Federal Court  Cour fédérale

Date: 20161125

Docket: IMM-1853-16

Citation: 2016 FC 1305

Ottawa, Ontario, November 25, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

OSAS SHARON OKOHUE
JADA OKOHUE (A MINOR)
BELVIS OKOHUE (A MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Ms. Osas Sharon Okohue, and her two children Jada and Belvis, are citizens of Nigeria. Ms. Okohue claimed protection in Canada on the basis that she fears her former common-law partner and his family who are located in and around Benin City, Nigeria.

[2] The claim for protection was denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]. The RPD concluded that the applicants had viable Internal Flight Alternatives [IFA] in Nigeria. The Refugee Appeal Division [RAD] of the IRB affirmed the RPD decision.

[3] Ms. Okohue brings this application for judicial review on the grounds that the RAD erred in stating and applying the IFA test and the IFA decision is unreasonable. The application raises the following issues:

A. Did the RAD misapply the IFA test?

B. Is the IFA finding unreasonable?

[4] Having reviewed the parties' written submissions and having considered their oral arguments, I am of the opinion that the RAD correctly identified and applied the IFA test. I am also of the view that the IFA finding was reasonably available to the RAD. The application is dismissed for the reasons that follow.

II. Decision under Review

[5] The RAD commenced its analysis by setting out the two-prong IFA test, citing *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 [*Thirunavukkarasu*] and *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706. The RAD recognized the need to consider both prongs of the test, be satisfied that there is no serious risk of persecution in the proposed IFA and that the conditions within the IFA are such that it would not be unreasonable to expect the applicants to relocate there.

[6] The RAD noted that the RPD had identified Lagos, Ibadan, Port Harcourt and Abuja as viable IFAs. It reviewed the evidence, including evidence that Ms. Okohue's common-law partner had sought her out in Abuja - the furthest of the four cities from Benin City - but noted that according to the evidence, the partner had limited his inquiries to mutually known contacts. The RAD concluded that the totality of the evidence provided by the applicants did not establish that the agents of persecution would have the reach, influence or capacity to locate and harm Ms. Okohue in any of the identified IFAs.

[7] In considering the second prong of the IFA test, the RAD noted that the particular situation and circumstances of the claimant and country are to be taken into account. The RAD noted that the evidence of circumstances in the IFA must be more than the general country conditions and relevant to the applicant's specific circumstances. The RAD noted that Ms. Okohue has only a grade-5 education but then emphasized that she (1) has some employment experience; (2) is Christian (which constitutes the largest proportion of the population in and around the four cities suggested); and (3) speaks the local language in addition to some English. The RAD noted that Ms. Okohue is a young woman, who has come all the way to Canada and is the head of her household, and is on her own. On this basis, it rejected the argument that it would be unreasonable for Ms. Okohue to seek refuge in the identified IFAs because of the family separation. The RAD noted the very high threshold for determining an IFA to be unreasonable in all the circumstances and concluded that the second prong of the test was met.

III. Standard of Review

[8] The applicants argue that the Court should adopt a correctness standard of review in considering the RAD's interpretation and application of the IFA test. I disagree.

[9] While the identification of the correct legal test is a matter that would normally be reviewed on a correctness standard, the applicants do not argue that the RAD identified the incorrect test, rather, they argue that the RAD erred in applying the test. This is an issue of mixed fact and law that I will review on a reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51 and 53[*Dunsmuir*]).

[10] The parties submit, and I agree, that the RAD's assessment of the evidence and circumstances when determining the viability of a possible IFA attracts a reasonableness standard of review (*Zaytoun v Canada (Citizenship and Immigration)*, 2014 FC 939 at para 10 (per Mactavish J.) [*Zaytoun*], citing *Lopez Martinez v Canada (Citizenship and Immigration)*, 2010 FC 550 at para 14 and *Pedraza Corona v Canada (Citizenship and Immigration)*, 2010 FC 508 at para 5).

IV. Analysis

A. *Did the RAD misapply the IFA test?*

[11] The applicants argue that the RAD misapplied the IFA test by requiring them to demonstrate a serious possibility of persecution throughout the country as opposed to within the

identified IFAs. The applicants submit that in doing so, the RAD required them to demonstrate that any location in Nigeria would be unreasonable in order to demonstrate that the proposed IFAs were unreasonable. This is simply not the case.

[12] The RAD correctly set out the two-prong IFA test. The RAD's statement with which the applicant takes issue is "…the onus of proof rests on the claimant to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the area which is alleged to afford the IFA". This statement is a direct quote from the *Thirunavukkarasu* decision. It reflects nothing more than the burden any refugee claimant has of demonstrating a risk of persecution in their country of nationality.

[13] In this case, the RAD assessed the applicants' evidence of risk within the proposed IFAs. In doing so, it considered the applicants' evidence demonstrating that Ms. Okohue's former partner had sought her out at her friend's home in Abuja, that Abuja is farther from Benin City than any of the other identified IFAs and that her former partner and family could travel to any of the proposed IFAs. Having considered the evidence the RAD concluded that Ms. Okohue's had not demonstrated that her former partner or his family had the capacity to locate the applicants in the IFAs.

[14] The RAD considered the risk within the proposed IFAs. It did not require or consider evidence of a broader geographic risk within the context of the IFA analysis. The RAD did not misapply the IFA test.

B. *Is the IFA finding unreasonable?*

[15] The applicants submit that the IFA finding cannot be reasonably supported by the evidence. The applicants argue that the RAD erred in: (1) not adequately considering the geographic proximity of the IFAs to Benin City; (2) failing to address the risks presented by Ms. Okohue's occupation; (3) failing to consider her status as a single mother; (4) not recognizing that the applicants were in hiding in Abuja when her former partner was unable to locate her there; and (5) failing to consider the objective documentary evidence demonstrating that it would be unreasonable to expect the applicants to relocate to any of the IFAs. The applicant also submits that the RAD erred in considering Ms. Okohue's establishment in Canada.

[16] While geographic proximity between an IFA and an agent of persecution might well be a relevant consideration in some circumstances, it is not in and of itself a basis to reject a potential IFA. In this case, the RPD concluded that the applicants had failed to demonstrate that there was a serious possibility of persecution in the IFAs. The only evidence of potential discovery was based on the ability of the agents of persecution to travel within the country. The totality of the evidence did not establish that the former partner or his family would be able to locate the applicants in the suggested IFAs. This conclusion was reasonably available to the RAD.

[17] The RAD's conclusion that the second prong of the IFA test is met in this case and that the proposed IFA would be reasonable is a determination that is within a range of acceptable outcomes. The RAD considered Ms. Okohue's personal circumstances and canvassed the documentary evidence in detail, including the country documentation highlighted by the

applicants. The RAD recognized and considered the evidence of discrimination, unemployment and the challenges faced by women who head their own households in Nigeria. It recognized that women establishing households face economic challenges and noted Ms. Okohue's education level. The RAD, however, contrasted this evidence with her work experience, her ability to integrate into the Christian community, her international experience, her ability to speak English and evidence of the limited services available to victims of gender and domestic abuse. The RAD also addressed the issue of family separation but noted that the applicants' presence in Canada also results in family separation without the benefits of cultural familiarity. The hardships the applicants identified with relocation to the suggested IFAs are not of a kind that render an IFA unreasonable.

[18] The applicants argue that the failure of the RAD to address the fact that they were in hiding in Abuja undermines the reasonableness of the decision. In support of this position they rely on the decisions of this Court in *Zaytoun, Offei v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1619 and *Zamora Huerta v Canada (Minister of Citizenship and Immigration)*, 2008 FC 586.

[19] The jurisprudence relied on by the applicants includes evidence of hiding prior to fleeing the country. However, in each case, there was also evidence demonstrating the agent of persecution's capacity to locate the applicants in the IFA. There is no such evidence here. Ms. Okohue's former partner is a bus driver in Benin City and there is no evidence that his family members are located outside the Benin City area. Although there is evidence that the former partner initially sought the applicants out, that evidence indicates that his efforts were limited to

inquiring with mutual contacts. There is no evidence suggesting that the former partner or his family are linked to a group with means and capability of tracking and locating the applicants. Nor is there evidence of access to government databases or information. Finally, there is no evidence suggesting continuing efforts or even an interest in locating the applicants.

[20] In the circumstances, it would have been preferable had the RAD expressly addressed the fact that the applicants allege they were in hiding prior to fleeing Nigeria. However, "[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, **but that does not impugn the validity of either the reasons or the result under a reasonableness analysis**" [Emphasis added]. (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 at para 16). The IFA finding is not unreasonable.

V. Conclusion

[21] The RAD did not err in considering the evidence or in stating and applying the IFA test. The decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[22] The parties have not proposed a question of general importance and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1853-16
STYLE OF CAUSE:	OSAS SHARON OKOHUE, JADA SHARON OKOHUE, BELVIS OKOHUE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 17, 2016
JUDGMENT AND REASONS:	GLEESON J.
DATED:	NOVEMBER 25, 2016

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