

Federal Court



Cour fédérale

Date: 20210506

Docket: IMM-7715-19

Citation: 2021 FC 406

Ottawa, Ontario, May 6, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

**OMOWUNMI MOJISOLA MALIK YAMAH
OREOLUWA EMOSHORIAME MALIK YAMAH
OPEOLUWA OSHONE MALIK YAMAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Omowunmi Mojisola Malik Yamah and her two adult daughters, seek to set aside a decision of the Refugee Appeal Division of the Immigration and Refugee Board (RAD), confirming the Refugee Protection Division's (RPD) determination that the applicants

are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[2] The applicants are citizens of Nigeria. They allege a fear of persecution by unknown individuals they believe to be corrupt government officials seeking retaliation. Ms. Malik Yamah was in charge of public sector accounts at a bank in Lagos. She started receiving threats after she revealed information about government employees, including Lagos State government officials, to law enforcement authorities as part of a fraud investigation. On two occasions in March 2018, Ms. Malik Yamah noticed she was being followed, and the next month she received a threatening letter. She reported the incident to police. After receiving a second threatening letter in May 2018, referring to the police report she had made, Ms. Malik Yamah fled Nigeria for the United States. Ms. Malik Yamah's daughters were living in the U.S. with her ex-husband at the time and attending school. They had applied for permanent resident status in the U.S. but their applications were denied in February 2018. Ms. Malik Yamah and her daughters travelled to Canada in July 2018 and claimed refugee protection.

[3] The RPD accepted that Ms. Malik Yamah was pursued at her home and at her work in Lagos by unknown individuals, as a result of her cooperation in the fraud investigation. However, the RPD found that the applicants are not Convention refugees or persons in need of protection under the *IRPA* because they have viable internal flight alternatives (IFAs) in Port Harcourt and Ibadan. The RAD dismissed the applicants' appeal, on the same basis that Port Harcourt and Ibadan are viable IFAs. The RAD concluded there would not be more than a mere possibility that the agent or agents of persecution would locate the applicants in Port Harcourt or

Ibadan, and the applicants failed to establish it would be unreasonable for them to seek refuge there.

[4] The applicants submit that the RAD committed reviewable errors in determining that they have viable IFAs. They allege the RAD's decision is unclear as to whether the RAD accepted that the agents of persecution are state actors, and that this is a serious shortcoming because state actors would be more likely than non-state actors to find them outside of Lagos. Also, they allege that the second threatening letter demonstrates the persecutors knew Ms. Malik Yamah had filed a police report, establishing a connection with the police. According to the applicants, the RAD failed to consider country condition documentation detailing the many ways that those who have connections within the police force—a force that operates nationally in Nigeria—are able to track people throughout the country. Furthermore, the applicants submit that the RAD did not independently analyze whether it would be unreasonable for them to relocate to Port Harcourt or Ibadan. Instead, the RAD agreed with the RPD's conclusions and adopted the RPD's reasons, which the applicants submit were also unreasonable.

[5] In my view, the applicants have not established that the alleged errors render the RAD's decision unreasonable. This application is dismissed, for the reasons set out below.

II. Issues and Standard of Review

[6] The sole issue on this application for judicial review is whether the RAD reasonably determined that the applicants have viable IFAs in Port Harcourt and Ibadan.

[7] The applicable standard of review is reasonableness, conducted according to the guidance regarding reasonableness review that is set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. In applying the reasonableness standard, the Court must not assess the tribunal's reasons against a standard of perfection, but must ask whether the decision under review bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at paras 91, 99.

III. Analysis

[8] The two-prong test for an IFA requires that: (i) the claimant would not face a serious possibility of persecution in the IFA, or be personally subject to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture; and (ii) it would not be unreasonable in all the circumstances, including those particular to the claimant, for the claimant to seek refuge in the proposed IFA: *Rasaratnam v Canada (Minister of Employment and Immigration) (1991)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (1993)*, [1994] 1 FC 589 (CA). A refugee claimant bears the onus of establishing that a proposed IFA is not viable, and can discharge the onus by defeating at least one prong of the two-prong test.

[9] The applicants submit that the RAD's decision is unreasonable with respect to both prongs of the IFA test.

A. *First Prong*

[10] The applicants submit that the RAD's decision lacks transparency and intelligibility because it is unclear whether the RAD did or did not accept that the individuals who targeted Ms. Malik Yamah are state actors. They submit this is relevant because, in general, where the agent of persecution is a state actor, there is no viable IFA anywhere in Nigeria. The applicants submit that Ms. Malik Yamah's credibility was not impugned, yet the RAD made a "qualified" credibility finding that suggests she was not believed about being pursued by government officials. The applicants argue that the agents of persecution are powerful people in Nigeria, with police connections—the threat letters indicated the persecutors knew about the fraud investigation as well as Ms. Malik Yamah's report to the police—and the connection to police provides the means for the agents to locate the applicants in the proposed IFAs.

[11] The applicants maintain that the RAD failed to consider all of the evidence before it regarding whether the agents of persecution would have the means or motivation to track the applicants outside of Lagos, based on their police connections: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53 (TD). They argue that the agents of persecution could track the applicants, through the national police force, at police checkpoints, through a crime reporting computer application, and through the use of National Identification Numbers. They maintain that the agents of persecution will continue to be motivated to find Ms. Malik Yamah because the fact that she disclosed their names to the police has not changed.

[12] The applicants allege that it was unreasonable for the RAD to rely on Ms. Malik Yamah's resignation from the bank, as well as the fact that she has no notable profile and was not aware of anyone looking for her since she left Nigeria, to conclude there is no more than a mere possibility that the agents of persecution would find her in one of the proposed IFA cities. The applicants argue the RAD was speculating that these factors would reduce the risk of being found. Further, the applicants submit that the RAD's reasons impermissibly suggest the applicants would be safe in the IFA cities if they do not disclose their location to others, a finding that is tantamount to requiring them to go into hiding, which this Court has held can render a decision that a viable IFA exists unreasonable: *Ehondar v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1143.

[13] I am not persuaded that the RAD's analysis regarding the first prong of the IFA test is unreasonable. In my view, the RAD did not accept that the agents of persecution are likely to be state actors. This does not amount to a "qualified" credibility finding that Ms. Malik Yamah was not believed. It was not necessary to find that Ms. Malik Yamah was lying in order to find that her evidence, and the other evidence on record, simply did not establish that the individuals who targeted her possess the means and motivation to pursue the applicants across the country. As the RAD correctly stated, the applicants bear the onus of establishing the existence of a serious possibility of persecution in the proposed IFA locations. It was not unreasonable for the RAD to find that the applicants' evidence did not meet the onus.

[14] Furthermore, the RAD did not accept the applicants' argument that there would be no IFA in Nigeria if their agents of persecution are state actors. The RAD found that, even if the

agents of persecution are state actors, the evidentiary gap remained—the applicants failed to establish that the unknown state actors would have the means or motivation to track them nationally. Ms. Malik Yamah testified before the RPD that she had given law enforcement authorities the names of many government employees “from the topmost person down to the accountants”. The RAD found it was speculative to assume that “one or more of these ‘many’ individuals who range from high-ranking government officials to accountants” would, by virtue of being local government employees, have access to resources to search for the applicants across Nigeria. In my view, these findings were open to the RAD.

[15] I am not persuaded that the RAD failed to properly and independently consider the country condition evidence before it. The applicants’ argument that the RAD ignored country condition evidence about tools at the disposal of the national police force is based on a premise that the individuals who targeted Ms. Malik Yamah in Lagos would have access to the tools. The RAD’s findings do not support that premise. The applicants did not establish that the individuals pursuing them are in a position of power or influence within government. The RAD found that, even if it were to accept that the agents of persecution “were employees of the state government apparatus”, the applicants had not established on a balance of probabilities that the agents would have the means or motivation to search for or track the applicants nationally. In my view, the factual record, including the threat letter containing a statement that the writer knew (by unknown means) that Ms. Malik Yamah made a report to the police, does not compel a different finding or render the RAD’s finding unreasonable in light of the facts that were before it: *Vavilov* at para 99, 105, 126.

[16] The RAD did not speculate or rely unreasonably on Ms. Malik Yamah's resignation from the bank, lack of a notable profile, or the fact that she was not aware of anyone looking for her since she left Nigeria to conclude that the applicants would not face a serious possibility of persecution in the IFA cities. These are relevant factors. I am not persuaded that the RAD erred by considering these factors among others, or that the RAD gave any of these factors undue weight in concluding that there was insufficient evidence in the record to support more than a mere possibility of risk.

[17] Contrary to the applicants' submission, the RAD did not find, or even suggest, that the applicants would be safe if they do not disclose their location. Rather, the RAD addressed the applicants' argument that the RPD had erred in considering the possibility that the applicants "could choose not to share their location with others" as a factor under the first prong of the IFA test. The RAD found that the RPD's observation was one factor in a detailed analysis, and insufficient to find that the RPD had erred. This does not amount to a positive finding by the RAD, or a suggestion that the applicants must hide in order to remain safe.

[18] The applicants have not established that the RAD's conclusion on the first prong of the IFA test is unreasonable.

B. *Second Prong*

[19] The applicants submit that the RAD did not conduct its own analysis on the second prong of the IFA test, but rather agreed with the RPD's conclusions and for the same reasons. They argue that the RPD's analysis of the second prong of the IFA test is unreasonable, and as it was

adopted by the RAD, the RAD's conclusion is also unreasonable. Specifically, the applicants submit that the RPD erred by importing a requirement of personalized risk into the analysis, by failing to address the difficulties faced in female-headed households or the generalized violence and kidnappings in Nigeria, and by referring to a high threshold for defeating the second prong, without specifying the threshold.

[20] As this Court explained in *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at paragraph 23, the RAD's decision must be assessed in the context of how the applicants framed the appeal, and the RAD is not required to consider potential errors that were not raised. The applicants did not raise any issues related to the RPD's analysis under the second prong of the test on appeal to the RAD. The RAD is not required to provide reasons for unchallenged findings, and a general statement that it concurs with uncontested findings does not permit the applicants to raise, for the first time on judicial review, alleged errors of the RPD that were unchallenged on appeal: *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at paras 30–39.

IV. **Conclusion**

[21] The applicants have not established that the RAD's decision is unreasonable, and this application for judicial review is dismissed.

[22] Neither party proposed a question for certification. I find there is no question to certify.

JUDGMENT in IMM-7715-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7715-19

STYLE OF CAUSE: OMOWUNMI MOJISOLA MALIK YAMAH,
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MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO BY WAY OF
VIDEOCONFERENCE

DATE OF HEARING: JANUARY 18, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: MAY 6, 2021

APPEARANCES:

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