Federal Court  Cour fédérale

Date: 20230719

Docket: IMM-8637-21

Citation: 2023 FC 992

Toronto, Ontario, July 19, 2023

PRESENT: Madam Justice Go

BETWEEN:

ABDULLATEEF DOLA ABDULRAHEEM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Abdullateef Dola Abdulraheem, is a citizen of Nigeria. He alleges fear of Fulani herdsmen who attacked his farm and others in a village in Kwara State in March 2018, and who returned in January 2019, killing four farmers.

[2] The Refugee Protection Division [RPD] rejected the Applicant's claim in May 2021 on the basis of viable Internal Flight Alternatives [IFA] in Lagos, Abuja, and Port Harcourt, Nigeria. In a decision dated November 2, 2021, the Refugee Appeal Division [RAD] upheld the RPD's IFA finding for Lagos and confirmed that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] [Decision].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[4] The Applicant raises two issues before this Court:

a. Whether the RAD erred in finding that the Applicant has no nexus to the Convention ground of perceived political opinion; and

b. Whether the RAD's IFA analysis was reasonable.

[5] 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*].

[6] 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 and 133-135.

[7] For a decision to be unreasonable, the Applicant must establish 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. *Whether the RAD erred in finding no nexus to a Convention ground*

[8] To qualify as a Convention refugee under section 96 of *IRPA*, a claimant must establish a nexus between the harm feared and one of five grounds, including political opinion: see *Ye v Canada (Citizenship and Immigration)*, 2022 FC 1767 [*Ye*] at para 25.

[9] On appeal to the RAD, the Applicant pointed to various RAD decisions that considered similar section 96 claims on their merits, related to the Fulani herdsmen. The Applicant also pointed to new evidence, including letters from his family and country condition evidence, indicating that the Fulani herdsmen have continued to incite violence in Nigeria over issues of property. The Applicant asserted that his vocal opposition to the herdsmen's activities made him inherently politically opposed to them.

[10] In finding that the Applicant failed to establish a nexus to the Convention ground of perceived political opinion, the RAD distinguished the previous decisions from the case at bar.

[11] One distinction the RAD relied on was its finding that the Applicant did not play a leadership or organizational role in opposing the Fulani herdsmen's actions, or that the herdsmen perceived him of holding such role: *X (Re)*, 2019 CanLII 136656 (CA IRB) [*X (Re) 1*] at para 39.

[12] The Applicant argues that a leadership role is not a precondition to finding a nexus under perceived political opinion, and that the RAD erred in interpreting its past decision as requiring this level of involvement.

[13] I reject the Applicant's arguments.

[14] I find, as the RAD did, that the cases cited by the Applicant do not assist him because they are distinguishable on the facts: *X (Re) 1; Gopalapillai v Canada (Citizenship and Immigration)*, 2019 FC 228; *Oluwafemi v Canada (Citizenship and Immigration)*, 2023 FC 564. The case of *Gonsalves v Canada (Attorney General)*, 2011 FC 648, relied on heavily by the Applicant, confirms that an evidentiary basis is required for finding the motive behind persecution: see paras 29-30.

[15] In this case, the RAD noted the evidence of the Applicant's opposition to the Fulani herdsmen, including the police reports filed by members of the village after the two attacks, but found that the Applicant's name was only mentioned in one of the reports. The Applicant asserts

that the RAD ought to have considered country conditions evidence highlighting the broader political and ethno-racial context of the conflict between the herdsmen and landowners. However, the Applicant fails to explain how the broader context, on its own, could lead to a finding of nexus in his case.

[16] The Respondent argues, and I agree, that the RAD's findings are consistent with the Court's jurisprudence, as the Applicant simply failed to establish an imputed political opinion with sufficient reliable and credible evidence: *Ye* at paras 27-28; *Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 at paras 40-44.

[17] The Applicant's argument amounts to a disagreement with the RAD's assessment of its prior jurisprudence. Based on the evidence before it, I find no reviewable error arising from the RAD's assessment of nexus.

B. *Whether the RAD's IFA analysis was reasonable*

[18] The two-pronged test for finding a viable IFA is well-established. The decision-maker must be satisfied on a balance of probabilities that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA, and (2) the conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge in the city: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at 711; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at 597 [*Thirunavukkarasu*].

[19] In *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*], the Federal Court of Appeal established a threshold for finding an IFA unreasonable in the second prong of the test, namely that the conditions in the IFA would jeopardize the lives and safety of the claimant: at para 15.

[20] The Applicant argues that the evidence before the RAD met the threshold set out in *Ranganathan* at para 15, and that the RAD committed a reviewable error in finding otherwise, without addressing the relevant evidence on the record.

[21] The Applicant argued before the RAD that his age (now 66) and medical conditions render the proposed IFAs unreasonable, as someone who was already retired and was unable to obtain a pension. In support of his position, the Applicant submitted diagnosis reports and a list of medications he takes. The Applicant also pointed to documentary evidence showing that 97% of Nigerians have no access to care and that even with access, he would be unable to pay for it, as fewer than 5% of Nigerians carry health insurance.

[22] With respect to the issue of employment, the RAD upheld the RPD's finding that the Applicant's high level of education, including a Master's Degree in medical microbiology, and employment experience would place him in a position to find employment more easily than the average Nigerian. The RAD also assessed the evidence of the Applicant's medical conditions but found that it did not establish any health impediments that would affect his ability to work. The RAD acknowledged the high unemployment rate in Nigeria but ultimately found that while the

Applicant “might prefer to retire, I do not find it unreasonable to expect him to continue working” at his age.

[23] The Applicant argues that the RAD’s conclusion contradicts the fact that Nigeria’s mandatory retirement is at age 60. The Applicant notes that this was the reason he took up farming to support his family after his retirement, when the country did not provide him with retirement benefits – an underlying aspect of his claim that the RAD did not challenge. The Applicant argues that the RAD’s conclusion was unreasonable, as the mandatory retirement age is not a “preference” for retirement but a limitation on his ability to work.

[24] I acknowledge that the RAD did note that the Applicant “might prefer to retire.” However, the RAD nevertheless conducted a thorough analysis of the Applicant’s circumstances including his education, language capacity and employment record, before concluding that the Applicant failed to demonstrate the IFA is unreasonable, citing *Thirunavukkarasu*.

[25] The Applicant has put forth many of the same arguments that he presented to the RAD, which the RAD did assess. Essentially the Applicant is asking the Court to reweigh the evidence, which is not the role for this Court to play.

[26] At the hearing, the Applicant further submitted that he presented evidence showing he would not have access to health care in Lagos. By finding that he would be able to work on a balance of probabilities, the Applicant submitted that the RAD failed to connect the dots as to how he will be able to access health care, and imposed an even higher threshold than required

under the second prong. By suggesting that it is not enough for the Applicant to show the IFA is unreasonable because he may not be able to find "suitable work" there, the RAD misapplied the test when the issue is whether the Applicant can support himself, at his age, and with his health.

[27] I reject this argument. I note that the RAD's use of the phrase "suitable work" was made in response to the Applicant's argument that he would likely have to find work in the informal sectors of the economy, due to his age and his retirement. Further more, I see no error on the part of the RAD to point out that not being able to find suitable work in the IFA is insufficient to meet the high threshold set out in *Ranganathan* requiring conditions that would jeopardize the life and safety of a claimant: at para 15.

[28] With respect to his medical conditions, the Applicant submits that the RAD's assessment of the country conditions evidence was selective, and failed to address evidence that contradicted its findings. For example, the Applicant notes that at his age, he has already surpassed the average life expectancy of a Nigerian male by over a decade. The Applicant asserts that the RAD's reliance on his education level does not address his evidence showing that he would not be able to access or afford medical care in Nigeria for his conditions.

[29] At the hearing, the Applicant further submitted that the RAD erred by expecting to see a statement in the medical reports confirming that he would be too unwell to work. The Applicant added that the medical reports and letters were not created for the purposes of litigation. It was unreasonable for the RAD to expect the Applicant to submit a letter saying he could not work, especially during the pandemic.

[30] I reject the Applicant's submissions.

[31] First, there is nothing in the Decision to suggest that the RAD expected such a letter as the Applicant claims.

[32] Second, the RAD accepted the documented medical issues that the Applicant faces. The RAD noted that the evidence about poor access to health care in Nigeria pertained "particularly [to] outside major urban centres", and differentiated the Applicant's profile as one who is highly educated, compared to "most Nigerians." The RAD relied on various sources indicating the higher availability and accessibility of health care services in urban areas to conclude that the Applicant has not established that he would be unable to obtain necessary health care in Lagos. The RAD also rejected the Applicant's argument that his mental health condition, which has been exacerbated by his recent experiences, would hinder the reasonableness of the IFA. The RAD found no evidence that his mental health condition requires treatment.

[33] The RAD's analysis was thorough and its conclusion was reasonably supported by the evidence before it.

[34] Like the RAD, I acknowledge that the Applicant's relocation to the IFA may not be easy. However, despite counsel's able submissions, I conclude that the Applicant has failed to demonstrate any reviewable errors that render the Decision unreasonable.

IV. Conclusion

[35] The application for judicial review is dismissed.

[36] There is no question for certification.

JUDGMENT in IMM-8637-21

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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