Federal Court Cour fédérale

Date: 202300302

Docket: IMM-3646-22

Citation: 2023 FC 293

Ottawa, Ontario, March 2, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

OSAGIE LOUIS OKODUGHA
JULIET EDESIRI OKODUGHA
OSAWONAMEN FAVOUR OKODUGHA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision of the Refugee Appeal Division [RAD] dismissing their appeal of the decision of the Refugee Protection Division [RPD] dismissing their claim for protection.

[2] The Applicants, Osagie Louis Okodugha (Principal Applicant), Juliet Edesiri Okodugha (Associate Applicant), and their minor daughter Osawonamen Favour Okodugha (Minor Applicant), are citizens of Nigeria. They fear that the Associate Applicant's kinsmen will force the Associate Applicant and the Minor Applicant to undergo female genital mutilation (FGM).

[3] Both the RAD and the RPD concluded that the Applicants had a viable Internal Flight Alternative [IFA] within Nigeria, in Lagos or Port Harcourt. The Applicants submit that the RAD's decision is unreasonable because it failed to properly assess the risks they faced; in particular, that they had faced threats and the Associate Applicant was physically attacked shortly before they fled Nigeria. They also claim the RAD did not consider relevant evidence in finding that they could move to the IFA locations.

[4] For the reasons that follow, this application will be dismissed.

I. Background

[5] The Applicants claimed refugee status because of their fear that the Associate Applicant and their daughter (the Minor Applicant) would be forced to undergo FGM if returned to Nigeria. They claim that, as part of their religious beliefs, the Associate Applicant's kinsmen demanded that she undergo FGM before marriage but she refused to do so and her parents supported her decision. At some point before she became an adult, the Associate Applicant moved away from her ancestral home, in order to avoid undergoing FGM.

[6] By 2010, the Associate Applicant was living in Lagos and in a relationship with the Principal Applicant. She gave birth to the Minor Applicant that same year. They kept this news from the Associate Applicant's family, fearing repercussions from her kinsmen because the Principal and Associate Applicants were not married at the time.

[7] The Principal and Associate Applicant married on February 6, 2016. They kept the marriage secret from the Associate Applicant's kinsmen, informing only her father, who had sought to protect her from FGM. The Associate Applicant's kinsmen learned of the marriage and summoned the Principal Applicant to meet them, warning him that certain misfortune would occur if he did not take the Associate Applicant to undergo a traditional marriage ceremony and initiation, including FGM. The Principal Applicant met with the kinsmen several times, pleading with them for more time to comply with the demand that his wife undergo FGM.

[8] In June 2017, the Applicants travelled to the Principal Applicant's family home in Benin City, Nigeria. The Associate Applicant's kinsmen came to the Principal Applicant's family home and demanded he divorce the Associate Applicant because she had not undergone FGM. A fight ensued in which the Associate Applicant was assaulted and left with several injuries, including deep cuts on her leg and face. The Associate Applicant received treatment for these injuries at a hospital in Benin City.

[9] Following this, the Applicants travelled to the United States on a visitor's visa and, a few months later, they travelled to Canada and claimed refugee protection. In their Basis of Claim [BOC] forms, the Applicants claimed they had not sought asylum in any other country. The

Minister intervened in this matter, providing evidence that the Applicants did seek asylum in the United States, arguing this ought to negatively impact their credibility, and that an IFA ought to be considered in any event. The Applicants acknowledged the omission in an addendum to the Principal Applicant's BOC narrative, explaining that they had feared deportation to the United States, which is why they did not initially disclose the truth.

[10] In its decision, the RPD focused on the Applicants' failure to seek state protection in Nigeria. It accepted their claims as credible and did not deal with the Minister's arguments regarding their prior asylum claim in the United States. The RPD dismissed their claims because they did not seek the protection of Nigerian authorities and thus had not rebutted the presumption of state protection.

[11] The RAD upheld the RPD's dismissal of the claims, but on different grounds. It gave the Applicants notice of its intention to consider whether they had an IFA in Lagos or Port Harcourt, and the Applicants made submissions to the RAD on this question.

[12] The RAD's review of the documentary evidence indicated that while FGM is illegal throughout most of Nigeria, the practice is considered a family or social issue and so the criminal ban is not enforced. The RAD found the evidence showed that the consequences for failing to submit to FGM were generally "relatively minor, including social pressure, exclusion, mocking, stigma or ostracization from the community."

[13] The RAD then turned to a consideration of the two prongs of the IFA test. Under the first prong of the IFA test, the RAD found the Applicants failed to establish their agents of persecution had the means and motivation to locate them in the proposed IFAs of Port Harcourt and Lagos. The RAD noted the Applicants could not identify any individual specifically seeking to harm them, nor describe in detail the size or location of the Associate Applicant's kinsmen, other than to say that they were a large group and located everywhere in Nigeria. The RAD noted that, despite the kinsmen's demands that the Associate Applicant undergo FGM, the Associate Applicant was able to avoid the kinsmen for about 20 years by moving out of her home state.

[14] The RAD found the consequences for women who refuse FGM did not amount to a possibility of persecution, danger of torture, risk to life, or cruel and unusual treatment. Most women who refuse FGM faced no consequences aside from criticism, mocking, stigma, or ostracization. In rare instances, they may experience assault by family or community members but this was only noted to occur in very isolated rural communities, which Lagos and Port Harcourt are not. FGM is also illegal in the proposed IFAs, but the RAD found that the evidence indicated it was unlikely to be prosecuted. However, the RAD also found that there was no evidence that the sort of assault the Associate Applicant underwent when she was attacked by the kinsmen would not be prosecuted or that state protection would be unavailable for such an assault.

[15] The RAD noted the only "incident" the Associate Applicant faced during 20 years of hiding in Lagos was the assault in June 2017. This assault happened right after a meeting with the Associate Applicant's kinsmen and was likely in direct response to the Applicants' refusal to

comply with the demand that the Associate Applicant undergo FGM. The RAD found it unlikely any further action would be taken against the Applicants outside the kinsmen's home state, provided the Applicants do not have further contact with the kinsmen.

[16] The RAD considered supporting affidavits and letters from the Applicants' family and a friend, but found they did not provide any details regarding any ongoing and specific threat of persecution. The only evidence of ongoing threats were the two threat letters from an individual, indicating the Applicants had been located in the United States, were "marked" as enemies, and that the agents of persecution were coming for the Applicants. The Applicants testified that these threat letters were delivered to their family home and forwarded to them. The RAD noted the letters were not posted directly to the Applicants, and thus did not support a finding that the Applicants had been located by the agents of persecution. Further, while they indicated the kinsmen were pursuing the Applicants, the letters were insufficient to overcome the NDP evidence which was "not reconcilable with the notion of any harm that exceeds social ostracization outside of very isolated and rural locations."

[17] On the second prong of the IFA test, the RAD found it would not be unreasonable for the Applicants to relocate to the proposed IFAs in their circumstances. The RAD found, based on the objective country evidence, that the Applicants would not face undue hardship based on the availability of transportation, language barriers, access to education and employment, accommodation, religion, indigeneship, the availability of medical and mental healthcare, and the crime rate. The RAD noted the Principal and Associate Applicants had completed university-level education and had significant work experience that could help them find work despite

Nigeria's high unemployment rate. The RAD also noted the Associate Applicant had managed to find accommodation in Lagos previously.

[18] Based on this analysis, the RAD dismissed the Applicants' appeal. They seek judicial review of this decision.

II. Issues and Standard of Review

[19] The only issue is whether the RAD's IFA finding is reasonable.

[20] The standard of review that applies to the RAD's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*].

[21] In summary, under the *Vavilov* framework, 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" (*Vavilov* at para 85). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (*Vavilov* at para 95). The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

III. Analysis

[22] The test for an IFA has two prongs:

a) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists; and

b) The conditions in that part of the country (the IFA) must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimants, for them to seek refuge there.

Rasaratnam v Canada (MEI), 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) at 710; *Thirunavukkarasu v Canada (MEI)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA) at 596-598.

[23] The Applicants claim that the RAD erred on both branches of the test, but I find the determinative issue to be whether its treatment of the first branch is reasonable.

[24] I am not persuaded that any of the Applicant's arguments regarding the RAD's assessment of the second element are sufficient to make the decision unreasonable, in particular given that the threshold for demonstrating objective unreasonableness of the IFA is very high and "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to" the area where a potential IFA has been identified… (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) [*Ranganathan*] at para 15. This must be supported by "actual and concrete evidence of such conditions" (*Ranganathan* at para 15).

[25] In my view, the RAD's assessment of the elements of the second prong of the test is reasonable, because it reflects the evidence (including the Applicant's long period living in Lagos without incident or difficulty), and the RAD explained its reasoning on each point in detail.

[26] Turning to the RAD's assessment of the first branch of the test, the Applicants argue that this aspect of the decision is flawed because it wrongly put too much emphasis on the fact that the Associate Applicant managed to avoid her kinsmen for 20 years while she lived in Lagos. They point out that her risks crystallized only in the final year before they fled Nigeria, once the kinsmen found out that she married the Principal Applicant. They submit that the evidence shows that the tribal traditions demand that a woman undergo FGM prior to marriage, and so she did not face any real threats during the earlier period.

[27] The Applicants also note that the pressure mounted on the Associate Applicant and the Principal Applicant once the kinsmen learned of their marriage. Following this, the kinsmen summoned the Principal Applicant to meet the headmen of the tribe, and told him that he would face grave consequences if he did not bring the Associate Applicant to them so that she could undergo FGM. Later, there was a fight with the kinsmen when the Applicants refused to comply with their demands, and the Associate Applicant was seriously injured and ended up in hospital. The Applicants contend that the RAD failed to take into account this sequence of events in its assessment of the risks they faced and the motivation of the kinsmen.

[28] Additionally, the Applicants submit that the RAD was mistaken in stating that they had been safe in Lagos, when in fact they had been discovered there and so it was not a safe place of refuge for them. Furthermore, Port Harcourt was in the neighbouring state and so it too would not be a safe haven if they were forced to return to Nigeria.

[29] Based on the cumulative effect of these errors, the Applicants assert that the RAD's decision is unreasonable and should be overturned.

[30] I am not persuaded.

[31] First, the RAD reasonably considered the Associate Applicant's evidence that long before her marriage, she and her family feared that she would be forced to undergo FGM and so she moved to Lagos and remained apart from the kinsmen. The fact that she lived for 20 years in Lagos without encountering any of her kinsmen is a relevant consideration in assessing whether Lagos was an IFA.

[32] The RAD acknowledged that the Principal Applicant had been summoned to meet with the kinsmen and faced pressure to bring the Associate Applicant to them so that she could undergo FGM. It also noted that a fight occurred and the Associate Applicant was injured, although it incorrectly stated that this occurred in Lagos. I agree with the Applicants that the evidence shows that this did not occur in Lagos, but rather in Benin City, where the Principal Applicant's family lived. However, I am unable to accept the Applicants' argument that the RAD's error as to the location is significant, because the facts do not support their contention

that the kinsmen had discovered them in Lagos. An assault that occurred in Benin City cannot reasonably support a claim of danger in Lagos, given that the Applicants had lived there without difficulty for two decades.

[33] The evidence is that the Applicants were living in Lagos when the Principal Applicant was summoned to meet the kinsmen, but their testimony was vague as to how they were contacted. Other evidence indicates that they believed the kinsmen did not know where they were located. Thus, for example, the threatening letters they received after the fight were not sent directly to them, but rather were addressed to the Principal Applicant's family. The Associate Applicant's testimony was that the letters were sent there because her assailants did not know where she was.

[34] The RAD's decision does not need to be perfect; it only needs to be reasonable, meaning that it is based on the key facts, assessed within the applicable legal framework, and that it reflects a coherent and consistent line of reasoning that justifies the result. I am satisfied that the RAD's analysis meets this test. The Applicants failed to show that the RAD did not consider any important evidence showing that the kinsmen had the means and motivation to track them down in Lagos or Port Harcourt, and thus the RAD's finding on the first branch of the IFA test is reasonable. As noted earlier, I am also satisfied that the RAD's findings on the second branch of the test are reasonable.

[35] For all of these reasons, the application for judicial review will be dismissed.

[36] There is no question of general importance for certification.

JUDGMENT in IMM-3646-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3646-22
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