Federal Court Cour fédérale

Date: 20231010

Docket: IMM-326-22

Citation: 2023 FC 1343

Ottawa, Ontario, October 10, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

JOHN KAYODE-ABUSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 38-year-old citizen of Nigeria. He left Nigeria for the United States in February 2017. After entering Canada irregularly in October 2017, the applicant claimed refugee protection. He alleged that he had a well-founded fear of persecution by traditionalists in his home village of Ikale, who sought to compel him to become an *Abobaku* – that is, someone who, according to Yoruba practice, would eventually be sacrificed and buried with the local king when the king dies.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) heard the applicant's claim on June 3, 2021. In a decision dated July 5, 2021, the RPD rejected the claim because it found that the applicant had a viable internal flight alternative (IFA) (three specific places in Nigeria were identified).

[3] The applicant appealed the RPD's decision to the Refugee Appeal Division (RAD) of the IRB. The RAD dismissed the applicant's appeal in a decision dated December 21, 2021. The RAD agreed with the RPD that the applicant had a viable IFA in the locations identified. The RAD therefore confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

[4] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). He submits that the RAD's conclusion that he has a viable IFA is unreasonable.

[5] For the reasons that follow, I do not agree. This application will, therefore, be dismissed.

[6] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard. 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court

to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[7] As noted, both the RPD and the RAD rejected the applicant's claim for refugee protection on the basis that he has a viable IFA in Nigeria. An IFA is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to which it would not be unreasonable for them to relocate. When there is a viable IFA, a claimant is not entitled to protection from another country. To counter the proposition that they have a viable IFA, a party seeking protection has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA).

[8] The applicant contends that it is unreasonable for the RAD to conclude that the first branch of the IFA test was satisfied. He also submits that the RAD erred by failing to address the second branch of the test in any detail in its decision.

[9] On the question of whether the applicant would be safe from persecution in the IFAs identified by the RPD, the RAD agreed with the RPD that the applicant had not established that his agents of persecution would be motivated to seek him out there or, even if they were, that they would have the means to locate him. This is a point on which the applicant had the burden of proof. On the record before it, it was not unreasonable for the RAD to conclude that the applicant had failed to discharge that burden.

[10] Like the RPD, the RAD accepted the applicant's narrative as credible. On this account, however, any interest the agents of persecution had shown in the applicant was dated. The last incident for which the applicant could provide a date (his wife being questioned about his whereabouts a few weeks after he left Nigeria) occurred in February 2017. Prior to this, the agents of persecution had not shown any interest in the applicant since June 2015.

[11] The RAD provided transparent and intelligible reasons explaining why it agreed with the RPD that the applicant's evidence was insufficient to establish that the agents of persecution were currently motivated to find the applicant or that they had the means to do so. Among other things, the RAD explained why it agreed with the RPD that certain evidence that could not be dated had no probative value when it came to establishing an ongoing interest in the applicant on the part of his agents of persecution. (Even on the most favourable view of this evidence, it was

not more recent than 2018.) The applicant's arguments on review essentially ask me to reassess his evidence and reach a different conclusion than the RAD did. As mentioned above, this is not the Court's role when applying the reasonableness standard.

[12] The applicant also submits that the RAD erred in failing to examine the second branch of the IFA test more fully in its decision. I do not agree. While it is true that the RAD only briefly summarizes the RPD's findings under the second branch and then states in a conclusory fashion that it agrees with these findings, it is also the case, as the RAD itself points out, that the applicant did not challenge this aspect of the RPD's decision. The applicant's arguments on appeal all related to the first branch of the IFA test. The RAD cannot be faulted for not engaging more fully with an issue that was not raised before it.

[13] In sum, the applicant has failed to establish any basis to interfere with the RAD's decision.

[14] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-326-22

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-326-22
STYLE OF CAUSE:	JOHN KAYODE-ABUSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 23, 2023
JUDGMENT AND REASONS:	NORRIS J.
DATED:	OCTOBER 10, 2023

APPEARANCES:

Ariel Hollander	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT