Federal Court  Cour fédérale

Date: 20200123

Docket: IMM-3367-19

Citation: 2020 FC 100

Ottawa, Ontario, January 23, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OSAS SHARON OKOHUE
JADA EFOSA (a minor)
BELVIS EFOSA (a minor)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of a senior immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") to deny the Applicants' application for permanent residence on humanitarian and compassionate ("H&C") grounds. The Officer rejected the application on the basis that it did not provide sufficient evidence to justify an

exemption under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicants are citizens of Nigeria, whose refugee claims were refused by the Refugee Protection Division ("RPD") on November 3, 2015. The appeal to the Refugee Appeal Division ("RAD") was dismissed on April 11, 2016. The Applicants also received a negative Pre-Removal Risk Assessment ("PRRA") decision on December 22, 2017.

[3] The Applicants submit that the Officer breached procedural fairness by considering extrinsic information not disclosed to the Applicants. The Applicants also submit that the Officer unreasonably assessed the evidence.

[4] For the reasons that follow, I find the Officer's decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

[5] Mrs. Osas Sharon Okohue (the "Principal Applicant") and her 8-year-old daughter and 6-year-old son, Jada and Belvis, (the "Minor Applicants") (collectively, the "Applicants") are citizens of Nigeria. The Principal Applicant also has a 4-year-old daughter, Elvira, who is also a Canadian citizen.

[6] The Applicants entered Canada on February 10, 2015 and submitted refugee claims. On November 3, 2015, the RPD refused the claims. The RPD's decision was appealed, but on April 11, 2016, the RAD dismissed the appeal. The Applicants received a negative PRRA decision on December 22, 2017.

[7] The Applicants submitted an H&C application, which was received by IRCC on January 5, 2018. By decision dated April 25, 2019, the H&C application was refused.

[8] The Applicants' H&C application consists of a brief 7-page submission accompanied by supporting documentation and country condition evidence. In the H&C application, the Applicants submitted that they would face hardship to re-establish themselves in Nigeria, based on the "bizarre" country conditions in Nigeria. The Applicants submitted that they would have no place to return to in Nigeria because the Principal Applicant's family members have fled from their homes due to attacks by the Principal Applicant's husband. The Applicants noted they would face hardship due to high levels of unemployment, a high level of insecurity through the "socio-political and religious crisis", inability to afford quality medical care, and a lower quality of life in Nigeria.

[9] The Applicants also submitted that the Principal Applicant is "financially stable, filed tax and has contributed to the Canadian economy".

[10] On the best interests of the children ("BIOC"), the Applicants submitted that the children could not return to Nigeria due to the inadequate health-care and education systems. The Applicants submitted that Nigeria "is plagued by multiple life-threatening problems, ranging from risk to life due to recurring bomb blasts, incessant incidence of kidnappings, police brutality, religious intolerance, inadequate health-care, etc., which in combination will result in undue, unusual, undeserved and disproportionate hardship to the applicants." The Applicants submitted that the Principal Applicant lost her first daughter to "circumcision"—referring to female genital mutilation ("FGM")—and argued the Applicants would likely "fall back into the hands of their assailants if they are forced to return to Nigeria".

[11] The Applicants also submitted that there is a lack of state protection in Nigeria. They alleged that there are "real and potential barriers to seeking protection in a country where police corruption and brutality remains a serious threat to the protection of individual human rights."

III. **Underlying H&C Decision**

[12] After noting the Applicants' immigration history, the Officer considered the Applicants' establishment in Canada. The Officer noted that the Principal Applicant is currently employed and considered the counsel's submission that the Principal Applicant will be unable to enter the workforce due to high unemployment rates. Although recognizing that a less favourable economic climate existed in Nigeria, the Officer noted the process of reestablishment in such circumstances is an ordinary consequence of removal, and found that the Principal Applicant would be able to find gainful employment in Nigeria as she worked as a hairdresser for eight years in Nigeria prior to her departure to Canada. The Officer also noted the Principal Applicant's overseas work experience could provide her with a competitive advantage in finding employment in Nigeria.

[13] The Officer assigned some positive weight to the Principal Applicant's attendance at her church. However, the Officer did not find the Principal Applicant's overall establishment in Canada to be significant. The Officer found that the Principal Applicant demonstrated adaptability skills by uprooting her family to Canada, which would mitigate difficulties in relocating back to Nigeria, where she resided for over 30 years and where she would be familiar with the local culture, language and customs. The Officer further noted the Applicants' strong family ties in Nigeria, and found there was insufficient evidence that the Principal Applicant's family would be unwilling or unable to assist the Applicants with support.

[14] On the issue of the BIOC, the Officer found there to be insufficient evidence that the children would be denied an adequate education in Nigeria. Relying on the 2018 U.S. Department of State ("USDOS") Human Rights Practices Report, the Officer noted the law requires a tuition-free, compulsory, and universal basic education for primary and junior education. The Officer noted that discrimination and impediments to female participation in education existed in the Northern region of Nigeria, but found there to be insufficient evidence that the Applicants would be denied education in their hometown of Benin City, which is in southern Nigeria.

[15] The Officer noted there would be an initial adjustment period in relocating to Nigeria given the young age of the children. However, the Officer concluded there was insufficient evidence that the children's basic needs will not be met in Nigeria, as they have extended family ties and they will have the support of their mother. Overall, the Officer did not find that the BIOC would be negatively impacted if the family were to leave Canada.

[16] Although section 25 of the *IRPA* prohibits an assessment of risk (pursuant to sections 96 and 97), the Officer recognized that elements of adverse country conditions must be examined in relation to hardship, on a forward-looking basis. In response to counsel's submissions that the Applicants would be unable to find quality medical care, the Officer noted that there is insufficient evidence regarding any specific medical conditions. Also, although there are several general country condition documentation pertaining to kidnappings, police brutality and impunity, the Officer found there to be insufficient evidence "supporting a personalized impact from political or any religious crisis." The Officer noted general country conditions are faced by all citizens of Nigeria, and concluded there could be no finding of associated hardship without evidence that the conditions would personally and directly impact the Applicants.

[17] On the issue of FGM, the Applicants had submitted they were at risk because the children's father's family wishes to perform FGM on the daughters. The Principal Applicant had claimed one of her daughters died as a result of FGM. However, the Officer noted that despite the presence of a death certificate, there was insufficient information in relation to the details or cause of the daughter's death. In addition, the Officer considered the letter written by the Principal Applicant's sister, in which she stated the Principal Applicant's husband's family destroyed her family home and attacked everyone, and that a police complaint been made in May 2017. However, the Officer noted insufficient evidence to support this allegation other than undated, black and white photos of a destroyed structure.

[18] Citing excerpts from the 2018 USDOS Human Rights Practices Report, and the United Kingdom Home Office Report, the Officer accepted that FGM continues to be an ongoing practice in Nigeria, but noted the Applicants could relocate to Abuja, the capital city of Nigeria, where a federal legislation against FGM was being enforced. The Officer noted there was insufficient evidence that the family of the Principal Applicant's husband would locate the Applicants in a populated urban area of Nigeria. The Officer found that the Principal Applicant's adaptability skills could be applied to an internal move within Nigeria. The Officer notes, "As relocation is an option, and the applicant has not provided information to support the hardship behind relocating to another part of the country, I am not satisfied the applicant could not re-establish herself in another area of Nigeria."

[19] In conclusion, the Officer found the factors raised by the Applicants were not sufficient to warrant an exemption based on H&C grounds.

IV. **Issues and Standard of Review**

[20] The issues on this application for judicial review are:

A. Did the Officer breach the duty of procedural fairness by considering extrinsic information not disclosed to the Applicants?

B. Was the Officer's decision reasonable?

[21] The applicable standard of review must be determined in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*]. The revised standard of review analysis begins with the presumption of reasonableness, which can be rebutted in two types of situations. The first is where the legislature has indicated that it intends a different standard to apply, i.e. where it has explicitly prescribed the applicable standard of review, or where it has provided a statutory appeal mechanism from the administrative decision maker to a court (*Vavilov* at para 17).

[22] The second situation is where the rule of law requires that the standard of correctness be applied, for example in certain categories of legal questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at para 17).

[23] First, the correctness standard continues to apply to issues of procedural fairness. In *Vavilov* at paragraph 23, the Supreme Court states:

> Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a

> review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

[24] A reading of paragraphs 76 to 77 in *Vavilov* reveals the Supreme Court's acknowledgement that the "requirements of the duty of procedural fairness in a given case…will impact how a court conducts reasonableness review." This is instructive for a reviewing court to first determine whether a duty of procedural fairness exists, and in light of the procedural fairness requirements (if applicable), apply the presumption of the reasonableness standard. In *Vavilov*, the duty of procedural fairness concerned whether reasons for the administrative decision was required and provided (*Vavilov* at para 78). Having found that reasons were both required and provided in this case, the Supreme Court moves onto its discussion on whether the decision is substantively reasonable. This excerpt from paragraph 81 is also helpful, where the duty of procedural fairness is distinguished from the reasonableness analysis:

> […] The starting point for our analysis is therefore that where reasons are required, they are the primary mechanism by which administrative decision makers show that their decisions are reasonable — both to the affected parties and to the reviewing courts. It follows that the provision of reasons for an administrative decision may have implications for its legitimacy, including in terms both of whether it is procedurally fair and of whether it is substantively reasonable.
>
> (*Vavilov* at para 81)

[25] Second, the standard of review to be applied for an H&C immigration officer's decision is reasonableness, as neither exception from the revised framework applies (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 (CanLII) at

para 44 [*Kanthasamy*]; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 31 and 56 [*Baker*]; *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 (CanLII) at para 15).

V. **Analysis**

A. *Procedural Fairness*

[26] The Applicants submit the Officer breached a duty of procedural fairness by considering "extrinsic information that was not disclosed to the Applicants", which is made in reference to an updated April 2019 version of the USDOS Report on Nigeria. The Applicants argue this document was not in existence at the time the Applicants filed their H&C application, and that the Officer breached procedural fairness by failing to notify the Applicants of the intention to use this information by using the report to make a finding that education would be available to the Minor Applicants.

[27] The Respondent submits that cited portions of the updated USDOS Report are materially the same, and that the information acknowledges issues in Nigeria concerning education for female children. The Respondent also submits that the Officer accepted there may be issues faced by female children to obtain education, and that none of the information relied on by the Officer was "new" or "novel". The Respondent points out this information is publicly available, and the Applicants should have been aware of, and could have submitted the updated version in support of their application.

[28] In my view, the Officer's reliance on a publicly available document that is part of the Immigration and Refugee Board's ("IRB") National Documentation Package ("NDP") is not a

breach of procedural fairness. Nor is it a breach of procedural fairness for the Officer to not have disclosed the reliance on the NDP (*Khokhar v Canada (Citizenship and Immigration)*, 2018 FC 555 (CanLII) at para 24).

[29] The case of *Mancia v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9066 (FCA), [1998] 3 FC 461, is instructive here, where the Court held it is only when an officer relies on a significant post submission document evidencing changes in general country conditions that such a document must be disclosed to an applicant. In the case at bar, the updated USDOS report's section on education does not contain significant changes in general country conditions that the Officer relied on. Both versions note the impediments to female participation in education in the northern regions of Nigeria, which the officer recognized. Furthermore, although the previous version of the document noted the existence of school fees charged by authorities, I note the Officer's main concern with the application was the insufficiency of evidence. In fact, the Applicants fleetingly refer to the "education system" in Nigeria once in the 7-page H&C submissions (excluding supporting country condition documentation), without even a single sentence on why the Minor Applicants' best interests would be adversely affected by the education system.

[30] Thus, the Officer did not breach procedural fairness.

B. *Reasonableness*

(1) Selective Assessment of the Evidence

[31] The Applicants submit that the Officer conducted an unreasonable and selective assessment of the evidence. The Applicants note the USDOS Report relied on by the Officer

also states that while education is “technically free”, there are a multitude of barriers and over 30% of primary school-aged children were not enrolled in formally recognized schools. A report submitted by the Applicants also notes that many children do not attend school due to the need to provide additional income for their families. The Applicants also purport to point out that 60% of Nigerian children younger than age 18 experienced some form of physical, emotional, or sexual violence during childhood.

[32] The Applicants rely on *Abdulla Farah v Canada (Citizenship and Immigration)*, 2012 FC 1149 (CanLII) at paras 11-21 [*Abdulla Farah*] for the proposition that the officer unreasonably ignored the evidence before him. The Applicants also cite *Okafor v Citizenship and Immigration (Minister of)*, 2002 FCT 1108 (CanLII) [*Okafor*] to support their submission that the Officer erred by referring to the updated NDP.

[33] The Respondent submits that the Officer’s decision is reasonable as the impediment to female education is primarily in the northern region of Nigeria, whereas the Applicants would be returning to the southern region. The Officer also noted the Principal Applicant’s employability skills, which would help meet the children’s needs. The Respondent submits that the Officer reasonably found there to be insufficient evidence that the Principal Applicant would be unable to find a similar position when relocating to Nigeria.

[34] In my view, the decisions in *Abdulla Farah* and *Okafor* are inapplicable to the case at bar. This case does not concern the Officer’s “ignoring of evidence”, but concerns the sufficiency of evidence and submissions provided by the Applicants. Therefore, the decision in *Abdulla Farah* is not instructive for this case. Also, *Okafor* was a judicial review of the

Convention Refugee Determination Division's decision, not an immigration officer's decision on an H&C application. Thus, this Court's decision in *Okafor* simply does not apply here.

[35] As I have noted previously, the Applicants' H&C submissions consist of a mere seven pages that is lacking in both facts and analysis. Other than providing country condition documentation, the Applicants made no submissions on the BIOC as relating to education, nor its impact on the Minor Applicants. The Applicants broadly stated, "The prospects for the applicants get even grimmer with the reality of the inadequate health-care system and the near comatose state of the education system." There are no references to the country documentation in the actual submissions. Furthermore, it is unclear why the Applicants are introducing submissions on the "physical, emotional, or sexual violence" on children on the application for judicial review. This was not an issue raised in their H&C application.

[36] I find the Officer's decision to be reasonable in this regard.

(2) Internal Flight Alternative

[37] The Applicants take issue with the Officer's finding that the Applicants could relocate to Abuja, and submit that the Applicants were not notified that an Internal Flight Alternative ("IFA") was being considered. However, in the case at bar, there were no submissions on IFA or contrary evidence that would preclude the Officer from concluding that the Applicants could not relocate to Abuja. Given the negligible factual background provided by the Applicants, and "highly discretionary and fact-based nature" of the decision (*Baker*, para 61), the Officer's decision was transparent and justified.

VI. **Certified Question**

[38] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VII. **Conclusion**

[39] The Officer did not breach procedural fairness in considering an updated USDOS report. The Officer also did not err in the consideration of evidence or of the existence of an IFA in the context of assessing hardship.

[40] This application for judicial review is dismissed.

JUDGMENT in IMM-3367-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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