Federal Court  Cour fédérale

Date: 20220126

Docket: IMM-480-21

Citation: 2022 FC 81

Ottawa, Ontario, January 26, 2022

PRESENT: Mr. Justice Gascon

BETWEEN:

OLUWABUSOLAMI GANIAT ADELEYE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Oluwabusolami Ganiat Adeleye, is a citizen of Nigeria. She seeks judicial review of a decision rendered in December 2020 [Decision] by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. The Decision confirmed the rejection, by the Refugee Protection Division [RPD], of Ms. Adeleye's claim for refugee

protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Both the RAD and the RPD dismissed Ms. Adeleye's claim on the basis that she had a viable internal flight alternative [IFA] in Nigeria.

[2] Ms. Adeleye is asking the Court to quash the Decision and to return it to the RAD for redetermination by a differently constituted panel. Ms. Adeleye alleges that the Decision is unreasonable in three respects. Ms. Adeleye claims that the RAD erred in its IFA analysis, that it conducted a microscopic review of the objective documentary evidence on corruption in Nigeria, and that it made an unreasonable assessment of her mental health.

[3] The only issue to be determined is whether the RAD's Decision is reasonable. For the following reasons, I will dismiss Ms. Adeleye's application for judicial review. In light of the RAD's findings, the evidence presented to it and the applicable law, I see no reason to overturn the Decision. The RAD's reasons have the qualities which make its reasoning logical and coherent with regard to the relevant legal and factual constraints. There is therefore no ground warranting the Court's intervention.

II. Background

A. *The factual context*

[4] Ms. Adeleye was born in Nigeria on February 24, 1983. She is married and has no children. Ms. Adeleye is the daughter of Mr. Alhaji Ibrahim Saliu, a businessperson who owned numerous properties in Nigeria.

[5] Ms. Adeleye alleges that, in June 2015, her father was killed by members of her extended family in an attack where she was also beaten and knocked unconscious. She further alleges that a second attack took place in February 2016, during which she was sexually and physically assaulted by members of her extended family, leading to a miscarriage. Ms. Adeleye claims to have been the target of these attacks as heir of her father's estate, which arouses the envy of her agents of persecution. More particularly, her agents of persecution maintain that she is in possession of important documents regarding her deceased father's properties.

[6] In June 2016, Ms. Adeleye left Nigeria for the United States. She stayed there for two months before returning to Nigeria. Ms. Adeleye alleges that, during the following year, she suffered repeated attacks and harassment by her agents of persecution. Ms. Adeleye's husband reported a particularly brutal attack to the police. Ms. Adeleye claims that she personally suffered a third attack in November 2017 when she was forced to pull her car over, and was then threatened, molested and held captive for 48 hours. Ms. Adeleye continued to receive threats, and believes that her agents of persecution have bribed the Nigerian police. Ms. Adeleye says she now lives with post-traumatic stress disorder [PTSD] as a result of these events.

[7] Ms. Adeleye ultimately left Nigeria for the United States for a second time. From there, she travelled to Canada and claimed asylum in this country in 2019.

[8] In November 2019, the RPD determined that Ms. Adeleye could not qualify as a refugee or as a person in need of protection due to the existence of a viable IFA in Abuja, Nigeria. In its

reasons, the RPD explained that Ms. Adeleye did not demonstrate that the proposed IFA would be objectively unreasonable or unduly harsh in her particular circumstances.

B. *The RAD Decision*

[9] Ms. Adeleye appealed the RPD decision to the RAD. In its Decision issued in December 2020, the RAD ruled that the RPD was correct in finding that Ms. Adeleye was neither a refugee nor a person in need of protection, and agreed with the RPD's reasoning process.

[10] The RAD first determined that the agents of persecution were not motivated to find Ms. Adeleye if she were to return to Nigeria in 2021. Indeed, the RAD noted that Ms. Adeleye had provided no evidence that her agents of persecution had made efforts to contact her since the summer of 2017. In fact, the only reason the agents were able to contact her during her yearlong return to Nigeria in 2016-2017 was that Ms. Adeleye had kept the same address and the same phone number. According to the RAD, the evidence did not show that the agents would actively search Ms. Adeleye across the country if she were removed to Nigeria in 2021.

[11] The RAD then looked at the procedural fairness argument raised against the RPD decision. Ms. Adeleye had argued that she had not been given an opportunity to respond to the conclusions of the RPD regarding the traceability of her banking transactions, her mobile phone history and her driver's licence. The RAD determined that the audio recording of the hearing contradicted this submission and that Ms. Adeleye was given the opportunity to clarify her responses to a number of questions. The RAD ruled that there was no procedural unfairness before the RPD.

[12] On the question of the traceability of Ms. Adeleye's activities, the RAD assessed her submissions that her agents of persecution could bribe Nigerian officials and public servants to gain access to confidential databases. The RAD determined that the objective country evidence did not support such claim, though it supported a finding that Nigeria suffers from widespread bribery and corruption. The RAD further concluded that Ms. Adeleye's claims about the traceability of her information were speculative in nature.

[13] Finally, the RAD considered Ms. Adeleye's claim that her removal to Nigeria would be seriously detrimental to her mental health. The RAD determined that the objective country evidence was clear on the fact that Ms. Adeleye would be able to access mental health services in the proposed IFA, and that no factor in her circumstances established that her life and safety would be jeopardized if she relocated to Abuja. In its analysis, the RAD gave little weight to a psychological report [Report] submitted by Ms. Adeleye.

C. *The standard of review*

[14] It is well established that the standard of reasonableness must be applied by the Court when it reviews the RAD's findings regarding the existence of a viable IFA (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh*] at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11). This was confirmed by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the court established a presumption that the standard of reasonableness is the applicable standard in all judicial reviews of the merits of administrative decisions. None of the situations

allowing a reviewing court to depart from that presumption apply in this case. The parties do not challenge this.

[15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). It is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the administrative decision maker "must also be *justified*, by way of those reasons . . . to those to whom the decision applies" [Emphasis in the original.] (*Vavilov* at para 86). Thus, a review pursuant to the reasonableness standard is concerned with both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87).

[16] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is important to remember that the standard of reasonableness finds its starting point in the principle of judicial restraint and requires the

reviewing court to demonstrate respect for the distinct role conferred to administrative decision makers (*Vavilov* at paras 13, 75). The presumption of reasonableness review is based on "respect for the legislature's institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court" (*Vavilov* at para 46). In doing so, the reviewing court will only intervene on an administrative decision maker's findings of fact in "exceptional circumstances," where the decision maker "has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at paras 125–126).

III. Analysis

[17] Ms. Adeleye raises three main arguments in her challenge of the RAD Decision. Each will be addressed in turn.

A. *Did the RAD commit a reviewable error in its IFA analysis?*

[18] Ms. Adeleye first submits that the RAD committed a reviewable error by proceeding to an analysis of the motivation of her agents of persecution, even though her testimony was deemed credible. Relying on *Nimako v Canada (Citizenship and Immigration)*, 2013 FC 540 [*Nimako*] and *Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 [*Hamid*], Ms. Adeleye argues that the RAD can only analyze the motivation of an applicant's agents of persecution when his/her testimony is found not to be credible. In other words, she claims that it would be unreasonable to, on the one hand, confirm the credibility of her allegations and, on the other hand, determine that her agents of persecution lack the motivation to locate her.

[19] I do not agree with Ms. Adeleye's submissions.

[20] First, I am of the view that Ms. Adeleye misconstrues the RAD's reasons and what the Decision actually says. The RPD and the RAD found Ms. Adeleye to be credible on her past persecution, meaning that they believed that she gave a genuine account of the past events she described and that her fear of persecution was genuine. However, the RAD found that Ms. Adeleye had not established that her agents of persecution were still willing, a number of years after the alleged events at the source of her fear, to search for her throughout the country. Once an administrative decision maker proposes a viable IFA, the claimant bears the burden to establish that such proposition is unreasonable and that there is a serious possibility of persecution throughout the whole country (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)* [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*] at para 12; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 [*Manzoor-Ul-Haq*] at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 [*Feboke*] at paras 43–44). In this case, Ms. Adeleye simply failed to meet her burden of proof. I add that the RAD found that the only apparent reason why Ms. Adeleye's agents of persecution were able to harass her during her yearlong stay in Nigeria in 2016-2017 after she returned from the United States was that she had not changed her address and had kept the same phone number.

[21] Under the well-accepted IFA test, the means and motivation of the agents of persecution is one element to be assessed by the decision maker. This involves a prospective analysis, and it is considered from the perspective of the agents of persecution, not from the claimant's perspective. True, Ms. Adeleye's fear and past persecution are one part of the equation. But the

means and motivation of her agents of persecution is a distinct, separate element. In other words, these are two different sides of the same coin. Here, there was simply no evidence before the RAD demonstrating that, since the end of 2017 and the most recent November 2017 event of past persecution raised by Ms. Adeleye, her agents of persecution had any means or motivation to find her. The fact that the RAD had found Ms. Adeleye credible with respect to her allegations of attacks having taken place some three years ago did not prevent the RAD from determining whether, at the time of the Decision and going forward in 2021, her agents of persecution still had the means and motivation to find her. There was no evidence supporting that.

[22] Second, I agree with the Minister that Ms. Adeleye's reliance on *Nimako* and *Hamid* is ill founded, and that these decisions offer little assistance to her case. Neither *Nimako* nor *Hamid* stand for the principle that, once a claimant is found credible, a decision maker cannot question the future motivation of his/her agents of persecution. Ms. Adeleye is conflating the credibility of an applicant and the motivation of her agents of persecution to find her, as these two elements require two distinct analyses. In sum, I do not agree that the RAD or the RPD cannot consider the means and motivation of the agents of persecution when the credibility of a refugee claimant is not at issue. In *Nimako*, the applicant had been found credible and the RPD (and the Court) was also convinced that the applicant's common-law spouse had an ongoing desire to actively look for her, meaning that the criterion of motivation had been established by the applicant's evidence (*Nimako* at para 7; *Feboke* at paras 43–44). Not only had the decision maker found the applicant credible, but the applicant had provided evidence demonstrating that her agent of persecution was still motivated to find her. This is quite distinct from the case at bar, where the

RAD found no evidence of an ongoing interest of the agents of persecution to find Ms. Adeleye (*Feboke* at para 44).

[23] Turning to *Hamid*, the Court determined that it was not inconsistent for the RAD to find that the persecutors were no longer motivated to locate the claimant, since the claimant's credibility was impugned (*Hamid* at paras 33–36). However, contrary to Ms. Adeleye's submission, *Hamid* does not support the reverse proposition, namely, that it would be inconsistent for the RAD to probe the persecutors' motivation when a claimant's credibility is not questioned. Nothing in *Hamid* allows to draw such a conclusion. *Hamid* only stands for the proposition that an officer can assess the risk faced by an applicant in a proposed IFA without having ruled on the applicant's credibility, thus emphasizing that the two analyses are independent from one another. In that case, the RAD found no evidence of a continuing interest of the alleged aggressor, but only mere suspicions of the applicant.

[24] As I indicated in *Singh*, the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide adequate protection everywhere within their territory (*Singh* at para 26). It is well established that international protection is a measure of last resort: a refugee protection claimant must first try to obtain protection from their own country and, if necessary, relocate within their country before applying for refugee protection from a third country. The onus is on the claimant to prove, on a balance of probabilities, that there is a serious risk of persecution throughout their home country and that it is unreasonable to settle in an IFA (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA)

[*Ranganathan*] at para 13, citing *Thirunavukkarasu* at paras 12–15). In the Decision, the RAD expressly refers to this well-established test for determining the viability of an IFA, and it therefore cannot be criticized for the legal criterion used for its analysis.

[25] The RAD's conclusions on the existence of an IFA are essentially factual: they are based on ample documentary evidence, and they go to the very heart of its expertise in matters of immigration and refugee protection. It is well established that the RAD takes advantage of the specialized knowledge of its members to assess evidence relating to facts that fall within its area of expertise. In such circumstances, the standard of reasonableness requires the Court to show great deference to the RAD's findings. It is not the task of a reviewing court to reweigh the evidence on the record, or to reassess the RAD's findings of fact and substitute its own (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Rather, it must consider the reasons as a whole, together with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53), and limit itself to determining whether the conclusions are irrational or arbitrary. In the case of Ms. Adeleye, I have no hesitation to conclude that the RAD's Decision on the IFA, and its consideration of the motivation of her agents of persecution, have all the attributes of a reasonable analysis.

B. ***Did the RAD conduct a microscopic review of the objective documentary evidence?***

[26] As a second ground to fault the RAD Decision, Ms. Adeleye submits that the RAD conducted a microscopic analysis of the objective evidence regarding the prevalence of corruption in Nigeria. She is particularly concerned with the RAD's finding that there was no evidence pertaining specifically to the possibility of gaining access to confidential data through

bribery. Ms. Adeleye submits that the RAD thus failed to consider the totality of the evidence at its disposal.

[27] Again, I disagree.

[28] I concede that, at first glance, the distinction made by the RAD between the general state of corruption in Nigeria and the absence of evidence specifically corroborating the possibility of bribing corrupt official to access confidential data may appear odd. However, I agree with the Minister that the RAD's concerns with Ms. Adeleye's arguments precisely had to do with her inability to establish that her agents of persecution had the requisite occupation, resources or standing to yield her confidential information, something she had specifically argued (*Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 54).

[29] In this case, Ms. Adeleye was not alleging that corruption in Nigeria generally was a concern. She specifically claimed that bribery had allegedly allowed her agents of persecution to trace her banking transactions, her mobile phone history and her driver's licence in order to find her. Ms. Adeleye herself focused her allegations on these particular incarnations of bribery and corruption in Nigeria. It was thus amply reasonable for the RAD to look, in the country documentary evidence, for materials relating to these particular uses of bribery and corruption to access information to which a requester is not entitled. It found none, and determined that Ms. Adeleye's assertions that her banking transactions, mobile phone or driver's licence could be reliably used to track her were speculative. It was Ms. Adeleye's burden to provide sufficient evidence to support her claim on the bribery front, but she failed to do so.

[30] Furthermore, I am not persuaded that the RAD's analysis can be described as "microscopic." As I discussed in *Paulo v Canada (Citizenship and Immigration),* 2020 FC 990 [*Paulo*], an administrative decision maker's approach cannot be called "microscopic" (and result in a reviewing court's intervention) unless it clings to issues that are irrelevant or peripheral to the claim of the refugee claimant (*Paulo* at paras 59–61). An analysis does not become "microscopic" or overzealous because it happens to be exhaustive, focused or comprehensive. Quite the contrary, such an approach reflects the rigour that applicants have the right to expect from an administrative decision maker's analysis. I would add that a decision maker must in fact demonstrate such rigour in order to satisfy the requirement for a "justified" decision established in *Vavilov*. An administrative decision maker's analysis only veers towards being "microscopic" when it delves into peripheral issues and examines contradictions that are insignificant or irrelevant to the purpose of the refugee claim.

[31] In this case, the analysis conducted by the RAD in no way targeted contradictions or inconsistencies irrelevant, insignificant or peripheral to Ms. Adeleye's allegations of corruption among public officials in Nigeria. Quite the contrary, the factors found in the RAD's reasons concerned specific events which were right at the heart of Ms. Adeleye's own allegations supporting her refugee claim and her fear of her agents of persecution. The RAD's analysis focused precisely on the specific type of bribery and corruption alleged by Ms. Adeleye, and the RAD found that the evidence on the record did not support her claims on this front.

[32] There is nothing unreasonable in this exercise conducted by the RAD.

C. ***Did the RAD conduct an unreasonable assessment of Ms. Adeleye's mental health?***

[33] Finally, Ms. Adeleye submits that the RAD unreasonably assessed the importance of the Report in determining the hardship she would face if removed to the proposed IFA. She claims that the RAD overstepped its competence by relying on its own unqualified medical opinion regarding her mental health. Ms. Adeleye is particularly critical of the fact that the RAD chose to give little weight to the Report in light of her return to Nigeria after her initial visit to the United States in 2016. She argues that the RAD was obliged to consider the medical report, which was signed by a licensed medical professional, and to weigh the said report against the rest of the evidentiary record. Moreover, Ms. Adeleye submits that the RAD framed the issue as being one of access to mental health treatments in Nigeria, while the relevant factor in the case of an IFA is the unreasonable pain and suffering she would endure by the fact of being removed to her country.

[34] I am not convinced by Ms. Adeleye's arguments. I am rather of the opinion that, by proceeding as it did, the RAD made no error justifying the intervention of this Court.

[35] It is clear from the Decision that the RAD thoroughly considered the Report in rendering its conclusions. This type of psychological evidence is frequently central to the question of whether a proposed IFA is adequate in the applicant's circumstances (*Okafor v Canada (Citizenship and Immigration)*, 2011 FC 1002 at para 13), and I do not dispute that a decision maker cannot dismiss such evidence lightly (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 49; *Lainez v Canada (Citizenship and Immigration)*, 2012

FC 914 at para 42). But, it remains that an applicant bears the burden to establish that the proposed IFA is not appropriate (*Thirunavukkarasu* at para 12; *Manzoor-Ul-Haq* at para 24).

[36] In this case, Ms. Adeleye incorrectly qualifies the RAD's conclusions on the Report by saying that the RAD overstepped its competence and provided unqualified medical opinions. Nothing in the Decision allows to support the argument that the RAD reached its conclusions on the psychological evidence based on its own medical opinions or that it unduly diminished the value of the Report. In fact, the RAD did not deny the existence of Ms. Adeleye's mental health issues, and provided an adequate description of the contents of the Report in its Decision. The RAD then considered how the objective documentary evidence interacted with the information contained in the Report, which is most evident in the RAD's finding that Ms. Adeleye could receive mental health treatments in Abuja. This finding is, indeed, central to the RAD's analysis, and "access to treatment in the proposed IFA" is a criterion recognized by the jurisprudence as being a valid proxy of the adequacy of an IFA (*Alves Dias v Canada (Citizenship and Immigration*), 2012 FC 722 at para 22; *Hernandez Gonzalez v Canada (Citizenship and Immigration)*, 2008 FC 1259 at para 12).

[37] Furthermore, it is apparent from the Report itself that the psychologist who authored it was not aware of the fact that, after the 2015 and 2016 attacks allegedly at the source of her PTSD and mental health issues, Ms. Adeleye had already returned to Nigeria of her own volition. The Report clearly relates to traumatic events experienced by Ms. Adeleye prior to her first return from the United States and, by recommending that Ms. Adeleye should avoid going back to Nigeria, it was apparent that the fact she had already returned towards the end of 2016 had not

been divulged to the psychologist. In those circumstances, it was certainly reasonable for the RAD to give little weight to the conclusions of the Report, as a major material fact had been omitted from the medical opinion. In sum, the Report was not sufficient to establish that the proposed IFA in Abuja was unreasonable.

[38] The burden of demonstrating that an IFA is unreasonable in a given case, which rests with the claimant, is quite an exacting one (*Elusme v Canada (Citizenship and Immigration)*, 2020 FC 225 at para 25; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21; *Pineda v Canada (Citizenship and Immigration)*, 2019 FC 1446 at para 14). It requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area, and it requires actual and concrete evidence of such conditions (*Ranganathan* at para 15). Such evidence was not adduced by Ms. Adeleye with respect to her mental health.

IV. Conclusion

[39] For the foregoing reasons, Ms. Adeleye's application for judicial review is dismissed. I find nothing irrational in the decision-making process followed by the RAD or in its conclusions. I instead find that the RAD's analysis has the required attributes of transparency, justifiability and intelligibility, and is not tainted by any reviewable error. According to the reasonableness standard, it is sufficient for the Decision to be based on an inherently coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. That is the case here.

[40] Neither party has proposed a question of general importance for certification. I agree that none arises here.

JUDGMENT in IMM-480-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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