Federal Court  Cour fédérale

Date: 20220926

Docket: IMM-4911-20

Citation: 2022 FC 1333

Ottawa, Ontario, September 26, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

HABIB MOHAMMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant challenges his September 14, 2020 Refugee Appeal Division [RAD] Decision, ["Decision"] which upheld the Refugee Protection Division [RPD] in finding that the Applicant is neither a Convention refugee nor a person in need of protection, pursuant to s. 96 and 97 of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), on the basis of an

internal flight alternative [IFA] in Cape Coast, Ghana. For the reasons that follow, this judicial review is dismissed.

II. Background

[2] The Applicant is a citizen of Ghana and resided in the city of Accra. He grew up with a large Muslim family. His father was an imam in a local mosque.

[3] The Applicant became increasingly interested in the Christian faith, as he became friends with two Christian men with whom he played soccer. His friends invited him to attend their church and meet their pastor. He converted to Christianity in 2016. Upon learning of this, the Applicant's family and local Muslim community became extremely upset. His family regarded his conversion as bringing shame and dishonour to them, particularly as his father is an imam in their community.

[4] In 2016, as he was on his way to church, the Applicant was attacked by members of his family and the Muslim community in Accra. The attackers included his brothers and uncles. The Applicant was assaulted with sticks, was threatened, and warned by his attackers that if he continued to attend church, they would kill him. The Applicant sustained head injuries as a result of the attack and was taken to the hospital to obtain treatment. After his release, he contacted the police to make a report on the assault, but the police took no action because they are allegedly unable or unwilling to confront religious or mob violence issues in the community.

[5] Fearing for his safety, the Applicant went into hiding in Ghana, and subsequently fled the country. He eventually made his way to the United States where he made a claim for asylum, which was denied, whereupon he left for Canada on May 30, 2017, making a claim for refugee protection upon arrival.

[6] In its May 15, 2019 decision, the RPD, while finding the Applicant to be generally credible, found an IFA in Cape Coast. In assessing the proposed IFA, the RPD found that the Applicant would not face a serious risk of persecution there, finding speculative his claim that his father alerted other imams and that as a result of this notice, Muslims throughout the country would be looking for him, and act against him with impunity, because the state authorities fear them. The RPD cited several articles regarding a lack of threat of violence from the Muslim community in Ghana, noting articles provided by the Applicant were unhelpful.

[7] The RPD also gave no weight to an affidavit from a member of the community in Accra, who stated that the Applicant's conversion did not please his father who encouraged others in the community and beyond to kill the Applicant. The Applicant had never met the affiant but spoke to friends who had in turn spoken to the affiant and informed him of the situation. Having considered the Applicant's evidence, the RPD concluded that his arguments were not corroborated by the objective evidence.

[8] Ultimately, the RPD concluded that, while the Applicant may face persecution from his father and his father's allies for his conversion, he does not face persecution from the general Muslim community at large throughout the country. The RPD further found that he does not face

a serious risk of persecution in Cape Coast because of his conversion unless his father is able to locate and act against him there, which the RPD found the Applicant had not established. The RPD found that likewise under the second prong of the legal test, Cape Coast is a viable IFA.

III. Decision Under Review

[9] The RAD agreed with the RPD that the Applicant was generally credible and accepted that his father and extended family were the potential agents of persecution. As to whether, on a balance of probabilities, there is a serious possibility of s. 96 or 97 risk in the IFA area, the RAD dismissed the suggestion that the RPD gave no reasonable explanation as to why it discounted the assertion his father alerted other imams to his conversion to Christianity.

[10] The RAD also agreed that the testimony was speculative, including due to its observations that (i) the Applicant was not recounting his actual experiences when he testified in this regard, and (ii) there was no evidence before either tribunal that the agents of persecution have any influence outside of their local area or that they have the resources to search throughout Ghana, and specifically in the proposed IFA. On this point, the RAD stated that the Applicant had not presented sufficient credible or trustworthy evidence that his family or community have the means to persecute him in Cape Coast.

[11] Rather, the RAD found that the evidence shows that the vast majority of the population in Ghana is Christian, and while renouncing Islam is a crime punishable by death under Islam, there is no evidence that this is a state crime in Ghana. According to the RAD, the Applicant failed to provide sufficient credible and trustworthy evidence that he would face threats and violence as a

Christian in Ghana. It also found that his family would be unable to locate him in the viable IFA on a balance of probabilities, and he does not need to self-identify as an ex-Muslim in the IFA. The RAD also rejected the assertion that the police are unwilling and unable to protect the Applicant.

[12] Finally, the RAD found nothing to conclude that the Applicant could not settle in Cape Coast from the perspective of employment, health care, or otherwise, and that it was a reasonable IFA location.

IV. Issue and Analysis

[13] The Applicant challenges the legal test and outcome of the RAD's IFA analysis, contending that its application and conclusion were, respectively, unreasonable. The parties agree, as do I, that the reasonableness standard applies per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Applicant also challenges fairness of the RAD's findings regarding self-identification. Questions of procedural fairness are to be reviewed by asking whether the process leading to the decision was fair in all the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4.

A. *The RAD reasonably applied the IFA test*

[14] The Applicant submits that the RAD erred in its application of the legal test, arguing that the RAD placed a higher onus on him to provide evidence that his family or community would

be able to successfully locate and persecute him in the proposed IFA, when the RAD stated that the Applicant "has not presented sufficient credible or trustworthy evidence that his family or community have the means to successfully locate and persecute him in Cape Coast." According to the Applicant, that is not the requisite test under the law and the RAD erred by recasting the onus on the Applicant when it stated that the Applicant would not face a serious possibility of persecution in Cape Coast, Ghana because of a lack of evidence.

[15] The Applicant contends that the claimant must establish the factual elements of their claim on a balance of probabilities, and the evidence must show only that there is a "serious possibility" of persecution.

[16] I cannot agree with the Applicant. When the question of an IFA is invoked and a potential IFA location has been identified, the onus shifts to the refugee claimant who must demonstrate that they do not have a viable IFA – such that at least one part of the two-pronged test established in *Ranganathan v Canada (Minister of Citizenship & Immigration)*, [2000] FCJ No. 2118, [2001] 2 FC 164 is not made out. As Justice Norris affirmed in *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430, at para 45:

> […] the jurisprudence is clear that rejecting a claim on the basis that there is a viable IFA is not simply a matter of concluding that the claimant has not met their onus. Rather, the decision maker must conclude affirmatively on a balance of probabilities that the claimant does have an IFA – in other words, that there is a place where the claimant would not be at risk (in the relevant sense and on the applicable standard) and to which it would be reasonable for the claimant to relocate: see *Rasaratnam* at 710; see also *Hamdan* at paras 11–12 and *Khan v Canada (Citizenship and Immigration)*, 2020 FC 1101 at para 10. One way to understand this is to consider the existence of a place where the claimant would be safe and that is realistically accessible to the claimant to raise a presumption that

> it would be reasonable for the claimant to relocate there instead of seeking international protection. A claimant may rebut this presumption by showing that it would be unreasonable to expect them to seek safety in the proposed IFA.

[17] In the present case, a viable IFA was clearly identified by the RAD (and previously, the RPD). The Applicant failed to meet his onus before those tribunals to demonstrate that Cape Coast was unviable. Relying on *Lawal v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 301, as well as *Henguva v Canada (Citizenship and Immigration),* 2013 FC 48, the Applicant argues that the RAD applied a wrong legal test as established early on by the Federal Court of Appeal in *Adjei v Canada (Minister of Employment & Immigration),* 1989 CanLII 9466 (FCA), and later specifically to the first branch of the IFA test in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration*), 1993 CanLII 3011 (FCA) [*Thirunavukkarasu*].

[18] Specifically, the Applicant asserts that the Board erred in requiring him to prove that persecution would be more likely than not, or that the Applicant *would* be subject to persecution on the basis of probabilities, such that it elevated the legal standard from what he should have been required to prove – simply that he faced a serious possibility of persecution.

[19] When reading in its entirety, however, I cannot agree that the RAD did impose a higher onus for the Applicant. Rather, it applied the accepted legal test for an IFA in concluding that the Applicant would not, on a balance of probabilities, face a serious possibility of persecution or a risk in Cape Coast, Ghana. Contrary to the Applicant's assertions, this is consistent with the test as set out in *Thirunavukkarasu* which is still good law (see, for instance *Idowu v Canada*

(Citizenship and Immigration), 2022 FC 1052 at para 6 and *Khokhar v Canada (Citizenship and Immigration)*, 2022 FC 1028 at para 5). There, where Linden J.A. wrote:

> On the one hand, in order to prove a claim to Convention refugee status, as I have indicated above, claimants must prove on a balance of probabilities that there is a serious possibility that they will be subject to persecution in their country. If the possibility of an IFA is raised, the claimant must demonstrate on a balance of probabilities that there is a serious possibility of persecution in the area alleged to constitute an IFA. I recognize that, in some cases the claimant may not have any personal knowledge of other areas of the country, but, in all likelihood, there is documentary evidence available and, in addition, the Minister will normally offer some evidence supporting the IFA if the issue is raised at the hearing (*Thirunavukkarasu* at p 595).

[20] Here, consistent with this standard articulated in *Thirunavukkarasu*, the RAD wrote, "I find that, on a balance of probabilities, the Appellant would not face a serious possibility of persecution or a risk to life or cruel and unusual treatment or punishment or danger." In so concluding, the RAD explained that it was simply unsatisfied that there was sufficient credible and trustworthy evidence that the Applicant's family or community have the means to persecute him in Cape Coast, or that he would face threats and violence as a Christian in Ghana. Indeed, the RAD agreed with the RPD in finding the Applicant's assertion that he cannot be safe anywhere in Ghana because his father has alerted other imams to his conversion was unsupported by the evidence, including in the following excerpt:

> […]
>
> There was no evidence before the RPD, nor is there any before me, that the agent of persecution has any influence outside of his local area or has the resources to mount a search throughout Ghana and successfully locate the Appellant in Cape Coast. I find that the Appellant has not presented sufficient credible or trustworthy evidence that his family or community have the means to persecute him in Cape Coast.

[21] Ultimately, the Applicant simply disagrees in the manner in which both the RAD applied the IFA test, and weighed the evidence under it. It was open to the RAD to find that the Applicant, now a Christian, would be safe returning to a predominantly Christian country, in which the large majority of the population is of his religion. The RAD's conclusion, once again, was true to the legal test established by a long line of IFA jurisprudence, including *Thirunavukkarasu.*

[22] Also open to the RAD was its conclusion that the objective evidence does not support the Applicant's position that the treatment of ex-Muslims in Ghana is harmful and that they are mistreated with impunity, or that the state cannot protect him. After all, as the Court pointed out in *Adams v Canada (Citizenship and Immigration)*, 2018 FC 524 at para 35, a state protection analysis is of no moment in light of its finding that the Applicant faced no serious possibility of persecution in the proposed IFA.

[23] While the Applicant would have preferred the RAD to place weight on generalized evidence that Muslim converts in certain countries face risks in conversion, those comments were not specific to Cape Coast. The RAD had pointed out that the Applicant himself was not aware that the Board reasonably concluded that the country condition evidence simply did not support his assertions of risk or persecution.

B. *There was no error made in the considering of the totality of the evidence*

[24] The applicant argued in the alternative that even if the Court were to find that none of the reasons in and of themselves impugned the IFA, that the RAD nonetheless erred in failing to take

account of the cumulative nature of the Applicant's difficulties in both avoiding a possibility of persecution and in safely travelling or relocating to Cape Coast.

[25] Once again, this simply does not accord with the reading of the RAD's decision in its full context and given the totality of its findings, including explaining why it agreed with the RPD reasons, which went into more detail as to why the Applicant neither satisfied the first nor the second part of the IFA test per *Thirunavukkarasu.*

C. *The findings regarding self-identification were open to the RAD*

[26] Finally, the applicant argued that the RAD erred in finding that the Applicant does not need to self-identify as a convert in the IFA, given that he has a clearly Muslim name, and that there are Muslims throughout Ghana. The Applicant states that this finding was unreasonable, and further, since it was raised for the first time on appeal, without providing the Applicant an opportunity to respond, breached procedural fairness.

[27] I cannot agree. The RAD was clear that it agreed with the RPD's finding which included that the Applicant's subjective fear was not corroborated by the objective evidence, in that there was no evidence demonstrating that he would neither face persecution from his family in the IFA, nor from the general Muslim community at large, and that he failed to establish that his father had the resources or contacts to pursue him in Cape Coast, or otherwise have the influence in the community to do so.

[28] In terms of the self-identification point, I note that the RAD member was simply enumerating the ways in which the Applicant might be known as a convert, and responding to the Applicant's argument in his submissions to the RAD that Muslims throughout Ghana would be looking for him upon his return, and that he would be discovered in the IFA (see, for instance, paragraphs 21-28 of the Applicant's submissions to the RAD, at pages 50-53 of the Certified Tribunal Record).

[29] Justice Pallotta, in a case based on similar facts (conversion of a Muslim man in Ghana to Christianity), addressed arguments which closely resembled those raised in the present case, including those made with respect to the Applicant's Muslim name: *Gadafi v Canada (Citizenship and Immigration),* 2021 FC 1011 [*Gadafi*] at paras 15-21. She concluded that the RAD's findings on the similar points raised were reasonable, because the Applicant had challenged the findings of insufficient evidence of alleged risks before the RAD.

[30] As for the procedural fairness argument associated with this issue, raised only in oral argument before this Court, and made without any reference to *Gadafi*, Justice Pallotta wrote as follows at paragraph 25:

> Mr. Gadafi submits the RAD breached procedural fairness by raising a new issue without giving notice and an opportunity to respond. According to Mr. Gadafi, the RAD raised a new issue by finding that he would be recognized as an ex-Muslim only through self-identification. He asserts that the issue of self-identification was not addressed by the RPD. Furthermore, he argues the RAD's finding has no evidentiary foundation, and contradicts Mr. Gadafi's evidence that he would be identifiable as a former Muslim by his name, which was accepted at face value by the RPD. Mr. Gadafi submits the RAD should have provided an opportunity to respond before dismissing the appeal based on a different (and erroneous) factual basis than the RPD

Justice Pallotta pointed to the RAD's finding, and concluded as follows in rejecting the similar procedural fairness argument to that which the Applicant has made in this case:

> … The RAD's finding was a response to Mr. Gadafi's submission on appeal, and not a new issue. The RAD has fact-finding authority, and may make additional findings or even different findings than the RPD in assessing the evidence; this alone does not elevate the findings to a new issue or trigger a breach of procedural fairness: *Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2016 FC 380 at para 30; *Bakare v Canada (Minister of Citizenship and Immigration)*, 2017 FC 267 at paras 18-19. As noted above, the RAD did not substitute its own findings for those of the RPD on the issue of whether Mr. Gadafi would face risk in the proposed IFAs due to his personal circumstances as a religious convert. The RAD did not raise a new IFA issue that would require notification and an opportunity to respond.

[31] Here, too, the RAD did not raise any new issues in responding to the Applicant's submissions on appeal regarding his risk as a convert to Christianity. Indeed, had the RAD simply parroted everything that the RPD stated in its decision or simply endorsed everything found by the first instance tribunal, issues such as independence or failure to follow the requisite standard of review might have been raised. Rather, the RAD here made its own findings in response to the arguments raised on appeal, as it did in *Gadafi.* I too find, as a result, that the Applicant has not established any breach of procedural fairness.

V. Question Proposed for Certification

[32] Counsel for the Applicant proposed the following question for certification:

1. Does a requirement that a refugee appellant establish, on a balance of probabilities, that the feared agents of persecution will not be able to locate the appellant in the identified internal flight alternative location impose a higher standard of proof on the appellant than a requirement that the refugee appellant establish that he/she would not, on a balance of

probabilities, face a serious possibility of persecution in the identified internal flight alternative location?

2. If the answer to this question is yes, a. are the two requirements consistent or inconsistent, and b. is the first requirement reasonable?

[33] Questions for certification must be dispositive of the appeal, transcend the interests of the parties, and raise issues of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36).

[34] These questions proposed in this case do not meet the test for certification, because they neither raise issues of general importance or broad significance, nor are determinative of the appeal.

[35] As explained above, the RAD correctly identified and then reasonably applied the test to the facts of the case. The test, including the standard of proof, has been well established in a long line of cases since *Thirunavukkarasu* including recent cases cited above. As the Respondent notes, the standard of proof must not be confused with the legal test to be met, such that while a refugee does not need to establish that persecution would be more likely than not, he must still establish his case on a balance of probabilities (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 11). On that point, ACJ Gagné recently held in *Omoruan v Canada (Minister of Citizenship and Immigration)*, 2021 FC 153, at para 31 in response to the use of the word "would" being used by the RAD:

> I agree a decision maker can err by requiring an applicant to establish that she would be persecuted (see for example *Lawal* at para 10). However, that it is not what the RAD did in this matter. The RAD said that there was insufficient evidence that persecution

> would occur. The RAD was then making reference to standard of proof – the balance of probability – and focusing too heavily on the word "would" detracts from the real meaning of the RAD's decision. The real meaning of the RAD's decision, as I understand it, is that the Applicant did not convey sufficient information, on a balance of probabilities, to show that there was a serious possibility she would face the persecution she alleged in Nigeria.

[36] Thus, the proposed question neither raises a question of general importance because it questions long-settled law, nor is it dispositive of the case, since the Board found no evidence that the Applicant could be located in the IFA – and thus could not have satisfied the required standard of proof.

VI. Conclusion

[37] For the reasons set out above, the RAD's Decision was transparent, justified and intelligible (*Vavilov* at para 102), and the tribunal respected the rules of procedural fairness. The Applicant has accordingly failed to identify a reviewable error warranting this Court's intervention. The application is dismissed. The question proposed for certification does not meet the test established by the Court of Appeal.

JUDGMENT in IMM-4911-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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