Federal Court

Cour fédérale

Date: 20220302

Docket: IMM-3242-21

Citation: 2022 FC 296

Ottawa, Ontario, March 2, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

ADEYEMI NURUDEEN GANIYU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered Orally from the Bench by Videoconference on March 1, 2022)

[1] The Applicant claims persecution at the hands of cult believers in his village in Ogun State, Nigeria, because he had refused to accept his appointment as the next Oracle of his clan, and for which he received death threats. He left Nigeria for the US for two weeks in January 2015 hoping the situation would resolve, but says that when he returned, cult believers ransacked his Lagos home and left a threatening note.

[2] The Applicant moved his family to another location in Lagos State, some 40 minutes away from the city. The Applicant himself then returned to the U.S. in 2015, ultimately entering Canada in 2019, and claiming refugee status. His family has continued to live in Lagos State, where there has been no indication of harm or subsequent contact from the cult members.

[3] On April 22, 2021, the Refugee Appeal Division [RAD] upheld a finding of the Refugee Protection Division [RPD] that the Applicant had viable internal flight alternatives [IFAs] in Lagos State, Abuja, Port Harcourt, Benin City and Ibadan. Therefore, the Applicant's refugee claim was denied. In so finding, the RAD applied the two-part IFA test – namely that the Applicant provided insufficient evidence to demonstrate (i) that the agent of persecution had the means or motivation to pursue him in the proposed IFAs such that he would suffer persecution or danger in relocating to any of them, and that (ii) it would not be unreasonable for the Applicant to relocate to the IFAs (see *Raganathan v. Canada (MCI)*, [2001] 2 FC 164 (CA)).

[4] The Applicant challenges the RAD decision on IFA findings, alleging that they are unreasonable, being lacking in justification, transparency and intelligibility as set out in *Vavilov v. Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at para. 99.

[5] First, the Applicant asserts that the RAD improperly relied on the RAD's jurisprudential guide (RAD File no. TB7-19851, May 17, 2018 [Guide]), which was revoked in 2020 in an Immigration and Refugee Board [IRB] Notice of Revocation [Notice]. In that Notice, the IRB noted that developments in Nigeria "<u>including</u> those in relation to the ability of single women to

relocate to the various internal flight alternatives proposed in the Nigeria jurisprudential guide, have diminished the value of the decision as a jurisprudential guide".

[6] The Applicant argues that the language of the Notice does not suggest that the Guide was revoked for reasons solely relating to the viability of IFAs in relation to single women in Nigeria, since it uses the word "including", as opposed to "primarily" (which was the word the RAD used at para 8 of its Reasons).

[7] However, as this Court has noted previously, it was open to the tribunal to list IFAs that had been included in the Guide, for those who are not single Nigerian women, and who are fleeing non-state actors. This would include the Applicant, a male with family members. Furthermore, numerous recent decisions of this Court have upheld IFA findings where the Guide was mentioned, but the RAD undertook its decision based on the specific facts before it (see, for instance, *Adegbenro v. Canada (Citizenship and Immigration)*, 2021 FC 290 at para 3, and *Olusesi v Canada (Minister of Citizenship and Immigration),* 2021 FC 1147, at para 34).

[8] Finally, I note that importantly, in this situation, the RAD did not rely on the jurisprudential guide, but only responded to arguments that had been put to it by the Applicant, based on the RPD assessment. Rather, the RAD looked at the IFA issue independently, on the basis of a correctness review. The RAD, based on the evidence on the record, found that the Applicant neither demonstrated that he would be pursued in the proposed IFAs, nor that it would be unreasonable for him to relocate to those locations with his family.

[9] On the RAD analysis, the Applicant asserts that the RAD erred regarding the IFAs in Lagos state based on the fact that his spouse and children continued to live there. I disagree. It was a reasonable assumption to for the RAD infer that the Applicant would not be pursued there, given the recent history of his family, and make the inferences it did (see *A.B. v. Canada (Citizenship and Immigration)*, 2021 FC 90 at paras. 64-65).

[10] The Applicant also contends that the RAD failed to consider arguments concerning employment prospects, language issues, housing and lack of family members in the IFAs. However, of these issues, the Applicant only raised employment as a concern before the RPD. As the Court stated in *M.T.A. v. Canada (Citizenship and Immigration)*, 2019 FC 1508 at para 37, while "the RAD must conduct its own assessment of the evidence, absent new evidence on an issue, it cannot consider a new argument, developed for the first time on appeal." The RAD has no duty to speculate as to what might have been a better approach for the Applicant based on risks not raised in the first place, as it is not the RAD's function to supplement the weaknesses of the claim as initially presented (see *Ogunjinmi v. Canada (Citizenship and Immigration)*, 2021 FC 109 at paragraph 16).

[11] Finally, I do not see any reviewable error based on the RAD analysis with respect to employment prospects, given the Applicant's background, including his high level of education, and extensive work experience in finance and economics. The threshold for objective unreasonableness is very high on the second prong of the IFA test (see *Hamdan v. Canada (Immigration, Refugees and Citizenship), 2017 FC 643*). This Court has also noted that poor job

prospects or a high unemployment rate are not enough to render an IFA objectively unreasonable (see *Onjoko v. Canada (Citizenship and Immigration),* 2020 FC 1006 at para 22).

JUDGMENT in IMM-3242-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. There are no questions for certification.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3242-21
STYLE OF CAUSE:	ADEYEMI NURUDEEN GANIYU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 1, 2022
JUDGMENT AND REASONS:	DINER J.
DATED:	MARCH 2, 2022

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