Federal Court  Cour fédérale

Date: 20210709

Docket: IMM-4803-19

Citation: 2021 FC 729

Ottawa, Ontario, July 9, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

OLAYEMI OLURONKE OGUNJIMI
OLUWADEMILADE DAVID VALENCIA JAIYESIMI
OLUWADOLAPO ESTHER VALERIA JAIYESIMI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicants apply for judicial review of a July 8, 2019 decision [the Decision] of the Refugee Appeal Division [RAD] pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [*IRPA*]. The RAD dismissed the Applicants' appeal of a decision

of the Refugee Protection Division [RPD] for refugee protection under sections 96 and 97 of the *IRPA*.

[2] The Applicants submit that the RAD erred in its assessment of an Internal Flight Alternative [IFA]. They request that the Decision be set aside and remitted to a different member for redetermination.

[3] The application for judicial review is dismissed.

II. Background

[4] Ms. Ogunjimi [Principal Applicant] is from Lagos, Nigeria, and the remaining Applicants are her two minor children, one of whom is a United States [US] citizen. The Principal Applicant fears domestic abuse from her husband in Nigeria. She states that her husband began physically assaulting her in March of 2010 while pregnant with her first child. She also states that her husband's family, primarily her mother-in-law and her husband's aunt, seek to perform female genital mutilation [FGM] on her daughter. She claims that the police in Nigeria have been unwilling to assist.

[5] The Principal Applicant left Nigeria without her husband’s knowledge on August 5, 2015, on a US tourism visa. While living in the US, the Principal Applicant’s husband contributed financially towards her monthly expenses and visited her in September of 2016. On February 12, 2018, after learning that her husband was returning to the US, she entered Canada through an irregular border crossing and applied for protection.

[6] The RPD denied the minor child's claim by virtue of her US citizenship. The RPD found that the Primary Applicant was not credible and did not display a subjective fear of persecution because she remained in the US for 18 months without making an asylum claim. The RPD further concluded that the Applicants had an IFA in Port Harcourt, Nigeria.

[7] The Applicants appealed the RPD decision, stating that the decision involving the minor Applicant was unreasonable and not in her best interest. They further argue that the RPD erred in its credibility assessment and its determination concerning their subjective fear of persecution, misapprehended and misapplied the law regarding an IFA, and failed to properly consider the documentary evidence. Lastly, the Applicants argue that RPD denied them a right to a fair hearing as they failed to give notice that an IFA in Port Harcourt was at issue.

III. The Decision

[8] The RAD confirmed the decision of the RPD that the Applicants are not Convention refugees nor are they persons in need of protection. The determinative issue was a viable IFA based on the following:

(1) The Applicants bear the onus of demonstrating that there is a serious possibility of persecution throughout the country;

(2) The city of Port Harcourt is a large urban centre with a population of over 2 million;

(3) There was no evidence suggesting that the Applicants' family members have the ability to find the Applicants throughout a country of 192 million people;

(4) The Principal Applicant's statement that her husband sought her daughter for enforced FGM was not consistent with the letter of consent in which her husband indicated he authorized his children to live with the her as he trusted her to look after them;

(5) There was no evidence to support the Principal Applicant's assertion that her husband could track them down anywhere in Nigeria through their banking information simply because he works at a bank;

(6) There was no evidence to support the Principal Applicant's contention that she could be tracked through the registration of her phone number;

(7) The Primary Applicant is well-educated and bilingual with a long work history and she would likely be able to find employment in Port Harcourt;

(8) There was no evidence to support the Primary Applicant's suggestion that she could not afford healthcare or education and there was no evidence that healthcare or education in Port Harcourt is inadequate; and

(9) The evidence did not suggest that the Applicants would face discrimination based on their ethnicity, as Port Harcourt is a large and multi-ethnic city.

IV. Issues and Standard of Review

[9] There is one issue for determination: Is the Decision reasonable? In reviewing the Decision, the following will be reviewed:

a) Did the RAD err in its assessment of the IFA?

b) Should the Decision be quashed on the basis that it relied on the Nigeria Jurisprudential Guide [JG] in light of its 2020 revocation?

[10] Reasonableness is the presumptive standard; however, this standard can be rebutted in certain cases, none of which applies here (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23 and 33 [*Vavilov*]).

[11] 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-maker's written reasons must be interpreted holistically and contextually (*Vavilov* at para 97).

V. Parties' Positions

(1) Applicants' Position

(a) *IFA Assessment*

[12] The Applicants state that the RAD erred in upholding the RPD's IFA finding. They state that the population of Port Harcourt is not relevant to her husband's and his family's available resources and determination to find them. The Principal Applicant states that her husband could simply pay the relevant officials to find their whereabouts through her phone number, as all phone numbers are registered.

[13] The Applicants submit that the RAD erred in light of the Women Refugee Claimants Fearing Gender-Related Guidelines [Gender Guidelines]. They state that it is more than likely

that, as a single mother of two children, she could not hide, as she needs to be able to move freely for the best interest of her children. This makes the hardship of moving to Port Hartcourt elevated and unreasonable (*Kayumba v Canada (Minister of citizenship and Immigration)*, 2010 FC 138).

(b) *Nigeria JG*

[14] The Applicants state that both the RPD's and the RAD's determinations relied on the JG in determining an IFA, which was revoked on April 6, 2020. In the notice of revocation, the Immigration and Refugee Board states "Developments in the country of origin information, including those in relation to the ability of single women to relocate to the various internal flight alternatives proposed in the Nigeria Jurisprudential Guide, have diminished the value of the decision as a jurisprudential guide". Because of this revocation, the Applicants submit that the Decision should be set aside.

(2) The Respondent's position

(a) *IFA Assessment*

[15] The Respondent submits that the Applicants are essentially asking this Court to re-weigh the evidence before the RAD and to arrive at a different conclusion. Based on the evidentiary record, the Decision was reasonable.

[16] The Respondent also states that the Applicants failed to provide any evidence to support an assertion that the IFA is unreasonable because the Principal Applicant is a single female with

children and that it is impossible for a person of that profile to find a safe haven anywhere in Nigeria.

(b) *Nigeria JG*

[17] The Respondent's written submissions are silent on the issue of the JG. In oral submissions, it pointed to four mentions of the JG by the RAD but that the RAD did not rely on the JG in making its Decision.

VI. Analysis

(a) *IFA Assessment*

[18] I find that the RAD did not err in its IFA assessment.

[19] A viable IFA means that a person could seek refuge in one part of their home country other than where they faced persecution or risk of harm. *Armando v Canada (Citizenship and Immigration)*, 2020 FC 94 at para 37 provides a recent articulation of the conjunctive two-part test to determine the availability of an IFA:

1) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA exists; and
2) Conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimants, for the claimants to seek refuge there.

[20] The Principal Applicant states that her husband and his family have the means to find them in the IFA and this is not remedied by the size of Port Harcourt. The RAD found that the Applicants failed to establish that the agents of persecution have the reach and ability to create a serious risk of persecution in the IFA. For the RAD, there was a lack of evidence to support this assertion. As illustrated by the summary of the RAD decision above, the RAD did engage with the evidence that was before it in making its findings. After reviewing the record, I see no error in the RAD's analysis that the Applicants would not face a serious risk of persecution in the IFA.

[21] Turning to the second part of the IFA test, after reviewing the record I find that the RAD assessed the country conditions along with the education level and professional experience of the Principal Applicant in finding that relocation to Port Harcourt was reasonable. I see no error in the RAD's assessment.

[22] Concerning the Applicants' submission that the IFA is unreasonable in light of the Gender Guidelines, I see no issue with the Decision on this point. The RAD is presumed to have assessed and weighed the entire record before it (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24). The Applicants' submissions go to the appreciation or weight of the evidence, which is not an exercise this Court can undertake on judicial review (*Vavilov* at para 83).

(b) *Nigeria JG*

[23] The Applicants state that since the JG relied on by the RAD was revoked in April 2020 their claim should be remitted for consideration. As pointed out by Justice Shore in *Ogunkunle v*

Canada (Citizenship and Immigration), 2021 FC 111, a matter that closely resembles this one, the Federal Court has already spoken to this issue:

> [9] …The Federal Court has also recently confirmed its use provided the "nature and degree of the RAD's reliance on the JG ... do[es] not weaken its conclusions to the point of unreasonableness" (*Agbeja v. Canada (Citizenship and Immigration)*, 2020 FC 781 at para 78).
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> ….
>
> [15] Lastly, upon review of the RAD's decision, it cannot be said that the JG was relied on such that the reasons are not justified on the Applicants' personal circumstances — these supporting a finding that the IFA is reasonable. The JG, as a relevant analysis framework that does not encroach on actual factual determinations, was indeed recently acknowledged by the Federal Court of Appeal (*Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 (F.C.A.) at paras 75, 95, 98, 100).

[24] Similarly, in the present matter, the RAD independently assessed the evidence before it and it did not rely solely on the JG but rather considered all relevant materials before it. The RAD did not err.

VII. Conclusion

[25] The application for judicial review is dismissed. There is no question for certification and there is no order as to costs.

JUDGMENT in IMM-4803-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4803-19
STYLE OF CAUSE:	OLAYEMI OLURONKE OGUNJIMI, OLUWADEMILADE DAVID VALENCIA JAIYESIMI AND OLUWADOLAPO ESTHER VALERIA JAIYESIMI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 26, 2021
JUDGMENT AND REASONS:	FAVEL J.
DATED:	JULY 9, 2021

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