Federal Court  Cour fédérale

Date: 20220428

Docket: IMM-3098-21

Citation: 2022 FC 622

Ottawa, Ontario, April 28, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

OLANSHILE LUKMON MUSTAPHA
HALIMAT FOLAKE GIWA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Olanshile Lukmon Mustapha and the Associate Applicant, Halimat Folake Giwa are married citizens of Nigeria. The couple fled Nigeria in 2017, fearing persecution by the "Badoo" cult that operates in Lagos state, and a lack of available healthcare

for the Associate Applicant. Travelling to Canada, via the United States of America, they claimed refugee protection upon their arrival here.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] refused their claims on the basis that that they have viable internal flight alternatives [IFAs] in the Nigerian cities of Benin City, Abuja and Port Harcourt. The RPD therefore concluded that the Applicants are neither Convention refugees nor persons in need of protection.

[3] On appeal, the Refugee Appeal Division [RAD] of the IRB confirmed the RPD decision and dismissed the Applicants' appeal. In response to the Applicants' concerns regarding the IFAs, including the potential language barrier posed by Benin City, the RAD held that only one IFA needs to be viable to reject the Applicants' claims. The Applicants now seek judicial review of the RAD decision.

[4] The sole issue for determination is the reasonableness of the RAD decision. There is no dispute that the presumptive reasonableness standard of review is applicable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. I find that none of the situations rebutting such presumption (*Vavilov*, at para 17) is present in this matter.

[5] To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility; the party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at paras 99-100.

[6] I am not satisfied that the Applicants here have met their onus. For the reasons below, I therefore dismiss the Applicants' application for judicial review.

II. Analysis

[7] I find the RAD reasonably concluded, in the circumstances, that the Applicants had not satisfied their burden of establishing they would face more than a mere possibility of persecution by the Badoo in the proposed IFAs; nor did they establish that it would be unreasonable for them to relocate to the IFAs: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 [*Olusola*] at para 8.

[8] In particular, I am not persuaded that the matter before me involves a fundamental misapprehension or failure by the RAD to account for the evidence before it: *Vavilov*, above at para 126.

[9] To argue that the RAD failed to engage with the substance of their documentary evidence, as the Applicants do here, amounts in my view to a disagreement with the RAD's weighing of the evidence and a request for the Court to reassess the evidence that was before the RAD. This is not the role of the Court on judicial review, however: *Vavilov*, above at para 125.

[10] The RAD is presumed, unless the contrary is shown, to have considered all the evidence before it in making its decision; it need not refer expressly to all evidence: *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 28. Bearing in mind that perfection is not the applicable standard, a reasonable administrative decision is one that is justified in relation to the

constellation of law and facts that are relevant to the decision: *Vavilov*, above at paras 91 and 105. Further, the Supreme Court strongly discourages a "line-by-line treasure hunt for error": *Vavilov*, above at para 102.

[11] The Applicants challenge the RAD's treatment of their documentary evidence in three main respects: corruption that exists within the police in Nigeria, thus enabling the Badoo to locate the Applicants in the IFAs; the burden on the Applicants in terms of employment, rent and particularly, the lack of medical care or treatment to address the Associate Applicant's health issues; and indigeneity.

[12] The indigeneity issue is easily disposed of. The Applicants conceded at the hearing before the Court that the evidence regarding indigeneity in Abuja and Port Harcourt is mixed. To take the position that the RAD did not consider some of the more negative evidence contained in the relevant National Documentation Package [NDP] for Nigeria, by pointing to one or two articles among many, is not sufficient in my view to rebut the presumption that the RAD considered all the evidence before it. I find the Applicants' strategy exemplifies their disagreement with the RAD's weighing of the evidence and their consequent request that the Court reassess the applicable evidence.

[13] The Applicants repeat this strategy in connection with the issue of police corruption. They point, for example, to an article in the NDP that discusses a national police computer network for information sharing, not yet installed, and the potential for their information to be shared with the Badoo, wherever they are located, because of the prevalence of bribery. The

Applicants speculate that this network could be installed by the time they were removed to Nigeria, if removal occurs. They similarly argue that the possibility of having to provide biometrics to obtain a sim card for cell phones could expose them potentially to being traced.

[14] I find that the Applicants' arguments on this issue are speculative and in the main, involve a request to reweigh or reassess the evidence that was before the RAD. In addition, I find the RAD's reasons demonstrate that it reviewed the most recent NDP. The RAD explains, for example, that it sought to determine if there is information that might assist in establishing whether the Badoo operate in the proposed IFAs. The RAD concludes, not unreasonably in my view, that the most recent information confirms the Badoo operate primarily in another area.

[15] Further, the RAD reasonably notes that the *Maldonado* presumption of truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CarswellNat 168 at para 5, [1980] 2 FC 302 (FCA)), does not require the RAD to accept the Applicants' sworn testimony as objectively true: *Olusola*, above at para 25.

[16] Regarding the reasonableness of relocating to the IFAs, I find that the RAD's analysis of this second prong of the IFA test takes into account the evidence and the Applicants' submissions, and is logical and justified in relation to the applicable constellation of facts and law.

[17] The onus on the Applicants of demonstrating that the burden on them is unreasonable is a high one. It requires establishing, with actual and concrete evidence, the existence of conditions

that would jeopardize their life and safety in travelling or temporarily relocating to the IFAs: *Aghimien v Canada (Citizenship and Immigration),* 2021 FC 953 at para 90.

[18] Regarding the availability of medical care, for example, the RAD considers the evidence regarding the Associate Applicant's specific condition and the availability of treatment, as well as treatment options, and concludes, reasonably in my view, that the Applicants have not established that such treatment would be inaccessible. The RAD notes that the Applicants did not make any specific arguments that treatment for the Associate Applicant's particular condition would be unavailable, but rather finds the objective evidence supports that medical and healthcare facilities are concentrated in large cities such as the IFA cities and, therefore, such facilities likely would be more accessible to the Applicants. Based on the evidence before the RAD, this is not an unreasonable conclusion, in my view.

[19] In considering whether conditions in the proposed IFAs are such that it would be reasonable, in all of the Applicants' circumstances, for them to seek refuge there, the RAD examines several factors, including language, employment, housing, the availability of healthcare, and the intersection of indigeneship. Following its own review, the RAD concludes the Applicants did not demonstrate, on a balance of probabilities, that relocating to one of the IFAs would be unduly harsh or objectively unreasonable in their particular circumstances. I am satisfied that, based on the evidence before it, the RAD's findings on this issue were not unreasonable: *Onuwavbagbe v Canada (Citizenship and Immigration),* 2020 FC 758 at para 46.

[20] I find the Applicants essentially reassert before the Court the same arguments on the country conditions documents that were submitted before the RAD, considered in full, and found insufficient to ground a determination that their removal to the IFAs would be unreasonable. The RAD is entitled to a high degree of deference in its factual findings and weighing of the evidence: *Sisay Teka v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 314 at para 35. In my view, it was open to the RAD here to conclude the available objective country conditions evidence did not support a finding that the proposed IFAs are unreasonable.

[21] Judicial review is not an appeal and is not a "do-over," particularly where reasonableness is the applicable standard of review: *Agbeja v Canada (Citizenship and Immigration)*, 2020 FC 781 at para 22. The reviewing court simply must be satisfied that the decision maker's reasons "add up": *Vavilov*, above at para 104. In the matter before me, I conclude that the RAD's reasons do just that.

III. Conclusion

[22] For the above reasons, I therefore dismiss the Applicants' judicial review application.

[23] Neither the Applicants nor the Respondent proposed a question for certification, and I find that none arises in the circumstances.

JUDGMENT in IMM-3098-21

THIS COURT'S JUDGMENT is that: the Applicants' application for judicial review is dismissed, and there is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27**

Convention refugee **96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, **(a)** is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or **(b)** not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**Définition de réfugié** **96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : **a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; **b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection **97 (1)** A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally **(a)** to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or **(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if **(i)** the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, **(ii)** the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**Personne à protéger** **97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : **a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; **b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : **(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, **(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and **(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, **(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection **(2)** A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**Personne à protéger** **(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.
Appeal **Procedure** **110 (3)** Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.	**Appel** **Fonctionnement** **110 (3)** Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.
Hearing **(6)** The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3) **(a)** that raises a serious issue with respect to the credibility of the person who is the subject of the appeal; **(b)** that is central to the decision with respect to the refugee protection claim; and	**Audience** **(6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois : **a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause; **b)** sont essentiels pour la prise de la décision relative à la demande d'asile;

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.
Decision	**Décision**
111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:	**111 (1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.
(a) confirm the determination of the Refugee Protection Division; …	

***Refugee Protection Division Rules*, SOR/2012-25**
***Règles de la Section de la protection des réfugiés*, DORS/2012-256**

Additional Documents	**Documents après l'audience**
Documents after hearing	**Documents supplémentaires**
43 (1) A party who wants to provide a document as evidence after a hearing but before a decision takes effect must make an application to the Division.	**43 (1)** La partie qui souhaite transmettre à la Section après l'audience, mais avant qu'une décision prenne effet, un document à admettre en preuve, lui présente une demande à cet effet.
…	…
Factors	**Éléments à considérer**
(3) In deciding the application, the Division must consider any relevant factors, including	**(3)** Pour statuer sur la demande, la Section prend en considération tout élément pertinent, notamment :
(a) the document's relevance and probative value; **(b)** any new evidence the document brings to the proceedings; and **(c)** whether the party, with reasonable effort, could have provided the document as required by rule 34	**a)** la pertinence et la valeur probante du document; **b)** toute nouvelle preuve que le document apporte aux procédures; **c)** la possibilité qu'aurait eue la partie, en faisant des efforts raisonnables, de transmettre le document aux termes de la règle 34.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3098-21
STYLE OF CAUSE:	OLANSHILE LUKMON MUSTAPHA, HALIMAT FOLAKE GIWA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 23, 2022
JUDGMENT AND REASONS:	FUHRER J.
DATED:	APRIL 28, 2022

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