Federal Court  Cour fédérale

Date: 20220607

Docket: IMM-6233-21

Citation: 2022 FC 837

Toronto, Ontario, June 7, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

NNAMDI SYLVESTER IWUANYANWU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns an application for judicial review of a decision (the "Decision") of the Refugee Appeal Division (the "RAD"), dated August 18, 2021, dismissing the Applicant's appeal of the Refugee Protection Division's decision to deny his claim for refugee protection. The RAD determined that the RPD was correct to conclude that the Applicant had an internal

flight alternative ("IFA") in Lagos, Nigeria. For the reasons that follow, I find the Decision to be reasonable and will dismiss the application for judicial review.

II. Background

[2] The Applicant is a 40-year-old citizen of Nigeria, who claimed refugee protection in 2018 on the grounds that he fears a risk to his life at the hands of his in-laws. He claims they want to harm and kill him for reporting his wife to the authorities for travelling to Canada using a fraudulent passport with their daughter and against his will. In February 2021, the RPD concluded that the Applicant did not qualify as a person in need of protection because he had a viable IFA in Lagos.

[3] On Appeal, the RAD found that the Applicant was generally credible, and accepted that his in-laws had the motivation to attempt to locate him in Lagos, Nigeria, but that he had not established that they had the means to do so. The RAD found that the RPD was correct to consider the size and population of Lagos in its assessment of the risk to the Applicant and that it was reasonable to expect that he would take reasonable steps and exercise caution in his use of social media to avoid detection there. The RAD also found that the Applicant had failed to establish how his brother-in-law, J.O., who he claimed had threatened to kill him if he returned to Nigeria, would have the sophistication, resources or access to networks in Nigeria that would permit him to locate the Applicant. He now challenges the Decision by way of this application for judicial review, brought pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*].

III. Issues and Analysis

[4] The only issue in this judicial review is whether the Decision was reasonable. A court performing a reasonableness review scrutinizes the decision maker's decision in search of the hallmarks of reasonableness – justification, transparency and intelligibility – to determine whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Any flaws or shortcomings must be more than superficial or peripheral to the merits of the decision and the court must be satisfied that they are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[5] The Applicant argues that the RAD erred by failing to justify its reasons and by unreasonably assessing the evidence. Specifically, he challenges the finding that he would be expected to take reasonable steps to avoid detection in Lagos, asserting that he should not be expected to live in perpetual hiding and that means other than social media would be available to locate the Applicant. The Applicant further argues that having demonstrated that his wife was from a wealthy family, it was unreasonable to conclude that her family would not have the means to locate him in a corrupt country like Nigeria, or to place a higher evidentiary burden on the Applicant to demonstrate their influence. The Applicant also contests the RAD's finding regarding the absence of evidence of any influence possessed by his brother-in-law, J.O., asserting that his sworn affidavit ought to have been considered adequate in this regard.

[6] I am not persuaded by the Applicant's arguments. The RAD applied the proper standard of review, cited the correct authorities in support of its application of the IFA analysis, and provided detailed and transparent reasoning to justify its findings. The Applicant essentially invites the Court to replace the RAD's IFA determination, which is owed deference on judicial review (*Castillo Garcia v Canada (Citizenship and Immigration)*, 2019 FC 347) with his own alternative interpretation. The Applicant is free to disagree with the RAD, but to have the Decision set aside; he must demonstrate that it was unreasonable. I find that he has not done so.

[7] The burden to prove that an IFA was not available fell on the Applicant, and it was open to the RAD, based on the evidence that was before it, to find that he had not shown a serious possibility of persecution by his in-laws there. The RAD accepted that they had the motivation, but was not convinced as to their means. The RAD also concluded that it was not unreasonable to expect the Applicant to relocate to Lagos.

[8] I am not convinced that the mere suggestion by the Applicant of his in-laws being wealthy, or that his brother-in-law is an influential businessman, required the RAD to find that there was sufficient evidence to demonstrate they had the means to locate him in the largest city in Nigeria and that any conclusion to the contrary was unreasonable. It was open to the RAD to conclude as it did regarding the sufficiency of evidence to show the reach of the agents of persecution.

[9] I agree with the Respondent that the Applicant has simply failed to provide a sufficient evidentiary basis to find that the RAD's conclusions were unreasonable. I note that the main

agent of the persecution, including the subject of the police report, was the mother-in-law, who is since deceased. The Applicant provided very little evidence regarding J.O, as the RAD clearly pointed out in their Decision. The RAD did not accept the Applicant's blanket rationale that he was "forgetful" regarding his failure to mention J.O. in the Basis of Claim form. While the RAD found that the Applicant was "generally credible", it was entitled to draw an adverse credibility finding on the omission of this important fact in his claim and to expect some corroborative evidence for that reason (see *Occilus v MCI*, 2020 FC 374 at paras 24-25; *Cekim v MCI*, 2011 FC 177 at para 14).

[10] As for the RAD's findings on his social media use, this Court has already upheld that it is not an error for the RAD to expect a refugee claimant to exercise care and caution in their use of social media (*Adeyig Olusola v Canada (Citizenship and Immigration)*, 2021 FC 659 at para 24). I see no reason why that was not a reasonable expectation in this context. The Applicant placed great reliance on *Zamora Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586, where the Court never mentioned social media, and was specifically concerned with a person's inability to share their whereabouts with family and friends. Here, on the other hand, the RAD simply suggested the Applicant be careful in his use of social media, and not that he avoid contacting family or friends. Being discreet in social media and making use of privacy settings therein has been upheld in other cases to be a reasonable expectation, and not akin to requiring a claimant to live in seclusion or hiding, as distinct from *Zamora Huerta* (see, for instance, *Olusesi v Canada (Citizenship and Immigration)*, 2021 FC 1147 at paras 19-20).

[11] The Applicant at the hearing raised a new argument that his sister, who lives in Lagos, could inadvertently share his whereabouts with his agents of persecution. However, this point was neither addressed by the RAD, nor for that matter, in the Applicant's factum, as I pointed out to counsel for the Applicant during the hearing. Furthermore, I find this argument to be speculative and decline to address it at this stage of the proceedings without it having been properly raised before the Court, or indeed, without it having even been raised in submissions to the RAD itself (*Xiao v Canada (Citizenship and Immigration)*, 2021 FC 386 at para 34).

[12] Finally, the Applicant has also not provided any convincing justification for why the RAD's finding on his ability to relocate was insensitive to any particular religious, cultural or economic factors. To the contrary, the RAD specifically considered the Applicant's personal circumstances as an Igbo from Imo state and referred to Lagos's long history of accommodating non-indigenes, who compose the majority of its population. The RAD found the conditions in Lagos, including the demographic make-up and availability of public services, would enable the Applicant to relocate and live there safely. I find the RAD's IFA conclusions to be reasonable.

JUDGMENT in IMM-6233-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.

2. No question for certification was submitted and I agree that none arise.

3. No costs will be issued.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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