Federal Court Cour fédérale

Date: 20220308

Docket: IMM-3190-21

Citation: 2022 FC 314

Ottawa, Ontario, March 8, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

TEMITOPE OLUWASEUN OSOJA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated April 13, 2021, which found that the Applicant is neither a Convention refugee nor a person in need of protection as defined in sections 96 or 97 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA] The RAD also found that the Applicant had viable Internal Flight Alternatives [IFA] in Port Harcourt and Ibadan.

[2] For the reasons that follow, the application is dismissed.

II. **Background**

[3] The Applicant is a citizen of Nigeria and a Christian Yoruba man from Borno State in the northeastern region where he co-owned a technology business. The Applicant says that upon his return from a trip on or about October 15, 2016, he discovered that Boko Haram had swept through the town searching for Christian businesses and homes, had killed his partner, and burned down his office building. As a result, the Applicant relocated to Lagos with his family. He says that in February 2017 he received a phone call to the effect that Boko Haram extremists knew where he was located in Lagos and had threatened him. He then relocated to another part of Lagos.

[4] In October 2017, the Applicant discovered his apartment had been ransacked and a cousin who lived with him had been attacked and later died. The attackers were believed to be from the north. The Applicant left Nigeria and made a claim for protection when he arrived in Canada.

[5] In a June 17, 2019 decision, the Refugee Protection Division [RPD] rejected the Applicant's claim. The RPD found that the Applicant did not satisfy his burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities,

he would be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to Nigeria. That decision was appealed to the RAD.

[6] Prior to the appeal hearing, the RAD wrote to the Applicant to notify him that while the issue of an IFA was raised during the RPD hearing, with Ibadan and Port Harcourt as potential IFA locations, the issue was not decided. The RAD invited the Applicant to address the IFA issue and to submit a response due no later than March 24, 2021. The RAD also notified the Applicant that the tribunal would be referring to the most recent National Documentation Package for Nigeria.

[7] The Applicant did not submit new evidence on IFA nor did he request an oral hearing. He submitted that since the RPD did not reach a conclusion on IFA it was logical to assume that the RPD determined that there was no viable IFA.

[8] In denying the appeal, the RAD held that there was no breach of procedural fairness in raising and addressing the IFA issue. The RPD had not been required to reach a conclusion on IFA as it had found there to be no forward-looking risk of harm for the Applicant. Fairness was satisfied by providing notice and an opportunity to respond which the Applicant acted upon by providing written submissions. Moreover, it was clear that the IFA was an issue for the RPD as it had identified the two locations and had heard submissions from counsel for the claimant at the end of the hearing. The RAD did not otherwise rely on the RPD’s decision.

[9] In applying the first prong of the test to determine whether there is a viable IFA, the RAD found that the objective documentary evidence on file did not support a finding that the Applicant had the profile of an individual that Boko Haram would target outside the northeast of Nigeria. The RAD did not find the Applicant's evidence to be sufficient to outweigh the objective evidence. Even if Boko Haram had an interest in finding the Applicant, which was not accepted, the RAD found that the Applicant had not demonstrated that the alleged agents of persecution had the means to find him in the two IFA locations. Consequently, the RAD found that the Applicant did not face a serious possibility of persecution in Port Harcourt or Ibadan, nor would he face a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment in either location.

[10] As for the second prong of the test, the RAD considered the risk from Boko Haram, the Applicant's ability to find a job, the absence of family, that he would be confined to the IFA locations, indigeneship, language and culture, and access to housing and social services, as well as the factors why the Applicant could not live in Port Harcourt or Ibadan. The RAD was not convinced that the Applicant met his burden of establishing that it is objectively unreasonable for him to relocate to the IFA locations.

[11] With regard to employment, the RAD found that the Applicant did not prove on a balance of probabilities that his circumstances were such that he would be unable to find employment and support himself and his family, including finding accommodation, in the IFA locations. This is especially true, the RAD found, as he is an educated man and ran his own IT business in the north of Nigeria, despite not being indigenous to the area.

III. **Issues and Standard of Review**

[12] The question of whether the RAD had erred when it raised a new issue on appeal was presented in the Applicant's written submissions in this matter but was not pressed at the hearing. This, in my view was appropriate given that the requirements of fairness were met by providing the Applicant with notice and an opportunity to make submissions in advance of the appeal: *Aghedo v Canada (Citizenship and Immigration)*, 2021 FC 450 at para 15. I do not read *Ching v Canada (Minister of Citizenship and Immigration),* 2015 FC 725 at paras 66-67 as precluding the RAD from raising a new issue on appeal when advance notice is provided.

[13] The sole issue remaining is whether the RAD's finding that the Applicant has a viable IFA in Port Harcourt or Ibadan was reasonable?

[14] I agree with the parties that the standard of review is reasonableness. The Respondent has also invited the Court to apply the palpable and overriding error standard when considering individual factual or logical inferences citing *Xiao v Canada (Citizenship and Immigration)*, 2021 FC 386, *Aldarwish v Canada (Citizenship and Immigration)*, 2019 FC 1265, and *Housen v Nikolaisen*, 2002 SCC 33. While there may be some merit to the suggestion, I do not find it necessary in this matter to consider whether the appellate standard should apply in this judicial review.

[15] The Supreme Court of Canada has determined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 that the standard of review analysis, "begins

with the presumption that reasonableness is the applicable standard in all cases." This presumption can be rebutted by reviewing courts "only where required by a clear indication of legislative intent or by the rule of law." In my view, none of the exceptions in which the presumption can be set aside arise in this matter.

[16] In determining the reasonableness of a decision, the Supreme Court established in *Vavilov* that two types of flaws must be considered, the first is a: "failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it." (at para 101). Additionally, absent exceptional circumstances, a reviewing court must not interfere with the factual findings of a decision maker since it is trite law that the decision maker may assess and evaluate the evidence before it. The reviewing Court must consequently "refrain from "reweighing and reassessing the evidence considered by the decision maker"" (at para 125). As a general rule, a reviewing court, must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (at para 99).

IV. **<u>Analysis</u>**

A. *Was the RAD's decision that the Applicant has a viable IFA in Port Harcourt and Ibadan reasonable?*

[17] The test to establish whether there is a viable IFA for an applicant is two-fold. The first prong requires the decision maker to be satisfied that there is no serious possibility that the applicant would be persecuted or would be personally subjected to a danger of torture or a risk to life or of cruel and unusual treatment or punishment in the IFA locations, on a balance of

probabilities. The second prong of the test requires that the conditions in the proposed IFA must be such that it would not be reasonable for the refugee claimant to seek refuge there, upon consideration of all the circumstances, including their personal circumstances: *Barros v Canada (Citizenship and Immigration)*, 2022 FC 9 at para 45 citing *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991) [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589 at paras 2, 12 (FCA). The onus is on the refugee claimant to demonstrate that a proposed IFA is unreasonable and the threshold is "very high" (*Barros v Canada (Citizenship and Immigration)*, 2022 FC 9 at para 46).

[18] On the first prong of the test, the Applicant has failed to demonstrate that the RAD committed a reviewable error which would require this Court's intervention. The Applicant's claim that the RAD accepted the Applicant's evidence as credible and then selectively found evidence to be lacking in credibility when it does not fit within its IFA analysis does not withstand scrutiny.

[19] The RAD accepted most of the evidence provided by the Applicant, but was not convinced, based on its own independent assessment that his evidence was sufficient to establish or support the claims made by the Applicant, when weighed against the objective documentary evidence on file.

[20] There was no dispute that Boko Haram has an active presence in northeastern Nigeria but neither IFA is in that region. Furthermore, the objective evidence did not support a conclusion that the extremists would be motivated or capable of pursuing individuals outside the northeast

except for former members who had double-crossed the current leadership. It was open to the RAD to find that Boko Haram attacks in the south are very rare and that the organization lacks the ability to track its targets outside its region. And it was reasonable for the RAD to conclude, while accepting that they occurred, that the evidence did not support attribution of the events in Lagos to the organization.

[21] The RAD found that the objective documentary evidence outweighed the evidence provided by the Applicant. This is not indicative of a reviewable error but simply that the Applicant did not have sufficient evidence to meet its case. Nor was it necessary for the RAD to come up with an alternative explanation as to who perpetrated the attacks. It is not the RAD’s mandate to speculate when the evidence is insufficient.

[22] Regarding the second prong, the Applicant has failed to demonstrate that the RAD erred in its assessment of whether the conditions in the two IFA’s were such that it would be unreasonable to expect the Applicant to relocate to either of them. It was reasonable for the RAD to consider the Applicant’s educational achievements, work experience in information technology, and the fact that he had been a business owner in the northeast despite not being indigenous to that area. He was thus a skilled worker likely to find employment and accommodation in the two IFA locations.

[23] The Applicant’s language Yoruba is among the many spoken in Port Harcourt and is prevalent in Ibadan. The RAD reasonably found that indigenousness to the region is less significant in larger centres that have many new, non-indigenous persons relocating to them.

Apparently, Pidgin English is the preferred language in Port Harcourt but is also widely spoken elsewhere in Nigeria. The RAD did not err in concluding that its usage would not be a problem for the Applicant.

[24] The Applicant failed to establish that the proposed IFA's could not reasonably accommodate his wife and children. He did not provide submissions on this when provided the opportunity by the RAD. Aside from that, the fact that his family and friends are all living in Lagos does not in itself make the proposed IFA's unreasonable. The absence of family members would have to rise to the level of jeopardizing the Applicant's life or safety before it could be said that the IFA was unreasonable: *Canada (Minister of Citizenship and Immigration) v. Ranganathan,* (2000), [2001] 2 F.C. 164 (Fed. C.A.) at paras 14-15.

[25] As for the argument before the RAD and on this application that the Applicant would be confined to the IFA for the rest of his life, the Applicant has failed to demonstrate why that would be the case. It was reasonable for the RAD to conclude that the Applicant had not provided substantive argument in support of that contention and it is not for this Court to reweigh the evidence.

V. **Conclusion**

[26] The RAD's reasons in this matter were very thorough and detailed. It did not err in its determination of the existence of viable IFAs. It fulfilled its procedural fairness duties when it provided notice and gave the Applicant an opportunity to make submissions on the IFA issue. The findings that the IFA's in Port Harcourt and Ibadan were well supported by intelligible

explanations. The Applicant failed to meet the threshold of establishing that the proposed IFAs were unreasonable. There is no basis for this Court to interfere with the RAD's findings.

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

JUDGMENT IN IMM-3190-21

THIS COURT'S JUDGMENT is that the application for Judicial Review is dismissed.

No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Seyfi Sun	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates Immigration Lawyers Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT