Federal Court  Cour fédérale

Date: 20210728

Docket: IMM-4685-20

Citation: 2021 FC 797

Ottawa, Ontario, July 28, 2021

PRESENT: Madam Justice Walker

BETWEEN:

GBOLAHAN OLU AWAKAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Awakan, is a citizen of Nigeria who claimed asylum in Canada in 2018. The Refugee Protection Division (RPD) rejected his claim, finding that the Applicant has an internal flight alternative (IFA) in Abuja, Nigeria. The Applicant appealed the RPD's decision to the Refugee Appeal Division (RAD) but the RAD dismissed the appeal and confirmed the RPD's IFA finding. The Applicant now seeks the Court's review of the RAD's decision (Decision).

[2] This application will be dismissed because the RAD coherently addressed each of the issues before it and justified its findings with reference to the RPD's decision, the evidence in the record and the Applicant's appeal submissions.

I. Background

[3] The Applicant left Nigeria for the United States in 2017, fearing violence from members of the Ogboni Secret Society (Ogboni) and the Nigerian police whom he alleges have significant ties to the Ogboni. He came to Canada on March 9, 2018. His wife and three adult children remain in Nigeria.

[4] Prior to his departure from Nigeria, the Applicant worked as a manager of the internal fraud review system of a well-established bank. He was approached by a colleague, Mr. Omokemi, who attempted to involve him in a scheme to defraud the bank. The Applicant feared Mr. Omokemi whom he knew to be a member of the Ogboni but refused to participate in the scheme. Although the Applicant reported the incident to his superior, the fraud was carried out. The Applicant was able to recoup the monies but was subsequently terminated by the bank's disciplinary committee. A second colleague informed him that two members of the committee were also Ogboni members.

[5] The Applicant states that he was abducted by a group of four men shortly thereafter. He was assaulted and kept captive until his escape two days later. The Applicant alleges he was subject to continued threats by Ogboni members via his cell phone before and after he fled Nigeria to the United States.

[6] The Applicant provided an affidavit from his wife recounting three incidents during which unidentified men forcibly entered their home in Nigeria masquerading as police officers. The incidents occurred in March, April and June 2017, after the Applicant had left Nigeria. The Applicant alleges that the three individuals were able to obtain a search warrant, which they presented during the June 2017 incident. In the Applicant's view, this ability to obtain a search warrant demonstrates the reach and corruption of the Ogboni and the police given he has never been charged with a crime in Nigeria.

[7] The Applicant's refugee claim was rejected by the RPD on June 14, 2019. The RPD considered both prongs of the test for an IFA, concluding first that the Applicant had not demonstrated that Mr. Omokemi and the Ogboni have connections in the police throughout Nigeria or that the men who visited his home after his departure were connected to Mr. Omokemi or the Ogboni. The RPD also found that the Applicant had not demonstrated that there had been any continued pursuit after his escape from captivity and departure from Nigeria. The panel reviewed the objective documentary evidence in the National Documentation Package (NDP) and concluded that the Applicant would not be at risk in Abuja. With respect to the second prong of the test, the RPD determined that it was not objectively unreasonable for the Applicant to seek refuge in Abuja in light of his level of education, work experience and ability to find work.

II. Decision under review

[8] On appeal to the RAD, the Applicant challenged a number of aspects of the RPD's IFA analysis. The RAD reviewed each of the Applicant's appeal submissions against the

two-pronged IFA test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*), ultimately concluding that the RPD had not erred in its analysis and dismissing the appeal.

[9] The RAD first considered the Applicant's submission that the RPD erred in failing to afford him the benefit of the doubt that his agents of persecution had connections all over Nigeria and that the police who visited his home were connected to Mr. Omokemi and the Ogboni. The RAD found no error in the RPD's consideration of this issue and stated that the Applicant had confused the issues of credibility and sufficiency of evidence. The Applicant believed that Mr. Omokemi and the Ogboni had the means to locate him in Abuja but provided insufficient objective evidence establishing this fact on a balance of probabilities.

[10] With respect to whether the RPD "cherry-picked" the documentary evidence in the NDP, the RAD noted that the Applicant provided no reasons in support of his argument and that the RPD had reviewed the documentary evidence regarding the Ogboni when questioning the Applicant about Abuja. In the absence of specific arguments as to how the RPD erred and having itself reviewed the NDP documentation, the RAD found no error and adopted the RPD's reasons.

[11] The Applicant also argued on appeal that he should be given the benefit of the doubt regarding the motivation of the police to look for him. The RAD disagreed. The panel stated that it had reviewed the evidence and determined that the Applicant had not provided sufficient evidence to establish this forward-looking motivation, particularly given the passage of four years since he had been terminated from his position at the bank. The RAD emphasized that the

Applicant did not know whether the individuals/police officers who attended his home after his departure were part of the Ogboni. His wife's affidavit had not been challenged but it was insufficient to establish that the persons who came to the home were the police or were connected with either Mr. Omokemi or the Ogboni. The RAD agreed with the RPD that the Applicant had furnished no evidence of any pursuit since 2017.

[12] With regard to the second prong of the IFA test, the RAD noted that the Applicant's appeal arguments regarding errors in this regard were brief. He alleged that the RPD assumed that his personal circumstances weighed in favour of finding employment and that the RPD failed to give him the benefit of the doubt that his risk is heightened by the "dynamics of his life". The RAD concluded that there was no evidence before it to indicate that it would be unreasonable for the Applicant to relocate to Abuja, taking into account the new evidence regarding the Nigerian government's response to the COVID-19 pandemic.

[13] In summary, the RAD found no error in the RPD's assessment of either the first or second prong of the test for an IFA and dismissed the appeal.

III. Issue and standard of review

[14] The issue in this application is whether the RAD erred in concluding that the Applicant has a viable IFA in Abuja. The Applicant challenges the RAD's analysis of both prongs of the IFA test. He first submits that the RAD erred in its assessment of the capacity and motivation of his persecutors to locate him in Abuja without regard to his accepted and credible testimony or

the objective evidence. The Applicant also submits that the RAD erred in its consideration of Abuja as a reasonable IFA by failing to consider his personal characteristics.

[15] The parties submit and I agree that the RAD's reasons and conclusions regarding the availability of an IFA are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*)). None of the situations identified by the Supreme Court in *Vavilov* for departing from the presumptive standard of review apply in this case.

[16] The Supreme Court emphasizes two components of a reasonable decision: the decision maker's reasoning process and the outcome. The reasons given must reflect a logical chain of analysis and intelligibly explain the outcome. While an outcome may be reasonable, it "cannot stand if it was reached on an improper basis" (*Vavilov* at para 86). I agree with the Applicant's emphasis that the underlying rationale for an administrative decision must be transparent, intelligible and justified.

IV. Analysis

[17] The concept of an IFA is inherent in the definition of a Convention refugee under section 96 of the IRPA. If a claimant can seek safe refuge anywhere within a country, typically their country of nationality, Canada is not required to extend protection. Further, a person in need of protection under section 97 of the IRPA is someone who faces a risk of harm in every part of that country. It follows that the existence of a viable IFA is fatal to a claim made under either section 96 or 97 (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 7).

[18] The test for determining if a claimant has a viable IFA was set out by the Federal Court of Appeal in *Rasaratnam*. The decision maker must be satisfied on a balance of probabilities that:

1. the claimant will not be subject to a serious possibility of persecution or a section 97 risk in the proposed IFA; and

2. conditions in the part of the country proposed as an IFA are such that it would not be unreasonable in all the circumstances, including those particular to the claimant, to seek refuge there.

[19] The onus rests on the claimant to demonstrate that they have defeated one or both prongs of the test (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA); *Obotuke v Canada (Citizenship and Immigration)*, 2021 FC 407 at para 16).

1. *Did the RAD err in its assessment of the Applicant's risk of persecution in Abuja?*

[20] The Applicant submits that the RAD's assessment of the capacity and motivation of his agents of persecution to find him in Abuja suffers from reviewable errors in two respects. First, the Applicant argues that the RAD's analysis is not consistent with his testimony and evidence. Second, he argues that the RAD relied on discrete excerpts from certain country reports in the NDP and ignored contradictory evidence in those same reports. In the Applicant's opinion, these two errors individually and cumulatively undermine the transparency and justification of the RAD's conclusions and render the Decision unreasonable.

[21] I have reviewed the Applicant's arguments carefully against the evidence in the record and the documentary evidence on which he relies but am not persuaded by his arguments. The RAD comprehensively and intelligibly reviewed the evidence and addressed the Applicant's

submissions on appeal. Each of the member's conclusions are explained transparently and coherently and are justified. As a result, I find that the RAD committed no reviewable error in its assessment of the first prong of the IFA test.

[22] The Applicant emphasizes that his narrative and testimony were found credible by the RPD and the RAD. He submits that his evidence provided abundant information regarding Mr. Omokemi and the Ogboni, their sophistication, and their ability to locate him throughout Nigeria. For example, during his testimony before the RPD, the Applicant stated that the Ogboni are found all through the country and that they have significant influence among the police forces. The Applicant also submits that his testimony was corroborated by the affidavits provided by his wife and friend and by the medical report detailing the injuries he suffered during his abduction.

[23] The RAD addressed the Applicant's submission that he should be given the benefit of the doubt as to his testimony and belief that his agents of persecution can find him anywhere in Nigeria. As noted above, the RAD found that the Applicant was confusing the issues of credibility and sufficiency of evidence. The member acknowledged the Applicant's belief that the Ogboni had the means to locate him in Abuja but stated that he "provided no further evidence establishing this on a balance of probabilities". The RAD referred to the decision of this Court in *Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at para 37:

> [37] […] Contrary to the Applicants' submissions, the fact that their testimony was found to be credible with respect to their fear does not alleviate the need to provide sufficient objective evidence.

> As noted in *Figueroa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 521 at paragraph 54, 266 ACWS (3d) 435:
>
> > [54] In this matter the Applicants were found to be credible, however, this does not overcome the need for objective evidence that the proposed IFA is not viable. […]

[24] The Applicant's arguments in support of this application are similar to those he made to the RAD. He states that his testimony regarding his suspension and termination by the bank and his subsequent abduction are unchallenged. I agree. He also states that he credibly testified as to his belief that the Ogboni can locate him in Abuja. Again, I agree but I echo the RAD's finding that the Applicant's belief that his agents of persecution have the means to locate him throughout Nigeria is not determinative of whether they objectively can do so. This is a case of insufficiency of evidence and not of credibility or veiled credibility findings. The Applicant's argument that his testimony is corroborated by the affidavits of his wife and friend and by the medical report of his injuries following his abduction is not persuasive because those documents do not speak to this issue. Specifically, his wife's affidavit does not link the incidents at the family home to the Ogboni and does not establish, on a balance of probabilities, the influence or reach of Mr. Omokemi or the Ogboni in Abuja.

[25] The Applicant takes issue with the RAD's statement that the Ogboni could not locate him after the abduction and before he left Nigeria. He argues that he was in hiding at his friend's house in his hometown during this interim period of late 2016 to February 2017. I agree that the evidence establishes the Applicant stayed with his friend following his abduction and hospitalization. However, whether the Applicant was or was not in hiding for the full period is not determinative of the ability of his agents of persecution to find him in Abuja.

[26] Turning to the documentary evidence in the NDP, the Applicant submits that the RAD committed a reviewable error in relying on selective excerpts from the documentary evidence and ignoring evidence contrary to its conclusions, evidence found in part in the same documents the member cited in the Decision.

[27] The RAD referred to items 1.3 and 13.5 of the NDP and observed that these items were brought to the Applicant's attention during the RPD hearing. The RPD had indicated to the Applicant that the Ogboni has no real power and influence in the Midwest states and he replied that he knew they continued to have influence throughout the country. After independent review of the NDP and in the absence of specific argument in the Applicant's appeal submissions as to any RPD error, the RAD concluded that there was no error in the RPD's assessment of the objective evidence.

[28] In his submissions in this application, the Applicant cites item 1.3 in the NDP and its report of an interview with a Nigerian lawyer. The focus of the interview was the efforts and ability of the Ogboni to find and eliminate ex-members of the society who may reveal its secrets. The Nigerian lawyer stated that the society has branches in every part of the country and can find a former member should it wish to do so. I do not find this example of conflicting evidence indicative of an error on the part of the RAD. Although the report refers to the Ogboni's reach into all areas of Nigeria, its focus is on the use of that reach to find ex-members. This evidence must be considered in light of the RAD's assessment of the motivation of the Ogboni to find the Applicant who has never been a member.

[29] The objective evidence states that Ogboni members include police officers, members of the judiciary and government, and other groups considered to be from among the elite. I agree with the Applicant that the RAD erred in stating that the Applicant's testimony in this regard was merely speculative. I do not find this to be a significant or reviewable error in the context of the Decision as a whole. The Applicant's arguments regarding the infiltration of the Ogboni into the police and the general issue of corruption in Nigerian police forces do not establish the Applicant's position that he will face persecution and serious risk from the police in Abuja. He must establish their motivation to do so.

[30] The RAD found that the Applicant had failed to establish a continuing motivation or intention on the part of the Ogboni to find him four years after his departure from Nigeria whether using its own members or its connections within the police. I find that it was open to the RAD to arrive at this conclusion in light of the evidence provided by the Applicant and the objective evidence before it.

[31] First, the RAD considered whether the persons and/or police who visited the Applicant's Nigerian home in 2017 were looking to harm him on behalf of Mr. Omokemi or the Ogboni. The RAD noted that the Applicant testified during his RPD hearing that neither he nor his wife knew if the police were part of the Ogboni. The RAD also noted that the Applicant responded to the question of whether his wife knew why the police were looking for him by stating that he did not think she did know.

[32] As stated above, the RAD agreed that the Applicant's testimony and evidence had not been challenged but found that his evidence did not establish that the persons who visited his home were the police or were connected with his agents of persecution. The RAD's rationale and explanation for its finding are justified. The Applicant argues that the only logical conclusion from the fact that he is not wanted for a crime in Nigeria coupled with the evidence of rampant corruption among the police and their links to the Ogboni is that the three incidents at his home must have been perpetrated on behalf of Mr. Omokemi and the Ogboni. I am not prepared to draw this conclusion in the absence of evidence regarding the identities, occupations or affiliations of the men responsible for the incidents.

[33] Second, the Applicant contests the RAD's assessment of his evidence regarding the circulation of his picture by the police throughout Nigeria and his failure to substantiate his claim that he received threats via text message from his agents of persecution after he left Nigeria. The Applicant's evidence regarding the circulation of a photograph consisted of his testimony that he did not know whether a photo had been circulated but that he knows how the police work. The issue regarding the alleged texts arose from the Applicant's comment in his Basis of Claim form that the texts were available as evidence. The RPD questioned why the Applicant had not produced a hard copy of the texts at the hearing and was not satisfied with the response that he had no means of showing the text messages to the panel because his cell phone battery had died and he was unable to procure a new one. The RPD asked whether he had kept a copy of the text messages and the Applicant initially indicated that a copy was available. When pressed, he could not produce a copy and the RPD found that his explanations were evolving and evasive.

[34] The Applicant argues that neither the RPD nor the RAD should have required corroboration of his statements. I find no reviewable error in this regard because the issue of corroborative evidence arose due to the Applicant's own evidence and not due to a requirement for corroboration imposed by the decision maker.

2. *Did the RAD err in its consideration of Abuja as a reasonable IFA?*

[35] The Applicant submits that the RAD failed to consider all aspects of his personal circumstances in determining whether it would be unreasonable for him to relocate to Abuja. He argues that the panel restricted its analysis to the likelihood of him finding employment in the city and ignored factors such as his indigene status, age and lack of family connections in Abuja.

[36] The Applicant's appeal submissions regarding the second prong of the IFA test were sparse. He referred to the RPD's decision and stated that "[t]he Board's finding at paragraph 34 constitutes another instance where it failed to accord him the benefit of the doubt given that his risk is heightened by the dynamics of his life."

[37] The Applicant argues that the RAD was required to consider all aspects of his life, whether or not he pointed to specific errors or omissions in the RPD decision in his appeal submissions. He relies on a 2018 RAD decision in which the member set out a list of factors relevant to the second prong of the IFA test, including transportation and travel, language, education and employment, accommodation, religion, indigeneship status, and the availability of medical and mental healthcare (*X (Re)*, 2018 CanLII 52123 (CA IRB) at para 22). However, this case must be read in its entirety to understand the RAD's approach. The paragraph cited by the

Applicant is part of an introductory section in which the member set out the general principles relevant to an IFA. In their analysis, the member noted the appellant's appeal submissions and testimony during her RPD hearing (at para 40):

> [40] The Appellant was asked at the hearing why she could not relocate to Port Harcourt or Ibadan. She indicated that she could not live in Port Harcourt because she did not speak the language there, she is not an indigene of that state, and because her Yoruba ethnicity would stand out there. She testified that she could not live in Ibadan because of its geographic proximity to the location of her agents of persecution (addressed above) and because she does not know anyone there, so she would face difficulties with accommodation and employment. I will address each factor in turn.

[38] In this case, the RPD noted that the Applicant had not provided reasons in his testimony as to why he could not live in Abuja. On appeal, the Applicant made only a generic reference to his circumstances and did not touch on any specific factor that may undermine the reasonableness of Abuja as an IFA for him personally (*Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at paras 21, 32). The RAD stated in the Decision that the Applicant gave no elaboration as to what the "dynamics of his life" might be. The member looked at the obvious factors before them – the Applicant's sophistication, education and substantial work experience – and concluded that these factors will assist him in establishing a life in Abuja.

[39] In *Vavilov*, the Supreme Court stated that a reviewing court must "read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered" (at para 94). In the present case, it is crucial to look at how the Applicant framed his appeal in reviewing the Decision (*Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 13).

[40] I have considered the evidence and the Applicant's arguments on appeal and in this application. I find that it was open to the RAD to conclude that the RPD made no error in concluding that the Applicant had not established that his personal circumstances would result in unreasonable conditions that would threaten his life and safety should he relocate to Abuja. He has provided no actual or concrete evidence of any such conditions.

V. Conclusion

[41] In summary, I find that the RAD committed no reviewable error in concluding that the Applicant had not discharged his onus of demonstrating he does not have a viable IFA in Abuja. The Applicant has not established that his agents of persecution have a continuing motivation to find and harm him there, or that they have maintained their pursuit since his escape from captivity and departure from Nigeria. I also find that the RAD's conclusion that it would not be unreasonable in all the circumstances for him to seek refuge in Abuja is justified having regard to the evidence and the parties' submissions. For these reasons, the Applicant's application for judicial review of the Decision is dismissed.

[42] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4685-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4685-20
STYLE OF CAUSE:	GBOLAHAN OLU AWAKAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	JULY 15, 2021
JUDGMENT AND REASONS:	WALKER J.
DATED:	JULY 28, 2021

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