Federal Court  Cour fédérale

Date: 20220718

Docket: IMM-557-21

Citation: 2022 FC 1052

Ottawa, Ontario, July 18, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

OLUGBENGA FABUNMI IDOWU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Olugbenga Fabunmi Idowu (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"), dismissing his claim for protection as a Convention refugee or a person in need of protection, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of Nigeria. He based his claim for protection upon his status as a bisexual man. The RAD determined that an Internal Flight Alternative ("IFA") is available to him in Port Harcourt.

[3] Although the Applicant advanced several arguments, the dispositive issue in this application is the RAD's treatment of the IFA.

[4] The decision of the RAD is reviewable on the standard of reasonableness, following the decision in the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[5] In considering reasonableness, the Court is to ask if the decision under review "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 that decision"; see Vavilov, at paragraph 99.

[6] The test for a viable IFA is addressed in *Rasaratnam v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 706 (Fed. C.A.), at 710-711. The test is two pronged and provides as follows:

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA and
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[7] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v. Canada (Minister of Employment & Immigration)* (1993), [1994] 1 F.C. 589 (Fed. C.A.), at 596-598.

[8] The Applicant argues that the RAD erred by relying on an outdated version of the National Documentation Package ("NDP"), when there was a more current version available. The Applicant submits that the updated NDP includes new information that is relevant to his circumstances.

[9] I agree.

[10] In my opinion, the RAD was unreasonable in relying on an outdated NDP when updated information was readily available.

[11] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to a new panel of the RAD for redetermination.

JUDGMENT in IMM-557-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to a new panel of the Immigration and Refugee Board, Refugee Appeal Division for redetermination.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-557-21
STYLE OF CAUSE:	OLUGBENGA FABUNMI IDOWU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
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REASONS AND JUDGMENT:	HENEGHAN J.
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APPEARANCES:

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