Federal Court  Cour fédérale

Date: 20201120

Docket: IMM-279-20

Citation: 2020 FC 1072

Ottawa, Ontario, November 20, 2020

PRESENT: The Honourable Madam Justice St-Louis

Muritala Niyi EYITAYO
Bintu Folashade EYITAYO
Iman Ajoke EYITAYO
Isamat Gbonjubola EYITAYO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Muritala Niyi Eyitayo, the Principal Applicant, his wife, Mrs. Bintu Folashade Eyitayo, and their two minor daughters [collectively, the Applicants] seek judicial review of the December 24, 2019 decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [the RAD] dismissing their appeal.

[2] The RAD confirmed the December 10, 2018 decision of the Refugee Protection Division [RPD] and concluded the Applicants are neither Convention refugees nor persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27).

[3] For the reasons set out below, the Application for judicial review [the Application] will be dismissed.

II. Relevant Factual Background

[4] The Applicants are citizens of Nigeria. In January 2017, they left Nigeria for the United States, each holding a valid US visitor's visa.

[5] In October 2017, they entered Canada and claimed refugee protection. Their claim is expressed in Mr. Eyitayo's narrative, included in his Basis of Claim Form, and is based on the fear that the minor daughters will be subjected to female genital mutilation (FGM) in Nigeria. Mr. Eyitayo outlined that although he and Mrs. Eyitayo both oppose this practice on their daughters, they cannot protect them because, they allege, the father of the child "does not have any rights over the girl, the right will be automatically transferred to an elderly member of the family with the traditional rite to perform all the rituals and the bride price of the girl child will be given to the elder who has control of the girl, the father only has right over the son alone" (Certified Tribunal Record at page 88).

[6] The RPD found that the Applicants did not establish the existence of a well founded fear of persecution under the Convention nor, on a balance of probabilities, the existence of a personal risk, a threat to their lives, or a risk of unusual treatment or punishment upon their return to Nigeria. The RPD found that the Principal Applicant was not a credible witness, as his testimony and documents showed many significant contradictions, omissions, and discrepancies directly related to the heart of his refugee claim, and as his behaviour, on a balance of probabilities, was incompatible with that of a person who fears persecution or threat to his two daughters in Nigeria. The RPD also noted that the Applicants had stayed in the United States for more than eight months without claiming protection, which, although not determinative, was found to be incompatible with the behaviour of a person who fears persecution in his country of nationality.

[7] The RPD noted, having outlined to the Principal Applicant during the hearing, that the available information in the National Documentation Package for Nigeria [NDP] (Document 3, tab 5.11) confirmed that the parents are responsible for their children and can refuse to have their daughters undergo FGM. The RPD noted that the Principal Applicant did not respond to the information available in the NDP, although he bore the burden to demonstrate the opposite.

III. The RAD Decision

[8] The Applicants appealed the RPD decision before the RAD.

[9] In its decision, the RAD assessed the evidence independently in order to determine whether the RPD was correct in relation to each alleged error of law, fact, or mixed fact and law.

[10] From its analysis, the RAD found that (1) the RPD had erred in concluding that the Applicants had not established the existence of Mr. Eyitayo's uncle; (2) the RPD was correct in concluding that the Applicants' assertion that the elders rather than the father have rights over a daughter was not credible; (3) the RPD was ultimately correct to hold that the medical report did not corroborate the Applicants' assertion; and (4) the uncontested RPD credibility findings were correct.

[11] Regarding the Applicants' assertion that the elders hold the rights over a daughter, the RAD essentially (1) reviewed the exchange the RPD member had with Mr. Eyitayo during the hearing; (2) confirmed that the document the RPD intended to cite was the one at tab 5.12 of the National Documentation Package on parental refusal of FGM, but that, regardless of this error, the RAD could receive and consider evidence and cure any possible citation error; (3) noted that counsel chose not to make any substantive submission to the RAD on the RPD's findings about parental control over their children or power to refuse FGM; (4) examined the 2012 Response to Information Request [RIR] and its updated version on the subject, and concluded that none of the cited limitations to the parents' control applied in this case; (5) noted that the RIR indicates that the decision to subject a girl to FGM in Nigeria lies with the parents; (6) considered four articles the Applicants had filed before the RPD on FGM in Nigeria, and found that two did not address the possibility or consequences of parental refusal, while the other two presented issues justifying the RPD's decision to grant them no evidentiary weight.

[12] The RAD ultimately found that the RPD was correct to hold that the Applicants' allegations were not credible, and found that determinative of the appeal. The RAD also noted

that there were essentially no allegations that Mr. and Mrs. Eyitayo themselves faced a risk should they return to Nigeria, and that they made no mention of such a risk in their testimony.

[13] The RAD dismissed the appeal and confirmed the decision of the RPD.

IV. Issues before the Court

[14] The Applicants challenge the RAD's assessment of the evidence. They submit that the RAD erred in (1) engaging in a microscopic analysis of two press articles submitted by the Applicants on FGM and, as a consequence, affording them no weight; and (2) ignoring contradictory evidence in the National Documentation Package by failing to consider the documents at tab 5.28.

V. Standard of Review

[15] The analytical framework for judicial review of an administrative decision is based on a presumption that the standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Respect for the rule of law requires courts to apply the standard of correctness for certain types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, para 53), legal questions that are not in play here.

[16] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

VI. Analysis

A. *The RAD did not engage in a microscopic analysis of two press articles submitted by the Applicants on FGM*

[17] On the first issue, the Applicants submit that the RAD member committed a reviewable error by engaging in a "microscopic analysis" of two press articles (citing *Hamdar v Canada (Citizenship and Immigration)*, 2011 FC 382 and *Chen v Canada (Citizenship and Immigration)*, 2012 FC 510), and by essentially discarding them based on their sources. The Applicants essentially submit that the member unreasonably found the sources not to be credible because journalists in Nigeria at times accept bribes. They stress that articles from these news organisations are included in the NDP, and that they are thus credible sources. The Respondent argues the RAD properly weighed the evidence and that the inclusion of specific articles in the NDP cannot import a broader endorsement of the journalistic practices of an organisation.

[18] The Applicants have not convinced me that the RAD improperly weighed the evidence before it – a role which forms part its natural purview.

[19] On the contrary, despite the fact that the Applicants had raised no arguments to support their position on appeal before the RAD, the RAD assessed the reliability of the articles. It

referenced the sources of the information, whether the authors had witnessed firsthand the alleged incidents, and whether they had sought full or partial corroboration of the accounts in question or whether the publications themselves had conducted their own inquiries into the truth or credibility of the stories published. It also considered the documentary evidence outlining that it is not uncommon for ordinary citizens to bribe journalists, a practice referred to as "brown envelope journalism." The RAD did not rely on the source of the articles to grant them no weight.

[20] The Applicants have not convinced me that the factors relied upon by the RAD to evaluate the reliability of the articles are improper factors or that the RAD erred in affording them no weight.

[21] The Supreme Court of Canada states in *Vavilov*: "It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from 'reweighing and reassessing the evidence considered by the decision maker.' Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review" (at para 125 [references omitted]).

[22] The weighing of conflicting evidence is at the core of the RAD's jurisdiction, and it is not the function of the reviewing court to reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 60-61).

[23] The Court is satisfied that no exceptional circumstances were raised here and that the RAD set out a clear and intelligible justification for its decision to afford no weight to these sources. The RAD's conclusion is thus reasonable, and the Court's intervention is not justified.

B. *The RAD did not ignore contrasting evidence regarding FGM*

[24] The Applicants submit that the RAD ignored key evidence which contradicted its conclusion, and point particularly to tab 5.28 of the NDP.

[25] However, before the RAD, the Applicants did not refer to tab 5.28, nor did they argue the rights of the elders on their daughters, intergroup relationships, or the possible consequences the parents may suffer. They submitted no arguments or evidence on these matters.

[26] The Applicants concede that the RAD is not obliged "to comb through every document listed in the National Document Package in the hope of finding passages that may support the Applican[ts'] claim and specifically address why they do not, in fact, support the Applican[ts]" (*Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 19). However, they submit that this evidence was relevant, as it addressed the very common practice of FGM in Lagos, the relevance of "intergroup relationships," and the possible consequence on or harm to the parents. They thus submit that the RAD should have addressed this evidence.

[27] I disagree. The Applicants did not raise these issues before the RAD, hence “In such circumstances, their argument that the RAD did not consider specific evidence, now raised before this Court, must fail” (*Akintola v Canada (Citizenship and Immigration*), 2020 FC 971 at paras 29-32).

[28] I am satisfied the RAD decision is reasonable in light of RAD’s record and of the law. For these reasons, the Application will be dismissed.

JUDGMENT in IMM-279-20

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;

2. No question is certified;

3. No costs are granted.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-279-20
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