Federal Court  Cour fédérale

Date: 20210129

Docket: IMM-385-20

Citation: 2021 FC 103

Ottawa, Ontario, January 29, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JOSEPH OLUWAFEMI OLASINA
BISI TUNRAYO OLASINA
ADEMIDE OLASINA

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 January 2, 2020, which confirmed the refusal of the refugee claim of the Applicants as there was a viable internal flight alternative (IFA).

[2] The principal Applicant and his wife, citizens of Nigeria, and their minor son, citizen of the United States, are claiming refugee protection for fear of risk to life or of serious harm from the wife's Muslim family opposed to her marriage. The Applicants sought asylum in Canada in November 2017, passing through the United States in March 2017.

[3] The Refugee Protection Division (RPD) found that the Applicants were not credible (reference made to paragraphs 10 to 21 of the RPD decision) and that they have a viable IFA in Port Harcourt. The RAD confirmed the decision integrally on the evidence as based on the IFA.

[4] An 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 they seriously risk persecution in the IFA or that the conditions are such that it would be objectively unreasonable in the circumstances that they seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at pp 593, 597 (FCA)).

[5] This judicial review relates to the reasonability of the RAD's decision in regard to restraining its reasons to the IFA issue and applying the legal standard required in establishing an IFA. 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] The Applicants argue that the RAD did not apply the correct test of the first prong of the analysis of a viable IFA and that it should have considered their submissions regarding credibility.

[7] The RAD in the present matter accurately stated the applicable analysis of an IFA, referring to *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, and the two-prong test. It then summarized that the onus lies on the Applicants to establish that the IFA is neither safe, nor reasonable.

[8] On the first prong, the RAD determined that the Applicants had failed to provide evidence to show that the non-state agents of persecution have the resources and determination to locate the Applicants upon return to the country.

[9] The Applicants dispute the finding that they failed to provide evidence, where upon, they contend that they have. It is on this that they submit the RAD incorrectly interpreted and applied the IFA analysis, requiring a preponderance of evidence establishing that the IFA is not safe, rather than there is no serious possibility that the IFA is safe based on the facts that are, then, established by preponderance.

[10] With respect, this circular position amounts to requesting this Court to intervene on the appreciation of the evidence, not on the standard applicable on the first prong of the IFA analysis. In this regard, the Applicants enumerate their evidence, though, do not advance that it contradicts the RAD's findings. The RAD is presumed to have considered the record and it was not obliged to refer to every element of the claim (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24).

[11] Upon review of the decision, the RAD has reasonably applied the standard required. Its reasoning on the agents of persecution's capacity to locate the Applicants is relevant insofar as it relates to whether the Applicants seriously risk persecution by agents of such in the IFA (see for example *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 35).

[12] Lastly, the finding of a viable IFA was determinative on the claim and the RAD's consideration in the context of issues is not an error, provided that the analysis considers the claimants' situation and the evidence (*Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 10).

[13] The RAD, in this case, conducted an independent review of the evidence and of the recording of the hearing. Its assessment of the IFA took into account the Applicants' narrative on persecution, the relation with the agents of persecution, their capacity to locate the Applicants, the latter's personal circumstances and the national documentation.

[14] This Court is not satisfied that this is an application that warrants a departure from the principle referenced within *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, to the effect that it is not warranted to remit a matter for redetermination if the outcome would be unaffected.

[15] For the aforementioned reasons, the RAD's decision is reasonable and the judicial review is dismissed.

JUDGMENT in IMM-385-20

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-385-20
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