

Federal Court



Cour fédérale

Date: 20220609

Docket: IMM-5983-21

Citation: 2022 FC 863

Ottawa, Ontario, June 9, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ABIDEEN AYODIMEJI LAWAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Dr. Abideen Ayodimeji Lawal is a citizen of Nigeria. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB].

[2] The RAD confirmed the determination of the Refugee Protection Division [RPD] of the IRB that Dr. Lawal is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Both the RAD and the RPD found that Dr. Lawal has a viable internal flight alternative [IFA] within Nigeria.

[3] For the reasons that follow, the RAD's finding that Dr. Lawal has a viable IFA in Abuja, Nigeria was reasonable. The application for judicial review is therefore dismissed.

II. Background

[4] Dr. Lawal is 43 years old. He is married and has three children. He worked as a physician in Nigeria from 2009 until September 2017, when he left the country for the United States of America. He entered Canada at the unofficial border crossing in Lacolle, Quebec on or around May 9, 2018. His wife and children continue to live in Nigeria.

[5] Dr. Lawal claimed to have a well-founded fear of Boko Haram, but the RPD found he would not be at risk from the terrorist organization in Abuja. Dr. Lawal did not challenge this finding before the RAD.

[6] Dr. Lawal also claimed to have a well-founded fear of persecution by his uncle, who is the head of a shrine in Lagos and an active member of a cult. His uncle is also affiliated with the Oodua Peoples Congress [OPC], a nationalist and vigilante organization in Nigeria.

[7] In May 2017, Dr. Lawal's uncle informed him that an oracle of the cult had chosen him to be the next "Abore", or chief priest of the shrine. Dr. Lawal refused, citing his Muslim faith and the demands of his profession. His uncle threatened him with death.

[8] Throughout the month of May 2017, Dr. Lawal's uncle continued to pursue him and demand that he accept the position of Abore. Dr. Lawal recounted the following incidents:

- a) On May 13, 2017, Dr. Lawal's uncle went to his clinic with members of the cult and issued an ultimatum that he either accede to the oracle's wishes or face the consequences.
- b) On May 20, 2017, members of the cult and the OPC marched into Dr. Lawal's clinic and caused a commotion, demanding to see him. Dr. Lawal hid and later reported the incident to the police. Some of the perpetrators were arrested, but were released when the police discovered the involvement of Dr. Lawal's uncle, who is revered and feared in the local community.
- c) On May 28, 2017, the uncle and members of the OPC threatened Dr. Lawal's wife and children while he was not at home, saying they would be "a widow and fatherless kids". They repeated that Dr. Lawal must either accept the title of Abore or die. Dr. Lawal's wife was pregnant at the time, and was hospitalized for five days following the incident. The family moved to another part of Lagos and stayed at the house of Dr. Lawal's mother-in-law.

[9] The RPD rejected Dr. Lawal’s claim for protection on February 8, 2021, finding that he has a viable IFA in Abuja. The RAD confirmed the RPD’s decision on August 9, 2021. The RAD observed that Dr. Lawal’s uncle had not shown any motivation to search for him outside of Lagos since 2017, even though he had the means to do so.

III. Issue

[10] The sole issue raised by the application for judicial review is whether the decision of the RAD was reasonable.

IV. Analysis

[11] The RAD’s findings of mixed fact and law, including whether an applicant has a viable IFA, are subject to review by this Court against the standard of reasonableness (*Olalere v Canada (Citizenship and Immigration)*, 2017 FC 385 at para 19; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only if “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[12] The Court must consider both the outcome of the administrative decision and its underlying rationale (*Vavilov* at para 15). The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made,

and determine whether it falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86).

[13] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 707 (FCA) at paras 5-6, 9-10): first, the IRB must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

[14] A claimant bears the onus of establishing with objective evidence that the proposed IFA is unreasonable (*Hastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 29). Dr. Lawal challenges the IFA determination on only the first prong: that there is no serious possibility he will be persecuted by his uncle in Abuja.

[15] Dr. Lawal argues that he has received multiple threats from his uncle, and his uncle has successfully mobilized cult members and vigilantes against him. His uncle has pursued his wife and children in multiple locations, and his wife often perceives that she is being stalked when she leaves the house. Even after he knew Dr. Lawal had left Nigeria, his uncle approached his mother to ask about his whereabouts. All of this testimony was accepted by the RPD, which found Dr. Lawal to be generally credible.

[16] The RAD nevertheless concluded there was insufficient evidence in the IRB's National Documentation Package for Nigeria to demonstrate that refusing the title of chief priest would necessarily result in adverse consequences for someone like Dr. Lawal. According to a Response to Information Request relied upon by the RAD, in many communities it may be a "big problem" if someone refuses to take on the inherited role of the shrine priest, because the person may bring "divine wrath" on himself, as well as on the local community. The RAD accepted that members of a shrine's local community may believe in the potential for "divine wrath", but Dr. Lawal was unlikely to be targeted because he lives in a large urban centre.

[17] Dr. Lawal says the RAD considered the information contained in the NDP selectively, and unreasonably found he would not be at risk in large urban centres. He adduced affidavit evidence confirming that his uncle is an active cult member who has demonstrated a willingness to attack him at his place of work, and threaten his wife and children at multiple locations. He says that his uncle's ongoing enquiries regarding his whereabouts confirm he is still motivated to find him. Additionally, Dr. Lawal must register as a physician in order to practise medicine, which will make him easy to trace.

[18] The Respondent notes that the RAD's finding that Dr. Lawal was generally credible does not mean everything he said must be accepted as true. The RAD considered both Dr. Lawal's testimony and the other evidence in the record. The RAD reasonably found that Dr. Lawal's apprehension of risk in the IFA was not supported by the objective evidence, and gave the latter more weight.

[19] The RAD is entitled to rely on documentary evidence in preference to the testimony of a claimant, even if it finds the claimant to be trustworthy and credible (*Matore v Canada (Citizenship and Immigration)*, 2017 FC 1009 at para 24). While the RAD accepted that Dr. Lawal was threatened and harassed in Lagos when he refused the title of Abore, and that his uncle had the means to pursue him throughout Nigeria, the RAD reasonably found that the uncle lacks a present motivation to do so.

[20] Dr. Lawal continued to work at the same medical clinic after his uncle threatened him. His uncle made no attempt to pursue Dr. Lawal during the four months before he left Nigeria, and he experienced no retaliation after he reported the attack at the clinic to the police. There was no evidence that the uncle had any contact with Dr. Lawal's wife and children after they left his mother-in-law's house in 2018. The family has continued to live in Nigeria for several years without further incident.

[21] Dr. Lawal does not claim to have ties to any indigenous religion or a belief system aligning with those of shrines or cults. The RAD found no evidence that the influence of shrines extends to urban centres such as Abuja, or that the OPC will assist cults in tracking people down.

[22] The RAD's conclusion that Mr. Lawal has a viable IFA in Abuja was therefore reasonable.

V. Conclusion

[23] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5983-21

STYLE OF CAUSE: ABIDEEN AYODIMEJI LAWAL v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: MAY 3, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JUNE 9, 2022

APPEARANCES:

Zohra Safi FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

SOLICITORS OF RECORD:

ZSN Law Professional CORPORATION FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario