Federal Court  Cour fédérale

Date: 20200522

Docket: IMM-5229-19

Citation: 2020 FC 640

Ottawa, Ontario, May 22, 2020

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

ADEDAMOLA OLADAPO ADELEYE
OLUWATUMININU YETUNDE ADELEYE
MOJOLAOLUWA ADEWUNMI ADELEYE
MOROLALUWA ADESOLA ADELEYE
MOMOREOLUWA ADEBOLA ADELEYE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants seek judicial review of the dismissal of their claim for asylum. They argue that the decision-maker unreasonably discounted their evidence for what it did not say and that in doing so, it made what amounts to a negative credibility finding without valid reason. I am dismissing their application, as the decision-maker did not impugn their credibility, but rather

found that their evidence was insufficient. The applicants have not demonstrated that this assessment is unreasonable.

I. Background

[2] The applicants, a couple and their three minor daughters, are citizens of Nigeria. They came to Canada and claimed asylum. They allege that a prominent member of their family in Nigeria, whom I will simply call the agent of persecution, has insisted that their daughters undergo female genital mutilation [FGM]. They provided evidence to the effect that the agent of persecution insisted on performing "naming ceremonies," in some cases through the use of violence; that more recently, he came to perform FGM on their eldest daughter, but was persuaded not to do so when reminded that she had not yet reached eight years of age; and that he made a number of threats to the applicants because of their refusal to consent to FGM. While some of these incidents were reported to the police, they declined to intervene. After the applicants left Nigeria, the agent of persecution visited the main applicant's mother and made threats. The applicants also filed two letters in which the agent of persecution makes threats.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected the applicants' claim. First, the RPD found that they did not have a well-founded fear of persecution. It reviewed country condition evidence to the effect that Nigerian parents can refuse FGM for their daughters, especially if they are highly educated like the adult applicants.

[4] Second, the RPD held that the applicants had an internal flight alternative [IFA] in Abuja. While the applicants testified that the agent of persecution was looking for them, the RPD found

that testimony to be vague. Moreover, the RPD found that the two letters allegedly written by the agent of persecution were forged, in particular because the applicant failed to mention one of them in their basis of claim [BOC] form. The RPD also rejected the applicants' assertion that the agent of persecution had influence in the ruling political party and the resources to search for them anywhere in Nigeria. The RPD noted that the BOC form did not mention such political influence and that the applicants were not able to provide any objective evidence in this regard.

[5] The Refugee Appeal Division [RAD] of the IRB dismissed the applicants' appeal. The RAD found it unnecessary to deal with credibility issues, as it considered that the availability of an IFA was determinative. On that issue, the RAD concluded that the evidence of the agent of persecution's means to search for the applicants anywhere in Nigeria was "vague and insufficient."

[6] The applicants now seek judicial review of the RAD's decision.

II. Analysis

[7] The applicants' challenge to the RAD's decision is focused on a single issue: whether the agent of persecution has the means to search for the applicants in Abuja, the proposed IFA, given his alleged political connections.

[8] The applicants argue that the RAD engaged in impermissible forms of reasoning in reaching a negative answer to that question. It would have discounted the applicants' evidence for what it does not say, instead of focusing on what it does say, contrary to cases such as

Mahmud v Canada (Minister of Citizenship and Immigration), 1999 CanLII 8019 (FC) at paragraph 11.

[9] The prohibition on discounting evidence for what it does not say arises in the context of the assessment of credibility. It is impermissible to disbelieve one witness's evidence simply because another witness corroborated only part of that evidence and remained silent as to another part: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraphs 48–52 [*Magonza*]. In such a situation, there is no contradiction affecting credibility. At most, the issue is simply a lack of corroboration.

[10] This prohibition, however, does not detract from the general requirement that there be sufficient evidence to ground a finding of a well-founded fear of persecution. Insufficiency should not be confused with a lack of credibility: *Magonza*, at paragraphs 32–35; *Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paragraphs 17–18. I discussed the concept of sufficiency of the evidence in *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 [*Azzam*]. I noted that "[a] mere conclusory statement offered in evidence will often be insufficient" (at paragraph 31) and that evidence may be insufficient "where it does not contain enough detail to persuade the decision-maker of the existence of the facts necessary to trigger the application of a legal rule" (at paragraph 33).

[11] One might be forgiven for thinking that there is no meaningful difference between insufficiency and lack of credibility. In this regard, counsel for the applicants argued that a conclusion that the applicants have brought insufficient evidence practically means that the Court

does not believe them. Even though both situations may lead to the rejection of the claim, there is nonetheless a significant distinction. As counsel for the Minister noted, the applicants may well have a sincere belief in the power and influence of the agent of persecution. Without sufficient evidence, however, a decision-maker is unable to ascertain that this belief is objectively grounded. Thus, a conclusion of insufficiency is logically distinct from a negative credibility finding.

[12] Given that the RPD and RAD raised the issue of an IFA, the applicants had to prove that "there is no serious possibility of the [applicants] being persecuted in the part of the country, to which it finds an IFA exists:" *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 710. This means that the applicants had to prove that the agent of persecution had the means to find them in the proposed IFA.

[13] In this regard, the applicants' theory is that the agent of persecution is involved in politics and has connections throughout Nigeria, which would allow him to search and find the applicants, even in large cities. However, it appears that the only evidence to that effect was the main applicant's testimony, which the RAD found to be "vague and insufficient." Despite the applicants' argument to the contrary, this is a finding of insufficiency, not a negative credibility determination.

[14] As there is no transcript of the evidence before the RPD in the court record, it is impossible for me to conclude that the RAD's assessment of the sufficiency of the main applicant's testimony is unreasonable. The RAD also noted that the remainder of the evidence

did not address the issue of the agent of persecution's political connections. The applicants did not persuade me that this statement is incorrect. In my view, the threats made by the agent of persecution in the February 2018 letter do not explicitly mention the political connections and provide no evidence of the resources that the agent of persecution is able to marshal in order to find the applicants. In this regard, the RPD found, at paragraph 34 of its decision, that the applicants "did not provide any persuasive objective evidence to link [the agent of persecution] to any political party or persons of influence in Nigeria." As a result, I find that the RAD's conclusion regarding the insufficiency of the evidence is reasonable.

[15] The applicants also argue that the RAD impermissibly required corroboration of the applicants' allegations regarding the agent of persecution's political influence, contrary to cases such as *Ahortor v Canada (Employment and Immigration)* (1993), 21 Imm LR (2d) 39 (FCTD) at paragraph 46. They say that the RAD should have indicated what corroborative evidence was required, but failed to do so. I do not agree. In *Magonza*, at paragraph 58, I indicated that when reviewing a finding of insufficiency, it is useful to ask oneself what other evidence could have been adduced. In this case, this question is easily answered. The applicants could have explained the nature of the agent of persecution's political connections, given names of politicians with whom he was associated and given examples of situations where he was able to use those connections to inflict harm on someone. Thus, the RAD's conclusion is really based on the insufficiency of the evidence and not on the lack of corroboration of evidence that would have been sufficient in and of itself. The RAD's failure to spell out what evidence was missing is not enough to render its decision unreasonable.

[16] The applicants also argued, based on *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 128 [*Vavilov*], that the RAD failed to "grapple with their submissions." In particular, they point to the RAD's erroneous statement to the effect that they had failed to address the issue of the agent of persecution's means in their memorandum. The RAD's mistake, however, is of no moment, as the subsequent paragraphs of its decision contain a fulsome discussion of the means issue. Indeed, *Vavilov* does not detract from the Supreme Court's previous decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, insofar as the latter held that a decision-maker need not provide an explicit discussion of each and every argument raised by the parties, as long as the rationale for the decision is clear. *Vavilov*'s injunction "to meaningfully grapple with key issues or central arguments raised by the parties" does not set a different standard for judicial review.

[17] As a result, this application for judicial review will be dismissed.

JUDGMENT in IMM-5229-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5229-19
TYLE OF CAUSE:	ADEDAMOLA OLADAPO ADELEYE, OLUWATUMININU YETUNDE ADELEYE, MOJOLAOLUWA ADEWUNMI ADELEYE, MOROLALUWA ADESOLA ADELEYE, MOMOREOLUWA ADEBOLA ADELEYE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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