

Federal Court



Cour fédérale

Date: 20210106

Docket: IMM-7030-19

Citation: 2021 FC 21

Ottawa, Ontario, January 6, 2021

PRESENT: Mr. Justice Annis

BETWEEN:

**TUNDE ABIODUN OYEWOLE
MARY DASOLA OYEWOLE
ELIZABETH NINOLA OYEWOLE
ESTHER OLASUBOMI OYEWOLE
DANIEL OLAKANMI OYEWOGLE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision from the Refugee Appeal Division (RAD) dated October 10, 2019, which confirmed the refusal of the Applicants' refugee claim as there was a viable internal flight alternative (IFA) in Lagos, Nigeria.

[2] The Principal Applicant (PA), his spouse and their three minor children are citizens of Nigeria and are claiming refugee protection for risk to life or of serious harm by extended family and community for refusal to take on kingship of Ajaba.

[3] The principal Applicant alleges that he was chosen by the Oracle of Ifa to succeed his late father as the king of Ajaba. He asserted his opposition on religious grounds to the rituals ordained by the oracle for his children (which include the initiation of his first son and the circumcision of his daughter) and also repudiated the polygamy deemed mandatory for the king of Ajaba.

[4] The principal Applicant alleges that his refusal to take on the kingship prompted threats against himself, his spouse and children from his extended family and community, culminating in an ultimatum to present himself to them. On December 21, 2017 the Appellants left Nigeria. On February 20, 2018 they entered Canada from the United States of America (US) and claimed refugee protection.

[5] The Refugee Protection Division rejected the asylum claim as the Applicants lacked credibility and they had not demonstrated that the IFA was unreasonable. The RAD confirmed the decision on grounds of a viable IFA in Lagos, Nigeria.

[6] It is common ground that the RAD applied the proper two-prong test elaborated by case law to establish a viable IFA in Lagos. The onus was first on the Applicants to establish that they

were seriously at risk of being persecuted throughout the country, and second that it would be unreasonable in their circumstances to relocate in the proposed IFA location.

[7] The principal issue concerns the determination of the RAD that the Applicants do not face a serious possibility of persecution or likelihood of harm from his extended family and community in the IFA of Lagos, because of the principal Applicant's refusal to assume the kingship of Ajaba. This factual finding effectively refuted both prongs of the IFA test.

[8] As such, the principal issue is that of the reasonableness of the assessment of findings of fact. With regard to assessed findings of fact, the Supreme Court has ruled that the reviewing court can only intervene in "exceptional" circumstances: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125. This excludes the reweighing of the evidence by the reviewing court. Essentially this means that so long as there is some probative evidence to support the finding, and no process error in the course of the assessment (e.g., failing to consider relevant tendered evidence), it is not subject to the Court's interference.

[9] The principal Applicant argues that the main threat of harm was from his uncle. He alleged that the uncle is an influential person with sufficient resources to track down the Applicants no matter where they resided in Lagos. In addition, the principal Applicant testified that the Ajaba people maintain a large presence in Lagos and by their cultural associations would inform others of the Applicants' presence, including when attending religious services. The principal Applicant also contended that the agents of persecution would be motivated to find him because the acting King could only perform limited functions of the position.

[10] The principal point of factual contention was with respect to the assessment of the evidence regarding the uncle's threats. The principal Applicant stated that the uncle had told him that if he allowed the opportunity of kingship to elude the family, he would follow him to Ajaba and he would "lose his life".

[11] Similarly, the principal Applicant had testified that after his nomination for kingship, his uncle brought the council of elders to his home in Ibadan. They told him he had seven days to take up the nomination, and that if he refused, sickness might befall the principal Applicant himself or his children.

[12] The RAD accepted the evidence describing insinuations of such consequences. Nevertheless, this was found to be insufficient to establish on a balance of probabilities that his uncle was motivated to find him in order to harm him. Instead, the RAD concluded that the uncle's statements were more in the nature of indirect threats about illness for himself, or his family members, and the shortening of his own life attracting retribution from the Yoruba deities as a consequence. The RAD described these threats as "more about bad karma rather than violence."

[13] The Court finds that the Applicants did not attempt to contradict these findings based upon the evidence of the RPD. Instead, they argue that the RAD set a different test or definition of what amounts to persecution when describing the threats as "more about karma." The Court disagrees that the RAD's remarks refer to a persecution test, rather than amounting to a finding of fact based on evidence. The Court similarly concludes that the threats of the nature described

in the evidence as found by the RAD are both speculative, and were reasonably found not amount to persecution.

[14] Further, despite the principal Applicant's testimony, there is no reason to reject the RAD's conclusion drawn from the Response to Information Request (RIR) and National Documentation Package (NDP) that address the consequences of refusing kingship in the Yoruba tribe. They do not support a finding that a branch of the Ajaba community association exists in other parts in Nigeria, and would be able to trace the Applicants' whereabouts, let alone target them with violence in Lagos. The RAD's assessment took into account the principle Applicant's evidence, as well as the country conditions documents containing mixed information on the consequences of refusing a traditional chieftaincy. All but one of eight sources suggest that the consequences of refusal are minor and do not include death or physical harm. These factual conclusions are supported by evidence.

[15] The RAD indicated that the Applicants were unable to respond to the questions of the RPD regarding the aforementioned country condition documents suggesting relocation after refusal of kingship. The spouse of the principal Applicant could also not explain what would motivate the agents of persecution to harm or kill him, his spouse and their children.

[16] As a result, the country evidence was preferred and the Applicants' lack of evidence was found to be insufficient to demonstrate actual harm for refusal of the kingship in Ajaba and that the agents of persecution are an entity capable of, or even motivated to, pursue and harm the Applicants. The RAD thus found that they do not face a serious possibility of persecution in

Lagos should they relocate there. This is reasonable, giving the Court no basis to interfere with the RAD's decision.

[17] Additionally, the Court finds that the RAD did not err in concluding that the second prong of the IFA test is largely met by the conclusion that the Applicants would be able to lead normal lives in Lagos as there was no serious possibility that they would face persecution there. There was no evidence that the Applicants would not be able to travel to Lagos safely or that they would be unable to support and establish themselves there as residents of Lagos.

[18] Lastly, the RAD did not err in relying on the July 2018 Jurisprudential Guideline for Nigeria. As held in *Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2019 FC 1126 at para 171 (rev'd in part on other grounds 2020 FCA 196):

For the reasons that I have discussed, the Nigeria JG does not unlawfully fetter Board members' discretion to make their own factual findings, and it does not improperly interfere with Board members' independence or reduce their perceived impartiality.

[19] The RAD's reasons are based on the facts as assessed from the evidence of the case at bar. The Applicants have not shown that the Board committed any errors, exceptional or otherwise, in its assessment of the evidence.

Conclusion

[20] The Court dismisses this application for judicial review. No questions were proposed for certification; none are certified.

JUDGMENT IMM-7030-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No questions are certified for appeal.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7030-19

STYLE OF CAUSE: OYEWOLE et al v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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DATED: JANUARY 6, 2021

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