Federal Court  Cour fédérale

Date: 20240226

Docket: IMM-2630-23

Citation: 2024 FC 313

Ottawa, Ontario, February 26, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

LORETHA OLERE AKHAGBEMHE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Nigeria who seeks refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. She reports that, as a Christian, she fears persecution in Nigeria, identifying Boko Haram, Fulani Herdsmen and an influential uncle as the agents of persecution.

[2] In concluding the Applicant was neither a Convention refugee nor a person in need of protection, the Refugee Protection Division [RPD] of the Immigration and Refugee Board identified credibility concerns but held that the availability of a viable Internal Flight Alternative [IFA] in Port Harcourt was the determinative issue. The Refugee Appeal Division [RAD] confirmed that the RPD's IFA determination was correct and determinative. The RAD dismissed the Applicant's appeal.

[3] The Applicant applies under subsection 72(1) of the IRPA for judicial review of the RAD's February 8, 2023 decision.

[4] For the reasons that follow, I am satisfied that the RAD's IFA analysis was reasonable and the Application is therefore dismissed.

II. Background

[5] The Applicant returned to Nigeria in 2019 after having resided in the United States for a number of years. Upon her return to Nigeria, she reports she lived in hiding, fearing she would be targeted due to her religious beliefs. Her mother passed away in July 2019 but the Applicant did not attend the funeral. A few months later the Applicant's sister reportedly lost the use of her legs. The Applicant believes that the death of her mother and her sister's injury resulted from a voodoo spell placed on them because of their Christian faith. She asserts in her amended Basis of Claim form that she now believes her uncle was behind the voodoo spells. The Applicant traveled to Canada in 2019 and sought refugee protection in July 2021.

III. Decision under review

[6] The RAD began by addressing the Applicant's new evidence, which included evidence relating to and addressing concerns the RPD had expressed concerning the psychological assessment that had been before the RPD. The RAD accepted the new evidence in part.

[7] The RAD then moved on to consider the RPD's IFA analysis. In determining whether the RPD had erred, the RAD first noted that the Applicant did not take issue with the RPD's findings as they related to the Boko Haram and Fulani Herdsmen. The RAD found no error in those findings and therefore focussed its reasons and analysis on the submissions relating to the Applicant's uncle and the new evidence.

[8] The RAD identified the applicable two-prong IFA test – first, is there a serious possibility of persecution or risk of harm in the proposed IFA, and second, whether the conditions in the proposed IFA are such that it would not be unreasonable for the Applicant to move there, considering the specific circumstances of the Applicant.

[9] In considering the first prong of the IFA test, the RAD found that the Applicant had not provided sufficient evidence to demonstrate the Applicant's uncle possessed the means and motivation to locate her in the IFA of Port Harcourt.

[10] In considering the second prong of the IFA test, the RAD noted the objective country condition evidence and the Applicant's circumstances. Addressing her education, English-language knowledge, single status, lack of children, and her acquired skills and travel

experience, the RAD concluded the Applicant was better positioned than most women in Port Harcourt. The RAD found that her profile would not place her in a situation where accommodations or employment could not be found. Similarly, the RAD concluded the Applicant did not successfully establish that reasons of religion, transportation or travel, or issues related to indigeneship would render Port Harcourt an unreasonable IFA.

[11] The RAD acknowledged the objective evidence relating to the availability of mental health services in the IFA and considered evidence relating to the Applicant's mental health. The RAD again concluded the evidence was not sufficient to demonstrate that the proposed IFA would be unreasonable. Similarly, the RAD found the trauma resulting from the death of the Applicant's mother and the illness of her sister did not render seeking refuge in the IFA unreasonable. The RAD also concluded evidence regarding the environmental pollution in Port Harcourt was not sufficient to render the proposed IFA unreasonable.

[12] Finally, in dismissing the appeal, the RAD recognized the importance of the Applicant's mental health interests. The RAD noted that the Applicant had detailed her possible reaction to a negative decision, and on that basis, instructed that copies of the decision be sent to counsel, thereby allowing appropriate arrangements to be made when sharing the decision with the Applicant.

IV. Issues and standard of review

[13] The Application raises a single issue – did the RAD unreasonably conclude the Applicant has a viable IFA in Port Harcourt?

[14] The RAD's IFA analysis is to be reviewed against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]; *Engenlbers v Canada (Citizenship and Immigration)*, 2022 FC 1545 at para 8). A reasonable 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).

[15] Written reasons are not to be assessed against a standard of perfection, nor must a decision address all arguments, statutory provisions, jurisprudence or other details a reviewing judge might prefer (*Vavilov* at para 91, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The party challenging a decision has the burden of demonstrating the decision is unreasonable. The Applicant has the burden of convincing a reviewing court that any shortcomings or flaws are sufficiently central or significant as to render the decision unreasonable. Flaws or shortcomings that are superficial or peripheral to the merits of the decision will not justify the overturning of an administrative decision (*Vavilov* at para 100).

V. Analysis

A. *The RAD's analysis relating to the first prong of the IFA test was reasonable*

[16] The Applicant submits that, in considering the first prong of the IFA test, the RAD misapprehended evidence relating to the uncle's means and motivation to locate the Applicant within the IFA and failed to engage with or consider evidence relating to the Ogboni Fraternity, a Fraternity to which the uncle reportedly belongs.

[17] First, the Applicant submits the RAD erred in identifying the city that the Applicant's sister had moved to and was later located in by the uncle. The Applicant submits the error goes to the heart of the RAD's means and motivation analysis. This because the RAD wrongly understood that the uncle's place of residence and the sister's city of relocation were in close proximity, and relied on this factor to conclude the sister's evidence deserved little weight when considering the uncle's means of locating the Applicant in the IFA, Port Harcourt. In fact, the sister was located in a city hundreds of kilometers away from the uncle's place of residence, as is Port Harcourt.

[18] The RAD did misapprehend the evidence, but a factual misapprehension alone does not necessarily render a decision unreasonable. The RAD's error must be considered in context.

[19] In considering the uncle's means and motivation to locate the Applicant in the IFA, the RAD noted the evidence in this regard was based on "extremely vague and speculative testimony." The RAD considered the additional evidence that had been before the RPD and the new evidence that had been admitted on the appeal, but concluded it was insufficient to suggest the uncle "has the ability, means or motivation" to find the Applicant in the IFA. The RAD's approach reflects an interpretation of the evidence that was reasonably available to it, and the RAD in turn justified the conclusion reached (*Kassim v Canada (Citizenship and Immigration)*, 2018 FC 621 at para 22; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 26).

[20] After assessing the evidence and concluding the Applicant had failed to demonstrate the uncle had the means and motivation to locate her in the IFA, the RAD then undertook a further "even if" analysis seeking to bolster the reasonable conclusion it had already reached. In doing

so, the RAD misapprehended the city in which the sister had been located and the distance between the sister's residence and the residence of the uncle. That the RAD misapprehended the location of the sister is regrettable, but in this specific context, it does not render the RAD's primary analysis and conclusion, unreasonable.

[21] Similarly, I am of the opinion that the RAD was under no obligation to address the uncle's reported membership in the Ogboni Fraternity. As noted above, decision-makers are not required to refer to every piece of evidence or address every argument and, unless the contrary is demonstrated, a decision-maker benefits from the presumption that all the evidence has been considered (*Efere v Canada (Citizenship and Immigration),* 2022 FC 136 at para 33; *Tsigehana v Canada (Citizenship and Immigration),* 2020 FC 426 at paras 32-33).

[22] Although a reviewing court may intervene where a decision-maker fails to directly address contradictory evidence, that is not the situation here. The evidence relating to the Ogboni Fraternity is not directly contradictory to the RAD's finding, but instead includes an acknowledgement that there is little concrete information available about the Ogboni and that which is available is speculation (Certified Tribunal Record at page 72, as marked).

B. *The RAD did not err in concluding that Port Harcourt was a reasonable IFA*

[23] The Applicant submits the RAD erred in assessing the second prong of the IFA test by failing to consider documentary evidence and relying on speculation as opposed to evidence to support the conclusions reached.

[24] The Applicant's arguments take issue with the RAD's assessment of the documentary evidence and the weight given to that evidence. Neither argument can succeed on judicial review. It is not for a reviewing court to reweigh or reassess the evidence (*Vavilov* at para 125).

[25] The RAD identified the high threshold that must be met to render an IFA unreasonable. In doing so, the RAD expressly recognized the hardship associated with relocation but reasonably noted that hardship was not sufficient to render an IFA unreasonable. The RAD acknowledged the challenges for single women in Nigeria but also recognized well-educated women fare better, noting that the Applicant was educated and had also acquired other skills through her work experience. This was not unreasonable.

[26] The Applicant disagrees with the RAD's conclusions as they relate to access to accommodations and employment, but these arguments reflect a preference for different aspects of the documentary evidence. The RAD noted the challenges faced by single women seeking employment and accommodations in Nigeria generally and in Port Harcourt in particular. However, the RAD concluded the evidence did not demonstrate that the Applicant could not find employment or that her personal circumstances would prevent her from obtaining accommodations. These conclusions were available to the RAD in light of the evidence.

[27] In assessing access to healthcare, the Applicant argues the RAD failed to consider documentary evidence demonstrating a lack of access to adequate mental health services for those in need in Nigeria, and also failed to consider the Applicant's particular circumstances and

how relocation to Port Harcourt would impact her access to mental health services as a single woman.

[28] Again, the Applicant's arguments reflect disagreement with the RAD's weighing of the evidence. The RAD grappled with the evidence relating to the availability of mental health services, including the limited number of psychiatrists available to service the Nigerian population. In doing so, the RAD concluded that financial means would be available to the Applicant to allow her to access mental health services if required. This conclusion was based on the Applicant's prior employment and the RAD's finding that the Applicant had the skills and education to find employment in Port Harcourt. The RAD also noted the absence of evidence to demonstrate the cost of those services. The RAD's analysis is tethered to the evidence and the conclusions are logically connected to that analysis. The RAD's treatment of this issue was reasonable.

[29] In summary, I am satisfied that the RAD's analysis and the conclusions reached in considering the two prongs of the IFA test were reasonable.

VI. Conclusion

[30] The Application for Judicial Review is dismissed. Neither party has proposed a question for certification, and none arises.

JUDGMENT IN IMM-2630-23

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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