Federal Court  Cour fédérale

Date: 20171004

Docket: IMM-4452-16

Citation: 2017 FC 879

Ottawa, Ontario, October 04, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

ISMAIL OLANIYI TAIWO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Appeal Division [RAD] denying Ismail Olaniyi Taiwo's claim for refugee protection. He argues that as the result of his conversion to Christianity, he has been the victim of persecution in Nigeria at the hands of his uncle. The Refugee Protection Division [RPD] rejected his claim on the grounds that he lacked credibility and that he had a reasonable internal flight alternative [IFA] in southern Nigeria. The RAD also dismissed his claim on the same grounds.

[2] For the reasons that follow, this judicial review is dismissed as the Applicant raises no reviewable errors.

I. RAD Decision

[3] The RAD rejected the Applicant's claim in October 2016, and confirmed the RPD decision that there was an IFA available to the Applicant within Nigeria, specifically Port Harcourt.

[4] The RAD applied the two-part test for establishing a reasonable IFA, as outlined by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*].

[5] Like the RPD, the RAD held that there was a lack of evidence that the Applicant's uncle had power or influence outside of Lagos. With respect to the Applicant's kidnapping, the RAD found that this was local in nature. Further the RAD noted that due to the Applicant's lack of profile and the minimal geographical influence his uncle would have, the Applicant would not be targeted, by the police or otherwise outside of Lagos.

[6] The RAD placed no weight on the police report stating that the Applicant is wanted for sponsoring Boko Haram. The RAD found that the document did not have the hallmarks of an official document from a Nigerian government authority.

[7] The RAD also considered whether it would be unduly harsh to expect the Applicant to relocate pursuant to the Federal Court of Appeal decision in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FCR 589 (CA) [*Thirunavukkarasu*]. The RAD noted that the Court of Appeal in *Thirunavukkarasu* held that dislocation and relocation are normal incidences of an IFA and do not amount to undue hardship.

[8] The Applicant alleged that he would face ethnic, religious, and language-based discrimination in Port Harcourt. However, the RAD found that ethnic and language-based discrimination are not prevalent in large cities, such as Port Harcourt. With respect to the religious discrimination the Applicant claimed he would face, the RAD noted that a large majority of the Christian population is located in south Nigeria.

[9] He also alleged that he would suffer financial hardship, as it would be more difficult for him to work as an architect outside Lagos. The RAD concluded that any economic or job related hardship the Applicant might face did not amount to undue hardship.

[10] The RAD agreed with the RPD that there was a reasonable IFA available to the Applicant.

II. Issue

[11] The reasonableness of the RAD decision will be assessed against the 3 main issues raised by the Applicant as follows:

a. RAD treatment of new evidence

b. RAD treatment of the Nigerian Police Report

c. Assessment of IFA

III. Standard of Review

[12] The parties agree that the applicable standard of review is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 22).

[13] This standard also applies to the RAD assessment of the admissibility of "new evidence" (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29 [*Singh*]).

[14] Accordingly, this Court will not intervene unless the RAD's decision falls outside the range of possible, acceptable outcomes available in light of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

a. *RAD treatment of new evidence*

[15] Before the RAD, the Applicant attempted to introduce evidence which was not before the RPD. The Applicant argues that the RAD refusal to consider this evidence was an error and that it *should* have admitted his new evidence, in particular an article that was published after his RPD hearing.

[16] In considering the admission of the new evidence, the RAD correctly applied the *Raza* framework (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385) [*Raza*]. Though it could have admitted the article that was published after the RPD hearing, the RAD noted that the Applicant had not explained why he could not have tendered the article as post-hearing evidence when he became aware of the publication.

[17] The RAD was not satisfied that the article in question met the test in s. 110(4) of the *Immigration and Refugee Protection Act* [*IRPA*] for the admission of new evidence, and therefore declined to accept the evidence. It is obvious the RAD considered the grounds for receiving the new evidence and made the appropriate inquiries about the article. Although the RAD ultimately refused to accept it as evidence, it acted reasonably in considering the evidence.

[18] It is not appropriate for this Court on judicial review to revisit the *Raza* factors and apply them to the Applicant's documents. On a reasonableness standard of review, the Court owes deference to the RAD's analysis of the admissibility of new evidence.

[19] The RAD decision not to admit the new evidence is reasonable.

b. *RAD treatment of the Nigerian Police Report*

[20] The Applicant argues that the Nigerian Police Report should have been given weight by the RAD. He argues that if the RAD had concerns about the authenticity of the Nigerian Police Report, these concerns should have been put to the Applicant during an oral hearing. He submits

that the format of police documents in Nigeria can vary, and that appearance alone cannot be the reason to discard the report as inauthentic.

[21] However, a review of the RAD reasons demonstrates that the RAD did not discard the report on physical appearance alone. It reasoned that the police report which purports to be from a central agency, the Department of State at National Headquarters in Lagos, would usually bear the hallmarks of authenticity. The RAD found the police report, which states that the Applicant was wanted by the state, is likely a fake and accordingly afforded it no weight.

[22] The Applicant has not demonstrated how this determination is unreasonable.

[23] As a related argument, the Applicant argues that if the RAD had concerns about the authenticity of the Nigerian Police Report, these concerns should have been put to the Applicant during an oral hearing. Section 110(6) of the *IRPA* provides that the RAD *may* convoke an oral hearing where there is *new* documentary evidence admitted pursuant to s. 110(4) which raises a serious issue as to credibility, and other considerations (*Adera v Canada (Citizenship and Immigration)*, 2016 FC 871 at para 57). Here, the police report was not "new" because it was before the RPD. Further, the RAD did not discount the police report on account of the Applicant's lack of credibility but rather on account of the probative value of the document itself.

[24] Though the common law duty of procedural fairness may provide an Applicant with an opportunity to respond where the RAD makes new credibility findings (*Husian v Canada*

(Citizenship and Immigration), 2015 FC 684 at paras 9-10), the findings in this case related to the weight given to the police report and not to the credibility of the Applicant.

[25] Accordingly the treatment by the RAD of the police report was reasonable.

c. *Assessment of IFA*

[26] The Applicant argues that the IFA is not viable because of his profile and the hardships he will face.

[27] The IFA analysis has two aspects:(1) whether there is a serious possibility that the Applicant will be persecuted in the part of the country in which an IFA exists, and (2) whether it would be unreasonable for the Applicant to seek refuge in the IFA (*Rasaratnam*, at 711). In relation to the second prong of the test, refuge will only be unreasonable where there is undue hardship in relocation (*Thirunavukkarasu*, at 688).

[28] Here the Applicant alleges that there is a serious possibility of persecution because, he argues, his uncle wields power and influence throughout the country. However the RAD found that there was no evidence to support this assertion. The RAD noted a lack of evidence that his uncle, an Imam in Lagos, wielded any power or influence outside of Lagos. Nor was there any evidence that he wielded influence, as a man of means, over local law enforcement.

[29] The second alleged source of persecution is the police who the Applicant claims were bribed by his uncle. The Applicant alleged that he had been detained for no reason by order of

his uncle. The RAD found that his detention was to obtain a bribe, a plight faced by many Nigerians. The RAD also found that this detention was local in nature.

[30] The RAD considered whether the hardship associated with such relocation was unduly harsh as described in *Thirunavukkarasu*. The Applicant alleged that he would face religious, ethnic, and language-based discrimination in Port Harcourt. He had also alleged, and emphasised heavily, that he would not be able to find suitable employment as an architect that would allow him to support his family.

[31] The RAD held that although there would be some discrimination, as with any minority or even majority group, such discrimination is less in large city centers. As such, this would not qualify as unduly harsh.

[32] As well, the RAD found that the Applicant would not face difficulties in securing employment so as to constitute undue hardship.

[33] Overall the Applicant has not raised any reviewable error in the RAD's assessment of the reasonableness of the IFA.

JUDGMENT in IMM-4452-16

THIS COURT'S JUDGMENT is that

1. The application for judicial review of the RAD decision is dismissed.

2. No serious question of general importance is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4452-16
STYLE OF CAUSE:	ISMAIL OLANIYI TAIWO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 25, 2017
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	OCTOBER 04, 2017

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