

Federal Court



Cour fédérale

Date: 20240723

Docket: IMM-12901-23

Citation: 2024 FC 1148

Ottawa, Ontario, July 23, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

**CHRISTIAN CHIJOKE EKEIGWE and
DAVID UDOWUNDU EKEIGWE**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants seek judicial review of a Refugee Appeal Division [RAD] decision, dated September 25, 2023 [Decision], confirming the decision of the Refugee Protection Division [RPD] that they are not Convention refugees nor persons in need of protection under sections 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], because they have an internal flight alternative [IFA] in Abuja.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the applicants have failed to discharge their burden and demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] Christian Chijioke Ekeigwe and his son David Udowundu Ekeigwe [applicants] are citizens of Nigeria. They fear persecution from unnamed cyber-criminals that have targeted Christian Chijioke Ekeigwe [principal applicant] and his family when they lived in Lagos.

[4] The principal applicant is a chartered accountant who operated an accounting and auditing firm called EDP Audit & Security Associates [EDP] in Lagos, a company that worked for entities in critical sectors of the Nigerian economy. The applicants claim that, due to the principal applicant's access to sensitive and lucrative information, they were repeatedly targeted, from 2007 to 2018, by cyber-criminals seeking access to the data of the company or trying to recruit the principal applicant to work on their behalf. The cyber-criminals want the principal applicant to assist them in accessing and using data systems and to help them avoid detection of their criminal activity. The applicants assert that, although they put their best efforts to protect themselves, including leading a reclusive life and hiring security personnel, they continued to be targeted by these individuals. They further claim that their remaining family in Lagos who continue to work at EDP have been targeted by these criminals.

[5] The applicants left Nigeria in 2018 and arrived in the United States of America before coming to Canada in 2022.

[6] In its April 18, 2023 decision, the RPD found that the applicants have a viable IFA in Abuja. It found that the applicants failed to establish that the agents of persecution had the means and motivation to locate them in Abuja or that it would be unreasonable for them to relocate there. It therefore concluded that the applicants are neither Convention refugees nor persons in need of protection.

[7] In its September 25, 2023 Decision, the RAD dismissed the appeal and confirmed the RPD's decision. The RAD concluded that the RPD was correct in their finding that the applicants have a viable IFA in Abuja.

III. Issues and Standard of Review

[8] The only issue before the Court is whether the RAD's decision confirming that the applicants have a viable IFA in Abuja is reasonable.

[9] The standard of review applicable to the merits of the RAD's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before

it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[10] The test to determine if an IFA is viable in the claimant’s country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA). The test is two-pronged: the claimant has an IFA when (1) they will not be subject to a serious possibility of persecution nor to a risk of harm under section 96 and section 97 of the IRPA in the proposed IFA location; and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances.

[11] Both prongs must be satisfied in order to make a finding that a claimant has an IFA (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 597–598; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9 [*Leon*]; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1623 at para 16 [*Singh* 2023 FC 1623]; *Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at para 16 [*Bassi*]; *Chatrath v Canada (Citizenship and Immigration)*, 2024 FC 958 at para 19 [*Chatrath*]; *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1080 at para 16 [*Singh* 2024 FC 1080]).

[12] On the first prong of the test, the applicants bear the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. In order to discharge their burden, a claimant must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have the “means” and “motivation” to cause harm to the claimant in the IFA (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8). The applicants must establish that the agents of persecution have both elements: the means and the motivation to cause harm (*Ortega v Canada (Citizenship and Immigration)*, 2023 FC 652; *Leon* at para 13). This assessment must be made by the decision maker, is a prospective analysis, and is considered from the perspective of the agents of persecution, not from the claimant’s perspective (*Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21; *Aragon Caicedo v Canada (Citizenship and Immigration)*, 2023 FC 485 at para 12). The onus is therefore on the applicants to adduce sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the means and motivation to locate them in the proposed IFA and that therefore, they will be subject to a serious possibility of persecution under section 96, or to a likelihood of a section 97 danger or risk in the proposed IFA (*Singh* 2023 FC 1623 at para 17; *Bassi* at para 17; *Chatrath* at para 20; *Singh* 2024 FC 1080 at para 17).

[13] For the second prong of the test regarding the reasonability of the refuge in other parts of the country, the threshold is very high and applicants for asylum must present actual and concrete evidence of the existence of conditions that would jeopardize their life or safety if they

were to attempt to relocate to that part of the country (*Ranganathan v Canada (Minister of Citizenship and Immigration)* (CA), 2000 CanLII 16789 (FCA) [*Ranganathan*]; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at paras 20–21 [*Jean Baptiste*]; *Singh* 2023 FC 1623 at para 18; *Bassi* at para 18; *Chatrath* at para 21; *Singh* 2024 FC 1080 at para 18).

A. *The RAD's Finding on the First Prong of the IFA Test is Reasonable*

[14] Under the first prong of the IFA test, the applicants submit that the RAD misapprehended the evidence showing the means as well as the motivation of the agents of persecution to locate them in Abuja. They argue that the evidence, accepted by the RAD, that the principal applicant was being targeted by criminals should be sufficient and that the RAD mistakenly assumed that the applicants were targeted by local unknown criminals. Instead, they explain that the principal applicant's knowledge and expertise of cyber-security will continue in the proposed IFA where he will find work and that therefore, the criminals will be able and motivated to find him there. They point to evidence, available to the RAD, that cyber-crime is growing exponentially in Nigeria, meaning that the criminals would have an added motivation to find him.

[15] The applicants submit that the RAD also misjudged the evidence on the motivation of the criminals to locate them in Abuja. They argue that the principal applicant would find work in his field in the proposed IFA, that he is an expert in cyber-security and would participate in business conferences. The applicants state that they cannot be expected to live in hiding in the IFA and avoid public events like business conferences, which would enable the agents of persecution to

locate them. Lastly, the principal applicant submits that he remains involved with EDP as its chairman and the company continues to work with high value data.

[16] In my view, the RAD's reasoning and finding on the first prong of the IFA test is reasonable. The RAD addressed the evidence and the arguments presented by the applicants to this Court. At paragraphs 18 and 19 of its Decision, the RAD took into consideration the level of sophistication of the attacks of the agents of persecution. The RAD reasonably found that the applicants failed to point to any particular skill or means which would enable these unknown criminals to find them in the IFA. Indeed, the criminals followed and attacked the principal applicant and his wife on the streets, which does not present a high level of sophistication demonstrating a capacity to locate the applicants in the proposed IFA. The RAD also reasonably held that the applicants' arguments relating to the use of drones and bombs were speculative.

[17] At paragraph 21 of its Decision, the RAD discussed the objective evidence on criminal organizations involved in cyber-crime in Nigeria and reasonably noted that the evidence did not make specific mention of cyber-crime organizations tracking targets across Nigeria. The RAD took note of the increase in cyber-attacks in the objective evidence, but also noted the increase in prosecution for cyber-crimes, and that the objective evidence is silent on targeting individual accountants or cyber-security specialists. The RAD also recognized and considered, at paragraphs 24 to 27, the principal applicant's fame and notoriety. It was open to the RAD to find that the principal applicant's notoriety was not sufficient to constitute a serious possibility that the agents of persecution have the means to locate the applicants in the proposed IFA.

[18] The RAD also reasonably found that the principal applicant's claim that he would find work in Abuja giving him access to the same data and information that is of interest to the cyber-criminals was speculative. No evidence was presented by the applicants to support this claim. The RAD recognized the principal applicant's professional profile and the fact that he and his family working with EDP were indeed targeted in Lagos. The RAD reasonably noted, however, that the principal applicant no longer had the same profile because EDP is no longer operating on a daily basis, and because he has not dealt with high value clients or data since he left Nigeria in 2018.

B. *The RAD's Finding on the Second Prong of the IFA Test is Reasonable*

[19] On the second prong of the IFA test, the applicants submit that the RAD's conclusion is unreasonable since the RAD found their allegations of personalized targeting from the agents of persecution to be credible.

[20] In my view, the RAD reasonably found that the applicants have not established that any risk faced in Abuja is particularized to them and instead, the fact that there is generalized criminality does not render Abuja an unreasonable IFA. The applicants did not meet the high threshold required of conditions that would jeopardize their life or safety (*Ranganathan; Jean Baptiste* at para 18).

[21] Consequently, the applicants have not discharged their burden to demonstrate that the RAD's decision is unreasonable. The RAD's reasoning as to why the applicants have a viable IFA is intelligible, transparent and justified (*Vavilov* at paras 15, 98).

V. Conclusion

[22] The RAD's decision is justified in light of the factual and legal constraints of this case (*Mason* at para 8; *Vavilov* at para 99).

[23] For these reasons, the application for judicial review is dismissed.

[24] No question of general application has been submitted for certification, and the Court agrees that there is none.

JUDGMENT in IMM-12901-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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