

Federal Court



Cour fédérale

Date: 20220131

Docket: IMM-3719-20

Citation: 2022 FC 110

Ottawa, Ontario, January 31, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

TAOFIQ MOHAMMED OLAGUNJU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of proceeding and background

[1] The Applicant, Taofiq Mohammed Olagunju, is a 45-year-old Nigerian citizen seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated August 12, 2020, which confirmed the earlier decision of the Refugee Protection Division [RPD] dated August 22, 2019, rejecting his claim for refugee protection on the grounds that he had a viable internal flight alternative [IFA] in Lagos.

[2] Mr. Olagunju was born in Lagos, Nigeria, and is Yoruba. He lived in northern Nigeria, in Zamfara state, until 1998, when, at the age of 22, he left for Libya purportedly because of ethnic conflict between the Hausa-Fulani and the Yoruba people. Mr. Olagunju returned to live in the northern part of Nigeria in 2000, however asserts that in 2007, members of Boko Haram visited his parents' home in Zamfara state in an attempt to recruit him on pain of death – Mr. Olagunju admits never having any personal contact with any member of Boko Haram and that all contact was through his parents.

[3] At some point, Boko Haram launched an attack in his parents' community; his parents' home was burned down and two weeks later, one of his brothers lost his life trying to escape the conflict. Mr. Olagunju remained in Nigeria for two more years, traveling around with no fixed address, and in 2009 moved to South Africa where he settled, got married and had children. However, on account of becoming the target of xenophobic attacks because he was from West Africa, Mr. Olagunju left South Africa for the United States in 2016. His wife and children stayed in South Africa. He did not claim refugee protection in the United States because he feared being deported on account of the United States government's strict policies and could not afford the legal fees. Mr. Olagunju finally came to Canada and submitted a claim for refugee protection in January 2018. At this point, he has not lived in Nigeria for 13 years.

[4] Before the RPD, Mr. Olagunju claimed that he fears the violence between the Hausa-Fulani and Yoruba people, as well as Boko Haram who continue to seek to kill him for having refused to join the group; two weeks prior to his death in early 2019, Mr. Olagunju's father purportedly told him that Boko Haram members were still looking for him in Zamfara state, in

northern Nigeria. The determinative issue for the RPD was the availability of a viable IFA. With respect to the first prong of the IFA test, the RPD was prepared to accept Mr. Olagunju's allegations as generally credible, however determined that Boko Haram has been confined by the security forces in Nigeria, for the most part, to the north of the country and that even if still motivated to find him, Mr. Olagunju had not demonstrated, on a balance of probabilities, that Boko Haram has the ability to do so in Lagos; the prospect of Mr. Olagunju running into a Boko Haram member in Lagos who would seemingly have his photograph, as he asserted, was speculative and not supported by the National Documentation Package [NDP], which indicates that the ability of the group to track down citizens is doubtful. As regards the Hausa-Fulani/Yoruba conflict, the RPD found that Mr. Olagunju's explanation of the conflict was speculative and lacking in detail and that in fact the existence of the conflict is not supported by the NDP; as a consequence, the RPD determined that, on a balance of probabilities, Mr. Olagunju did not demonstrate that it was that conflict that caused him to flee Nigeria in 1998 or that such conflict continues to this day. Regarding the second prong of the IFA test, the RPD recognized the high unemployment rate in Nigeria but found that Mr. Olagunju had demonstrated his adaptability and resilience by relocating and securing employment in Libya, South Africa and Canada and that he is in a better position than the average Nigerian to secure employment in Lagos. The RPD found that Mr. Olagunju has not demonstrated that the proposed IFA would be objectively unreasonable or unduly harsh in his particular circumstances.

[5] On appeal to the RAD, Mr. Olagunju submitted as new evidence the affidavit of his childhood friend, which states that four men came to his home in Lagos in December 2019 brandishing guns and looking for Mr. Olagunju, threatening to kill him on account of his refusal

to join Boko Haram. Police protection was unavailable on account of the police requiring a bribe, which the friend seemingly refused to provide. How Boko Haram tracked down Mr. Olagunju's friend in a city of 14 million people is a mystery, as is why Boko Haram did not seek out Mr. Olagunju's brothers, who have the same last name and also live in Lagos.

[6] The RAD accepted the affidavit as new evidence as it post-dated the RPD decision but determined that the statements of Mr. Olagunju's friend that Boko Haram is actively looking for Mr. Olagunju in Lagos lacked credibility. The RAD based its decision on several factors:

- i. In his narrative to his Basis of Claim [BOC], Mr. Olagunju claims that the ethnic conflict between the Hausa Fulani and Yoruba people, leading to the attack on Mr. Olagunju's community, the fire to his home and the death of his brother, resulted in Mr. Olagunju moving to Libya in 1998. However, during his testimony before the RPD, Mr. Olagunju testified that his home was set on fire by Boko Haram in 2007 and that his brother died trying to escape. In support of his assertion regarding the death of his brother, Mr. Olagunju produced a death certificate dated 2007 for a man who Mr. Olagunju claimed to be his brother, but whose name does not appear on his BOC form as a listed family member;
- ii. Mr. Olagunju's testimony before the RPD sets the date of the start of the threats from Boko Haram as being in 2007, yet the allegation of direct targeting by Boko Haram was not mentioned in any way in Mr. Olagunju's BOC narrative. In fact, his BOC form contains no mention of any significant event in 2007;
- iii. Although Mr. Olagunju has not been back to Nigeria since 2009, and although he testified that his father advised him just before his death in early 2019 that Boko

Haram was still looking for him in Zamfara state, in northern Nigeria, there is no evidence that Mr. Olagunju's brothers living in Lagos were ever visited by Boko Haram in a search for Mr. Olagunju in Lagos. However, Boko Haram was able to identify and track down, ten years after Mr. Olagunju left Nigeria, a childhood friend of Mr. Olagunju who lives in Lagos, coincidentally, mentions the RAD, while an appeal was pending before the RAD on the issue of an IFA in Lagos;

- iv. The assertions being made in the affidavit were inconsistent with the evidence found in the NDP to the effect that Boko Haram is generally inactive in the south and its ability to track down individuals is very limited.

[7] As a consequence, the RAD found that the statement from Mr. Olagunju's friend that Boko Haram is actively looking for him in Lagos and has the means to identify and locate Mr. Olagunju lacks credibility. Accordingly, the RAD determined that the affidavit did not meet the test for admissibility established in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paragraphs 13-15 and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 38; the affidavit was therefore found inadmissible pursuant to section 29 of the *Refugee Appeal Division Rules*, SOR/2012-257, and subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[8] In the end, the RAD determined that Boko Haram likely has neither the motivation nor the means to locate Mr. Olagunju in Lagos and that Mr. Olagunju is not at risk in Lagos and could reasonably relocate there in light of his personal circumstances and country conditions. The RAD noted that, although the RPD's reliance on the TB7-19851 Jurisprudential Guide

[Jurisprudential Guide] in assessing the viability of the IFA was improper as the Jurisprudential Guide had been revoked, the RPD nonetheless conducted its own assessment of the viability of Lagos as an IFA and did not inappropriately rely on the Jurisprudential Guide in its analysis.

II. Issues and standard of review

[9] The issues in this application for judicial review are whether the RAD's decision is reasonable as regards its rejection of the new evidence and its finding of a viable IFA in Lagos. Mr. Olagunju also raises the argument that the RAD failed to conduct an analysis under section 97 of the Act. As to the standard of review, both parties agree, as do I, that the applicable standard is one of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17).

III. The RAD reasonably refused to admit Mr. Olagunju's childhood friend's affidavit as new evidence

[10] Although somewhat confusing, my understanding of Mr. Olagunju's argument is that there was no basis for the RAD to find his friend's affidavit not to be credible, for to do so is in essence saying that the assertion that Boko Haram is in search of Mr. Olagunju in Lagos is not plausible. I do not agree. It seems to me that finding a third party document inadmissible on the grounds of credibility does not necessarily result in a finding of implausibility. I see nothing unreasonable in the RAD coming to the conclusion it did as regards the admissibility of the affidavit based upon the factors it considered.

IV. The RAD reasonably found that Mr. Olagunju has a viable IFA in Lagos

[11] Mr. Olagunju did not seriously contest before me the viability of Lagos as a viable IFA. The RAD agreed with the RPD that it was unlikely that Mr. Olagunju could be located in Lagos on the basis of his photograph being passed around by Boko Haram members – I would add that the photograph would be at least 13 years old by now – and that Boko Haram had neither the motivation nor the means to locate Mr. Olagunju in Lagos. In his written arguments, Mr. Olagunju argues that the RPD erred by “heavily” relying on the revoked Jurisprudential Guide and alleges that Lagos is consequently not a viable IFA. However, the revocation of the Jurisprudential Guide did not result in the revocation of Lagos as a viable IFA in Nigeria. In any event, the RAD’s decision did not rely on this Jurisprudential Guide and only noted that the RPD conducted its own assessment of a viable IFA despite referring to the revoked Jurisprudential Guide.

[12] In my view, the RAD reasonably found that Mr. Olagunju has a viable IFA in Lagos. The RAD applied the two-prong test for assessing an IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706: (i) there must be no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there. The onus to negate one of the two prongs of the IFA test was on Mr. Olagunju, and he has not convinced me that the RAD erred in any way in its assessment.

V. The RAD did not fail to conduct a subsection 97(1) analysis

[13] Mr. Olagunju is claiming refugee protection pursuant to section 96 and subsection 97(1) of the Act, and he submits that the RAD failed to consider his claim under subsection 97(1) by not considering his personalized risk of harm if removed to Nigeria; even if he was found not credible under section 96, his risk may still be successful under section 97 (*Paramanathalingam v Canada (Citizenship and Immigration)*, 2017 FC 236 and *Soliman v Canada (Citizenship and Immigration)*, 2007 FC 162).

[14] Before me, Mr. Olagunju conceded that both the RPD and the RAD did in fact consider his claim under both section 96 and 97 of the Act –both the RPD and RAD decisions specifically refer to both sections of the Act – but argued that the RAD did not delve into a section 97 analysis as much as it should have. Mr. Olagunju has provided no support for his proposition and could not point to any part of the RAD’s decision which was lacking in respect to this issue; as a result, I need not dwell on his argument further.

VI. Conclusion

[15] I would dismiss the application for judicial review.

JUDGMENT in IMM-3719-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3719-20

STYLE OF CAUSE: TAOFIQ MOHAMMED OLAGUNJU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: PAMEL J.

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