Federal Court  Cour fédérale

Date: 20210128

Docket: IMM-781-20

Citation: 2021 FC 98

Ottawa, Ontario, January 28, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

OLUWAKEMI ADEOL OLARERIN
OLUWASEUN WILLI SOLATE
OLUWATIMILEHIN SOLATE

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 23, 2019, which confirmed the refusal of the refugee claim of the Applicants as there was a viable internal flight alternative (IFA).

[2] The principal Applicant (PA) and her spouse, citizens of Nigeria, and their minor child, citizen by birth of the United States, are claiming refugee protection for fear of female genital mutilation (FGM), cleansing rituals, and retribution from the PA's family due to the secret union and pregnancy. The Applicants sought asylum in Canada in October 2017, after they spent time in the United States.

[3] The Refugee Protection Division (RPD) rejected the claim as the Applicants lacked credibility, as it is particularly clearly brought forward in paragraphs 19 to 28 inclusive of the RPD decision, and specified as such in paragraph 7 of the RAD decision. Further, the Applicants had not established persecution and they have a viable IFA in Ibadan, Port Harcourt and Benin City, Nigeria. The RAD confirmed the decision based on the IFA.

[4] This judicial review relates to the reasonability of the RAD's findings on a viable 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 [*Vavilov*]).

[5] 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)). This second prong of the analysis requires "nothing less than the existence of conditions which

would jeopardize the life and safety of a claimant" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15).

[6] The Applicants submit that they risk persecution in the proposed IFA given the ability of the agents of persecution to locate them in light of the PA's filiation, the father's popularity, influence and connections within the government and airport facilities, and that the agents of persecution include important figures with means and influence. The capacity to locate the Applicants is also exacerbated by country corruption and interception by authorities of those who are deported to the country, as evidenced by national documentation. This evidence also points to the prevalence of FGM and traditional rites, and inadequate state protection, which are argued to make the proposed IFA unreasonable.

[7] From the outset, it is important to note that the above arguments were not raised before the RAD. The only issue raised on appeal in relation to a viable IFA was whether the PA's father, as a former airport functionary, has the capacity to locate the Applicants upon re-entry in the country by air. This Court should therefore constrain its review to this argument (*Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 23-24).

[8] The RAD found that the Applicants have not established on a balance of probabilities that the PA's father would have the capacity to locate them upon their arrival at an airport and before their departure by car to a viable IFA. Within its analysis, it examined the record and testimony given with respect to the IFA, the Chairperson's Guideline 4, as well as the Jurisprudential

Guideline TB7-19851, which outlines considerations for IFA for Nigerians fleeing non-state actors, and the national documentation particularly on the country's airports.

[9] Though the PA had testified that her father had government connections due to his former position and subsequent consultation positions, she had not established how he could use these connections to locate them. Similarly, the evidence does not support her allegation that her name would be flagged upon arrival; she is not a wanted person and there is no evidence to suggest that she has been or could be placed on a watch list at the request of her father. The RAD remarked that the father was not part of the police, border control or immigration, rather he was employed by the airport authority in a role related to the operations of the airport such as facilities, runways and equipment.

[10] The PA also had not established that she would encounter, upon re-entering the country (of a population of over 200 million as specified in the documentation package), connections and friends that the father may have within the airport system, particularly in light of the size of the airports and the volume of activity, and in bypassing Lagos – location where the father was based at the time of his retirement and where he has lived for the past several years.

[11] Furthermore, given that the PA testified that they would have no trouble travelling by land and that Nigeria is a large country geographically with a large population, the RAD determined that it is reasonable that the Applicants could enter the country by air and proceed to a final IFA destination without being located, even if the father somehow gained access to entry records (reference to paragraph 20 of the RAD decision).

[12] The RAD lastly considered, though it was not contested, that the Applicants had not established that the PA's father would have access to the PA's personal bank account information such that he could use it to locate the Applicants.

[13] Upon review of the impugned decision, this is not speculative reasoning, contrary to the Applicants contention, but for entertaining the possibility where the PA's father even would gain access to entry records. The reasons rather attest to a lack of evidence on the part of the Applicants, where the onus laid.

[14] The RAD is presumed to have considered the entire record before it and it was not required to refer to particular evidence or elements of the claim (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24). It was open for the RAD to assess, weigh and prefer evidence where the reasons are justified on the record. The Applicants do not point to evidence or submissions that are squarely in contradiction with the findings.

[15] In essence, the Court is being asked to entertain an exercise equivalent to an appellant court such that it would review the record, assess and weigh the evidence and substitute its conclusions for those of the RAD (*Vavilov*, above, at para 83).

[16] For the aforementioned reasons, the judicial review is dismissed.

JUDGMENT in IMM-781-20

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-781-20
STYLE OF CAUSE:	OLUWAKEMI ADEOL OLARERIN et AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE IN MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 12, 2021
JUDGMENT AND REASONS:	SHORE J.
DATED:	JANUARY 28, 2021

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