Federal Court  Cour fédérale

Date: 20200127

Docket: IMM-1386-19

Citation: 2020 FC 141

Ottawa, Ontario, January 27, 2020

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ADEBOLA DIANE HAASTRUP
GLORIA AYOMIDE ARUBUOLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Adebola Diane Haastrup [Ms. Haastrup] and her daughter, Gloria, seek judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated January 29, 2019. The RPD rejected the Applicants' claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] because it found that there were viable Internal Flight Alternatives [IFA] in two locations in Nigeria.

[2] For the reasons that follow, the Application is allowed. Once again, the Applicants' claim for refugee protection must be redetermined by the RPD.

I. Background

[3] Ms. Haastrup and her daughter are Nigerian citizens. Ms. Haastrup recounts that she and her daughter fled Nigeria because Ms. Haastrup's common law partner, Mr. Arubuola, was abusive and was planning to subject their daughter to female genital mutilation [FGM] in accordance with his family's tradition. The Applicants initiated their claims for refugee protection in Canada in 2012, but did not have a hearing before the RPD until November 2017.

[4] At the November 2017 hearing, the RPD had concerns about Ms. Haastrup's credibility and further found that Ms. Haastrup and her daughter had IFAs available to them in Abuja and Port Harcourt.

[5] Ms. Haastrup sought judicial review, which was granted. In *Haastrup v Canada (Citizenship and Immigration)*, 2018 FC 711, Justice Strickland found that the RPD had erred in making credibility findings based on Ms. Haastrup's omission to disclose that she had been sexually abused as a child by a relative because this abuse was not the basis for the refugee claim. Justice Strickland also found that the RPD's assessment of the IFA was unreasonable. The RPD had not considered the report from Ms. Haastrup's doctor, Dr Redditt, with respect to Ms. Haastrup's mental health, which was relevant to whether the IFA locations proposed were reasonable in the Applicants' particular circumstances. Justice Strickland found that the RPD's blanket statement that it had considered the report did not demonstrate sufficient attention to the

content of the doctor's report. The report, among other things, addressed the RPD's concerns regarding the quick assessment by another doctor and described the testing done by Dr. Redditt to support her diagnosis, several follow up visits and ongoing counselling for Ms. Haastrup.

[6] Justice Strickland found, at para 27, that Dr. Redditt's report should "at least have been considered" when assessing Ms. Haastrup's particular circumstances and ability to relocate.

[7] The RPD considered the Applicants' claim for refugee protection at a *de novo* hearing held on January 8, 2019 and rendered a decision on January 29, 2019, again rejecting the claim.

II. The Decision Under Review

[8] In its redetermination decision, the RPD grappled with its concerns regarding Ms. Haastrup's credibility, but relied on the objective basis for the Applicants' claims of domestic abuse and fear of FGM. The RPD found that there was sufficient reliable and trustworthy evidence to find on a balance of probabilities that Ms. Haastrup was a victim of abuse by her former common law partner and that there was a serious interest by her common law partner and his family in subjecting her daughter to FGM. The RPD's determinative finding was that the Applicants had IFAs in two locations: Benin City and Port Harcourt.

[9] The RPD described and applied the two-part test established in *Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 706 (CA), 31 ACWS (3d) 139 [*Rasaratnam*], to determine whether there is an IFA.

[10] With respect to the first prong of the test, the RPD found that there was no serious possibility that the Applicants would be persecuted in either city.

[11] With respect to the second prong of the test, the RPD considered whether either IFA location would be unduly harsh taking into account that Ms. Haastrup is a single woman fearing domestic abuse with a seven-year-old daughter fearing FGM. The RPD considered Ms. Haastrup's language and her lack of indigeneship (i.e. roots) in both cities. The RPD noted the Neurodevelopmental Assessment and school report cards submitted with respect to Gloria, noting Ms. Haastrup's allegation that the educational and support services needed to address Gloria's needs were not available in the Nigerian education system. The RPD also noted the updated medical report of Dr. Redditt, which stated that Ms. Haastrup suffers from complex chronic distress disorder and major depressive disorder and continues on medication, counselling and psychotherapy. The RPD added, "no report was provided from her current counsellor or psychotherapist".

[12] The RPD found that the absence of affordable public or private health care affects all Nigerians, not only the Applicants, and that there was no evidence that the access to treatment would be unavailable or inaccessible in the IFA locations.

[13] Overall, the RPD found that given Ms. Haastrup's high school education, training and work experience, socio-economically she fell within the upper half of Nigerian women. The RPD noted a more "positive picture" for women living alone in the south of Nigeria, as opposed

to the north The RPD found that although the cost of rent is high, relocation to either city would not be unduly harsh or objectively unreasonable.

III. Issue and Standard of Review

[14] The RPD correctly stated the test for an IFA. The issue is whether the RPD reasonably found that an IFA was available in either Port Harcourt or Benin City.

[15] The Supreme Court of Canada's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] SCJ No 65 [*Vavilov*], establishes that reasonableness is the presumptive standard of review for decisions made by administrative decision-makers. That presumption is not rebutted in the circumstances. Moreover, the pre-*Vavilov* jurisprudence established that the application of the IFA test and its determination should be reviewed on the reasonableness standard (*Ugbekile v Canada (Citizenship and Immigration)*, 2016 FC 1397 at paras 12-14, 275 ACWS (3d) 360.)

[16] In *Vavilov*, the Supreme Court of Canada elaborated on what constitutes a reasonable decision, and provided guidance in conducting a reasonableness review. A hallmark of a reasonable decision remains that the decision is justified, transparent and intelligible. The Court in *Vavilov* elaborated that the decision must be justified in relation to the relevant factual and legal constraints that bear on the decision (at para 99).

[17] Among other guidance provided, the Supreme Court of Canada explained, at paras 103-104, that a decision is unreasonable if the reasons, read holistically, fail to reveal a rational chain of

analysis, reveal that the decision was based on an irrational chain of analysis, reveal that the conclusion reached cannot follow from the analysis undertaken, do not make it possible to understand the decision-maker's reasoning on a critical point or, exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. In a nutshell, the court in reviewing the decision must ultimately be satisfied that the decision-maker's reasoning "adds up" (at para 104).

IV. Is the IFA Finding Reasonable?

A. *The Applicant's Submissions*

[18] The Applicants submit that the RPD erred by not assessing their subjective fear before concluding that an IFA existed. The Applicants point to *Amit v Canada (Minister of Citizenship & Immigration),* 2012 FC 381, 216 ACWS (3d) 725 [*Amit*], where the Court found the RPD's IFA determination to be unreasonable because it did not take into account the claimant's subjective fear of persecution.

[19] The Applicants further submit that the RPD's assessment of the IFA was unreasonable. With respect to the first prong of the IFA test, the Applicants submit that the RPD appeared to hold them to a higher standard of proof than the "balance of probabilities" standard by requiring that they provide proof that Ms. Haastrup's common law partner and his associates would find them in the proposed IFAs. The Applicants submit that the RPD erred by holding them to a higher standard than that of a "serious possibility of persecution" (relying on *Henguva v Canada (Minister of Citizenship and Immigration),* 2013 FC 483 at para 16, 228 ACWS (3d) 216).

[20] The Applicants further submit that the RPD failed to consider the evidence provided in Ms. Haastrup's amended narrative about the vast reach of her common law partner and his extended family, given that his father is an influential politician.

[21] With respect to the second prong of the test, the Applicants argue that the proposed IFA locations are unreasonable in their particular circumstances given the country conditions in Nigeria. The Applicants allege that the RPD selectively relied on the objective country condition documents. They argue that the RPD failed to consider – or overlooked – the specific information in those same country condition documents about the situation in Port Harcourt or Benin City for females living without male support, with no income, employment, housing or language skills, among other impediments to relocation. The Applicants point to several errors including:

1. The RPD failed to consider their ability to assimilate in either city as a non-indigene (i.e., having no roots in those communities) in particular with respect to their access to housing, education, and employment;

2. The RPD erred in finding that Ms. Haastrup spoke English and Yoruba and could therefore communicate in either Port Harcourt or Benin City. The country condition documents confirm that although English is the official language in Nigeria, the spoken language in Port Harcourt is Pidgin English or one of several local dialects, none of which the Applicants speak;

3. The RPD erred in finding that Ms. Haastrup could find work given that she worked in Canada as a Personal Service Worker, as that type of job does not exist. Moreover, the NDP explains that the employment prospects of a single woman are dismal;

4. The RPD had no basis to find that Ms. Haastrup was in the upper half of Nigerian women socio-economically;

5. The RPD failed to consider Gloria's Attention Deficit Hyperactivity Disorder [ADHD] diagnosis and Ms. Haastrup's chronic distress disorder and major depressive disorder when assessing their need for healthcare. The RPD erred in finding that they could access health care given Ms. Haastrup would not be able to find work and has no resources;

6. The RPD failed to consider the gender discrimination single women face when seeking accommodation or the excessive rent demanded, usually in advance;

7. The RPD failed more generally to consider the widespread unemployment, poverty, and insecurity in both Port Harcourt and Benin City as well as the cumulative factors at play for the Applicants.

B. *The Respondent's Submissions*

[22] The Respondent submits that the RPD's assessment of the IFAs was reasonable and supported by the evidence. The Applicants did not meet their high onus to establish, on a balance of probabilities, that the proposed IFAs were unreasonable (*Ranganathan v Canada (Minister of Citizenship & Immigration)*, [2001] 2 FC 164, 102 ACWS (3d) 592 [*Ranganathan*]).

[23] With respect to the second prong of the test, the RPD reasonably considered the Immigration and Refugee Board's *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution (Gender Guidelines)* and considered Ms. Haastrup's age,

gender, language and education, her employment prospects and her ability to find accommodation. The Respondent submits that the RPD reasonably found that because Ms. Haastrup had worked selling leather goods previously and had worked in Canada as a Personal Support Worker, her skills would permit her to find employment in the IFA locations and would place her in the upper socio-economic group.

[24] The Respondent submits that that the RPD reasonably found that English is the official language in Nigeria and because the Applicants speak English, this would not be an impediment to their relocation.

[25] The RPD also considered the medical needs of both Applicants. The Respondent submits that because healthcare costs affect all Nigerians equally this is not a factor personal to the Applicants. The Respondent submits that medical needs are more appropriately considered in an H&C application.

C. *The RPD's finding that the Applicants had an IFA in Port Harcourt or Benin City is not reasonable in their particular circumstances*

[26] The two-part test for an IFA established in *Rasaratnam* has been consistently applied and elaborated upon, including in *Thirunavukkarasu v Canada (Minister of Employment & Immigration)*, [1994] 1 FC 589 at paras 2, 12, [1993] FCJ No 1172 (QL) (CA) [*Thirunavukkarasu*]. As correctly noted by the RPD, first, the decision-maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the refugee claimant being persecuted in the proposed IFA. Second, the conditions in the proposed IFA must be such that it

would not be unreasonable for the refugee claimant to seek refuge there, upon consideration of all the circumstances, including their personal circumstances. Both aspects of the test must be established by the refugee claimant.

[27] As noted in *Thirunavukkarasu* at paragraph 14:

> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
>
> [Emphasis added]

[28] The onus on a refugee claimant to demonstrate that a proposed IFA is unreasonable is high. As explained in *Ranganathan* at para 15:

> [15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status,

> reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.
>
> [Emphasis added]

[29] As explained in *Ranganathan* and in the jurisprudence which has applied the principles noted above, a refugee claimant is a refugee from their country as a whole, not from a city or region of their country. Therefore, a refugee claimant cannot seek the refugee protection of another country while there is a place within their own country – even if it may not be where they wish to live – that can offer safety from the risk they claim and that is not unreasonable in all the circumstances. The refugee claimant bears the onus of establishing with objective evidence that the proposed IFA is unreasonable. This means establishing that there is a serious possibility of being persecuted in the proposed IFA or that the conditions in the proposed IFA make it unreasonable to relocate there, taking into consideration all the circumstances, including their personal circumstances.

[30] In order to find that an IFA is not reasonable in their particular circumstances, a refugee claimant must establish more than the undue hardship resulting from loss of employment, separation from family, difficulty to find work, and a reduction in the quality of life. While circumstances that jeopardize the life and safety of a refugee claimant clearly point against the proposed IFA, other types of undue hardship may not meet the very high threshold. The dividing line will vary.

[31] Absent some failure to consider relevant evidence or other error, deference is owed to the IFA findings made by the RPD. In the present case, as explained below, the RPD did fail to

consider and reconcile relevant evidence about the Applicants' particular circumstances. The country condition evidence supports the Applicants' submissions that in their personal circumstances relocation to the IFAs would fall on the side closer to jeopardizing their lives and safety due to their inability, among other things, to find accommodation, employment, education, and health services.

[32] Contrary to the Applicants' submission, the RPD did not err by not assessing their subjective fear. Unlike *Amit,* relied on by the Applicants, the RPD independently reviewed the evidence and reasonably found that Ms. Haastrup's assertions about her common law spouse's ability to find her were speculative and not supported by the objective country condition evidence. Moreover, subjective fear is not determinative when the issue is whether there is a viable IFA (*Onyeme v Canada (Citizenship and Immigration)*, 2018 FC 1243 at paras 36-37, 300 ACWS (3d) 364).

[33] The RPD assessed whether there was a serious risk that the Applicants would face persecution in either of the proposed IFAs. The RPD acknowledged Ms. Haastrup's assertions that her common law partner had business ties to "thugs" in all parts of Nigeria who could reach her, and that her father-in -law was a politician (which was a new assertion in her amended narrative). The RPD found that her assertions were speculative and not supported by the objective country condition documents.

[34] In *Henguva,* relied on by the Applicants, the Court found that the RPD erred by requiring that the applicant show that her uncle and cousin would be able to find the applicant in the

proposed IFA. (The Court also found that the RPD had muddled the test for state protection and the test for an IFA, noting these were separate).

[35] Unlike *Henguva*, the RPD did not require the Applicants to show that Ms. Haastrup's common law spouse would be able to find her in either proposed IFA. The RPD did not hold the Applicants to a higher standard of proof to establish that her common law spouse's extended family would actually find them in either proposed IFA. The RPD found that the "evidence presented does not establish on a balance of probabilities the capacity or ability of the common law partner to track the claimants to Port Harcourt or Benin City."

[36] With respect to the second prong of the test, the *Gender Guidelines* require decision-makers to take into account, among other considerations, "religious, economic, and cultural factors, and consider how these factors affect women in the IFA". The RPD considered the relevant religious, economic, social and cultural factors particular to the claimants.

[37] However, the RPD's findings with respect to Ms. Haastrup's ability to speak the language, find employment, find housing, access education for her daughter and access medical treatment for herself and her daughter, taken on their own and, more importantly, taken together, are not supported by the objective country condition evidence. The country condition documents confirm, to a large extent, the concerns noted by Ms. Haastrup in her submissions.

[38] The RPD's finding that the Applicants speak English and Yoruba and would, therefore, be able to assimilate into Port Harcourt or Benin City, overlooks the country condition evidence

that, although English is Nigeria's official language, the spoken languages in the IFA cities is different and there are many dialects. The objective country condition evidence, in particular RIR NJA 104679E, notes, as did Ms. Haastrup, that Yoruba is not spoken in the IFA locations, rather Pidgin English is spoken in Port Harcourt and Benin City in addition to local dialects.

[39] With respect to accommodation, the RPD found that the "picture for females living alone in the South is mixed" but that it is better for women with higher education and socio-economic status, which erroneously implies that Ms. Haastrup enjoys this status.

[40] The RPD acknowledged that rent is high, which increases the challenges for Ms. Haastrup as a female living alone without support. However, the country condition evidence indicates that this is not simply a challenge, but a huge obstacle due to the stigma attached to unmarried women. In addition to the high cost of rent, it is often required to be paid in advance. This, coupled with the obstacles to employment, would make Ms. Haastrup's ability to find housing or other accommodation, and to pay for it, even more difficult.

[41] Although the RPD acknowledged the Applicants' submission that their lack of indigeneship in either IFA location would be an impediment to accessing services, employment, housing and education, and more generally, in being accepted, the RPD did not consider how this affected its other findings.

[42] The RPD accepted the evidence that Gloria has ADHD, for which she receives educational and other support services in Canada. In addition, the RPD accepted that Ms.

Haastrup continues to suffer from complex chronic stress disorder and major depressive disorder, for which she takes anti-depressant medication and receives counselling and psychotherapy. Dr. Redditt's letter, dated January 3, 2019, notes that she is "very concerned about a potential severe exacerbation of [Ms. Haastrup's] depression and PTSD if she is forced to return to Nigeria, with the risk of suicidality." The RPD stated that no report was provided from Ms. Haastrup's current counselor or psychotherapist – despite the fact that the report from Dr. Redditt was current and described ongoing counselling and therapy from Dr. Redditt.

[43] The RPD's finding that there was no evidence to suggest that the Applicants could not access treatment in Port Harcourt or Benin City overlooks the country condition evidence that non-indigenes must pay for all such medical services, and may face additional impediments as well. Although I agree that the cost of health care and other services is not generally a factor pointing away from a proposed IFA, given the cumulative obstacles faced by Ms. Haastrup, it is unreasonable for the RPD to find that the Applicants could access the necessary treatment. The RPD's finding really means they could access it if they could pay for it. The evidence before the RPD is that Ms. Haastrup cannot pay for treatment given that she will face major obstacles to find employment and accommodation, and pay for accommodation, education and other needs.

[44] The RPD's finding that Ms. Haastrup's high school education and employment experience (as a Personal Support Worker in Canada and a market place seller of purses in her home country) place her in the top half of Nigerian women in terms of socio-economic status is not supported by any evidence on the record to which the Court was directed.

[45] Applying the guidance in *Vavilov*, the Court is not satisfied that the RPD's reasoning in the present case "adds up".

[46] As a result, the RPD's finding that the Applicants had a viable IFA in Port Harcourt and Benin City is not reasonable. A differently constituted panel of the RPD must redetermine the Applicants' refugee claims.

JUDGMENT in file IMM-1386-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is allowed.
2. The Applicants' refugee claims must be redetermined by a differently constituted panel of the RPD.
3. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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