Federal Court Cour fédérale

Date: 20210415

Docket: IMM-2883-20

Citation: 2021 FC 330

Ottawa, Ontario, April 15, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

FOLARIN AKANNI
OLOLADE TOLULOPE AKANNI
DERICK ESELIKHOGHENE FOLARIN
SHARON OMEHNAME FOLARIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decision of the Refugee Appeal Division ("RAD"), confirming the decision of the Refugee Protection Division ("RPD") that the Applicants are neither Convention refugees nor persons in need of protection under sections 96

and 97 of *the Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). The RAD found that the Applicants have an internal flight alternative (“IFA”) in Abuja, Nigeria.

[2] The Applicants submit that the RAD unreasonably found that Abuja is a viable IFA, as there is a serious risk of the Applicants being located and persecuted there.

[3] In my view, the RAD’s decision is reasonable. The Applicants have not identified any overriding errors in the RAD’s IFA analysis; instead, they assert the RAD reached the wrong conclusion and ask this Court to reweigh the evidence. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicants*

[4] The Applicants, all Nigerian citizens, are a family of four: Mr. Folarin Akanni (the “Male Applicant”); his wife, Ms. Ololade Tolulope Akanni (the “Female Applicant,” and collectively, the “Adult Applicants”); and their two children, Sharon Omehname Folarin (10 years old) and Derick Eselikhoghene Folarin (7 years old). The Male Applicant is from Edo State, Nigeria, whereas the Female Applicant is from Osun State.

[5] On April 10, 2007, the Adult Applicants met in Benin, a city in Edo State. Shortly thereafter, the Female Applicant became pregnant and the couple became engaged.

[6] On July 15, 2008, the Adult Applicants visited the Female Applicant's family home and asked her parents for their consent to marry. The Female Applicant's father opposed the marriage because the Female Applicant was betrothed to a man since childhood and the Male Applicant is from Edo State. According to the Adult Applicants, the Female Applicant's father is an influential person whose company has executed various projects for the Nigerian government.

[7] The Adult Applicants moved back to Benin and secretly married on August 2, 2008. On December 21, 2008, the Male Applicant was assaulted by four men and hospitalized for eight days. The Male Applicant continued to receive threatening messages left on the windshield of his car after he was discharged from hospital. Suspecting it was the Female Applicant's father who orchestrated the attack, the Adult Applicants reported the incident to the police, but the police refused to assist because of the father's power and influence.

[8] On April 12, 2011, the Male Applicant claims that he was kidnapped and held for days without food or water, during which he was beaten and sexually assaulted. The attackers forced the Male Applicant to sign a document stating that he would release the Female Applicant from their marriage. Eventually, the Male Applicant escaped and was again hospitalized.

[9] In July 2017, while the Female Applicant was in Akure, she encountered the man that she was betrothed to by her father. The betrothed man attacked the Female Applicant, resulting in her being hospitalized.

[10] After the above incident, the Applicants decided to leave Nigeria out of fear for their lives. On February 14, 2018, the Applicants arrived in Canada and subsequently made a claim for refugee protection.

[11] In a decision dated May 14, 2019, the RPD rejected the Applicants' claim for refugee protection, finding that the Applicants were not credible and have a viable IFA in Abuja. The Applicants appealed the RPD's decision to the RAD.

B. *Decision Under Review*

[12] In a decision dated March 5, 2020, the RAD held that the Applicants have a viable IFA in Abuja and confirmed the decision of the RPD. The RAD made no findings on whether the Applicants were credible.

[13] In its decision, the RAD relied upon Decision TB7-19851, a jurisprudential guide identified by the Chairperson of the Immigration and Refugee Board (the "*Jurisprudential Guide*"). The *Jurisprudential Guide* was revoked as a guiding decision on April 6, 2020 — approximately one month after the RAD issued the decision under review.

[14] The RAD noted that a viable IFA exists if the following two-prong test established in *Rasaratnam v Canada (Minister of Employment & Immigration)*, [1991] FCJ No 1256, [1992] 1 FC 706 (FCA) ("*Rasaratnam*"), is met upon a balance of probabilities:

1. there is no serious possibility of the claimant being persecuted in the part of the country in which the proposed IFA exists; and

2. the conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[15] After reviewing the relevant country documentation and jurisprudence, the RAD concluded that internal relocation in Nigeria is generally viable for persons fearing persecution by non-state actors. The RAD then outlined the relevant principles underlying each prong of the *Rasaratnam* test.

[16] With respect to the first prong of the *Rasaratnam* test, the RAD noted the following testimony provided by the Applicants:

1. the Male Applicant was attacked twice by the agents of the Female Applicant's father in Benin;

2. Abuja is not a viable IFA because the Female Applicant's father is a "chief engineer" whose company has executed projects in Abuja;

3. the Applicants cannot safely hide in Abuja because the Female Applicant's father has the means, resources, and influence to locate and harm them there;

4. the Applicants are unable to obtain evidence concerning the Female Applicant's father because the police would not investigate or arrest him.

[17] The RAD then concluded that, based on the Applicants' testimony and the corroborative evidence, there is no serious possibility of the Applicants being persecuted in Abuja.

[18] With respect to the second prong of the *Rasaratnam* test, the RAD concluded that the Applicants failed to establish how relocating to Abuja would be unduly harsh or objectively unreasonable. In particular, the RAD held that the Applicants would likely be able to travel safely to Abuja, find gainful employment, not face language barriers, find accommodation, access Christian places of worship and community, and integrate into local society.

[19] Having found that Abuja is a viable IFA for the Applicants, the RAD dismissed the Applicants' appeal.

III. Issue and Standard of Review

[20] The sole issue on this application for judicial review is whether the RAD reasonably found that the Applicants have a viable IFA in Abuja.

[21] It is common ground between the parties that reasonableness is the applicable standard of review for the RAD's decision. I agree (*Agbeja v Canada (Citizenship and Immigration)*, 2020 FC 781 at para 19, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")).

[22] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The court must determine whether the decision under review, including both its rationale and

outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[23] Where a decision provides reasons, those reasons are the starting point for review (*Vavilov* at para 84). Reasons for a decision need not be perfect; as long as the reasons allow the reviewing court to understand why the decision-maker made its decision and determine whether the conclusion falls within the range of acceptable outcomes, the decision will normally be reasonable (*Beddows v Canada (Attorney General)*, 2020 FCA 166 at para 25, citing *Vavilov* at para 91). However, where a decision-maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will normally be unreasonable (*Vavilov* at para 98).

[24] For a decision to be unreasonable, an applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing or reassessing evidence before the decision-maker, and it should not interfere with findings of fact absent exceptional circumstances (*Vavilov* at para 125).

IV. Analysis

[25] With respect to the first prong of the *Rasaratnam* test, the RAD stated at paragraphs 41-42 of its decision:

> I have reviewed the corroborative evidence presented by the Appellants. I note that the medical reports and crime diary extract do not identify the agent of persecution as the adult female Appellant's father or betrothed. The corroborative evidence references "unknown assailants," "hoodlums at a motor park" and "hired assassins." I also find that the two affidavits from a close relative and the mother of female adult Appellant do not address the power and influence of her father, saying only he is a "Chief Eng." and that he is "an egocentric man, full of himself."
>
> Following my review of the adult Appellant's testimony, the Appellants' evidence and the objective evidence, as detailed above, I find that the Appellants have not established, on a balance of probabilities, that the female adult Appellant's father or betrothed have the motivation, reach or influence to continue looking for them or find them in Abuja. I find that the Appellants did not establish that they would be persecuted or risk harm from their agents of persecution if they relocated to Abuja.

[26] The Applicants submit that it was unreasonable for the RAD to find that Abuja is a viable IFA, as the Applicants will have to isolate in Abuja to avoid being detected by the Female Applicant's father. According to the Applicants, the requirement to isolate is unreasonable because they will have to search for work, which will bring them into contact with lots of people and make them highly visible to the public. The Applicants further argue that it was unreasonable for the RAD not to give greater weight to their corroborative evidence, which they assert establishes the ability and motivation of the Female Applicant's father to persecute the Applicants in Abuja.

[27] In my view, the RAD reasonably found that Abuja is a viable IFA for the Applicants. I accept the Respondent's argument that the Applicants have failed to identify any overriding errors within the RAD's decision that warrant this Court's intervention; instead, the Applicants simply disagree with the outcome the RAD reached upon weighing the evidence before it. In the absence of any exceptional errors, I find that this Court must refrain from interfering with the RAD's decision (*Vavilov* at para 125).

[28] I am not persuaded by the Applicants' argument that the RAD failed to reasonably consider the Applicants' testimony. The RAD found that the Applicants' corroborative evidence failed to identify the Female Applicant's father or his agents as the Applicants' persecutors, and to establish the scope of the father's power and motives. While the Applicants did provide oral testimony on these concerns, the RAD states that it weighed the testimony in relation to the corroborative evidence and found it insufficient to establish a serious risk of persecution in Abuja.

[29] Given the lack of detail in the Applicants' oral testimony concerning the agents of persecution, and the RAD's finding that the corroborative evidence did not clarify those ambiguities, I find the RAD determined the first prong of the *Rasaratnam* test was met in a manner that is justified, transparent, and intelligible (*Vavilov* at para 99).

[30] With respect to the second prong of the *Rasaratnam* test, I find the RAD reasonably determined that the conditions in Abuja are such that it is a reasonable IFA for the Applicants. As noted by the RAD, the Federal Court of Appeal held in *Ranganathan v Canada (Minister of*

Citizenship and Immigration), [2001] 2 FC 164, [2000] FCJ No 2118 (“*Ranganathan*”) at para 15, that the unreasonableness test is a “very high threshold” to meet:

> It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. […] This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one’s wishes and expectations.

[31] With this threshold in mind, the RAD applied the Applicants’ circumstances to the factors that commonly inform whether a proposed IFA is reasonable and concluded that Abuja is a reasonable IFA for the Applicants. The RAD’s analysis follows a similar approach to the one taken in the *Jurisprudential Guide*.

[32] I find that the RAD’s determination that Abuja is a reasonable IFA for the Applicants is internally coherent and justified in relation to the country condition evidence, the evidence concerning the Applicants’ circumstances, the *Jurisprudential Guide*, and the principles enumerated in *Ranganathan* (*Vavilov* at para 85). The Applicants placed little emphasis on this issue in their submissions, essentially arguing that the RAD reached the wrong outcome. In the absence of the RAD misapprehending the evidence before it or relying upon faulty reasoning, I find the RAD reasonably held that the second prong of the *Rasaratnam* test was met.

V. Conclusion

[33] I find that the RAD's decision is reasonable. I therefore dismiss this application for judicial review.

[34] The parties have not identified a question of general importance for certification. I agree that none arises.

JUDGMENT IN IMM-2883-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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