Federal Court  Cour fédérale

Date: 20220218

Docket: IMM-2268-21

Citation: 2022 FC 224

Toronto, Ontario, February 18, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

EVALIMAMPO OBODORUKU
ONANEFE OMAGBEMI
ESE ASHLEY OMAGBEMI
ONOME FAVOUR OMAGBEMI
FLOURIST OMAGBEMI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The five applicants are citizens of Nigeria and are members of a family—a mother and her four daughters. They applied for permanent residence in Canada with an exemption on humanitarian and compassionate grounds under subs. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*). They have applied to this Court for judicial review of the negative decision by a senior immigration officer.

[2] The applicants are Ms Evalimampo Obodoruku and her daughters. They fled Nigeria for fear of the family of the father of the children. They entered Canada in April 2017 and claimed protection under the *IRPA*. In September 2017, the Refugee Protection Division rejected their claim, and the Refugee Appeal Division dismissed the appeal in October 2018.

[3] In March 2019, they submitted an H&C application concurrently with an application for a pre-removal risk assessment.

[4] By decision dated January 4, 2021, the officer dismissed their H&C application. At that time, Ms Obodoruku was 48 and her children were 15, 12, 10 and 5 years old. The family also includes a son born in Canada.

[5] In this application, the applicants challenge the officer's H&C decision as unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and ask the Court to set the decision aside.

I. Legal Principles

[6] This Court's role on this judicial review application is not to determine whether the officer's decision was correct on the merits. Instead, it is to determine whether the officer's decision was unreasonable, as described by the Supreme Court in in *Vavilov*.

[7] The reviewing court must read the officer's reasons holistically and contextually, and in conjunction with the record of evidence and submissions before the officer: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at

paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrained the officer: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194.

[8] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada, if the Minister is of the opinion that such relief is justified by humanitarian and compassionate considerations. The purpose of the H&C provision is to provide equitable relief if humanitarian and compassionate considerations warrant it. Officers consider "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the [*IRPA*]": *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, at paras 13, 21-22, 30-33 and 45.

[9] Subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience on leaving Canada. Appellate case law interpreting subsection 25(1) has confirmed that the words "unusual", "undeserved" and "disproportionate" describe the hardship contemplated by the provision that may give rise to an exemption. The quoted words are instructive but not determinative, allowing subsection 25(1) to respond flexibly to the equitable goals of the provision and mitigate the rigidity of the ordinary operation of the law in an appropriate case: *Kanthasamy*, at paras 33 and 45.

[10] Relevant considerations are to be weighed cumulatively as part of a global determination of whether relief is justified in the circumstances: *Kanthasamy*, at paras 27-28. Officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them: *Kanthasamy*, at paras 25 and 33; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 74-75.

II. Analysis

[11] In this case, the officer recognized that the grounds raised in the H&C application were establishment in Canada, hardship associated with adverse country conditions in Nigeria if the applicants return there, and the best interests of the children ("BIOC").

[12] The applicants focused on the officer's analysis of these three issues on this judicial review application. I will address each issue in turn.

A. *Establishment*

[13] The applicants submitted that the officer made a reviewable error by finding that "little information has been provided regarding the depth and breadth of their in-person relationships in Canada".

[14] In their written submissions and at the hearing, the applicants maintained that the letters in the record before the officer did demonstrate the depth and breadth of Ms Obodoruku's relationships. Her church friends wrote the letters. In the applicants' submission, the letters showed that she spent nearly every Saturday with them and that they knew her well.

[15] The officer did not disbelieve the contents of letters. The officer decided only to place a "small amount of positive weight" on Ms Obodoruku's relationships in Canada when assessing establishment. In my view, that was a conclusion open to the officer on the record. The officer did not fundamentally misapprehend the evidence, nor did the officer ignore or fail to account for critical evidence in the record: *Vavilov*, at paras 125-126. The Court is not permitted to assess or reweigh the evidence on this application.

[16] I also do not agree with the applicant's submission that the officer's reasoning does not disclose a rational line of analysis from the evidence to the conclusion. While the applicants disagree with the officer's analysis and weight given to the evidence, the officer's reasoning was intelligible and the conclusion was not untenable: *Vavilov*, at paras 101-102.

[17] Applying the principles in *Vavilov*, I conclude that the applicants have not shown that the officer's assessment of establishment was unreasonable.

B. ***Gender-based Inequality and Violence in Nigeria***

[18] The applicants supported their H&C application with evidence about the conditions for women in Nigeria. They submitted that women and girls endure serious discrimination barriers in Nigeria, as well as gender-based violence. Their position was that they would be personally targeted in Nigeria beyond the effects on them because of their gender.

[19] In this Court, the applicants submitted that the officer made a reviewable error by failing to apply the correct legal test as set out by Justice Gleason in *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129.

[20] In *Diabate*, the applicant sought judicial review of an H&C decision. The officer had identified problems in the applicant's native Ivory Coast. The problems applied to the entire population. The officer found that the applicant had not shown in what respect his situation was different from that of the population as a whole. This Court held that the officer's formulation of the applicable test under subsection 25(1) was neither correct nor reasonable—indeed, it frustrated the purpose of the provision: *Diabate*, at paras 32-33. Justice Gleason stated that it was both incorrect and unreasonable to require the applicant to establish that his circumstances were not generally faced by others in the country of origin. Rather, the frame of analysis for H&C consideration must be that of the individual personally, which involves consideration of whether the hardship of leaving Canada and returning to the country of origin would be undue, undeserved or disproportionate. Applying that standard to the circumstances of the applicant in *Diabate*, Justice Gleason found that it might well be an undue hardship for the applicant to return to Ivory Coast, a country struggling with violence, in which the applicant had no family and had not lived for 26 years. She noted, however, that this consideration would need to be balanced with the choices made by the applicant, which involved disregard of the law, and had lengthened the period of his absence from the Ivory Coast: *Diabate*, at paras 36-37.

[21] The respondent in the present application submitted that the officer did not make a reviewable error and that the applicants were asking the court to reweigh the evidence. According to the respondent, the officer did not require the applicants to show that they would be personally targeted because of their gender. Rather, the officer found that given their profiles, they would likely experience no more than low-level hardships due to their gender. The respondent observed that the officer considered Ms Obodoruku's successful career and that the

applicants' claims for refugee protection had been dismissed in part on the basis that their allegations about gender-based risk from their extended family were not credible.

[22] Referring to *Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617, at para 16, the respondent also submitted that the officer was permitted to assess:

> … how an applicant's particular circumstances relate to the broader country condition evidence, in terms of the degree of risk or extent of harm they may be facing. In other words, if country condition evidence presents a range of risks or hardship that may be faced by returning nationals, it is appropriate for an officer to assess where on that spectrum the H&C applicant lies in order to conduct the "meaningful, individualized analysis" that is required: *Kanthasamy*, at para 56, citing *Aboubacar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 714 at para 12.

See also *Demetrio v Canada (Citizenship and Immigration)*, 2021 FC 1139, at para 29; *Meniuk v Canada (Citizenship and Immigration)*, 2021 FC 1374, at para 40.

[23] In response to this submission, the applicants submitted that even if "very little" had changed in Nigeria since they left, as the officer concluded, the applicant's own circumstances had changed: the female children were older and nearing entry to the workforce where they would experience discrimination and their father was no longer there to protect them.

[24] In my view, the officer did not make a reviewable error in this case. Reading the officer's reasons, I do not believe that the officer made the error identified in *Diabate*. In my opinion, the officer carried out the kind of assessment contemplated by Justice McHaffie in *Arsu*.

[25] The officer's reasons recognized that Ms Obodoruku owned a clothing boutique in Lagos before she left Nigeria. Prior to that, she owned a hair salon from 2009 to 2014. In 2018, while in

Canada, she started another clothing boutique called New Looks that specializes in beauty supplies and accessories. The officer found that given the applicants' particular profile and pattern of business ownership, the pay gap between men and women and the informal job market in Nigeria would likely not affect them. The officer stated that the applicants must link the generalized conditions in Nigeria to their personal situation. The officer found that issues of forced marriage and harm from the father's family had been addressed in the Refugee Protection Division decision and that Ms Obodoruku would not face a risk of undergoing a ritual due to having given birth to only to daughters because she had also given birth to a son.

[26] The officer accepted that gender-based violence and mistreatment are prevalent in Nigeria and recognized that the applicants are all female. The officer was "cognizant that not all women's experience[s] are the same" and stated that "[g]ender-based hardship is influenced by such things as socio-economic circumstances, location and race/ethnicity, just to name a few." The officer accepted that gender-based violence was more common in Nigeria than in Canada and that Ms Obodoruku or her daughters may experience gender-based discrimination or violence. The officer was also "mindful that the fear of being a victim is likely to cause some mental anguish in the family". Nonetheless, the officer found that there was insufficient information to suggest that the applicants were more likely to be targeted than other females in their region of return in Nigeria. Despite the country condition evidence, Ms Obodoruku had her own business and was employed. She did not indicate that she was previously limited in securing stable employment or leading a successful career because of her gender. Given the lack of change in country conditions since their departure from Nigeria, the officer concluded that the applicants would experience "no more than low-level hardships related to gender", on a balance of probabilities.

[27] Based on *Diabate*, the applicants challenged the officer's statement that there was "insufficient information to suggest that the applicants are more likely to be targeted than other females in their region of return" in Nigeria. In the context of the officer's overall reasoning on this issue, I find that the officer was considering the hardship that would be experienced by these applicants in Nigeria if they return, with the evidence—particularly Ms Obodoruku's prior successful business experience there. In substance, the officer's assessment is better characterized as a personalized assessment of the applicants' likely hardships on return to Nigeria: *Arsu*, at paras 16-17. I do not believe the officer raised the legal standard required of the applicants, or disregarded or minimized the hardships the applicants may experience because other women also suffer the same circumstances. Although the officer did not give the same weight to the applicants' exposure to adverse country conditions as the officer did in *Arsu*, the weighing of evidence is a matter for the officer.

[28] I also observe that the officer's analysis, as set out in the reasons, is not required to be perfect: *Vavilov*, at paras 91 and 104; *Canada (Minister of Citizenship and Immigration) v Mason*, 2021 FCA 156, at paras 39-40. In my view, the officer's reasons do not contain a legal error or fail to appreciate evidence in the record that was so important or central to the reasoning as to render it unreasonable: *Vavilov*, at paras 101 and 125-126; *Mason*, at paras 35-36.

C. ***BIOC***

[29] The applicants submitted that the officer was not alive, alert and sensitive to the best interests of the children directly affected by the H&C application, as required by *Kanthasamy* (at paras 38-39). The applicants emphasized the adverse country conditions in Nigeria, which indicated that "gender-based violence against women and girls, including domestic violence,

remains prevalent". The applicants pointed to the evidence of sexual and labour exploitation of women and girls, discrimination and large-scale gender inequality that has not been addressed by the Nigerian government. The applicants argued that the officer denied or failed to appreciate the obvious link between the conditions in Nigeria for women and girls and the fact that they are all female. The applicants also submitted that the only scenario that served the children's best interests was to remain in Canada and not to return to a country in which they will face discrimination and violence.

[30] I am sympathetic to the applicants' concerns about the treatment of women and girls in Nigeria as discussed in the country condition evidence. As I have already noted, the role of this Court is not to agree or disagree with the applicant's submissions on what the best interests of the children are (or whether they should remain in Canada or return to Nigeria). The Court's task on this application is to determine whether the officer's decision was unreasonable, applying the standards established in *Vavilov* and the other appellate cases cited already.

[31] I agree with the applicants that there is one passage in the officer's reasoning that could be read, in isolation, to imply that they had not established a link between the generalized country condition evidence and their personal situations. However, as described above, the officer's reasons had already expressly recognized that gender-based violence and mistreatment were prevalent in Nigeria and that Ms Obodoruku and her daughters were all female. As a result, I cannot conclude that the officer denied the link between the applicants and the country condition evidence filed by the applicants as it concerns the hardships suffered by women and girls in Nigeria.

[32] In assessing the BIOC, the officer considered the interests of the minor applicants, including their establishment in Canada and the contents of a psychotherapy report (neither of which was challenged on this application). With respect to country conditions, the officer acknowledged that Ms Obodoruku was worried for the safety of her children and that, generally, country conditions for some in Nigeria were poor. The officer noted that child abuse is prevalent and child marriages and abductions are issues in certain regions. The officer found that there was little evidence to suggest that Ms Obodoruku and her family suffered from poverty, disease/illness or were victims of gender-based inequality and/or crime. There was also little to suggest that their experiences in education or with health services were inadequate. The officer considered evidence about female genital mutilation ("FGM") and found that both parents of the children opposed the practice. The officer concluded that the applicants had not demonstrated how the minor applicants would be at risk of experiencing FGM. Overall, on BIOC, the officer found that there was insufficient evidence demonstrating a negative impact on the children if the H&C application were refused.

[33] Looking at the officer's reasoning as a whole, and the BIOC reasoning in particular, the applicants have not demonstrated that the officer made a reviewable error by ignoring the country condition evidence or that the only conclusion open to the officer was for the children to remain in Canada. The officer's reasoning was transparent, intelligible and provided a sufficiently reasoned justification for the outcome on the BIOC issue. The conclusions on BIOC were open to the officer on the record.

[34] For these reasons, I conclude that the officer's H&C decision was reasonable under *Vavilov* principles.

III. Conclusion

[35] The application is therefore dismissed. Neither party proposed a question to certify for appeal, and none will be stated.

JUDGMENT in IMM-2268-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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