Federal Court  Cour fédérale

Date: 20220127

Docket: IMM-2827-21

Citation: 2022 FC 91

Ottawa, Ontario, January 27, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

TEMITAYO STEPHEN AJEPE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada dated April 7, 2021. The RAD confirmed the Refugee Protection Division's (RPD) decision that the Applicant was neither a Convention refugee

nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The Applicant is a citizen of Nigeria who alleged a fear of persecution from his father-in-law based on his religion.

[2] This application turns on whether it was reasonable for the RAD to find that the Applicant has a viable Internal Flight Alternative (IFA) in the capital city of Abuja. For the reasons that follow, the Court finds that the decision was reasonable, and the application is dismissed.

II. **Background**

[3] The Applicant is a Christian citizen of Nigeria. His wife was raised as a Muslim but became a Christian before their marriage in April 2016. Her father, a devout Muslim, strongly opposes the marriage because the Applicant is non-Muslim.

[4] The Applicant's father-in-law is a merchant who travels across Nigeria to sell his Kola nut products. He employs drivers to help him transport his products across the country.

[5] According to the Applicant's claim, his father-in-law threatened to kill the Applicant if he did not divorce his wife. He allegedly made threatening calls to the Applicant's wife and his family. On three occasions, the father-in-law allegedly travelled with other men from his home in Ekiti State to the Applicant's home in Osun State to threaten the Applicant. The Applicant's car was vandalized, and on another occasion, when the Applicant was at a conference in the United States, his home was also vandalized. The Applicant's wife then fled to his parents' home in

Ekiti State. Her father continues to call, threatening the Applicant's life and attempting to convince her to leave him.

[6] After a sojourn of several months in the US, the Applicant entered Canada on November 22, 2018, and submitted his claim. He says this was because his wife kept receiving calls from her father threatening to kill the Applicant if he returns to Nigeria.

[7] The Applicant's claims about the persecution were found to be credible. However, the RPD concluded that the Applicant has a viable IFA in Abuja. The RPD considered the father-in-law's financial profile and found it was not feasible for him to pay people to continuously monitor his daughter and granddaughter to find where they relocated to.

[8] The RAD confirmed the RPD findings applying the two-prong test set out in *Thirunavukkarasu v Canada (Minister of Employment and Immigration),* [1994] 1 FC 589 [*Thirunavukkarasu*].

[9] On the first prong of the IFA test, the RAD concluded that although the father-in-law was motivated to find him, the Applicant had failed to establish, on a balance of probabilities, that the father-in-law had the means to locate him in Abuja, or that the Applicant faces a serious possibility of persecution there.

[10] In the RAD's view, the Applicant was speculating that the father-in-law was paying people to locate and harm him. Although he was a businessman, the RAD found that the father-

in-law did not have the means to hire agents to continuously monitor the Applicant's wife and child in Ekiti and to track him down in a country of 200 million people. Moreover, the RAD found the evidence did not establish that the Applicant's brother-in-law, who lives in Abuja, had the motivation or the means to locate him in the large capital city.

[11] The RAD did not accept that religion would motivate people, who had no connection to the Applicant, help his father-in-law hunt him down all over Nigeria, a country of 200 million people. In addition, the RAD was not persuaded that the presence of a large Muslim population in Abuja would make it easier for the father-in-law to persecute and harm the Applicant there.

[12] On the second prong of the IFA test, the RAD concluded that the Applicant did not demonstrate the presence of adverse conditions in Abuja which would jeopardize his life and safety.

[13] The RAD held that the RPD had erred in assuming that there was an airport in Ekiti State. However, the RAD agreed with the RPD finding that the Applicant could find a way, as many other means are available, to reunite with his wife and child in Abuja. The RAD noted that family separation on its own is not sufficient to make relocating in Abuja objectively unreasonable. Moreover, his siblings and parents, the RAD found, could assist the Applicant's resettlement in Nigeria. The impact of Covid-19 in Nigeria, including its effect on employment, was not a sufficient reason to find that Abuja is not viable. The Applicant had not demonstrated a particular vulnerability to Covid, and due to his education and work experience, he would be in a better position to find employment.

III. **Issues and Standard of Review**

[14] As a preliminary matter, the proper Respondent on this application is the Minister of Citizenship and Immigration as that remains the statutory name of the position. The Order will direct that the style of cause be amended accordingly.

[15] The sole substantive issue on this application is whether the RAD's IFA analysis was reasonable.

[16] As determined by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 30, reasonableness is the presumptive standard for most categories of questions on judicial review, a presumption that avoids undue interference with the administrative decision maker's discharge of its functions. While there are circumstances in which the presumption can be set aside, as discussed in *Vavilov*, none of them arises in the present case.

[17] To determine whether the decision is reasonable, the reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The party challenging the decision bears the burden of showing that it is unreasonable (*Vavilov* at para 100).

[18] 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; *Canada Post Corp v Canadian Union of Postal Workers, 2019 SCC 67*, at para 33; *Canada (Citizenship and Immigration) v Mason, 2021 FCA 156, at para 36.*

IV. **Analysis**

[19] The two-prong test was described by Justice McHaffie in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 8-9:

> [8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12.
>
> [9] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v. Canada (Minister of Citizenship & Immigration)*, [2001] 2 F.C. 164 (Fed. C.A.) at para 15.

(1) First Prong of the IFA Test

[20] The Applicant argues that the RAD failed to consider relevant evidence regarding the risk of persecution or harm in Abuja. The RAD disregarded his evidence that his father-in-law would hire men to locate and harm or kill him. The Applicant submits that the RAD failed to consider the role of two agents of persecution who could be counted upon to carry out the father-in-law's intentions; his wife's two brothers, one of whom lives in Abuja, a predominantly Muslim city. In that regard, he argues, the RAD unreasonably assumed that Muslims in Abuja would not consider the Applicant's marriage to be contrary to Islam as his wife had converted to Christianity before they met and married.

[21] The Respondent contends that the RAD explicitly considered the Applicant's brother-in-law who lives in Abuja to be a potential agent of persecution and reasonably concluded that there is no evidence to support the Applicant's allegations. The RAD found no evidence that the father-in-law has the ability to locate the Applicant in Abuja. The Applicant had testified that it was the father-in-law who tried to intimidate his daughter by using her brothers' reaction to her marriage. The Respondent submits that the RAD's comment regarding how the intermarriage would be received in the proposed IFA was in relation to the perception of Muslim residents in Abuja to demonstrate that the Applicant will not be in danger in that city, despite being Christian.

[22] I agree with the Respondent that it was reasonable for the RAD to conclude, on a balance of probabilities, that Muslim residents of Abuja would regard the Applicant's marriage to be

between two Christians and not an intermarriage between persons of the two faiths. The RAD noted that Christians comprise about half of the population in the Federal Capital Territory. There was no objective evidence to demonstrate that Muslims in Abuja were prone to randomly harm people in that city because they were Christian or because of their marriages. Without evidence to the contrary, that conclusion was reasonable.

[23] It was also reasonable for the RAD to conclude that the Applicant had failed to establish a connection between his father-in-law's threats and his means to carry out those threats in Abuja. While the father-in-law may know where the Applicant's brother lives, Abuja is a very large city, and they could meet elsewhere. The Applicant need not visit his brother's home. Also, as the Respondent argues, it was reasonable for the RAD not to accept the allegation that the father-in-law is paying others to locate and persecute the Applicant in Nigeria as it was merely speculation. On a balance of probabilities, it was reasonable for the RAD to find that the father-in-law would not be paying for constant surveillance of the Applicant's sibling in Abuja or his daughter's in Ekiti State.

(2) Second Prong of the IFA Test

[24] The Applicant argues that the RAD did not engage enough with the evidence that demonstrates that Abuja is an expensive city, has a high rate of unemployment, and that the Covid infection rate is rising, adversely affecting the Nigerian economy. It is unreasonable, the Applicant argues, for the RAD to conclude that his siblings and parents are able to support him based solely on the fact that the Applicant's siblings are employed, and his parents are currently

supporting his wife and child in Ekiti. The RAD did not take into consideration, he argues, that the Applicant's parents are retired and of limited means.

[25] As noted, the threshold on the second prong of the IFA test is high. There must be "actual and concrete evidence" of conditions that would jeopardize the Applicant's life and safety in travelling or temporarily relocating to the proposed safe area. In the absence of such evidence, it was reasonable for the RAD to conclude that Abuja is a viable IFA for the Applicant. The rising unemployment rate and Covid infection rates are not sufficient to establish that the Applicant could not find refuge in the city.

[26] As stated in *Jean Baptiste v Canada (Citizenship and Immigration),* 2019 FC 1106 at para 28, the mere fact that it would be difficult to find employment in the proposed IFA was insufficient to conclude that it would be unreasonable to find refuge there. The Applicant had completed six years of post-secondary education including two years towards a master's degree. He had been working in a university before leaving the country. It is not enough to say that he may not be able to find suitable work in the proposed IFA: *Thirunavukkarasu* at p 598; *Ambroise v Canada (Citizenship and Immigration),* 2021 FC 62 at para 35; *Mora Alcca v Canada (Citizenship and Immigration),* 2020 FC 236 at para 15.

[27] The RAD did consider the limited financial means of the Applicant's siblings and parents. But it was reasonable for the RAD to conclude that as the parents were already supporting the Applicant's wife and child, they could continue to do so while the Applicant resettled himself and until he was able to support them. And the Applicant had failed to

demonstrate that he could not count on support from his siblings, both of whom were employed, one at a bank in Lagos and the other as an Uber driver in Abuja.

V. **Conclusion**

[28] The RAD considered the evidence and explained its conclusions in light of the evidence. In my view, the decision bears the hallmarks of reasonableness in terms of justification, transparency and intelligibility. The factors and evidence presented by the Applicant were insufficient to meet the required high threshold of the IFA test. This conclusion was open to the RAD on the record and was reached on reasonable grounds.

[29] On this application, the Applicant has failed to meet his burden of showing that the decision was unreasonable. This is not a case where intervention by the court is warranted.

[30] No serious questions of general importance were proposed, and none will be certified.

JUDGMENT IN IMM-2827-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Respondent as the Minister of Citizenship and Immigration;

2. The application is dismissed; and

3. No questions are certified

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2827-21
STYLE OF CAUSE:	TEMITAYO STEPHEN AJEPE V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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