

Federal Court



Cour fédérale

Date: 20210831

Docket: IMM-3901-20

Citation: 2021 FC 903

Ottawa, Ontario, August 31, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

LAMBERT FRIDAY ATTAMA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Lambert Friday Attama seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, confirming the Refugee Protection Division's (RPD) determination that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Attama alleges a fear of persecution under section 96 or a risk of harm under section 97 at the hands of Nigerian state officials and the Fulani herdsmen, and based on the likelihood of significant deterioration in his mental health were he to return to Nigeria.

[3] The RPD found that the risk related to Mr. Attama's mental health could not ground his claim for protection under the *IRPA*. With respect to the state agents and the Fulani herdsmen, the RPD found that the cities of Lagos, Port Harcourt, Abuja, or Ibadan are viable internal flight alternatives (IFAs). In this regard, Mr. Attama had failed to establish that there exists a serious possibility of persecution, a danger of torture, a risk to his life or a risk of cruel and unusual punishment in the proposed IFAs, or alternatively that it would be unreasonable in all the circumstances for him to relocate to the proposed IFAs.

[4] On appeal to the RAD, Mr. Attama challenged the RPD's findings and analysis on the second prong of the IFA test—whether it would be unreasonable in all the circumstances for Mr. Attama to relocate to the proposed IFAs. He argued that the RPD had failed to properly consider a psychologist's report as part of its analysis under the second prong, and that the RPD had made unreasonable findings that mental health care is available in Nigeria and that Mr. Attama is able to pay for such care. In confirming the RPD's decision, the RAD found that the RPD did not fail to properly consider the psychologist's report as part of its analysis under the second prong of the IFA test, and that the RPD did not err in concluding the evidence was insufficient to establish a lack of access to mental health care in the proposed IFA locations or an inability to pay for treatment.

[5] On this application for judicial review, Mr. Attama begins with the alleged errors in the RPD's IFA analysis, and submits the RAD fell into the same errors by confirming the RPD's decision.

[6] While I agree with Mr. Attama that the RPD did not properly consider the psychologist's report as part of its analysis under the second prong of the IFA test, this is insufficient to establish that the RAD's decision is unreasonable because the RAD did not simply adopt the RPD's analysis. The RAD analyzed the psychologist's report independently. Mr. Attama has not established that the RAD's independent analysis under the second prong of the IFA test is unreasonable. Accordingly, this application for judicial review is dismissed.

II. **Issue and Standard of Review**

[7] The issue on this application for judicial review is whether the RAD's decision is unreasonable as a result of a reviewable error under the second prong of the IFA test.

[8] The RAD's decision is reviewable according to the reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

The party challenging the decision bears the onus of demonstrating that it is unreasonable:

Vavilov at para 100.

III. Analysis

[9] Mr. Attama submits the RAD based its decision on erroneous findings of fact made in a perverse or capricious manner or made without regard to the evidence. In particular, Mr. Attama submits it was an error for the RAD to find that the RPD had analyzed the psychologist's report under the second prong of the IFA test when in fact the RPD had not. According to Mr. Attama, the RPD only considered the report in determining whether his mental health could ground a claim for protection under section 96 or 97 of the *IRPA*, and not in determining whether it would be unreasonable for him to relocate to the proposed IFA locations.

[10] As a result of her psychological assessment, the psychologist wrote in her report that "Mr. Attama is at considerable risk of psychological deterioration due to any number of factors, and such deterioration could result in a triggering of even more symptomatology...One such factor that would put Mr. Attama at great psychological risk would be a return to Nigeria." She explained that being returned to a place of past loss and trauma would intensify Mr. Attama's symptoms, and there would be a deterioration of his mental health and a serious decline in his ability to function in any capacity. The psychologist concluded:

If returned to Nigeria, Mr. Attama certainly faces serious psychological deterioration, including not only a worsening of his current clinical state but also a return of the trauma-related symptoms. As his psychological health declines, so would his ability to effectively function in any capacity, including security and support for himself.

[11] Mr. Attama contends the psychologist's report was central to a proper analysis under the second prong of the IFA test, but the RPD did not mention it or specifically address Mr. Attama's psychological state as part of that analysis. As such, Mr. Attama asserts the RPD failed to properly consider whether the proposed IFAs are reasonable in his circumstances, in view of the psychological evidence. Mr. Attama contends the RPD erred in limiting its analysis under the second prong to a consideration of whether he will have access to and the ability to pay for treatment (findings that he submits are in themselves unreasonable), and by extension, the RAD fell into error when it erroneously held that the RPD had also analyzed the report.

[12] Mr. Attama relies on *Olalere v Canada (Citizenship and Immigration)*, 2017 FC 385 [*Olalere*] at paragraphs 58-59, where the Court set aside a decision of the RAD based on a failure to engage with a psychological report that was central to the reasonableness of an IFA. In that case, the Court held that the RAD's failure to address the psychological evidence was contrary to the principles in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) (at paragraph 17). Mr. Attama submits the RAD improperly relied on *Onyeme v Canada (Citizenship and Immigration)*, 2018 FC 1243 (at paragraphs 66-67) [*Onyeme*] to distinguish *Olalere* on the basis that the RPD had acknowledged the psychologist's report and discussed its relevance to the second prong of the IFA test. Mr. Attama argues that the basis for the distinction is not accurate. Unlike the tribunal in *Onyeme*, the RPD did not discuss the relevance of the report to the second prong of this IFA test.

[13] The test for assessing an IFA is well established in the jurisprudence. As noted in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706; (1991), 140 NR 138 (CA) at page 711:

[...] the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in [the IFA] and that, in all the circumstances including circumstances particular to him, conditions in [the IFA] were such that it would not be unreasonable for the appellant to seek refuge there.

[14] This Court has recognized that psychological evidence can be central to the question of whether the IFA is reasonable under the second prong of the IFA test, and cannot be disregarded (*Cartagena v Canada (Citizenship and Immigration)*, 2008 FC 289 at para 11 [*Cartagena*]):

[11] The member noted the fragile mental health of Mr. Cartagena, but maintained his finding of the existence of a viable IFA despite the psychological opinion in evidence. Psychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded: *Singh v. Canada (Minister of Citizenship and Immigration)*, 1995 CanLII 3495 (FC), 97 F.T.R. 139, [1995] F.C.J. No. 1044. The panel failed to thoroughly assess the reasonableness of the locations suggested as viable IFAs in the context of Mr. Cartagena's situation and vulnerable mind-set.

[15] As noted above, I agree with Mr. Attama that the RPD's decision does not properly consider the psychologist's report in analyzing the reasonableness of relocating to the proposed IFAs. I disagree with the respondent's submission that since the RPD fully considered the psychological report in another section of its reasons, Mr. Attama's argument is one of form over substance. Certainly, the RPD did not overlook the psychologist's report, and it considered the report in depth within the context of whether Mr. Attama's mental health challenges constitute a risk that meets the requirements to ground a claim under sections 96 or 97 of the *IRPA*.

However, in my view, the RPD did not properly consider the psychologist's report as part of its analysis of whether the proposed IFA locations are unreasonable in Mr. Attama's circumstances (that is, under the second prong of the IFA test). In that analysis, the RPD acknowledged that the psychological makeup of a claimant is a relevant factor that cannot be disregarded at the second stage, but then addressed only two points: (i) there was no evidence that the treatment Mr. Attama requires would not be available in any of the proposed IFA locations; and (ii) there was no evidence that the treatment would be inaccessible to him. As a result, I disagree with the RAD's finding (at paragraph 11 of the reasons) that the RPD's analysis of the psychological report in a different section rendered it unnecessary for the RPD to "repeat all of that information" when explaining its analysis under the second prong of the IFA test. The two analyses are different, and the RPD failed to consider the psychological evidence in assessing the reasonableness of the proposed IFA locations in light of Mr. Attama's circumstances and vulnerable mind-set: *Cartagena* at para 11.

[16] However, in my view, the RAD's error in respect of this finding does not render the RAD's decision unreasonable. A reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency: *Vavilov* at para 100. In this regard, I agree with the respondent that the RAD did not rely on the RPD's analysis and findings to justify its own determination that Mr. Attama failed to meet his burden of establishing he does not have viable IFAs in Lagos, Port Harcourt, Abuja, or Ibadan. After assessing the RPD's decision, the RAD conducted its own review of the psychological assessment report under the second prong of the IFA test, and addressed whether the psychological assessment report was sufficient to show that

seeking refuge in the proposed IFAs would be unreasonable. Mr. Attama did not raise specific errors with those findings of the RAD, and in my view, he has not established that the RAD's analysis under the second prong of the IFA test is unreasonable.

[17] The RAD stated that it reviewed the psychologist's report, and its reasons indicate that the RAD was alert to the psychologist's statements regarding the deteriorating effect that a return to Nigeria would have on Mr. Attama's mental health and capacity to function. The RAD's reasons note the psychologist's conclusions, including an abatement of Mr. Attama's trauma-related symptoms from an attack by Fulani herdsmen in 2017, a persistence of psychological distress in dealing with the loss of his mother who died in 2004, and the potential return of the trauma-related symptoms and worsening of his current clinical state should he return to Nigeria.

[18] The RAD then explained why it did not accept that the psychologist's report was sufficient to meet the threshold under the second prong of the test. In this regard, the RAD found that the psychological report spoke generally to the impact of removal to Nigeria, but did not address the extent to which and the reasons why Mr. Attama's conditions would worsen upon relocation to the proposed IFAs of Lagos, Port Harcourt, Abuja, or Ibadan. The RAD noted that the events in question occurred many years ago (Mr. Attama's father was killed in 2003, his mother was killed in 2004 and the ambush occurred in 2017), that none of the events occurred in the proposed IFAs, and that Mr. Attama had lived in one of the proposed IFAs for at least ten years after the 2003 and 2004 events. The RAD also noted that the psychologist's report does not discuss the type of treatment Mr. Attama is undergoing in Canada, if any, whether his

treatment is successful, and to what extent and for what reasons his treatment would be different if he relocates to the proposed IFAs.

[19] With respect to Mr. Attama's submissions regarding the accessibility and affordability of mental health treatment in the proposed IFAs, the RAD considered the National Documentation Package (NDP) for Nigeria, and found that while mental health care is difficult to obtain in Nigeria, it is available. The RAD noted that "treatment of mental illness is possible in public hospitals", there are "between 130 and 200 psychiatrists in Nigeria", and there is "no form of mental illness for which treatment is not available in Nigeria". The RAD agreed with the RPD that Mr. Attama had not met his burden to show that the proposed IFA locations would be unreasonable on the basis of access to or the ability to pay for mental health care.

[20] In summary, in the present case the RAD acknowledged the psychological evidence and discussed its relevance to the second prong of the IFA test. The RAD reasonably considered the impact of return and did not limit its analysis to the availability and affordability of mental health treatment in the proposed IFAs. It is within the RAD's discretion and expertise to assess and evaluate the evidence, and it is not the Court's role on judicial review to reweigh and reassess the evidence: *Vavilov* at paras 125-126. It was open to the RAD to find that the psychologist's report was insufficient to establish that it would be unreasonable for Mr. Attama to return to one of the proposed IFAs, and the RAD's reasons are transparent, intelligible, and justified.

IV. **Conclusion**

[21] Mr. Attama has not established that the RAD's decision is unreasonable, and accordingly, this application for judicial review is dismissed.

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

JUDGMENT in IMM-3901-20

THIS COURT'S JUDGMENT is that:

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

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3901-20

STYLE OF CAUSE: LAMBERT FRIDAY ATTAMA v THE MINISTER OF
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