Federal Court  Cour fédérale

Date: 20201231

Docket: IMM-183-20

Citation: 2020 FC 1195

Ottawa, Ontario, December 31, 2020

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OLUWAFUNSHO JULIANA OYADOYIN
EMMANUEL KEHINDE OYADOYIN
EMMANUELLA TAIWO OYADOYIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision from the Refugee Appeal Division [RAD] dated December 20, 2019, which confirmed the refusal of the Applicants' refugee claim as there was a viable internal flight alternative [IFA] in Port Harcourt, Nigeria.

[2] The Principal Applicant [PA] and her minor children are citizens of Nigeria and are claiming refugee protection for fear of female genital mutilation and scarification by village chiefs on her husband's side. They also fear the husband personally, as well as the family of the woman he impregnated. The Applicants arrived in Canada in April 2018 from the United States.

[3] The Refugee Protection Division [RPD] rejected the asylum claim, as the Applicants had not demonstrated that the IFA was unreasonable. The RAD confirmed the decision.

[4] The IFA is a concept whereby a person may be a refugee in one part of a country, but not in another. The burden is on the refugee claimant to establish, on a balance of probabilities, that there is a serious risk of persecution in the IFA or that the conditions are such that it would be objectively unreasonable in the circumstances (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at pp 593, 597 (FCA)).

[5] This judicial review goes to the reasonability of the RAD's findings on the absence of serious possibility of persecution in the IFA and its refusal to admit new evidence on appeal. A reasonable decision is internally coherent, rational and justified in light of the factual and legal constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[6] On a preliminary note, though the Applicants have not submitted a personal affidavit as required under the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, paragraph 10(2)(d), the certified tribunal record in the present matter will suffice for the consideration of this application (*Singh v Canada (Public Safety and Emergency*

Preparedness), 2018 FC 455 at paras 18-19; *Conka v Canada (Citizenship and Immigration)*, 2018 FC 532 at paras 12-15).

[7] The Applicants submit that they risk persecution in Port Harcourt due to the ability of the agents of persecution to locate them in light of the PA's family ties and background there, that, in addition, to previous communications between her father and her husband.

[8] The Applicants further advance that the evidence on appeal should have been admitted as it could not have been submitted in the week prior to the RPD's decision given their provenance from Nigeria; and, they were material to the determination of the agents' of persecution motivation to find the Applicants. The evidence attests of threats and an assault on the PA's father by unknown assailants seeking the PA.

[9] In the present case, the RAD's decision is unreasonable in regard to the first prong of the IFA analysis as it omits to address evidence that indicates that the agents of persecution would readily be able to locate the Applicants in the IFA, potentially, amounting to a serious possibility of persecution.

[10] The Applicants were deemed credible; the RAD acknowledged that the PA's mother, a brother and a sister resided in Port Harcourt; and, the PA, herself, studied there for seven years – this being three years prior to meeting her husband. It appears from the record that the agents of persecution, at the very least, the husband would reasonably be aware of this information.

[11] In addressing the possibility of locating the Applicants, the RAD notably indicated that there was no evidence that the family members in the IFA have contact or would cooperate with the agents of persecution; the Applicants need not to communicate their whereabouts; and the PA has custody of the children. The RAD did not, however, address whether the knowledge of the Applicants' significant ties to the IFA weighs to the advantage of the agents' of persecution ability to locate them, should they be motivated to do so, and whether this amounts to a serious possibility of persecution.

[12] Although the RAD is presumed to have considered the entire record, it appears not to have considered important evidence relevant to its assessment (see *Ntirandekura v Canada (Citizenship and Immigration)*, 2016 FC 564 at para 4). For these reasons, the RAD's decision is unreasonable; and, it is not necessary to address the issue of admissibility of evidence on appeal. Therefore, the application for judicial review is granted.

JUDGMENT in IMM-183-20

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the matter be considered anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Saïd Le Ber-Assiani	FOR THE APPLICANTS
Michel Pépin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hasa Attorneys Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT