Federal Court  Cour fédérale

Date: 20211220

Docket: IMM-713-20

Citation: 2021 FC 1448

Toronto, Ontario, December 20, 2021

PRESENT: Justice Andrew D. Little

BETWEEN:

CHIYEM STEPHEN IGWE
AGATHA NDUDI IGWE
JEROME UCHECHUKWU IGWE CHIYEM
CHARLES CHIKAMSO IGWE CHIYEM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The question on this application for judicial review is whether the Refugee Appeal Division (the "RAD") reasonably concluded that the applicants have an internal flight alternative ("IFA") within Nigeria in the city of Port Harcourt.

[2] The applicants are a family and are all citizens of Nigeria. They fled Nigeria in September 2018 after a group of Fulani herdsmen set fire to their family farm and later attacked their home in Lagos.

[3] The applicants claimed to be Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*"IRPA"*).

[4] The Refugee Protection Division ("RPD") and the Refugee Appeal Division ("RAD") of the Immigration and Refugee Board of Canada both dismissed the applicants' claims. Both concluded that the family has an IFA in Port Harcourt and therefore did not qualify for protection under the *IRPA*.

[5] The RAD's decision was dated January 9, 2020, and communicated to the applicants by letter dated January 15, 2020 (the "Decision").

[6] On this application for judicial review, the applicants ask this Court to set aside the decision of the RAD dated January 9, 2020.

[7] For the following reasons, the application is dismissed. In my opinion, there are no grounds on which this Court may intervene to disturb the RAD's decision.

I. Facts and Events Leading to this Application

[8] The applicants are Chiyem Stephen Igwe, his spouse Agatha Ndudi Igwe, and their two sons, Jerome and Charles. They are from Akumazi in Delta State, Nigeria. The adult applicants

also have a daughter, Isioma Hilary, who was a baby and did not have a passport when the applicants fled to Canada. She remained in Nigeria in the care of a relative.

[9] Mr Igwe holds an undergraduate degree in economics from the University of Lagos. He was employed for many years at a shipping company. In October 2017, he changed careers and began farming on his ancestral farmlands in Delta State.

[10] In early 2018, Mr Igwe came into conflict with a group known as the Fulani herdsmen. Several herdsmen led their cattle to graze on Mr Igwe's land and declined to leave. Mr Igwe contacted local police and filed a report about the trespass, but the police refused to assist. Mr Igwe and several other farmers resolved to confront the herdsmen on their own. In Mr Igwe's words, they formed a "vigilante" group.

[11] On February 2, 2018, Mr Igwe led the vigilante group and apprehended four herdsmen on a nearby farm. They took the herdsmen into custody and presented them at the local police station. Within a few hours, the police released the herdsmen, despite the citizen's arrests and the applicant's previously filed report.

[12] At 10 p.m. on the same night, Mr Igwe received a threatening phone call. He recognized the caller's voice as belonging to the leader of the local herdsmen, Musa Danladi. The caller threatened to kill Mr Igwe and the other group members in retaliation for the citizen's arrests. The caller claimed the herdsmen would find the group members even if they fled from Akumazi. Mr Igwe reported the phone call to police.

[13] Early on February 4, 2018, someone set fire to the applicants' family compound. Mr Igwe awoke at 3:00 a.m. to a neighbour shouting "fire". When Mr Igwe ran outside, he heard gunshots and shouting in the language spoken by the Fulani herdsmen. He glimpsed the arsonists fleeing on motorbike, but did not get a good look at them. Mr Igwe reported the event to police the next morning. The police agreed to look into the matter.

[14] After the fire, Mr Igwe feared for his safety and decided not to return to the farm. He joined the rest of his family in Lagos. He learned new information confirming that the fire had been set by the same herdsmen he and the other farmers had arrested. Mr Igwe tried to lodge a complaint with the Lagos police about the fire, but they referred him back to the local police in Akumazi.

[15] On August 20, 2018, three men attacked the applicants' home in Lagos and set fire to their electric generator. In his Basis of Claim form, the applicant claimed he caught sight of one of the attackers while he was fleeing the home in Lagos, and recognized him to be Musa Danladi. The family fled to a local hotel for safety, where they remained until September 14, 2018, when they left Nigeria for the United States.

[16] On September 18, 2018, the family crossed the border from the United States to Canada irregularly and claimed protection under the *IRPA*.

II. Decisions by the RPD and the RAD

[17] The RPD heard the applicants' claims for *IRPA* protection on May 10, 2019 and rendered a decision with written reasons dated August 13, 2019. The RPD found that generally, the

applicants' claims about having been targeted for reprisals by the Fulani herdsmen were credible, and that they had fled Nigeria because they feared further persecution by the herdsmen. The RPD concluded the applicants had two internal flight alternatives in Nigeria, in Abuja and Port Harcourt.

[18] On appeal, the RAD's Decision confirmed that the determinative issue was whether the applicants had a viable IFA in Nigeria. The RAD, conducting a *de novo* review of the matter, agreed with the RPD that the applicants had an IFA in Port Harcourt. The RAD set out and applied the two-part test for an IFA in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA). It stated the test as follows:

> (1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life for risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
>
> (2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for him to seek refuge there.

[19] With respect to the first prong of the IFA test, the RAD found the RPD erred in concluding that "unknown persons" had attacked the family's home in Lagos. The RAD concluded, on a balance of probabilities, that the herdsmen from Akumazi, led by Musa Danladi, had attacked the family's home in Lagos.

[20] However, the RAD found that this one incident alone was not sufficient to establish that the herdsmen would be motivated and capable of finding the applicants in Port Harcourt. The RAD found that the "vast preponderance" of documentary evidence indicated that conflicts

between Fulani herdsmen and farmers were localized and over land resources. In the articles provided by the applicants, the conflicts and attacks (most of which were merely alleged rather than proven) occurred in rural villages and farming regions, not in large urban cities like Port Harcourt.

[21] The RAD also did not agree with the applicants' position that the Fulani herdsmen's prior activities were indicative of their future motivation to seek out the applicants and kill them. The RAD reasoned that in an "unkind irony", the destruction of the family's farm in Akumazi had caused the applicants to abandon their farmland, meaning the applicants no longer posed a threat to the herdsmen's livelihoods. The RAD found a lack of reliable evidence since the Lagos attack in August 2018 that the herdsmen from Akumazi continued to pursue the applicants or inquired about their whereabouts.

[22] The RAD rejected the applicants' submission that the herdsmen would be capable of tracking them to Port Harcourt. It found that generally, Fulani herdsmen lack the means to track people across the country. The RAD noted that the herdsmen tend to their cattle in rural regions. They have a "nomadic way of life" and often travel by foot, "making their ability to travel and remain in urban centres to track people down… difficult and contrary to their way of life as herdsmen". The RAD acknowledged that the herdsmen from Akumazi had been able to track the family to Lagos, but the same would not apply if the applicants flew directly from Canada to the international airport at Port Harcourt.

[23] For these reasons, the RAD found that the applicants had failed to establish that the Fulani herdsmen would find them in Port Harcourt, a city of some 2.3 million inhabitants. In addition, it found that it was unlikely that the Fulani herdsmen would have any future interest or

motivation to harm them, given that the applicants would not interfere with their herding activities from Port Harcourt and there is no evidence that the Fulani herdsmen were continuing to seek them out.

[24] The RAD also considered the circumstances of similarly situated persons targeted by the Fulani herdsmen. In the RAD's view, it was "highly speculative" that Fulani herdsmen had connections with high-level authorities, such as the Nigerian police, who could provide them with information about the applicants' whereabouts.

[25] Overall on the first prong of the IFA test, the RAD concluded that violence associated with the Fulani herdsmen largely occurred in rural farm areas and over land for grazing for their livestock. It was unlikely, looking forward, that the Fulani herdsmen would have the motivation or interest in the applicants in a large urban city like Port Harcourt or have the ability to follow or trace them there. The applicants therefore had not discharged their burden to show that they faced a serious possibility of persecution or a risk to life in the proposed IFA.

[26] On the second prong of the IFA test, the RAD concluded that it would not be unreasonable or unduly harsh for the applicants to seek refuge in Port Harcourt. The RAD noted the RPD's finding that the adults were a relatively sophisticated married couple, with English language proficiency, employment skills and work experience congruent with living in a city. They would be capable of finding accommodations and employment in Port Harcourt. The RAD concurred with the RPD's finding that Mr Igwe did not have to return to farming to make an income, and that his experience as a driver in Lagos was transferable to other large cities such as Port Harcourt. The RAD rejected the applicants' submission that the Fulani herdsmen could find them in Port Harcourt by tracking them on social media, and found there was insufficient

evidence to support the applicants' position that they suffer discrimination in Port Harcourt as people who are not from the region.

III. Issue Raised by the Applicants

[27] The applicants raised one principal issue on this application: was the RAD's finding of an IFA in Port Harcourt unreasonable, applying the standard of review in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65?

IV. Standard of Review

[28] As both parties recognized in their submissions, the standard of review of the RAD's decision is reasonableness, as described in *Vavilov*. The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[29] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15.

[30] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 85 and 99. The reviewing court must read the reasons holistically and

contextually, and in conjunction with the record that was before the decision-maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at para 31.

[31] The Court's review is both robust and disciplined. Not all errors or concerns about a decision will warrant intervention. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[32] The Supreme Court in *Vavilov*, at paragraph 101, identified two types of fundamental flaws: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.

[33] On a judicial review application, this Court's role is not to agree or disagree with the RAD's decision. The task of a reviewing court is to determine whether the RAD made one or more of the kinds of errors described in *Vavilov* and if so, whether the RAD's decision should be set aside as unreasonable.

V. Analysis

[34] The applicants made submissions in writing and at the hearing challenging the reasonableness of RAD's decision on an IFA in Port Harcourt, many of which contested the RAD's conclusion on its merits.

[35] The applicants did not challenge the RAD's statement of the legal test for an IFA in *Rasaratnam*. To restate it for convenience, that test requires that the RAD be satisfied, on a balance of probabilities, that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant(s), conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Rasaratnam*, at paras 8-10.

A. *The first prong in* Rasaratnam

[36] The applicants submitted that the RAD failed adequately to consider the personal circumstances of the applicants as well as the interest, motivation and ability of the agents of persecution to be able to locate them in Port Harcourt. The applicants contended that the Fulani herdsmen had already proven themselves highly motivated and able to pursue the applicants to their home in Lagos, creating a risk to them far beyond a generalized risk faced by the Nigerian population. The applicants emphasized that the motivation of the Fulani herdsmen included revenge against Mr Igwe. He was the leader of the group that had apprehended four of the herdsmen in the first place and the herdsmen had a specific grievance against him. In the applicants' submission, the RAD did not address that issue.

[37] The applicants also raised a geographic argument related to the herdsmen's ability to locate them in Nigeria. They observed that Port Harcourt is close to the applicants' home in Akumazi and closer than the site of the previous urban attack in Lagos. They also made submissions about how the Fulani herdsmen might be able to track them now within Nigeria, using their information available on a publicly accessible website or through their social media presence. The applicants further relied on the similar factual circumstances and the reasoning of Justice Strickland in *Onuwavbagbe v Canada (Citizenship and Immigration)*, 2020 FC 758.

[38] The applicants further submitted that the RAD's decision failed to consider the forward-looking risk they faced in Port Harcourt and that the RAD erred by not giving appropriate weight to certain facts in its analysis of risks to similarly-situated individuals.

[39] Having considered all of these submissions, I am unable to find that the RAD made an unreasonable decision as described in *Vavilov*.

[40] A prominent feature of the applicants' submissions concerned how the RAD assessed the evidence. With respect to factual constraints in the evidence, the Supreme Court held in *Vavilov* that unless there are "exceptional circumstances", a reviewing court will not interfere with the decision maker's factual findings and will not reweigh or reassess the evidence: *Vavilov*, at para 125. A reviewing court's ability to intervene arises only if the reviewing court loses confidence in the decision because it was "untenable in light of the relevant factual … constraints" or if the decision maker "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, at paras 101, 126 and 194; *Canada Post*, at para 61.

[41] The approach to these issues in *Vavilov* is akin to the one taken under paragraph 18.1(4)(*d*) of the *Federal Courts Act,* RSC 1985, c F-7. A reviewing court may intervene under paragraph 18.1(4)(*d*) against a finding of fact made in a "capricious" manner or without regard to the evidence if there was no evidence to rationally support a finding or if the decision-maker failed to reasonably account at all for critical evidence that ran counter to its findings: *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161, *per* Gleason JA (LeBlanc JA concurring), at paras 122-123; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53, at paragraphs 14-17. See also *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160, at paras 37-49.

[42] In this case, the RAD provided detailed reasoning to support its conclusion that the Fulani herdsmen no longer had the motivation or means to find the applicants in Port Harcourt. That reasoning considered the facts and evidence that were before the RAD. The applicants did not identify any material evidence not considered by the RAD on the herdsmen's motivation and means.

[43] With respect to motivation, the RAD expressly referred to the revenge motive, citing the applicants' submissions to the RAD on that issue. While its analysis did not expressly address revenge as a motive, it relied on a broad range of evidence to make its conclusions on the herdsmen's lack of ongoing motivation to track down the applicants. As I read the RAD's reasons, that conclusion considered the passage of time and the lack of an ongoing or prospective dispute in the circumstances. In my view, its analysis concerning ongoing motivation intelligibly justified its conclusion. The Court cannot reweigh the evidence on this application.

[44] With respect to means and ability to track the applicants, the RAD was well aware of the prior attack in Lagos and that it was important to the determination of whether the applicants had an IFA in Port Harcourt. I appreciate the applicants' point on the geographic locations and distances between the farm, the location of the subsequent attack in Lagos and the proposed IFA in Port Harcourt. However, the applicants' submission does not identify a fundamental flaw in the RAD's overarching logic on the first IFA prong. Even if the RAD could have come to a different conclusion on a geographic analysis of the proposed IFA, it was only one factor that may have affected the RAD's conclusions. The RAD considered evidence relating to both future motivation and means. The geographic locations and evidence of conduct of the Fulani herdsmen (towards the applicants or generally) did not so constrain the RAD's analysis as to compel a specific conclusion on Port Harcourt as an IFA. I am not persuaded that the RAD's treatment of the Fulani herdsmen's motivation and means was untenable or that its reasoning disclosed a fundamental misapprehension of the evidence before it.

[45] I agree with the applicants' submission that the facts in *Onuwavbagbe* bear some resemblance to the present case. In *Onuwavbagbe,* one of the applicants was one of seven committee members who had been tracked by Fulani herdsmen. The other six were now deceased. A key issue was whether the herdsmen had personally targeted the applicant as the committee leader, as he alleged in his amended Basis of Claim. Justice Strickland held that the RAD erred by failing to assess that evidence: *Onuwavbagbe*, at paras 41-42. In this case, the applicants' submission did not identify any material evidence in the record that the RAD did not consider. Their position is really that the RAD did not properly weigh the evidence and reach the correct conclusion. Unless the RAD ignored or failed to explain some critical evidence,

performed an untenable analysis or otherwise misapprehended the evidence in some fundamental manner (none of which has been demonstrated), there is no basis on which this Court may intervene.

[46] The RAD's decision made express conclusions on the forward-looking risk faced by the applicants in Port Harcourt. The RAD referred to the Fulani herdsmen's "future motivation to seek out" the applicants and expressly found that it was unlikely that they would have "any future interest for motivation to harm" them. The RAD's overall conclusion found that it was "unlikely, looking forward", that the Fulani herdsmen would have the motivation or interest in the applicants in a large urban city like Port Harcourt or the ability to follow or trace them there. The RAD clearly considered the matter on a forward-looking basis.

[47] In several paragraphs of its reasons, the RAD expressly addressed the risks to similarly situated individuals. In my view, the RAD's analysis was adequate. The Court will not reweigh the evidence on this judicial review application.

B. *The second prong in* Rasaratnam

[48] The applicants also made submissions about the second prong of the *Rasaratnam* test for an IFA, including that the applicants would not be safe in Port Harcourt and would face discrimination in that city. They argued that it would not be possible to live in hiding in Port Harcourt, without a mobile telephone or cut off from all social media and other communications. Referring to country condition evidence, they argued that the applicant Agatha Ndudi Igwe would face undue hardship in Port Harcourt and would be unable to find employment.

[49] In my opinion, these arguments attempted to re-litigate the merits on the second prong of the IFA. They did not disclose a basis for an unreasonable decision by the RAD under *Vavilov* principles.

[50] Lastly, the applicants alleged that the RPD made veiled credibility findings and relied on them in making its IFA findings, which the RAD confirmed. However, they did not identify a reviewable error made by the RAD. This position therefore has no merit on this application.

VI. Conclusion

[51] For these reasons, the application is dismissed. Neither party proposed a serious question for certification and none is stated.

JUDGMENT IN IMM-713-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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