

Federal Court



Cour fédérale

Date: 20210304

Docket: IMM-7898-19

Citation: 2021 FC 205

Ottawa, Ontario, March 4, 2021

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**SAMSONDEEN BOLANLE LASISI
RAHEEMAT GBEMISOLA BOLANLE-LASISI
BAHEERA BOLATITO BOLANLE-LASISI
BAIZA BOLAYOLE BOLANLE-LASISI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD], dated November 17, 2019, which confirmed that the Applicants were neither Convention refugees nor persons in need of protection, as defined by sections 96 and 97 of the *Immigration*

and Refugee Protection Act, SC 2001, c 27 [IRPA]. The RAD found that the Applicants had viable Internal Flight Alternatives [IFAs] in Port Harcourt, Abuja or Kaduna.

[2] For the reasons that follow, the application is dismissed.

II. **Background**

[3] The Applicants, Samsondeen Bolanle Lasisi (Principal Applicant) and Raheemat Gbemisola Bolanle-Lasisi (Associate Applicant), as well as Baheera Bolatito Bolanle-Lasisi and Baiza Bolayole Bolanle-Lasisi (minor Applicants) are a family from Nigeria. They claim protection from the Principal Applicant's family who, they allege, have been exerting pressure to have the mother and daughters circumcised for several years.

[4] In January 2018, the Principal Applicant departed Nigeria for the United States leaving his wife and daughters in Nigeria. The Applicants claim that the Associate Applicant continued to face pressure from the husband's family to have herself and the daughters circumcised. As a result, they joined the Principal Applicant in the United States in April 2018. A few weeks later they arrived in Canada and sought protection.

[5] The Refugee Protection Division (RPD) held that the Applicants' story was not credible and that the Applicants had viable IFAs in Port Harcourt, Abuja, or Kaduna. The RAD confirmed the RPD's decision and dismissed the appeal.

[6] The RAD found that the existence of viable IFAs in Port Harcourt, Abuja or Kaduna was determinative and did not address the RPD's credibility findings.

III. Issue

[7] The central and dispositive issue in this matter is whether the RAD's decision is reasonable.

IV. Analysis

[8] The standard of review of the RAD decision is reasonableness: *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 30.

[9] The court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it. A court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker, attempt to ascertain the range of possible conclusions, conduct a new analysis or seek to determine the correct solution to the problem. Instead, the reviewing court must consider only whether the decision made by the decision maker, including both the rationale for the decision and the outcome to which it led, was unreasonable (*Vavilov* at para 83).

[10] As indicated above, the dispositive issue in this matter is the reasonableness of the RAD's decision regarding the availability of a viable IFA for the Applicants in one of the three

identified cities. The two-prong test to be applied in determining whether a viable IFA is available is as follows: (i) there must be no serious possibility of the individual being persecuted in the IFA on a balance of probabilities; (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there. There is a high threshold to establish that an IFA is unreasonable: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*].

[11] As held in *Thirunavukkarasu*, the existence or not of an IFA is part of the question of whether the claimant is a Convention refugee, the onus of proof rests on the claimant to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA.

[12] The Applicants' submissions before the RPD with respect to the availability of IFAs within Nigeria were largely based on the proposition that one of their persecutors, a Mr. Lukman, travels widely as the agent of a political party and could find them in any of the identified locations. And given their financial circumstances, as evidenced by the fact that they did not leave the country together, they could not afford to settle in any of the three IFAs.

[13] The Applicants' appeal submissions to the RAD on the IFA issue focused on the failure of the RPD to consider the inconsistent enforcement of the Nigerian legislation prohibiting female genital mutilation in all regions of the country. They did not challenge the RPD's conclusion that their agents of persecution would not be able to locate them throughout Nigeria

and that it is not unreasonable to expect them to resettle in the proposed IFAs given their personal financial circumstances.

[14] Findings made by the RPD which were not challenged by the Applicants on appeal may not form the basis of judicial review of the RAD's decision: *Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at para 21; *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14 at paras 13-16; *Dovha v Canada (Citizenship and Immigration)*, 2016 FC 864 at para 6; *Zakka v Canada (Citizenship and Immigration)*, 2005 FC 1434 at para 13; *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at para 35.

[15] I do not accept the Applicants argument that the RAD failed to conduct an independent analysis of the RPD's findings with respect to the viability of the IFA's. The Applicants chose to focus their appeal mainly on the credibility issues raised by the RPD. The RAD admitted new evidence relating to those issues but found that it was not necessary to address them given the viability of the IFAs. It agreed with the RPD's finding that the agents of persecution would not have the means or ability to find the Applicants in the three cities. As a result, there would be no need for them to rely on the capacity of the State to enforce the anti-FGM legislation.

[16] The Applicants did not challenge the RPD's determination that it was reasonable to expect them to be able to resettle in the proposed IFAs. The adult applicants both have post-secondary education and knowledge of English, which is commonly used throughout Nigeria. It was open to the RPD to dismiss the claim that the Applicants could not relocate in an IFA

because they were impecunious. In any event, they cannot now challenge the RPD's finding as they did not raise it before the RAD.

V. **Conclusion**

[17] The RAD conducted an independent assessment of the viability of the IFAs for the Applicants. Its decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the RAD.

[18] No serious questions of general importance were proposed, and none will be certified.

JUDGMENT IN IMM-7898-19

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

No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7898-19

STYLE OF CAUSE: SAMSONDEEN BOLANLE LASISI
RAHEEMAT GBEMISOLA BOLANLE-LASISI
BAHEERA BOLATITO BOLANLE-LASISI
BAIZA BOLAYOLE BOLANLE-LASISI
V
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE BETWEEN
TORONTO AND OTTAWA

DATE OF HEARING: JANUARY 20, 2021

JUDGMENT AND REASONS: MOSLEY J.

DATED: MARCH 4, 2021

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