Federal Court Cour fédérale

Date: 20230217

Docket: IMM-2265-22

Citation: 2023 FC 234

Toronto, Ontario, February 17, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

CHRISTOPHER OGBONNA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] The Applicant seek judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of a Refugee Appeal Division [RAD] rejecting the Applicant's claim for refugee protection. For the following reasons, I will dismiss the Application.

I. Background

[2] The Applicant is a 42-year-old citizen of Nigeria from the city of Lagos. He grew up in a family with six siblings, regularly travelling to a village in Imo state from which his parents both hailed.

[3] As a child, the Applicant's mother informed him that his paternal grandmother was a servant of the family deity at a shrine in their village. In 2000, the elders informed the Applicant's father, that the Applicant had been chosen by the deity to be the next servant of worship [Position] and that the Applicant must live in the shrine to carry out his duties. However, his father refused to allow his son, the Applicant, to do this.

[4] In January 2005, a group of elders attended the family home in his village, where the Applicant and his father were staying at the time. The elders reiterated their demand for the Applicant to assume the Position, and that if he failed to do so, he would "face the consequences of being sacrificed to the gods for disobedience."

[5] After the incident, the Applicant returned home to Lagos, after which he left for South Africa. There, he married a South African citizen with whom he had a child. While there, the Applicant's father died in his sleep in 2006. The Applicant's elder brother died in 2010 in an explosion while he was filling a generator with gas. In 2011, his mother died after a period of depression. The Applicant believed that his mother died due to stress. Around that time, the Applicant's younger sister became ill with an unknown illness, which continues.

[6] One of the Applicant's brothers informed him that upon a visit to the village, the elders told the brother that the deaths of his parents and elder brother, as well as his sister's illness are the consequences of his refusal to accept the Position. The Applicant relocated to the US in 2015, and entered Canada irregularly in November 2017 where he claimed refugee protection.

[7] The RAD upheld the decision of the Refugee Protection Division [RPD] finding that the Applicant had not credibly established that there is a serious possibility that he would be persecuted, or that on a balance of probabilities, he would be harmed by the elders in his village for refusing to accept the Position.

II. Analysis

[8] The only issue to be decided in this judicial review concerns the reasonableness of the findings on the Applicant's fear of persecution. The applicable standard of review is reasonableness, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[1] The Applicant claims that the RAD erred in finding insufficient evidence to support that fear of persecution. He notes that the RPD accepted the Applicant as a credible witness. Furthermore, he states that the testimony cannot be rejected solely due to a lack of evidence, relying on cases including *Maldonado v Canada (Minister of Employment and Immigration)*, (FCA) [1980] 2 FC 302, *Mui v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1020 and *Poshteh v Canada (Minister of Employment and Immigration)*, 2005 FC 1034.

[2] Furthermore, the Applicant notes that he provided sufficient corroborating evidence of his situation, as well as country condition evidence, all of which supported the possibility of his claim. He states that his evidence did not have to be perfect, given the balance of probabilities and burden of proof required (citing *Adjei v Canada (MEI)*, [1989] 2 FC 680 and *Ponniah v Canada (MEI)*, (1991) 13 Imm LR (2d) 241 (FCA)). He argued that the Board was not sensitive to the fact that he had left Nigeria in 2005 and thus was limited in what he was able to provide. He also noted that at his oral hearing before the RPD, the Board never mentioned to him what type of further evidence should or could have been produced.

[3] Ultimately, the Applicant argues that the RAD failed to provide a valid reason to doubt his sworn testimony that he would be harmed if returned to Nigeria, and that to expect further corroborative evidence is erroneous, referencing various sections of a Response to Information request contained in the national documentation package for Nigeria.

[4] I am not persuaded that there was any error in the RAD's analysis, which would allow this Court to grant the judicial review. The RAD provided responsive justification for its conclusions based on the evidence before it, including the fact that the Applicant resided in Lagos for eight months after he was threatened with no consequences that occurred during this period. Furthermore, there was no objective evidence that the elders had taken any steps to carry out their threats.

[5] To the extent that the Applicant inferred that there was procedural unfairness in failing to specify what documentation could or should have been provided, the burden is always on the

claimant to establish his claim. Furthermore, procedural fairness arguments should be raised at the earliest opportunity (*Hennessey v Canada*, 2016 FCA 180 at para 21). Here, the Applicant did not raise any procedural fairness arguments on appeal before the RAD and only briefly argued procedural fairness in his oral submissions before this Court, without elaborating, and having not mentioned it in his written arguments.

[6] Turning to the primary arguments raised in a timely manner in the written materials for this Application, I note that the presumption of truthfulness as set out in the cases on which the Applicant relies, is not an absolute one. For instance, it is not applied to all inferences that the Applicant might draw from the circumstances that has befallen him. Here, the country documentation — as Counsel for the Applicant conceded at the hearing — was very mixed regarding the harm faced when refusing to accept hereditary positions in Nigeria. As the tribunal pointed out, the Applicant did not establish that he would be amongst those who would face harm given what had occurred to him, and based on the evidence in the country condition reports.

[7] It is not this Court's job to reassess the evidence and place its weight on that which favours the Applicant's position, but rather to evaluate whether it was open to the tribunal to have based its reasons on evidence in a justifiable, transparent and intelligible manner. Here, the RAD did just that. Furthermore, it reasonably pointed out that the Applicant had not established that the cultural practice posed a threat to his life, that he had sought state protection, or that such state protection would be unavailable.

[8] It was further open to the RAD to question the credibility of a well-founded objective fear of persecution when, before the Applicant left, he had spent eight months continuing to live at his home in Lagos post-threat, in addition to the fact that there was no evidence of the alleged agents of persecution carrying out their threats over the nearly two decades since that time.

[9] The Applicant is correct that the RAD accepted he was credible in his account that he was elected to serve in the Position, and that he himself held a subjective fear regarding the actions the elders in the village would take. However, I find that it was also open to the RAD to find that the Applicant had not credibly established on an objective basis, that there was a serious possibility that he would be persecuted on a balance of probabilities.

[10] With the absence of any evidence that the elders had taken steps to enforce their threats, the Applicant's and other's conjecture about the reasons for the death and illness of family members without any objective links to those elders is not enough to establish a serious possibility of persecution. As relied on in *Hussin v Canada (Citizenship and Immigration)*, 2022 FC 290, Justice McHaffie's comments in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799:

> [25] The Olusolas also argue that the "presumption of truth" required the RAD to accept Ms. Olusola's statement that the police were pursuing her, even in the absence of corroborative evidence: *Maldonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (CA) at p 305. However, the *Maldonado* presumption is simply that a sworn witness is telling the truth. It is not a presumption that everything the witness believes to be true, but has no direct knowledge of, is actually true. Ms. Olusola had no personal knowledge of facts that would establish the Nigerian police's ongoing interest in pursuing her. She had indirect knowledge from her husband that the police had questioned him about her whereabouts, and that there had been no

> subsequent attempts by the police to find her. While she may have truthfully believed that the police were pursuing her, the *Maldonado* presumption does not require the RAD to accept this as objectively true.

[11] In finding that there is no serious possibility or reasonable chance of persecution, the tribunal is entitled to give more weight to the documentary evidence, even if it finds the Applicant to be trustworthy and credible (*JM v Canada (Minister of Citizenship and Immigration)*, 2015 FC 598 at para 66). As Justice Walker recently held in *Salem v Canada (Minister of Citizenship and Immigration)*, 2023 FC 195, "[a] refugee claimant bears the onus of establishing, on a balance of probabilities, their subjective fear of persecution and the objective basis for that fear".

[12] Here, the RAD gave a clear explanation for finding that the Applicant had failed to establish that his fears would lead to persecution on even the low threshold required (see, in particular, paragraphs 20-24 of the Decision).

III. Conclusion

[13] While trite to say — but bears repeating here since it is precisely what is being requested in this case — the role of the Court in judicial review is not to reweigh the evidence to arrive at the outcome that the Applicant would like. The tribunal's cogent and transparent rationale was entirely justifiable in light of the factual context, the evidence, and the law, and thus reasonable. The Application for Judicial Review is accordingly dismissed. The Parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in file IMM-2265-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. No questions for certification were argued and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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