Federal Court  Cour fédérale

Date: 20211021

Docket: IMM-4570-20

Citation: 2021 FC 1121

Ottawa, Ontario, October 21, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OKECHUKU UGWU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Okechuku Ugwu, seeks judicial review of the decision of an immigration officer of Immigration, Refugees and Citizenship Canada (the "Officer"), refusing his application for a Pre-Removal Risk Assessment ("PRRA").

[2] The Applicant submits that he would be in danger of persecution by the militant group Boko Haram if he were to return to Nigeria because he is a Christian.

[3] For the reasons that follow, I find the Officer's decision is reasonable. The Officer found that the Applicant had not submitted new evidence to support a personalized risk of return to Nigeria, and that the Applicant had not rebutted the RPD's finding that there exists an internal flight alternative ("IFA") for the Applicant in Nigeria. Accordingly, I dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 39-year-old citizen of Nigeria. In April 2017, the Applicant came to Canada and made a refugee claim based on the fear of being killed by members of the militant group Boko Haram because he is a Christian.

[5] As part of his refugee claim, the Applicant stated that several members of his family were killed by the militant group Boko Haram between 2013 and 2015, including his sister and fiancé.

B. *Previous Immigration Decisions*

[6] On May 16, 2018, a member of the Refugee Protection Division (the "RPD") of the Immigration and Refugee Board refused the Applicant's refugee claim. The RPD expressed

concerns with respect to the Applicant's allegations that he was persecuted by Boko Haram. In particular, the RPD took issue with the credibility of the following:

a) The Applicant's failure to explain why he had moved away from his family home in a Christian area of Nigeria to open a Christian music store in a predominantly Muslim area;

b) The Applicant's characterization of his experience of an attack in Baga in 2015 in which the Applicant describes being targeted by what he believed to be Boko Haram while he played Christian music loudly from his shop;

c) The Applicant's sister's death and the lack of corroborative evidence of the events leading up to the alleged death of his sister; and

d) The death certificates for the Applicant's sister and fiancé that were provided by the Applicant.

[7] The RPD also held that the Applicant has a viable IFA in Nsukka, Enugu state where the Applicant was born and lived most of his life. The RPD found that the evidence demonstrated that Boko Haram's operations are curtailed to the North-East of Nigeria and that if the Applicant relocated to his ancestral home, he would be far from the contested territory and the conflict. The RPD determined that there was no reliable evidence that Boko Haram would continue to seek out or target the Applicant. The RPD also found that it is reasonable to expect that the Applicant could relocate to a Christian-dominated area and similarly be able to continue his small business.

[8] The Applicant appealed the RPD's decision to the Refugee Appeal Decision ("RAD"). On July 27, 2018, the RAD dismissed the appeal for lack of perfection.

C. *Decision Under Review*

[9] On September 17, 2019, the Applicant applied for a PRRA on the basis that he would be in danger in Nigeria because he is a Christian, and if returned to Nigeria he would face risks from the militant group Boko Haram because of his religion.

[10] The evidence submitted with the PRRA application included: an unsigned written statement from the Applicant, a psycho-social assessment from Mount Carmel Clinic dated July 10, 2017, a copy of the Applicant's Catholic Diocese of Borno State ID, and various articles on country conditions in Nigeria.

[11] In a letter dated April 23, 2020, the Officer refused the Applicant's PRRA application on the basis that the Applicant provided insufficient evidence to meet his onus of establishing that he would face more than a mere possibility of persecution upon return to Nigeria as described in section 96 of the *IRPA*, nor did the Applicant demonstrate that he is likely to face a danger of torture, risk to life, or a risk of cruel and unusual treatment or punishment pursuant to section 97 of the *IRPA*.

[12] The Officer found that the Applicant had not submitted new evidence of risks associated with his return to Nigeria. The Officer noted that the Applicant's written statement reiterated the same risks and allegations concerning Boko Haram that were presented to the RPD, which the RPD dismissed for not being credible. The Officer further determined that the psycho-social

assessment is not new evidence as it was dated July 10, 2017, yet was not put before the RPD when it decided the Applicant's case on May 16, 2018.

[13] With respect to the country condition articles, the Officer determined that they discuss risks faced by all Nigerians, rather than personal risks faced by the Applicant. The Officer noted that the Applicant failed to provide documentary evidence to demonstrate that the attacks that occurred were a result of discrimination or hate due to the Applicant's Christian beliefs, and found that the discrimination faced by the Applicant does not amount to persecution.

[14] Furthermore, the Officer found that the Applicant did not provide evidence of new risks associated with returning to Nigeria, nor did he rebut the RPD's determination that an IFA exists within Nigeria, in the Applicant's hometown or in a Christian-dominated area.

III. **Issues and Standard of Review**

[15] The sole issue in this case is whether the Officer's decision is reasonable.

[16] The Respondent submits that the applicable standard of review is reasonableness. I agree. It is well established that a PRRA decision is reviewed on the ground of reasonableness (*Lai v Canada (Minister of Citizenship and Immigration)*, 2007 FC 361 (CanLII) at para 55; *Figurado v Canada (Solicitor General)*, 2005 FC 347 (CanLII); *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 10, 16-17).

[17] 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).

[18] 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 must establish 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. *Viable Internal Flight Alternative*

[20] The Officer found that the Applicant failed to rebut the RPD's determination that an IFA exists in Nigeria in the Applicant's hometown of Nsukka, or in a Christian dominated area.

[21] The Applicant submits that the IFA must be a specified geographic location (*Valdez Mendoza v. Canada (Citizenship and Immigration),* 2008 FC 387, at paras 17, citing *Rabbani v.*

Canada (Minister of Citizenship and Immigration), (1997) 125 FTR 141 (TD), at para 16). The Applicant argues that there was no determination by the RPD that he had an IFA in all Christian-dominated towns in Nigeria, only that the IFA existed in Nsukka.

[22] Yet the RPD and the Officer specifically found that the Applicant has a viable IFA in his hometown of Nsukka, where the Applicant was born and lived almost his entire life. The Applicant concedes that the RPD made this determination, but takes issue with the reference to "other Christian dominated areas." In discussing the Applicant's IFA in Nsukka, which is a Christian dominated area, the RPD stated:

> [13] On the evidence before it, this panel finds that it is objectively reasonable in all the circumstances, including those particular for the claimant, for him to seek refugee in Nsukka, Enugu, for the following reasons. The claimant is from Enugu state, born and lied almost his entire life in Nsukka. He was able to [successfully] relocate to a Muslim area and open a Christian shop in a primarily Muslim area and according to him prosper, I would reasonably expect that he could relocate to a Christian dominant [area] and similarly [be] able to continue his small business.

[23] The RPD's finding that the Applicant could relocate to "a Christian dominated area" in addition to the specifically proposed IFA does not undermine the IFA finding itself.

[24] I agree with the Respondent's submission that the Applicant's arguments on this issue encourages this Court to place form ahead of substance rather than looking to the decision as a whole to determine its reasonableness (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833, at para 30).

[25] In *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) ("*Ranganathan*"), the Federal Court of Appeal affirms that there is a high threshold for refugee claimants to establish that it would be unreasonable for them to seek and obtain safety from persecution elsewhere in the country. Specifically, at paragraph 15, the Federal Court of Appeal notes that:

> [the unreasonableness test] requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.

[26] I find that the Officer reasonably determined that the Applicant failed to rebut the RPD's finding of an IFA, and that the Applicant did not provide adequate evidence to meet the high threshold established by the Federal Court of Appeal in *Ranganathan* to show why a relocation to the IFA would not be possible.

B. *Consideration of the Evidence*

[27] In order to rebut a decision from the RPD with respect to the issue of protection under section 96 or 97 of the *IRPA*, new evidence must demonstrate "that the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision" (*Escalona Perez v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1379, ("*Perez*"), at para 5).

[28] In support of his PRRA application, the Applicant provided a psycho-social assessment from Mount Carmel Clinic, a written statement, and several articles that speak to the country conditions in Nigeria.

[29] In the reasons for the decision, the Officer states: “the applicant has not submitted ‘new’ evidence and risks associated to his return to Nigeria.” The Applicant contends that the Officer’s statement suggests that no new evidence was before them when they considered the PRRA application.

[30] The Applicant further submits that the new evidence provided demonstrates a different aspect of the old risk, and that the additional risk the Applicant faces in Nsukka was not appropriately considered by the Officer. Specifically, the Applicant asserts that more weight should have been given to the Government of Canada Travel Advisory submitted as part of the PRRA application, which refers to terrorism, crime, inter-communal clashes, armed attacks and kidnappings. The Applicant submits that inter-communal clashes are a component of the type of violence he fears and include violence between Christians and non-Christians.

[31] By looking at the page in which the wording is contained within the RPD’s decision, as well as the Officer’s decision as a whole, it is clear that the Officer was not literally saying that the Applicant did not submit any evidence, in addition to that which was provided to the RPD. The Officer addressed the evidence submitted by the Applicant to come to the reasonable conclusion that the evidence provided and the Applicant’s new allegation of the risk he would

face as a Christian in the identified IFA location did not relate to a "new, different or additional risk" (*Perez,* at para 5) that could not have been contemplated at the time of the RPD decision.

[32] In fact, the allegation of risk was contemplated at-length by the RPD in their decision. In their reasons for why the Applicant's evidence does not raise a risk in the proposed IFA, the RPD wrote that Boko Haram's operations are curtailed in the North-East of Nigeria, far from the IFA in Nsukka, and that there is no reliable evidence to suggest that Boko Haram would continue to seek out or target the Applicant.

[33] The psycho-social assessment submitted by the Applicant was dated July 10, 2017. The Applicant has not explained why the assessment was not made available during the RPD hearing. I find that the Officer reasonably determined that because the RPD decided on the Applicant's case on May 16, 2018, the psycho-social assessment is not "new" evidence as it pre-dated the hearing and was readily available at the time of the RPD hearing.

[34] With respect to the Applicant's written statement, I find that the Officer reasonably held that the Applicant simply reiterated the risks that were already dismissed by the RPD – particularly with regards to the credibility of the Applicant's statement concerning the attacks from Boko Haram and the evidence of the deaths of the Applicant's sister and fiancé. This finding is reasonable and consistent with the jurisprudence (*Perez*, at para 5).

[35] The articles provided by the Applicant that speak to the country conditions in Nigeria show some examples of threats and attacks against Christians in predominantly Muslim areas,

which are controlled by either Boko Haram or Fulani Herdsmen. The documentation also describes terrorist attacks against the general public, demonstrations between Muslims and Christians that resulted in violent confrontations, and acts of violence and other crimes against Christian preachers in the predominantly Muslim north.

[36] The Applicant further contends that the Officer erred in determining that the RPD found that he was not credible. The Applicant submits that the credibility findings of the RPD were not explicit, and cites *Zaytoun v Canada (Citizenship and Immigration)* 2014 FC 939 ("*Zaytoun*") to assert that a statement of doubt about the credibility of an application does not amount to an outright rejection of the Applicant's credibility. In *Zaytoun*, this Court affirms that the RPD "is required to make negative credibility findings in clear and unmistakeable terms" (at para 7, citing *Hilo v. Canada (Minister of Employment and Immigration* (1991), 130 N.R. 236, 15 Imm. L.R. (2d) 199 (F.C.A.)).

[37] I agree with the Respondent's argument that, given the RPD's expertise and the fact that it is best placed to evaluate an applicant's testimony, deference is owed to the RPD's credibility findings. This was affirmed by this Court in *Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at paragraph 15:

> This Court should not lightly interfere with credibility findings made by the RAD and the RPD, which fall into the heartland of their jurisdiction (*Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 18).

C. *Conflation of tests under sections 96 and 97 of the IRPA*

[38] The Applicant submits that the Officer has conflated the tests under sections 96 and 97 of the *IRPA.* The Applicant contends that there is a requirement to demonstrate personalized risk for a claim made under section 97 of the *IRPA*, but not under section 96 of the *IRPA*. The Applicant affirms that he is claiming a risk under section 96 of the *IRPA* based on a well-founded fear of persecution in the identified IFA because of his Christianity, and submits that the Officer failed to assess whether the general evidence about the risk faced by Christians in the IFA location applies to the Applicant.

[39] Citing *Fodor v. Canada (Citizenship and Immigration)*, 2020 FC 218 ("*Fodor*"), the Applicant submits that evidence of risk faced by the similarly situated is sufficient to determine that there is a risk under section 96 of the *IRPA.* In comparing sections 96 and 97 of the *IRPA*, Justice McHaffie writes at paragraphs 19 and 20 of *Fodor*:

> [19] The Federal Court of Appeal has long held that a claimant to Convention refugee status (a) need not show that they have themselves been persecuted in the past; (b) may show a fear of persecution through evidence of the treatment afforded similarly situated persons in the country of origin; and (c) need not show that they are more at risk than others in their country or other members of their group: *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250, 1990 CanLII 7978 (FCA) at paras 17-19.
>
> […]
>
> [20] Section 97, on the other hand speaks to the claimant being personally subject to risk of life or cruel and unusual treatment or punishment, and expressly excepts risks faced generally by other individuals in the country: IRPA, s 97(1)(b)(ii). An important distinction between the provisions is thus that while section 97

> requires a risk that is individual to the claimant, in the sense that it is not faced generally by others in the country, section 96 protection may be based on the existence of a more generalized risk based on a Convention ground that is applicable to the claimant: *Salibian* at paras 18-19; *Somasundaram* at para 24; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808 at paras 21-22.

[40] I find that the Officer adequately considered whether the evidence showed that the Applicant himself has a well-founded fear of persecution, and whether the Applicant's generalized evidence was sufficiently personal to him. Paragraph 38 of *Fodor* supports the reasonableness of the Officer's analysis:

> [38] A claimant under section 96 has a burden to demonstrate that they, themselves, have a well-founded fear of persecution. To the extent that the claimant relies on generalized evidence of those similarly situated**, the claimant must show that that evidence is relevant to them, i.e., that they are sufficiently similarly situated to those described in the evidence.** In this way […] the "generalized" evidence becomes "personal" to the claimant by showing that the evidence is relevant to them […] I therefore agree with the Minister that mere use of the term "personally" (or "personalized" or "individualized") does not alone indicate that the tests under section 96 and 97 have been conflated (citations omitted, emphasis added).

[41] The Applicant submits that the Officer's finding that the articles about the attacks on Christians in the Enugu state are "general in nature and discuss risks all Nigerians face" is a mischaracterization of the articles, which are specific to the Enugu state and Christians like himself. In particular, the Applicant points to the most recent National Documentation Package ("NDP") for Nigeria at the time of the PRRA decision, published on April 9, 2020. The NDP includes a 2019 report from the United States Department of State, which the Applicant argues

demonstrates that there is a great deal of violence between Christians and Muslims throughout Nigeria, and in Enugu in particular. Specifically, the report states:

> In August [2018] 200 Catholic priests marched through the streets of Enugu city, protesting insecurity and what they characterized as "Fulani attacks on Christians."

[42] The Respondent argues that the Applicant's submissions are a mischaracterization of both the passage and the report from which it is taken. The Respondent contends that the passage shows that in 2018, a group of priests protested general insecurity and some unidentified number of "Fulani attacks on Christians" during an unspecified timeframe and in an unspecified location. The Officer's decision acknowledges country condition information showing that priests in Nigeria have been kidnapped and murdered, but notes that the Applicant is not a priest, and "has not indicated he was more than a Christian worshipper."

[43] While the Applicant asserts that he did claim to be more than just a Christian worshipper, he does not address what he identified himself as, nor does he point to the evidence to support this assertion. If the Applicant meant that he is more than just a Christian worshipper just because he sold Christian music at the store that he ran, the country condition information provided does not show that someone who sold Christian music at their store would be considered anything more than a Christian worshipper.

[44] Based on the evidence before them, I find that the Officer made a reasonable finding that the Applicant has not shown that he is more than a Christian worshipper.

V. **Conclusion**

[45] I find that the Officer's decision is reasonable and dismiss this application for judicial review.

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

JUDGMENT in IMM-4570-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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