Federal Court  Cour fédérale

Date: 20210527

Docket: IMM-1449-20

Citation: 2021 FC 500

Ottawa, Ontario, May 27, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

RACHEL JOHNSON EIJE
LAWRENCE JOHNSON EIJE
DIVINE UKANA EIJE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Principal Applicant, Rachel Johnson Eije, her husband, Lawrence Johnson Eije [Associate Applicant], and her daughter, Divine Ukana Eije [Minor Applicant], are citizens of Nigeria. The Principal Applicant and Associate Applicant also have a son, who is a citizen of Nigeria and the United States and is not an applicant in this application for judicial review.

[2] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD] dated February 5, 2020, confirming the decision of the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection.

[3] The Applicants claim to have a well-founded fear of persecution of the Principal Applicant's abusive ex-husband, who is the Minor Applicant's biological father.

[4] In her Basis of Claim [BOC] narrative, the Principal Applicant alleges that after the death of her mother when she was eight (8) years old, she was sent to live with her uncle. This uncle had children of his own and decided to send her to live with a friend, who already had two (2) wives and children. Her uncle's friend abused her until she was forced to marry him in 2004. The abuse continued throughout the marriage. He became more violent towards the Principal Applicant after the birth of the Minor Applicant. She left her ex-husband and fled with her daughter on December 31, 2014. While fleeing, she met a "good Samaritan" – the Associate Applicant – who assisted her and whom she married on November 10, 2015. When her ex-husband learned that the Principal Applicant had remarried, he started threatening her and her family. In August 2017, the ex-husband set fire to the Applicants' home and kidnapped the Minor Applicant.

[5] The Principal Applicant and her son entered Canada from the United States on October 20, 2017, and claimed refugee protection. The Associate Applicant and the Minor Applicant followed on January 12, 2018. They also claimed protection.

[6] On August 8, 2019, the RPD rejected their claim due to credibility issues. Though the Applicants claimed in their BOC narratives that they had met on December 31, 2014, the evidence submitted by the Respondent demonstrated that they had applied for visitor visas for the United States together as a couple on April 18, 2012. The RPD found them not credible with respect to the timing of their alleged persecution and, more specifically, the circumstances in which they met. The RPD did not believe that the alleged persecution took place. It rather believed that the Applicants had fabricated a story to support their refugee protection claims.

[7] The Applicants appealed this decision. They claimed that although they had lied about the circumstances of their first meeting, this did not mean that the rest of their claim was false. They further submitted that the RPD erred when it failed to consider the corroborating evidence they had submitted. They sought to introduce additional evidence for consideration by the RAD.

[8] On February 5, 2020, the RAD dismissed the appeal and confirmed the RPD's findings that the Applicants were neither Convention refugees nor persons in need of protection. After its own review and assessment of the evidence, the RAD found that the Applicants were married to each other as early as April 2012, when they applied for a visa to the United States as a married couple, which undermined the credibility of their allegations regarding the Principal Applicant's ex-husband. Though it agreed that the RPD had erred in failing to assess the supporting evidence on the record, it ultimately concluded that the evidence was not sufficient to establish the Applicants' allegations.

[9] Although framed differently by the Applicants, this application for judicial review raises four (4) issues: (1) whether new evidence should be accepted before this Court; (2) whether the RAD unreasonably refused to admit the Applicants' new evidence; (3) whether the RAD's assessment of the documentation evidence was reasonable; and (4) whether the RAD gave sufficient weight to the *Chairperson's Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [*Gender Guidelines*].

II. Analysis

A. *Standard of Review*

[10] The presumptive standard of review for decisions made by administrative decision makers is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10, 16-17 [*Vavilov*]. None of the exceptions described in *Vavilov* apply here.

[11] Where the standard of reasonableness applies, the Court shall examine "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

B. *New Evidence Before This Court*

[12] The Applicants submit that, in the particular circumstances of this case, this Court should admit for consideration their new evidence. They believe that the new evidence could assist the Court in having a better understanding of their general situation and that it is extremely relevant to their allegations of persecution. The new evidence shows that they informed the RPD of their intention to file new evidence before the RAD and that they were waiting for the list of evidence from the RPD before doing so. It also shows that they first requested the list of evidence on November 13, 2019, and followed up without success until they finally received the list on February 6, 2020, a day after the issuance of the RAD's decision.

[13] It is well established that a judicial review application is to be determined based on the record that was before the decision maker, barring certain well-defined exceptions (*Association of Universities and Colleges of Canada v Canada Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). There are three (3) recognized exceptions to this rule: (1) affidavits that provide general background in circumstances when that information might assist the reviewing court in understanding the issues relevant to the judicial review; (2) affidavits bringing to the attention of the reviewing court procedural defects that cannot be found in the decision maker's record; and (3) affidavits highlighting the complete absence of evidence before the administrative decision maker when it made a particular finding (*Access Copyright* at para 20).

[14] The Applicants have not clearly articulated which exception they rely on. Even if one were to accept that it falls within the procedural defect exception, the argument of the Applicants must fail. In support of their appeal, the Applicants submitted "new evidence" and informed the RAD that some of this evidence may have been presented and considered by the RPD. The RAD considered and determined the admissibility of all of the new documents that the Applicants adduced before it, regardless of whether it had been submitted as new evidence or what the Applicants believed to be part of the RPD's record. There is no evidence before this Court to suggest that the Applicants restricted themselves in submitting their evidence, that they were prevented from doing so or that the RAD failed to accommodate them.

C. *The RAD's Assessment of the New Evidence is Reasonable*

[15] The Applicants attempted to introduce new evidence before the RAD that consisted of the following: (1) a lease agreement for the Applicants' home; (2) a police report filed on October 26, 2017; (3) the Minor Applicant's birth certificate; (4) a letter from the Applicants' church in Canada; (5) thirteen (13) documents relating to the Associate Applicant's training and job in Nigeria; and (6) two (2) news articles regarding gender-based violence in Nigeria dated June 29, 2014 and July 24, 2019.

[16] The RAD found that all of the evidence, except for the letter from the church, predated the decision of the RPD and was reasonably available to the Applicants before the RPD rendered its decision. The RAD rejected the Applicants' submissions that their former counsel had advised them not to include these documents as they had not made a complaint against their former counsel and had not alleged counsel incompetence. As for the letter from the church, the RAD

found that its content was neither new nor relevant to the Applicants' claim. Having admitted no new evidence, the RAD rejected the Applicants' request for an oral hearing.

[17] The Applicants argue that it was unreasonable for the RAD to reject this new evidence on the basis that the Applicants had failed to make a complaint against their former counsel. Though they admit that part of the new materials did not speak to the core issues, the Applicants submit that it gave context to the Applicants' situation and supported their credibility. They further submit that this new evidence raised serious issues concerning credibility, and that a new hearing was therefore necessary.

[18] The Applicants' arguments must fail.

[19] Subsection 110(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, provides that the RAD is required to proceed without a hearing, based on the record that was before the RPD. Subsection 110(4) creates an exception to this general rule. The person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection of their claim. If the new evidence meets this requirement, the RAD must then assess its credibility, relevance, newness and materiality to determine whether it is admissible (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 38-49 [*Singh*]; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13-15). Subsection 110(6) permits the RAD to hold an oral hearing if it admits new evidence that raises a serious issue with respect to the credibility of the claimant, is central

to the claim and, if accepted, it would justify allowing or rejecting the claim (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 43; *Singh* at paras 48, 51,71).

[20] The RAD assessed and rejected the new evidence pursuant to these criteria. It did not require the Applicants to file a complaint against their former counsel. The Applicants blamed the delay in filing the evidence on their former counsel. The RAD was simply responding to the Applicants' explanation, which it found to be unpersuasive.

[21] Since the RAD did not admit any new evidence, it was therefore reasonable for the RAD to refuse the Applicants' request for a hearing.

D. *The RAD's Assessment of the Documentary Evidence Was Reasonable*

[22] First, the Applicants argue that the RAD erred by assessing the evidence for what it did not contain rather than for what it contained. They take issue with the RAD's assessment of: (1) the Associate Applicant's affidavit, sworn November 14, 2019, explaining the reasons for misrepresenting their relationship; (2) the custody order and name change certificate, which support the Principal Applicant's claim of inhumane treatment suffered at the hands of her ex-husband; and (3) the documents relating to the fire at the Applicants' home corroborating their claim of persecution. The Applicants also take issue with the RAD's statement that "no documentation on when [the Principal Applicant] separated from her first husband and married [the Associate Applicant] was provided; there is no marriage certificate or divorce order on record". They claim that since the Principal Applicant was married to her first husband

traditionally, no such marriage or divorce certificate exist. They also claim that she was 13-years-old at the time so there would be no valid marriage certificate.

[23] Second, the Applicants claim that the RAD erred by not considering the Associate Applicant's affidavit, sworn November 14, 2019, which explained the misrepresentation concerning the Applicants' first meeting and their application for a United States visa together in 2012. According to the Applicants, the decision in *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 [*Oranye*] stands for the principle that when assessing issues of credibility, the RAD must consider affidavits providing explanations (*Oranye* at para 27). As the RAD did not consider the affidavit, it also did not consider the explanation for the misrepresentation that it contained.

[24] Third, the Applicants submit that the RAD erred by discrediting or giving little weight to affidavits from family members and police reports because they contained self-serving evidence.

[25] Finally, the Applicants submit that the negative credibility finding concerning the timeline of their relationship was not enough to reject their claim as the timing of the relationship was not a core issue.

[26] I am not persuaded by the Applicants' arguments.

[27] The principal concern of the RAD was the credibility of the Applicants with regards to the timeline of their relationship. Given the fact that the Principal Applicant was using the

Associate Applicant's last name at the time of the United States visa application in 2012, and on the passport she submitted with the application, it was open to the RAD to conclude that the Applicants were in fact married in 2012. This, in turn, completely undermined their claims of ongoing persecution at the hand of the Principal Applicant's ex-husband, which was premised on the fact that she had left him and married another man in 2014 and 2015, respectively.

[28] The RAD found that the evidence provided by the Applicants was not sufficient to confirm the Applicants' version of events regarding their first meeting and their application for a United States visa in April 2012. The fact that the RAD pointed out what these documents did not contain does not mean that it did not consider the actual contents of the documents. A simple reading of the decision shows that the RAD indeed considered all of the admissible documentary evidence presented by the Applicants. It provided clear and thorough reasons for its findings regarding the probative value of the evidence after assessing the explanations of the Applicants for misrepresenting their relationship.

[29] As for the Applicants' argument that the RAD did not consider the Associate Applicant's affidavit, it cannot stand. A decision maker does not need to mention each and every document; on the contrary, there is a presumption it considered all the evidence presented (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). Though the affidavit is not mentioned by the RAD, the explanation it provides is thoroughly examined in the RAD's decision.

[30] Regarding the RAD's assessment of the family members' affidavits, the RAD explains that the affidavits are of little probative value to establish the ongoing risks to the Applicants. The RAD finds that while they provide some corroboration that the Principal Applicant was in an abusive relationship and that her ex-husband had threatened her and her family, they did not provide any details regarding the timeline of the Principal Applicant's relationship or the threats experienced. They were also not sufficient to overcome the credibility concerns. There is no mention of the fact that they are self-serving. As for the police reports, the RAD finds that they are not sufficient to corroborate the Applicants' claim because they are based entirely on self-reported information. It is also unclear why one of the reports was issued eight (8) months after the reported events.

[31] The timeline of the Principal Applicant's abusive relationship was crucial to the assessment of the Applicants' alleged forward-looking risk of persecution or harm. The inconsistencies noted by the RAD were central to the claim because they put into question the Applicants' version of events underlying their alleged fear of persecution. The Applicants' corroborative evidence did not remedy the problems identified by the RAD. Moreover, having found that the Applicants were not credible, the RAD was not obliged to accept the documentary evidence intended to support the facts deemed not credible (*Liu v Canada (Citizenship and Immigration)*, 2015 FC 207 at para 30; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 610 at para 13; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471 at para 26).

E. *The RAD Gave Sufficient Weight to the* Gender Guidelines

[32] The Applicants submit that the RAD did not give sufficient weight to the *Gender Guidelines*. They argue that the RAD should have recognized that forced marriage, spousal abuse and possible honour killings are valid reasons to recognize the Applicants as refugees.

[33] This argument must also fail.

[34] The *Gender Guidelines* are to be considered in the context of a gender-based claim. While they are not binding, tribunal members are expected to follow them unless there are compelling or exceptional reasons for adopting a different analysis (*Higbogun v Canada (Citizenship and Immigration),* 2010 FC 445 at para 60 [*Higbogun*]).

[35] In its reasons, the RAD explicitly states that in considering the Applicants' explanations, it considered the *Gender Guidelines*, which explain that cultural norms and pressures may prevent women from disclosing certain events, such as sexual assault. While it acknowledged this context, the RAD found that it did not apply in the circumstances here because the Principal Applicant had been able to disclose her allegations of gender-based violence against her ex-husband in her BOC. It therefore could not justify the important misrepresentation regarding the timeline of her relationship with the Associate Applicant.

[36] I am satisfied that the RAD not only considered and gave due weight to the *Gender Guidelines* but that its conclusion is reasonable in the circumstances of this case. The *Gender*

Guidelines cannot be treated as corroborative evidence of gender-based persecution (*Higbogun* at para 50; *Mendoza Cornejo v Canada (Citizenship and Immigration)*, 2010 FC 261 at para 27). They also are not meant to cure deficiencies in a claimant's story or evidence (*Yared Belay v Canada (Citizenship and Immigration)*, 2016 FC 1387 at para 51).

III. Conclusion

[37] To conclude, the Applicants have failed to demonstrate a reviewable error in the RAD's decision. Findings of credibility and the assessment of evidence lie at the heart of the RAD and RPD's expertise. They require a high degree of deference from this Court (*Singh v Canada (Citizenship and Immigration)*, 2016 FC 787 at para 16; *Tosha v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1741 at para 21). Although the Applicants may disagree with the RAD's findings and assessment of the evidence, it is not for this Court to reweigh or reassess the evidence to reach a conclusion that is favourable to the Applicants (*Vavilov* at para 125; *Canada* (*Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[38] I am satisfied that, when read holistically and contextually, the RAD's decision meets the reasonableness standard set out in *Vavilov*. The decision is based on internally coherent reasons, and it is justified in light of the relevant facts and the law. The reasons are also transparent and intelligible.

[39] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-1449-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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