

Federal Court



Cour fédérale

Date: 20190107

Docket: IMM-1598-18

Citation: 2019 FC 15

Ottawa, Ontario, January 7, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**NZIDEE YEMISI ROSSY
NZIDEE SOPHIA WAAKO
NZIDEE TAMBARI EMMANUEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Ms. Yemisi Rossy Nzidee and her two minor children, are citizens of Nigeria who report they fear persecution from the Islamist extremist group Boko Haram [BH] in Nigeria. Their claim for protection pursuant to sections 96 and 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [IRPA] was refused by the Refugee Protection Division [RPD] on the basis that they had failed to rebut the presumption of state protection in Nigeria.

[2] The Refugee Appeal Division [RAD] upheld the decision of the RPD, finding the applicants are neither Convention refugees nor persons in need of protection. The applicants now seek judicial review of the RAD decision pursuant to subsection 72(1) of the IRPA on the basis that the RAD's state protection finding was unreasonable. The respondent submits that the applicants are essentially asking the Court to reweigh the evidence.

[3] Although the applicants disagree with the RAD's state protection finding, the RAD's conclusion is supported by the evidence. The Court's role on judicial review is not to reconsider or reweigh the evidence. The application is dismissed for the reasons that follow.

II. Background

[4] Ms. Nzidee reports that her husband is a senior Nigerian military officer. His duties include the provision of intelligence to Nigerian authorities about ISIS, which has links to BH.

[5] The applicants fear persecution by BH based on the husband's work and their Christian faith. Ms. Nzidee became aware that they were being sought by BH while she and her children were in Canada: a friend advised her that a threatening letter had been left at her residence in Lagos. She reports that through her friend she sought the protection of the Nigerian police and that her husband sought assistance from the Nigerian military. Neither was willing to assist or provide assurance of protection.

III. The Decision under Review

[6] In its decision, the RAD first considered the applicants' proposed new evidence. With the exception of a letter from Ms. Nzidee's husband, the RAD found the evidence was inadmissible as it did not satisfy the criteria set out in subsection 110(4) of the IRPA.

[7] In addressing the issue of state protection, the RAD considered the RPD's finding that BH posed a risk in northern Nigeria but that there was little evidence of BH activity in the south, including in Lagos.

[8] The RAD noted the lack of evidence regarding BH activity in Lagos and the south. It also noted that the evidence indicated that Nigerian efforts to curb the group's activities and eradicate the organization in the south had been highly successful. It concluded that the RPD was not wrong in finding that Nigeria was taking effective action to counter the BH threat.

[9] In considering the applicants' efforts to access state protection, the RAD reviewed the evidence. The RAD noted that the receipt of the threatening letter had been reported to the civilian police by a neighbour and that a report was also made to the military police. It further noted that the initial reports were not pursued, something the RAD indicated one would expect given the seriousness of the threat. The RAD concluded that the applicants "provided little evidence to suggest that a significant effort was made to follow up on the reports to authorities or to seek protection from the threat."

[10] The RAD considered affidavit evidence from Ms. Nzidee's mother and a neighbour but gave it little weight, noting it preferred the documentary evidence regarding state protection from BH over the "opinions of two individuals with no known expertise in the assessment of state protection." The RAD also considered a letter from Ms. Nzidee's husband, the new evidence it had found admissible. The RAD noted that the letter indicated the husband had followed up on the military investigation. It also noted the letter reported that the investigation was inconclusive and that security was not available for his family.

[11] The RAD found it was not credible that the husband would wait until the applicants' claims were rejected to follow-up with authorities. It reiterated that documentary evidence demonstrated state protection in southern Nigeria was effective and stated that adequate state protection did not require a personal security detail, as suggested by the husband. The RAD noted that the evidence showed state protection was effective and gave the letter little weight.

[12] The RAD concluded that the RPD had not erred in its state protection analysis and that the applicants were neither Convention refugees nor persons in need of protection.

IV. Analysis

[13] The applicants take issue with the RAD's assessment of the evidence and the conclusions the RAD has reached. These matters are to be reviewed against a standard of reasonableness (*Murugesu v Canada (Minister of Citizenship and Immigration)*, 2016 FC 819 at para 15, citing *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

[14] The applicants argue that the RAD erred as follows:

- A. In assessing state protection, it ignored or failed to consider evidence in the National Documentation Package [NDP]:
 - i. indicating that high-status individuals, including senior military and police officers, could be targeted by BH or acknowledge that the applicants fit that profile;
 - ii. describing numerous attacks by BH in southern Nigeria and Lagos in particular and the spread of violence in Lagos;
 - iii. indicating a general absence of state protection in relation to BH.
- B. In stating the applicants would likely have increased access to state protection, the RAD imposed too high a standard for rebutting state protection; the applicants needed only to demonstrate they had taken all reasonable steps in the circumstances to access state protection; and
- C. The RAD applied a western perspective when assessing the husband's efforts to follow-up on the investigation of the Nigerian police.

[15] I have carefully reviewed the RAD's reasons, and it is clear that the RAD did not ignore evidence. The RAD addressed the applicants' profile and expressly noted that BH targets Christians and senior military and police officers. However, it also noted the absence of evidence indicating BH regularly targets individuals in the south. The RAD also acknowledged some

evidence of BH activity in the south, noting a BH attack on a fuel depot in Lagos in 2014 and numerous news reports of arrests of BH members, including a report of the arrest of six members in Lagos in 2016. It noted that the six individuals arrested were fleeing state agents in the north, not planning or conducting operations or attacks in Lagos. The RAD also concluded this evidence was demonstrative of the effectiveness of Nigerian efforts to curb BH activities and eradicate the organization.

[16] The applicants argue that specific contradictory pieces of evidence were ignored by the RAD. However, the documentary evidence cited by the applicants is not contradictory of the RAD's conclusion that BH was not active to a significant extent in southern Nigeria or that state protection was unavailable.

[17] It is evident upon a review of the decision that the RAD was aware of and in fact cited content from many of the reports the applicants point to in support of their position. For example, the applicants point to a Response to Information Request entitled NGA105451.E *The capacity of Boko Haram to pursue individuals who relocate to another region or city, such as Lagos*. While this report does suggest BH *could* target individuals outside northern Nigeria, it also says there have been no targeted attacks on individuals in southern Nigeria and very few attacks in general. It explicitly says BH is almost entirely inactive in Lagos and that security measures are making it more difficult for BH to operate there. The RAD considered this report and reasonably found it indicated BH was largely inactive in southern Nigeria.

[18] The applicants also refer to NGA105320.E, *Situation of Christians, including those living in northern cities, Lagos and Abuja; state protection*. While the RAD does not cite this report, it does discuss some of the information found in it. The RAD refers to attacks in Lagos and arrests of BH members in Lagos which are addressed in the report. The report also addresses the “Situation of Christians and Boko Haram Activity in Lagos,” stating “the situation for Christians in Lagos State is ‘normal’ and [they] live ‘peacefully’ along with people of other religions...the Lagos State authorities and Nigerian police have ‘strengthened the security situation’ to ensure that people can practice their religion in Lagos.” The RAD was aware of the report, and again its content is not inconsistent with the RAD’s findings.

[19] In assessing the BH risk in the south and the impact of that risk on persons with the applicants’ profile, the RAD was under no obligation to assess and address every piece of contradictory evidence. The RAD’s conclusion that the evidence did not indicate that BH was active to a significant extent in the south is a conclusion that was consistent with the evidence and one that was reasonably available to the RAD.

[20] I am also not convinced that the RAD, in finding that the applicants were better placed than the average citizen to access state protection, imposed a higher standard on the applicants for rebutting the presumption of state protection. The RAD’s comments in this regard highlight its concerns with the absence of efforts to follow-up on initial complaints to police in light of Ms. Nzidee’s husband’s senior position within the Nigerian security apparatus. The RAD expressly notes that state protection was assessed on the basis of the “demonstrated measures the state has in place to provide protection to its citizens and if those measures have proved to be successful.”

[21] The RAD canvassed the applicants' efforts to seek protection from both military and civilian authorities, noting the absence of follow-up to initial complaints. It found the efforts unsatisfactory and was entitled to view this as a negative factor in its state protection analysis. The RAD also noted the evidence indicating Nigerian successes in addressing the BH threat, particularly in the south, and it was open to the RAD to conclude that this was indicative of the operational effectiveness of state efforts.

[22] While there is, as the applicants submit, contradictory evidence indicating that effective protection may not be available to those threatened by BH in Nigeria, that evidence refers to areas where BH is active or has influence. It may have been preferable had the RAD directly addressed this contradictory evidence when assessing whether there was clear and convincing evidence rebutting the presumption of state protection. However, the failure to do so must be considered in the context of the RAD's finding that BH was not active to any significant extent in the south.

[23] In considering the RAD decision, I am required to pay "respectful attention" to the decision-maker's reasons and to be cautious about substituting my view by designating certain omissions in the reasons to be fateful (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17). In considering the state protection finding, in light of evidentiary record, I am unable to conclude the RAD committed any reviewable error.

V. Conclusion

[24] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-1598-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1598-18

STYLE OF CAUSE: NZIDEE YEMISI ROSSY NZIDEE SOPHIA WAAKO
NZIDEE TAMBARI EMMANUEL v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 1, 2018

JUDGMENT AND REASONS: GLEESON J.

DATED: JANUARY 7, 2019

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