

Federal Court



Cour fédérale

Date: 20200914

Docket: IMM-6033-19

Citation: 2020 FC 895

Ottawa, Ontario, September 14, 2020

PRESENT: The Honourable Madam Justice Pallotta

BETWEEN:

**DORIS EZEGBEBE AIGBE
VICTOR AIGBE
AIMUAMWOSA GOODLUCK AIGBE
VANESSA UWAILA AIGBE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants seek to overturn a decision of the Refugee Appeal Division (“RAD”) dismissing their appeal and confirming a ruling by the Refugee Protection Division (“RPD”) that the applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Doris Ezegebe Aigbe, her spouse Mr. Victor Aigbe, and their two minor children fear persecution from Mr. Aigbe's family, who are members of the Asigidi cult in Nigeria. Mr. and Ms. Aigbe claim that they are being pursued by Mr. Aigbe's family because they refused the family's demands to perform cleansing rights and spiritual initiation on Ms. Aigbe and their son, and female genital mutilation on their daughter before her seventh birthday. The situation intensified as the daughter's seventh birthday approached. The applicants attempted to avoid their pursuers by relocating from Benin City, where they had been staying in a house belonging to Mr. Aigbe's family, to Lagos where they were sheltered by Ms. Aigbe's sister. The applicants allege that they were found in Lagos within three months, despite the fact that Ms. Aigbe's sister had no ties to Mr. Aigbe's family or the Asigidi cult. Mr. Aigbe's family threatened to kill the applicants for their failure to complete the rituals, prompting the applicants to flee Nigeria and claim refugee protection in Canada.

[3] The RPD rejected the applicants' claims. The determinative issues were credibility and the availability of an internal flight alternative ("IFA"). Given "serious credibility concerns", the RPD found that the applicants were not threatened by Mr. Aigbe's family, and concluded that their fear of persecution was not well-founded. The RPD also found that the applicants would not face a serious threat of persecution in Abuja—the proposed IFA—and that it was not unreasonable for them to move there.

[4] The applicants appealed the RPD's decision to the RAD. While they alleged that the RPD erred by improperly impugning their credibility, the RAD found it unnecessary to address this ground of appeal and assumed that the applicants' allegations were credible. The RAD

dismissed the appeal on the basis that there is a viable IFA in Abuja. In this regard, the RAD concluded that the applicants failed to establish: (i) the serious possibility of persecution, a danger of torture, a risk to their lives or a risk of cruel and unusual punishment in Abuja; or (ii) that it would be unreasonable in all the circumstances for the applicants to relocate to Abuja.

[5] The applicants argue that the RAD's conclusions were unreasonable. For the reasons below, I find that the RAD's decision was unreasonable regarding point (i) above, the serious possibility of persecution or harm in Abuja. Accordingly, this application for judicial review is allowed.

II. Issue and Standard of Review

[6] The sole issue is whether the RAD unreasonably determined that the applicants have a viable IFA in Abuja.

[7] The parties concur on the applicable standard of review. Administrative decisions are presumptively reviewed under the reasonableness standard, unless legislative intent or the rule of law requires otherwise: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17. Since neither exception applies here, the standard of review applicable to the RAD's decision concerning the availability of a viable IFA is reasonableness: *Sanchez v Canada (Citizenship and Immigration)*, 2018 FC 665 at para 8.

[8] When reviewing the merits of an administrative decision, the judge must determine whether the decision bears the hallmarks of reasonableness—justification, transparency and

intelligibility—and whether the decision is justified in relation to the relevant factual and legal constraints that bear on it: *Vavilov* at para 99. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. Analysis

A. *Serious Possibility of Persecution in IFA*

[9] The two-prong test for assessing an IFA requires that: (i) there is no serious possibility of persecution in the proposed IFA and/or the claimant would not be personally subject to a risk to life or a risk of cruel and unusual treatment or punishment or a danger, believed on substantial grounds to exist, of torture in the IFA; and (ii) it would not be unreasonable in all the circumstances, including those particular to the claim, for the claimant to seek refuge in the proposed IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA). The refugee claimant bears the onus of establishing that a proposed IFA is not viable and can discharge the onus by defeating at least one prong of the two-prong test.

[10] The RAD determined that the applicants failed to establish that Abuja is not a viable IFA. With respect the first prong of the test, the RAD's determination was based primarily on the following findings:

- There was evidence to indicate the agents of persecution received information that Ms. Aigbe's sister was sheltering the applicants. As such, the RPD did not speculate by concluding that it was reasonable to expect the agents of persecution to search family members in order to locate the applicants.

- There is a greater possibility of being located in another city if the applicants live with a family member, as it is likely that the agents of persecution would search for the applicants through their family members.
- The fact that the agents of persecution traced the applicants to the sister's home did not establish their means and motivation to locate the applicants in Abuja, which is a large city of 2.9 million people where the applicants do not have family. Objective evidence in the National Documentation Package ("NDP") for Nigeria states that it is generally possible to relocate to another area in Nigeria to escape localized threats from family members or other non-state agents.
- Affidavits and notarized letters of support corroborated the applicants' claim that they were found in Lagos while living with Ms. Aigbe's sister, but did not establish that the agents of persecution possess the means and motivation—including contacts and resources—to locate the applicants in Abuja.
- Two online opinions about the reach and influence of the Asigidi cult in Nigeria were accorded little weight because they did not reference credible or verifiable sources and did not contain support for the authors' statements.
- Mr. Aigbe did not have a sufficiently public profile. Neither his past political role as one of thousands of local councillors (six years earlier and in a different state) nor his used car business in Benin City would make him easily recognizable in Abuja.

[11] The applicants submit that the above findings are unreasonable and do not support the RAD's determination that they failed to defeat the first prong of the IFA test. The applicants argue that the RAD's assumption about their credibility necessitates the RAD's acceptance of their personalized evidence of risk arising from: (i) the applicants' previous history of having been discovered in Lagos; and (ii) Mr. Aigbe's public profile. They submit that the RAD misapprehended the evidence and engaged in improper speculation by finding that the applicants were discovered in Lagos solely because they were sheltered by family, and that the cult's ability to locate them in Lagos did not establish its influence and ability to do so in Abuja, where the applicants would not be living with family. Furthermore, the applicants argue it was unreasonable for the RAD to expect detailed evidence on the agents' ability to locate them in

Abuja, where they had never been. According to the applicants, the evidence concerning the cult's ability to trace them to Lagos was sufficient to support a conclusion that the cult would likely find them in Abuja.

[12] The respondent submits that the Court's role on judicial review is not to decide whether the applicants would be found in Abuja, but whether the RAD's determination—that there is no serious possibility of persecution in Abuja—was transparent, intelligible and justified.

According to the respondent, the RAD's finding that the applicants were discovered in Lagos because they were staying with family was a reasonable inference, supported by the evidence.

The respondent argues that the applicants failed to establish they would be found in Abuja if they were not to be sheltered by family members.

[13] For the reasons below, I find that the RAD failed to justify its determination that there was no serious possibility the applicants would be found in Abuja.

[14] As noted above, the RPD had found that the applicants' allegations of persecution at the hands of Mr. Aigbe's family were not credible. However, the RAD assumed that the applicants' allegations were credible and that their fear of persecution was well-founded. It follows from this assumption that the applicants would be unsafe if Mr. Aigbe's family were to find them. Moreover, the RAD accepted that the applicants tried to find safety in an alternative location within Nigeria (Lagos) and that they were found within three months. Therefore, the central issue on review is whether, in light of the assumptions about the credibility of the applicants'

claims, the RAD reasonably determined the applicants do not face a serious possibility of persecution by being discovered in Abuja, despite having been discovered in Lagos.

[15] The RAD held that the RPD's finding that the agents of persecution would look to family members to locate the applicants was not an improper speculation since the applicants' own evidence indicated that the agents of persecution had received information that Ms. Aigbe's sister was sheltering them. The RAD pointed to an affidavit from Ms. Aigbe's sister stating, "[I]nformation got to the husband's family that I was harboring my sister, the husband and children in my house, therefore I was then being threatened to release them to the husband's family/kinsmen for their family rituals." However, this simply indicates that Mr. Aigbe's family learned the applicants were staying with Ms. Aigbe's sister and threatened her. The affidavit goes on to state that Mr. Aigbe's family went to Lagos to pursue the applicants, but it does not explain how Mr. Aigbe's family learned of the applicants' location. Neither does the affidavit establish that the applicants were found solely because they were living with Ms. Aigbe's sister or because the agents of persecution were initially searching family members.

[16] The respondent submits that it was reasonable for the RAD to infer that the cult was able to locate the applicants in Lagos because they were staying with family. I disagree. Possibly, Mr. Aigbe's family acquired the information through its network and contacts or in some other way. As noted above, the evidence did not indicate how Mr. Aigbe's family obtained information of the applicants' whereabouts and as such, it does not lend support to any of the various possibilities.

[17] Further, the RAD found that there would be a greater possibility of being located in another city if the applicants were to live with a family member because the agents of persecution would likely search for them through family members, and thus the fact that the applicants were found with a family member in Lagos “does not negate the finding that Abuja, where they do not allege having any family members, is a viable IFA”. In doing so, the RAD drew a second faulty inference from the first: that if the applicants were found in Lagos because they were staying with family, then it is unlikely they would be found in Abuja if they do not stay with family.

[18] This double inference was the RAD’s primary justification for its determination that there is no serious possibility of persecution in Abuja. In my view, it was insufficient to justify the determination, and the RAD’s reliance on other evidence did not provide the necessary justification. The RAD relied on the NDP reports, which state it is generally possible to relocate to another area in Nigeria to escape localized threats from family members or other non-state agents; however, the applicants did in fact relocate to another area in Nigeria, and they were discovered by the agents of persecution and were not safe. The RAD failed to explain why the generalized statements from the NDP reports were sufficient to refute conflicting evidence specific to the applicants. The RAD also relied on Abuja being a large city with close to three million people, but this does not provide the necessary justification as the population of Lagos is even higher. Thus, the RAD did not justify the determination in view of evidence to establish that the cult’s reach or influence within Nigeria is restricted, or that the cult lacks the ability to locate the applicants in a city like Abuja.

[19] While the RAD properly noted that the applicants cannot discharge their burden of proof on the belief that they would be found in Abuja, I find that the applicants offered more than mere belief. The applicants provided evidence that they attempted to hide by relocating to Lagos—a large city within Nigeria that is geographically distant from Benin City—and that the agents of persecution possessed the means and motivation to find them in three months. They also provided a number of supporting affidavits and notarized letters, which spoke of the events that triggered the applicants to flee Nigeria. It was unreasonable for the RAD to conclude that the affidavits and notarized letters corroborated the applicants' claims of being found in Lagos while living with family, but did not establish, on a balance of probabilities, that the Asigidi cult has the means and motivation—including contacts and resources—to locate the applicants in Abuja. It is unclear what type of evidence the RAD expected regarding the means and motivation of the Asigidi cult or its influence and reach in Abuja. The affiants and authors of the supporting evidence are not members of the cult and can only testify to facts within their knowledge. They stated that Mr. Aigbe's family would not leave the applicants in peace, and that the applicants would not be safe in Nigeria. The applicants correctly submit that they cannot provide testimony about Abuja because they have never been there. It is well-established that refugee claimants need not have lived or even travelled to the proposed IFA in order to establish that it is not a viable IFA location: *Estrada Lugo v Canada (Citizenship and Immigration)*, 2010 FC 170 at para 35.

[20] In summary, having assumed that the applicants' allegations were credible, the RAD's determination regarding the first prong of the IFA test was primarily based on an inference that the agents of persecution would be unlikely to find the applicants as long as they are not living

with family. In my view, this inference was not supported by the evidence and did not justify the RAD's determination that the applicants would not face a serious possibility of persecution in Abuja.

B. *Online Opinions and Mr. Aigbe's Public Profile*

[21] The applicants also challenge the RAD's findings, described below, regarding Mr. Aigbe's public profile and the online opinions describing the reach and influence of the Asigidi cult. Although I am not persuaded by the applicants' submissions on these findings, they do not alter my view that the RAD's determination on the first prong of the IFA test was unreasonable.

[22] With respect to the online opinions, I find that the RAD provided adequate reasons for assigning little weight and low probative value to the evidence. As the RAD reasonably found, the first online opinion discusses the author's sister's experience with ritual crimes; however, the alleged factual circumstances were not verified. Moreover, the author made questionable assertions that his sister passed away after the cult struck her with madness and that his sister's eldest child was spiritually murdered. Regarding the second opinion, the RAD noted that there were no details or information about the qualifications of the author nor an indication that his statements were verified. In my view, the RAD's reasons adequately supported its decision to accord little weight to the online opinions.

[23] With respect to the public profile findings, the applicants assert that the RAD was obligated to accept their personalized evidence of risk due to Mr. Aigbe's public profile because the RAD had assumed that the applicants' claims were credible. I am not persuaded by this

argument. The RAD found that Mr. Aigbe's past political history and his profile as a businessperson would not make him an easily recognizable figure in Abuja. Mr. Aigbe had been a local councillor six years earlier in a different state and among thousands of other councillors, and had owned a used car business in Benin City. Although the RAD accepted that Mr. Aigbe's allegations were truthful and credible, it was reasonable for the RAD to conclude that Mr. Aigbe's profile would not subject him to a heightened risk in Abuja.

[24] Given my findings that the RAD's determination on the first prong of the IFA test is unreasonable, I find it unnecessary to address the applicants' submissions regarding the second prong of the test.

IV. **Conclusion**

[25] For the reasons above, I find that the RAD's decision is unreasonable. Therefore, this application for judicial review is granted.

[26] Neither party raised a question for certification, and none arises.

JUDGMENT in IMM-6033-19

THIS COURT'S JUDGMENT is that

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6033-19

STYLE OF CAUSE: DORIS EZEGBEBE AIGBE, VICTOR AIGBE,
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