Federal Court Cour fédérale

Date: 20230428

Docket: IMM-3656-22

Citation: 2023 FC 624

Toronto, Ontario, April 28, 2023

PRESENT: Madam Justice Go

BETWEEN:

Oluwatuyi Felix BAMIDELE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Oluwatuyi Felix Bamidele, is a 51-year-old citizen of Nigeria. He claims that his father's family custom requires the first-born-son of each family to carry out a sacrifice when they reach the age of 45. The Applicant claims that on the day he turned 45 in July 2016, while he was in Ondo State, he was approached by his father and several family

members who insisted that he participate in the sacrifice. The Applicant refused because the sacrifice conflicted with his Christian beliefs, and returned to Ikorodu where he was living.

[2] The Applicant claims that he was assaulted on July 30, 2016 by his father in Ikorodu, and that he received threats over the phone after he reported the incident to the police. The Applicant believes that his father was also spiritually attacking him. The Applicant further claims he was accosted, detained, and slapped by three men in August 2016 on his way home from work, which he also reported to the local police.

[3] The Applicant left Nigeria in May 2017 to study at Mississippi State University in the United States [US] in June 2017. He could not afford the tuition and went to Maryland to reside with his cousin.

[4] The Applicant came to Canada in July 2019 and made a claim for refugee protection. The Refugee Protection Division [RPD] rejected his claim in October 2021 on the basis of a viable Internal Flight Alternative [IFA] in Port Harcourt. In a decision dated March 25, 2022, the Refugee Appeal Division [RAD] rejected the Applicant's appeal of the RPD decision and confirmed that he is neither 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*] [Decision].

[5] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[6] The Applicant argues that the Decision is unreasonable because the RAD erred by refusing to admit a piece of new evidence, and in its determination that there is a viable IFA in Port Harcourt.

[7] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[8] 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 and 133-135.

[9] For a decision to be unreasonable, the Applicant must establish that 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.

III. Analysis

A. *Did the RAD err in refusing to admit new evidence?*

[10] On appeal to the RAD, the Applicant sought to adduce various affidavits, newspaper articles, and a Government of Canada travel advisory against Nigeria dated December 11, 2021 [Travel Advisory] as new evidence under subsection 110(4) of the *IRPA*. The RAD admitted all documents with the exception of the Travel Advisory. Despite meeting the requirements of subsection 110(4) of *IRPA*, the RAD found that the Travel Advisory was not relevant to the appeal with respect to the IFA.

[11] The Applicant argues that the RAD erred by refusing to admit the Travel Advisory as new evidence. The Applicant submits that the Travel Advisory is relevant and new information because it presents current country conditions on travel to Nigeria and demonstrates that adverse conditions are present all over the country. Specifically, the Applicant asserts that the evidence shows the frequency of violent attacks without police intervention, which supports his narrative that he experienced attacks in public, which were reported to the police, but nothing concrete was ever done.

[12] I am not persuaded by the Applicant’s argument. Instead, I agree with the Respondent that the RAD reasonably decided not to admit the Travel Advisory as new evidence.

[13] In rejecting the Travel Advisory as new evidence, the RAD acknowledged the evidence of the increasing regional risk of violent crime and civil unrest in Rivers State, where Port Harcourt is located. However, the RAD did not find the Travel Advisory relevant, mainly because it is not intended to inform Nigerian citizens about potential safety concerns, but rather Canadian citizens wishing to travel to the country temporarily. Further, the RAD highlighted that the Travel Advisory warns Canadians to "avoid all travel" to certain Nigerian States "with the exception of Rivers' capital city, Port Harcourt", where it advises against "non-essential travel." The RAD found that the exception made for the IFA in the advisory indicates a lesser concern regarding Canadians traveling to Port Harcourt than other locations in the country. I see no error in the RAD's analysis.

[14] I also agree with the Respondent that, when the RAD's assessment is considered holistically, similar evidence of country conditions in Nigeria, and Port Harcourt specifically, was assessed. The fact that the RAD did not admit and assess the Travel Advisory did not affect the reasonableness of the RAD's overall assessment of the country conditions.

B. *Was the RAD's IFA analysis unreasonable?*

[15] The two-pronged test for finding a viable IFA is well-established. The decision-maker must be satisfied on a balance of probabilities that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA, and (2) the conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge in the city: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*] at 711.

[16] Claimants bear the burden in the first prong of the test to show that they would be personally subject to persecution or a risk to life or a risk of cruel and unusual punishment in the IFA, on a balance of probabilities: *Rasaratnam* at 710.

[17] The Applicant notes that the test requires consideration of evidence surrounding the Applicant's particular situation and the specific country at issue: *Rasaratnam* at 710.

(1) First prong of IFA test

[18] The Applicant argues that the RAD erred in assessing the agents of persecution's motivation and means to locate him in the proposed IFA.

[19] The Applicant highlights an affidavit sworn by his spouse attesting to the continuous harassment she has received by the Applicant's paternal family members since he left Nigeria. The Applicant takes issue with the RAD's dismissal of this evidence by relying in part on the fact that the spouse was using an unchanged number. The Applicant asserts that the phone calls demonstrate a continued interest in him, and that should he return, he would risk having his persecutors learn of his return and attempt to locate him. The Applicant also submits that the fact that the agents of persecution have not targeted his family in Nigeria per se is irrelevant.

[20] I reject this argument. As the RAD noted, while the Applicant testified that he continued to receive calls from his father's associates and that his spouse received calls from his paternal aunt, no additional incidents occurred following the event in August 2016 until his hearing at the RPD in September 2021. The RAD also noted that the Applicant testified that he did not change

his phone number and there is no evidence on the record that his spouse changed her phone number. The RAD then concluded:

> The ability of the alleged agents of persecution to contact the [Applicant] was possible because he maintained the same telephone number rather than a demonstration that they are sufficiently motivated to locate the [Applicant] in the proposed IFA location.

[21] In light of the evidence before the RAD, I do not find this conclusion to be unreasonable.

[22] With respect to the RAD's finding that the agents of persecution would not have the means to locate the Applicant in the IFA, the Applicant disagrees with the RAD's reliance on the distance between Port Harcourt and Lagos and Ondo State, highlighting that the drive can be completed in a single day, making it "very easy" for his persecutors to arrive in the IFA.

[23] The Applicant's argument lacks merit. The RAD highlighted the distance between those locations when it found that the agents of persecution would not have the motivation to locate him in a populous city hundreds of kilometers away, a finding that was supported by the RAD's assessment of the other evidence before it.

[24] The Applicant further submits that in order for the Applicant to relocate to Port Harcourt, he would have to reach out to his family and the people in his community, which in turn would raise the possibility of him being discovered. Further, as the agent of persecution is a member of the Applicant's family, it is possible that they have the means and motivation to track him down, given the proximity of the IFA, and that they would continue to be motivated to harass the Applicant's family members.

[25] I note that the RAD did consider this argument but ultimately rejected it due to a lack of evidence. The RAD also noted that the Applicant has no family members or friends living in Port Harcourt, and the incidents of threat happened in or around the Applicant's previous residence and his workplace, which had remained the same for approximately 15 years. The Applicant does not point to any reviewable errors in these findings.

[26] The Applicant also argues that the RAD erred by characterizing an encounter between the Applicant's friend, Mr. Meshe and the Applicant's paternal uncle as a "chance encounter." In an affidavit provided by Mr. Meshe describing this encounter, he states that the paternal uncle urged him to persuade the Applicant to return to Nigeria and abandon his religious principles. The Applicant highlights that Mr. Meshe's affidavit merely states that he saw an uncle and greeted him, which is not evidence of it being a chance encounter. The Applicant asserts that the other plentiful evidence indicating that the Applicant is still of interest to his paternal family supports that the uncle deliberately approached Mr. Meshe.

[27] I disagree. Given that there was no evidence that the uncle had tracked down the Applicant's friend as a means to locate the Applicant, it was open to the RAD to draw the inference it did.

[28] The Respondent argues overall with respect to the first prong of the IFA test that the Applicant has not raised any reviewable errors and merely seeks to have this Court reweigh the evidence.

[29] I agree. In light of the evidence before it, it was open to the RAD to find that the Applicant failed to demonstrate his paternal family's motivation and means to seek him out in Port Harcourt.

(2) Second prong of IFA test

[30] For the second prong of the test, the question to be asked is whether it would be objectively reasonable to expect the claimant to seek safety in the IFA before seeking refuge outside the country. The Respondent highlights that the unreasonableness test requires claimants to demonstrate "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area", and concrete evidence of such: by *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*] at para 15.

[31] The Applicant argues that the RAD erred in finding that it would be reasonable for him in all the circumstances to relocate to Port Harcourt. Specifically, the Applicant contends that the RAD failed to assess his situation based on cost of living, gendered issues, employment prospects, housing, access to social services, language differences, and indigeneship in the proposed IFA.

[32] The Applicant emphasizes again that given these difficulties, he would have to reach out to other family members for help, which would increase the risk of him being discovered, rendering the IFA unreasonable for the Applicant.

[33] I reject the Applicant's arguments for two reasons.

[34] First, as the Respondent points out, the Applicant was questioned by the RPD about two proposed IFAs. The Applicant consistently stressed his fear of his father, but did not suggest that it would be unreasonable for him to live in the proposed IFAs, including Port Harcourt, because of issues such as the lack of employment or housing. The Applicant acknowledged that he would be able to find a job, although it might take a while. Based on the Applicant's own testimony, I find it was reasonable for the RAD to find that the Applicant has not met the high threshold required by *Ranganathan* at para 15.

[35] Second, relating back to the Applicant's argument that contacting his family for help would put him at greater risk, I adopt the Court's comment in *Olori v Canada (Citizenship and Immigration)*, 2021 FC 1308 at para 40 in response to a similar argument raised in that case:

> […] in order to establish that an IFA is unreasonable by reason of undue hardship, the Applicants must meet a very high threshold: "a refugee claimant must establish more than the undue hardship resulting from loss of employment, separation from family, difficulty to find work, and a reduction in the quality of life" (*Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 30; Ade-Ogunade at paras 27-28). I do not find that the Applicants have met this threshold.

[36] Taking into consideration the country conditions evidence, as well as the Applicant's education and varied work experience, I find that the RAD reasonably concluded on a balance of probabilities that the conditions in the IFA, while unfavourable, would not jeopardize the Applicant's life or safety.

IV. Conclusion

[37] The application for judicial review is dismissed.

[38] There is no question to certify.

JUDGMENT in IMM-3656-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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