Federal Court  Cour fédérale

Date: 20220531

Docket: IMM-1978-21

Citation: 2022 FC 785

Toronto, Ontario, May 31, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

AKEEM ADEWALE ADEYEMO
FAREEDAH ABIMBOLA ADEYEMO
ADEJUMOKE OLATOKUNBO ADEYEMO
FAISAL AYOMIDE OLUWAPELUMI ADEYEMO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENTAND REASONS

[1] The Applicants are citizens of Nigeria. They seek judicial review of a decision of the Refugee Appeal Division [RAD], dated March 3, 2021, confirming the refusal of their refugee claims. The RAD agreed with the Refugee Protection Division [RPD] that the Applicants have viable internal flight alternatives [IFAs] available to them in Port Harcourt and Abuja, Nigeria.

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

I. Background

[3] The Applicants are a family of Nigerian nationals. Mr. Akeem Adewale Adeyemo [Principal Applicant] is the husband of Ms. Adejumoke Olatokunbo Adeyemo [Associate Applicant] and father of their two minor children [Minor Applicants]. The Applicants fear a return to Nigeria because of demands by the Principal Applicant's extended family to inflict female genital mutilation [FGM] on the female Minor Applicant and perceived threats to their life for failing to comply with this demand.

[4] The RPD rejected the Applicants' refugee claims finding that the Applicants had a viable IFA in both Port Harcourt and Abuja, Nigeria. On the first part of the IFA test, the RPD concluded that the Applicants had not shown how the agent of persecution could track them if they relocated to the IFA locations. On the second part of the test, the RPD held that it was not unreasonable to require the Applicants to relocate. The RPD found that given the Principal Applicant and Associate Applicant's education, work experience and life experience, they would, on a balance of probabilities, be able to find employment, housing and education for their children such that they could lead a normal life.

[5] The Applicants appealed the decision of the RPD to the RAD arguing that the RPD had erred on both prongs of the IFA test. The RAD accepted four new articles filed by the Applicants as new evidence in the proceeding. After an independent review of the evidence, the RAD found that, on a balance of probabilities, the Applicants would not face a serious possibility of

persecution if they were to relocate to either Abuja or Port Harcourt. On the second part of the IFA test, the RAD considered, *inter alia*, the Applicants' argument relating to the availability of mental healthcare for the Associate Applicant in view of a psychotherapist's report [Report], noting that she exhibits symptoms of post-traumatic stress disorder [PTSD], generalized anxiety and major depression. The RAD found that there was insufficient evidence that care would not be reasonably available to the Associate Applicant in the face of the objective evidence. The RAD also considered the argument that the RPD had erred by not being alert to the best interests of the children [BIOC] when assessing the reasonableness of the IFA for the Minor Applicants. After its own independent assessment, the RAD concluded that there was insufficient evidence that the Minor Applicants would be unable to access education, healthcare and other social services. It could not identify any impact on the Minor Applicants that would suggest that relocating to the proposed IFA locations would be unreasonable or unduly harsh.

II. Issues and Standard of Review

[6] The only issue on this application is whether the RAD erred in its analysis of the second part of the IFA test.

[7] The standard of review is reasonableness. RAD decisions on the availability of an IFA are reviewed on the reasonableness standard: *Hamid v Canada (Citizenship and Immigration)*, 2020 FC 145 at para 25. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 9-10, 16-17.

[8] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31.

[9] Reasons should be responsive to the submissions made by the parties and "meaningfully grapple with key issues or central arguments raised": *Vavilov* at paras 127-128; *Mason v Canada (Citizenship and Immigration)*, 2021 FCA 156 [*Mason*] at para 34. However, reasons "must not be assessed against a standard of perfection"; rather, "a reviewing court must ultimately be satisfied that the [administrator's] reasoning 'adds up'": *Vavilov* at paras 91, 104; *Mason* at para 40.

[10] A decision is reasonable if, when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 85, 91-95, 99-100.

III. Analysis

[11] There is no dispute that the two-part IFA test was correctly stated by the RAD. The test provides that the RAD must be satisfied on a balance of probabilities that: (1) there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA exists; and, (2) conditions in that part of the country are such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there: *Rasaratnam v Canada (Minister of Employment & Immigration)* (1991), [1992] 1 FC 706, 140 NR 138 (CA) at paras 6, 9-10;

Thirunavukkarasu v Canada (Minister of Employment and Immigration), [1994] 1 FC 589, [1993] FCJ No 1172 (QL) (FCA) [*Thirunavukkarasu*].

[12] The Applicants argue that the RAD made three errors in its analysis of the second part of the IFA test. First, they assert that the RAD erred by failing to consider the Applicants' state of mind. Second, they contend that the RAD erred in determining that mental healthcare would be available in the IFA locations. Third, they argue that the RAD failed to consider the psychological impact on the Minor Applicants when addressing the BIOC.

A. *Consideration of Psychological Harm*

[13] The Applicants argue that the second part of the IFA test includes a subjective element. They assert that the RAD failed to consider the perception of risk or harm to the Applicants when considering the second part of the IFA test, despite finding that the Applicants' fear of returning to Nigeria was credible. The Applicants cite *Karim v Canada (Citizenship and Immigration*), 2015 FC 279 [*Karim*] in support of their argument, where Justice de Montigny, then of this Court, stated at paragraph 26:

> The Board's finding that it was not unreasonable for the Applicant to live in Islamabad is also problematic because it fails to take into account the Applicant's testimony about his emotional state. The Board acknowledged that the Applicants, as Christians, may face discrimination and tensions with other members of the Pakistan religious community, and that they may also have to make "some adjustments" in their life in Islamabad, but does not appear to turn its mind to the problems encountered by the Applicant and his "permanent fear" for himself and his family. After all, the Board believed that the Applicant was targeted both because of his business and his faith as a Christian while he was working in Rawalpindi from 2005 to 2011, and also accepted the documentary evidence indicating that members of minority religious groups owning businesses are targeted by the Muslin majority. The Board

> also accepted that the Applicant was kidnapped in December 2012 by armed individuals who threatened to kill him unless he provided access passes to the diplomatic missions for which Ram Dev was providing security systems. In those circumstances, the fear of the Applicants was not beyond the pale or clearly irrational, and deserved to be assessed within the second prong of the IFA test to determine whether it would be unreasonable to expect the Applicants to relocate in Islamabad. Yet the Board does not mention this testimony anywhere in its IFA analysis. While the Applicant's state of mind may not have been determinative to the Board's finding, it is problematic that the Board altogether failed to mention this evidence at all in its analysis.

[14] The comments of Justice de Montigny, however, must be taken in context. In *Karim*, the Court noted (at paragraphs 24 and 25) that it was illogical for Islamabad to be identified as an IFA as it was the exact location of one of the abductions of the applicant. The Court faulted the RPD for failing to recognize the discrimination and tensions the applicants would face as Christians in Islamabad, and the associated fear of persecution with returning the applicant to the same location as the abduction and a place where the police had previously advised the applicant that they could not protect him. The Court found that there was an objective risk and a serious possibility of persecution sufficient to satisfy the first part of the IFA test. It was based on these findings that the Court went on to consider the second part of the IFA analysis.

[15] This was similarly the case in *Gayrat v Canada (Citizenship and Immigration)*, 2021 FC 666 [*Gayrat*], also relied on by the Applicants. In *Gayrat*, the applicants had been subjected to years of discrimination based on their ethnicity and were asked to relocate to Russia where the Court found that "the country condition documentation included evidence of radical nationalism and racial violence against ethnic minorities and individuals of a non-Slav appearance." The Court found the RPD had erred by failing to explain why the objective evidence of

discrimination, harassment and violence did not offer relevant evidence of an objective risk of persecution in the proposed IFA. This finding grounded the Court's analysis on the second part of the IFA test and its further finding that the RPD had erred in not considering the applicant's particular history of racism and its impact on whether it would be reasonable to relocate to the IFA.

[16] In my view, *Karim* does not establish that a subjective component must form part of the analysis of the second part of the IFA test. Rather, as noted in *Thirunavukkarasu*, a flexible approach must be taken and each case must be considered on its own facts.

[17] Indeed, this was the approach taken in *Achugbe v Canada (Citizenship and Immigration)*, 2020 FC 876 [*Achugbe*] where the Court considered the application of *Karim* to facts similar to those in this case. In *Achugbe*, the Applicants were Nigerian citizens who feared a threat of FGM from the family of the children's estranged father. The RAD accepted the risk to the applicants, but concluded they had an IFA in Port Harcourt. Justice Walker found *Karim* did not apply due to the absence of objective evidence to ground the mother's subjective fear. As stated at paragraphs 24 and 25 of *Achugbe*:

> [24] In *Karim*, the RPD accepted that the applicants may face discrimination and tensions in the IFA based on their religious beliefs, leading to Justice de Montigny's finding that the principal applicant's subjective fear was not "beyond the pale or clearly irrational". In the present case, the RAD determined, as part of its assessment of the first prong of the *Rasaratnam* test, that the Applicants would not face a possibility of persecution or risk of harm in Port Harcourt because their agents of persecution would not find them.
>
> [25] Therefore, I find that the RAD was not required to assess Ms. Achugbe's subjective fear of returning to Nigeria as her

> genuinely held belief was not supported by objective evidence that the feared events could or would occur.

[18] The same reasoning applies here. In this case, the RAD has also determined in its assessment of the first part of the IFA test that the Applicants would not face a possibility of persecution or risk of harm in Port Harcourt or Abuja because their agents of persecution would not be able to find them. The RAD's analysis associated with this finding is not challenged on this judicial review. Unlike *Karim* (and like *Achugbe*), there is no objective basis for the Applicants' fears in the IFA to ground a mandatory consideration of the impact of those fears on the Applicants for the second part of the analysis.

[19] The Applicants assert that the Report of the psychotherapist who diagnosed the Associate Applicant with PTSD and stated that she exhibited symptoms of anxiety and depression provides support for the importance of considering the state of mind of at least the Associate Applicant in the second part of the IFA test. However, I do not find the Report imposes a requirement for separate consideration of the Associate Applicant's subjective fears, particularly in view of the consideration already given to the availability of mental healthcare in the IFA locations for the Associate Applicant and the family supports she would have, as addressed further below. In my view, there is no unreasonable omission in the RAD's analysis.

B. *The Availability of Mental Healthcare*

[20] The Applicants argue that that the RAD engaged in a selective review of the evidence in concluding that suitable mental healthcare was available to the Applicants in the IFA locations and erred by failing to provide justification for its conclusions.

[21] In the Decision, the RAD discussed its preference for the country condition evidence over the evidence of the Applicants as it related to the availability of mental healthcare as follows:

> [37] While I note that the Riverdale Immigrant Women's Centre coordinator states in her letter that the Associate Appellant would not have access to such services – namely counselling – in Nigeria, it is not clear on what she bases this conclusion. In fact, the country condition evidence shows that mental healthcare is available in Nigeria, and that the treatment of mental illness is possible in public hospitals, noting that "there is no form of mental illness for which treatment is not available in Nigeria." While the same item notes that human resources are not sufficient to meet the needs of the country, it clearly states that treatment facilities are located in urban areas, and that in- and out-patient treatment by psychologists, psychiatrists and psychiatric nurses is available at both private and public facilities, and many mental health medications are available as recommended by professionals there as well. I would also note that the psychotherapist whose clinical impressions of the Associate Appellant were based on a single, 60-90 minute session, recommended a plan of medical and therapeutic care for the Associate Appellant "involving medication, proper counselling, and strategies which could help her work through the depression, anxiety, and trauma she currently feels," but there is insufficient evidence that such care would not be reasonably available to the Associate Appellant in Nigeria, in the face of the objective evidence which seems to suggest that both medical and therapeutic mental healthcare is accessible, at least in the urban centres, if not the country's more remote north-eastern region.
>
> [38] The Appellants rely on two reports which indicate that people with actual or perceived mental health conditions have been "placed in facilities without their consent, usually by relatives," where abuses have been documented. However, on the evidence before me relating to the clinical evaluation of the Associate Appellant, there does not appear to be any indication that the Associate Appellant's mental health concerns, for which she has benefitted from counseling, sleep protocol and stress management techniques, would not likely be adequately addressed through outpatient means, nor does it suggest that her husband, the Principal Appellant, is not supportive of the Associate Appellant in her efforts to seek mental health supports. Based on the evidence before me, I prefer the country condition evidence which states from various sources that mental healthcare, including counselling services, is available in Nigeria, particularly in urban centres such as the proposed IFA locations. I cannot find that mental healthcare of the nature that has been recommended for the Associate

> Appellant would be unavailable, or even not reasonably available, to her in either of the proposed IFA locations. ... [Footnotes omitted]

[22] The RAD's reasons explain that it found insufficient foundation in the Riverdale Immigrant Women's Centre coordinator's letter for the statement that counselling would not be available in Nigeria. The RAD considered the psychotherapist's recommendations and the clinical evaluation of the Associate Applicant together with its review of the country condition evidence and found that the country condition evidence supported that the services needed to treat the Associate Applicant would be available to her in the IFA locations.

[23] While the country condition evidence notes some limitations to the services available in the northeast parts of Nigeria, as noted by the RAD, these limitations were not identified in the urban centers such as the proposed IFA locations. I do not consider the RAD's comments to be selective. Rather, they are consistent with the country condition evidence, including the United Kingdom Home Office, *Country Policy and Information Note, Nigeria: Medical and healthcare issues*, (January 2020); the Australia Department of Foreign Affairs and Trade, *DFAT Country Information Report Nigeria*, (9 March 2018); and the European Asylum Support Office *Country of Origin Information Report: Nigeria, Key socio-economic indicators*, (November 2018).

[24] In my view, it was open for the RAD to conclude that it preferred this country condition evidence to the evidence advanced by the Applicant. The reasons of the RAD are transparent and intelligible, and adequately justify the basis for this preference. The Applicants' argument amounts to a request for the Court to reweigh the evidence, which is not the role of the Court on judicial review (*Vavilov* at paras 99-100, 125).

C. *The Best Interests of the Children*

[25] The Applicants assert, and I agree, that the BIOC is to be taken into account at the second stage of the IFA test: *Jones v Canada (Citizenship and Immigration)*, 2020 FC 1172 at para 12. However, the Applicants have not identified any reviewable error in the RAD's analysis of the BIOC.

[26] The RAD considered a number of circumstances (education, healthcare, social services) that could impact the Minor Applicants should they relocate to the IFA locations, but found that the presence of supportive parents with strong education and work experience would mitigate the challenges the Minor Applicants would face.

[27] The Applicants argue that the RAD should have considered the psychological impact on the female Minor Applicant due to the fear of FGM and the risk associated with failing to undergo the family's rituals and traditions. However, no evidence was advanced on this point and this argument was not raised before the RAD.

[28] Similarly, the Applicants assert that the RAD should have considered the psychological harm to the Minor Applicants from relocating. They rely on a statement made within the Report on the assessment of the Associate Applicant that the Minor Applicants would "likely experience significant stress and trauma if they are forced to return to Nigeria, essentially removing them from safety, stability and community and sources of support they now have in Canada." Again, this argument was not raised before the RAD, despite the Report being part of the record.

[29] Indeed, this was expressly noted by the RAD when it stated: “While I acknowledge that relocation is inherently challenging for children, there is insufficient evidence that relocation itself would be unduly harsh in this case; the Appellants have not advanced this argument and it does not appear to arise on the facts before me.” [emphasis added]

[30] The Applicant asserts that as the RAD conducted its own review of the evidence, this opens the RAD up to further review. However, I do not agree. The Respondent contends and I agree, it is not appropriate for the Applicants to impugn the Decision with an issue they did not previously raise: *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at paras 22-25; *Owolabi v Canada (Citizenship and Immigration)*, 2021 FC 2 at para 50-53; *Brown v Canada (Citizenship and Immigration)*, 2022 FC 736 at para 35-39. In my view, there is no basis to assert that a reviewable error in the RAD’s analysis has been made. As such, this third argument must also fail.

IV. Conclusion

[31] For the foregoing reasons, the application is dismissed.

[32] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-1978-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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