

Federal Court



Cour fédérale

Date: 20210510

Docket: IMM-7802-19

Citation: 2021 FC 419

Ottawa, Ontario, May 10, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ROWLAND EKENE EKPEI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Rowland Ekene Ekpei, is a citizen of Nigeria. Mr. Ekpei and his spouse fled Nigeria with their children, three girls and a boy. They alleged, among other things, fear of returning to Nigeria because family elders demanded female genital mutilation [FGM] of their minor daughters.

[2] The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dismissed the appeal of the decision of the Refugee Protection Division [RPD] rejecting the family's claims for refugee protection. While credibility and an internal flight alternative [IFA] were determinative issues for the RPD, the only issue considered by the RAD was the IFA in Lagos.

[3] Mr. Ekpei's spouse was the principal claimant/appellant before the RPD and RAD, while the children and Mr. Ekpei were co-appellants. They sought judicial review of the RAD's decision. Shortly before the hearing before this Court, the judicial review application was discontinued for all of the other applicants, leaving Mr. Ekpei as the sole Applicant. For the reasons below, I find there is no reviewable error.

[4] At the hearing, Mr. Ekpei narrowed the issue for the Court's determination to the RAD's treatment of the first part of the two-part IFA test (specifically, in paragraphs 35 and 36 of the RAD's decision). Briefly, a refugee protection claim will fail if the claimant can seek safe refuge within their own country (in other words, a possible IFA exists); in that case, "there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country": *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589. Thus, to maintain the claim for protection, the refugee claimant bears the burden of establishing, on a balance of probabilities, that (i) there is a serious possibility of persecution in the proposed IFA, or (ii) objectively and considering all the circumstances, it would be unreasonable or unduly harsh for the claimant to move there: *Olasina*

v Canada (Citizenship and Immigration), 2021 FC 103 at para 4; *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 29.

[5] In considering the IFA issue, the RAD acknowledged the appellants' argument "that with bribery, anyone can find anyone through telephone, bank or driver's licence since there is one system nationwide." The RAD found, however, that there was insufficient reliable and concrete evidence to conclude that the family elders have the "ability and knowledge to use bribery" to obtain such information. The appellants failed to persuade the RAD that the elders would locate them in Lagos. The RAD thus concluded, on a balance of probabilities, there is no serious possibility the appellants would not be able to live safely in Lagos given the city's large population.

[6] At the hearing before me, the Applicant' submitted that the issue for determination was not about the reasonableness of the RAD's decision but rather the RAD's failure to account for one country document by the United Nations pointing to deep rooted corruption, including in Lagos. I disagree for two reasons. First, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. I find none of the situations that would rebut this presumptive standard (as summarized in *Vavilov*, above at para 17) is present in the case before me. Second, the Supreme Court of Canada pointed specifically to the failure of a decision maker to account for the evidence before it as a factor that can jeopardize a decision's reasonableness: *Vavilov*, above at para 126.

[7] I further find that the RAD's treatment of the first part of the IFA test was not unreasonable. The Applicant argues that the RAD discounted bribery by the elders, without referring to any objective evidence. I disagree that the RAD engaged in such discounting for several reasons. First, I find the Applicant's argument is tantamount to a request that the Court reweigh evidence; the RAD is presumed to have considered all evidence before it, including country condition documents: *Kandha v Canada (Citizenship and Immigration)*, 2016 FC 430 at para 16; *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 at para 52. The Supreme Court of Canada has cautioned reviewing courts against reassessing and reweighing evidence that was before the decision maker: *Vavilov*, above at para 125. Nonetheless, I note that the United Nations document on which the Applicant relies does not mention "bribery" specifically and further, it mentions efforts to combat corruption. In other words, I agree with the Respondent that this document does not support the Applicant's argument.

[8] Second, in my view, the RAD did not discount bribery; rather the RAD found the appellants failed to establish the family elders would engage in bribery ("have the ability and knowledge to use bribery") to locate the appellants in the proposed IFA. Bearing in mind the burden of proof was on the appellants, I am unable to conclude the RAD committed any reviewable error in determining that there is no serious possibility the appellants would not be able to live safely in Lagos and, thus, the appellants did not meet the first part of the IFA test.

[9] For the above reasons, I therefore dismiss the Applicant's judicial review application. Neither party raised a serious question of general importance for certification and I find that none arises in the circumstances of this case.

JUDGMENT in IMM-7802-19

THIS COURT'S JUDGMENT is that: this judicial review application is dismissed; and there is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7802-19

STYLE OF CAUSE: ROWLAND EKENE EKPEI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS: FUHRER J.

DATED: MAY 10, 2021

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