Federal Court  Cour fédérale

Date: 20231215

Docket: IMM-8785-21

Citation: 2023 FC 1706

Ottawa, Ontario, December 15, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

TOSIN ADEYEMI DADA
IREMIDE JOSH AMOS
AKOREDE JOEL AMOS
ADESIRE JASON AMOS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, Tosin Adeyemi Dada and her three children, seek judicial review of an October 27, 2021 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed the applicants' appeal and confirmed the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [*IRPA*], because the applicants have a viable internal flight alternative (IFA) in Nigeria.

[2] The applicants fear that if they return to Nigeria, the family of the children's father would take the children away from Ms. Dada and force them to undergo rituals, including tribal marking, required by royal family traditions and cultural practices.

[3] The sole issue for determination is whether the RAD's IFA determination is unreasonable. The applicants do not challenge the RAD's finding that one of the children, a citizen of the United States of America, had not established a claim under sections 96 or 97 of the *IRPA*.

[4] The reasonableness of the RAD's IFA determination is reviewed according to the principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

[5] The applicants submit the RAD erred in assessing their risk.

[6] First, the applicants argue the RAD relied on speculation, unwarranted inferences, and implausibility findings instead of the evidence. Ms. Dada's evidence is presumed to be true without the need for corroboration of uncontradicted testimony.

[7] Second, the applicants submit the RAD erred by stopping its analysis at an IFA assessment, without considering whether the applicants face an objective risk. Even if a claimant is disbelieved, the RAD is obliged to consider whether a claimant is at risk based on the claimant's profile.

[8] Third, the applicants submit the RAD and RPD erred in basing their analyses on section 97 of the *IRPA*, when the fact that the minor applicants are sought by their paternal royal family could constitute a Convention ground of persecution under section 96 of the *IRPA*.

[9] Fourth, the applicants argue the RAD fundamentally misunderstood the nature of their claim, focussing on Ms. Dada instead of the children, and the RAD erred by ignoring the children's claims in analyzing the first prong of the IFA test. There can be no suitable IFA for the children because, according to Nigerian culture, the children belong to their father and his family. No geographical boundary can stop Ms. Dada's former husband's family from taking the children from her.

[10] With respect to the second prong of the IFA test, the applicants submit the RAD erred in basing its decision on Ms. Dada's education and potential for employment. The applicants submit the RAD erred in determining that Ms. Dada would likely be able to find employment

based on her qualifications. Furthermore, the applicants submit the RAD failed to consider evidence in the National Documentation Package (NDP) for Nigeria that moving to another region in Nigeria is not always viable, particularly for non-indigenes. The plight of non-indigenes in any city in Nigeria cannot be overlooked, as non-indigenes can be denied access to basic rights such as medical treatment. In any event, and irrespective of Ms. Dada's qualifications, the applicants contend that even if the proposed IFA is suitable for Ms. Dada as a divorced woman, the claim for protection was focussed on the children, who would always belong to their father's family in Nigeria.

[11] I find the applicants have not established a reviewable error that warrants setting aside the RAD's decision.

[12] The applicants have not established any error in the RAD's risk assessment.

[13] The applicants do not point to anything in the RAD's decision or in the record to indicate that the RAD relied on speculation, unwarranted inferences, and implausibility findings instead of Ms. Dada's evidence. The applicants advanced a similar argument in respect of the RPD's decision, and the RAD addressed it. The RAD stated that while Ms. Dada may believe that her ex-husband's family is wealthy and influential, that belief does not make it true, and the RPD was correct to require some corroboration of the former husband's family's wealth or influence. Even when a claimant is found to be credible, this does not overcome the need for objective evidence that the proposed IFA is not viable: *Awakan v Canada (Citizenship and Immigration)*, 2021 FC 797 at para 23, citing *Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at

para 37 and *Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 54. The applicants have not established any error in the RAD's findings in this regard.

[14] The RAD did not err by focusing on the proposed IFA. The concept of an IFA is inherent in the definition of a refugee or person in need of protection. A refugee protection claimant must be a refugee from a country, not a region of a country: *AHA v Canada (Citizenship and Immigration)*, 2020 FC 787 at para 1.

[15] Turning to the argument regarding section 96 of the *IRPA*, the RAD addressed the applicants' arguments and found they had not established that they would face persecution based on a Convention ground. The RAD held that the RPD had correctly analyzed the claim based on section 97 of the *IRPA*. The applicants have not established a reviewable error with the RAD's findings in this regard.

[16] In any event, the RAD found that, regardless of whether the claim was analyzed based on section 96, section 97, or both, the existence of a viable IFA was determinative. In this regard, the RAD accepted that the applicants would face a risk to life or of cruel and unusual treatment at the hands of the father's family, and that the father's family is an agent of harm. Ultimately, the RAD found the applicants failed to establish that the proposed IFA is not viable. As the RAD accepted the father's family as agents of harm and assessed the IFA on that basis, an analysis under section 96 would have had no effect on the decision. The applicants have not established any error in the RAD's approach.

[17] The RAD accepted that the family of Ms. Dada's ex-husband has the motivation to search for the applicants, but found the evidence did not establish they have the means to search throughout Nigeria and successfully locate the applicants in the proposed IFA. While the family may have some local influence, the RAD found there was no evidence of the family's royal status, that their status was widely recognized, or that it would give them influence so that they would be able to track the applicants throughout Nigeria. The RAD held the RPD was correct to require some corroboration of the wealth or influence of ex-husband's family. The applicants have not pointed to any error in the RAD's finding that the agents of harm lack the means to locate them in the proposed IFA.

[18] Instead, the applicants raise a different argument, that according to Nigerian culture, the children of the family belong to her ex-husband and his family and Ms. Dada cannot stop her ex-husband's family from taking the children away from her. This argument was not raised in the appeal to the RAD. Furthermore, the applicants point to no evidence establishing that, according to Nigerian culture, Ms. Dada cannot stop her ex-husband's family from taking the children. The evidence in the record indicates that Ms. Dada was granted sole custody of her children in 2016, as part of the divorce.

[19] In summary, the applicants have not pointed to any error in the RAD's analysis or findings that the applicants did not present sufficient and credible evidence to establish they face a prospective risk of harm in the proposed IFA.

[20] Regarding the second prong of the IFA test, I am not persuaded that the RAD erred in concluding the applicants could reasonably relocate to the IFA. As the respondent correctly notes, there is a high onus on an applicant to demonstrate that a proposed IFA is unreasonable. An applicant must provide actual and concrete evidence of conditions which would jeopardize their life and safety in traveling to the IFA or relocating there: *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 at paras 45-46; *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at paras 13-15, 102 ACWS (3d) 592 (FCA). I agree with the respondent that the RAD reasonably considered the applicants' personal circumstances, including Ms. Dada's employment prospects and issues of indigeneship, and reasonably concluded they had failed to establish that relocating to the IFA would be unreasonable under the second prong of the IFA test. The applicants' arguments amount to a request to reweigh the evidence, which is not this Court's role on judicial review.

[21] In conclusion, the applicants have not established that the RAD erred in determining the applicants have a viable IFA. Accordingly, this application for judicial review is dismissed.

[22] Neither party proposed a question for certification, and I agree that no question for certification arises in this case.

JUDGMENT in IMM-8785-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8785-21
STYLE OF CAUSE:	TOSIN ADEYEMI DADA, IREMIDE JOSH AMOS, AKOREDE JOEL AMOS, ADESIRE JASON AMOS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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