Federal Court  Cour fédérale

Date: 20230117

Docket: IMM-7975-21

Citation: 2023 FC 67

Ottawa, Ontario, January 17, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

RAHMON ABIODUN AKEWUSHOLA
RASHIDAT OLOLADE AKEWUSHOLA
ABDULQAHAR BABAFEMI AKEWUSHOLA
ROFEEQ AKOLADE AKEWUSHOLA
ROQEEBAT AKOREDE AKEWUSHOLA
MUIZAT OMOBOLANLE AKEWUSHOLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, a family from Nigeria, sought refugee protection upon their arrival in Canada based on a fear of persecution or harm by members of a cult. They seek judicial review of an October 14, 2021 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed the applicants' appeal and confirmed the Refugee

Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because they have a viable internal flight alternative (IFA) within Nigeria, in Port Harcourt.

[2] The applicants submit the RAD's decision is unreasonable. First, they contend the RAD erred by refusing to admit a newspaper article as new evidence on appeal. Second, they contend the RAD erred in its IFA analysis. In this regard, the applicants allege the RAD misunderstood the facts and did not identify the correct agents of persecution for the purpose of assessing whether they would face a risk of harm in the IFA. The applicants allege the RAD also erred in assessing whether it would be unreasonable in their circumstances to relocate to Port Harcourt.

[3] The parties agree that the applicable standard of review is reasonableness, and I concur. 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.

[4] The applicants tendered five documents as new evidence on appeal, and the RAD rejected one of them—an article titled “Rivers Court Remands Three for Cultism” published on July 16, 2019 in the Nigerian newspaper Punch. Port Harcourt is the capital city of Rivers State. The applicants submit the RAD erred in rejecting the Punch article, which reports that the men remanded into custody were members of a cult know as Black Axe.

[5] Subsection 110(4) of the *IRPA* provides that on an appeal to the RAD, a refugee claimant may only present new evidence that (i) arose after the RPD’s rejection of their claim, (ii) was not reasonably available at the time of the RPD’s rejection, or (iii) they could not reasonably have been expected in the circumstances to have presented at the time of the RPD’s rejection: *IRPA* s 110(4). Although the Punch newspaper article pre-dated the RPD’s decision, the applicants contend they met the requirements of subsection 110(4) in that they could not have reasonably expected the RPD would suggest Port Harcourt as an IFA. Also, they note that the RAD accepted two other articles that pre-dated the RPD decision, and were less relevant.

[6] I agree with the respondent that the RAD was required to exclude evidence that did not meet the subsection 110(4) statutory criteria, and reasonably excluded the Punch newspaper article on this basis. The RAD noted that the article pre-dates both the RPD’s decision and RPD hearing. The RAD rejected the applicants’ argument that “they could not know the RPD would disbelieve that the agents of persecution are in the IFA location”, and the RAD saw no reason why the article could not have been provided to the RPD. On this application for judicial review, the applicants argue they could not have been expected to anticipate that the RPD would propose Port Harcourt as the IFA when at least 10 cities could have been proposed, noting that they had

provided evidence of cult presence in Lagos. I am not persuaded by this argument. I agree with the respondent that the RPD proposed Port Harcourt as an IFA and the applicants' counsel made submissions about the proposed IFA at the RPD hearing. The applicants did not allege surprise or ask for time to submit additional evidence or file post-hearing submissions. I am not satisfied that the RAD committed a reviewable error in its assessment of the statutory criteria for admitting new evidence.

[7] The applicants note that the RAD admitted other articles pre-dating the RPD's refusal, and state that the Punch article is more relevant. However, the applicants have not established that the RAD's refusal to admit the Punch newspaper article is unreasonable because it admitted the other articles. The RAD noted that the Punch article states only that three men, described as belonging to the "Klaus-men and Black Axe", were charged with participating in cult-related activities, which were not detailed. The RAD found the minimal information was insufficient to establish the Black Axe has a meaningful presence in Port Harcourt. Furthermore, the RAD found it was not necessary to address at length the applicants' arguments regarding the capacity or means of the Black Axe cult to locate them in Port Harcourt, because the RAD was not satisfied that members of the cult the applicants feared—regardless of the cult's identity—were motivated to harm them.

[8] Turning to the alleged errors in the RAD's IFA analysis, the applicants state the agents of persecution are members of the "Aye Confraternity (Black Axe)". According to the applicants, the RAD erred in finding that the agents of persecution they had described as members of "Aiye" confraternity were not the Black Axe, but rather, members of the "Eiye" confraternity. They

submit “Aiye” is a local term for the Black Axe cult, and the RAD was mistaken when it found there was no indication in the country condition documents or in the sworn affidavits before the RPD that the “Aiye” confraternity is the same as the Black Axe. Furthermore, the applicants submit that the Eiye confraternity is itself a dreaded confraternity, with roots across Nigeria including in Port Harcourt, and this Court has recognized that there is evidence of the Eiye cult in Port Harcourt: *Omogie v Canada (Minister of Citizenship and Immigration),* 2019 FC 1240.

[9] The respondent submits the applicants have not established a reviewable error. The RAD reasonably found the applicants’ evidence about the identity of the agents of persecution to be inconsistent, and the RAD was not persuaded the applicants had been targeted by the Black Axe. The respondent submits the RAD nonetheless went on to assess whether the applicants would face a forward-looking risk in Part Harcourt from the Black Axe, and found there was little evidence to suggest that the Black Axe maintained any meaningful presence there. The allegation that the applicants are at risk from the Eiye confraternity are improper, as it is not open to the applicants to advance a new claim on judicial review that was not before the RAD. Moreover, the respondent submits the RAD reasonably found there was insufficient evidence that the alleged agents of persecution, regardless of their identity, had an ongoing interest in the applicants.

[10] I agree with the respondent. The applicants allege the RAD erred in finding the agents of persecution were not members of Black Axe because National Documentation Package (NDP) Item 7.27, which relates to the Eiye confraternity, includes a statement that the Eiye confraternity was involved in clashes “with the rival cult, the Aiye [Black Axe] confraternity”. It does not

appear that the applicants pointed the RAD to this statement. The RAD noted that the applicants had asked it to consider NDP Item 7.24, which specifically relates to the Black Axe confraternity. The RAD considered NDP Item 7.24 and was unable to find any reference to the Black Axe also being known as the Aiye cult or the Aiye confraternity. To the contrary, the RAD found that multiple references in NDP Item 7.24 described the Black Axe and the Aiye cult or confraternity as rivals. The RAD also noted other evidence that described the Black Axe group as a group that is distinct from the Eiye and Aiye confraternities. The RAD concluded that the applicants had not established that the Black Axe were the agents of harm. On judicial review, the applicants have not established that the RAD's finding was unreasonable.

[11] As noted above, the RAD went on to find that the applicants would not face a forward-looking risk in Part Harcourt, as they had not established that the agents of persecution had an ongoing interest or motivation to pursue them. The applicants alleged that they remained at risk of vengeance long after the principal applicant witnessed events in 2013 and reported them to the police. The applicants alleged they had received threatening telephone calls, and cult members had attempted to abduct one of the minor applicants in 2018. With respect to the alleged abduction, the RAD found that the evidence was insufficient to establish the identity of the men involved in the incident, that it was in fact an attempted abduction, and if it was an attempted abduction, the motivation behind it. The RAD noted the evidence of threatening telephone calls in 2013 from unknown persons who the applicants believed were associated with the Aiye cult, then no calls between 2013 to 2015, and one call in 2016. The RAD found that if a cult, whether it be the Black Axe, the Eiye, or the Aiye, were truly motivated to search for and find the applicants for purposes of retribution, there would likely be an escalation of conduct beyond the

phone calls over the period spanning from 2013 to 2018. The RAD concluded that the applicants had not established the agents of persecution would be motivated to look for and harm the applicants in the IFA. On this application for judicial review, the applicants have not shown that these findings were unreasonable.

[12] The applicants further allege the RAD erred in assessing whether it would be unreasonable for them to relocate to Port Harcourt. They allege the RAD unreasonably assumed that the principal applicant would find employment, when he had not worked in Nigeria for 10 years before coming to Canada, unemployment rates in Nigeria are high, he does not have skills to work in the oil and gas industry, and his previous experience working for the state government would not assist to secure a state job in Port Harcourt as a non-indigene. The applicants also allege the RAD failed to adequately consider the possibility that they will be denied full citizenship rights and face hardship as non-indigenes.

[13] The Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) 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*.

[14] On this application for judicial review, the applicants raise the same arguments about the unreasonableness of the IFA that were raised in their appeal of the RPD's decision, and addressed by the RAD. I agree with the respondent that the RAD reasonably determined the applicants had not established it would be unreasonable for them to relocate to Port Harcourt. The RAD considered the educational and employment backgrounds of the principal applicant and his spouse, noting that their academic achievements exceeded the national average, and found the applicants had not established that the difficulties they might face in finding employment were so significant as to render the IFA unreasonable. The RAD found that indigeneship status is less important in large urban centres like Port Harcourt, and even if the applicants' status as non-indigenes would pose difficulties, the RAD was not satisfied such difficulties would meet the high threshold required to demonstrate that the IFA is objectively unreasonable. The RAD acknowledged the difficulties of relocating, but concluded that Port Harcourt is a viable IFA, based on the applicants' personal circumstances. In my view, the applicants' arguments on judicial review amount to a request to reweigh and reassess the evidence, which is not the Court's role: *Vavilov* at paras 125-126. The applicants have not established a reviewable error in the RAD's analysis or conclusion.

[15] In conclusion, the applicants have not established that the RAD's decision was unreasonable. Accordingly, this application for judicial review is dismissed.

[16] Neither party proposed a question for certification. I find there is no question to certify.

JUDGMENT in IMM-7975-21

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

DOCKET:	IMM-7975-21
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