Federal Court  Cour fédérale

Date: 20210623

Docket: IMM-2220-20

Citation: 2021 FC 659

Ottawa, Ontario, June 23, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

AYOWUNMI ADEYIG OLUSOLA
MOLAYO DORCAS OLUSOLA-ADEYIGA
AYOMIDE OMOTOLA OLUSOLA-ADEYIGA
AYODEJI OMOGBOL OLUSOLA-ADEYIGA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a husband [the Principal Applicant], wife, and their minor daughter and son, all citizens of Nigeria, who seek judicial review of the February 26, 2020 decision [the Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB].

The Decision upheld the March 21, 2019 decision of the Refugee Protection Division of the IRB [RPD], which found that the Applicants are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The determinative issue in the Decision was the availability of an internal flight alternative [IFA] in Abuja, Nigeria.

[2] As explained in greater detail below, this application is dismissed, because I have considered the Applicants' arguments but find the RAD's IFA analysis to be reasonable.

II. **Background**

[3] The Applicants claim fear of persecution from the Principal Applicant's extended family, who want to perform female genital mutilation [FGM] on the female minor Applicant. The Principal Applicant is a prince of the Olusola royal family of Pakoto Village, in Ogun State, where the agents of persecution continue to live. When his daughter was born in 2012, the Principal Applicant began receiving pressure from members of the Olusola royal house to subject her to FGM. The Principal Applicant claims he was then followed by members of the family, beaten, and threatened on several occasions. When he went to the police, he was told it was a family issue that has nothing to do with the police.

[4] On January 9, 2013, the Principal Applicant fled to South Africa. His wife and children were twice denied South African visas. On July 7, 2018, the Principal Applicant returned to Nigeria and hid at a friend's house. He claims that he was discovered by three men wearing Nigerian army uniforms and kidnapped in order to force him to agree to his daughter's FGM. On

July 12, 2018, the Applicants fled Nigeria for the United States. They entered Canada on July 13, 2018, and filed their refugee claims on July 30, 2018.

[5] The determinative issue in the RPD decision was the existence of IFAs in Abuja, Ibadan, and Port Harcourt. The Applicants appealed that decision. The RAD dismissed the appeal on the basis of the existence of an IFA in Abuja alone. That Decision by the RAD is under review in this application.

III. **Issue and Standard of Review**

[6] The sole issue for the Court's determination is whether the RAD made an unreasonable determination that the Applicants have a viable IFA in Abuja, Nigeria. The parties agree that the standard of review is reasonableness, as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

IV. **Analysis**

A. *Internal Fight Alternative Test*

[7] The test to determine the availability of an IFA is conjunctive and consists of two prongs (see, e.g., *Rasaratnam v Canada (Minister of Employment & Immigration)* (1991), [1992] 1 FC 706, 1991 CarswellNat 162 at para 13 (FCA)). The decision-maker must be satisfied, on a balance of probabilities, that:

A. there is no serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA exists; and

B. conditions in that part of the country are such that it would not be unreasonable, in all the circumstances, including those particular to the claimants, for the claimants to seek refuge there.

[8] Once an IFA is proposed, the burden is on the Applicants to establish that it is not viable, either because there is a serious risk of persecution there or because it would be unreasonable for them to seek refuge there. None of these principles is in dispute. However, the Applicants raise arguments challenging the reasonableness of the RAD's analysis under both prongs of the IFA test.

B. *First Prong of the IFA Test*

[9] The Applicants assert that they would not be safe from persecution in Abuja, because the agents of persecution have contacts all over Nigeria. In analysing the viability of Abuja as an IFA under the first prong of the test, the RAD noted the Principal Applicant's testimony that the agents of persecution had not stopped looking for him and that they were searching for him in every part of the country. Before both the RPD and the RAD, the Applicants relied on notices purportedly published in a major Nigerian newspaper, stating that the Principal Applicant was wanted and asking anyone who saw him to report him to the nearest police station.

[10] The RAD considered these notices, as well as the RPD's analysis thereof and conclusion that they were not authentic. While the RAD found that some of the RPD's concerns with the notices were not, on their own, a sufficient basis to impugn the authenticity of the notices, the

RAD conducted its own analysis and also concluded that they were not authentic. The Applicants argue that this analysis was unreasonable.

[11] However, the RAD made an alternative finding that, even if the notices were authentic, they would not support a conclusion that the agents of persecution would be able to locate the Applicants in Abuja. Therefore, even if there were an error in the RAD's analysis of the authenticity of the notices, it would not be determinative of this application for judicial review. As such, the question for the Court's consideration in connection with this evidence is whether the RAD erred in arriving at its alternative finding.

[12] The RAD observed that it had no evidence concerning the breadth of circulation of the Nigerian newspaper in which the notices were apparently published. Also, each notice appeared to have been published only once. Therefore, even assuming the newspaper had a wide circulation, the RAD found that the circulation of the notices themselves would have been limited in time to the publication period of each issue in which the notices appeared. On this basis, the RAD found that the Principal Applicant's testimony that the notices would be read so widely through Nigeria that his agents of persecution would be able to locate him and his family in Abuja was without merit.

[13] The Applicants argue that this analysis is unreasonable, because it disregards the probative value of the notices as establishing the motivation of the agents of persecution, and efforts undertaken by them, to locate the Applicants. Even though there were only two notices published on one occasion each, and only one of the notices can be characterized as an effort to

locate the Applicants, I accept that the efforts to publish these notices could speak to some level of motivation to locate them. However, the RAD's analysis focused on the probative value of the notices in establishing the ability of the agents of persecution to locate the Applicants in Abuja. Without demonstrating this ability, the Applicants could not establish they would face a serious possibility of persecution in the proposed IFA. I find nothing unreasonable in this analysis.

[14] The other evidence upon which the Applicants relied, to establish that the agents of persecution were searching for them and have the ability to locate them, consisted of affidavits sworn by two childhood friends of the Principal Applicant, deposing to events that occurred around the time of the RPD decision. One of these affiants lives in Ibadan and the other in Port Harcourt. Each deposed that he was accosted at his home by men searching for the Principal Applicant.

[15] The RAD admitted these affidavits as new evidence. It made no adverse credibility findings related to the affidavits but afforded them no weight in establishing that the Applicants would face a serious risk from their agents of persecution in relocating to Abuja.

[16] The RAD noted that the affiant from Ibadan stated that the assailants only came looking for the Principal Applicant at his home because they had "heard" the Applicants were hiding at his address. Reasoning that it was not clear whether the assailants would have looked for the Applicants there otherwise, the RAD concluded that this affidavit was not clear and convincing evidence that the agents of persecution would look for them in Abuja and gave the affidavit no weight.

[17] In challenging the reasonableness of this analysis, the Applicants argue that the RAD erred in giving no weight to this affidavit, based on an erroneous interpretation of the evidence that the assailants "heard" that the Applicants were hiding at the affiant's address. The Applicants submit that this evidence does not necessarily mean that the assailants passively became aware of this information. The evidence is equally consistent with the assailants having learned this information by actively searching for the Applicants. The Applicants also note that, while the RAD relied on Abuja's large population in concluding that the agents of persecution would not be able to find the Applicants there, Ibadan has a larger population than Abuja.

[18] I accept the logic of the Applicants' submissions. However, in my view, these arguments do not undermine the reasonableness of the RAD's reasoning. I interpret that reasoning to be that the effort to locate the Applicants in Ibadan resulted from information (albeit erroneous) that the Principal Applicant had a friend who resided there with whom he was hiding. The RAD found that this event did not support a conclusion that anything would prompt the agents of persecution to search for the Applicants in Abuja. It was in that context that the RAD stated that Abuja's large population decreases the likelihood that the agents of persecution would find the Applicants there. I find nothing unreasonable in this analysis.

[19] The affidavit from the friend who lives in Port Harcourt recounts a similar event, although it also deposes (presumably based on statements made by the assailants) that the agents of persecution have sent scouts or spies to all Nigerian states and the Federal Capital Territory in an effort to locate the Principal Applicant. The RAD found that this affidavit did not represent clear or convincing evidence that the agents of persecution would find the Applicants if they

relocated to Abuja. Noting Abuja's large population and its distance from the Principal Applicant's family's village in Ogun State, the RAD reasoned that it was unlikely the agents of persecution would be able to continually send spies to seek the Applicants in Abuja, absent clear and convincing evidence that they have the means to do so. The RAD therefore gave this affidavit no weight for the purpose of showing that the agents of persecution would locate the Applicants in Abuja.

[20] The Applicants argue that the RAD erred in this analysis by failing to note that the distance between the Principal Applicant's family's village and Port Harcourt (where the agents of persecution accosted his friend) is comparable to the distance between the village and Abuja. More broadly, the Applicants submit that the RAD erred in failing to afford some weight to the efforts to locate the Principal Applicant in both Ibadan and Port Harcourt, as representing evidence of the means and motivation of the agents of persecution to locate him in other cities as well.

[21] To make their point, the Applicants propose a thought experiment, in which one assumes (entirely hypothetically) that Nigeria has 100 cities and that there was evidence of efforts to locate the Applicants in 99 of those cities. On those facts, the Applicants posit that one would clearly conclude there was evidence of ability to locate the Applicants in the entire country. Therefore, even if such evidence related to only 2 of the 100 cities, this evidence would be entitled to some weight for purposes of establishing that the Applicants would face risk if relocating to Abuja.

[22] It is trite law that the Court's role in judicial review does not extend to interfering with the weight afforded by an administrative decision-maker to the evidence before it (see, e.g., *Vavilov* at para 125). Moreover, the evidence upon which the Applicants rely relates to efforts by the agents of persecution to locate them by visiting the homes of two of the Principal Applicant's childhood friends, at least in part based upon information that that the Principal Applicant was hiding at one of those locations. I find no logical error in the RAD declining to treat that evidence as probative of the ability of the agents of persecution to locate the Applicants in a different city (even if a similar distance from the Principal Applicant's village) without comparable factors pointing them in that direction.

[23] Finally, in relation to the first prong of the IFA test, the Applicants submit that the RAD erred in rejecting the Principal Applicant's testimony that he and his family would have to remain in hiding and avoid social media and other communications technology in order to avoid detection in Abuja. The RAD concluded that the Applicants had not explained how the agents of persecution could use social media to locate them and again found an absence of clear and convincing evidence of such risk. The Applicants submit that it is self-evident how social media can be used to attempt to locate someone who has a presence on such platforms.

[24] On this point, I agree with the Respondent's submission that it is not a reviewable error to expect a refugee claimant's use of social media to be careful and, in the absence of more specific evidence as to how the Applicants' careful use of social media would present a risk of the agents of persecution locating them, the RAD's finding was reasonable.

C. *Second Prong of the IFA Test*

[25] In challenging the RAD's analysis under the second prong of the IFA test, the Applicants rely principally upon the RAD's use of the jurisprudential guide on the availability of IFAs in Nigeria. To understand this argument, some background is required. The Respondent's Further Memorandum of Argument filed in this application provides such background, which I do not understand to be in dispute between the parties.

[26] On July 6, 2018, the Chairperson of the IRB issued the *Policy Note for identification of TB7-19851 as a RAD Jurisprudential Guide* [Policy Note], which identified paragraphs 13 to 30 of the reasons for decision issued on May 17, 2018 by the RAD in file TB7-19851 as a jurisprudential guide on the issue of IFAs in major cities in South and Central Nigeria for claimants fleeing non-state actors [the Jurisprudential Guide]. The Policy Note provides that a number of factors may be considered in determining if it is objectively reasonable for asylum claimants to settle there, including travel and transportation, language, education, employment, accommodation, healthcare, culture, indigeneship, and religion. The Policy Note further provides that the Jurisprudential Guide is not binding and that members remain free to reach their own decisions and conclusions based on the facts of each particular case.

[27] In the case at hand, the RAD refers to the Jurisprudential Guide and adopts paragraphs thereof in several portions of its analysis under the second prong of the IFA test. The Applicants' argument that the RAD erred in doing so turns on the fact that the Jurisprudential Guide was revoked by the Chairperson of the IRB on April 8, 2020, after the issuance of the RAD's

Decision. The Notice of Revocation explains that developments in the country of origin information, including those in relation to the ability of single women to relocate to the various IFAs proposed in the Jurisprudential Guide, have diminished the value of the decision in file TB7-19851 as a jurisprudential guide for Nigeria. However, the Notice of Revocation explains that the framework of analysis employed in the revoked Jurisprudential Guide, absent any of the factual findings–i.e., the legal test for identifying a viable IFA as well as the seven factors identified therein for consideration–will remain of use to members in assessing the facts of each case as well as the most current country of origin information.

[28] The Applicants rely on authorities, involving refugee claimants from other countries, in which the Federal Court has held that the revocation of a jurisprudential guide will weaken findings made by a decision-maker based on the guide (see *Liang v Canada (Citizenship and Immigration)*, 2019 FC 918 [*Liang*] at para 10; *Cao v Canada (Citizenship and Immigration)*, 2020 FC 337 [*Cao*] at para 39).

[29] However, the Respondent notes that in the recent decision in *Agbeja v Canada (Citizenship and Immigration)*, 2020 FC 781 [*Agbeja*], involving fear of FGM and the availability of a viable IFA in Nigeria, Justice Little held that relying on the revoked Jurisprudential Guide, in and of itself, did not invalidate a tribunal member's decision. Justice Little considered *Liang* and *Cao* and held as follows (at paras 77–78):

> 77. Reviewing the present RAD decision in light of *CARL*, *Liang*, *Cao* and *Liu*, I conclude that the RAD's reasons did not contain a reviewable error. Although the RAD stated that it "adopt[ed] the reasoning of the [Nigeria] JG in the analysis of the second prong of the IFA test" at para 35, it also noted at para 36 that "[w]hile not determinative, consideration of the [Nigeria] JG supports a finding

> that it is reasonable for the [family] to relocate to Abuja or Lagos". The RAD's consideration of the factors in the Nigeria JG did not adopt identical or essentially the same factual findings of that JG. It appropriately recognized and considered the specific circumstances of the applicants (e.g. the parents' education, likely ability to find employment in the cities, language abilities) and came to its own conclusion on the facts. The RAD's reasons also did not improperly use the Nigeria JG as a threshold or benchmark; the RAD recognized that the JG's analysis occurred in a case involving a single woman rather than a family with two parents, both of whom are educated and have worked outside their home in the past. The RAD also addressed the general risk conditions in the two cities proposed as IFAs.
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> 78. I agree with Justices Brown and Pamel that, in principle, the adoption of the reasons in a revoked Jurisprudential Guide weakens the reasoning in a RAD decision. In this case, on the second prong of the IFA test, the personal circumstances of the applicants clearly pointed towards their ability to seek refuge in the proposed IFAs. In my view, the nature and degree of the RAD's reliance on the JG here do not weaken its conclusions to the point of unreasonableness.

[30] I find that the RAD's use of the Jurisprudential Guide in the case at hand is similar to that in *Agbeja*. Consistent with the analytical framework which survives the revocation of the Jurisprudential Guide, the RAD analysed the reasonableness of the IFA employing the factors of transport to and from the IFA, language, religion, indigeneship, employment and education, availability of healthcare, and accommodation. Under each of these factors, other than accommodation, the RAD stated that it was adopting the relevant paragraph of the Jurisprudential Guide. However, in each section of this analysis, before such adoption, the RAD considered the country condition evidence and the Applicants' personal circumstances. The RAD's adoption of the relevant paragraphs of the Jurisprudential Guide was based on its conclusion that, based on the evidence in the case at hand, those paragraphs applied. I therefore

find no error in the particular manner in which the RAD employed the Jurisprudential Guide in the Decision.

[31] The Applicants also argue, specifically in relation to the RAD's analysis of prospects of employment, that it failed to take into account the Applicants' particular circumstances. The RAD noted that the Principal Applicant has five years of university education and his spouse has five years of secondary education, making them better educated than most Nigerians who receive only nine years of formal schooling on average. The RAD considered the fact that the Principal Applicant has several years of work experience, as an entrepreneur and a manager in a foreign exchange business in Lagos and a business owner in Pretoria, South Africa, and his spouse has experience working as a director. The RAD concluded that the Applicants' high level of education and prior work experience, relative to other Nigerians, would place them at an advantage in seeking work in Abuja, noting the potential of obtaining employment, establishing a business, or both.

[32] In challenging this analysis, the Applicants submit that their economic history involves entrepreneurial initiatives and that, in order to successfully operate a business, it is necessary to advertise and otherwise be publicly visible. Therefore, they argue that, unlike someone who may be able to obtain employment and remain out of the public eye, the means by which they could earn a living in Abuja would necessarily place them at risk of being identified by the agents of persecution.

[33] This appears to be the same argument that the Applicants advanced before the RAD, which notes in the Decision their counsel's submission that the Principal Applicant's foreign exchange business involved dealing with the public. The Decision demonstrates that the RAD considered this argument but found that the Applicants had not adduced clear and convincing evidence that the Principal Applicant would place himself at risk in doing such work. The RAD considered and rejected this argument, and the Applicants have raised no basis for the Court to conclude that this aspect of the Decision is unreasonable.

[34] Having considered the Applicants' arguments, I find that the Decision is reasonable and must dismiss this application for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2220-20

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

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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