

Federal Court



Cour fédérale

Date: 20220513

Docket: IMM-4239-21

Citation: 2022 FC 718

Ottawa, Ontario, May 13, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

SHOLA LUMOS OGUNNIYI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Nigeria, seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] dated June 10, 2021, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a *Convention* refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant claims fear of persecution and risk to his life at the hands of his political opponents in Nigeria, the Peoples Democratic Party [PDP], as a result of his political opinions and activities in his constituency in Lagos State as a member of the All Progressive Congress [APC] in Nigeria.

[3] From 2002 onward, the Applicant worked as a real estate manager practitioner and as a result of his ability to influence and convince people to join the political party that he supports, the Applicant became a political grassroots mobilizer within his constituency in Lagos State.

[4] In 2007, the Applicant contested as a representative to the Lagos State House of Assembly on the platform of the Progressive Peoples Alliance [PPA] and in 2008, the Applicant crossed over from the PPA party to the Actions Congress of Nigeria [ACN], which later merged with other parties to become the APC. Given the repeated success of the APC and the Applicant's efforts to mobilize new members for the APC, the PDP tried to convince the Applicant to defect to their party. When the Applicant declined, he became tagged by the PDP as an enemy.

[5] The RPD raised no credibility concerns with respect to the Applicant and accepted that in the course of his political involvement, he has been repeatedly a victim of political violence in his constituency. In that regard, the Applicant's evidence was that in October 2019, he was attacked by a gang of hoodlums, who fired weapons and assaulted him. They told him they were there to kill him, but spared his life when they recognized him as a good person and a philanthropist within the community. Later that same month, the Applicant was followed by a gang on the expressway. The Applicant exited the expressway and was able to hide until the gang members left in their car.

On November 8, 2019, hoodlums came to the Applicant's home and harassed, threatened, attacked and molested the Applicant's wife and children. The hoodlums warned the Applicant's wife to tell the Applicant that they were sent to kill him due to his political influence and affiliation.

[6] The RPD raised the possibility of an IFA in Abuja. After considering the evidence before it, the RPD found that it was more likely than not that the violence directed towards the Applicant was due to the Applicant's proximity and connection to the local constituency in Lagos and that his removal (and his family's removal) from the area had more likely than not extinguished that risk. The RPD found that relocating to Abuja would remove the direct risk to the Applicant from the individuals in question, as the risk to the Applicant was localized to the constituency in which he worked, campaigned and lived for most of his adult life. The RPD also found that it was objectively reasonable, in all of the circumstances, for the Applicant to seek refuge in Abuja.

[7] On appeal to the RAD, the Applicant submitted six new documents (which were accepted by the RAD) that addressed the viability of Abuja as an IFA. The Applicant included an affidavit in his appeal record, which was accepted by the RAD with the exception of paragraph 9 thereof. The Applicant requested an oral hearing, which request was denied.

[8] The RAD held that the issue with respect to the first prong of the IFA test is whether the Applicant's relocation to another city would diminish or remove the risk of further threats allegedly organized by his former political rivals. The RAD held that "virtually all of the [Applicant]'s political organizing relates to this organizing work within one constituency in

Lagos”. The RAD held that the Applicant was not a politician and had no influence or political profile outside of his local Lagos constituency, such that he would not be put at risk in Abuja.

[9] Following the RAD’s consideration of the second prong of the IFA test, the RAD confirmed the RPD’s finding that the Applicant had a viable IFA in Abuja and dismissed the Applicant’s appeal.

[10] The Applicant asserts that the decision of the RAD was unreasonable as: (a) the RAD erred in rejecting the Applicant’s affidavit; (b) the RAD erred in denying the Applicant’s request for an oral hearing; (c) the RAD erred in reaching its determination that the threat to the Applicant was localized to his constituency; and (d) the RAD erred in its analysis of the Applicant’s testimony.

[11] After reviewing the record and considering the submissions of the parties, I find that the determinative issue on this application is the RAD’s flawed assessment of the evidence leading to its determination that the Applicant had no political profile outside of his local Lagos constituency, which underpinned, in large measure, the RAD’s determination that Abuja was a viable IFA.

[12] This issue is reviewable on a reasonableness standard [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25]. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Vavilov*, *supra* at paras 15, 85]. The Court will intervene

only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[13] Turning to the RAD's consideration of the evidence before it, as noted above, the RAD found that virtually all of the Applicant's political activities occurred within his constituency in Lagos State. After making that determination, the RAD addressed a letter from the APC's head office that was adduced by the Applicant as new evidence, which letter stated:

Finally, the Appellant submitted into new evidence a document outlining that, from 2013 to 2019, he visited Abuja some sixteen times to attend various political meetings or events. I do not find that the attendance of meetings, most of them either with members of his own party or social functions of his party, would necessarily conclude that he would gain any particular political profile in Abuja such that he would be put at risk.

[14] With respect to the RAD's consideration of the APC's letter, I find that the RAD's finding shows a complete lack of engagement with, and understanding of, the evidence contained in the APC letter and the Applicant's own evidence and submissions, which were central to support his claim that he had an important history of political involvement and exposure in Abuja.

[15] The RAD did not mention that the APC letter was written by the Secretary of the APC's Membership Committee, on behalf of the National Working Committee and the National Executive Committee of the party. The RAD also did not mention that the APC letter stated the Applicant was "an active member of our great party, who had taken up several leadership roles, and participated in representing the party in both intra and inter party national meetings", for which

the letter provided a non-exhaustive list. Indeed, from the sixteen events listed, seven were co-organized by the Independent National Electoral Commission [INEC], which the RPD had already found was the independent electoral body responsible for overseeing elections by regulating the process and preventing electoral misconduct. The INEC conducted the Presidential election, National Assembly elections, State House Assembly elections and local elections in all thirty-six states and the Federal Capital Territory. Moreover, the list of events detailed in the APC letter clearly identified that other political parties attended those events, which were held at the INEC headquarters in Abuja. The list also includes two APC rallies, one to protest against Boko Haram insecurity (which the Applicant submitted is a potential threat to him in Abuja), killings, corruption and police brutality in Nigeria in 2014, the other being the APC Grand Finale Rally for President Muhammadu Buhari's re-election campaign in Abuja in February 2019. These two events took place in Eagle Square, the main square of the capital located in front of the Abuja International Conference Center, and the first rally extended to "all parts of Abuja environs". The Applicant also attended the first two National Peace Accords organized by all parties in anticipation of the 2015 and 2019 Presidential elections, which were held at the International Conference Center, as a member of APC's Contact and Mobilization Committee. Finally, the Applicant attended the APC's Presidential Inauguration in Eagle Square in 2015. Of these sixteen events, only the APC's maiden elective national convention, elective national convention, presidential national convention and national leadership training did not implicate either interacting with members of other political parties or important public exposure.

[16] Moreover, I find that the RAD failed to engage with and address the Applicant's submissions regarding the APC's letter, which explained that during the course of these events, he

met with local leaders on numerous occasions and interacted with people in the neighbourhoods where meetings were held, both in the city and in rural areas of Abuja.

[17] I find that the RAD's finding that the Applicant would not necessarily gain any particular political profile in Abuja as a result of "meetings, most of them either with members of his own party or social functions of his party", is not supported by the evidence on record and unreasonably minimizes the scope of the Applicant's involvement and exposure in Abuja as a leading member of the APC.

[18] I find that the aforementioned errors render the RAD's decision unreasonable. Accordingly, the application for judicial review is granted, the RAD's decision is set aside and the matter is sent back for redetermination by a differently-constituted panel of the RAD.

[19] The parties have proposed no question for certification and I agree that none arises

JUDGMENT in IMM-4239-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, the decision of the Refugee Appeal Division dated June 10, 2021 is set aside and the matter is remitted to a differently-constituted panel of the Refugee Appeal Division for redetermination.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4239-21

STYLE OF CAUSE: SHOLA LUMOS OGUNNIYI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 7, 2022

JUDGMENT AND REASONS: AYLEN J.

DATED: MAY 13, 2022

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