

Federal Court



Cour fédérale

Date: 20220926

Docket: IMM-8231-21

Citation: 2022 FC 1334

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 26, 2022

PRESENT: Mr. Justice Pentney

BETWEEN:

IBRAHIM DIENGUY TRAORE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD) dismissing the appeal of Ibrahim Dienguy Traore (the applicant) and confirming the decision of the Refugee Protection Division (RPD) that the applicant is neither a Convention refugee within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), nor a person in need of protection within the meaning of section 97 of the

IRPA. The RAD and RPD agree that there is an internal flight alternative (IFA) for the applicant in Côte d'Ivoire.

[2] The applicant submits that the RAD's decision is unreasonable because the RAD failed to consider the fact that he has a certain reputation in Côte d'Ivoire. He believes that his reputation makes it less likely that he will find refuge within the country, especially since new technologies are making it easier to locate people. The applicant submits that the RAD's reasoning as to the will and ability of the agents of violence is not intelligible. He is asking this Court to set aside the RAD's decision and refer the case back for a *de novo* hearing.

[3] For the reasons that follow, I am of the opinion that the application for judicial review should be dismissed.

I. Background

[4] The applicant is a citizen of Côte d'Ivoire, and his wife and daughter still live in that country. He is a musician and sound engineer and was a member of the band of Serge Kassy, an artist committed to opposing the dictatorial power of the Ivorian head of state. After the electoral crisis in Côte d'Ivoire in 2011, Mr. Kassy and most of the band members left Côte d'Ivoire for their safety. The applicant stayed, but he says that from then on he became increasingly fearful for his safety. In 2013, he and his family moved to a different part of the city and started living [TRANSLATION] "discreetly".

[5] In May 2015, the studio where the applicant worked was burglarized, and the next morning the applicant received a telephone call threatening him for "the next time". The

applicant filed a complaint at the police station for theft and death threats. In September 2015, the applicant received another call with death threats and filed a second complaint at the police station the following day. The applicant then changed his telephone number and decided to keep an even lower profile. Two years later, in January 2018, the applicant received another telephone call threatening him with death and telling him that 2018 would be his [TRANSLATION] “last year of life”. The same day, the applicant filed a third complaint at the police station.

[6] In February 2018, the applicant had the opportunity to accompany some Ivorian artists for a show in Montréal. He obtained a visitor’s visa to Canada and arrived in Montréal in February 2018. A few days later, two individuals visited the applicant’s wife and daughter in Côte d’Ivoire. They threatened them, asked for the applicant’s whereabouts and told them to inform the applicant that they would come back for him when he returned. The applicant took emergency precautions and moved his spouse and daughter to another location. Since March 2018, the studio in Côte d’Ivoire where the applicant worked has been visited six or seven times by shady individuals asking to see him.

[7] The applicant claimed refugee protection on March 11, 2018, stating that he would face threats if he were to return to Côte d’Ivoire.

[8] The RPD rejected the applicant’s refugee protection claim on the grounds that he had an IFA in Séguéla. The applicant appealed the decision. In his Notice of Appeal, he submitted that the RPD’s conclusion that there was an IFA in Séguéla was unreasonable. Given his occupation as a musician and his work in the studio, the applicant is well known. He therefore could not live in hiding his entire life. Moreover, he stated that the danger he was in was not lessened by the

fact that the persecutors have not been identified, since he works in the public eye. He pointed out that the political instability in Côte d'Ivoire also justified his fear of being located.

II. Decision under review

[9] The RAD dismissed the applicant's appeal and confirmed the RPD's determination that the applicant has an IFA in Séguéla, his hometown.

[10] In the first prong of the IFA test, the RAD concluded that the applicant had failed to establish, on a balance of probabilities, that the agents of persecution had the ability and the will to locate him in Séguéla. This conclusion was based on the fact that the applicant was unable to provide any information on the persecutors' identities or their ability to locate him, other than the fact that they might be able to locate him "by car". In response to the applicant's argument that his lack of information was not significant because the danger and ability could be deduced from the facts on the record, the RAD noted that the applicant had failed to explain his multiple hypotheses that a connection could be established between the applicant and Serge Kassy.

[11] Moreover, the RAD found that the applicant was speculating about the motivation of the agents of persecution and noted that, following their unsuccessful attempt to locate the applicant in May 2015, the persecutors failed to locate him for more than two years and were only able to contact him by telephone to threaten him. The RAD further noted that the applicant had failed to state or explain whether these calls were made by the same persecutors. The applicant had also failed to specify whether it was the same persecutors who allegedly threatened his spouse and daughter in February 2018 and visited the studio a number of times after he had left for Canada. The RAD accepted the applicant's argument that technology and his reputation would make it

easier for the persecutors to find him. However, the RAD was of the opinion that the applicant had failed to establish the persecutors' will to locate him.

[12] In the second prong of the IFA test, the RAD concluded that it would not be unreasonable for the applicant to relocate to the IFA. The RAD noted that the threshold for establishing that an IFA is unreasonable is "very high", and that the applicant had merely pointed out, in response to the question regarding the possibility of relocating to Séguéla, that there was a generalized risk due to the high crime rate in Côte d'Ivoire. The RAD was of the opinion that the applicant would not face any cultural barriers in Séguéla, that he was educated, that he had demonstrated his ability to adapt by finding a job in a new field in Canada, that he could receive social services available to citizens of Côte d'Ivoire, and that his great-uncle, despite his age, could temporarily facilitate his relocation to that city.

[13] Moreover, the RAD considered the secondary documents submitted to be insufficient to demonstrate unstable conditions that would make it unreasonable for the applicant to settle in Séguéla.

[14] The applicant is seeking judicial review of that decision.

III. Issues and standard of review

[15] The sole issue is whether the RAD's finding that the applicant has an IFA in Séguéla, Côte d'Ivoire, is unreasonable.

[16] The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418).

[17] In summary, under the framework set out in *Vavilov*, a reviewing court conducting a reasonableness review must “review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the applicant to satisfy the Court that “any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

IV. Analysis

[18] The test to determine whether an IFA exists was defined by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA). As the RAD noted in its decision, the test is two-pronged. To determine whether an IFA is viable for the applicant, the RAD had to be satisfied, on a balance of probabilities, that (i) there was no serious possibility of the applicant being persecuted in the proposed IFA; and (ii) in all the circumstances including circumstances particular to the appellant, it would not be unreasonable for the appellant to relocate there.

[19] Before me, the applicant limited his submissions to the first prong of the IFA test. The applicant argues that the RAD's conclusion on this issue is flawed because it is inconsistent, contains contradictory statements and lacks an intelligible chain of reasoning as to the will and ability of the agents of persecution to locate him.

[20] The applicant states that paragraphs 31 and 32 of the RAD's decision are contradictory and that they are not intelligible when read together:

[31] The appellant alleges that with new information and electronic technologies, it is easy today to locate someone even in a city like Séguéla, located many kilometres from Abidjan. It is unreasonable to think that he could live there in hiding his entire life, especially since he is well known and would not be able to go unnoticed. The RAD recognizes that new technologies can make it easier to look for someone and that the appellant's reputation might make it easier to find him, but it is of the opinion that the appellant has not established that the agents of harm might have the will to look for him, as explained further on in these reasons.

[32] The RAD considers that the RPD was correct to conclude that the appellant failed to establish, on a balance of probabilities, the ability of the agents of harm to locate him in the proposed IFA in Séguéla if he were to return to Côte d'Ivoire.

[21] The applicant submits that the RAD erred in concluding that the agents of harm would have neither the will nor the ability to locate him. He believes that this conclusion is inconsistent with the RAD's agreeing that new computer and electronic technologies, in addition to his reputation, would make it easier for the agents of persecution to find him in the IFA. The applicant states that, having agreed that new technologies would make it easier for the agents of persecution to find him, the RAD could not then conclude that the agents of persecution would lack the ability to find him. He submits that the inconsistency and the contradiction between the two paragraphs are in themselves sufficient to render the decision unreasonable.

[22] Moreover, the applicant states that the fact that the identities of the agents of harm remain unknown is not sufficient to demonstrate that they lack the ability and will to locate him. The RAD accepted that the applicant had received threats and that strangers had visited his wife and his employer. Therefore, given the totality of the evidence, he considers it illogical for the RAD to conclude that there is an IFA for him in Séguéla.

[23] The applicant submits that the decision is unreasonable. Given the obvious errors in the factual analysis and the erroneous and contradictory findings, the RAD's analysis does not add up (*Vavilov* at para 104; *Mabirizi v Canada (Citizenship and Immigration)*, 2021 FC 1354).

[24] I disagree.

[25] The main issue in this case is the reasonableness of the RAD's assessment of the factual findings. With respect to assessed factual findings, the Supreme Court of Canada has stated that a reviewing court may intervene only in "exceptional" circumstances (*Vavilov* at paras 91–92). A reweighing of the evidence by the reviewing court is therefore excluded.

[26] The onus was on the applicant to persuade the RPD and RAD, on a balance of probabilities, that there was no IFA or that the IFA was unreasonable in the circumstances (*Rasaratnam*). The evidence had to show that the agents of persecution had the ability and the will to pursue the applicant.

[27] Although I agree that the RAD could have better explained its analysis with respect to the references to the "will" and "ability" of the agents of persecution in paragraphs 31 and 32 of the decision, I am not persuaded that this is sufficient to assert that the decision is completely unreasonable. I note that the RAD considered the case law and rules of law that apply to the

analysis of an IFA, and that the decision reflects a detailed analysis of the facts. Given the evidence and the applicant's failure to elaborate on key points of his argument, the RAD's conclusion that the applicant has a viable IFA in Séguéla is reasonable.

[28] The RAD stated that the applicant was unable to establish the identity of the agents of persecution and was speculating about their motivation. The RAD considered statements made by the applicant in an interview with a journalist after his arrival in Canada. In this interview, the applicant gave a number of hypotheses as to why his life might be in danger. Among other things, he stated that it could be for political reasons related to his work with Serge Kassy, or that it could be because someone wanted revenge. He also stated that it could be an issue of "recurring jealousy in the showbiz industry". On this point, the applicant did not provide the RAD with a persuasive clarification.

[29] Regarding the RAD's conclusion in both prongs of the IFA test, the applicant failed to show that his agents of persecution had the will to locate him in the proposed IFA. Moreover, the RAD noted that the applicant allegedly received only three threatening calls in three years, between 2015 and 2018. During that period, he allegedly stayed in the same place, in the same house, and continued to work at the same studio until he left in 2018. He was never physically threatened or visited either at home or at work.

[30] On the basis of these facts, the RAD concluded as follows at paragraphs 35 and 39:

[35] According to the RPD, it would be objectively unreasonable to expect that unknown people with unknown motivations who had not located the appellant for three years when he continued to live at the same address, would have the motivation to locate him in Séguéla, which is 412 kilometres from there.

[39] According to the RAD, the fact that the agents of harm did not go to the appellant's home or work for a period of three years suggests that they would not have the will to locate him in the proposed IFA a few hundred kilometres away.

[31] The RAD was also not persuaded that the visits by unknown people to the family home or by shady individuals to the studio where the applicant had worked were sufficient to establish the will of the agents of persecution to locate him. The RAD concluded that neither the identities of these people nor their motivation to look for the applicant had been established, and the fact that the owner may have said he did not trust the visitors was speculation. This is a reasonable conclusion, considering all the evidence in the record.

[32] In this case, the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at paras 81, 86). Given the evidence and the applicant's argument, I agree that the reasoning in the RAD decision "adds up" (*Vavilov* at para 104).

[33] For all these reasons, I find that the RAD's decision is reasonable. Accordingly, I dismiss this application for judicial review.

[34] Neither party has proposed a question of general importance for certification.

JUDGMENT in IMM-8231-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question of general importance to be certified.

“William F. Pentney”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8231-21

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MINISTER OF CITIZENSHIP AND
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