Federal Court Cour fédérale

Date: 20221108

Docket: IMM-7972-21

Citation: 2022 FC 1518

Ottawa, Ontario, November 8, 2022

PRESENT: Mr. Justice Pentney

Docket: IMM-7972-21

BETWEEN:

YOVWI ESIEBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Yovwi Esieba, seeks judicial review of a decision of the Refugee Appeal Division [RAD] that confirmed the decision of the Refugee Protection Division (RPD) that he is not a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”]

[2] The Applicant submits that the RAD decision should be overturned because he was denied procedural fairness when the RAD elevated the section 96 issue, in effect raising it as a new issue, and because the RAD's credibility findings and factual assessments are flawed.

[3] For the reasons that follow, I am not persuaded that the RAD's decision is unreasonable and the application for judicial review will therefore be dismissed.

[4] The Applicant says he fled Nigeria because he fears unknown kidnappers, who he says called themselves "ex-militants", who have continued to threaten him and his family. The RPD and RAD accepted that he had been kidnapped in June 2017, and held for seven days before being released after his family paid a ransom. His evidence that he managed to evade another kidnapping attempt in November 2017 was also accepted. The Applicant relocated to Lagos in late November 2017, and his family relocated to another city in Nigeria in December 2017. He says he was confronted by "outlaws" seeking his family in December 2017, but he managed to escape.

[5] The Applicant obtained a visa to the United States, and he arrived in Canada on December 30, 2017 and claimed refugee protection. He claims that in December 2019, his family in Nigeria were approached by three armed men who told his wife they knew the Applicant had fled the country, then demanded a monthly ransom. The Applicant says that his mother borrowed money to pay the ransom, and he has made remittances to help with these payments.

[6] The Applicant asserted that these individuals were connected to the 2017 incidents, and he feared returning to Nigeria because of the ongoing threats.

[7] The RPD rejected the Applicant's refugee claim. It found there was no nexus to section 96 of the IRPA because criminality is not a Convention ground, and thus his claim was considered under section 97. The RPD also found that his claim about the 2019 threats lacked credibility, and concluded he had a viable Internal Flight Alternative (IFA) in Abuja.

[8] The RAD dismissed the Applicant's appeal, noting that he had not challenged the RPD's finding that there was no nexus to a Convention ground, and therefore the RAD only considered the Applicant's arguments in relation to his claim for protection under section 97. The RAD disagreed with certain parts of the RPD's findings, but upheld the core determinations that the Applicant's evidence about the 2019 incidents was not credible, and also that he had a viable IFA.

[9] The Applicant's challenge to the RAD's decision must be assessed on the standard of reasonableness, applying the framework of analysis set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] The Applicant asserts that the RAD elevated the nexus issue, thereby denying him procedural fairness because it did not analyze the threats against his family even though family status is recognized as a Convention ground. He claims that his opposition to the violence of armed gangs in Nigeria caused the ongoing threats he and his family received and this is

equivalent to an imputed political opinion, which is a recognized ground under the Convention. The Applicant submits that the procedure was unfair because he had no notice the nexus issue was going to be raised by the RAD and he was denied the opportunity to provide submissions on the point.

[11] I disagree. The Applicant's problem is that the RAD's decision reflects the choices he made at earlier stages in the process. The RPD decision states that the Applicant had not alleged that he was targeted because of any of the grounds listed under the Convention, and that his counsel "submitted that this claim should be analyzed under section 97 of the IRPA." The RPD agreed with that assessment. On appeal, the RAD noted that the Applicant had not challenged the finding of the RPD that his claim did not raise a nexus to a Convention ground, and so it did not need to address this point. The RAD cannot be criticized for mentioning this in the course of its reasons. There is no basis to find that the RAD somehow elevated this issue or treated it as determinative of the outcome; the RAD's decision clearly rests on other findings. In light of this, there was no denial of procedural fairness.

[12] Turning to the Applicant's submissions concerning the reasonableness of the decision, I am not persuaded that he has identified any flaws that are sufficiently serious to warrant overturning the decision. I will review the Applicant's main points on this issue in turn.

[13] The first argument relates to the RPD's and RAD's finding that the evidence pertaining to the 2019 incident was not credible. Both decision-makers found the fact that the Applicant's wife did not mention the 2019 incident in her affidavit an important consideration. They also

discounted her subsequent explanation, in which she clarified that she had been reluctant to include the 2019 incident because of her fear about what the ex-militants might do if they found out she had given evidence about it. The RPD did not accept this explanation because her affidavit included details about the 2017 incident, which she said involved the same perpetrators, and so her explanation for omitting the more recent events did not withstand scrutiny. She did not explain why her evidence on the earlier incident did not elicit the same fear she expressed about giving evidence about the most recent events.

[14] The RAD upheld this finding, stating: "The explanation that she feared the ex-militants for mentioning the 2019 incidents, but by implication, not for mentioning the 2017 incidents, is nonsensical" (RAD Decision, para 25). The Applicant objects to the use of the term "nonsensical", arguing that it is extremely offensive and it presents a window into the RAD member's heart. The Applicant submits that this is sufficient to make the entire decision unreasonable.

[15] I disagree. While the choice of words may not have been ideal, this falls well short of the type of problem that could call into question the soundness of the entire decision. Judicial review on the reasonableness standard is not a "line-by-line treasure hunt for error" and reasons do not have to be perfect (*Vavilov* at paras 91 and 102). Furthermore, the jurisprudence has consistently required decision-makers to make their credibility findings in clear terms (see, for example, *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA)).

[16] In this case, the RAD upheld the RPD’s credibility finding based on the absence of any reference to the 2019 incident in affidavits provided by the Applicant’s wife as well as two other witnesses, and also because it agreed with the RPD’s reasons for rejecting the wife’s explanation for the omission. This finding is amply supported in the evidence and clearly explained by the RAD. The Applicant’s objection to the wording of the RAD’s conclusion is not a basis to find it unreasonable.

[17] The Applicant next argues that the RAD erred in its assessment of the documentary evidence about ransom payments, as well as its treatment of the evidence that he had made remittances to help his wife and mother pay the ransom that was demanded. On the first point, the RAD found that the RPD erred when it made a negative credibility finding about the ransom demand on the basis that making such demands was not part of the normal way criminal gangs operated in Nigeria. The Applicant submits that, based on this finding, the RAD should have accepted his evidence about the ransom demands. That conclusion does not, however, flow directly from the RAD’s finding on this point. All that can be drawn from the RAD’s assessment is that the RPD erred in making a negative credibility finding based on the absence of reference to ransom demands in the National Documentation Package. This does not, in itself, serve to bolster the Applicant’s claim. The RAD’s finding that his evidence about the ransom demand and the remittance payments lacked credibility is reasonable.

[18] In a similar manner, the Applicant seeks to challenge other findings by the RAD by extending their meaning beyond what the words can reasonably bear. For example, the RAD accepted the Applicant’s evidence that he had made remittance payments, but it also noted that

these transfers had begun prior to the time of the ransom demands, and thus the RAD found the evidence of the remittances to be neutral. The Applicant submits that the RAD's conclusion is unreasonable.

[19] I disagree. The RAD had other reasons to question the Applicant's evidence on this point, and it did not err in noting that the remittances had begun prior to the alleged ransom demand. Its conclusion that the evidence only showed that payments were made, not the reason for them, is reasonable in light of the evidence.

[20] On the Applicant's argument that the RAD unreasonably questioned why his wife did not seek to escape from the threats by moving to another location, I find that his submissions do not reflect the evidence. He says that the objective country condition evidence shows that the situation of single women in Nigeria is precarious, and he contends that the situation of his wife as a single, unemployed woman in the country was even more difficult. The problem with this, however, is that both the Applicant's and his wife's evidence was that she was employed. The RAD did not act unreasonably when it questioned why the Applicant's wife had not taken any steps to relocate in order to escape from the threats and ransom demands.

[21] Finally, the Applicant submits that after the kidnapping, he and his family faced a personalized risk in Nigeria. He says that the RAD's finding that the risks were generalized was unreasonable, because once it accepted the 2017 kidnapping evidence, the RAD was bound to conclude that the risks were personalized.

[22] I am not persuaded. The RAD, like the RPD, based this finding in part on the fact that the Applicant was unable to identify the kidnappers, or to demonstrate any ongoing threats from them. As noted previously, the RAD found that the evidence about the 2019 threats was not credible, and absent any other evidence of ongoing threats to the Applicant or his family, it was open to the RAD to determine that the risks were not personalized. Again, this finding is supported by the evidence and explained in the RAD's decision. There is no basis to find it unreasonable.

[23] For all of the foregoing reasons, I am not persuaded that the RAD's decision is unreasonable. The application for judicial review is therefore dismissed.

[24] There is no question of general importance for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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