Federal Court  Cour fédérale

Date: 20230725

Docket: IMM-591-22

Citation: 2023 FC 1018

Ottawa, Ontario, July 25, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ABOSEDE OLAYINKA FALOWO
SAMUEL OLUWATOMISIN FALOWO
DEBORAH TEMILOLUWA FALOWO
ESTHER TOLUWALOPE FALOWO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abosede Olayinka Falowo, the Principal Applicant [PA], and her co-Applicant children are citizens of Nigeria who fear persecution at the hands of her in-laws (her late husband's family). The Applicants assert that the in-laws want to force the children to undergo certain

mandatory rituals, including female genital mutilation for the female children, eating a concoction for their brother, and forced remarriage in the case of the PA.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] found the Applicants generally credible but found, determinatively, that they had an internal flight alternative [IFA] in Abuja. On appeal, the Refugee Appeal Division [RAD] of the IRB confirmed the RPD's IFA finding and determined that the Applicants were neither Convention refugees nor persons in need of protection [Decision].

[3] The main issue for the Court's determination is whether the Decision is reasonable. There is no dispute that the presumptive reasonableness standard of review applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25. I find that none of the situations rebutting the presumptive standard is present here.

[4] To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at para 100.

[5] For the reasons below, I find that the Applicants have not met their onus and, therefore, I dismiss their judicial review application.

II. Analysis

[6] I am not persuaded that the RAD's reasons or the conclusions it drew are unreasonable.

[7] A claim for refugee protection will fail if the claimant has a viable IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration),* 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]. To obtain protection, the refugee claimant must establish, on a balance of probabilities, that (i) there is a serious possibility of persecution in the proposed IFA, and (ii) objectively, considering all the circumstances including those particular to the claimant, it would be unreasonable or unduly harsh for them to move there: *Thirunavukkarasu,* above; *Rasaratnam v Canada (Minister of Employment and Immigration),* 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Olasina v Canada (Citizenship and Immigration),* 2021 FC 103, at para 4; *Haastrup v Canada (Citizenship and Immigration),* 2020 FC 141 at para 29.

[8] The question before this Court on judicial review is whether the challenged Decision exhibits the hallmarks of reasonableness – justification, intelligibility and transparency – to avoid judicial intervention. It is not an opportunity to reargue the appeal before the RAD, which I find the Applicants have done here. Nor is it the role of the Court to reweigh the evidence considered by the RAD: *Vavilov,* above at para 125. Bearing these principles in mind, I consider next the reasonableness of the RAD's analysis and conclusions regarding each part of the applicable test.

(1) Serious Possibility of Persecution

[9] The Applicants have not demonstrated, in my view, that the RAD erred. As I explain, I find the RAD's reasons permit the Court to understand the conclusions it reached. In other words, I find that the RAD's reasoning "adds up": *Vavilov*, above at paras 102, 104.

[10] The Applicants argue before this Court, as they did before the RAD, that the tribunal(s) below erred by considering the size and population of Nigeria and Abuja in the IFA analysis. The RAD considered this issue and reasonably found that the RPD simply outlined very general conditions in Nigeria and, at most, this was but one factor the RPD considered, among others.

[11] I also am not convinced that the RAD erred in finding the Applicants can travel to the proposed IFA by air. Contrary to the Applicants' submissions, I find the RAD considered the dangers of travelling to Abuja as a single mother, and found the Applicants had failed to identify what about this profile would make air travel, in particular, unsafe, given the major airport there. In my view, the Applicants have not demonstrated any reviewable errors in the RAD's analysis.

[12] I further agree with the Respondent that the RAD did not err in its application of the IRB's *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board*. The RAD reasonably found no evidence to support the Applicants' argument that the PA's gender was the basis for her lack of detailed knowledge about the agents of harm. The onus to rebut the availability of a viable IFA rests with the Applicants: *Thirunavukkarasu*, above at 593, 597.

[13] In addition, I am not persuaded that the RAD erred in assessing whether the agents of persecution will be able to track the Applicants in the proposed IFA. Not only have the Applicants not provided evidence to support these arguments, but the RAD reasonably addressed each of their allegations. The RAD found there was no evidence to support the allegation that cell phone tracking is a rampant practice in Nigeria. The RAD also determined that the PA's personal residence was never located by the agents of persecution in the city to which she relocated before leaving Nigeria, and further, she never changed her phone number despite receiving threatening phone calls. The RAD concluded that there was a lack of evidence to support that the attempted kidnapping of the PA's son was connected to the Applicants' claimed fear.

[14] The RAD is presumed to have reviewed all evidence before it and is not required to refer expressly to every line of evidence: *Zhang v Canada (Citizenship and Immigration),* 2016 FC 765 at para 32. The Applicants have not convinced me of any basis here that would rebut this presumption.

(2) Reasonableness of Relocating

[15] I am satisfied that the RAD did not err in finding it would not be unreasonable, in the Applicants' particular circumstances, for them to relocate to Abuja. In my view, the Applicants have failed to demonstrate how the RAD erred in its analysis, and instead invite the Court to reweigh evidence, which is not the role of this Court on judicial review: *Vavilov,* above at para 125.

[16] Contrary to the Applicants' submissions, once the RAD proposed the IFA in Abuja, the onus was on the Applicants to demonstrate that it would be unreasonable for them to relocate to Abuja: *Yafu v Canada (Citizenship and Immigration),* 2014 FC 293 at para 8.

[17] The RAD reasonably addressed, in my view, the Applicants' allegations concerning the PA's profile and ability to find employment in Abuja. The RAD acknowledged objective evidence that some women face harassment and exploitation in the workplace in Nigeria, but ultimately found that the PA has years of experience working in Nigeria, including after her husband passed away, and that there was no evidence she ever faced mistreatment especially in the context of running her own business. The RAD also acknowledged the patriarchal nature of Nigerian society and found that the PA's son may be able to provide assistance to obtain accommodation.

[18] I am also not convinced the RAD erred in assessing or ignored the Applicants' psychological assessments. The RAD considered the evidence and found the Applicants had not established that treatment is unavailable to them in Nigeria. In my view, the country condition evidence cited by the Applicants before this Court is applied out of context in a line-by-line attempt to impugn the Decision. The RAD is not required to mention every document in evidence, and the Applicants have failed, in my view, to establish a link between the general country conditions to their particular circumstances: *Jean-Baptise v Canada (Citizenship and Immigration),* 2018 FC 285 at paras 19-20.

[19] In addition, I find that the case of *Li v Canada (Public Safety and Emergency Preparedness),* 2019 FC 548 does not assist the Applicants here, because the RAD did not conclude nothing was precluding the Applicants from relocating, but rather found that relocation would be reasonable after a holistic review of and engagement with the evidence.

[20] Ultimately, I am satisfied that the Decision demonstrates a rational chain of analysis that led the RAD from the evidence before it to its conclusion, allowing the Court to connect the dots: *Vavilov*, above at paras 97 and 102.

III. Conclusion

[21] For the above reasons, I therefore dismiss this application for judicial review.

[22] No party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-591-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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