Federal Court  Cour fédérale

Date: 20210311

Docket: IMM-5789-18

Citation: 2021 FC 194

Ottawa, Ontario, March 11, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

TAFARA MUCHENJE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an Application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [*IRPA*] of an October 19, 2018 decision [Decision] of the Refugee Protection Division [RPD]. The Decision dismissed the Applicant's claim for refugee protection under section 96 and 97 of the *IRPA*. The determinative issue for the RPD was a viable internal flight alternative [IFA].

[2] The Applicant, a Zimbabwean citizen, fears returning to Zimbabwe because of a threat from members of Zimbabwe's governing party and the national army arising from a land dispute. The Applicant claims that the government may perceive him to be a supporter of an activist, Pastor Mawarire, and persecute him based on perceived political and religious views.

[3] The Applicant has completed nine years of post secondary education. He is married and has three children. He joined the Movement for Democratic Change [MDC] in Zimbabwe in 2011, although he has no duties or formal position. In October 2012, the Applicant also became a pastor with Kingsway Fellowship International Church, which is based in the United States of America [USA].

[4] In 2008, the Applicant entered into a lease agreement with the Ministry of Local Government, Public Works and Urban Development [Ministry] for vacant land located in a suburb of Harare, Zimbabwe. He built a family home on the leased land and intended to develop it further to fulfil the Ministry's requirement for ownership. However, around July 18, 2013, soldiers from the national army ordered the Applicant's workers to stop building, claiming that it belonged to a general/war veteran [General] in the national army. Chizema [Charai], the sister of a member of the governing party, and her sister Cleveria Chizema [Cleveria], began to construct a development on the Applicant's land in collaboration with the General.

[5] The Applicant went to the police for assistance and was told that he should contact the Ministry since they were the lessor of the land. The Applicant states that the police were reluctant to become involved with the army and kept asking him to which party he belonged. The

Applicant reported the matter to the Ministry who conducted a site visit on July 25, 2013, and told the army personnel that they had to vacate. The Ministry also sent a letter to Charai on July 29, 2013, however, she ignored the Ministry's directions and construction continued.

[6] On August 16, 2013, the Applicant again went to the police asking them to evict the occupants from his land. The police told the Applicant that they did not have the power to displace a veteran or order the construction to stop and they advised the Applicant to pursue civil action. The Applicant was successful in court. On January 3, 2014, he served an injunction on Chaira that prevented any further construction and only three subsequent interactions with state officials over the next four years.

[7] In February 2017, a member of the governing party visited the Applicant's home canvassing for the 2018 election. They asked if he would vote or donate but the Applicant stated that he did not want to get involved in politics. He believes they identified him as someone who was not involved with the governing party.

[8] In May 2017, police arrested the Applicant following a protest by farmers against the police. The Applicant states that he was not a farmer and was not near the protest but that the police detained him overnight. When leaving the station, the Applicant was told to "stay well" with the authorities. While the Applicant submits that the arrest was unnerving, he states that he did not feel seriously threatened.

[9] On September 29, 2017, upon returning from a two-month trip to the United Kingdom [UK] to celebrate his sister's birthday, two men claiming to be members of the Central Intelligence Organization [CIO] questioned the Applicant at the airport. The men accused him of selling out his country and associating with Pastor Mawarire, who had encouraged protests in 2016 and again just before the Applicant's return from the UK. The Applicant was released but was told to respect and honour important people. The Applicant submits that he felt this comment was related to his refusal to let the General build on his property, though he "supposes" that it could be because the CIO believes he was involved with Pastor Mawarire.

[10] Later that same week the Applicant's housekeeper told him that while he was away two men had visited and asked about him. The Applicant took this as a threat and arranged for him and his family to leave their home. They went into hiding at his sister's house who was in Canada visiting her son.

[11] On October 29, 2017, he flew to the United States [US], entered Canada on October 30, 2017, and made a claim for protection in Canada on November 10, 2017. The Applicant states that he did not seek asylum in the US because he has a nephew that lives in Canada.

II. The Decision

[12] The RPD heard the claim on September 17, 2018. After the hearing, the Applicant provided written submissions and additional post-hearing evidence by way of affidavits from his wife and his uncle. The RPD gave less probative value to these two affidavits since they were declared after the conclusion of the hearing. The Applicant does not take issue with this.

[13] The RPD denied the Applicant's claim on October 19, 2018, stating that the determinative finding was a viable IFA in Bulawayo. The RPD correctly set out the two-pronged test for whether there was a viable IFA. First, the panel must be satisfied, on a balance of probabilities, that there is no serious possibility that a claimant would be persecuted in the proposed IFA. Secondly, the conditions in the proposed IFA must be such that it would not be objectively unreasonable under the circumstances, including those particular to the claimant, to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706).

[14] The RPD found that there was no serious possibility of persecution in the proposed IFA. It noted that the core of the threat from Sharai and her sister Cleveria was related to the land development. The RPD cited a lack of noticeable activity on the Applicant's property as well as a lack of interest and motivation on the part of Shaira or her representatives to take the property or to pursue the Applicant in a different part of Zimbabwe. In short, the RPD found insufficient evidence to establish a willingness and an ability for any person or group to pursue the Applicant to another part of Zimbabwe.

[15] Regarding the second part of the test, the RPD determined that it is reasonable in all of the particular circumstances of the Applicant to relocate to Bulawayo. The RPD noted the Applicant did not foresee any issues in finding housing, he speaks English and Shona, and the Applicant's education, work experience, and level of sophistication would allow him to find employment. Although adjustments will need to be made by the Applicant, the RPD determined

that it would not be unreasonable, in the circumstances particular to the Applicant, for him to seek refuge in Bulawayo.

III. Issues and Standard of Review

[16] The Applicant submits that the sole issue for determination is whether the RPD erred by conducting an incomplete risk assessment by failing to evaluate the risk of persecution from the Zimbabwean government or the CIO based on perceived political opinion.

[17] The parties submit that this issue is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401 at para 14). I agree that the standard of review is reasonableness.

[18] Under the reasonableness standard the Court must focus on the Decision, including the reasoning process and the outcome (*Vavilov* at para 83). This does not include a redetermination of the matter but rather a consideration of whether the decision is "one that is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). In doing so, the decision-makers' written reasons must be interpreted holistically and contextually (*Vavilov* at para 97).

IV. Parties' Positions

(1) Applicant's Position

[19] The Applicant submits that the RPD failed to conduct a risk assessment of whether the Zimbabwean government or Zimbabwe's CIO would continue to target him based on a perceived political opinion and religion leading to an incorrect finding that a viable IFA existed. The Applicant submits that the RPD did not assess the September 2017 airport questioning fully.

[20] The Applicant submits that, while he disagrees with the RPD's finding that the September 2017 events were not linked to the land dispute, he concedes that it was reasonable for the RPD to make that finding on the evidence. In concluding that there was no connection between the CIO questioning and the land dispute, the Applicant submits that the RPD had an obligation to assess whether the questioning by the CIO created an independent ground of persecution.

[21] The Applicant relies on *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 and *Varga v Canada (Citizenship and Immigration)*, 2013 FC 494 [*Varga*] for the premise that the RPD was required to assess any grounds of persecution that arose from the evidence regardless of whether he had precisely articulated them. The Applicant states that he "expressly put the RPD on notice" of the alternative possibility of persecution in the first paragraph of his BOC.

(2) The Respondent's position

[22] The Respondent submits that the Applicant failed to establish the central elements of his claim with sufficient evidence and failed to demonstrate that the proposed IFA was unreasonable. The Respondent submits that the determinative issue was the finding that there was an IFA and that the RPD did not ignore risks in coming to that decision. Therefore, the

Decision was reasonable based on the evidence. It states that the Applicant's arguments amount to a disagreement with the conclusions and the weighing of evidence by the RPD.

V. Analysis

[23] The jurisprudence requires a claimant to discharge the onus to "make out his or her claim in clear and unmistakeable terms" (*Hassan v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1183 at para 18; *Ranganathan v Canada (Minister of Citizenship & Immigration)* (2000), [2001] 2 FC 164 at paras 10-11). I have determined that the Applicant has not met his burden of making out his claim nor has he established a reviewable error on the part of the RPD in the IFA analysis.

[24] It is necessary to review the relevant portion of the first paragraph of the BOC narrative:

> …I am seeking protection in Canada because I fear persecution from elements within the Zimbabwe National Army. An officer in the army and a woman who is well connected to the politburo of the governing ZANU-PF party have caused me to be threatened by agents of the state in an attempt to seize a stand of land I own. I also believe the government may perceive me to be a supporter of Pastor Evan Mawarire, and will persecute me on the basis of my perceived political and religious views.

[25] The Applicant submits that the RPD erred by failing to assess whether he risked persecution on the grounds of political opinion and religion, specifically as it relates to the September 2017 questioning by the CIO. The Applicant cites *Varga* at para 5 which states:

> Refugee claims involve fundamental human rights. Accordingly, it is critical that the Board consider any ground raised by the evidence even if not specifically identified by the claimant: *Ward v. Canada (Minister of Employment & Immigration)*, [1993] 2 S.C.R. 689 (S.C.C.); *Viafara v. Canada (Minister of Citizenship &*

> *Immigration)*, 2006 FC 1526 (F.C.), para 13. It is, in most circumstances, a serious and potentially fatal error to ignore part of a refugee claim: *Mersini v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 1088(F.C.), para 6.

[26] I acknowledge that immigration decisions have been overturned based on the finding that a Board has failed to consider an additional ground of persecution (*Ghirmatsion v Canada (Minister of Citizenship & Immigration)*, 2011 FC 519 at para 106). However, there are limits to what will constitute a fatal error (*Mersini v Canada (Minister of Citizenship & Immigration)*, 2004 FC 1088 [*Mersini*]*; Mohamed v Canada (Minister of Citizenship and Immigration)*, 2015 FC 758 at para 27*; Nadarasa v Canada (Minister of Citizenship & Immigration)*, 2012 FC 752 at para 24).

[27] The Court in *Mersini* addressed a Board's lack of consideration of a ground of persecution stating that this is not a fatal error where the issue that appeared to be ignored is not central to the claim and it appears "to be an afterthought that was not supported by any evidence" (*Mersini* at para 8). Further, the Court has stated that an additional ground of persecution must only be considered where there is evidence on the record to support it (*Galyana v Canada (Minister of Citizenship & Immigration)*, 2011 FC 254 at paras 9-11; *Paramanathan v Canada (Minister of Citizenship & Immigration)*, 2012 FC 338 at para 19).

[28] Similar to *Mersini* and *Paramanathan*, the Applicant's submission is that the September 2017 questioning by the CIO at the airport was related to an independent ground of political opinion. I am not persuaded by the Applicant's submissions. On a review of the record and the Decision I find that the RPD reviewed the September 2017 CIO questioning and his previous

police detention in May 2017 and found that there was insufficient evidence to tie these two events with the previous issue with the Chizema sisters, which ended after the serving of the injunction in January 2014. The RPD also noted that there was insufficient evidence to show that Sharai interacted with the Applicant subsequent to the injunction in January 2014. The RPD was alive to all of the allegations made by the Applicant that could point to a political or perceived political opinion, including the CIO questioning.

[29] The RPD found that the evidence from the uncle and the Applicant provided only speculative statements about possible threats.

[30] The BOC narrative sets out the Applicant's belief that the questioning related to the General's failed attempt to take the Applicant's land and that "I suppose it is also possible that the CIO believes I am involved with Pastor Evan Mawarire's movement, which would also make me a target".

[31] The Applicant also attributed a visit of several men to the Applicant's land, from the account of his housekeeper, to the land dispute with the General.

[32] The Applicant's sister also refers to the land dispute and mentioned that the Applicant told her about the September 2017 questioning at the airport, though then states that the men who visited afterwards were surveying the land. She believes the Applicant risks death if he returns to Zimbabwe despite there being no evidence of threats of this nature or any physical altercations in the record.

[33] The Applicant also made written submissions to the RPD after the hearing reiterating that he had given credible and corroborated testimony about his experienced persecution based on his resistance to giving up his land. He submits that the state viewed this as a form of political opinion. The Applicant also states that the General was the cause of the harassment he faced and if he were to continue to resist attempts to take over his land he would face harassment, intimidation, and arrest that would rise to the level of persecution.

[34] While the Applicant states the RPD ignored the ground of political opinion, the record shows otherwise. As set out above, the RPD canvassed all of these incidents and found that the fears were speculative and that there was insufficient evidence. The RPD was entitled to make this finding based on the evidence on the record.

[35] In addition, there was no evidence adduced connecting the CIO's questioning about Pastor Mawarire to religion. The CIO accused the Applicant of selling out his country to Britain. The Applicant described Pastor Mawarire as a well-known democracy activist. It was reasonable that the RPD did not reference this interaction as being connected to religion, as there was no evidence on the record in this regard**.**

[36] While I am of the view that the RPD fully assessed the risk of persecution on Convention grounds, I am persuaded by the Respondent's submissions that whether or not each risk was individually assessed does not change the fact that the Applicant had a viable IFA in Bulawayo (*Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 at para 41).

[37] Turning to the IFA, there is a high onus on an applicant to demonstrate that a proposed IFA is unreasonable (*Ranganathan* at para 15). An applicant is required to establish this with objective evidence. The Applicant does not challenge the IFA itself but rather states that an error in assessing risk lead to an incomplete assessment of the IFA.

[38] The Respondent points out that the finding of a viable IFA was based on the following five findings:

(1) The Applicant failed to establish a willingness or ability of any person or group that would seek out the Applicant in another part of Zimbabwe pursuant to section 96 or 97(1) of the *IRPA*;

(2) A relocation to Bulawayo, Zimbabwe is reasonable;

(3) The Applicant's level of sophistication based on his work experience and post secondary education supports a finding that he would be able to find work in Bulawayo;

(4) There are no serious barriers to a relocation to Bulawayo; and

(5) It is reasonable for the Applicant to seek refuge in the IFA.

[39] The Respondent submits that the determinative issue was the finding that there was an IFA and that the RPD did not ignore risks in coming to that decision. They state that the Applicant failed to discharge his onus to make out his claim clearly and adduce evidence to establish that the IFA is unreasonable.

[40] As I have found, there was no error in the RPD's risk assessment. I also find that the RPD conducted a proper IFA analysis.

VI. Conclusion

[41] Reviewing the Decision and the record in its entirety, with the evidence before it, the RPD acted reasonably in its risk assessment and in its determination of an IFA. I find that the Decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law. Therefore, the application for judicial review is dismissed.

JUDGMENT in IMM-5789-18

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

There is no question for certification. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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