Federal Court  Cour fédérale

Date: 20221108

Docket: IMM-7796-21

Citation: 2022 FC 1519

Ottawa, Ontario, November 8, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

JUDE OMORUYI UKPONAHIUSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a Nigerian citizen who is a Missionary Pastor. He seeks judicial review of a decision made by the Refugee Appeal Division (RAD) on October 4, 2021 dismissing his appeal from a decision by the Refugee Protection Division (RPD) denying his claim for refugee protection.

[2] For the reasons that follow, this application is dismissed.

II. **Background**

[3] The Applicant alleged a risk to his life at the hands of various Nigerian cults who were seeking retaliation for his public efforts in converting cult members to Christianity.

[4] The Applicant claimed the threats originated from his decision to organize public outreach, which began in 2014, spanned 1.5 years, and included three public outreach meetings.

[5] After receiving numerous threats, the Applicant travelled to the United States on July 6, 2016 for a conference. He remained there for approximately 3 years then travelled to Canada where he sought refugee protection.

III. **Decision under Review**

[6] The determinative issue for both the RPD and the RAD was the finding of a viable Internal Flight Alternative (IFA) in Port Harcourt, Nigeria. The RAD found that the Applicant would not face a serious possibility of persecution and it would not be objectively unreasonable for the Applicant to relocate there.

[7] The RAD also found that the Applicant had not established that his right to practice his religion, or to bear witness, was violated solely because he cannot hold public meetings in an attempt to convert cultists.

IV. **Issue**

[8] The Applicant submits the IFA analysis was unreasonable.

[9] Specifically, the Applicant states the RAD erred by requiring him to discontinue holding public meetings as part of his outreach work in the IFA, and that constituted a restriction on his religious freedom.

V. **Standard of Review**

[10] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[11] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the "correct" solution to the problem: *Vavilov* at para 83.

[12] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court

must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at para 125.

[13] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

VI. **Analysis**

A. *IFA principles*

[14] When assessing the viability of a proposed IFA, the RAD must be satisfied on a balance of probabilities that there is no serious possibility of persecution of a claimant in the proposed IFA.

[15] A two-pronged test for establishing an IFA was set out by the Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*]. It reflects the principles previously established in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, (FCA).

[16] First, the decision-maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA, or the Applicant will be

personally subjected to a risk to life or a risk of cruel and unusual treatment or punishment, believed on substantial grounds to exist, in the IFA.

[17] Second, the conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including the personal circumstances of the Applicant, for him to seek refuge there.

[18] For an IFA to be viable, both prongs must be established. The onus is on the Applicant to show that at least one of the two prongs has not been established: *Thirunavukkarasu* at para 13. Failure to meet that onus therefore means the IFA is determinative of the claim for refugee protection.

[19] Whether a proposed IFA is reasonable or not is determined objectively. The threshold for proving objective unreasonableness is very high. Actual and concrete evidence of the existence of conditions that would jeopardize the life and safety of the Applicant in travelling or temporarily relocating to Port Harcourt was required: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 [FCA] at paras 13 and 15.

B. *RAD findings with respect to Prong 1*

[20] In assessing the first prong of the IFA test, the RAD found the Applicant could continue his religious vocation, including outreach activities with cult members, as he had done for over a decade.

[21] The Applicant argues that the RAD's IFA determination under the first prong is predicated on the fact that the Applicant's religious freedom does not include holding public outreach meetings.

[22] I disagree.

[23] The Applicant has reduced the RAD's analysis under the first prong to being "predicated on the fact that the Applicant's religious freedom does not include holding public outreach meetings".

[24] The RAD's analysis is more nuanced than the Applicant states.

[25] Under the subheading "findings with respect to Prong 1" the RAD first addresses how the evidence failed to establish a risk that the agents of persecution had the motivation or interest in the Applicant to locate him in the IFA. The RAD also considered how the Applicant was able to engage in his outreach activities to convert cult members for more than a decade without issue, even when travelling between and residing in other cities.

[26] The RAD noted there had been no evidence of ongoing interest in the Applicant in the five years since the threats occurred, and his wife remained in Nigeria without evidence of contact or threats by anyone since 2016.

[27] The RAD reviewed the transcript of the Applicant's testimony before the RPD. It found that "nowhere does he mention that he plans to continue holding public meetings that lead to the threats from cult members. Instead, his testimony focussed on the theme that the cult network would be after him for his past actions."

[28] The RAD considered the objective evidence that it found failed to reveal that cults would target outsiders based on a historical connection to those who oppose them. The RAD found the objective evidence indicated the bulk of violence took place between those involved in cult activities.

[29] Overall, it appears that the RAD was most persuaded by the lack of demonstrated interest in the Applicant, particularly given the passage of time. Nothing in the Applicant's submissions to the RAD suggested the contrary.

[30] Finally, the Applicant argues, citing *Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813; 90 FTR 182 (FCTD) [*Fosu*] and *Zhang v Canada (Citizenship and Immigration)*, 2009 FC 1198 [*Zhang*] for the proposition that this Court has interpreted religious freedom liberally and that religious persecution can take many forms.

[31] While the foregoing proposition is correct, as noted by Justice Angela Furlanetto in *Antony v. Canada (Citizenship and Immigration)*, 2022 FC 991, at paragraph 20, when these cases are considered in context "both *Zhang* and *Fosu* dealt with circumstances where there was state sanctioned persecution." Here, there is no evidence that the cults engage in state sanctioned

persecution. Nor is the Applicant faced with the prospect of having to stay underground or conceal his activities from authorities.

[32] The RAD's conclusions under Prong 1 were responsive to the submissions it received from the Applicant. The reasons provided are internally coherent and follow a rational chain of analysis. They are justified in relation to the facts and law that constrained the RAD.

[33] I therefore find the RAD's analysis under Prong 1 is reasonable.

C. *RAD findings with respect to Prong 2*

[34] The RAD acknowledged that the right for persons to practice their religion was a fundamental right, and that issue was not in dispute in the appeal.

[35] The RAD noted that many of the Applicant's arguments under this prong had already been dealt with under the first prong of the IFA test.

[36] The RAD disagreed with the Applicant that it would be unreasonable for him to relocate to Port Harcourt because he would continue his religious outreach to cults and therefore would always be at risk. Rather, the RAD was of the view that the evidence was that the Applicant is a Christian and wished to resume his work as a pastor, and that was not compromised by relocation to the IFA.

[37] The RAD found that the objective evidence showed that southern Nigeria has a large Christian population with almost 45% of the population being Christian with various denominations.

[38] The objective evidence was found by the RAD to indicate, “the police continue to attempt to deal with the cult violence in Nigeria. The NDP also notes that the Rivers state, where Porth (*sic*) Harcourt is located, along with a number of others, have signed an anti-cultism bill into law in March 2018 which prescribes the death penalty for any cultist who kills during a cult activity and life imprisonment for any cultist apprehended.”

[39] Specifically, the RAD already had found the Applicant’s right to practice religion, including outreach activities, would not be infringed. The RAD also noted that, apart from his ability to practice religion, the Applicant had not provided any submissions to suggest it would be unduly harsh for him to relocate to Port Harcourt.

[40] With respect to relocating, the RAD noted the Applicant speaks both Bini and English. He also has seventeen years of education, including a university degree. As he and his wife ran a business buying and selling automobiles, the RAD observed that the Applicant has both work experience and resourcefulness to find employment.

[41] The RAD also looked at whether there were any circumstances particular to the Applicant that would make relocation unduly harsh. It found there was no mental health or

medical condition or any other circumstance that would impact the Applicant's ability to travel and relocate to Port Harcourt.

[42] Under this prong, the Applicant again raised *Zhang* and *Fosu* however, the facts of those cases do not support the Applicant's position for the reasons already provided under my Prong 1 analysis.

[43] The Applicant has not claimed he cannot practice his faith as a Christian or as a pastor or that he faces any risks in doing so. It was open to the RAD to disagree with the Applicant's assertion that his religious conviction compels him to do so, when the evidence did not support it and where, as the RAD noted, he failed to provide any evidence of engaging in such activities over the last 5 years.

[44] Once again, the reasons provided by the RAD under Prong 2 are internally coherent and follow a rational chain of analysis. They are justified in relation to the facts and law that constrained the RAD.

[45] I therefore find the RAD's analysis under Prong 2 is reasonable.

VII. **Conclusion**

[46] The Applicant failed to meet his onus to show that at least one of the two prongs had not been established.

[47] For all the foregoing reasons, I find that the RAD did not err in concluding the RPD was correct to find the Applicant had a viable IFA in Port Harcourt.

[48] This application is dismissed.

[49] Neither party posed a question for certification, nor does one arise on these facts.

JUDGMENT in IMM-7796-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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