Federal Court  Cour fédérale

Date: 20221220

Docket: IMM-6461-21

Citation: 2022 FC 1776

Ottawa, Ontario, December 20, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

ADEGOKE JULIUS ASANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Adegoke Julius Asana, a citizen of Nigeria, seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed Mr. Asana's appeal and confirmed the Refugee Protection Division's (RPD) determination that he is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*], because he has a viable internal flight alternative (IFA) within Nigeria, in Port Harcourt.

[2] Mr. Asana is a Christian and alleges that he and his family were targeted by a Muslim extremist with ties to Boko Haram and the Fulani Herdsmen, identified as AS, for organizing weekly prayer services in Maiduguri after moving there in 2011. Tensions escalated, and in 2016 two of Mr. Asana's brothers died following an attack in Maiduguri that was led by AS. Mr. Asana believes he was the intended target. He moved with his wife and children to Ibadan, but continued to receive threats. With help from a church in Ibadan, Mr. Asana left for the United States in September 2016, but he was fearful of claiming refugee protection there and first claimed protection in Canada in 2018. Mr. Asana believes that he and his family remain at risk. He believes agents of Boko Haram were behind threats made to his wife in late 2019 or early 2020, which drove her into hiding, and that they set fire to the family home in Ibadan after his wife returned there in 2021.

[3] The RAD found there was insufficient evidence to establish that Mr. Asana and his family would be at risk in Port Harcourt. The RAD was not satisfied that AS has the means or motivation to pursue the family to Port Harcourt, and Mr. Asana had not established that AS has connections with Boko Haram or the Fulani Herdsmen, or that AS or agents of Boko Haram were behind the threats to his wife or the fire in Ibadan. The RAD also found it would not be unreasonable for the family to relocate to Port Harcourt.

[4] Mr. Asana submits the RAD's decision is unreasonable. He contends the RAD committed reviewable errors in determining that Port Harcourt is a viable IFA, both with respect to the means and motivation of the agents of harm to locate him, and with respect to the

reasonableness of relocating to Port Harcourt. Also, he contends the RAD erred when it refused to admit certain documents as new evidence on appeal.

[5] For the reasons below, Mr. Asana has not established that the RAD's decision is unreasonable. Accordingly, this application is dismissed.

II. **Issues and Standard of Review**

[6] Mr. Asana raises the following issues:

A. Did the RAD err in refusing to admit new evidence?

B. Did the RAD err in its assessment of risk in Port Harcourt?

C. Did the RAD err in its assessment of the reasonableness of relocating to Port Harcourt?

[7] The parties agree, as do I, that the applicable standard of review is reasonableness.

[8] The Supreme Court of Canada set out the guiding principles for reasonableness review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In applying the reasonableness standard of review, the reviewing court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

A. *Did the RAD err in refusing to admit new evidence?*

[9] Mr. Asana submits the RAD's refusal to admit medical reports and photographs from his son's admission to hospital after the fire in Ibadan was based on an unreasonable finding that this evidence was not relevant to his claim. He submits the evidence is relevant because it corroborates his wife's statements that their son, who has a medical condition, had a seizure following the fire.

[10] I am not persuaded that the RAD unreasonably refused to admit the medical reports and photographs on the basis of relevance. In addition to the statutory requirements for admitting new evidence on appeal under subsection 110(4) of the *IRPA*, the RAD may refuse to admit evidence that is not relevant: *Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 at para 64; *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at para 13. The RAD considered whether the documents were relevant in light of Mr. Asana's submissions that his son was admitted to the hospital for smoke inhalation. The RAD reasonably found they were not relevant, noting statements in the reports that the son was a known patient who was being managed for a seizure disorder, and that the reports gave no indication of smoke inhalation or that the admission to hospital was connected to an event such as a fire. The RAD noted the photographs were undated and without labels, and were not mentioned in any affidavit evidence. The RAD reasonably concluded that the photographs were not relevant to the fire or whether it was caused by the agents of persecution, as Mr. Asana alleged.

B. *Did the RAD err in its assessment of risk in Port Harcourt?*

[11] Mr. Asana submits the RAD erred in its assessment of risk in Port Harcourt by making a veiled credibility finding. It was an error to require corroborative evidence of means and motivation or AS's connections to Boko Haram and the Fulani Herdsmen when Mr. Asana's testimony is presumed to be true, and should have been sufficient. In any event, Mr. Asana states there was corroborative evidence, but the RAD disregarded it. There was evidence that the agents of persecution located the family in Ibadan, which is outside of the traditional area of operation of Boko Haram, and there was objective country condition evidence about Boko Haram's presence in southern Nigeria and the surrounding areas. Also, Mr. Asana contends the agents of persecution likely learned of the family's move to Ibadan from the police in Maiduguri, and their influence with the police would make it easy for the agents to find the family in Port Harcourt.

[12] The respondent argues the presumption of truth does not require the RAD to accept speculation. Mr. Asana may believe that AS has connections to Boko Haram and the Fulani Herdsman and the ability to find him in Port Harcourt, but he failed to meet his onus with evidence to show his belief is objectively reasonable. Similarly, the RAD reasonably found there was insufficient evidence to link the 2021 fire to the alleged agents of persecution. With respect to the country condition evidence, the respondent states the RAD considered it and found it did not show that Boko Haram or the Fulani Herdsmen have a presence in Port Harcourt, or that Mr. Asana would be a likely target of these groups.

[13] I agree that the RAD was not required to accept unsupported assertions. It was Mr. Asana's onus to demonstrate a serious possibility of persecution or section 97 risk of harm in the IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at para 6; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at paras 6 and 9 [*Thirunavukkarasu*]. The RAD was entitled to assess whether there was sufficient, reliable evidence to meet the onus.

[14] The RAD addressed this issue squarely, citing principles from decisions of this Court that explain the difference between findings based on insufficient evidence and those based on unexplained or veiled findings of credibility: *Adeleye v Canada (Minister of Citizenship and Immigration)*, 2020 FC 640 at paras 10-11; *Jimenez v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1225 at paras 15-16; *Kassim v Canada (Minister of Citizenship and Immigration)*, 2018 FC 621 at para 22. The RAD considered the evidence—including Mr. Asana's testimony in response to questions asking how he knew that AS is connected to Boko Haram or the Fulani Herdsmen, evidence of the threats and fire in Ibadan, and the objective country condition evidence—and explained why it was insufficient or did not support Mr. Asana's allegations. The RAD also considered Mr. Asana's allegations that the agents of persecution would be able to locate his family through police connections, and found Mr. Asana had not established the agents of persecution had sufficient influence with the police such that the police would access information about him and provide it to the agents of persecution. I am not persuaded that the RAD made veiled credibility findings or disregarded country condition evidence. The RAD reasonably concluded that Mr. Asana's beliefs, supported by his wife's

beliefs, and the objective country condition evidence did not establish that Mr. Asana and his family face a serious possibility of persecution in Port Harcourt.

C. *Did the RAD err in determining it would not be unreasonable to relocate to Port Harcourt?*

[15] Mr. Asana submits the RAD erred in concluding he could relocate to Port Harcourt without unreasonable and undue hardship. Mr. Asana states the hardship of relocating would amount to a risk to life; he and his family would not be able to afford housing and they would be unable to survive. Mr. Asana submits it would be almost impossible for him to find skilled work given the unavailability of such jobs and the preferential treatment of indigenes, and he would not be able to afford housing for a family of six. He states the RAD assumed he could support his family with menial work, which was unreasonable given the high cost of living and his inability to support himself when he lived alone in Port Harcourt, without the additional costs of supporting his family.

[16] I agree with the respondent that the RAD reasonably determined Mr. Asana had not met his burden of establishing that it would be unreasonable to relocate to Port Harcourt. The Federal Court of Appeal in *Thirunavukkarasu* at paragraph 14, and in *Ranganathan v Canada (Minister of Citizenship and Immigration)* [2001] 2 FC 164 (CA) at paragraph 15, made it clear that the type of hardship that renders an IFA unreasonable is the existence of conditions that would jeopardize an applicant's life and safety in travelling or relocating to the IFA. There is a "sharp contrast" between conditions jeopardizing an applicant's life and safety, and hardship resulting from the "loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations": *Ibid*. In Mr.

Asana's case, the RAD considered the evidence of difficulties faced by non-indigenes, but found Mr. Asana had work experience and skills that would help him secure employment. The RAD accepted that Mr. Asana and his family would face challenges, but was not satisfied the challenges would cause undue hardship, or that it would be objectively unreasonable for Mr. Asana and his family to relocate to Port Harcourt. Mr. Asana has not established a reviewable error in the RAD's assessment or conclusion.

IV. **Conclusion**

[17] Mr. Asana has not established the RAD's decision is unreasonable, and this application for judicial review is dismissed.

[18] Neither party proposes a question for certification. In my view, there is no question to certify in this case.

JUDGMENT in IMM-6461-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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