Federal Court Cour fédérale

Date: 20230202

Docket: IMM-5329-21

Citation: 2023 FC 154

Ottawa, Ontario, February 2, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

EDOGHOGHO DEZI IKPONMWONBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 38 year old citizen of Nigeria. After entering Canada from the United States irregularly on March 2, 2018, she claimed refugee protection on the basis of her fear of members of her common law partner's family. According to the applicant, these individuals sought to harm her because she had refused to undergo female genital mutilation and other traditional rituals after she became pregnant.

[2] The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the applicant's claim in a decision dated November 21, 2019. The RPD found that the applicant's lack of credibility was determinative but, in any event, the applicant had a viable Internal Flight Alternative ("IFA") in Abuja or Port Harcourt.

[3] The applicant appealed this decision to the Refugee Appeal Division ("RAD") of the IRB. In a decision dated July 16, 2021, the RAD dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection. The RAD concluded that the applicant's lack of credibility was determinative. As a result, it was not necessary to address the issue of an IFA.

[4] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") on the basis that the RAD's decision is unreasonable. Specifically, the applicant submits that the RAD fell into reviewable error by: (a) determining unreasonably that affidavits from her mother and her common law partner did not corroborate her account of events in Nigeria; (b) assessing the applicant's credibility unreasonably; (c) assessing unreasonably the significance of the applicant's having returned to Nigeria twice from vacation travels abroad despite her alleged fears; and (d) assessing unreasonably the significance of the applicant's delay in finally leaving Nigeria despite her alleged fears.

[5] I do not agree that the RAD fell into reviewable error in any of these ways. This application for judicial review must, therefore, be dismissed.

[6] The parties agree, as do I, that the decision should be reviewed on a reasonableness standard.

[7] 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances: see *Vavilov* at para 125. At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review: see *Vavilov* at para 13.

[8] The onus is on the applicant to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[9] None of the grounds advanced by the applicant warrant the Court's intervention.

[10] First, the RAD carefully reviewed the affidavits from the applicant's mother and her common law partner. It found that they added nothing to the applicant's narrative because they simply repeated the applicant's main allegations. This was an altogether reasonable

determination. Notably, neither affiant claimed to have independent knowledge of the circumstances giving rise to the applicant's alleged fears.

[11] Second, the applicant contends that in assessing her credibility the RAD failed to recognize that she suffered from Post-Traumatic Stress Disorder ("PTSD"); instead, the RAD placed undue emphasis on a psychologist's report (filed by the applicant) stating only that the applicant's symptoms "suggest" that she is suffering from PTSD. I disagree. The RAD reasonably concluded that the psychologist had not offered a diagnosis. The RAD also found it significant that the narrative of events the applicant had provided to the psychologist (on which the psychologist's assessment was based) differed in at least one highly material way from the narrative she advanced before the RPD. As well, the RAD had determined that the applicant's narrative was not credible in a number of other respects. There is no basis on which to interfere with the RAD's determination that the psychologist's report deserved only limited weight. In any event, even assuming for the sake of argument that the applicant suffers from PTSD, the applicant has failed to establish how this ought to have affected the RAD's assessment of her credibility in the particular circumstances of this case.

[12] The applicant also contends that the RAD failed to apply the IRB Chairperson's *Guideline 4 – Gender Considerations in Proceedings Before the Immigration and Refugee Board* reasonably. However, she has not established any particular respect in which the RAD's approach to her evidence is inconsistent with the guidance found in that document.

[13] Third, the RAD (like the RPD) found that the applicant's having returned to Nigeria twice after travelling to the United States on holiday (first in 2015 and again in 2017) was indicative of a lack of subjective fear. On the applicant's account, her fear of her partner's family first crystalized in January 2013, when she was attacked by someone wielding a metal rod, which had led to her suffering a miscarriage and a fracture to her upper left arm. It was open to the RAD to reject the applicant's explanations for why she returned to Nigeria despite her fears and to find, instead, that the applicant's behaviour was inconsistent with the subjective fear she alleged. The applicant's submissions challenging the RAD's determination effectively ask me to reweigh the evidence considered by the RAD. That is not the role of a court conducting judicial review on a reasonableness standard.

[14] Lastly, it was also open to the RAD to conclude that the applicant's lengthy delay in finally leaving Nigeria was inconsistent with her professed fear of her partner's family. The applicant had left Nigeria for Canada (via the United States) on February 28, 2018. Once again, the applicant is effectively asking me to reweigh the evidence and come to a different conclusion than the RAD did about the significance of the lapse of time between when her fears allegedly first crystalized and when she finally left Nigeria. That is not my role.

[15] For these reasons, the application for judicial review will be dismissed.

[16] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-5329-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5329-21
STYLE OF CAUSE:	EDOGHOGHO DEZI IKPONMWONBA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 10, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	FEBRUARY 2, 2023

APPEARANCES:

Josephat O. Nwabuokei	FOR THE APPLICANT
Monmi Goswami	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Blue House Law Professional Corporation Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT