Federal Court  Cour fédérale

Date: 20211015

Docket: IMM-328-20

Citation: 2021 FC 1090

Vancouver, British Columbia, October 15, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ADIJAT ADENIKE ANIMASAUN
MUHAMMAD-FIAZ IKEOLUWAPO ANIMASAUN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Adijat Adenike Animasaun (the "Principal Applicant") and her minor son Muhammad-Fiaz Ikeoluwapo Animasaun (collectively the "Applicants") seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"). In that decision, the RAD confirmed the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD") that the Applicants are neither Convention refugees nor persons

in need of protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicants are citizens of Nigeria. They fear persecution on the basis of forced participation in ritual scaring of the Principal Applicant's minor son.

[3] The dispositive issue for the RAD was the availability of state protection and the Applicants' failure to seek it. A second major issue for the RAD was the lack of subjective fear, attributed to the Applicants, from the fact that the Principal Applicant's husband, who is the father of the minor son, returned to Nigeria and reavailed himself of the protection of that country.

[4] The decision of the RAD is reviewable upon the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[5] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[6] Any issues of procedural fairness are reviewable upon the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa,* [2009] 1 S.C.R. 339 at paragraph 43.

[7] When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: *Dunsmuir,* at para 50. While it should take the administrative decision maker's reasoning into account – and indeed, it may find that reasoning persuasive and adopt it – the reviewing court is ultimately empowered to come to its own conclusions on the question; see *Vavilov, supra* at para 54.

[8] The Applicants argue that the decision of the RAD is unreasonable, having regard to the evidence. They also submit that the RAD improperly made independent findings of credibility without giving them the opportunity to respond to credibility concerns, thereby breaching their right to procedural fairness.

[9] The Minister of Citizenship and Immigration (the "Respondent") argues that the decision meets the standard of reasonableness and that there was no breach of procedural fairness.

[10] I will first address the allegation that the RAD breached procedural fairness by dealing with the issue of credibility without providing the Applicants the opportunity to respond.

[11] There is no merit in this argument. Credibility is inherent in any claim for Convention refugee status. I refer to the decision in *Ward v. Canada (Minister of Employment &*

Immigration), [1993] 2 S.C.R. 689 at paragraph 54, where the Supreme Court of Canada said that a person seeking such status must show both a subjective and objective basis of the claim.

[12] In my opinion, establishment of the subjective element must include assessment of credibility.

[13] In the present case, the RAD reasonably made a negative credibility finding about the Applicants' claim, on the basis of the return of the Principal Applicant's husband to Nigeria. He is part of the family unit and his return to Nigeria undermines the Applicants' fear of persecution.

[14] The RAD likewise reasonably concluded that state protection in Nigeria was available to the Applicants.

[15] The Applicants, not the RAD, bear the burden of showing that state protection is not available or is ineffective; see the decision of the Federal Court of Appeal in *Mudrak v. Canada* (2016), 485 N.R. 186 (F.C.A.). The RAD determined that they had not discharged that burden. Its conclusion on this issue is reasonable, in light of the evidence submitted by the Applicants.

[16] In the result, the application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT in IMM-328-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, there is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-328-20
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