Federal Court  Cour fédérale

Date: 20211015

Docket: IMM-4404-20

Citation: 2021 FC 1081

Ottawa, Ontario, October 15, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JAMES MOSES IDU
ANNIE GBALIPRE IDU
JAMES JAMES IDU
DANIELLA ADAGOLD IDU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada, refusing their application for a Pre-Removal Risk Assessment ("PRRA"). The Officer determined that the Applicants were neither

Convention refugees nor 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 allegedly fear persecution from militia in the Niger Delta of Nigeria. They submit that the Officer's decision was made without regard for the relevant country condition information contained in the Immigration and Refugee Board's (the "IRB") National Documentation Package (the "NDP").

[3] For the reasons that follow, I find the Officer's decision is reasonable. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicants*

[4] Mr. James Moses Idu (the "Principal Applicant"), his wife, Ms. Annie Gbalipre Idu, and their two children James and Daniella Idu are citizens of Nigeria.

[5] The Principal Applicant is a retired commander of the Nigerian Navy. He was enlisted in the Nigerian Navy in1979, was commissioned as an officer in 2001, and served in various capacities throughout his career until his retirement in 2015.

[6] In his role as an officer, the Principal Applicant was involved in the suppression of militant activities in the Niger Delta. In 2005, he was a witness in the prosecution of the leader

of a militant group. From 2005 onwards, the Principal Applicant began receiving threats by telephone, including threats that his family members would be abducted.

[7] On September 15, 2015, militants invaded the Applicants' house, attacked and robbed the Principal Applicant's brother-in-law, and threatened that they would return.

[8] The Applicants arrived in Canada on December 31, 2016 and applied for refugee protection on January 30, 2017.

B. *Previous Decisions*

[9] On May 5, 2017, a member of the Refugee Protection Division (the "RPD") of the IRB refused the Applicants' refugee claim on the basis that there exists a reasonable and viable internal flight alternative ("IFA") for the Applicants in the city of Lagos. The RPD concluded that, should the Applicants return to Nigeria and reside in Lagos, the circumstances will be different from those that existed when the Applicants received threats because the Principal Applicant has now retired from the military and will no longer reside at a military base.

[10] The Applicants appealed the RPD's decision to the Refugee Appeal Division (the "RAD"). In support of their Appeal, the Applicants submitted fifteen articles about conditions in Nigeria, which they stated were not available at the time their RPD claim was rejected.

[11] On January 19, 2018, the RAD found the new evidence inadmissible and dismissed the appeal because of the existence of an IFA. The RAD concluded that it would be safe and reasonable for the Applicants to relocate to Lagos, a city of over 13 million people.

[12] The Federal Court dismissed the Applicants' application for leave and judicial review of the RAD's decision.

C. *Decision Under Review*

[13] The Applicants subsequently submitted a PRRA application, which was refused by the Officer in a decision dated June 18, 2020. In refusing the PRRA application, the Officer noted:

> I have read and considered the principal applicant's narrative regarding their perceived risk and circumstance regarding their departure from Nigeria. I find that their statement of risk in Nigeria is essentially the same as what was presented to the RPD, RAD and FCA. In the context of this PRRA application, I find that the applicants do not address the findings of a viable IFA.

[14] The Officer stated that the Applicants had not submitted any supporting documentary evidence related to Nigeria. The Officer reviewed publicly available documents concerning conditions in Nigeria, and cited information from the 2019 United States Department of State Country Report on Human Rights Practices ("US DOS Report").

[15] The Officer found that the Applicants had provided little evidence to demonstrate a sufficient change in either their personal circumstances or country conditions that would displace

the RPD's finding that there exists a viable IFA, nor did the Applicants address the finding of a viable IFA in Lagos.

III. **Issues and Standard of Review**

[16] This application for judicial review raises the following issues:

A. *Whether the Officer appropriately considered country condition information.*

B. *Whether the Applicants met their burden to link general country conditions to personalized risk.*

[17] The applicable standard of review for the Officer's decision is reasonableness (*Pascal v Canada (Citizenship and Immigration),* 2020 FC 752 at para 6; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")).

[18] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[19] For a decision to be unreasonable, an applicant bears the onus of establishing that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

IV. **Analysis**

A. *Consideration of Country Conditions*

[20] The Applicants acknowledge that no new evidence was filed in their PRRA application. However, they submit that the Officer failed to take into account the most recent country condition information available in the NDP.

[21] Subsection 113(a) of the *IRPA* limits the evidence that may be presented to a PRRA officer:

Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit:
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection; […]	(a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

[22] In *Singh v Canada (Citizenship and Immigration)*, 2014 FC 11 at paragraph 24, this Court noted that when considering evidence in a PRRA, an officer must take into account whether the application contains information that is "significant or significantly different from the information previously provided" (citing *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at paras 22–23, *Elezi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 240 at para 29, and *Doumbouya v Canada (Citizenship and Immigration)*, 2007 FC 1187 at para 38).

[23] The Applicants argue that the Officer erred by failing to compare country condition information in the NDP for Nigeria at the time of the RPD and RAD decisions, dated November 20, 2016 (the "2016 NDP") with the NDP available at the time of the PRRA decision, dated April 9, 2020 (the "2020 NDP").

[24] The Applicants submit that the Officer did not use the 2016 NDP as the starting point of their analysis, but rather relied on the country conditions that were before this Court in 2018. This argument is based on the Officer's statement:

> I note that the country documentation showed the conditions to be mainly the same as the conditions when the FCA rendered its decision, without substantive changes.

[25] The Applicants submit that the Officer erroneously referred to the Federal Court as the "FCA", and that the Officer relied on country condition information at the time that this Court dismissed the Applicants' leave application in 2018 as the starting point for their comparative analysis, instead of the information that was originally before the RPD.

[26] The Respondent submits, and I agree, that the Officer's reference to the FCA is a typographical mistake, and that mere terminology does not constitute a reviewable error (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at paras 29-30). This is supported by the Officer's statement later in the decision:

> I find that the applicants have provided little evidence to suggest that there have been sufficient changes, in either the country conditions or their personal circumstances, since the RPD made the finding that there was a viable IFA in Lagos [emphasis added].

[27] The Applicants assert that the 2020 NDP has considerably more information about Niger Delta militants than the 2016 NDP. In particular, the Applicants argue that the Officer's analysis failed to take note of the increased militancy in the Niger Delta from 2016 to 2020, as reflected in the 2020 NDP.

[28] According to the Applicants, as long as country condition information shows a change in circumstances, which justifies a different decision from that made by the RPD and the RAD, the Officer should come to a different decision whether or not the Applicants submitted the country condition information. To support this, the Applicants cite *Rizk Hassaballa v Canada (Citizenship and Immigration)*, 2007 FC 489 at paragraph 33:

> [33] First of all, it is important to emphasize that the PRRA officer has not only the right but the duty to examine the most recent sources of information in conducting the risk assessment; the PRRA officer cannot be limited to the material filed by the applicant.

[29] The Applicants further submit that the Officer's considerations were limited to the US DOS Report and that the Officer failed to consider the 2020 NDP, to the Applicants' detriment.

[30] The Applicants rely on *Ding v Canada (Citizenship and Immigration)*, 2014 FC 820 ("*Ding*") and *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 ("*Saifee*") to underscore the importance of considering the NDP. In *Ding*, this Court noted that "[t]he whole purpose of a National Documentation Package is to ensure that everyone involved has access to the relevant country condition information" (at para 12). In *Saifee*, this Court wrote:

> [I]f it can be showed that the officer made a decision without knowledge of country conditions, this in itself could constitute a valid reason to overturn the decision in judicial review. It would indeed be unconscionable if Canadian visa officers were making a refugee claim determination without any reference to or knowledge of country conditions (at para 30).

[31] I note, however, that this Court in *Saifee* also stated that even if the tribunal record shows no reference to country condition documentation, "it may be assumed that the officer was either knowledgeable of these country conditions or could easily access available country conditions documentation in order to carry out his duties properly" (at para 30).

[32] Accordingly, this Court may presume that officers have acquired general knowledge of country conditions in the course of their work (*Jaouadi v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1549 at para 21; *Saifee* at para 30), and that they have relied on this knowledge and all information before them, absent evidence to the contrary *(Nation-*

Eaton v Canada (Citizenship & Immigration), 2008 FC 294 at para 19; *Hungbeke v Canada (Citizenship and Immigration),* 2020 FC 955 at paras 39–41; *Saifee* at para 30).

[33] This Court has also recognized that an officer is obliged to refer to the most up to date country condition information when assessing risk, regardless of whether an applicant submitted this evidence (*Woldemichael v Canada (Citizenship and Immigration),* 2020 FC 655 at para 30 ("*Woldemichael*"); *Jama v Canada (Citizenship and Immigration),* 2014 FC 668 at para 18).

[34] Nevertheless, as explained in *Wage v Canada (Citizenship & Immigration),* 2009 FC 1109, if an officer did not explicitly cite the entire NDP it cannot be inferred that they did not consider evidence contained in the NDP:

> Simply because this evidence was not mentioned outright by the Officer in her reasons does not mean that it was not considered. An officer is allowed to reject evidence if it does not establish that the country conditions as of the date of the PRRA application are materially different from those that existed at the time of the RPD assessment (at para 51).

[35] The Respondent contends that it was reasonable for the Officer to rely on the record, their general knowledge of country conditions, as well as the US DOS Report to reach the conclusion that there was no change in country conditions since the RPD decision. In doing so, the Respondent argues, and I agree, that the Officer properly compared the country conditions that were before the RPD with the most recent country condition information.

[36] The 56-page US DOS Report relied on by the Officer incorporated data from a variety of reputable sources; it is comprehensive, reliable, publically available and recent, given that it was released in March 2020, only three months prior to the PRRA decision.

[37] In *Nejad v Canada (Minister of Citizenship and Immigration*), 2006 FC 1444 ("*Nejad*") and *Ricketts v Canada (Citizenship and Immigration)*, 2020 FC 272 ("*Ricketts*"), this Court held that it is reasonable for a PRRA officer to rely on US DOS reports. In both *Nejad* and *Ricketts*, the officers made their decisions based on only a US DOS Report and the PRRA application and submissions (*Nejad* at para 22; *Ricketts* at paras 13, 17, and 21). In *Nejad*, and later affirmed in *Ricketts*, this Court notes that US DOS Reports are credible and commonly cited by both applicants and officers in PRRA submissions and determinations (*Nejad* at para 23 and *Ricketts* at para 14).

[38] I find that the Officer made a reasonable determination that there had not been a significant change in the country conditions of Nigeria since the RPD and RAD decisions.

B. *Personalized Risk*

[39] The Applicants submit that because of a rise in the operational strength of the feared agents of persecution and their ability to track down the Applicants in Lagos, the IFA in Lagos is no longer viable.

[40] In *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 ("*Raza*"), at paragraph 13, the Federal Court of Appeal affirmed that subsection 113(a) of the *IRPA* requires an

applicant to submit new factual evidence in their PRRA application if they wish to demonstrate that a personalized risk has changed:

> paragraph 113(a) [is] based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD

[41] I note that the Applicants provided no documentary proof of a new risk, nor was this argument and any supporting evidence provided for in their PRRA submissions before the Officer. I find that the Officer accurately noted that the Principal Applicant's narrative was essentially the same as the one that was presented to the RPD, the RAD and in the previous application before this Court, and that the Applicants failed to address previous decision makers' findings that there is a viable IFA.

[42] The onus is on the Applicants to establish a link between the general country condition documents and their personal situation. In *Woldemichael*, my colleague Justice Fuhrer explained that at a minimum, it is reasonable to require that the applicant point the PRRA officer in the right direction with respect to updated country information and explain how it applies to their situation. Justice Fuhrer notes:

> While this 'linking' need not be a fulsome analysis of the documentary evidence, it is insufficient simply to point to general country condition documents available in the NDP and allege risk, unless it is clear on the document's face that [the Applicant] would fit the risk profile.

[43] This Court in *Singh v Canada (Citizenship and Immigration)*, 2014 FC 867 notes: "[T]he burden is always on an applicant to identify a new risk and to present evidence supporting such a risk" (at para 26, citing *Bayavuge v Canada (Citizenship and Immigration)*, 2007 FC 65 at para 43, and *Mandida v Canada (Citizenship and Immigration)*, 2010 FC 491 at para 30).

[44] I am not convinced that the Applicants have met their burden to demonstrate a link between new country conditions and the risk they would face in the proposed IFA.

V. **Conclusion**

[45] In my view, the Officer's decision is reasonable. The Officer appropriately considered up-to-date information on the country conditions that was contained in the US DOS Report and the Applicants' PRRA submissions. The Applicants failed to meet their burden to show that there has been a change in circumstances in Nigeria, and have not provided evidence that demonstrates a link between general country conditions and their personalized risk. I therefore dismiss this application for judicial review.

[46] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-4404-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions are certified.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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