Federal Court Cour fédérale

Date: 20210324

Docket: IMM-476-20

Citation: 2021 FC 252

Ottawa, Ontario, March 24, 2021

PRESENT: Madam Justice Walker

BETWEEN:

BISI OLUROTIMI OLAWOYIN
OLUSHOLA AMINAT OLAWOYIN
GOODNESS OLUWAD OLAWOYIN
TAIWO DAMILOLA OLAWOYIN
KEHINDE OLAMIDE OLAWOYIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Bisi Olawoyin, the Principal Applicant, his wife, Ms. Olushola Olawoyin, and their three minor children seek judicial review of a decision of the Refugee Appeal Division (RAD) dated January 6, 2020 (Decision). The RAD found that the Applicants have an internal flight

alternative (IFA) available to them in Port Harcourt, Nigeria, and confirmed a January 28, 2019 decision of the Refugee Protection Division (RPD) on that basis.

[2] For the reasons that follow, the application will be dismissed. The RAD comprehensively engaged with the Applicants' submissions and evidence. The RAD also properly identified the well-established test for a viable IFA and did not impose on the Applicants an elevated evidentiary threshold for discharging their onus under the second prong of the test.

I. Overview

[3] The Applicants are citizens of Nigeria who arrived in Canada on April 14, 2016. They fear harm in Nigeria from Mr. Olawoyin's family who insist that his daughters undergo female genital mutilation. Mr. Olawoyin returned to Nigeria in May 2016, leaving his wife and daughters in Canada. He re-entered Canada in May 2017 and the family filed its refugee claims in September 2017.

[4] The RPD rejected the Applicants' refugee claims, finding that their allegations were not credible and that they have a viable IFA in Port Harcourt.

[5] The Applicants appealed the RPD's decision to the RAD, filing new evidence in support of their appeal. The RAD found the new evidence inadmissible and declined the Applicants' request for an oral hearing.

II. Decision under review

[6] The RAD's Decision focuses on the Applicants' arguments regarding the availability of an IFA in Nigeria. The RAD reviewed their appeal submissions against the two-prong test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*). Regarding the first prong of the test, the RAD concluded that the Applicants had not discharged their burden of showing that they would face more than a mere possibility of persecution in Port Harcourt or that they would be personally subject to a risk to their lives or risk of cruel and unusual treatment or danger of torture in Port Harcourt at the hands of their agents of persecution or Boko Haram. The Applicants do not dispute the RAD's conclusion.

[7] The RAD considered the second prong of the *Rasaratnam* IFA test at some length and noted that it requires concrete evidence of conditions that would jeopardize a claimant's life and safety. The Applicants' submissions focused on the fact that Mr. Olawoyin had been a high-ranking government official in Nigeria and, as such, would be perceived as wealthy and would be particularly vulnerable to kidnappers. The RAD reviewed the objective evidence in the National Documentation Package for Nigeria and the incidence and characteristics of kidnapping for ransom in the Niger Delta where Port Harcourt is located.

[8] The RAD acknowledged that Mr. Olawoyin fell into some of the categories of people who are targeted for ransom kidnappings while he was living and employed in Nigeria but concluded that he no longer has the same profile, having resigned from his government position in July 2017. The RAD also found that the risk of kidnapping identified by the Applicants is a risk faced by all Nigerians. Mr. Olawoyin had not been subject to threat of kidnapping while

occupying his prominent position and the risk of being a victim of crime did not satisfy the second prong of the test.

III. Issue and Standard of review

[9] The sole issue in this application is whether the RAD made a reviewable error in its analysis of the second prong of the IFA test and I will review the RAD's reasons and conclusion on this issue for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*)). None of the situations identified by the Supreme Court in *Vavilov* for departing from the presumptive standard of review apply in this case.

[10] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard, emphasizing the importance of the decision maker's reasoning process and the outcome for the person affected by the decision (*Vavilov* at para 83). The Supreme Court stated that the hallmark of a reasonable decision is "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; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 31).

IV. Analysis

[11] The second prong of the *Rasaratnam* test asks whether it would be unreasonable in the circumstances for the Applicants to seek refuge in Port Harcourt. The parties agree that the threshold for the second prong is high and requires actual and concrete evidence of "nothing less

than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118 (CA) at para 15 (*Ranganathan*)).

[12] The Applicants submit that the RAD "moved the goalposts" for satisfying the already high threshold by requiring a specific threat to Mr. Olawoyin and his family. They argue that, once a condition that would jeopardize his life and safety are established, there is no requirement for a threat. The Applicants state that the RAD effectively and improperly engaged in a new refugee determination.

[13] The RAD acknowledged that Mr. Olawoyin had been a high-ranking government official in Nigeria for 17 years as the Secretary of health services. As a result, at that time, he fell into some of the categories of people who are targeted for ransom kidnappings, including high-profile Nigerians, wealthy families, those who are perceived to be wealthy, and government officials. However, the RAD found that Mr. Olawoyin had resigned from his position in July 2017 and that there was "insufficient evidence to establish that any criminal entities or militant groups in Port Harcourt will be aware of his former position". In addition, any future employment he may obtain is unknown. The RAD stated that it would be speculative to conclude that Mr. Olawoyin will again be a government official or an individual with perceived wealth should he return to Nigeria and live in Port Harcourt.

[14] The RAD noted that there was no evidence that Mr. Olawoyin had been personally targeted or kidnapped when he was in a prominent position. The panel found that the risk of

being kidnapped by unspecified individuals in Port Harcourt is faced by all Nigerians and the Applicants had not established they specifically would be targeted. The RAD concluded that Mr. Olawoyin's personal characteristics were not such that the Applicants met the high threshold of the test for unreasonableness.

[15] I find no error in the RAD's analysis of the second prong of the *Rasaratnam* test. With respect to the fear of being kidnapped, the RAD reasonably concluded that the Applicants had not provided sufficient evidence to establish that relocation to Port Harcourt would be unreasonable in their circumstances. The panel did not misapply the test. The Applicants' disagreement with the outcome of the RAD's analysis is a request to the Court to reweigh the evidence and the RAD's findings of fact.

[16] The country condition documents concerning the prevalence of kidnappings in the Niger Delta, including Port Harcourt, do not constitute concrete evidence. Contrary to the Applicants' arguments, the existence of conditions that may indicate risk is not sufficient to discharge their onus without evidence to link those conditions to their personal circumstances. In their submissions, the Applicants recognize that they bore the burden of proof of establishing that it would be unreasonable in the context of their personal circumstances to relocate to the proposed IFA (*Gallo Farias v Canada (Citizenship and Immigration)*, 2008 FC 1035 at para 34; *Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at para 42). The RAD was alive to the Applicants' concerns and considered the role of risk and personal circumstances in the Decision. The RAD addressed the Applicants' assertion that Mr. Olawoyin's past employment would put

him and his family at increased risk but concluded that the assertion was not supported by any evidence.

[17] The Applicants characterize the RAD's statement that the organized gangs responsible for kidnappings in the area would not be aware of Mr. Olawoyin's prior government position as speculative. I disagree. The statement reflects the absence of clear and concrete evidence of threat to the Applicants' safety in Port Harcourt. The same is true of the RAD's statement that there was no evidence Mr. Olawoyin would resume a government position in Port Harcourt. Finally, the RAD's reference to the absence of kidnapping threats was part of its assessment of whether Mr. Olawoyin's prior government position was such that it distinguished him and his family prospectively from the general population.

[18] In summary, I find that the Applicants' submissions regarding the risk to their safety in the IFA due to the possibility of random kidnappings do not reveal a reviewable error in the Decision. The Applicants have identified no evidence that would suggest they had met the demanding requirement for unreasonableness that is the hallmark of the second prong of the *Rasaratnam* test (*Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at para 20, citing *Ranganathan* and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA)). The RAD's analysis logically linked the Applicants' personal circumstances to the right test and does not reflect the imposition of a higher and improper threshold. I am not persuaded that the RAD's Decision was unreasonable.

V. Conclusion

[19] The application is dismissed.

[20] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-476-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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