Federal Court  Cour fédérale

Date: 20180709

Docket: IMM-5608-17

Citation: 2018 FC 711

Ottawa, Ontario July 9, 2018

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ADEBOLA DIANE HAASTRUP
GLORIA AYOMIDE ARUBUOLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Principal Applicant, Adebola Diane Haastrup, and her minor daughter ("Minor Applicant"), seek judicial review of a decision of the Refugee Protection Division ("RPD" or "Member") of the Immigration and Refugee Board of Canada ("IRB"), dated November 14, 2017, which denied their claim that they are Convention refugees or persons in need of

protection under ss 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[2] For the reasons that follow I have found the RPD erred in its credibility and internal flight alternative ("IFA") analysis and, therefore, that this application must be allowed.

Background

[3] The Applicants are citizens of Nigeria. The Principal Applicant claims she suffered violent domestic abuse at the hands of her common-law spouse, who is the father of the Minor Applicant. She also claims that, after the birth of their daughter, her spouse told the Principal Applicant he intended to have the Minor Applicant subjected to female genital mutilation ("FGM"), in accordance with his family's tradition. The Principal Applicant opposed this and, when her spouse told her that the FGM would take place on June 23, 2012, the Applicants fled to Canada, making refugee claims shortly after arrival. As "legacy claimants", their claims being referred to the IRB before December 15, 2012, they are not eligible to appeal the RPD's decision to the Refugee Appeal Division (*Mathos v. Canada (Citizenship and Immigration)*, 2017 FC 1050).

Decision under review

[4] The RPD heard the claim on November 14, 2017 and rendered an oral decision immediately thereafter, its written reasons followed.

[5] The RPD identified credibility and IFA as the issues it was concerned with. It stated that it had some concern with the Applicant's testimony. Specifically, during an interview with a psychologist, the Principal Applicant alleged that her spouse had threatened to kill her and the Minor Applicant, however, this threat was not recorded in the Principal Applicant's Personal Information Form ("PIF") narrative. The RPD found the Principal Applicant had embellished her story when she met with the psychologist and also in her testimony before the RPD when she was questioned about the alleged death threat. Further, while the allegation about the demand that the Minor Applicant be subjected to FGM was corroborated in an affidavit from a friend of the Principal Applicant, the friend's statement was based solely on information provided to her by the Principal Applicant. The RPD afforded it little weight for that reason and noted, in contrast, that there was no corroboration from the Principal Applicant's family supporting her allegation that they had interceded on her behalf with her spouse's family, asking them not to require FGM. The RPD found that such corroborating evidence from the Principal Applicant's family would reasonably have been available to her. The RPD also noted that the Principal Applicant told the psychologist that she was abused as a child by an uncle, but this was also omitted from her PIF narrative. The RPD stated that it had some concerns about the credibility of the allegation that the Principal Applicant's spouse and family demanded that the Minor Applicant be subjected to FGM.

[6] However, even if the Principal Applicant's allegation about her spouse's demand were true, the RPD found that the Applicants had a viable IFA in Abuja or Port Harcourt. Given their distance from Lagos, the size of the proposed IFAs, and documentary evidence indicating that it would not be unduly harsh for a woman to internally relocate to escape localized threats from

members of her family, the RPD found that the Applicants would be able to relocate without the Principal Applicant's spouse or his family being able to find them.

[7] The RPD also found that the proposed IFA was reasonable in the Applicants' particular circumstances. The Principal Applicant had 14 years of education, some work experience selling purses and shoes, and it could reasonably be assumed that the Applicants would continue to enjoy the support of the Principal Applicant's family who opposed her spouse's family's requirement that the Minor Applicant be circumcised. The high cost of living in urban centres such as Abuja could be mitigated by living in the outskirts in virtual villages that would be far less expensive.

[8] The RPD stated that it reviewed all of the evidence, including the psychological report, and set out its concerns with that report. The RPD found there was less than a mere possibility that the Applicants would be at risk of persecution if they were to return to Nigeria and resettle in one of the proposed IFAs. Therefore, the Applicants were neither Convention refugees nor persons in need of protection, and the RPD dismissed their claims.

Issues and standard of review

The Applicants identify many issues but, in my view, they are all captured by the following:

1. Was the RPD's credibility determination reasonable?
2. Was the RPD's IFA analysis reasonable?

[9] The RPD's credibility findings are reviewable under the standard of reasonableness (*Aguebor v. Minister of Employment &* Immigration *(1993),* 160 N.R. 315 (Fed. C.A.) at para 4; *Arslan v Canada (Citizenship and Immigration),* 2013 FC 252 at para 30; *Aissa v Canada (Citizenship and Immigration),* 2014 FC 1156 at para 56). Similarly, reasonableness is the standard of review applicable to the RPD's assessment of the availability of an IFA (*Figueroa v Canada (Citizenship and Immigration),* 2016 FC 521 at para 13; *Kayumba v. Canada (Minister of Citizenship & Immigration),* 2010 FC 138 at para 12*).*

Analysis

[10] The Applicants' submissions are lengthy, wide ranging and repetitive. Most significantly, they include that the RPD ignored relevant contradictory evidence in the form of the report of Dr. Vanessa Redditt, a medical doctor, dated November 13, 2017 ("Redditt Report"). Amongst other things, the Redditt Report addressed the RPD's concern that the earlier assessment by Dr. J. Pilowsky, a psychologist, dated September 12, 2012 ("Pilowsky Report"), made a finding of Post-Traumatic Stress Disorder (PTSD) without any testing and based only on one brief interview. Further, the Redditt Report's conclusion, that the Principal Applicant was rated at almost the highest level of depression, contradicts the RPD's finding that the Principal Applicant's mental condition did not constrain her full participation in the hearing. The Redditt Report should have been considered when assessing her testimony, her claim for protection, and when applying the second prong of the IFA test. The Applicants also submit that the RPD failed to consider and apply the *Chairperson Guideline 4: Women Refugee Claimants Fearing Gender-*

Related Persecution (“Gender Guidelines”), which specifically instruct IRB members to be sensitive to issues such as sexual abuse.

[11] The Applicants further assert that the RPD unreasonably faulted the Principal Applicant for not stating in her PIF narrative that she was raped as a child by her uncle. The Applicants did not base their claims on fear of this uncle. Their claims were based on different facts and alleged a different agent of persecution at a different time. During the Principal Applicant’s testimony, the RPD characterized this omission as “important”. Yet in its decision the RPD did not explain why this omitted detail was relevant or important to the Principal Applicant’s fear of domestic violence or her fear that her spouse would cause the Minor Applicant to be subjected to FGM.

[12] Although the Applicants also reiterated their arguments about the merits of the decision and construed them as a breach of their right to be heard and, therefore, a violation of their natural justice rights, in my view, this has no merit. The issues are all properly addressed in the context of an assessment of the reasonableness of the RPD’s decision.

[13] And, while much has been written and said about this application by both the Applicants and the Respondent, in my view the reasonableness of the RPD’s credibility determination comes down to the question of whether the RPD relied on an irrelevant omission in making its negative credibility finding.

[14] The RPD’s credibility analysis is brief and limited to three findings. The omission of the alleged death threat in the PIF narrative, a lack of corroborating evidence concerning the FGM,

and the omission from the PIF narrative of the allegation of childhood sexual abuse of the Principal Applicant. The RPD is entitled to draw negative credibility inferences from omissions from a claimant's PIF that go the heart of the claim (*Aragon v Canada (Citizenship and Immigration)*, 2008 FC 144 at para 21-22). Here, the alleged threat to kill the Applicants was made by the Principal Applicant's spouse in the context of alleged domestic abuse and was, therefore, central and relevant to the Applicants' claim. In the result, while a claimant's sworn testimony is presumed to be true unless there is reason to doubt its truthfulness (*Maldonado v Canada (Minister of Employment & Immigration)* (1979), [1980] 2 FC 302 at para 5 (CA)), this omission gave rise to a reason to doubt the Principal Applicant's credibility and it was then reasonable for the RPD to require corroboration of her spouse's plan to subject the Minor Applicant to FGM (*Bhagat v Canada (Citizenship and Immigration),* 2009 FC 1088 at para 9).

[15] However, as to the RPD's finding that the Principal Applicant told the psychologist that she was abused as a child by her uncle, but failed to mention this in her PIF narrative, I am unable to ascertain from the reasons or the record why this omission was material or relevant to the Applicants' claim. A review of the transcript of the hearing sheds little light on this point. The Member asked the Principal Applicant if her spouse had abused her prior to their marriage. She replied that he had not. The Member then asked if she had experienced any abuse before her marriage. She replied that she had. When asked in what way, she stated that when she was a little child a family member raped her. The Member pointed out that this had been mentioned to the psychologist but not in her PIF narrative. She responded that it was something that was difficult to experience and the transcript indicates that the interpreter intervened to state that the Principal Applicant was having difficulty "bringing out the words". The Member told her to take

her time but that the allegation of rape "is important" and had not been mentioned in her narrative. Her response was that the problem or reason was that because of the pain and trauma "is she was unable to … it's difficult to express". The Member then asked if the trauma was any greater than the abuse her spouse allegedly directed to her, she responded that they were the same. It appears that the Member inferred from this that because the Principal Applicant was able to speak to the trauma of domestic abuse in her narrative then she should also have been able to speak to the childhood sexual abuse.

[16] However, as pointed out by the Applicants, childhood sexual abuse by an uncle was not the basis for the Applicants' claim for protection. The uncle was not the agent of persecution. Accordingly, it is unclear why the Member would note that the Principal Applicant had told her psychologist of the abuse but had not mentioned it in her PIF narrative and, in the next paragraph of the reasons, state that as a result, he had some concerns as to the credibility of her allegations concerning the Principal Applicant's spouse and his family's demanding that the Minor Applicant be subjected to FMG. The Respondent argued before me that because the Member had found that the Principal Applicant embellished her story concerning the alleged threat of death by her spouse, the fact that she also did not mention the childhood sexual abuse in her PIF narrative was viewed by the Member as a further embellishment and, therefore, warranted a negative credibility finding. However, the Member does not say this and, again, the sexual abuse was not relevant or material to the Applicants' claim.

[17] Because the RPD's reasons do not explain why the failure to disclose the childhood sexual abuse in the Principal Applicant's PIF narrative was relevant to the Applicants' claim, and

because this is not discernible from the record, its reasons are not transparent, intelligible or justified (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47) and are perverse. Further, this apparently irrelevant concern taints the RPD's credibility finding concerning the omission of the death threat from the PIF. This is because it is not possible to know what weight the RPD placed on its irrelevant concern over the omission of the allegation of childhood sexual assault, as compared to the omission of the alleged death threat, and whether it still would have reached its same cumulative negative conclusion as to credibility if it had not considered the former.

[18] That said, I would also add that it is also not clear to me from the reasons that the RPD actually made an adverse credibility finding as the reasons do not state that it has done so and refer only to having "some concerns". Further, there would have been no need to conduct an IFA analysis if the Applicants were found not to be credible.

[19] Regarding the Redditt Report, I am not satisfied that the RPD considered the information in the report. Some background to the submission of the documentary evidence, including the Redditt Report, is worthy of mention. At the commencement of the hearing, counsel for the Applicants sought to enter documentary evidence. The Member asked the Principal Applicant why this was being offered at this time and deflected efforts of counsel to explain the situation. The Principal Applicant explained that it had taken a long time to get the affidavit, as she had kept asking the affiant for it but they had not been responsive. The Member stated that he found this highly implausible. The Member then asked why the school certificates were late. The Principal Applicant replied that she had submitted them a long time ago. The Member stated that they had not arrived until November 10, a few days before the hearing. The Principal

Applicant stated that she did not understand this. At this point counsel was asked for an explanation. Counsel explained that the Principal Applicant had provided the school certificates and birth certificates to her a long time ago. Further, the Pilowsky psychological assessment had been received in 2012. Counsel said the late filing was an error on her part as she was intending to file all of the documents together and waited for the affidavit to arrive before doing so. As to the new disclosures, the medical report had not been faxed to her office until 4:10 pm the day before the hearing. The Member asked if counsel was referring to Dr. Pilowsky's assessment and counsel responded that she was not. The Member again asked why he was not seeing the Pilowsky Report until that day, counsel provided the same answer and apologized. The Member acknowledged her apology but stated that she was experienced counsel but had "held back" all of the documentation until the hearing. The Member took a 20 minute break and, when he came back on the record, stated that he had read the documents. The documents then were each identified and entered, including both the Pilowsky Report and the Redditt Report.

[20] The hearing was very brief. The Member asked no questions about either the Pilowsky or Redditt reports or concerning any of the other documentary evidence. At the conclusion of submissions of counsel for the Applicant, at 11:00, the Member broke for 10 minutes and then returned and rendered his decision orally.

[21] The decision makes no reference to the Redditt Report. In the context of his consideration of the second prong of the IFA test, the Member stated that he had reviewed all of the evidence, "including the psychological report". The Member noted that the psychological report was less than three pages long and was totally dependent upon the Principal Applicant's

statements to the psychologist. Additionally, that the psychologist made a finding of PTSD without any testing and on the basis of one brief interview. The Member also stated that the report crossed the line between professional opinion and advocacy. As to whether the Principal Applicant suffered from depression and anxiety, the Member acknowledged that this may be the case and noted that such concerns are widely shared by all or most claimants who appear before the RPD. And while emotional, the Principal Applicant was able to participate in the hearing and there "was no indication in the hearing that the diagnosis of the psychologist constrained you from full participation".

[22] However, the Redditt Report addressed many of the concerns stated by the Member with respect to the Pilowsky Report. For example, it stated that the Principal Applicant had been followed by the CrossRoads Refugee Clinic since October 5, 2012. She had previously been followed by Dr. Redditt's colleagues and came under Dr. Redditt's care on June 13, 2017. Dr. Redditt had six appointments with the Principal Applicant. Thus, the Redditt Report was not based on a single meeting as was the Pilowsky Report. The Pilowsky Report was referenced by Dr. Redditt, who stated that since she had started seeing her, the Principal Applicant had continued to suffer mental health concerns. Dr. Redditt noted that on the Patient Health Questionaire-9 (PHQ-9), which she described as a validated screening tool for clinical depression, the Principal Applicant scored 26 out of a maximum 27 points, indicating severe major depressive disorder. Thus, the Redditt Report mentioned testing, the lack of which was a concern of the Member with respect to the Pilowsky Report. Dr. Redditt stated, given the severity of her symptoms, that the Principal Applicant started on anti-depressant medication and was referred to counselling services. And, while she had been on the waitlist, the Principal

Applicant had recently started counselling with a therapist at Access Alliance Multicultural Health and Community Services.

[23] While the Respondent asserts that it must be assumed that the Member considered the Redditt Report, and that he also stated that he had considered all of the evidence, I note that this was a blanket statement at the end of which he specifically referenced the psychological report, but not the medical report. As noted above, while the Member took issue with the fact that the Pilowsky Report was based on only one brief meeting and that no testing had been done, the Redditt Report indicated the use of a screening device and confirmed that medication and counselling were prescribed and being utilized. From this, I can only conclude that the Member, in his haste, overlooked the Redditt Report.

[24] While it is arguable that the Redditt Report may not have been particularly relevant in evaluating the Principal Applicant's credibility, given that the RPD's credibility concerns arise from her PIF narrative that was completed in 2012, and not her ability to testify at the hearing, the failure to consider it in the conducting the IFA analysis was a reviewable error.

[25] The test for an IFA contains two-prongs: first, the RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicants being persecuted in the proposed IFA; and second, that conditions in that part of the country are such that it would not be unreasonable for the Applicants to seek refuge there (*Abdalghader v Canada (Citizenship and Immigration)*, 2015 FC 581 at para 22 ("*Abdalghader*"), citing *Chowdhury v Canada*

(Citizenship and Immigration), 2014 FC 1210 at para 22; *Rasaratnam v Canada (Minister of Employment & Immigration)* (1991), [1992] 1 FCR 706 at paras 4, 6-7 (CA)).

[26] The second prong of the IFA test is a flexible one that takes into account the particular situation of the claimant and the particular country involved (*Ramachanthran v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 673 at para 74 ("*Ramachanthran*"), quoting *Thirunavukkarasu v Canada (Minister of Employment & Immigration)* (1993), [1994] 1 FCR 589 (CA)). This Court has held that psychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded (*Olalere v Canada (Citizenship and Immigration)*, 2017 FC 385 at para 51-52 ("*Olalere*"); *Cartagena v Canada (Citizenship and Immigration)*, 2008 FC 289 at para 11).

[27] In my view, the Redditt Report should at least have been considered when assessing the Principal Applicant's particular circumstances and ability to relocate, as it addressed and remedied many of the Member's concerns with the Pilowsky Report and provided current medical evidence. The failure to do so was a reviewable error and renders the RPD's IFA analysis unreasonable.

[28] Given that the Member's credibility and IFA analysis were, for the reasons above, unreasonable, I need not address the other matters raised by the Applicants in their submissions. I would note, however, that having read the transcript of the hearing it is not at all apparent to me that the Member understood or applied the Gender Guidelines in his approach to an applicant who alleged to have suffered both domestic abuse and childhood sexual assault.

JUDGMENT IN IMM-5608-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.

2. There shall be no order as to costs.

3. No question is certified.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5608-17
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STYLE OF CAUSE:	ADEBOLA DIANE HAASTRUP, GLORIA AYOMIDE ARUBUOLA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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