Federal Court  Cour fédérale

Date: 20171129

Docket: IMM-1509-17

Citation: 2017 FC 1076

Ottawa, Ontario, November 29, 2017

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

GLADYS DIBIA

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario, on November 23, 2017)

[1] Dr. Gladys Dibia is a medical doctor from Nigeria. She is a member of the Igbo ethnic group and a Christian. Dr. Dibia claims to fear persecution in Nigeria for several reasons. She notes that her medical training program would have entailed rotations through regions in Northern Nigeria where, she says, she would have faced a risk from Boko Haram. She also claims that she would be at risk in Nigeria from her former fiancé, as well as at the hands of the

Fulani Herdsmen. Finally, Dr. Dibia states she would be at the risk of kidnapping if she were required to return to Nigeria.

I. The Refugee Protection Division's Decision

[2] The Refugee Protection Division of the Immigration Refugee Board dismissed Dr. Dibia's application for refugee protection, finding that she had a viable internal flight alternative (IFA) in the Southeast of Nigeria, in Owerri in Imo state. In coming to this conclusion, the RPD applied the two-part test articulated by the Federal Court of Appeal in the cases of *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, 140 N.R. 138 and *Thirunavukkarasu v. Canada (Minister of Immigration and Employment)*, [1994] 1 F.C. 589, 163 N.R. 232.

[3] That is, the RPD determined that there was no serious possibility that Dr. Dibia would be persecuted if she were to relocate to Owerri, nor would she face cruel or unusual treatment or punishment in that city. The RPD further found that in light of Dr. Dibia's personal circumstances, it would not be unreasonable for her to relocate to Owerri.

[4] In coming to this conclusion, the RPD had regard to the fact that Christianity was the majority religion in Imo state, where people sharing Dr. Dibia's Igbo ethnicity were also in the majority. The RPD further noted that Dr. Dibia has a sibling living in Owerri, and that she spoke English fluently, English being the *de facto* majority language in Nigeria.

[5] In finding that Dr. Dibia could live safely in Owerri, the RPD also considered the fact that both Dr. Dibia and her husband were highly educated, sophisticated individuals. The RPD further found that Dr. Dibia had significant resources available to her that would assist her in

relocating to Owerri. Finally, the RPD was satisfied that Dr. Dibia would not face physical danger or undue hardship if she were required to relocate to Owerri. In light of these findings, Dr. Dibia's refugee claim was dismissed.

[6] Dr. Dibia then appealed the RPD's decision to the Refugee Appeal Division of the Immigration and Refugee Board. As counsel for the Respondent has pointed out, a review of the Memorandum of Fact and Law filed by Dr. Dibia with the RAD discloses that she identified three errors that she says that the RPD committed in considering the first prong of the IFA test: that is, whether Dr. Dibia would be at risk in Owerri.

[7] However, as counsel for Dr. Dibia conceded in the hearing before me this morning, no issue was taken by Dr. Dibia before the RAD with respect to the RPD's assessment of the second prong of the IFA test, namely whether, in light of her personal circumstances, it would be reasonable for Dr. Dibia to relocate to Owerri.

[8] In reviewing the decision of the RPD, the RAD applied the standard of review that was articulated by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, [2016] 4 F.C.R. 157, carrying out its own analysis of the record in order to determine whether the RPD had erred as had been alleged by Dr. Dibia.

[9] Applying the test established by the Federal Court of Appeal in *Rasaratnam* and *Thirunavukkarasu*, the RAD concluded that Dr. Dibia had not established on a balance of probabilities that there was more than a mere possibility that she would face persecution or a risk to her life in Owerri.

[10] Moreover, while noting that no submissions had been made to the RAD with respect to the second prong of the IFA test, the RAD also concluded that the RPD had not erred in assessing whether it would be reasonable to require Dr. Dibia to relocate to Owerri. Consequently, Dr. Dibia's appeal to the RAD was dismissed.

II. The Issue Raised by Dr. Dibia on this Application

[11] This then takes me to the issue raised by Dr. Dibia on this application. Before this Court Dr. Dibia argues that the RAD erred in its treatment of the second prong of the IFA analysis by failing to properly assess the reasonableness of Dr. Dibia relocating to Owerri. According to Dr. Dibia, the RAD's finding with respect to the second prong of the IFA test was unreasonable as it failed to consider issues relating to the difficulty that women face in Nigeria in accessing housing and employment. The RAD further erred, Dr. Dibia says, in failing to consider the hardship that she would face as a newcomer in Owerri in light of the indigeneship system.

III. Standard of Review

[12] I agree with the parties that the standard of review to be applied in reviewing the RAD's decision on a factually-intensive question such as that raised by this application is that of reasonableness.

IV. Analysis

[13] As noted, Dr. Dibia argues the RAD erred by failing to conduct an independent assessment as to whether it would be reasonable to require her to relocate to Owerri. While it was not required to do so, it is evident from a review of the RAD's decision that it did expressly consider the second prong of the IFA test at paragraphs 44 to 46 of its decision. After

considering Dr. Dibia's personal circumstances, the RAD concluded that the RPD had not erred in finding that it was reasonable to require her to relocate to Owerri.

[14] While Dr. Dibia had pointed to evidence that she says was before the RAD that could potentially have led to a different conclusion, the RAD is presumed to have considered all of the evidence that was before it: *Hassan v. Canada (Minister of Employment and Immigration)*, (1992), 147 N.R. 317, [1992] F.C.J. No. 946. The brevity of the RAD's consideration of this issue is undoubtedly explained by the fact that no error had been identified by Dr. Dibia in relation to this aspect of the RAD test. As the Federal Court observed in *Abdulmaula v. Canada (Citizenship and Immigration)*, 2017 FC 14, [2017] F.C.J. No. 3 (referred to in the Respondent's memorandum), the reasonableness of a RAD decision cannot normally be impugned on the basis of an issue that was not put to it.

V. Conclusion

[15] In these circumstances, Dr. Dibia has not persuaded me that the RAD's treatment of the second prong of the test for an IFA was unreasonable, and the application for judicial review is therefore dismissed. I agree with the parties that the case does not raise a question that is suitable for certification.

JUDGMENT IN IMM-1509-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Oluwakemi Oduwole	FOR THE APPLICANT
Brad Bechard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Topmarké Attorneys LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT