

Federal Court



Cour fédérale

Date: 20220728

Docket: IMM-1965-21

Citation: 2022 FC 1137

Ottawa, Ontario, July 28, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**OLANREWAJU SULAIMON SOTUNDE
KUDIRAT OLUWAGBEMINIYI SOTUNDE
ABDUL-JALAAL OLUWAKAYOMIDE SOTUNDE
ABDUL-LATEEF AYOMITUNDE SOTUNDE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”), dated February 22, 2021, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of

protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The Applicants claim they fear persecution from Boko Haram due to the Principal Applicant’s involvement with the Muslim Student Society of Nigeria (“MSSN”). The RAD rejected the Applicants’ claim on the basis that there was a viable internal flight alternative (“IFA”) in Port Harcourt.

[3] The Applicants submit that the RAD’s analysis of the first prong of the IFA test was unreasonable.

[4] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicants*

[5] The Applicants are a family of four from Nigeria: the Principal Applicant, Olanrewaju Sulaimon Sotunde (Mr. “Sotunde”), his wife, Kudirat Oluwagbeminiyi Sotunde (Mrs. “Sotunde”) and their two minor children.

[6] In March 2011, Mr. Sotunde became involved in youth outreach activities with the MSSN, promoting the values of western education in towns surrounding the city of Gombe. In

January 2012, Mr. Sotunde states he was approached by a man at his National Youth Service lodge in Gombe who told him to stop preaching about education. In February 2012, armed men came allegedly to the lodge searching for Mr. Sotunde when he was not there. Following this incident, Mr. Sotunde relocated to his hometown, Abeokuta, and ceased his work with the MSSN. During this time, Mr. Sotunde alleges he received anonymous phone calls every two weeks, which he suspects were linked to his work with the MSSN.

[7] In July 2012, Mr. Sotunde and Mrs. Sotunde were married. In November 2012, Mrs. Sotunde was allegedly attacked at their home in Abeokuta by armed men who were looking for Mr. Sotunde. Mrs. Sotunde suffered serious injuries and was hospitalized. The Applicants state that the police believed the attackers were part of Boko Haram, but the police did not put this on the record for political reasons. After Mrs. Sotunde was released from the hospital, she went to live with her parents in Ogun state.

[8] In January 2016, the Applicants relocated to Ibadan together. In Ibadan, Mr. Sotunde allegedly saw the man who had initially approached him in Gombe. He states that he saw the man once at his workplace and once in his neighbourhood in Ibadan. Mrs. Sotunde fled to her parents' home with their children and Mr. Sotunde stayed with friends. The Applicants feared that they were still being sought by Boko Haram and made arrangements to leave Nigeria.

[9] In December 2017, the Applicants fled to the United States. On June 30, 2019, the Applicants crossed into Canada and made a claim for refugee protection.

B. *RPD decision*

[10] In a decision dated February 24, 2020, the RPD rejected the Applicants' claim for protection on the basis that they had a viable IFA in Port Harcourt. The RPD stated it had some credibility concerns about the November 2012 attack against Mrs. Sotunde and how the police determined that Boko Haram was involved. Nonetheless, the RPD accepted that Mr. Sotunde was targeted for his 2011-2012 outreach activities with the MSSN.

[11] While the RPD accepted that Mr. Sotunde had seen the man from Gombe twice in Ibadan, it found that the Applicants had not established that this man was associated with Boko Haram or that he was in Ibadan with the intention of harming them. The RPD found that while the Applicants took precautions by sleeping at friends' homes after Mr. Sotunde was spotted, the fact that they remained unharmed in Ibadan for six months after allegedly being located by one of their agents of persecution was an indication that the Applicants were not being targeted in Ibadan.

[12] The RPD further found that Mr. Sotunde did not fit the profile of someone who would face continued targeting by Boko Haram. Mr. Sotunde participated in MSSN activities for less than a year and did not hold any official title or rank within the organization. Mr. Sotunde also testified that no other members had experienced issues. The RPD found there was no evidence to indicate that Boko Haram would be motivated to continue pursuing the Applicants eight years after the alleged attack on Mrs. Sotunde in 2012.

[13] Under the second prong of the IFA test, the RPD found that it would be reasonable for the Applicants to relocate to Port Harcourt. Both adult Applicants have university degrees and considerable work experience. The RPD also noted that Mr. Sotunde himself testified that if he had no issues with Boko Haram, his family would be able to live in Port Harcourt.

C. *Decision Under Review*

[14] In a decision dated February 22, 2021, the RAD confirmed the RPD's determination and found Port Harcourt to be a viable IFA.

[15] Given that credibility was an issue before the RPD and was raised by the Applicants in their submissions, the RAD conducted its own assessment of the incidents alleged by the Applicants. Based on its own independent assessment, the RAD concluded that Mrs. Sotunde was not attacked by Boko Haram in Abeokuta in 2012 and that Mr. Sotunde was not located by Boko Haram in Ibadan in 2017. While the RAD accepted that Mr. Sotunde faced problems at the hands of local Boko Haram members in Gombe, the objective evidence did not support the Applicants' allegations that they were pursued in Abeokuta or Ibadan. Mr. Sotunde did not fit the profile that would motivate Boko Haram to pursue him once he left Gombe.

[16] The RAD also found that there were additional credibility issues with the Applicants' evidence in support of their allegation that Boko Haram attacked Mrs. Sotunde in 2012. While the RAD accepted that Mrs. Sotunde suffered injuries to her arm and shoulder in 2012, it did not accept that her injuries were the result of an attack by Boko Haram. The RAD rejected the Applicants' explanation for the lack of mention of Boko Haram in the police extract and found

that the authorities were not inclined to hide the threat of Boko Haram. The RAD also found that the Applicants ought to have been issued a police report rather than an extract from the crime diary, which is usually used for reports of loss or missing items and documents.

[17] Furthermore, the RAD rejected the Applicants' argument that Mr. Sotunde had avoided harm from Boko Haram in Ibadan due to the precautions he took. There was no corroboration for Mr. Sotunde's assertions, and there was no evidence that he sought a relocation from his employer or protection from the police.

[18] Finally, the RAD found it would not be unduly harsh for the Applicants to relocate to Port Harcourt and the Applicants raised no concerns with the RPD's conclusion on this point.

III. Issue and Standard of Review

[19] The issue in this application for judicial review is whether the RAD's decision is reasonable.

[20] The parties agree that the applicable standard of review is reasonableness. I agree (*Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 884 at para 13). The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") confirmed that reasonableness is the presumptive standard of review when reviewing the merits of an administrative decision and I do not find that the issue raised warrants a departure from this presumption (at paras 10, 16).

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

A. *Assessment of the objective evidence*

[23] The Applicants submit that the RAD conducted a selective assessment of the objective evidence on Boko Haram’s activities and disregarded the evidence that contradicts the RAD’s conclusion that Boko Haram does not have the capacity to pursue the Applicants in the proposed

IFA in southern Nigeria. The objective evidence indicates that there has been Boko Haram activity and isolated incidents in southern Nigeria, suggesting Boko Haram was or could be active in the area.

[24] The Respondent submits that the documentary evidence supports the RAD's finding that Boko Haram did not have the interest or capacity to track down people beyond their area of operation in the northeast and north-central region of Nigeria. Given the nine years that had passed since any alleged attack on the Applicants, this finding was reasonable.

[25] I agree with the Respondent. While the Applicants note that the RAD "selectively edited out or disregarded portions" of the objective evidence it quoted in its decision, the Applicants do not point to anything about the evidence that contradicts the RAD's finding that Boko Haram does not have the capacity or motivation to pursue the Applicants in Port Harcourt. The evidence highlighted by the Applicants and the RAD clearly states that the capacity of Boko Haram to pursue individuals who relocate to other parts of Nigeria is the greatest in the northeast region and that even locating them in this region is doubtful given Boko Haram's decentralized and local structure. While there have been some reported incidents involving Boko Haram in the south, these are described as "isolated incidents" between the police and alleged Boko Haram members.

B. *Evaluation of risk profile*

[26] The Applicants submit that the RAD did not properly evaluate Mr. Sotunde's profile as a proponent of western education and as a soccer coach. The Applicants stress that Mr. Sotunde

continued to propagate these values after being confronted by Boko Haram in January 2012 and after leaving the MSSN. As a Muslim leader who opposes Boko Haram, he fits squarely within Boko Haram's target profile.

[27] The Respondent submits that the Applicants' arguments amounts to a request to reweigh the evidence. I agree. Mr. Sotunde confirmed that after he left Gombe, he was no longer affiliated with the MSSN, nor was he involved in education support work or community grassroots organizations. The RAD considered how Mr. Sotunde was an advocate of western education and a soccer coach, but found that this did not raise his profile to the level of community activist or school teacher, such that he would be at risk in the proposed IFA. The RAD also noted that Mr. Sotunde's testimony suggests that his soccer coaching was a hobby, where he informally made his views on education known. Boko Haram members from Gombe would not be aware of these activities to the extent that they would pursue him in Abeokuta or Ibadan. The Applicants' characterization of Mr. Sotunde as a "Muslim leader who opposed Boko Haram" is not supported by the evidence and was adequately assessed and rejected by the RAD. I therefore find that the RAD reasonably determined that the Applicants failed to establish that Mr. Sotunde fits the profile of a person who would be targeted by Boko Haram outside of northeastern Nigeria.

C. *Applicants' testimony*

[28] The Applicants submit that the RAD failed to apply the presumption of truthfulness to their testimony, and unreasonably rejected it without a valid reason. Mr. Sotunde testified that he saw and identified the man from Gombe at his workplace and his neighbourhood in Ibadan.

[29] The Respondent submits that the RAD reasonably assessed the Applicants' testimony and found that they failed to establish the link between their account of events and their fear of Boko Haram. Again, I agree with the Respondent. The Applicants' arguments are without merit. The RAD pointed to several reasons to support its conclusion that Mr. Sotunde was not located by Boko Haram in Ibadan, including how Mr. Sotunde was able to continue working for six months after allegedly being found and the fact that there was no corroborating evidence of the 2017 incidents. Furthermore, the RAD reasonably found that the objective evidence on Boko Haram's capacity and motivation to pursue individuals did not support the Applicants' allegation.

D. *Credibility findings with regard to the police*

[30] The Applicants submit that the RAD's adverse credibility findings regarding the alleged attack on Mrs. Sotunde in 2012 were unreasonable. They argue that the RAD erred by rejecting their explanation for why the police extract made no mention of Boko Haram and in finding that the authorities were not inclined to hide the threat of Boko Haram. This finding is contradicted by the evidence that the government of Nigeria has political motivations to maintain the appearance of having Boko Haram contained. The Respondent does not address this issue.

[31] I disagree with the Applicants. Mr. Sotunde's BOC narrative indicates that the police told him that it was almost certain that Boko Haram was behind the attack on his wife in 2012, yet they could not put this on the record for political reasons. However, there is no other evidence on the record to support this assertion. As was noted by the RAD, this explanation is also contradicted by other objective country condition evidence indicating that the authorities are not inclined to hide the threat of Boko Haram.

V. **Conclusion**

[32] For the reasons above, I find that the Applicants have failed to demonstrate that the RAD's IFA analysis was unreasonable. I therefore find the RAD's decision is reasonable. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1965-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1965-21

STYLE OF CAUSE: OLANREWAJU SULAIMON SOTUNDE, KUDIRAT
OLUWAGBEMINIYI SOTUNDE, ABDUL-JALAAL
OLUWAKAYOMIDE SOTUNDE AND ABDUL-
LATEEF AYOMITUNDE SOTUNDE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 2, 2022

JUDGMENT AND REASONS: AHMED J.

DATED: JULY 28, 2022

APPEARANCES:

Sina Ogunleye FOR THE APPLICANTS

Jocelyn Espejo-Clarke FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sina Ogunleye FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario