Federal Court  Cour fédérale

Date: 20150205

Docket: IMM-427-14

Citation: 2015 FC 155

Ottawa, Ontario, February 5, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

AISHA IYABO LAWAL
ZAINAB OLAWUNMI LAWAL
NABEELAH OLATOM LAWAL
FUAD GBOLAHAN LAWAL
TAOFEEQ OLADAPO LAWAL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The Applicants seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision rendered on December 17, 2013 by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD), wherein the RPD determined that the Applicants were neither Convention refugees nor persons

in need of protection pursuant to sections 96 and 97 of the Act, respectively. For the reasons that follow, the application is dismissed.

[2] The Applicants are a mother (Ms Lawal), her two daughters (Zainab Olawinmi Lawal and Nabeelah Olatomiwa Lawal) and two sons (Toafeeq Oladapo Lawal and Fuad Gbolahan Lawal), and are citizens of Nigeria. They submitted a refugee protection claim on November 7, 2012, alleging fear of female genital mutilation (FGM) to be exercised on the daughters, as well as for an arranged marriage to be forced on them.

[3] On December 17, 2013, the RPD rejected the Applicants' claim on the ground that their alleged fear of persecution was not objectively well-founded and that, in any event, there was an Internal Flight Alternative (IFA) available to them in Nigeria.

[4] The issue raised by this application is whether the RPD, in concluding as it did, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7.

[5] Ms Lawal and her children flew to Canada on November 2, 2012, to visit Ms Lawal's oldest son, currently living and studying in Canada. Ms Lawal was accompanied by her husband, the father of the children. Once in Canada, Ms Lawal told her husband she had no intention of returning to Nigeria with the children, considering that a female circumcision was planned for the oldest daughter on December 20, 2012. Her husband went back to Nigeria, as planned, and the Applicants stayed and filed for refugee protection on November 7, 2012.

[6] Ms Lawal claims that she started to feel pressured by her husband's family in June 2012, when one of her husband's uncles came to visit the family and started discussing the circumcision. In August of that year, the family travelled to the husband's ancestral village in Nigeria at which time Ms Lawal was informed that her daughter's circumcision was set for December 20, 2012. Ms Lawal claims that any opposition on her part would have resulted in phone threats and violence towards her by the community leader in the husband's village.

[7] The RPD did not find Ms Lawal's alleged fear to be objectively well founded. In a lengthy analysis, the RPD considered the facts that Ms Lawal and her husband are both educated professionals and employed, and that they are both opposed to FGM. Additionally, the RPD found of great importance the fact that Ms Lawal's husband is opposed to FGM, that he married Ms Lawal even though she is not circumcised herself, that his family never opposed their marriage, and that he is not financially dependent on his uncles with whom he only had sporadic contacts over the years. In reaching that conclusion, the RPD considered the psychological report of Ms Lawal and examined the country documentary evidence on Nigeria. Finally, the RPD concluded that even if the alleged fear would have been well founded, the Applicants had an IFA available to them in the Nigerian city of Abuja.

[8] The Applicants submit that the RPD erred in: (1) making adverse credibility findings based on arbitrary presumptions; (2) making adverse credibility findings without regard to the evidence before it; and (3) concluding that there is an IFA for them in Abuja despite the country documentary evidence of the risks in that city.

[9] All these arguments must fail. It is well settled that when it comes to the credibility or plausibility of a refugee claimant's story or fears of persecution, the RPD's findings are factual in nature and, given its role as a trier of fact, are owed a significant amount of deference (*Khosa* at para 89; *Camara v Canada (Minister of Citizenship and Immigration)*, 2008 FC 362, at para 12; *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, at para 13; *Giron v Canada (Minister of Citizenship and Immigration)*, 2013 FC 7, at para 14; *Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55, at para 17, *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, at para 11; *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 491, at para12).

[10] This means that the role of the Court is not to reweigh the evidence that was before the RPD and substitute its own findings to those of the RPD. Its role is to review the impugned decision and only interfere with it if it lacks justification, transparency and intelligibility and falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47).

[11] Firstly, the Applicants argue that it was unreasonable on the part of the RPD not to find credible that Ms Lawal made the decision to stay in Canada only once she was here, and not before fleeing Nigeria. They claim that this finding tainted the rest of its analysis. I disagree. This finding is a minor part of the RPD's decision. In fact, the RPD did not focus its analysis around the contention that the Applicants came to Canada and, once here, decided to claim refugee protection. Rather, it focussed its analysis on the alleged power of the uncles on Ms Lawal's husband to force FGM and force marriage on her daughters. This was the crux of the

case before the RPD. The RPD's adverse findings regarding the alleged risk were based on the fact Ms Lawal could not explain why her husband, who is opposed to FGM, could not stand up to his uncles and simply refuse to go along with their plans.

[12] Indeed the RPD's conclusion, at para 31, is very clear and has very little to do with the moment the Applicants claimed refugee protection:

> (…) Given the bulk of the documentary evidence which shows that FGM is a tradition passed down and where female members of the family wish it for their daughters to avoid social isolation, the panel does not find it credible that distant grand-uncles, living far from the claimants and with little daily contact with them, would suddenly take an interest in the daughters of a woman who herself was not circumcised or that they would wield so much power as to impose their will by force. An important factor in this case is that the claimant's husband is not in favour of the circumcision and the forced marriage and given his position, he would have the authority as the father to stop any such plans of a forced marriage, assuming that the alleged tradition is still in force in Abeokuta.

[13] Secondly, the Applicants' argument regarding the evidence considered by the RPD cannot succeed either. The RPD analysis and review of the country documentary evidence before it was lengthy and complete. It referred to the evidence of the customary and cultural aspect of FGM in order to conclude that the Applicants' family profile did not match that of women who would be subjected to FGM. In particular, it found that FGM was not associated to any religion, that it was commonly carried out at birth, that several sources indicated that parents can refuse to have FGM performed on their daughters as they play a major role in such decision-making, and that performing FGM depends on the educational level and economic status of the family, with the better educated and more affluent families being more resistant to that practice. It also noted, based on the country documentation evidence, that FGM is part of the societal

norms handed down by mothers and grandmothers but that in the case of Ms Lawal, her husband's mother had accepted her son's choice of wife, even though Ms Lawal was not herself circumcised. Finally, it pointed out that although there was no federal law that criminalizes FGM in Nigeria, legislation in this regard had been enacted at the state level.

[14] The RPD assessed the evidence adduced by the Applicants along with the country documentary evidence and decided to give more weight to the latter. This finding was reasonably open to the RPD to make. As is well settled, this Court will generally not interfere with the RPD's findings where, as is the case here, the source of the challenge goes to the weight to be accorded to the evidence submitted to it (*Diallo v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1062, 317 FTR 179 at para 30; *Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 385 at para 33; *Olmos v Canada (Minister of Citizenship and Immigration)*, 2008 FC 809 at para 35).

[15] The Applicants argue that the RPD referred to country documentation evidence that supported its conclusion and not the ground for their claim. This argument cannot succeed. The RPD is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). The burden was on the Applicants to make that demonstration and show, on a balance of probabilities that the RPD's decision was unreasonable in this respect (*Julien v Canada (Minister of Citizenship and Immigration)*, 2010 FC 351, at para 44; *Taiwo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 731, at para 20; *Tseng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 278, at para 10). That burden was not met as the

Applicants were unable to direct the Court to any such supportive country documentation evidence.

[16] Similar conclusions apply to the alleged fear related to forced marriages as the RPD found from its review of the country documentation evidence that this practice was not very common amongst educated populations and in the area where Ms Lawal's husband family lives.

[17] Again, the role of this Court is not to re-weight the evidence that was before the RPD nor to interfere with the RPD's factual conclusions unless such conclusions were made in a perverse or capricious manner or without regard for the material that was before the RPD (*Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2003 FC 1225, [2004] 3 FCR 523 at para 102, *Selliah v Canada (Minister of Citizenship and Immigration)* 2004 FC 872, 256 FTR 53 at para 38; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No. 12 at para 59).

[18] The Applicants bore the burden of establishing both the subjective and objective elements of their fear of returning to their country of origin (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593). However, they failed to show that the RPD's primary determination that they do not have a well-founded fear of persecution because it is unlikely that the uncles of Ms Lawal's husband would be able to force her and her husband to submit their daughters to either FGM or forced marriage, was made in a perverse or capricious manner or without regard for the material that was before it.

[19] In other words, they have failed to establish that this primary finding falls outside the range of possible, acceptable outcomes defensible in respect of the facts and the law (*Dunsmuir*, above at para 47). This is fatal to the Applicants' case.

[20] Accordingly, I do not need to address the issue of whether it was reasonable for the RPD to conclude that an IFA in the city of Abuja was available to the Applicants (*Uppal v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1142, 300 FTR 139, at para 21; *Faour v Canada (Minister of Citizenship and Immigration)*, 2012 FC 534, at para 35; *Abid v Canada (Minister of Citizenship and Immigration)*, 2012 FC 483, at para 23).

[21] No question of general importance has been proposed by the parties. None will be certified.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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