

Federal Court



Cour fédérale

Date: 20200820

Docket: IMM-6856-19

Citation: 2020 FC 758

Vancouver, British Columbia, August 20, 2020

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

AYEMERE ONUWAVBAGBE
ANGELA IFEOMA ONUWAVBAGBE
OSERIEMEN KOSISOCHUKWU
ONUWAVBAGBE
BRIAN OSEIKHUEMEN ONUWAVBAGBE
ISABELLA OSEMEGHONGHON
ONUWAVBAGBE
EBOSETALE DAVID-DANIEL
ONUWAVBAGBE AND
ELLIS OSEZELE ONUWAVBAGBE

Applicants

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. The RAD confirmed the decision of

the Refugee Protection Division [RPD] finding that the Applicants have an internal flight alternative [IFA] in Lagos, Nigeria and, for that reason, are not Convention refugees or persons in need of protection pursuant to s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

Background

[2] The Applicants are a family, comprised of the Principal Applicant, his spouse [Spouse] and their five minor children. They are all citizens of Nigeria. The following background information is excerpted from the original Basis of Claim [BOC] forms of the Principal Applicant and his Spouse.

[3] The Principal Applicant and his Spouse met in in 2004. They claim that their wish to marry was opposed by the Principal Applicant's family who insisted that the Spouse first undergo female genital mutilation [FGM]. Instead, the couple began living together in Benin City.

[4] In 2006, the Spouse was sexually assaulted by unknown assailants while in her home in Benin City. In 2007, the Spouse was driving with their infant daughter when a car intentionally crashed into theirs. The Spouse was injured and unknown assailants unsuccessfully attempted to kidnap the child. The Applicants state they believe that members of the Principal Applicant's clan perpetrated these attacks because of the refusal to submit the Spouse, and the infant child, to FGM.

[5] After the 2007 attack, the family moved to the city of Abuja. In Abuja, the Principal Applicant and the Spouse married. The Principal Applicant worked in real estate and the Spouse worked as an administrator for the United Nations. The Spouse also helped with the Principal Applicant's real estate company. They claim that members of the Principal Applicant's clan continued to pressure the family to return to the Principal Applicant's home village, in Edo State, for the Spouse and their infant daughter to undergo FGM. While in Abuja, the Principal Applicant was attacked. The Applicants state they believe that the assailants were members of the Principal Applicant's clan and that the attacks were motivated by the family's continued refusal to accede to the demands that FGM be performed.

[6] In 2010, the Applicants moved to the village of Barkin Ladi, in the Jos region of Nigeria. There, the Principal Applicant worked as a farmer. The Spouse assisted with the farm business and commuted weekly to Abuja for work. They built a home and had more children. In 2018, Fulani herdsmen began camping near Barkin Ladi and grazing cattle on local farmland. The Applicants claim that they were very vocal against the Fulani and hence became targets. In June 2018, the Fulani herdsmen attacked a Christian funeral in Barkin Ladi, burned down much of the village, including the Applicants' home, and killed villagers. The Principal Applicant claims that his name was "amongst persons pencilled to be killed" by the Fulani, along with Reverend Adamu.

[7] The Applicants claim that the Fulani herdsmen occupied the Applicants' land, and about two months after the attack in Barkin Ladi, killed Reverend Adamu and his family.

[8] Immediately following the attack the Applicants returned to Abuja. There they again faced demands by the Principal Applicant's family that his Spouse and infant daughters undergo FGM, including a threat of death if they did not return to his village by his eldest daughter's 12th birthday, in November 2018, for this purpose.

[9] The Applicants obtained United States [US] visitor visas. They flew to the US on September 10, 2018, entered Canada on September 14, 2018 and claimed refugee protection on September 20, 2018. In a decision dated June 26, 2019, the RPD refused their claim.

[10] The RPD found that the determinative issue was that the Applicants had a viable IFA in Lagos. As to the risk from the Fulani herdsmen, the RPD found that it was unlikely that the herdsmen would search for and locate the Applicants in Lagos. The RPD also found that the objective evidence indicated that families fearing FGM could relocate to Lagos without being found, that parents in Lagos should be able to refuse demands or pressure to subject their children to FGM if they chose to do so, and that the objective evidence did not support that women are abducted and forced to undergo FGM. Further, that it would be reasonable for the Applicants to relocate to Lagos.

[11] The Applicants appealed to the RAD. By a decision dated October 23, 2019, the RAD confirmed the RPD's decision. The RAD's decision is the subject of this judicial review.

Decision under review

[12] The RAD upheld the RPD's finding that the Applicants have a viable IFA in Lagos.

[13] As to the first prong of the two-part IFA test, the RAD found, on a balance of probabilities, that neither the Fulani herdsmen nor the Principal Applicant's clan posed a serious risk of persecution or harm to the Applicants should they relocate to Lagos.

[14] The RAD summarized the RPD's reasons for its finding concerning the risk from the Fulani herdsmen as follows:

- There is insufficient evidence of related violence in the state of Lagos and the Fulani herdsmen are unlikely to be interested in continuing to search for the Principal Applicant there;
- Lagos is an urban, coastal city, hundreds of miles away from the Fulani's traditional grazing lands. It is not likely that the issues related to the general conflict relating to the herdsmen will move to such a southern locale;
- The Principal Applicant had a limited profile in his community. His profile was not the same as that of the activist Catholic priest killed by the Fulani in a different region of Nigeria; and,
- The risk is tied to the location and locale of the conflict in northeast Nigeria. Lagos is in southwest Nigeria.

[15] The RAD then noted the Applicants' contention that southwest Nigeria is under siege by the Fulani herdsmen. The RAD accepted that the conflict has spread southward. However, it concluded that none of the objective evidence submitted by the Applicants – two newspaper articles – suggests that the conflict has spread to Lagos itself. The RAD conducted an independent review of recent objective evidence, including a report published by the International Crisis Group, titled "Stopping Nigeria's Spiralling Farmer-Herder Violence", and found nothing to suggest that the risks associated with the conflict between herders and farmers has spread to Lagos.

[16] The RAD also agreed with the RPD that the Principal Applicant's community profile does not suggest that the Fulani herdsmen would pursue him, given his testimony that they have taken over his property, and that the risk from them is tied to the location and locale of the conflict in Jos.

[17] As to the risk from the Principal Applicant's clan, the RAD found that the clan would not pose a risk of persecution or harm to the Applicants in Lagos. The Applicants had lived in Barkin Ladi since 2010 without being harmed by the Principal Applicant's clan and the Applicants had not put forward any evidence to demonstrate that the clan would locate them in Lagos. Further, the objective evidence indicated that parents in Lagos, particularly well educated and affluent ones such as the Principal Applicant and the Spouse, should be able to refuse demands or pressures to subject their children to FGM. The objective evidence did not support that there is a risk of kidnapping and forced FGM in the absence of parental consent. The RAD accepted that the objective evidence also showed that a parent opposed to FGM within communities that practise it may face discrimination and ostracism for going against cultural or family traditions.

[18] As to the second prong of the IFA test, the RAD found that it would not be objectively unreasonable or unduly harsh for the Applicants to relocate to Lagos, the proposed IFA. It based this conclusion on the following findings:

- Travel: the Applicants can safely travel to Lagos;
- Language: all of the Applicants speak English, Nigeria's official language;
- Education and Employment: the adult Applicants are in a better position than the average Nigerian to find employment. The Principal Applicant has 21 years of education including a Bachelor of Arts in history, a diploma in social work, and a Master of Arts in peace and conflict studies. He has worked for

10 years in real estate and farming, running his own businesses. The Spouse has 19 years of education and 10 years of work experience as an administrator. The Applicants also did not raise any concerns about finding employment in Lagos or about finding housing in Lagos;

- Religion: the Applicants are Christian and there is no evidence that they would face undue hardship in the practice of their religion in Lagos where the Christian religion is generally practiced;
- Indigeneship: the Applicants did not raise any concerns about indigeneship and the objective evidence indicated that this factor is less important in Lagos than it is in other parts of Nigeria;
- Healthcare: the Applicants did not raise any issues about the availability of healthcare;
- Gender Guideline: the RAD considered the Chairperson's gender guidelines but noted that the female Applicants can be distinguished from the objective evidence concerning gender based discrimination, violence and inequality in Nigeria as the Applicants are comfortable financially, English-speaking, and more likely than not have reasonable access to education, medical care, and employment. The RAD also discussed the effect of the 2006 sexual assault suffered by the Spouse and her related fear. It stated that, while it did not discount the effect of the assault, the RPD found on the evidence that the assault had little negative impact on her life and career in Abuja and her employment in Canada;
- Crime: crime levels in Lagos are not so high that it would be objectively unreasonable for the Applicants to relocate there.

Issue and standard of review

[19] There is only one issue in this matter: whether the RAD erred in finding that the Applicants have a viable IFA in Lagos.

[20] The parties submit, and I agree, that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17

[*Vavilov*]; *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11).

Reviewing a decision for reasonableness means reviewing for intelligibility, transparency, and

justification and whether the decision “is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

Analysis

[21] In its reasons the RAD correctly identified the two pronged test for an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ No 1256 at paras 6, 9 (FCA) (QL); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ No 1172 at paras 2, 5, 12-15 (FCA) (QL). Also see *Gallo Farias v Canada (Citizenship and Immigration)*, 2008 FC 1035 at para 34). The RAD also correctly noted that both prongs of the test must be satisfied and that the burden of proof lies with the claimant to establish that they do not have a viable IFA, which burden is a high one. The claimant must show “actual and concrete evidence” of the existence of conditions that would jeopardize their life and safety in the IFA (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15; *Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at paras 23, 28).

[22] The RAD also noted that an IFA in Nigeria is often considered by the RPD and by the RAD, and that the relevant country documentation, including the UK Home Office Country Information and Guidance report for Nigeria, and jurisprudence, support that internal relocation in Nigeria is generally considered to be viable for refugee claimants fearing non-state actors. However, ultimately, whether a claimant has shown on a balance of probabilities that they face a serious possibility of persecution in the proposed IFA will turn on their evidence as to their particular circumstances, keeping in mind the general principles that the RAD had previously

outlined. The RAD also outlined factors often considered in whether an IFA is reasonable in the circumstances of a claimant. It then conducted its analysis of the Applicants circumstances against these principles.

[23] The Applicants do not take issue with these general principles but submit that the RAD failed to consider their particular circumstances and unreasonably found that Lagos afforded them a viable IFA.

Risk from Fulani herdsmen

[24] The Applicants submit that they provided documentary evidence and oral testimony showing that the Fulani herdsmen targeted a group organized by the Principal Applicant, and of which he was the leader. Further, that all of the members of the group had been killed, some of them in other states, except for the Principal Applicant. The Applicants submit that the RAD erred in its assessment of the Principal Applicant's profile. They submit that he had a high profile in his community and was part of the group of people who the Fulani herdsmen believed to have killed a number of the cattle; he was therefore targeted. They submit that they provided evidence that other people had been killed by the herdsmen, including in states in the southwest region of Nigeria, and that Lagos is located near those states. Thus, the evidence established that the risk to the Applicants is not confined to the location and locale of the conflict in northeastern Nigeria. Further, the Principal Applicant's occupation is that of a farmer making it more likely that he would come into contact with the Fulani herdsmen and that the documentary evidence shows that the herdsmen would come to city markets to sell their cattle.

Analysis

[25] The RAD noted that the RPD had concluded, for the reasons referenced above, that relocation of the Applicants to Lagos, outside the local area of contention and violence, would significantly mitigate the risks emanating from the 2018 attack by the Fulani herdsmen.

[26] Although the Applicants asserted that the conflict with the Fulani herdsmen had spread to Lagos, the RAD based its conclusion that the Fulani did not pose a risk of persecution or harm to the Applicants in Lagos, in part, on the fact that this was not supported by the objective evidence. In that regard, the RAD pointed out that neither of the two newspaper articles submitted by the Applicants in support of their contention showed that the risk had spread to Lagos. The Applicants do not dispute this. And, while the RAD agreed that the conflict between herders and farmers, which was centered in the North Central zone, has been spreading southward, its review of the recent objective evidence, including a report by the International Crisis Group, yielded nothing to suggest that the risks associated with the conflict between herders and farmers affect Nigeria's largest city.

[27] While the Applicants make various arguments intended to show that the conflict is not confined to northeastern Nigeria, and that there have been attacks in other states in the southwest region, they do not point to any documentary evidence of attacks by herdsmen in Lagos State or Lagos city. Indeed, at the hearing before me they concede that the record contains no documentary evidence of any attacks by the herdsmen in Lagos State or city. Other than pointing to the testimony by the Principal Applicant before the RPD that broadly, and in a general sense,

stated that the herdsmen are everywhere – they are very organized and they sell meat in markets (and therefore are in cities) – the Applicants offered no evidence of any attacks by the herdsmen in Lagos. Accordingly, in my view, the RAD reasonably found that the Applicants had not established that they would face more than a mere possibility of risk as a result of the general land use conflict in Jos between herdsmen and farmers were they to relocate to Lagos. Their argument in this regard is speculative.

[28] Less clear is the question of whether the RAD reasonably considered the Principal Applicant's evidence that his profile resulted in him being personally targeted and would put him at risk in Lagos.

[29] In its decision, the RPD noted that the Principal Applicant had testified about persons from Barkin Ladi who had been killed by the herdsmen since he and his family had fled that village. He had indicated that he had joined a committee organizing persons to protect themselves and was on the front lines against the Fulani herdsmen. He feared that he would be similarly targeted and assassinated. The RPD noted that little of this was mentioned in his BOC. When questioned by the RPD about the committee, the Principal Applicant testified that the committee was not armed and had only warned local residents of anything happening. However, they were blamed for cattle being killed. The RAD stated that although the objective evidence indicated that the herdsmen have a very limited presence elsewhere, the adult Applicants testified that the herdsmen can find people anywhere given their organization and pointed to the killing of a Catholic priest in another region of Nigeria as evidence that this could also happen to the Applicants. The RPD found that there was little linkage between the Applicants profile and that

of an activist Catholic priest. Rather, that the question was whether the agent of harm, which according to the Applicants was any herdsman from the region, would be interested or have continuing interest in searching for the Applicants throughout Nigeria. The RPD found that the Principal Applicant had a limited profile in his community and it was more likely than not that the alleged risk is tied to the location and the locale of the conflict in northeastern Nigeria.

[30] The RAD agreed with the RPD that the Principal Applicant's community profile does not suggest that Fulani herdsmen would pursue him, given his testimony that they have taken over his property in Jos and that the risk from the herdsmen is tied to the location and locale of the conflict in Jos. The RAD stated that the fact that the Principal Applicant believes that the Fulani herdsmen from Jos would find him in Lagos did not make it so, and did not discharge the Applicants' burden to demonstrate with credible and trustworthy evidence that they would face more than a mere possibility of persecution or risk harm from Fulani herdsmen in Lagos.

[31] It is useful to pause here for a moment to look at the evidence in the record concerning the Principal Applicant's profile.

[32] In his original BOC, the Principal Applicant refers to the Fulani herdsmen camping in Barkin Ladi and terrorising residents by grazing their cattle on farmlands and destroying crops. He states that, "We were against such practices because our farmland is our source of livelihood, the church was against it because 99% of the farmers are Christians. We were very vocal against the Fulani taking over our farmlands, hence we became targets". He states, without attributing a source, that after the attack he heard that his and Reverend Adamu's names were amongst those

to be killed. Two months later the herdsmen attacked in Barkin Ladi again and killed Reverend Adamu and his family along with another church family. The Principal Applicant states that in the second attack the herdsmen were targeting families that escaped the first attack.

[33] As noted by the RPD, the original BOC makes no mention of a seven-person committee, all of whom were allegedly killed by the herdsmen because of their participation in the committee, some in areas other than Barkin Ladi.

[34] However, the RAD does not mention an amended BOC of the Principal Applicant dated June 4, 2019. This varies or elaborates on the content of the original BOC. As to how the Principal Applicant became a target of the herdsmen, he states that following a church meeting he, Rev. Adamu, Pastor Isaac, Mr. Tankwa, Rev. Akawu, Vincent Damina, and Chris Donwo discussed the rampant killings by the Fulani herdsmen and decided to organize a protest to alert the world to the problem. It is unclear if this ever occurred. The amended BOC states that people were organized into groups so that no one farmed alone and that a “community base [*sic*] vigilante group” was initiated using a loud bell to ring every 10 minutes. And:

... Out of the Seven of us am [*sic*] the only person alive for they have killed Rev Adamu Gyang Wurim Pastor Isaac, Mr. Tankwa, Rev. Michael Akawu, Rev. Vincent Damina, Chris Donwo. Rev. Mechael [*sic*] Akawu, and Mr. Tankwa were killed in far Abuja because their names were also in the Herdsmen death list. They claim we instigated the people and also participated in the killing of their cows.

[35] The transcript of the hearing before the RPD indicates that, when the Principal Applicant was asked by the RPD why the herdsmen would still want to target him, his response was:

They value their cows so much. More than anything else. Say they said that organized people that killed 300 of their cows. That I was part of the people that did that.

[36] When asked why the herdsmen would try to find him in Lagos, he stated:

Okay. We that formed the committee in Jos, we are seven. And we are mat (phonic). Out of the seven of us, six of them are dead now, I am the only person alive. Those that were killed, they were in different places. Some of them in Kogi state. Some of them in Abuja. Then some, Ondo State. One in Ondo State.

[37] When questioned by his counsel, the Principal Applicant was asked what the seven committee members were doing in Jos. His response was that they were involved in organizing people on how to protect themselves against the Fulani herdsmen. He was the leader and was “organizing them on how to go from farm to farm”. He advocated that instead of going to farms individually to work, they should be going in groups to each of their farms in turn. The RPD followed this up by asking whether the committee was an organized group. The Principal Applicant stated they were all just coming together. They were not armed. When asked how they were going to repel an attack by the herdsmen, the Principal Applicant replied that they were not armed to repel them. They had bells to ring when the herdsmen were coming so the farmers could escape. They were more of a warning. The RAD then asked why the Fulani herdsmen would still take issue with this, given that the committee was only ringing warning bells. The Principal Applicant replied:

A Well, they – they target us, the people slaughter their 300 cows.

Q Why would they do that?

A We didn't kill any cows. If they want to kill people, they will given them – they will label them with something.

[38] Also in the record is a letter dated April 8, 2019 from the Reverend Joshua Davoc of the Church of Christ in Nation (COCIN). This letter speaks of the Principal Applicant as a member of that church in Barkin Ladi and about the persecution of Christians in Nigeria. It states that the international community should respond to the genocide of Christians, hundreds of whom are being killed daily in Nigeria by the Fulani herdsmen. The letter states that, unlike the Principal Applicant, most of the Christian members on the Fulani death list were unable to escape and were traced to places of hiding in the far east and southern part of Nigeria where they were killed. It lists nine families or individuals:

Rev. Adamu and his family, in Jos;
Mr. and Mrs. Isaac, in Jos;
Tay Jose, in Kogi State;
Felix Baki, in Kogi State;
Mary Kwaghe, in Abuja;
Pinga Love, in Edo State;
Christian Shausa, in Aboekuta;
Nganda Tsavbee, in Engu State; and
Jillius Giwa, in Oyo State.

[39] The letter makes no reference to a committee or that the listed persons were killed because they were members of a committee. Two of the families are identified in the Principal Applicant's amended BOC as having been killed because they were on the committee he described.

[40] The above evidence as to the motive for the alleged targeting is unreconciled, be it the Principal Applicant's profile and participation in an informal village committee intended to

effect a safer group farming and warning system, attributed cattle killing and/or Christianity. And, neither the RPD nor the RAD made any credibility findings concerning the Applicants.

[41] In my view, although the Applicants submit that the RAD erred by attributing a low rather than a high community profile to the Principal Applicant, the issue of whether the RAD erred in its assessment of the Principal Applicant's profile is really a question of whether the RAD failed to consider evidence alleging that, as a member of the committee, he would be personally targeted. This evidence was that the Principal Applicant was the leader or member of a group of individuals who he alleges have all been targeted and killed, subsequent to the initial attack and in various states of Nigeria and not just near Jos – the location of the land use dispute – by Fulani herdsmen because of their membership in that committee. I do not agree with the Respondent's submission that the testimony of the Principal Applicant did not suggest that the risk of persecution was personalized or targeted to him and his family. I also note that in their submission to the RAD the Applicants stated that the amended BOC showed that the herdsmen specifically targeted the Principal Applicant and six other individuals. In my view, the RAD had an obligation to consider this evidence when reaching its decision.

[42] This is because the Principal Applicant's evidence that the Fulani herdsmen tracked other committee members to locations beyond Jos raises the question of whether being tracked to Lagos is an actual possibility for the Principal Applicant because of his alleged profile as the committee leader. In my view, the RAD erred in failing to assess that evidence, which relates to forward-looking risk.

[43] This is not to say that the RAD could not have reasonably found as it did. For example, it could have found the evidence on this point not to be credible. Or, that regardless of the evidence, it still remained unlikely that the Fulani herdsmen could or would attack the Principal Applicant in Lagos. Rather, it is the omission to address this significant and relevant evidence that renders the decision unreasonable.

[44] Having reached this conclusion it is not necessary to address the Applicant's further submissions that the RAD unreasonably concluded that the Principal Applicant's clan would not pose a risk of persecution or harm to the Applicants in Lagos. However, in my view, in the absence of clear and convincing evidence as to how the Principal Applicant's clan would locate the family in Lagos, particularly given the Principal Applicant's testimony that the Applicants are already ostracized and do not communicate with his family, and given the objective documentary evidence, the RAD's decision was reasonable. In particular, based on its review of the objective evidence, it reasonably found that in Lagos, parents appear to have the ability to refuse FGM; that a parent's consent is important; that there is no indication of risk of kidnapping and forced FGM; and, that the occurrence of FGM depends on the educational level and economic status of the family – better educated and more affluent families, such as the Applicants, are more resistant to the practice.

[45] Similarly, in my view, the Applicants' submissions under the second prong of the IFA test also cannot succeed.

[46] As indicated above, when considering whether conditions in Lagos, the proposed IFA, are such that it would be reasonable, in all of the Applicants' circumstances, for them to seek refuge there, the RAD considered a number of factors. These were travel, language, education and employment, accommodation, religion, indigeneship, availability of healthcare, gender and crime. Despite the Applicants' submissions made in support of this judicial review, several of which were not made before the RPD, I find no error in the RAD's assessment of these factors. The RAD concluded, following its assessment of the RPD's findings considering the arguments of the Applicants and having conducted its own review, that it was satisfied that the Applicants did not demonstrate, on a balance of probabilities, that relocating to Lagos would be unduly harsh or objectively unreasonable in the Applicants' particular circumstances. In my view, based on the evidence before it, the RAD's finding in this regard was reasonable.

JUDGMENT IN IMM-6856-19

THIS COURT'S JUDGMENT is that

1. This application for judicial review is granted. The decision of the RAD is set aside and the matter is remitted for redetermination by a different panel;
2. No question for certification was proposed and none arises.
3. There shall be no order as to costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6856-19

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ONUWAVBAGBE AND, ELLIS OSEZELE
ONUWAVBAGBE v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

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