Federal Court  Cour fédérale

Date: 20221027

Docket: IMM-5589-21

Citation: 2022 FC 1475

Vancouver, British Columbia, October 27, 2022

PRESENT: Madam Justice Go

BETWEEN:

ADENIKE PRINCESS ARULEBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Adenike Princess Aruleba, is a citizen of Nigeria who entered Canada on November 19, 2010 and claimed protection from her ex-husband's family for accusing her of being a witch. On May 8, 2012, the Refugee Protection Division [RPD] dismissed her claim on the basis of credibility concerns and a lack of objective evidence.

[2] The Applicant submitted an application for a Pre-Removal Risk Assessment [PRRA] on July 30, 2019.

[3] On August 6, 2019, the Applicant submitted an application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[4] In a decision dated July 8, 2020, a Senior Immigration Officer [Officer] declined to grant the Applicant H&C relief [Decision]. The Officer gave weight to the Applicant's establishment because of her community ties, employment history and her financial situation. The Officer also gave weight to the Applicant's connection to Nigeria. The Officer gave no weight to the risk and adverse country conditions, finding that the Applicant is not at risk in Nigeria, and that her family and employment background would aid in her reintegrating. The Decision was communicated by email to the Applicant on August 16, 2021.

[5] The Applicant seeks judicial review of the Decision, arguing that the Officer made an unreasonable decision and breached procedural fairness.

[6] For the reasons set out below, I find the Decision reasonable and I find no breach of procedural fairness. I therefore dismiss the application.

II. Issues and Standards of Review

[7] The Applicant argues that the issues are: a) whether the Decision was unreasonable, and b) whether the Officer breached the duty of procedural fairness by not communicating the Decision in a timely manner and by not requesting information from the Applicant.

[8] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] The Applicant submits that with respect to procedural fairness, the applicable standard of review is correctness.

[10] 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.

[11] 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.

[12] For issues of procedural fairness, the central question is whether the procedure was fair having regard to all of the circumstances, including whether the applicant knew the case to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56.

III. Analysis

A. *Was the Decision Reasonable?*

[13] The Applicant submits that the Decision was unreasonable because it was based on internally incoherent reasoning unsupported by evidence and untenable in light of the legal and factual constraints. The Applicant further asserts that the Officer misconstrued and ignored evidence that was contrary to the Officer's conclusion.

[14] Specifically, the Applicant challenges the Officer's findings as to her establishment and ties in Canada, her ties in Nigeria, as well as the risk and adverse country conditions.

The Officer's Finding Regarding the Applicant's Establishment and Ties in Canada was Reasonable

[15] The Applicant argues that the Officer failed to explain why the Applicant's degree of establishment in Canada was insufficient to warrant H&C relief. The Applicant also argues that

the Officer's reasoning related to her establishment was based on contradictory reasoning. On one hand, the Officer found that the Applicant demonstrated a typical level of establishment for individuals in Canada in similar circumstances. Yet, on the other hand, the Officer applauded her establishment in Canada and concluded that her previous experience as a restaurant owner over 10 years ago would assist her in resettling in Nigeria.

[16] In her written submissions, the Applicant argues that the Officer's reasoning reflects the same flawed logic that was found unreasonable in *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 [*Sebbe*]. The Applicant submits that in *Sebbe*, Justice Zinn found that it was unreasonable to discount what the applicants had accomplished by crediting the Canadian immigration and refugee system, and that credit should be given to the initiatives the Applicant undertook: *Sebbe* at para 21.

[17] The Applicant, in my view, has mischaracterized Justice Zinn's comment in *Sebbe*. Contrary to the Applicant's argument, Justice Zinn did not find it unreasonable to discount an applicant's accomplishment by crediting the Canadian immigration and refugee system. Instead, Justice Zinn took issue with the officer's comment that the applicant "has received due process through the refugee programs and was accordingly afforded the tools and opportunity to obtain a degree of establishment into Canadian society": *Sebbe* at para 21.

[18] The Officer in this case did not attempt to link the Applicant's positive establishment to her immigration history and did in fact give some weight to her residence and community ties in Canada. I therefore find no merit in the Applicant's argument, nor do I find that *Sebbe* assists her

case. Further, as the Respondent points out, establishment was merely one factor of several to be considered by the Officer. Just because the Officer gave positive weight to this factor, it does not mean an exemption is warranted: *Perez Fernandez v Canada (Minister of Citizenship and Immigration)*, 2019 FC 628 at para 18.

The Officer's Finding of the Applicant's Ties and Support in Nigeria was Reasonable

[19] Similarly, I reject the Applicant's argument that the Officer's conclusion regarding her ability to adjust and adapt in Nigeria was based on a faulty premise and ignored the evidence of suffering she experienced before fleeing to Canada.

[20] Contrary to the Applicant's contention, the Officer did not find the Applicant has a "strong connection" to Nigeria. The Decision merely stated: "I have examined the applicant's connections to Nigeria and I give weight to this component."

[21] As the Respondent submits, there was insufficient evidence indicating that the ex-husband's family was still after the Applicant, particularly since the Applicant's refugee claim was refused based on credibility concerns. I therefore disagree with the Applicant that the Officer ignored evidence of her suffering in Nigeria.

[22] I also do not find that the Officer erred by finding that the Applicant would receive support from her daughters, given that the Applicant did not clearly demonstrate estrangement between herself and her daughters in her H&C application. Before this Court, the Applicant argued that when submitting that she was estranged from her "family" she had included her

daughters as part of the "family." I reject this argument. The Applicant's submissions about her estrangement from her family, as included in her H&C application, were as follows:

> Prior to my arrival in Canada I am completely estranged from my ex-husband and his family, due to a family breakdown after my ex-husbands father Mr. Oladipo passed away in October 2010 which left me all by myself with no connection whatsoever to them. As a matter of fact, the last conversation I had with ex-husband and his family categorically stated that I was dead to them, and my name should not be mentioned in the house….
>
> ….
>
> I am divorced from my ex-husband back home and my children have grown up and moved on with their life. I am currently separated from my husband … and do not have any contact with him.

[23] Read as a whole, the Applicant's submissions about her estrangement from her family could be read to apply specifically to her ex-husband's family, and not to her children. I cannot conclude that the Officer's interpretation of the Applicant's submission that she was estranged from her ex-husband's family but not from her daughters was unreasonable.

[24] This Court confirms the Officer's ability to consider factors attenuating hardship upon return: see *Ramesh v Canada (Citizenship and Immigration)*, 2019 FC 778 at paras 38-39. I see no error in the Officer giving weight to the Applicant's two adult daughters and her prior experience as a restaurant owner as factors supporting her reintegration in Nigeria.

[25] The Applicant further submits that it was unreasonable for the Officer to find her connection to Nigeria stronger and that separation would not cause hardship to justify granting an exemption, despite acknowledging the Applicant's involvement in her community, the letters

of support and her educational upgrading. I agree with the Respondent that the Applicant's arguments amount to a request for the Court to re-weigh the evidence, which I cannot do.

Risk and Adverse Country Conditions

[26] The Applicant submits that the Officer's analysis of her adverse country conditions was unreasonable as the Officer failed to consider the evidence provided. Namely, the Applicant relies on the country report on witchcraft accusations in Nigeria and the fact that the Applicant was forced to leave Nigeria due to violent threats. The allegations of witchcraft do not succumb with the passage of time, says the Applicant, citing an article showing the impact of witchcraft accusations on elderly women. I note that the article in question was not included in the Certified Tribunal Record, and the Applicant could not confirm if the said article was in fact put before the Officer. As such, I would not consider this article or any submission arising from the Applicant's reliance on it.

[27] I also do not find the Applicant's argument persuasive. As the Respondent asserts, the Court's purpose is not to re-litigate the findings of an RPD decision. The RPD already dismissed the Applicant's risk from her ex-husband due to credibility concerns and lack of objective evidence. The Officer's reliance on that finding was not unreasonable: *Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515 at para 29.

[28] The Applicant further maintains that she will face hardship if returned to Nigeria due to other factors such as her age and her status as a single woman, which would make it difficult for her to find employment.

[29] The Officer's findings in this regard followed their findings about the Applicant's previous experience as a restaurant owner in Nigeria and the Applicant having two daughters who could aid her in reintegrating. For the reasons already stated above, I see no basis to disturb the Officer's conclusions.

B. *Did the Officer Breach Procedural Fairness?*

[30] The Applicant argues that the Officer breached procedural fairness for two reasons. First, the Officer erred by failing to request additional information from the Applicant. Second, there was an unjustified delay in communicating the Decision to the Applicant after it was reached.

The Officer Did Not Make a Veiled Credibility Finding Against the Applicant

[31] The Applicant submits that the Officer breached procedural fairness and the Immigration, Refugees and Citizenship Canada [IRCC] manual on H&C applications by failing to ask the Applicant to provide evidence of ongoing risk. The Applicant argues that the Officer's reasons related to this issue made it clear that a veiled credibility finding was made against her. The Applicant submits that because of the credibility finding, she should have been given an opportunity to address the Officer's credibility concerns.

[32] I disagree. In pointing out that the RPD heard the Applicant's refugee claim and refused it on the basis of credibility and lack of objective evidence, the Officer was not making a veiled credibility finding, but was merely stating a fact.

[33] The Respondent argues that the onus is on the Applicant to submit all relevant evidence. The Officer has no requirement to seek out additional evidence, conduct their own independent research, or provide notice to the Applicant if their application is deficient: *Arshad v Canada (Citizenship and Immigration)*, 2018 FC 510 at para 24.

[34] In the context of this case, I agree with the Respondent that there was no breach of procedural fairness because the Officer had no duty to request further evidence. The Applicant herself raised risk as one of the grounds for H&C relief, and was well aware of the negative RPD decision. As such, the Applicant bore the onus to provide all relevant evidence regarding risk in Nigeria, including any new evidence that would rebut the negative findings made by the RPD.

There was no Breach of Procedural Fairness Arising from the Delay in Communicating the Decision

[35] The Applicant submits that the Officer's non-communication of the Decision for a period of over one year constitutes a breach of procedural fairness. In support of her argument, the Applicant cites the procedural fairness requirement stated in section 8.8 of *IP5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* [*IP5*]:

> Applicants must be informed when: additional information is required; the Department has extrinsic information material to the H&C or admissibility decision; and a decision has been made. The principal methods used to keep clients informed are: automated letters; phone calls; or in-person interviews and counselling.

[36] The Applicant contends that despite this requirement in the manual, the Officer refused to communicate his decision to the Applicant in a timely fashion and was insensitive to the hardship that the Applicant may experience. The Applicant made various efforts to get feedback

on the outcome of her application, the most recent of which was on July 29, 2021. The response to the webform stated that the application was still under processing.

[37] Despite the pandemic, the Applicant submits that the delay has been longer than what the nature of the process required.

[38] The Applicant also submits that the delay has prejudiced the Applicant, as she was unable to apply under the recently closed Pathway to Permanent Residency for Essential Workers program [Pathway Program]. The Applicant contends that she would have been eligible because she worked as an essential factory worker, but that she did not want to bring multiple applications in contravention of subsection 25(1.2) of *IRPA*.

[39] I find the Applicant's submissions lack merit.

[40] While there was a delay in communicating the Decision, the Applicant received the Decision 24 months after the H&C application was submitted. This timeframe fell within the average processing time for H&C applications.

[41] I also agree with the Respondent that the Applicant has not demonstrated that she has suffered any prejudice due to the delay. Contrary to the Applicant's submissions, nothing precludes the Applicant from submitting more than one application for permanent residency under different programs. Subsection 25(1.2) of *IRPA* states that an applicant is not permitted to submit two H&C applications, simultaneously, and is also not permitted to submit an H&C

application if a RPD or RAD matter is pending. Neither of these are issues here, since the Pathway Program was created pursuant to section 25.2 of *IRPA*.

[42] As the Respondent notes, *IP5* also contemplates multiple applications, including for instance, spousal sponsorship applications. I would also add that nothing precluded the Applicant from making additional submissions to the Officer in relation to the Pathway Program as an additional ground for granting her an exemption while waiting for the Decision.

[43] The Respondent further argues that the Applicant does not appear to be eligible for the Pathway Program, as it requires applicants to have valid temporary status (or to be eligible to restore their status), and that foreign nationals who do not currently have temporary resident status, such as refugee claimants, are not eligible. The Applicant submitted a PRRA in July 2019 and thus does not appear to be eligible for the program.

[44] I make no findings on this last submission. The Applicant's argument about the delay presumes she was eligible for the Pathway Program. However, since the Applicant fails to demonstrate why she could not have submitted an application under the Pathway Program while pursuing her H&C application, I find that there was no breach of procedural fairness.

IV. Conclusion

[45] The application for judicial review is dismissed.

[46] There is no question for certification.

JUDGMENT in IMM-5589-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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