

Federal Court



Cour fédérale

Date: 20231018

Docket: IMM-10786-22

Citation: 2023 FC 1369

Ottawa, Ontario, October 18, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ABAYOMI ABDUL GANIYU ARIJE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated October 13, 2022 [Decision], in which the RAD dismissed the Applicant's appeal from a decision of the Refugee Protection Division [RPD] and confirmed that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Nigeria who arrived in Canada in November 2018 and alleges a fear of persecution and risk to his life, because his former wife has falsely accused him of same-sex activity. As a result, the Applicant fears that he would be persecuted by his family members, particularly his cousins, and by Nigerian society as a whole because they believe that he is a member of the LGBTIQ+ community.

[4] The RPD rejected the Applicant's claims, finding that he has a viable internal flight alternative [IFA] in Abuja, Nigeria. The Applicant appealed this decision to the RAD. In the Decision under review in this application for judicial review, the RAD dismissed his appeal.

III. Decision under Review

[5] In support of his appeal to the RAD, the Applicant argued that the RPD made several factual errors, including the RPD describing the agents of persecution as his uncles rather than his cousins, mistaking their names, incorrectly stating that the Applicant argued his cousin was a high-ranking government official, and incorrectly stating that the Applicant claimed to have a mental illness. The RAD found merit to most of these arguments but concluded that the RPD's errors of fact were not fatal to its overall analysis.

[6] The RAD found that the Applicant's allegations established a nexus to a Convention ground and therefore analysed his claim under section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27*.

[7] The RAD also found that, with limited exceptions, the Applicant's evidence about the events he experienced preceding his refugee claim were credible. However, it concluded that his evidence about the threats posed by his cousins was based largely on speculation and therefore did not enjoy the presumption of truthfulness.

[8] Under the first branch of the IFA test, the RAD found that the Applicant does not face a serious possibility of persecution in Abuja. Considering first his concern about persecution by the Muslim community in Nigeria, the RAD noted that the Applicant did not provide any substantive evidence demonstrating that the general Muslim community had the means or motivation to search for and locate him in Abuja. Noting that the Applicant's testimony included little to no substantive reference to fear of the Muslim community at large, the RAD did not find that the community had the necessary means and motivation. The RAD therefore turned to an analysis surrounding the Applicant's family members as the agents of harm.

[9] The RAD agreed with the RPD that the Applicant had not provided sufficient evidence that his cousins had the means to locate him in Abuja. The RAD found that the Applicant's claims to this effect, based on his cousins' high profile and connections and him being a recognizable person, were largely speculative. The RAD found that the Applicant had not substantiated his claim that he was a person of prominence in Nigeria or that his involvement

with a Nigerian community organization named the Movement for Islamic Culture and Awareness (MICA) would allow the agents of harm to locate him in the proposed IFA.

[10] As for the motivation of the agents of persecution to locate the Applicant, the RAD again found that he had not produced substantive evidence beyond speculation. The RAD's analysis focused significantly upon an affidavit from the Applicant's brother, who explained that he believes the Applicant and is sympathetic to his plight and outlined his understanding of the events that had transpired. The RAD interpreted this affidavit as identifying that the Applicant's family in Nigeria want nothing more to do with him, rather than being motivated to find him.

[11] Turning to the second prong of the IFA test, the RAD noted the Applicant's statement that, other than safety concerns emanating from the agents of persecution, he would have no issue relocating to Abuja. The RAD concluded that it would not be unreasonable for him to relocate to that city. Finding that the proposed IFA was both safe and reasonable, the RAD dismissed the appeal and confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection.

IV. Issue and Standard of Review

[12] The sole issue raised by this application for judicial review is whether the RAD's IFA analysis is reasonable.

[13] As reflected in this articulation of the issue, the parties agree (and I concur) that the reasonableness standard of review applies (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

[14] As noted earlier in these Reasons, in applying the first prong of the IFA test, the RAD found that the Applicant had not provided sufficient evidence to establish that his cousins had the means to locate him in Abuja or that he was sufficiently prominent and recognizable that they would be able to locate him.

[15] In challenging this portion of the RAD's analysis, the Applicant submits that the RAD ignored the principle that testimony given under oath by a refugee claimant is presumed to be truthful (see *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) [*Maldonado*]) and indeed the RAD's own conclusion that the Applicant was credible. The Applicant argues that the RAD should not have expected him to adduce further evidence to establish that to which he had already testified, *i.e.*, that his cousins were high profile individuals, that one of his cousins is an Imam with followers capable of finding him, and that the Applicant himself is a person of prominence in Nigeria.

[16] I do not find this argument compelling. The RAD expressly referenced *Maldonado* and recognized the presumption of truthfulness. However, the RAD explained that this presumption

does not apply to inferences or speculation. I find no fault with the RAD drawing this distinction.

As explained in *Singh v Canada (Citizenship and Immigration)*, 2021 FC 1410:

[6] ... [T]his presumption does not apply to inferences, conclusions a witness may draw from the facts, or speculation regarding future events. Likewise, it does not apply to fears that are not sufficiently substantiated by the objective evidence: *Araya Atencio v Canada (Minister of Citizenship and Immigration)*, 2006 FC 571 at paras 8–10; *Hernandez v Canada (Minister of Employment and Immigration)* (1994), 79 FTR 198 at para 6; *Derbas v Canada (Solicitor General)*, [1993] FCJ No 829 (TD) at para 3.

[17] Similarly, in *Kassim v Canada (Citizenship and Immigration)*, 2018 FC 621 at paragraph 22, the Court considered an RPD finding as to a lack of evidence establishing the influence and connections of an agent of persecution and concluded that this finding did not represent an adverse credibility determination.

[18] As the Respondent submits, the RAD was entitled to assess whether there was sufficient evidence for the Applicant to meet his onus to demonstrate a serious possibility of persecution or risk of harm in the IFA (see *Asana v Canada (MCI)*, 2022 FC 1776 at para 13). I find nothing unreasonable in the RAD's characterization of the Applicant's evidence, about his cousins' capability of finding him in Abuja, as speculation and insufficient to discharge his onus.

[19] I note that the Applicant disputes that he bears this onus. He argues that, under the test for an IFA, the RAD must first be satisfied that the Applicant does not face a serious possibility of persecution in the proposed IFA location, before the burden to rebut this finding is shifted to him. He cites no authority for this proposition. Rather, as the Respondent submits, it is trite law that once the issue of an IFA is raised, a refugee claimant bears the burden of showing that the

proposed IFA is not viable (see, e.g., *Karas v Canada (Citizenship and Immigration)*, 2022 FC 1205 at para 60). As noted by the RAD, this requires considering both whether there is a serious possibility of persecution in the IFA and whether it would be reasonable for the claimant to move there (see, e.g., *Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 706 (CA) at 710).

[20] Still in relation to the first prong of the IFA test, the Applicant also submits that the RAD overlooked and failed to meaningfully engage with important evidence. He references his photograph with the Nigerian Vice President, emails regarding his organization's activities, and an affidavit from his Imam stating that the Applicant's house was burned down by his family as a result of allegations as to his sexual orientation.

[21] However, in relation to most of this evidence, the Decision demonstrates express engagement by the RAD. The RAD considered the photograph with the Vice President but afforded it little weight because it did not establish the Applicant had a relationship with the Vice President. In relation to the Applicant's activities, the RAD reasoned that, in order for the agents of persecution to locate the Applicant as a result of those activities, it would require someone involved in that work becoming aware that the Applicant had returned to Abuja, knowing that he had been accused of being in a relationship with a man, and having a link to the cousins. The RAD found it unlikely that all of these contingencies would arise.

[22] I agree with the Applicant that the Decision does not reference the evidence that his house was burned down. As he correctly notes, the analysis the Court is required to perform in

such circumstances was explained in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 [*Cepeda-Gutierrez*], at paragraph 16 to 17. An administrative decision-maker is not required to refer to every piece of evidence that is contrary to its finding and explain how it addresses that evidence. However, the more important the evidence that is not specifically mentioned and analysed in the decision-maker's reasons, the more willing a court may be to infer from the silence that the decision-maker made an erroneous finding of fact without regard to the evidence.

[23] The Respondent notes that the Imam's evidence is not based on personal knowledge. Rather, his affidavit states that he has been informed and believes that the Applicant's family burned his house down due to allegations of his sexual orientation. Moreover, I have difficulty understanding from the Applicant's submissions how this evidence, even if it were to be accepted, would be particularly material to the capability of the agents of persecution to locate the Applicant in Abuja. Applying the *Cepeda-Gutierrez* principles does not support a conclusion that the RAD overlooked this evidence.

[24] Turning to the motivation of the agents of persecution to locate the Applicant, he takes issue with the RAD's conclusions, resulting from its analysis of his brother's affidavit, that his family wants nothing more to do with him, as opposed to being motivated to find him. The Applicant notes his brother's reference to extended family members threatening to kill the Applicant whenever they see him and his brother's belief that, if the Applicant is seen by any of the extended family members, grave consequences may befall him.

[25] However, the RAD expressly refers to the concerns and threats identified in the brother's affidavit. As such, it is clear that this evidence was not overlooked. In interpreting the affidavit as demonstrating that the Applicant has been discarded by his family, rather than suggesting a motivation to locate him, the RAD noted that the Applicant's brother does not state that the cousins or any other family members are actively looking for the Applicant or that they have approached the brother in an effort to learn the Applicant's whereabouts. As the Respondent submits, the Applicant's arguments represent a disagreement with how the RAD weighed this particular evidence, and such a disagreement does not represent a basis for the Court to intervene.

[26] In relation to the second prong of the IFA test, the Applicant submits that the RAD erroneously concluded that relocation to Abuja was reasonable and unlikely to generate undue hardship for the Applicant. In support of this position, the Applicant argues that, in order to avoid tracking by his family, he would be required to hide out in an isolated area and have difficulty finding a job, which would represent significant hardship.

[27] As the Respondent submits, the RAD's analysis did not suggest that the Applicant would have to live in hiding in Abuja in order to live safely. As for his employment prospects, the RAD agreed with the RPD's employment analysis, given the Applicant's background, age, and work experience, as well as the employment prospects for non-indigenous persons. The RAD also noted that, but for the Applicant's safety concerns related to the agents of persecution (which were addressed under the first prong of the IFA test), the Applicant stated that he would have no

issue relocating to Abuja. The Applicant has not challenged this latter finding. I find no basis to conclude that the RAD's analysis under the second prong of the IFA test was unreasonable.

[28] Having concluded that the Applicant's arguments do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-10786-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10786-22

STYLE OF CAUSE: ABAYOMI ABDUL GANIYU ARIJE v. THE
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