Federal Court  Cour fédérale

Date: 20220407

Docket: IMM-3267-21

Citation: 2022 FC 501

Ottawa, Ontario, April 7, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

BENEDICT AGBATOR IRIBHOGBE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Benedict Agbator Iribhogbe, seeks judicial review of a decision rendered on April 29, 2021, by the Refugee Appeal Division [RAD], confirming the rejection of his claim for refugee protection on the basis that he had viable internal flight alternatives [IFAs] elsewhere in his home country.

[2] The Applicant is a citizen of Nigeria. Although originally from a town in Edo State, the Applicant resided in Lagos, where he worked as an accountant, before becoming a supply chain professional.

[3] On January 6, 2017, armed Fulani herdsmen [Fulani] attacked the Applicant's community in Edo State, resulting in several deaths. In response, the Applicant organized a public rally to call on the government to provide assistance and apprehend those responsible. The rally was held on January 8, 2017, and there were approximately one hundred (100) attendees. The media covered the event, including the Applicant's participation.

[4] On March 4, 2017, the Applicant returned to his hometown and stayed overnight at his uncle's residence. In the early hours of March 5, 2017, armed men broke in looking for him. The police was called, but provided no assistance.

[5] On May 23, 2017, as the Applicant returned home from work, armed men tried to force their way into his vehicle before chasing him. The Applicant went to the police station for assistance. The police investigated the incident but the investigation yielded no results.

[6] The Applicant left for the United States on May 31, 2017, where he remained for six (6) months. Upon learning of the arrests and deaths of individuals allegedly associated with those who participated in the rally, the Applicant entered Canada and made a claim for refugee protection.

[7] On January 14, 2020, the Refugee Protection Division [RPD] rejected the Applicant's claim after determining that the Applicant had viable IFAs elsewhere in Nigeria.

[8] The Applicant appealed the decision to the RAD. In support of his appeal, he sought to introduce new evidence. He first submitted new evidence with his appeal record in March 2020. Eight (8) months later, he submitted an application under Rules 29(3) and 37 of the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules] to introduce additional evidence. For the most part, the evidence related to an incident in December 2019, during which the Applicant's sister was attacked and sustained injuries. The RAD found that none of the documents submitted were admissible as new evidence. The RAD also confirmed the RPD's finding that the Applicant had viable IFAs elsewhere in Nigeria.

[9] The Applicant submits that the RAD erred in refusing to admit his new evidence on appeal and that its assessment on the existence of viable IFAs is unreasonable.

II. Analysis

A. *Standard of Review*

[10] The parties agree that the RAD's decision is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]). When determining whether a decision is reasonable, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "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 "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[11] Upon considering the record and the submissions of the parties, the Applicant has failed to persuade me that the RAD's decision is unreasonable.

B. *New Evidence*

[12] The Applicant claims that the RAD erred in rejecting the new evidence submitted in accordance with Rule 29(3) of the RAD Rules.

[13] He argues that the documents in relation to the attack on his sister were relevant, as they demonstrated the Fulani's motivation and ability to seek her out in Edo State to find him. In his opinion, such actions speak to the Fulani's interest to look for the Applicant outside the original location and in other cities. Moreover, the brutality of the attack on his sister also establishes a continued interest in the Applicant, which is relevant when assessing an IFA.

[14] The Applicant further submits that the RAD erred in finding that there was an inconsistency in the police report as to whether the Applicant's sister was taken to the hospital before the arrival of the police. He argues that the RAD should have compared the police report with the affidavit of the Applicant's sister, in which it is clearly stated that the police met her before she went to the hospital. The Applicant further contends that the RAD's finding on the

report's credibility was also entirely speculative, as it did not provide authorities to support its findings on what should have been in the report. In his view, the RAD ignored the presumption of truthfulness that applies to documents originating from foreign authorities. There was also no reason to doubt the validity of the other documents relating to his sister's attack.

[15] The Applicant also challenges the RAD's decision not to accept the evidence he submitted as part of his appeal record. He argues that the online newspaper articles clearly addressed the relationship between the Fulani and the government, as well as the Fulani's ability to engage the State to locate the Applicant. Other articles referred to Fulani attacks in other states and demonstrated that such attacks went beyond issues of farming and land acquisition. The Applicant submits that this evidence was directly relevant to whether the Fulani would target him for reasons other than land and farming, and whether their activities took place throughout Nigeria.

[16] Subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] stipulates that an appellant "may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection". The onus is on the appellant to convince the RAD that the new evidence meets the requirements of subsection 110(4) of the IRPA (*Abdi v Canada (Citizenship and Immigration)*, 2019 FC 54 at para 24).

[17] In addition to the express statutory requirements, the RAD must ensure that the implied conditions of admissibility laid out by the Federal Court of Appeal are fulfilled, such as

credibility, relevance, newness and materiality (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]). If the RAD determines that the explicit statutory requirements have not been met, there is no need to consider the implicit conditions.

[18] It is also incumbent on an appellant to comply with Rule 3(3)(*g*)(iii) of the RAD Rules. An appellant is required to include in the memorandum full and detailed submissions regarding how the new documentary evidence meets the requirements of subsection 110(4) of the IRPA and how that evidence relates to him or her. A similar explanation is required when presenting an application under Rules 29(3) and 37 of the RAD Rules.

[19] The Applicant has not persuaded me that the RAD's analysis regarding the evidence relating to his sister's attack is unreasonable. The RAD first noted that the Applicant had not indicated in his application how the submissions related to the incident met Rule 29 of the RAD Rules and subsection 110(4) of the IRPA. The RAD then considered that the Applicant had submitted new evidence with his appeal record relating to his sister's injuries and that he had indicated that this information was not known to him at the time of the RPD decision. The RAD accepted the Applicant's explanation that he could not reasonably have provided these documents with his appeal record, but noted that other factors needed to be taken into account in its analysis.

[20] The RAD then considered the relevance and probative value of the documents. The RAD accepted that the evidence demonstrated the Fulani continued to look for the Applicant in Edo

State, noting it was a place the Applicant frequently visited before leaving Nigeria. The RAD also accepted that he would be at risk there. That said, the RAD indicated that the determinative issue was the viability of an IFA in the proposed locations. The RAD found that the Applicant had not provided an explanation as to how his sister's attack demonstrated that the IFAs in the proposed locations were not viable, or that the Fulani local to Edo State would be motivated to look for him in those locations.

[21] The RAD added that even if it were to admit the evidence under Rule 29 of the RAD Rules, the evidence involving the Applicant's sister was not new, as the RPD had already accepted as credible the Applicant's allegations regarding the Fulani's actions in Edo State. The RPD had also accepted that the Fulani were looking for the Applicant in Edo State.

[22] I have reviewed the Applicant's submissions regarding the admissibility of the new evidence. In the absence of more detailed submissions explaining how the new evidence meets the requirements of subsection 110(4) of the IRPA , the implicit *Raza* factors and Rule 29(3) of the RAD Rules, it was reasonably open to the RAD to find that the new evidence did not demonstrate that the Fulani would have the motivation and the ability to locate him elsewhere than in Edo State. The RAD could reasonably find that it was therefore not relevant or material to the determination of the viability of an IFA in the proposed locations.

[23] Regarding the RAD's conclusion on the credibility of the police report, I agree with the Applicant that documents issued by foreign authorities are presumed to be valid (*Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at para 10; *Manka v Canada (Citizenship and*

Immigration), 2007 FC 522 at para 8). The prevalence of fraudulent documents in a country does not necessarily mean that every document originating from that country is fraudulent (*Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at paras 26-27). However, in this case, the RAD provided detailed examples of why it believed the report was not credible, such as the logo, the date of the report, the changing use of verb tenses and the third-person descriptions. The RAD's reasons regarding the credibility of the police report were mostly centred on the inconsistencies within the document itself rather than the inconsistencies with the affidavit of the Applicant's sister. The RAD could reasonably find that the report was not credible and decide not to admit it.

[24] With respect to the website links and excerpts from these webpages, the RAD noted that the Applicant did not provide any documentation as new evidence in his Rule 29 application, as required by the RAD Rules. Instead, he included references to forty (40) Internet web links and select excerpts from webpages. The RAD indicated that any submission of new evidence must be in printed form, not a simple reference to an Internet link. The RAD further indicated that, in the absence of the actual documents containing the excerpts, it was unable to ascertain the publication date of the information to determine if the documents could have been provided with the Applicant's appeal record.

[25] The RAD nonetheless considered whether the excerpts were relevant or probative. After reiterating that the determinative issue under appeal related to the viability of the IFAs, the RAD noted that the Applicant had not provided any explanation as to how the excerpts demonstrated that the Fulani in Edo State had either the motivation to locate the Applicant or the capability to

do so, as it would require coordinating their efforts across Nigeria. The RAD also found that the Applicant's request to admit new evidence was not made in compliance with the RAD Rules. Furthermore, the Applicant had not provided submissions enabling the RAD to assess whether the evidence met the requirements of admissibility for new evidence. Accordingly, it refused to admit the Internet web links and excerpts as new evidence.

[26] While the Applicant may disagree with the RAD's conclusions, it is within the RAD's expertise to assess the relevance and materiality of the new evidence. The Applicant had the onus of demonstrating that his proposed evidence met the requirements of subsection 110(4) of the IRPA, the implicit *Raza* factors and Rule 29(3) of the RAD Rules. The RAD found otherwise. The Applicant has not persuaded me that the RAD's findings are unreasonable.

C. *Proposed IFAs*

(a) *First Prong of the Test*

[27] The Applicant submits that the RAD erred in its assessment of the existence of a viable IFA in the proposed locations. He points out that the RAD recognized and accepted the presence of the Fulani throughout Nigeria.

[28] First, he argues that it "defies logic" that the RAD would adopt the RPD's finding regarding the Immigration and Refugee Board of Canada Chairperson Jurisprudential Guide on Nigeria [JG], given its revocation and lack of relevance. In his view, the RAD should have instead conducted its own independent assessment of the evidence.

[29] The RAD did indeed conduct its own independent assessment of the Applicant's evidence and directly referred to the most recent documentary evidence to justify its conclusion on the availability of the IFA in the proposed locations. The RAD merely explained why the RPD relied on the JG and why it was appropriate to do so, supporting its position by referring to relevant case law. The RAD noted in particular that the RPD had conducted its own assessment of the Applicant's particular circumstances. I am not persuaded that simply referring to or adopting the framework of analysis contained in a revoked JG, renders the decision unreasonable (*Fagite v Canada (Citizenship and Immigration)*, 2021 FC 677 at para 11; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at paras 51-53).

[30] Second, the Applicant disputes the RAD's finding that the documentary evidence does not support the Applicant's allegations that the Fulani would have the means and motivation to locate him in the proposed IFA locations. Specifically, he argues that the RAD:

1) misconstrued the Applicant's argument that there is a connection between the Fulani and law enforcement;
2) erred in finding that the RPD's failure to mention the murder of the Applicant's co-participant in one of the IFAs was not fatal because the assailants were only "suspected" to be Fulani;
3) erred in speculating the Fulani would no longer be interested in the Applicant given that three (3) years had passed since the demonstration, as well as the television and newspaper coverage of the event;
4) misconstrued the activities of the Fulani in finding that they are confined to securing pastoral land, which does not extend nationally;

5) wrongfully took the position that the Fulani would need a sophisticated and coordinated movement in order to locate the Applicant; and
6) ignored the fact that the Fulani exist in government and that through connections, members would be able to locate anyone.

[31] The Applicant's arguments are all unfounded.

[32] First, the RAD cannot be faulted for misconstruing the Applicant's argument regarding the alleged connection between the Fulani and law enforcement. The RAD noted that the Applicant was implying, in his memorandum on appeal, that the RPD had erred in assessing his testimony on this issue. Accordingly, the RAD addressed the issue in its reasons. The RAD agreed with the RPD that, in the absence of documentary evidence indicating law enforcement and the Fulani acted in concert, any actions the Fulani would take with respect to the Applicant would not be on behalf of the State. The RAD agreed with the RPD that the documentary evidence on the record did not indicate that the Fulani and the State acted together to advance their interests. While recognizing that local law enforcement may ignore certain Fulani activities related to local incidents, the RAD nevertheless found that this was not, on a balance of probabilities, an example of the State sponsoring or supporting the Fulani to advance their interests. The Applicant failed to establish an error on this matter.

[33] Second, I disagree that the RAD failed to assess the murder of a co-participant in the rally. The RAD noted that the RPD had omitted this allegation in its reasons, but found that this was not fatal because the Applicant's allegation was speculative. In reaching this conclusion, the

RAD considered that the Applicant had described the perpetrators of the alleged killing as "suspected Fulani herdsmen". Although the Applicant argues that the RAD failed to offer an alternative explanation on who was responsible of the murder, it is not the RAD's role to make these assumptions. The RAD therefore reasonably found that the Applicant's speculation over who was responsible for the alleged killing did not demonstrate, on a balance of probabilities, the Fulani's means and motivation to pursue the Applicant in either of the proposed IFA locations.

[34] Third, the RAD could reasonably conclude that the Fulani would not be motivated to pursue the Applicant in other states given the limited breadth of his profile at the time of the rally. In coming to this determination, the RAD considered that the rally had occurred over three (3) years ago and that only approximately one hundred (100) people had attended the event. The RAD also noted that it was unlikely that the Applicant would be "clearly identifiable" as the media reports dated back to 2017. Again, I see no error in the RAD's analysis, as the passage of time may in certain circumstances allow the RAD to reasonably infer a lack of motivation.

[35] As for the remaining issues raised by the Applicant, I find that the Applicant is essentially asking the Court to reweigh the evidence. It is within the RAD's expertise to assess the evidence on file and draw the necessary conclusions therefrom. The RAD considered the objective evidence and concluded, based on the record before it, that the RPD did not err in its assessment of the means and motivation of the Fulani to locate the Applicant in the proposed IFA locations. The Applicant has not persuaded me that the RAD's conclusion is unreasonable.

(b) *Second Prong of the Test*

[36] The Applicant disagrees with the RAD's conclusion on the second prong of the test. He submits that the RAD erred in its analysis of whether he could find employment in the proposed IFA locations. The Applicant also argues that the RAD ignored important factors that needed to be considered in the second prong of the test, such as accommodation and indigenous issues in the proposed IFA locations.

[37] The Applicant's arguments are unfounded.

[38] The RAD rightfully noted that the Applicant did not challenge the RPD's finding on the second prong of the IFA test. The Applicant is thus raising a new issue that could have been raised prior to the judicial review (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26). Furthermore, the Applicant cannot fault the RAD for failing to address issues like accommodation and indigeneship. The burden to show that a proposed IFA is unsuitable in light of his personal circumstances lies with the Applicant, not the RAD (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 810 at para 58; *Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 at para 56).

[39] Moreover, the Applicant had to show that it was objectively unreasonable for him to move to the proposed IFA locations. The RAD considered the Applicant had a Bachelor of Science in accounting and a Master of Science in Procurement and Supply Chain Management, while the objective documentary evidence showed that males in Nigeria completed an average of

nine (9) years of education. The RAD then noted his professional experience in procurement and logistic distribution from 2014 to 2017 and found that, on a balance of probabilities, the Applicant would not be restricted in terms of employment. While recognizing that the unemployment rate was high in Nigeria, the RAD found that the Applicant had failed to establish how the high unemployment would make it unreasonable for him to relocate in the proposed IFA locations, especially given his widely spoken language skills and meaningful work experience. It was incumbent on the Applicant to demonstrate that his religion, education, employment or language would render his relocation unreasonable.

[40] Finally, the Applicant submits that the RAD was required to ask itself, in assessing his forward-looking risk, whether he would continue to make his political opinions known and if so, it would be an error to conclude that he has an IFA in the proposed locations. The Applicant has raised this argument in the section of his memorandum that addresses the second prong of the IFA test. Since the Applicant did not challenge the RPD's findings on the second prong of the IFA test, he cannot reasonably expect the RAD to have addressed it. Likewise, if the focus of the Applicant's argument relates to the first prong of the test, he did not raise it in his memorandum on appeal.

[41] It is important to recall that once the issue of an IFA is raised, the onus lies with the Applicant to provide credible evidence demonstrating, on a balance of probabilities, that there is a serious possibility of persecution or risk of danger or harm throughout his country and that it would be unreasonable for him, in all the circumstances, to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 709-711 (FCA);

Thirunavukkarasu v Canada (Minister of Employment and Immigration), [1994] 1 FC 589 (FCA)). The RAD reasonably concluded that the Applicant had not met his burden of proof. While the Applicant may not agree with the RAD's findings, it is not this Court's role to reassess and reweigh the evidence to reach a conclusion that is favourable to the Applicant (*Vavilov* at para 125; *Canada* (*Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[42] To conclude, the Applicant has failed to persuade me that the RAD erred either in assessing the new evidence, or in evaluating the viability of the IFAs. The RAD explained its findings in a manner that was transparent and intelligible. I am satisfied that, when the RAD's reasons are read holistically and contextually, the decision meets the reasonableness standard set out in *Vavilov*.

[43] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-3267-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3267-21
STYLE OF CAUSE:	BENEDICT AGBATOR IRIBHOGBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 10, 2022
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	APRIL 7, 2022

APPEARANCES:

Pantea Samei	FOR THE APPLICANT
Chantal Chatmajian	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT