Federal Court  Cour fédérale

Date: 20190524

Docket: IMM-2184-18

Citation: 2019 FC 735

Ottawa, Ontario, May 24, 2019

PRESENT: Mr. Justice Norris

BETWEEN:

IZUYON BLESSING ERIBO
ELOGHOSA MITCHELLE ERIBO
IDAHOSA NATHAN ERIBO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The principal applicant, Izuyon Blessing Eribo, is the mother of Eloghosa Mitchelle Eribo (the minor female applicant) and Idahosa Nathan Eribo (the minor male applicant). All three are citizens of Nigeria.

[2] The applicants sought refugee protection in Canada on the basis that they are at risk in Nigeria from the principal applicant's husband's family. Specifically, the family opposed Ms. Eribo's marriage to her husband, Uyiosa Eribo, because Ms. Eribo is a Christian. Indeed, the family had consulted an oracle who determined that she is also a witch. Uyiosa Eribo's uncle, Osas Eribo, therefore wanted to perform cleansing rituals including female genital mutilation on the minor female applicant and bodily incisions on the minor male applicant. The applicants had been living in Lagos, Nigeria, when they fled the country. They claimed they were unsafe anywhere in Nigeria because Osas Eribo is a former police officer and he would be able to find them anywhere in the country. The applicants left Nigeria for the United States in August 2016 when they learned Osas Eribo was coming looking for them. They entered Canada irregularly in September 2016. They submitted their refugee claims in October 2016.

[3] The applicants' claims were heard by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] on August 3, 2017. For reasons dated August 22, 2017, the RPD rejected the claims. The RPD member was satisfied that the applicants had established their personal identities and their Nigerian nationality. The determinative issue for the member was whether there was a viable internal flight alternative [IFA]. The member concluded that the applicants had a viable IFA in Port Harcourt, Nigeria. In the member's view, the applicants did not face a serious possibility of persecution in Port Harcourt and it is not unreasonable for them to relocate there.

[4] The applicants appealed the decision of the RPD to the Refugee Appeal Division [RAD]. For reasons dated April 13, 2018, the RAD dismissed the appeal and confirmed the decision of the RPD that the applicants are neither Convention refugees nor persons in need of protection.

[5] The applicants now seek judicial review of the RAD's decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. For the reasons set out below, I am dismissing their application.

II. DECISION UNDER REVIEW

[6] The applicants appealed the RPD's decision on three grounds: (1) the RPD erred in its finding that Osas Eribo did not hold a high position with the police; (2) the RPD erred in finding that Port Harcourt was a safe and reasonable IFA; and (3) the RPD failed to give adequate consideration to a psychological assessment filed by the applicants when making its finding that Port Harcourt is a safe and reasonable IFA.

[7] In addition, the applicants sought the admission as new evidence of a sworn declaration dated October 6, 2017, from Michael Emordi Ojede, a friend of Ms. Eribo's brother. According to Mr. Ojede, on September 25, 2017, five armed police officers came to his house in Lagos, Nigeria, looking for Ms. Eribo and her children. They forcefully entered the house and started ransacking the place looking for the applicants. When they did not find them, one of the officers told Mr. Ojede that they had been sent by Osas Eribo after he received a tip that they had been seen around Mr. Ojede's house.

[8] Looking first at the admissibility of the proposed new evidence, the RAD member applied the test set out in section 110(4) of the *IRPA*, as interpreted by the Federal Court of Appeal in evidence *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]. The RAD member was satisfied that the events described in the statement occurred after the decision of the RPD. However, the member concluded that the proposed new evidence was not admissible because it was irrelevant. In written submissions in support of the admission of the new evidence, the applicants stated that the new evidence "is relevant because it's a demonstration that even in Lagos, the Appellants can be detected, and the agent of persecution has enlisted the assistance of the police to locate the Appellants." The RAD member disagreed. The fact that Osas Eribo was able to enlist police assistance in Lagos in attempting to locate the applicants had no bearing on the suitability of Port Harcourt as an IFA. Further, since there was no admissible new evidence, the RAD member determined that there was no basis upon which to hold a hearing under section 110(6) of the *IRPA*.

[9] The RAD member approached the grounds of appeal raised by the applicants as directed by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] as well as the decision of the three member RAD panel in *X (Re)*, 2017 CanLII 33034 (CA IRB). As the member understood these authorities, "the RAD may apply the modified standard of reasonableness in situations where the RPD enjoys a meaningful advantage." However, the RAD member noted that, unless otherwise stated, the correctness standard was employed "on all findings." As well, the member considered the overall refugee determination on a standard of correctness, "even where the RAD has deferred on some or all findings."

[10] With respect to the allegation that Osas Eribo had been a high-ranking police officer (indeed, a Deputy Police Commissioner for Ondo State), after conducting an independent analysis of the evidence and submissions, the RAD member agreed with the RPD that this claim is not credible and, further, "that this severely undermines the Appellants' assertion that their family would be able to find them in Port Harcourt as a result" of the uncle's status.

[11] The RAD member based this finding on two key considerations: first, Ms. Eribo's husband did not mention his uncle's connection to the police at all in his own statement; and second, no evidence was offered to corroborate the uncle's alleged status. In the member's view, since Ms. Eribo's husband was still in Nigeria, he would presumably have been in a position to obtain some sort of documentation to corroborate his uncle's status if such was in fact the case. Similarly, the member found it was more likely than not that, if such was in fact the case, there would have been some mention of Osas Eribo in a publicly accessible source indicating his status as a senior police officer yet nothing was produced. The RAD member specifically placed little, if any, reliance on Ms. Eribo's error regarding the status of Osas Eribo (i.e. that he was ex-military as opposed to ex-police) in concluding that it had not been established that he once was a high-ranking police officer.

[12] With respect to Port Harcourt as an IFA, the RAD member found that the RPD did not err in its assessment of the evidence and agreed with the RPD that Port Harcourt is a reasonable IFA in the circumstances. The RAD member concluded on a balance of probabilities that there is no serious possibility of the claimants being persecuted in Port Harcourt and that it would not be unreasonable for the applicants to seek refuge there.

[13] Finally, the RAD member concluded that while the RPD member did not refer to the psychological opinion of Dr. Devins that Ms. Eribo should receive treatment for "stressor-related disorder," this opinion did not preclude Port Harcourt as an IFA since the necessary treatment should be available and accessible to her there.

III. STANDARD OF REVIEW

[14] The RAD's determinations of factual issues and issues of mixed fact and law are reviewed on a reasonableness standard (*Huruglica* at para 35). This standard applies to, among other things, the RAD's determination as to the availability of an IFA (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14). It also applies to the RAD's assessment of the admissibility of new evidence (*Singh* at para 29).

[15] Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). That is to say, the reviewing court must look at both the outcome and the reasons that are given for that outcome (*Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 27). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*,

2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

IV. ISSUES

[16] This application for judicial review turns on the following two issues:

a) Is the RAD's determination that the new evidence is not admissible unreasonable?

b) Is the RAD's determination that Port Harcourt is a reasonable IFA unreasonable?

V. ANALYSIS

A. *Is the RAD's determination that the new evidence is not admissible unreasonable?*

[17] The applicants argue that the RAD should have admitted the sworn statement from Mr. Ojede. They maintain that it is relevant to the existence of an IFA because it is evidence of the extent of Osas Eribo's influence over the police and his ability to locate individuals. I disagree. In my view, it was not unreasonable for the RAD member to conclude, on the specific facts of this case, that any influence Osas Eribo may have had over the police in Lagos is irrelevant to the suitability of Port Harcourt as an IFA. Critically, Mr. Ojede did not provide any evidence as to Osas Eribo's status vis-à-vis the police, whether in Lagos or elsewhere. He states that a police officer claimed to him that they had been "sent" by Osas Eribo to look for the applicants. What this meant or how the officer knew this are not explained. Apart from this bald, second-hand statement, Mr. Ojede says nothing about the influence Osas Eribo has over the

police in Lagos. While it may have been preferable to have dealt with the admissibility of the new evidence under the materiality aspect of the test rather than relevance – in other words, to have focused on whether or not the evidence could have an impact on the RAD's overall assessment of the RPD's decision (cf. *Singh* at para 47) – I cannot say that it was unreasonable for the RAD member to have found that the evidence is irrelevant to the IFA issue as it was framed in this case. There is no basis for me to interfere with the member's conclusion.

B. *Is the RAD's determination that Port Harcourt is a reasonable IFA unreasonable?*

[18] The applicants submit that the RAD's determination that Port Harcourt is a reasonable IFA is unreasonable. In particular, the RAD member failed to give due consideration to the status of Osas Eribo as a former senior police officer and the hardship that relocating to Port Harcourt would pose for the applicants. Once again, I do not agree.

[19] As is apparent from the reasons of both the RAD and the RPD, the determinative issue in this case is whether there is a reasonable IFA. That issue, in turn, depended in large part on whether Osas Eribo was a former senior police officer (as the applicants claimed) or not. If the applicants failed to establish his status on the applicable standard of proof, there would be little basis to find that they would be at risk in Port Harcourt, the IFA identified by the RPD and confirmed by the RAD. The RAD conducted a careful, independent analysis of the evidence concerning Osas Eribo and the (lack of) risk in Port Harcourt. The RAD did not defer in any way to the findings of the RPD. There is no basis for me to interfere with the RAD's assessment of the evidence.

[20] Further, the RAD (like the RPD) concluded that it was reasonable for the applicants to move to Port Harcourt. The RAD took the various considerations cited by the applicants in their challenge to the RPD's decision into account (including the psychological assessment and country condition evidence) but nevertheless upheld the IFA finding. In effect, the applicants are now asking me to re-weigh the evidence, something that I am not permitted to do. The RAD member stated the test for an IFA correctly. The applicants have not been able to point to any reviewable error in the RAD's application of that test to the evidence in this case.

VI. CONCLUSION

[21] For the reasons set out above, the application for judicial review is dismissed.

[22] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

[23] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration. As well, there were errors in the spelling of the names of the minor applicants in the Application for Leave and Judicial Review. These errors have also been corrected in the style of cause.

JUDGMENT IN IMM-2184-18

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.
2. The style of cause is also amended to reflect the correct spelling of the names of the minor female applicant, Eloghosa Mitchelle Eribo and the minor male applicant, Idahosa Nathan Eribo.
3. The application for judicial review is dismissed.
4. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2184-18
STYLE OF CAUSE:	IZUYON BLESSING ERIBO ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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