Federal Court  Cour fédérale

Date: 20211123

Docket: IMM-994-21

Citation: 2021 FC 1286

Toronto, Ontario, November 23, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

MICHAEL OLAJIDE ZOMACHI
EUNICE MFON ZOMACHI
DELIGHT INEM ZOMACHI
JEMIMAH AYOMIDE ZOMACHI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are seeking judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of the decision of the Refugee Protection Division (RPD or panel), dated January 27, 2021, which rejected their refugee claims, based on a fear of female genital mutilation (FGM) on their two minor daughters, at the hands of two uncles as well as the broader community of Sagamu, should they return to Nigeria.

I. Decision under Review

[2] The RPD, in a detailed decision addressing the testimony of the Applicants, along with their Basis of Claim (BOC) narrative, their documentary evidence as well as the objective country condition evidence, found the determinative issue to be credibility, based on four key findings.

[3] First, the RPD found there was a lack of objective evidence of the risk of persecution claimed in the area in which the Applicants feared that the FGM would take place. This finding was based on the general country condition evidence contained in the National Documentation Package (NDP) for Nigeria, as well as Exhibit D-16 (D-16), an article authored by four academics tendered by the Applicants regarding FGM in the Sagamu area of Ogun State. Based on the totality of the evidence presented, including various findings of the academics in D-16, the panel found that it is parents who customarily make the decision as to whether their daughters will undergo FGM, and they do not customarily face any consequences for not doing so in the Applicants' native area of Nigeria.

[4] Second, the RPD found the other supporting evidence to be problematic, including an Affidavit from Mr. Zomachi's (the Principal Applicant) brother, which mentioned that elders would meet at his brother's house for a family meeting, but failed to mention FGM. The panel also gave no weight to a letter from the Applicants' landlord in Abuja (where they had relocated from their native Sagamu), stating that people had come looking for the family and damaged the entrance while attempting to forcefully gain access. Furthermore, the panel found that

psychological documentation suggesting that the Applicants had PTSD had no probative value with regard to the allegations.

[5] Third, the panel noted several instances of inconsistent testimony by the Applicants regarding threats against family members, from which it drew adverse credibility inferences. It noted omissions and inconsistencies between the testimony provided at the hearing, and the facts reported in the BOC narrative, particularly relating to threats received by visits and phone calls in 2014, and then once again in 2016. Further, it noted contradictory statements regarding threats against the Principle Applicant's mother.

[6] Fourth, the panel noted that the Applicants chose to remain in Nigeria for some time after the alleged 2014 and 2016 death threats, then obtaining their United States (US) visas in October 2017, and again remaining in the country several weeks until leaving for the US. Moreover, the panel noted that the Applicants had failed to claim asylum in the US during their six-month stay there and rejected their explanations for why, which purportedly stemmed from questionable advice provided to them by unreliable sources of information. The panel concluded the Applicants' failure to claim asylum in the US demonstrated a lack of subjective fear.

[7] Ultimately, in light of the above, the panel concluded that there was no credible basis or trustworthy evidence on which it could have made a favourable decision, finding that all of the Applicants' allegations were contradicted by objective documentary evidence and the academic article they provided, and that no credible explanation had been provided for the contradictions.

II. Analysis

[8] The parties agree that the appropriate standard of review is reasonableness, which was outlined in detail by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] The Applicants base their challenge to the RPD's findings entirely on what they qualify as a selective and misconstrued reading of D-16, a document presented by the Applicants entitled "Circumcisions and Related Practices about Child Birth in Sagamu, Ogun State, Nigeria" co-authored by four academics. They say that the flaw was fatal because the RPD itself said that D-16 stated that FGM was not practiced in Sagamu, and that contradiction with the Applicants' claim "goes to the heart of this claim", particularly given the "no credible basis" finding and its implications.

[10] I find two fundamental flaws in the Applicants' argument. First, while D-16 states that some communities in Sagamu do practice male circumcision, (*e.g.*: s 5.2), and notes inconsistent practices in the region regarding male circumcision, it notes at the outset in its "Findings and Discussion" (s 5.1) that:

> [F]emale children are not circumcised at all in this community irrespective of their religious affiliations. A participant among the women said:
>
> > Here in Sagamu, we do practice male circumcision… and we do not practice female circumcision at all.

[11] Other findings of the authors echo this statement (*e.g.*: s 5.3). Admittedly, D-16 points to some instances of female circumcision where "men take major decisions affecting the household including the women", including in "non-practicing communities". However, as I noted above, the panel found that parents are central to these decisions. Accordingly, when read as a whole, the RPD's assessment of D-16 regarding FGM in Sagamu was transparent, justified, and intelligible given all the evidence, and as a result, reasonable.

[12] Furthermore, I cannot accept the Applicants' broader submission that based on the analysis of D-16 alone, the RPD misconstrued the evidence, on the basis of cases such as *Sarissky v Canada (Citizenship and Immigration),* 2013 FC 186, *Hernandez v Canada (Citizenship and Immigration),* 2020 FC 1060, and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53, 1998 CanLII 8667 (FC). Again, D-16 was far from the only country condition evidence which the RPD considered and addressed, vis-à-vis the FGM situation that Nigerians face. Rather, the panel cited a multitude of sources from the NDP in making its findings about the objective evidence being inconsistent with the risks raised by the Applicants.

[13] My conclusion on this first flaw, with the Applicants' narrow focus on one document in a large body of evidence, flows directly into the second flaw, which is that even if I were to accept their position that the RPD unreasonably erred in its interpretation of D-16, they raise no objection to the various other credibility findings made elsewhere in the key findings as outlined in the summary of the RPD's Decision above. The credibility findings include inconsistencies

and contradictions between: (i) testimony of the adult applicants, and information contained in the BOC; and (ii) subjective fear.

[14] In short, even had I accepted that there was a weakness in the single D-16 finding challenged by the Applicants, this would not render the entire decision unreasonable given various other credibility findings which went unchallenged (see, for instance, *Obinna v Canada (Citizenship and Immigration)*, 2018 FC 1152 at para 34). Judicial reviews, after all, are not treasure hunts for errors (*Vavilov* at para 102).

III. Conclusion

[15] When viewed in its totality I find the RPD's Decision to have been reasonable, and will accordingly dismiss the application, for which neither party raised a question for certification.

JUDGMENT in IMM-994-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to reflect the correct Respondent, the Minister of Citizenship and Immigration.

2. The application for judicial review is dismissed.

3. The parties raised no questions for certification and I agree that none arise.

4. No costs will be issued.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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