Federal Court Cour fédérale

Date: 20240112

Docket: IMM-5479-22

Citation: 2024 FC 50

Ottawa, Ontario, January 12, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ONYEMAECHI SYLVESTER NWAKWUBEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a Nigerian citizen who fears harm from his extended family in Nigeria because of his marriage to a Canadian citizen from Zimbabwe.

[2] The Applicant married his spouse in 2012 and introduced her to his relatives in 2014. At that time, his extended family advised him to divorce because his relatives believed marrying a foreigner was taboo. The Applicant reports receiving several insults, calls and threats from his relatives, including from his uncle, a member of the Nigerian Police Force. His relatives view any negative event within the extended family as resulting from the Applicant's marriage. The Applicant reports he has been scolded and ostracized, and has experienced disdainful and violent behaviour from his relatives resulting in physical injury as well as psychological stress.

[3] The Refugee Protection Division [RPD] rejected the Applicant's claim, finding that the Applicant had failed to establish he was either a Convention refugee or a person in need of protection. In a decision dated May 19, 2022, the Refugee Appeal Division [RAD] held that the RPD erred in concluding the Applicant had failed to establish a serious possibility of persecution but found that the RPD's ultimate conclusion was not in error. The RAD concluded that the risk of persecution was localized and the Applicant had an Internal Flight Alternative [IFA] in Nigeria, notably in Abuja, Ibadan or Port Harcourt [proposed IFAs].

II. Issues and Standard of Review

[4] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD's decision. He raises a single issue: the RAD failed to reasonably assess the evidence before reaching its IFA conclusion.

[5] The parties agree the RAD's decision is to be reviewed on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

[6] A reasonable decision allows a reviewing court to follow the reasoning of the decision-maker without noting fatal flaws in the overarching logic. When read holistically, the reasoning must support the conclusion reached. Justification, transparency and intelligibility are the hallmarks of a reasonable decision. The onus is on the applicant to demonstrate that there are serious shortcomings that render the decision unreasonable (*Vavilov* at paras 99 and 100-102; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 31).

[7] Having reviewed the decision and having considered the parties' oral submissions, I am unable to conclude the decision is unreasonable. My reasons follow.

III. Analysis

A. *Internal flight alternative*

[8] In finding the Applicant had a viable IFA in Nigeria, the RAD was required to address the two-part test as set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) [*Rasaratnam*] and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA) [*Thirunavukkarasu*] – (1) there is no serious possibility the Applicant will be persecuted in the proposed IFA, and (2) in all the

circumstances, conditions in the IFA are such that it is not unreasonable for the Applicant to seek refuge there (*Rasaratnam* at para 13, *Thirunavukkarasu* at paras 9 and 11-14).

B. *Did the RAD fail to reasonably assess the evidence?*

(1) First prong of the IFA test

[9] The first prong of the IFA test requires the RAD consider whether an agent of persecution is motivated to pursue an applicant within a proposed IFA and whether the agent of persecution possesses the means to do so (*Ganiyu v Canada (Citizenship and Immigration)*, 2022 FC 296 at para 3 [*Ganiyu*]).

[10] The Applicant submits the RAD erred in concluding his extended family was only motivated to pursue and harass him to the extent that he lives or socializes in their midst or visits the ancestral village for a number of reasons:

A. the assumption that the Applicant had not been pursued in other locations was an error because the RAD failed to consider that the Applicant had mainly lived without his wife and that he had told his extended family he was no longer with his wife;

B. the RAD should have considered that, as the extended family believes the Applicant's marriage to be a curse that could bring them harm, the extended family's response could escalate resulting in more severe reprisals against the Applicant;

C. the RAD failed to recognize that the extended family's threat to ostracize the Applicant if he does not leave his wife could simply be a pressure tactic, this because ostracism alone would not address the purported risk the marriage posed to the extended family.

[11] I disagree.

[12] The RAD states that all of the evidence was reviewed, including the transcript and the audio recording of the RPD hearing. In addition, the RAD invited and received further submissions on the issue of an IFA. In response, the Applicant provided further submissions but only briefly addressed IFA. The submissions focused primarily on the "means" by which the agents of persecution might pursue the Applicant in the proposed IFAs; motivation was addressed only to the extent of noting the Applicant's continuing marriage.

[13] In determining that the evidence failed to demonstrate a motivation to pursue the Applicant within the proposed IFAs, the RAD relied on the Applicant's own handwritten declaration stating that the ultimatum he received from his extended family was that he must either leave his wife "or stop coming to the village" [emphasis added].

[14] The RAD recognized that the note was generated in stressful circumstances but found it to be consistent with the Applicant's credible narrative and testimony relating to his treatment in Nigeria. The RAD noted that the evidence of persecution involved instances within the home

region or ancestral village and found there to be insufficient evidence to establish the Applicant or his immediate family had been contacted or threatened after he left the home region in 2019.

[15] The RAD found that the proposed IFAs were sufficiently distant from the Applicant's home region, that the Applicant had the continued support of his immediate family, including his parents and siblings, and that there was no evidence to establish a need for the Applicant to hide from his extended family.

[16] The Applicant's subjective belief, speculation and general disagreement with the RAD are not sufficient to render the RAD's conclusion unreasonable in this regard. In taking issue with the RAD's finding on motivation, the Applicant has not pointed to specific evidence contradicting the RAD's conclusion.

[17] In my view, it was reasonably open to the RAD to find that the Applicant's extended family was only motivated to pursue and harass the Applicant if he lived or socialized in their midst or visited the ancestral village. This conclusion was appropriately justified, transparent and intelligible, and supported by "an internally coherent and rational chain of analysis" (*Vavilov* at paras 85-86).

(2) Second prong of the IFA test

[18] The second prong of the IFA test requires the RAD to consider whether, in all the circumstances, including those particular to the applicant, conditions within the IFA are such that

it would not be unreasonable for the applicant to seek refuge there (*Rasaratnam* at para 13). The threshold is high (*Ganiyu* at para 11).

[19] The Applicant argues that the RAD's treatment of the second prong of the IFA test was unreasonable because the RAD failed to account for the fact that the Applicant's wife refuses to return to Nigeria due to her fear of the Applicant's extended family. To require that the Applicant live separate and apart from his wife amounts to undue hardship.

[20] This argument is without merit. As stated by Linden JA in *Thirunavukkarasu* (at para 12), evidence that may establish subjective fear of returning to an IFA is not sufficient to refute the reasonableness of a proposed IFA:

> Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.
>
> [Emphasis added.]

See also *Rosas Maldonado v Canada (Citizenship and Immigration)*, 2011 FC 1183 at para 11 and *Semykin v Canada (Citizenship and Immigration)*, 2019 FC 496 at para 21.

IV. Conclusion

[21] For the above reasons, the Application is dismissed. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-5479-22

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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