Federal Court  Cour fédérale

Date: 20201221

Docket: IMM-6734-19

Citation: 2020 FC 1174

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 21, 2020

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HAKEEM OLAJIDE OLABODE
ADEBOLA OLUWAFU OLABODE
OLASUNKANMI OLA OLABODE
OLAJUMOBI ESTHE OLABODE
OLASUBOMI OLAJI OLABODE
OMOJOLAOLUWA MA OLABODE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated September 26, 2019, confirming the rejection of the applicants' refugee claim on the basis of an Internal Flight Alternative [IFA].

[2] The applicants, citizens of Nigeria—with the exception of their minor daughter, a U.S. citizen—are seeking refugee status based on threats of female genital mutilation by extended family members. The applicants left Nigeria in March 2018 and arrived in Canada the following month via the United States.

[3] The Refugee Protection Division [RPD] rejected the applicants' claim for refugee protection on the grounds that, aside from the fact that they lacked credibility and did not establish that they would be forced to have their daughters circumcised, they failed to show that the IFA in Abuja or Port Harcourt, Nigeria, was unreasonable. The RAD confirmed that decision.

[4] This judicial review focuses on the reasonableness of the RAD's findings with respect to the refusal to admit evidence on appeal and the determination of the existence of an IFA.

[5] While the applicants made arguments at the hearing that do not fully reflect the content of their written submissions, this Court has confined itself to their submissions.

[6] In their written submissions, the applicants contend that the additional evidence should be admitted as it was submitted prior to the RPD's notice of decision and was resubmitted on appeal. The applicants argue that this evidence supports their credibility and affects the assessment of the reasonableness of the IFA. A review of this evidence indicates that the applicants contend that the IFA is unreasonable for their relocation in light of the discrimination

against Muslim converts to Christianity and the network of non-state agents of persecution in question.

[7] First of all, the date of notice of the RPD decision is not indicative of the earlier cut-off date for admissibility of evidence (*Refugee Protection Division Rules,* SOR/2012-256, rules 43(1), 68). The RAD therefore properly analyzed the admissibility of the evidence on appeal in accordance with the *Immigration and Refugee Protection Act*, SC 2001, c 27, subsection 110(4).

[8] *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 34–35 [*Singh*], is clear that subsection 110(4) allows for the presentation of new evidence only in limited circumstances, and without discretion on the part of the RAD: either evidence that arose after the rejection of the claim for refugee protection, evidence that was not reasonably available, or evidence that was reasonably available, but that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. The criteria for admissibility set out in the case law also apply (*Singh*, above, at para 49).

[9] The evidence in question includes an article published in 2014 in a Nigerian newspaper and a series of documents relating to events that occurred prior to the RPD's decision. The RAD noted that no reasons were provided by the applicants to explain in a concrete and detailed way why this new evidence was not available or why they could not reasonably have submitted it prior to the RPD's decision. Nevertheless, the RAD considered the credibility and relevance of the evidence and drew negative conclusions with respect to both.

[10] In particular, for the 2014 article and documents relating to the ties of an imam—the principal applicant's uncle—in Abuja and Port Harcourt, the persecution of Muslim converts and the principal applicant's conversion to Christianity, the RAD noted that this information was not included in the refugee protection claim form and compensated for deficient evidence before the RPD. In fact, the RPD had raised the lack of evidence to corroborate that non-state agents of persecution had the ability or influence to trace applicants to the IFA. The RAD also questioned the reliability of the content of the 2014 article in light of discrepancies between the electronic and paper versions.

[11] Similarly, the RAD found that the documents describing the abduction of a secretary who had been working with the principal applicant in Port Harcourt in 2015 compensated for an omission raised by the RPD. Nevertheless, the RPD did consider the kidnapping and was not persuaded that it would happen again in the future.

[12] As for the documents regarding the two girls who are not circumcised and the work experience of the principal applicant, the RAD concluded that they did not present new facts as the RPD had accepted this as fact. Moreover, the work experience, as well as the children's boarding school accommodation and the sale of certain assets—described in the other documents—are not determinative of the IFA analysis.

[13] The RAD thus concluded that the new evidence sought to compensate for deficient evidence before the RPD, failed to establish any new facts or was not relevant to the analysis of whether a genuine IFA was available.

[14] As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the reasonableness of a decision is justifiable in relation to the relevant legal and factual constraints that bear on the decision. It is for the decision maker to assess and evaluate the evidence before it, and, absent exceptional circumstances, this Court will not interfere with its factual findings (*Vavilov*, above, at para 125).

[15] The RAD's analysis of the admissibility of new evidence was intelligible and reasonable. The arguments as to the unreasonableness of the IFA in light of this evidence must therefore also fail. Moreover, it is not the role of the Court on judicial review to re-weigh the evidence (*Vavilov*, above, at para 125).

[16] For the reasons stated above, the application for judicial review is dismissed.

JUDGMENT in IMM-6734-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6734-19
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