Federal Court  Cour fédérale

Date: 20220624

Docket: IMM-6363-21

Citation: 2022 FC 954

Toronto, Ontario, June 24, 2022

PRESENT: Madam Justice Go

BETWEEN:

THEODORA NNE ICHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Theodora Nne Ichi, is a 68-year-old citizen of Nigeria. She alleges that she fears persecution in Nigeria from her son-in-law's uncle [Agent of Persecution] and his supporters, due to their desire to perform Female Genital Mutilation [FGM] against the Applicant's daughter, A.C., and the Applicant alleges that they seek to harm her in order to force A.C.to submit herself to FGM.

[2] A.C. and her husband fled to the United States [US] before finally making a refugee claim in Canada, which was accepted for unrelated religious grounds.

[3] After A.C., her husband, and their infant son entered the US in June 2016, the Applicant visited them there in October 2017. Due to difficulties pertaining to settlement in the US, the family decided that it would be best for the Applicant to take the infant to a family friend in Ghana who could care for him. After discovering the child was not being cared for properly, the Applicant took the child with her and returned to Nigeria.

[4] The Applicant claims that, upon her return to Nigeria, the Agent of Persecution attempted to abduct the child by breaking into the Applicant's home, resulting in a confrontation and the child sustaining a serious injury to his eyes. Following this, the Applicant brought the child to the US in 2018, and accompanied the child to Canada to reunite with his parents.

[5] The Agent of Persecution attacked the Applicant for a second time when she returned to Nigeria. He broke into her home and ransacked the house. The Agent of Persecution also interrogated the Applicant regarding the whereabouts of her daughter and grandson, and assaulted the Applicant. The Applicant fled to the US, and then to Canada in May 2019 to make a refugee claim.

[6] The determinative issue for the Refugee Protection Division [RPD] was the viability of an Internal Flight Alternative [IFA]. After applying the two-part test for IFA in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 140 NR 138 (CA)

[*Rasaratnam*], the RPD found in a decision dated August 5, 2021 that there would be no serious risk of persecution faced by the Applicant in Awka and that it would not be unreasonable for the Applicant to seek refuge there [Decision].

[7] Pursuant to s. 110(2)(d)(i) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the Applicant was not eligible to appeal the Decision to the Refugee Appeal Division [RAD]. As such, the Applicant brings this judicial review application to the Court.

[8] For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[9] The sole issue in this application is whether the RPD erred in its analysis of IFA.

[10] The parties agree that these issues are reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[11] Reasonableness is a deferential, but robust, standard of review: *Vavilov*, at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[12] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

III. Analysis

A. *First Prong of IFA: Did the RPD err in finding there is no serious risk of persecution in Awka?*

[13] The Applicant has a married daughter living in Awka with her husband, their four children, and two other sons of the Applicant. The Applicant argues that the RPD did not consider the fact that the Agent of Persecution has knowledge of where her children live in Awka or the likelihood of him going there to look for her the same way he did when she was living in her home in Umuahia. Rather, the Applicant submits that the RPD's findings assumed that her other daughter's location in Awka is unknown to the Agent of Persecution, which was not only speculative on the part of the RPD but also rendered the Decision unreasonable.

[14] I reject this argument as there was no evidence before the RPD that the Agent of Persecution was aware that the Applicant has family members in Awka. Indeed, I note that

counsel for the Applicant also did not rely on this argument in their post-hearing submission to the RPD. Rather, the focus of the Applicant's arguments with respect to Awka were focussed on the second prong of the IFA, which I would address below.

[15] Besides, contrary to the Applicant's contention, the RPD did address the possibility of the Applicant being found in Awka when assessing whether other members of the shared community of the Agent of Persecution could target her. The Applicant argues that the RPD ignored or misstated evidence in this regard. I disagree. In coming to its conclusion that the Applicant failed to provide sufficient evidence to establish a serious possibility of persecution in the IFA, the RPD provided several reasons, namely:

a) The Agent of Persecution lives in Umuozo, Imo State where he has extended family members. The Applicant did not know who the Agent of Persecution could influence to help him locate her in another state but stated that there are meetings of his family and shared community across the country.

b) The evidence did not identify anyone in the shared community who would be influenced to locate the Applicant.

c) The documentary evidences states that there is generally no retaliation or violence against parents who refuse FGM.

d) There was no evidence indicating that the Agent of Persecution can influence the Nigerian Government or its apparatuses.

e) While there may be some members of the shared community in Awka, a city in another state of 100,000 to 250,000 people, the chance that a member of the community would find the Applicant and pass that information along to the Agent of Persecution is so low that it does not establish more than a mere possibility of persecution.

f) Counsel's submission that some unknown organization may put the Applicant's private contact information online to enable the Agent of Persecution to locate the Applicant is entirely speculative.

[16] These reasons, in my view, are reasonably supported by the evidence on record. As such, I find that the RPD reasonably determined there was no serious possibility of persecution for the Applicant in the IFA. While the RPD may not have specifically named another agent of persecution in the Decision, its finding that there was insufficient evidence that the shared community supports the Agent of Persecution was reasonable.

[17] The Applicant further relies on *Aigbe v Minister of Citizenship and Immigration*, 2020 FC 895 [*Aigbe*] to support her position. The Court in that case found the RAD erred by finding that if the applicants were found in Lagos because they were staying with family, then it was unlikely they would be found in Abuja if they do not stay with family. *Aigbe*, in my view, can be distinguished, as the RAD's reasoning was different from that of the RPD in the case at hand.

B. *Second Prong: Did the RPD err in finding it would not be unreasonable in all the circumstances for the Applicant to seek refuge in Awka?*

[18] In regards to the second-prong of the IFA test, *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] at para 15 requires the claimant to demonstrate "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant… [and] actual and concrete evidence of such conditions."

[19] Before this Court, the Applicant reiterates the same arguments she had submitted to the RPD as to why Awka will not be a viable IFA for her. These factors are: a) she is a widow and a senior; b) there is high unemployment rate in Nigeria for women and for senior citizens; c) there is a lack of housing; d) the Applicant has no income as the Nigerian Government has not paid out pensions to retirees like herself; e) her medical conditions; and f) her daughter in Awka as well as the daughter in Canada would not be able to support her. The Applicant's oral submission focused on the last factor.

[20] While sympathetic to the Applicant's situation, she has not pointed to any reviewable errors made by the RPD, which considered all of these arguments and addressed them in the Decision.

[21] Specifically with regard to the ability of her daughter in Awka to support the Applicant, the Decision noted:

> …the statement that additional expenses to support her mother would create a burden and strain the marriage of her Adult Daughter in Awka does not mean support is not entirely unavailable.

[22] The RPD's finding above was reflective of the evidence given by the Applicant and did not give rise to any reviewable error.

[23] The Applicant's daughter A.C. gave evidence at the RPD hearing and indicated it would be difficult for them to send money. But she also testified about her concern that any money she sends to Awka may not be used by the Applicant. The Decision noted that the Applicant currently lives with A.C. and her husband. The Decision further noted their prior support of the

Applicant for the five years after she retired before coming to Canada. On that basis, the RPD concluded that the Applicant has not established that A.C. and her husband would not be willing to provide the Applicant with support if necessary. It went on to find that the Applicant has not established, on a balance of probabilities, that she will have no familial support either from family members in Nigeria or Canada. I see no basis to interfere with this conclusion, in view of the evidence before the RPD.

[24] Indeed, the RPD member recognized the situation is difficult for the Applicant. Notwithstanding the challenges she would face, the RPD member concluded that the Applicant has "failed to establish, on a balance of probabilities, totality of the obstacles the [Applicant] may face in relocating to Awka would jeopardize her life and safety and therefore those conditions fail to reach the very high threshold for unreasonableness." In my view, the RPD reached a conclusion that was justifiable, transparent and intelligible in view of the evidence and the legal constraints before it: *Ranganathan*, para 15.

[25] Finally, the Applicant's argument that the RPD Member erred by failing to take into consideration A.C.'s status as a Convention Refugee in Canada has no merits. A.C.'s claim was accepted on the ground of Christianity, and not on FGM. The Member made no negative credibility findings against the Applicant and thus made no findings rejecting the FGM allegations. Besides, the Decision did acknowledge A.C.'s successful claim, albeit briefly.

[26] While the Applicant is not successful with her refugee claim, as the RPD has determined, she would likely face challenges should she return to Nigeria. These difficulties may become

relevant considerations should the Applicant decide to pursue other means of regularizing her status in Canada.

IV. Conclusion

[27] The application for judicial review is dismissed.

[28] There is no question to certify.

JUDGMENT in IMM-6363-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6363-21
STYLE OF CAUSE:	THEODORA NNE ICHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	MAY 26, 2022
JUDGMENT AND REASONS:	GO J.
DATED:	JUNE 24, 2022

APPEARANCES:

Solomon Orjiwuru	FOR THE APPLICANT
Erin Estok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Solomon Orjiwuru Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT