Federal Court  Cour fédérale

Date: 20231010

Docket: IMM-5260-22

Citation: 2023 FC 1340

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 10, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

SUNGAT HORTENESE MA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Sungat Hortense Ma, a citizen of Côte d'Ivoire, is requesting judicial review of the decision of the Refugee Appeal Division [RAD] rendered on May 12, 2022. The RAD confirmed the decision of the Refugee Protection Division [RPD] and determined that Mrs. Ma is not a Convention refugee or 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 RAD was of the opinion that the RPD's conclusion that there is an internal flight alternative [IFA] for Mrs. Ma in the cities of Gagnoa and Yamoussoukro in Côte d'Ivoire [or proposed IFA] was correct and consequently dismissed Mrs. Ma's appeal.

[3] In support of her application for judicial review, Mrs. Ma argues that the RAD erred in its assessment of the proposed IFA. She is asking this Court to set aside the RAD's determination and refer the matter back to the RAD for redetermination by a differently constituted panel.

[4] For the reasons detailed below, I will dismiss the application for judicial review. Mrs. Ma has not demonstrated that the RAD erred and that its determination is unreasonable; on the contrary, the RAD's reasons demonstrate that its determination is based on an internally coherent chain of analysis and is justified in light of the legal and factual constraints.

II. Background

[5] On February 20, 2018, Mrs. Ma arrived alone in Canada on a Canadian visitor visa, valid from December 13, 2017, to March 12, 2018, and in April 2018 she claimed refugee protection in Canada. Her husband and children did not accompany her and are still in Côte d'Ivoire.

[6] On April 9, 2018, Mrs. Ma signed her Basis of Claim Form [BOC Form]. In the written account she attached to her form, Mrs. Ma describes her family and her work in Abidjan. She states that she met a co-worker, an accountant, named Adam Adepi, on September 22, 2017, and that he wanted to have a romantic relationship with her. She alleges that Mr. Adepi harassed her, attempted to kidnap her on November 9, 2017, and threatened to kill her. She also states that in mid-December 2017, an American visitor visa was issued to her through the services of a human smuggler, that she received this visa in mid-January and that on February 20, 2018, with

financial assistance, she was able to leave her country. Mrs. Ma also notes that in March 2018, once in Canada, she contacted her husband, who informed her that Mr. Adepi came to their home with two men who threatened and hit her husband. Her husband then went into hiding with the children at a friend's home in Ayamé.

[7] Mrs. Ma later amended her written account to add that in October 2020, two and a half years later, her husband returned to Abidjan and resumed his work, and that in January 2021, her husband received calls from Mr. Adepi, who was looking for Mrs. Ma's place of residence.

[8] On October 13, 2021, the RPD heard Mrs. Ma's refugee protection claim, and she testified at the hearing. On December 20, 2021, the RPD rejected Mrs. Ma's refugee protection claim.

[9] The RPD raised concerns about the alleged abduction on November 9, 2017, considering that Mrs. Ma had signed her American visitor visa application on November 8, 2017. The RPD noted that this inconsistency raised doubts as to whether the attempted abduction occurred but considered that this alone could not undermine the applicant's credibility to the point of rejecting all of her allegations. The RPD also concluded that Mrs. Ma had a viable IFA in the cities of Gagnoa and Yamoussoukro. The RPD noted that Mrs. Ma bears the burden of demonstrating, on a balance of probabilities, and that Mr. Adepi has the motivation and ability to search for her in the proposed cities, and concluded that Mrs. Ma did not meet that burden. Furthermore, the RPD was not persuaded that Mrs. Ma has demonstrated that she could not reasonably settle in one of the cities proposed as an IFA. The RPD concluded that Mrs. Ma does not have the profile of a vulnerable person, without support or resources, and that Mrs. Ma did not meet her burden of establishing that there is a serious possibility of persecution.

[10] Mrs. Ma appealed the RPD decision to the RAD. Mrs. Ma argued that the RPD erred in its analysis of the proposed IFA and in its assessment of her credibility. She challenged the analysis of the first prong (ability and motivation) and the second prong of the applicable test.

[11] On May 12, 2022, the RAD confirmed the RPD's determination and dismissed the appeal.

III. RAD decision

[12] In its reasons, the RAD set out the two prongs of the test for assessing an IFA.

[13] With respect to the first prong of the test, the RAD first confirmed that Mrs. Ma had the burden of establishing that, in the proposed IFA cities, she would face a serious possibility of persecution within the meaning of section 96 of the IRPA or that she would, within the meaning of subsection 97(1) of the IRPA, on a balance of probabilities, be personally subjected to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment. In this regard, the RAD agreed with the RPD and concluded that the agent of persecution had neither the ability nor the motivation to search for Mrs. Ma in Gagnoa and Yamoussoukro, the cities proposed as IFAs.

[14] With respect to the ability of the agent of persecution to search for Mrs. Ma in the proposed IFA, the RAD concluded that Mrs. Ma did not discharge her burden. The RAD (1) was of the opinion that the evidence on the record did indeed establish the profile of the agent of persecution as an influential man with contacts and money; (2) did not share Mrs. Ma's view that the RPD tried to build a case against her; (3) also did not accept Mrs. Ma's argument that the RPD's conclusion regarding the omission in her BOC Form showed a lack of consideration of

the difficulties women may have in demonstrating that their claim is credible and trustworthy, and the potential impact of the sexual violence suffered; (4) was of the opinion that the fact that the agent of persecution found Mrs. Ma's husband and daughter in Abidjan, in a context where her husband had returned to a job he had held for many years, did not mean that he would have the ability to find her in the proposed IFA, taking into account the fact that the agent of persecution did not contact her husband and children during a period of more than two years when they allegedly lived a few kilometres from Abidjan; (5) considered that Mrs. Ma's omission, in her written account, without a satisfactory explanation, and the absence of any mention in her friend's letter of the presence of the agent of persecution in the neighbourhood undermined the credibility of this allegation; (6) noted that Mrs. Ma had testified that the agent of persecution did not know that she was in Canada and that her assertion that when she returns to the airport, the agent of persecution [TRANSLATION] "will know because he has people on the inside" is speculation; (7) considered that Mrs. Ma's allegations that the agent of persecution would have the necessary resources to find her anywhere in Côte d'Ivoire, and particularly in the proposed IFA, are hypothetical and speculative, since the fact that the agent of persecution is wealthy and influential was not sufficient to draw a conclusion that he would have the ability to find Mrs. Ma anywhere in Côte d'Ivoire; (8) found that the size of the proposed IFA and its distance from Abidjan would require, on the part of the agent of persecution, certain means that had not been established and emphasized that Mrs. Ma had not provided evidence that he would have access to authorities, government resources or another type of resource to find her anywhere in the country; and (9) noted that the case law cited by Mrs. Ma does not indicate that it is wrong to identify a large urban centre as an IFA because of the size of its population, but that a large urban centre cannot be assumed to be an IFA because of the size of its population

alone. The RAD was of the view that the RPD did not do so and instead considered this factor in its analysis.

[15] The RAD was of the opinion that the RPD's conclusion that Mrs. Ma did not establish that there was a serious possibility that the agent of persecution would be able to find her in the proposed IFA was correct.

[16] With respect to her agent of persecution's motivation to find Mrs. Ma in the proposed IFAs, the RAD noted Mrs. Ma's testimony before the RPD that the agent of persecution knew where her family was during their absence from Abidjan (March 2018 to October 2020) but reportedly did not go. The RAD also noted that the agent of persecution did not go to Bouaké or Ayamé, and that he only contacted Mrs. Ma's husband and daughter several months after they returned to Abidjan. The RAD was of the opinion that this contact in Abidjan did not lead to the conclusion that the agent of persecution would be motivated to search for the appellant throughout Côte d'Ivoire, and particularly in the proposed IFA. The RAD did not accept the argument that the period between 2018 and 2021 was merely a period of calm, nor did it agree with the argument based on the pandemic, as the assertion that between 2018 and 2020, people were not travelling or working and children were no longer going to school in Côte d'Ivoire was not put into evidence, and, according to generally accepted facts (subsection 171(b)) of the IRPA), the pandemic did not begin until March 2020.

[17] The RAD concluded that Mrs. Ma did not establish that there was more than a mere possibility that the agent of persecution would have the motivation to find her today in the proposed IFA.

[18] Finally, as for the second prong of the applicable test, the RAD shared the RPD's view that conditions that would jeopardize Mrs. Ma's life or safety had not been established. Having considered the RPD's decision and Mrs. Ma's arguments, the RAD noted, in particular, that (1) the refugee protection claimant's risk of not finding suitable work was not sufficient to make the proposed IFA unreasonable; (2) in the circumstances, the RPD did not propose the two cities as IFAs in a speculative manner; (3) it did not identify any errors in the RPD's uncontested conclusion that Mrs. Ma's husband could not go and live in the proposed IFA and agreed with it; (4) Mrs. Ma does not have the profile of a vulnerable person; (5) Mrs. Ma had not established a genuine fear of persecution on a Convention ground within the meaning of the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, issued by the Immigration and Refugee Board of Canada, pursuant to subsection 65(3) of the *Immigration Act*, November 13, 1996 [Guideline 4] and not that she is the subject of a form of generalized violence; and (6) Mrs. Ma had failed to demonstrate that the state is unable to provide security and had therefore failed to rebut the presumption of protection.

[19] The RAD was of the opinion that the RPD's conclusion on the second prong was correct.

[20] In short, the RAD was of the view that the RPD's conclusion that there is an IFA in the cities of Gagnoa and Yamoussoukro in Côte d'Ivoire was correct.

IV. Analysis

[21] Before the Court, Mrs. Ma argues that the RAD erred in assessing the proposed IFA and in analyzing her fear as a member of the particular social group of women.

[22] The Supreme Court of Canada has confirmed that the reasonableness standard applies for judicial review of an administrative decision (*Canada (MCI)* v *Vavilov*, 2019 SCC 65 at paras 23–25 [*Vavilov*]). Considering the arguments raised by Mrs. Ma, none of the situations that would justify departing from this presumption arise in this judicial review (*Vavilov* at paras 25, 33, 53, *Canada Post Corporation* v *Canadian Union of Postal Workers*, 2019 SCC 67 at para 27).

[23] Moreover, the Court has already confirmed that the standard of reasonableness applies to the RAD's findings regarding the existence of a viable IFA (*Djeddi c Canada (Citoyenneté et Immigration)*, 2022 CF 1580 at para 16; *Valencia* v *Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *Adeleye* v *Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise* v *Canada (Citizenship and Immigration)*, 2021 FC 62 at para 6; *Singh* v *Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh*] at para 17; *Kaisar* v *Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[24] Thus, the issue here is whether the RAD's decision 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). The party challenging a decision must prove that the decision is unreasonable.

[25] As the Minister of Citizenship and Immigration [the Minister] points out, an applicant's burden of proof is high when it comes to the reasonableness of a decision on an IFA. An applicant must provide actual and concrete evidence of conditions that would jeopardize his or her life or safety in the location proposed by the RPD (*Ranganathan v Canada (Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (FCA) at para 15; *Campos Navarro* v

Canada (Citizenship and Immigration), 2008 FC 358 at para 20; *Olivares Sanchez* v *Canada (Citizenship and Immigration)*, 2012 FC 443 at para 22).

[26] The test for determining whether a viable IFA exists was established in *Rasaratnam* v *Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) and *Thirunavukkarasu* v *Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*], judgments by the Federal Court of Appeal. Thus, two criteria must be met:

> 1) On a balance of probabilities, there is no serious possibility of the claimant being persecuted in the part of the country in which the IFA exists; and
>
> 2) It would not be unreasonable, in all the circumstances, including those particular to the claimant, for him or her to seek refuge there.

[27] The Court stated that "the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory" (*Singh* at para 26).

[28] Finally, if an IFA is suggested, the refugee protection claimant bears the burden of establishing that the IFA is inadequate and that it is unreasonable to settle there (*Thirunavukkarasu* at para 12; *Salaudeen* v *Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq* v *Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke* v *Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44).

[29] With respect to the first prong of the applicable test for establishing an IFA, and more specifically to the ability of the agent of persecution to find her, Mrs. Ma essentially argues that the RAD (1) ignored that Mr. Adepi has the ability to find her and that the evidence shows, on the contrary, that he is wealthy and influential, has contacts all over the country, knows people and did in fact find her husband and daughter; (2) erred in considering that Mrs. Ma had failed to state that she had learned that Mr. Adepi had been lurking about her neighbourhood; (3) erred in concluding that the proposition that Mr. Adepi would be aware that she was back in the country if she went to settle in another city is speculation; and (4) erred in concluding that, given the size of the city's population, Mr. Adepi would be unable to find her.

[30] As for the agent of persecution's motivation to find her, Mrs. Ma argues that the RAD erred in concluding that the family had no problems when they lived in the city of Ayamé and ignored the impact of the COVID-19 pandemic, which need not be put in evidence.

[31] The Minister responds that the RAD weighed various factors in assessing the ability and motivation of the agent of persecution, such as (1) Mr. Adepi (the accountant) was unable to find Mrs. Ma's family between March 2018 and October 2020, even though they lived in a small town a few kilometres from Abidjan; (2) it was only after her family moved back to Abidjan and after her husband returned to the same job he had held for 20 years that Mr. Adepi allegedly approached her family in 2021; (3) Mr. Adepi did not know that Mrs. Ma was in Canada; (4) the pandemic began in March 2020, and yet the applicant's family had lived in Ayamé since March 2018 for two years without any problems; (5) it was alleged for the first time at the hearing that Mr. Adepi had been lurking about near the residence of Mrs. Ma's friend, but this friend did not mention this fact.

[32] I am not persuaded that the RAD's conclusion on the first prong is unreasonable. First, in connection with the ability of the agent of persecution to find her, it is reasonable to conclude that the finding that the agent of persecution is wealthy and influential proves insufficient in a case such as the present one when his degree of influence is not established, as he was unable to find Mrs. Ma's family, who lived a few kilometres from Abidjan for two years, he did not know where Mrs. Ma was and there is no evidence of the resources available to him. The agent of persecution was not able to locate the family until after the family returned to Abidjan; it is reasonable to conclude that the agent of persecution's ability to locate Mrs. Ma in the proposed IFA has not been established.

[33] In connection with the motivation of the agent of persecution, it is clear that the family was not bothered for two and a half years, including two full years before the pandemic even began, and it is reasonable to conclude that the agent of persecution's motivation has also not been established.

[34] As for the second prong of the applicable test, Mrs. Ma argues that (1) it would be unduly harsh to expect her to move to Gagnoa or Yamoussoukro and that she testified that it would be an excessive hardship, despite her education and her employment history, because these cities are not major cities and there are no jobs; (2) the RAD erred in considering the population size; (3) although the burden of proof is on the claimant, the Board cannot, in the absence of sufficient evidence, rely solely on the fact that the claimant has not met the burden of proof for finding an IFA exists, and there is no onus on a claimant to personally test the viability of an IFA before seeking protection from Canada; and (4) the RAD erred in concluding that Mrs. Ma does not have the profile of a vulnerable person within the meaning of Guideline 4.

[35] As for the second prong of the test, the Minister responds that Mrs. Ma has not demonstrated that moving to these cities would put her safety or her life at risk and that the RAD's determination is therefore reasonable.

[36] In this case, I conclude that Mrs. Ma has not demonstrated that the RAD's finding on the second prong is unreasonable and that Mrs. Ma has not demonstrated any serious flaws that would require the Court's intervention in this regard.

[37] Mrs. Ma agrees that she bears the burden of demonstrating that the IFA is inadequate and that it is unreasonable for her to settle there, and she also essentially agrees that the evidence is insufficient here. I will not accept her invitation to somehow reverse the burden of proof. I also note, as the Minister points out, that the RAD considered that violence against women is a problem in Côte d'Ivoire, that sexual harassment often goes unpunished and that there are limits to the remedies available for women who are victims of sexual harassment but concluded that this did not amount to a risk of sufficiently serious harm that would put her life or safety at risk. Mrs. Ma does not indicate how the RAD erred in this regard. Also, Mrs. Ma did not demonstrate that the state is unable to ensure security and therefore did not rebut the presumption of protection, so the RAD's finding in this regard is also reasonable.

[38] There is a presumption that the RAD has considered all the evidence (*Guiseppe Ferraro* v *Canada (Citizenship and Immigration)*, 2011 FC 801 at para 17). Mrs. Ma had to demonstrate that the RPD failed to consider evidence that had high probative value and was relevant to the determination but failed to do so. In addition, the RAD is entitled to view the documentary evidence as a whole and is not required to refer to every piece of evidence before it (*Velazquez* v *Canada (Citizenship and Immigration)*, 2011 FC 775 at paras 22–23). In this case, the RAD's

decision is detailed and addresses the arguments raised before it. Mrs. Ma would have preferred another outcome, but that does not justify the Court's intervention.

[39] Considering the evidence on the record, the RAD was able to confirm that Mrs. Ma has an IFA in the cities of Gagnoa and Yamoussoukro. The RAD reasonably concluded that Mrs. Ma did not meet her burden of proof on the two prongs of the applicable test.

V. Conclusions

[40] Mrs. Ma has not demonstrated that the RAD's decision is flawed and unreasonable. Accordingly, the application for judicial review is dismissed.

JUDGMENT in IMM-5260-22

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. No costs are awarded.

3. No question is certified.

"Martine St-Louis"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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