Federal Court  Cour fédérale

Date: 20240523

Docket: IMM-5038-23

Citation: 2024 FC 771

Ottawa, Ontario, May 23, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

TAIWO FATAI ODUNOYE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Taiwo Fatai Odunoye, seeks judicial review of the decision of the Refugee Appeal Division ("RAD") that dismissed his appeal.

[2] The Applicant is a citizen of Nigeria. He is a former arts teacher, who was put in charge of a savings cooperative established to benefit school employees. He states that because of an

internal conflict in the cooperative, someone spread a rumour that he was having an affair with a staff member. He says that his wife learned of this, and in retaliation she had an affair with a man identified as “Y”, who is a known gang member and political thug.

[3] In January 2014, the Applicant was beaten and injured. He then decided to move to the United States hoping that the controversy with the cooperative would pass and that his wife would miss him and want to reconcile. Instead, the Applicant and his wife divorced. The Applicant remained in the United States. He says that in 2017 his ex-wife told him not to return to Nigeria because “Y” was making death threats against him. He also learned through a friend that the former executive of the cooperative had accused him and the others of embezzlement.

[4] The Applicant came to Canada in 2019 and claimed refugee status. The Refugee Protection Division (“RPD”) dismissed his claim, finding that he had a viable Internal Flight Alternative (“IFA”). The Applicant’s appeal to the RAD was dismissed, also on the basis that he had an IFA in Nigeria.

[5] The Applicant seeks judicial review of the RAD decision. He argues that the RAD erred in its analysis of the IFA issue and he proposes two questions for certification, which are discussed below. The issues in this case are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v*

Vavilov, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[6] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102).

[7] The test for whether an IFA is available requires the RPD or RAD to be satisfied, on a balance of probabilities, that: (a) there is no serious possibility of the individual being persecuted in the IFA location; and (b) the conditions in the IFA are such that it would not be unreasonable in all the circumstances for the individuals to seek refuge there: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA). The Applicant argues that the RAD erred in its analysis of both prongs of the test.

[8] On the first prong of the test, an applicant must show that the agent of persecution would have the means and motivation to search for and locate the applicant: *Singh* v *Canada (Citizenship and Immigration)*, 2023 FC 996 [*Singh*] at para 8. The Applicant argues that the

RAD's reasoning in this regard is inconsistent. It found him to be credible regarding the threats he had faced from "Y" and from the school community, but then found that he had not established that the agents of persecution had the motivation to locate him in the IFA location. He submits that the RAD cannot find him credible on the threats he has faced but then doubt his evidence on whether he faces risks in the IFA location simply because his evidence does not fit with the conclusion it wanted to reach.

[9] I cannot accept the Applicant's argument. The RAD's credibility finding regarding the past threats received by the Applicant do not automatically transfer to the evidence he submitted regarding the current and future means and motivation of the agents of persecution. There is no necessary logical connection between these two elements. The Applicant bore the onus of demonstrating that he faces risk in the IFA location, and the RAD reasonably noted the lack of evidence on the means and motivation of the agents of persecution to track him throughout Nigeria. The RAD's finding on this prong of the test is reasonable, in light of the Applicant's evidence and arguments.

[10] The Applicant also argues that the RAD erred in finding that the Applicant faced no continuing threats from the agents of persecution, because he no longer worked for the cooperative and was divorced from his ex-wife. The Applicant submits that the evidence shows he faced threats after he left Nigeria, including the warning from his ex-wife that he should not return because "Y" was threatening his life and the embezzlement accusation. He argues that the

RAD's finding is based on a misapprehension of the evidence on a key point, which makes the entire decision unreasonable.

[11] This argument cannot succeed because the RAD's conclusion that the Applicant did not face ongoing threats did not ignore the timing of the more recent threats, but rather focused on the lack of evidence that the agents of persecution had engaged in any ongoing efforts to locate him through his social media account or by contacting his family members still living in Nigeria. This is a reasonable interpretation of the evidence and it is not the role of a reviewing court to go behind such findings of fact.

[12] A major argument of the Applicant before the RAD – which he repeated on judicial review – is that the law's approach to the IFA analysis must be re-examined in light of the prevalence of social media. This is one of his proposed certified questions, discussed below. The Applicant stated that he received a message from "Y" on his Facebook account, and this demonstrates that the agents of persecution would have the means to locate him in Nigeria. The message from "Y" commented on the Applicant's appearance in a photograph posted on his account; it simply said "Americana", apparently in reference to the fact that the Applicant was not wearing clothing that would be more common in Nigeria. The Applicant acknowledges that the message, in itself, was not threatening.

[13] The Applicant submits, however, that the RAD discounted the importance of the fact that "Y" contacted him through social media. He testified that he would have to sell his art using social media, and would need to include his home address on the postings so that customers could view his art in person. The Applicant submits that the RAD erred when it concluded that it is reasonable to expect a person to keep such personal information private in order to avoid the threats from agents of persecution. He also argues that the RAD engaged in unreasonable speculation when it stated he could find other ways to sell his art that would not reveal his personal location details, such as through a third party or under a business name.

[14] I am not persuaded by the Applicant's arguments about social media, for several reasons. First, the Applicant's evidence about how he planned to sell his art did not prevent the RAD from observing that he could be expected to take reasonable steps to shield his location from the agents of persecution. This court has found this to be a reasonable expectation of someone seeking refuge from persecution in an IFA: *Adeyig Olusola v Canada (Citizenship and Immigration)*, 2021 FC 659 at paras 23-24; *Iwuanyanwu v Canada (Citizenship and Immigration)*, 2022 FC 837 at para 10.

[15] Second, the extent to which the Applicant's art was a primary source of his livelihood, or would be in the future, was not clear on the evidence. Nor was it clear that his reputation as an artist was such that selling under his own name was an essential element of his business. The RAD did not ignore his evidence on this point, but it was not convinced that online sales using

his own name and posting his address was the only manner in which he could sell his art. This is a reasonable finding on the evidence.

[16] A key point here is that the message from "Y" to the Applicant's Facebook account was not threatening, and there was no evidence that the Applicant had taken steps to shield his online identity. This single message did not demonstrate that the agents of persecution had used elaborate or sophisticated online tracking tools to locate the Applicant. In this respect, the message did not demonstrate that the agents of persecution had the means to track the Applicant using social media or other internet search capabilities, beyond the simple expedient of sending him a message to his Facebook account. The RAD's finding that the Applicant's social media presence would not necessarily enable the agents of persecution to track him in Nigeria cannot be disturbed on review.

[17] The Applicant's challenge to the RAD's findings on the second prong of the IFA test rests on two arguments. He submits that the RAD erred in concluding that the Applicant would be able to find employment in another part of Nigeria, and it failed to consider the impact of relocation on his ability to reunite with his children.

[18] The second argument cannot stand, because the Applicant did not advance it before the RAD. On this point, it should be noted that while the Applicant's evidence is that he maintains a

positive relationship with his children, they have lived apart for many years because the children remained with his ex-wife after he left Nigeria in 2014. On the facts of this case, the impact of the IFA on family reunification did not call for a separate analysis, and in any case the Applicant has not demonstrated why his children could not join him in the IFA location if they wish to do so.

[19] On the employment argument, the RAD noted that the Applicant had education and work experience in the education and arts fields, and it concluded that he would be able to find employment in the IFA location. It also pointed out that he had not challenged the RPD's findings on this ground. I can find no basis to question the RAD's conclusion on this point; it is clearly explained and based on the evidence. I have already discussed, and rejected, the Applicant's claim that he should not have been expected to modify or limit his social media presence. He could continue to sell his art using social media, and the RAD's finding on this point is reasonable.

[20] Finally, as noted earlier, the Applicant proposed the following two questions for certification:

A. In terms of both prongs of the IFA test, is it reasonable to expect refugee claimants to limit their use of internet and social media in an attempt to avoid agents of persecution and ensure the viability of an IFA location?

B. Is suggesting one viable IFA city only violating the mobility rights of refugee claimants?

[21] The Applicant contends that these meet the test for certification because they are serious questions that transcend the interests of the parties and raise issues of general importance. The Applicant argues that the social media question was dispositive of the IFA finding by the RAD, and that the mobility rights issue deserves attention because it has never been pronounced upon by this Court.

[22] It is not necessary to discuss the certified questions at length. Neither of them meets the test set out in binding case-law: *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46. The first question is not dispositive of the case, because the social media finding was but one of several grounds cited by the RAD in its IFA analysis. Furthermore, the RAD's specific finding was that the evidence failed to demonstrate that the IFA location would not be viable because the Applicant was required to continue his presence on social media using his own name and posting his personal address. This is a much narrower question than the one posed by the Applicant, and it was only one of the key findings about the viability of the IFA.

[23] I acknowledge that the prevalence of social media, and the additional tools it may provide to agents of persecution to hunt down their targets, raises an important question. Equally, the

extent to which those fleeing persecution may need to restrict their social media presence to escape detection is also an important question. That said, I note that both are intensely fact-based inquiries, and that the first question was not explored at all in the case at bar. While the Applicant did submit that requiring him to restrict his presence on social media was unreasonable, his evidence on this question did not satisfy the RAD and I found its conclusion to be reasonable. This proposed question does not meet the test for certification.

[24] The second question can be disposed by noting that it was not raised before the RAD, nor was it argued in the Applicant's submissions on judicial review. It is only mentioned as a proposed question for certification. This question is not appropriate for certification, absent any arguments, evidence or submissions on the merits of the case.

[25] For these reasons, the application for judicial review will be dismissed, and I will not certify either of the questions put forward by the Applicant. There are no other questions of general importance for certification.

JUDGMENT in IMM-5038-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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