Federal Court  Cour fédérale

Date: 20191028

Docket: IMM-587-19

Citation: 2019 FC 1346

Ottawa, Ontario, October 28, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ABIMBOLA ELIZABETH TITCOMBE
OLUWATOSIN ENOCH TITCOMBE
TEMILOLUWA ADENIKE TITCOMBE
OLUWASIKEMI ELIZABETH TITCOMBE
OYINDAMOLA BUKOLA TITCOMBE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated December 20, 2018, which dismissed the

appeal from the Refugee Protection Division [RPD] finding that the Applicants are neither convention refugees nor persons in need of protection.

II. Background

[2] The Principal Applicant [PA], Abimbola Elizabeth Titcombe, and her four minor children, are citizens of Nigeria. They filed refugee claims on the basis that the PA's husband or extended family members will force her daughters to be circumcised and to enter into arranged marriages.

[3] In November 2017, the PA learned that her father-in-law had decreed that her eldest daughter must get married by January 6, 2018 and must be circumcised before that. Consequently, the PA fled to the United States with her four children on December 15, 2017. Her husband remained in Nigeria because of his family and his job.

[4] The PA and her daughters entered Canada irregularly on December 18, 2017 and made their refugee claim in January 2018.

[5] The Applicants' claim was denied by the RPD, on the basis that they were not credible and, in the alternative, that a viable internal flight alternative [IFA] existed in Port Harcourt.

[6] Their appeal to the RAD was dismissed on the basis that a viable IFA was present in Port Harcourt. The RAD did not deem it necessary to review the Applicants' credibility, because of its IFA findings, except insofar as it related to the IFA finding.

III. Issue

(1) Did the RAD err in assessing the Applicants' IFA in Port Harcourt, Nigeria?

IV. Standard of Review

[7] The standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9).

V. Preliminary Issues

[8] The Minister correctly points out that the style of cause should be amended to name the respondent as the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, paragraph 5(2)(b); *Immigration and Refugee Protection Act*, SC 2001, c 27, subsection 4(1) [IRPA]). I hereby order that amendment effective as of the date of this decision.

[9] The Applicants challenge the RAD's dismissal of the affidavit of the PA dated August 16, 2018 as being "new evidence" which does not comply with subsection 110(4) of the IRPA.

[10] The Applicants argue that the affidavit merely contained the written statement required to perfect the appeal, and contained no new documents or testimony. Therefore, absent any new evidence, the affidavit should be admissible.

[11] The Minister argues that the affidavit amounts to submissions to counter the RPD's findings and clarify the Applicants' evidence that was before the RPD. To the extent that the

Applicants sought to address perceived problems with the RPD's findings, they should have presented these arguments as written submissions rather than argument in an affidavit.

[12] On appeal to the RAD, appellants may present only evidence that meets the conditions of subsection 110(4) of the IRPA (*Deri v Canada (Citizenship and Immigration)*, 2015 FC 1042 at para 51). The RAD member found that the affidavit did not comply with subsection 110(4), and was therefore inadmissible.

[13] The Applicants' argument must fail. If the affidavit truly contained no more than the written statement required to perfect the appeal, and the RAD considered the appeal, the admissibility or inadmissibility of the affidavit had no bearing on the RAD decision.

[14] The PA submitted a further affidavit dated February 24, 2019 in support of this application for judicial review. Paragraphs 10 and 11 of this affidavit contain arguments and legal conclusions not within the knowledge of the affiant, and are inadmissible. The remainder of the affidavit provides general background and information on procedural matters not otherwise contained in the evidentiary record from the RAD. These portions of the affidavit are admissible *(Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

VI. Analysis

[15] The determinative issue is the existence of an IFA. The RAD applied the two-pronged test for an IFA set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of*

Employment and Immigration) [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* [1994] 1 FC 589 (CA):

1. First, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of persecution in the part of the country where it has suggested an IFA may exist.

2. Second, the conditions in the part of the country proposed as an IIFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimants, to seek refuge there.

[16] With respect to the first prong of the test, the Board must be satisfied that there is no serious possibility of persecution of the Applicants in the proposed IFA – in this case Port Harcourt. The Applicant argues that the panel member unreasonably erred in two ways:

i) By taking the position that the in-laws' inability to locate the Applicants in Canada somehow is indicative of their inability to locate them elsewhere in Nigeria, specifically Port Harcourt; and

ii) By ignoring the fact that if the PA's husband stays at work in Ibadan and does not move to Port Harcourt, his regular visits to family will entail a likelihood that his family could track him and find the Applicants.

[17] While the comparison of not being able to locate the Applicants in Canada, to being able to find them in another location in Nigeria is tenuous, at best, this aspect of the RAD's analysis is not determinative of the outcome of the decision. On this point, the RAD went on to find that there is insufficient evidence that the in-laws are so well connected or powerful that they would find the Applicants in Port Harcourt.

[18] Moreover, while the PA's husband may choose to stay and work in Ibadan and consequently regularly visit the Applicants in Port Harcourt, to suggest that would in all likelihood lead the in-laws to the Applicants is speculative. The RAD reasonably concluded that the Applicants face no serious possibility of persecution in the IFA.

[19] With respect to the second prong of the test, dealing with the reasonableness of the Applicants relocating to the IFA, the Applicants raise a number of issues that in their view render the decision unreasonable:

1. the panel member failed to consider the adverse conditions facing single women with children in attempting to relocate in Nigeria;
2. the effect of the husband's absence on the family;
3. the lack of viable employment opportunity in Port Harcourt, based on the documentary evidence;
4. the economic situation of the family and the fact that no funds are readily available was ignored;
5. the higher education of the PA and her husband leads to work not being easily available in Port Harcourt;
6. the treatment of non-indigenes, including language, culture and religion;
7. psychological issues for family members; and
8. exposure to crime in Port Harcourt.

[20] The Applicants argue that the above factors were not considered as a whole or contextually, such that the RAD's decision is unreasonable. As well, the RAD failed to apply the objective documentary evidence to the Applicants' specific situation.

[21] The RAD reasonably considered the socio-economic and cultural problems that the Applicants may face in relocating to Port Harcourt. The expense, serious problems of employment and ethnic realties were all considered. Family separation, psychological issues and the level of crime in Port Harcourt were all weighed under the umbrella of the difficulty of relocation and degree of hardship. Loss of employment, status, aspirations, beloved ones and reduction in quality of life are not sufficient to show that a proposed IFA is unreasonable (*Obineze v Canada (Citizenship and Immigration)*, 2018 FC 1150 at paras 9-10).

[22] The Applicants are essentially asking the Court to reweigh the evidence under this second prong; this is not the role of the Court on judicial review (*Akinfolajimi v Canada (Citizenship and Immigration)*, 2018 FC 722 at paras 27-28).

JUDGMENT in IMM-587-19

THIS COURT'S JUDGMENT is that

1. The respondent in the style of cause is amended to the Minister of Citizenship and Immigration.
2. The application is dismissed.
3. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-587-19
STYLE OF CAUSE:	ABIMBOLA ELIZABETH TITCOMBE, OLUWATOSIN ENOCH TITCOMBE, TEMILOLUWA ADENIKE TITCOMBE, OLUWASIKEMI ELIZABETH TITCOMBE, OYINDAMOLA BUKOLA TITCOMBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Dotun Davies	FOR THE APPLICANTS
David Joseph	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Topmarké Lawyers Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT