

Federal Court



Cour fédérale

Date: 20230306

Docket: IMM-3267-22

Citation: 2023 FC 300

Ottawa, Ontario, March 6, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**UDUAK AVINASH BHAVNANI
SUNAINA AVINASH BHAVNANI
AVINASH SUNDER BHAVNANI
VEDA AVINASH BHAVNANI
KARAN AVINASH BHAVNANI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Principal Applicant, Uduak Bhavnani, is a citizen of Nigeria. Her spouse (SB), their two adult children and one minor child (collectively, the Associate Applicants) are citizens of India. The Applicants together seek judicial review of a decision of the Refugee Appeal Division (RAD) dated March 22, 2022, confirming the refusal of their refugee claim by the Refugee Protection Division (RPD). The RAD found that the Principal Applicant has a viable internal

flight alternative (IFA) in Abuja, Nigeria, and that she and the Associate Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

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

I. Background

[3] The Principal Applicant fears a man known as Bemuda whom she states is a leader in the Black Axe cult and a member of the House of Representatives in Nigeria. The Associate Applicant, SB, fears persecution and harm in India from the Black Axe cult and members of his family who disapprove of his interracial and interreligious marriage to the Principal Applicant and his conversion from Hinduism to Christianity. The three children fear persecution and harm in India because of SB's family and their Indian/Nigerian ancestry.

[4] The Principal Applicant first encountered Bemuda in 1999 on a university campus when he made advances towards her and asked her for a date. Later the same year, she married SB. In 2000, the Principal Applicant was attacked by Bemuda and other men. She and SB moved to Lagos the next day, where they settled and raised their family.

[5] In March 2018, the Principal Applicant encountered Bemuda by chance at a restaurant in Lagos. He made threats against the Applicants and, in April 2018, organized an attack during which their vehicle was damaged. Previously, there had been no contact between the Principal Applicant and Bemuda during the 18-year period following her move to Lagos.

[6] Both families disapprove of the marriage of the Principal Applicant and SB and have disowned the couple.

[7] The Applicants left Nigeria in May 2018 destined for the United States. They travelled to Canada in June 2018 and made refugee claims upon arrival.

[8] In a decision dated November 17, 2021, the RPD rejected the Applicants' claims for refugee protection, finding that the Principal Applicant has an IFA in Abuja and that the Associate Applicants have not established their allegations of risk on an objective basis.

[9] On appeal to the RAD, the Applicants argued that the RPD made unreasonable credibility findings and erred in concluding that the Principal Applicant has a viable IFA in Nigeria and that the Associate Applicants had not established their risk in India. The Applicants submitted no new evidence on appeal and did not request a hearing.

II. Decision under Review

[10] The RAD confirmed the RPD's credibility findings as they bear on the IFA assessment. Specifically, the RAD adopted the RPD's conclusion that Bemuda has been suspended indefinitely from the Black Axe cult and that he had been twice defeated in bids for a seat in the House of Assembly, despite the Principal Applicant's statements in her Basis of Claim form to the contrary. Except on this point and except where the Applicants' evidence was based on speculation or inference, the RAD accepted their evidence as credible.

[11] The RAD then assessed the availability of an IFA for the Principal Applicant and the Associate Applicants' fears of persecution and harm in India. The panel found:

1. The RPD did not err in its assessment of the first prong of the IFA test. A period of 18 years passed without the Principal Applicant encountering Bemuda while she lived openly in Lagos working as a lawyer, and while her spouse owned and operated a business in the city. During that time, Bemuda had significant connections to Lagos and yet made no contact with her. There was a brief renewal of interest by Bemuda in 2018 but he has not attempted to locate her since.
2. The lack of contact for 18 years and the absence of evidence of any attempt by Bemuda to inquire about or locate the Applicants after 2018 leads to the conclusion that he is not motivated to seek out and harm the Principal Applicant should she return and settle in Abuja.
3. The Applicants raised no arguments on appeal regarding the RPD's assessment of the second prong of the IFA test. The RPD comprehensively analysed the Principal Applicant's circumstances to determine whether it would be unreasonable for her to relocate to Abuja. The RPD considered her gender, education, employment history, age, marital status, ethnicity, languages spoken and medical conditions. The RPD panel also considered the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, and concluded she will not face hardship in travelling to or staying in Abuja.
4. SB's family disapproved of his marriage and was angered by his conversion to Christianity but for 20 years have shown no indication that they wish to or are capable of escalating their disapproval into the level of serious harm that constitutes persecution or section 97(1) harm.
5. The Applicants' argument that there may be other family members who will stop at nothing to reverse what SB did is speculative and not supported by the evidence.
6. With respect to the allegations of risk to the Associate Applicants in India at the hands of the Black Axe cult, the evidence did not establish that the cult had any presence in India or that it would be able to persecute or harm them in India.
7. The discrimination and risk to the children based on their profile as persons of mixed Indian and Nigerian ancestry did not rise to the level of persecution.

[12] In summary, the RAD concluded that the Principal Applicant has a viable IFA in Abuja and that the Associate Applicants had not established that they face a serious possibility of

persecution or, on a balance of probabilities, a risk of death, harm or punishment in India. As a result, the RAD dismissed the appeal.

III. Analysis

[13] The RAD's reasons and conclusions regarding the availability of an IFA in Nigeria for the Principal Applicant and its assessment of the evidence in support of the Associate Applicants' claims are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

A viable IFA for the Principal Applicant in Abuja

[14] In determining whether a viable IFA exists for a refugee claimant, the RAD must be satisfied that (1) the claimant will not be subject to a serious possibility of persecution or to a section 97 danger or risk in the proposed IFA; and (2) in all the circumstances, including the particular circumstances of the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 595–597). Once the issue of an IFA

is in play, the claimant bears the onus of establishing that they do not have a viable IFA (*Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1333 at para 16).

[15] The Applicants make a number of submissions regarding the RAD's assessment of the first prong of the IFA test and, despite not contesting the second prong on appeal, now do so and raises a series of new arguments.

[16] The Applicants' arguments regarding the first prong of the IFA test are not persuasive.

[17] First, the Applicants submit that Bemuda is still a cult member and that his suspension does not reduce his ability to kill and maim. In their opinion, the suspension in fact makes him more dangerous. The RAD addressed this argument in its decision as part of its analysis of the means and motivation of Bemuda to find the Principal Applicant and I find no reviewable error in its analysis. The Applicants' argument of increased danger is speculative and does not undermine the RAD's analysis of motivation.

[18] The Applicants also submit that the RAD has effectively required them to explain why Bemuda did not look for the Principal Applicant for 18 years. I do not agree. The RAD asked for no explanation of Bemuda's apparent disinterest during those years. The panel found on the facts that there had been no contact, a finding the Applicants do not contest, and concluded that the long period of inactivity indicates a lack of motivation. I find that the RAD's conclusion is reasonable.

[19] The Applicants argue that the 2018 meeting and Bemuda's subsequent attack denote a renewed interest on his part to find and harm the Principal Applicant. Again, the RAD addressed the 2018 incidents. The panel concluded that the meeting in a restaurant followed by the motor vehicle incident do not indicate that Bemuda has a continued and present motivation to locate the Principal Applicant in Abuja. I find it was open to the RAD to arrive at its conclusion even though the Applicants contest it vigorously. The 2018 incidents occurred after a chance encounter and were not the result of a search by Bemuda. They do not contradict the 18-year lapse of interest or remedy the absence of evidence of recurring attempts by Bemuda to find the Principal Applicant in the five years since 2018.

[20] The RAD did not ignore evidence in the record, including the statements and police record produced by the Applicants. The panel acknowledged that the documents corroborate the Principal Applicant's account of her encounters with Bemuda but found that they do not address his means or motivation to track her should she return to Nigeria.

[21] I find no error in the RAD's treatment of the second prong of the IFA test. In the absence of submissions from the Applicants, the panel confirmed the RPD's analysis, citing its comprehensive scope. The Applicants' current arguments must be considered against that backdrop, as this proceeding is a review of the decision made by the RAD based on the record and submissions before it. It is not the Court's function to consider new issues that were not raised during the RAD appeal (*Xiao v Canada (Citizenship and Immigration)*, 2021 FC 386 at para 43 (*Xiao*)).

[22] The Applicants now point to a series of news articles setting out dangerous incidents in Nigeria but offer no explanation as to how the information directly impacts the Principal Applicant's relocation to Abuja.

[23] The Applicants also argue that the All Progressives Congress Party, of which Bemuda is a member, hold national meetings in Abuja and that those meetings alone are sufficient to render Abuja an unreasonable IFA. However, this argument and evidence was not before the RAD. Again, a new argument should not be raised for the first time on judicial review (*Xiao* at para 43; see also *Owolabi v Canada (Citizenship and Immigration)*, 2021 FC 2 at para 52).

[24] In summary, I find no reviewable error in the RAD's assessment and conclusion of the availability of a viable IFA for the Principal Applicant in Abuja, Nigeria.

Associate Applicants - serious possibility of persecution or harm in India

[25] The Associate Applicants submit that the RAD misapprehended the core aspect of their claim. In addition to being ostracized by SB's family, the Associate Applicants face persecution, discrimination and a threat to their lives as members of a religious minority and, for the Associate Applicants other than SB, discrimination as children of Indian and Nigerian parents.

[26] I am not persuaded by the Associate Applicants' submissions for three reasons.

[27] First, SB's family disapproves of his marriage and his religious conversion but have not threatened to harm him in the past, nor have they indicated an intention to do so in the future. The RAD found that the actions of SB's family in disowning him and requiring him to leave the family home do not present a risk to his life or a risk of serious harm within the meaning of section 97(1) of the *IRPA*. There is also no indication or evidence that the family has harmed or threatened SB's children. The submission that there may be remaining family members who will stop at nothing to reverse SB's actions is speculative. I find that it was open to the RAD to conclude that the Associate Applicants have not established the objective basis of their fear of harm from SB's family.

[28] Second, the RAD reasonably reviewed the alleged risks to the Associate Applicants in India at the hands of the Black Axe cult and the discrimination the children face as persons of mixed Indian and Nigerian ancestry. The Applicants' argument that the Associate Applicants would be recognized as foreigners in India, and in Abuja, does not speak to the issue of persecution or harm as opposed to discrimination.

[29] Third, the RAD did not engage in a selective reading of the documentary evidence. The panel addressed the Applicants' evidence and arguments and explained its reasons for refusing the Associate Applicants' claims. In many respects, the Applicants' submissions on judicial review are a request to the Court to reweigh the evidence and to accept the Applicants' inferences from that evidence. Despite the very able arguments of their counsel, the Applicants have not established any error in the RAD's analysis and conclusions regarding the Associate Applicants' claims that warrants the Court's intervention.

IV. Conclusion

[30] In summary, the RAD's finding of a viable IFA for the Principal Applicant in Abuja, Nigeria is reasonable in light of the evidence and applicable law. The RAD's assessment of the Associate Applicants' risks of persecution or serious harm in India are similarly reasonable. The RAD analysed each component of the Applicants' refugee claims in a clear and comprehensive manner and its conclusions are justified on the evidence, including the objective evidence in the National Documentation Package. As a result, the application will be dismissed.

[31] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3267-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3267-22

STYLE OF CAUSE: UDUAK AVINASH BHAVNANI, SUNAINA
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AVINASH BHAVNANI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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