

Federal Court



Cour fédérale

Date: 20200527

Docket: IMM-6295-19

Citation: 2020 FC 648

Toronto, Ontario, May 27, 2020

PRESENT: Mr. Justice Diner

BETWEEN:

**BOLAJI EVELYN BEJIDE
JASON OLUWAGBOTEMI BEJIDE
MORAYO JOANNA BEJIDE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In this application for judicial review of a refugee appeal challenging the rejection of the initial claim, both lower tribunal decisions found the Applicants had internal flight alternatives [IFAs] to Lagos and Port Harcourt, Nigeria. The appeal was dismissed, which I find to have been

reasonable as the Applicants have not shown why the IFAs were inappropriate. As a result, I will dismiss this judicial review, for the following reasons.

II. Facts

A. *Background*

[2] The Principal Applicant is a female Nigerian citizen. In her refugee proceedings, she was the designated representative for her minor children.

[3] The Principal Applicant is from a town in southwest Nigeria. In October 2011, as she prepared to marry her husband, her family and particularly her mother began pressuring her to undergo female genital mutilation [FGM]. She was invited to a circumcision ceremony in 2012 after her wedding but chose not to attend.

[4] The Principal Applicant and her husband moved from their home town to a large city in June 2013 as she no longer felt safe due to the insistence she undergo FGM. The family lived peacefully at the same address in that city from June 2013 to September 2016. During this time, she began training at a hair salon in 2013 while enrolled in university classes, obtained a Bachelor's Degree in 2015, and gave birth to their eldest son in November 2015. She says things were safe in the city until at some unspecified point in 2015, she was discovered by people from her village and was asked to undergo circumcision by both her parents and the chief from her home village.

[5] In April 2016, the Principal Applicant said people from her town, accompanied by traditional soldiers, came to the city looking for her but she was away at the hospital at the time for her son's checkup. She got a call informing her that her husband had been kidnapped so she did not return home. She says the soldiers took her husband for two days hoping she would return, but ultimately released him demanding that he return with his wife within two months.

[6] The Applicants provided the Refugee Protection Division [RPD] with a police report dated April 22, 2016, where the Principal Applicant had reported the threats to her life "over circumcision issues that led to her relocation" to the city. In response to her police report, the city police stated that her case was referred for further investigation.

[7] After her husband's kidnapping, the Applicants state they agreed to escape their city separately and meet in the capital city, Lagos. They successfully applied for United States [US] tourist visas and in September 2016, they flew from Lagos to the US. The Principal Applicant's husband had to return to Nigeria during this period because his father passed away, but she remained in the US. The husband attempted to re-enter the US in February 2017 but was denied entry, and so he remains in Lagos, Nigeria, where he is working as a businessman. The Principal Applicant's and her son's visitor visas expired in March 2017. They remained in the US on their expired visas and the Principal Applicant gave birth to her daughter in Texas in June 2017.

[8] The Applicants did not make a refugee claim in the US and instead entered Canada at a border crossing, submitting a refugee claim in December 2017.

[9] In her claim before the RPD, the Principal Applicant indicated she feared FGM for herself as well as her US-born daughter if they were returned to Nigeria. She indicated her husband has experienced “verbal threats from various members of my family” demanding that the Principal Applicant undergo FGM. She indicated that she is a Christian and her beliefs prohibit FGM, and she also cited the drastic health effects associated with the practice.

B. *RPD Decision*

[10] The RPD found the determinative issue to be the existence of IFAs. For an IFA to exist, the RPD noted that (1) it must be satisfied on a balance of probabilities that there is no serious possibility of persecution in the proposed part of the country, and (2) the conditions in that part of the country must make it reasonable in the circumstances for them to seek refuge there. The RPD stated that once an IFA is raised as an issue, the onus is on the claimant to show they do not have an IFA.

[11] The RPD also raised credibility concerns and turned to the jurisprudential guide for the viability of IFAs for women in Nigeria. The RPD found there were credibility concerns as the Principal Applicant began receiving pressure to undergo FGM in October 2011 and yet remained in Nigeria until September 2016. The RPD noted she was never harmed from 2011 to 2016 despite her not undertaking safety precautions, and furthermore her husband was not harmed when she was located. She said her family located her in her city, and asked her to undergo FGM, yet she refused and continued to live there. Further, her husband returned to Nigeria after the threats and has lived there for over two years working as a businessman, yet he has not been harmed by relatives.

[12] As for the reasonableness of the proposed IFAs, the RPD noted that the Principal Applicant's husband has been living safely in Lagos and that it is a major city. The Board also found Port Harcourt to be an IFA and that both cities "are significantly far away from her own city" and there was "no more than a mere possibility" that she would be located and abducted by family members in either. The RPD considered several factors in the jurisprudential guide that would influence her ability to adapt, including her husband's employment in Lagos and her Bachelor's degree.

C. *Refugee Appeal Division Decision*

[13] On appeal, the Refugee Appeal Division [RAD] reached its conclusion on the written record as there was no new evidence on appeal and no need for an oral hearing. The RAD applied a correctness review to the RPD decision. The Applicants' arguments about a lack of reasons, the RPD's application of the jurisprudential guide, and other RPD errors were each considered and rejected by the RAD.

[14] The RAD found both prongs of the IFA test were met for both cities. On the first prong of the IFA test, the RAD agreed the Applicants did not show a serious possibility of persecution and relied on "general speculation" such as the fact the Principal Applicant's mother's family is in Lagos and they might bump into relatives in Lagos and Port Harcourt. There was insufficient credible evidence to demonstrate these IFAs were unsafe.

[15] On the second prong of the test, the RAD found it was not objectively unreasonable for the Applicants to seek refuge in Lagos or Port Harcourt based on similar factors noted by the

RPD. Therefore, the RAD agreed with the RPD that the Applicants had an IFA in Lagos and Port Harcourt and upheld the RPD's decision.

III. Issue and Standard of Review

[16] The sole issue raised before this Court is whether the RAD's IFA finding was reasonable. That is, this Court must consider "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

[17] The Applicants argue the RAD is to consider the religious, economic, and cultural factors that could influence the reasonableness of the IFA for a claimant. They ask the Court to consider her situation as a woman in Nigeria at risk of FGM. They cite *Henguva v Canada (Citizenship and Immigration)*, 2013 FC 483 for the proposition that a decision may be unreasonable where the IFA analysis fails to consider relevant cultural norms in the context of traditional families.

[18] The Applicants further argue that the RAD (as well as the RPD before it) failed to consider both subjective and objective evidence. Specifically, the Applicants allege that both tribunals unreasonably ignored the cultural norms for FGM in Nigeria vis-a-vis the applicant, as she would be pursued all over Nigeria by her family due to "cultural norms and reasons".

[19] I do not agree. The RAD found IFAs in Lagos or Port Harcourt using the appropriate two-step test, namely whether (1) there is a serious possibility of persecution in the proposed IFA

and (2) it would be unreasonable to move there (*Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at para 10 [*Ohwofasa*]). The RAD's application of the test to the facts of this case was entirely reasonable.

[20] On the first stage of the test, there must be a serious possibility of persecution throughout the country including in the area alleged to be an IFA (*Ohwofasa* at para 17, citing *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589 (FCA)). As the RAD noted, an applicant must show "actual and concrete evidence" of the existence of conditions which would jeopardize the life and safety of the claimant. The RAD cited *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15 (FCA) on this point. The RAD, relying on the appropriate jurisprudence, reasonably applied the facts to the law, as articulated in this key paragraph of the RAD's reasons:

[22] While I have considered this evidence and the submissions, I agree with the RPD's finding that the Appellants have provided insufficient credible evidence to demonstrate that the agents of persecution, and/or any relatives allegedly residing in the IFAs, have the means and/or are sufficiently motivated to cause the Appellants harm in the IFAs. For example, other than the Principal Appellant testifying that they are her mother's siblings, there is no specific evidence that provides detailed information about the relatives that live in these cities, and more importantly, no evidence to support that these relatives would actually be inclined or be able to locate the Appellants or facilitate any efforts to cause harm to the Appellants. The Principal Appellant's general assertion that she might bump into her mother's relatives when she is in the proposed IFAs of Lagos or Port Harcourt is speculative. That any such encounter might then result in harm is also speculative. No detailed evidence was given as to how the relatives would locate and then harm the Appellants.

[21] As the RAD noted, Lagos is a city of over 13 million people and Port Harcourt has a population of over 2 million people. The Applicants submitted no evidence regarding who in

Lagos and Port Harcourt would present the Principal Applicant with a serious possibility of being captured and forced to undergo FGM on a balance of probabilities. Moreover, there was limited evidence that the threat of FGM would be carried out in the family's original town or the city they then moved to, given that they had resided in the latter city for five years (2011-2016) despite the agents of persecution apparently knowing their whereabouts for much of this time.

[22] On the second prong of the IFA test – whether the proposed IFA would be reasonable in the circumstances – the Applicants argue that the RAD ignored “cultural norms” regarding FGM. However, the RAD was clearly aware of the concerns about FGM in Nigeria but concluded that the Principal Applicant would not face a serious possibility of FGM in either Lagos or Port Harcourt. This conclusion flowed from the evidence.

[23] The Applicants also argue that there is a lack of family support in Lagos or Port Harcourt, but this was part of the picture considered by the RAD. Again, I do not find that the RAD overlooked or otherwise ignored the evidence provided by the Applicants in their submissions. Rather, the RAD's Decision addresses each of the submissions made in the appeal regarding not only family support (the ground specified in this judicial review), but also gender, language, education, religious beliefs, mental health and access to services.

IV. Conclusion

[24] I find that the RAD's application of and conclusions on the IFA test were wholly reasonable. The Decision is both rational and logical, and the RAD's reasoning “adds up” in

arriving at a transparent and justifiable conclusion. I will accordingly dismiss this application for judicial review.

JUDGMENT in IMM-6295-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6295-19

STYLE OF CAUSE: BOLAJI EVELYN BEJIDE ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY TELECONFERENCE BETWEEN TORONTO,
ONTARIO AND WINNIPEG, MANITOBA

DATE OF HEARING: MAY 25, 2020

JUDGMENT AND REASONS: DINER J.

DATED: MAY 27, 2020

APPEARANCES:

Bashir Khan FOR THE APPLICANTS

Alexander Menticoglou FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bashir A. Khan FOR THE APPLICANTS
Barrister and Solicitor
Winnipeg, Manitoba

Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba