

Federal Court



Cour fédérale

Date: 20230308

Docket: IMM-1656-22

Citation: 2023 FC 305

Ottawa, Ontario, March 8, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

KOFI KODOM

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Kofi Kodom, citizen of Ghana, seeks judicial review of the Refugee Appeal Division [RAD] that confirmed the Refugee Protection Division [RPD] that found Mr. Kodom was neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The RAD, as relevant to this proceeding, accepted paragraph 19 of Mr. Kodom's new affidavit that affirmed his uncle and people connected to him were still asking for his whereabouts.

[3] Essentially, the RAD found Mr. Kodom had an Internal Flight Alternative [IFA] in Accra, Ghana. In regards to the first of the IFA two prong analysis, the RAD found that (1) on a balance of probabilities, Mr. Kodom's uncle did not have the ability to employ the police or government official to search for and harm him outside the town that he (the uncle) is chief of; and (2) Mr. Kodom had not established, on a balance of probabilities, that he will be found and harmed in Accra by his uncle or his uncle associates. The RAD noted that Mr. Kodom had not challenged the RPD's analysis on the second prong of the IFA test and the RAD saw no error with it.

[4] In particular, the RAD found Mr. Kodom had adduced insufficient evidence to support his claim that his uncle would come to know of his whereabouts through various ways and through the grapevine that connects his hometown to Accra. The RAD noted in particular that Mr. Kodom had testified that his uncle did not know Mr. Kodom was in Canada since 2017, despite his connections and influence and despite the fact that (1) Mr. Kodom maintained contact with his son's mother and his sister in his hometown; and (2) his uncle visits his son's mother and his sister.

[5] Before the Court, Mr. Kodom challenges the RAD's conclusion on the first prong of the IFA analysis. He submits that the RAD committed a reviewable error as it determined that the

suggested IFA location was safe and reasonable despite having acknowledged that his son's mother and his sister continue to receive visits from the agent of persecution. Mr. Kodom alleges that this determination is egregiously erroneous and unreasonable. Mr. Kodom argues that the fact his uncle enquires about his whereabouts to his family will necessarily result in him having to live in hiding if in Accra, in him not being able to share his location information with his family and with him thus having then to cease all communication with his family. Mr. Kodom relies on the Court's decision in *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 [*Ali*] for this proposition.

[6] The Minister responds that the RAD decision is reasonable and that the Court's decision in *Ali* is here distinguishable on the facts.

[7] For the reasons that follow, I will dismiss the Application.

II. Decision

[8] The parties agree that the Court must review the RAD's findings regarding the existence of a viable IFA against the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh*] at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11). The role of the Court is thus to examine the reasons given by the administrative decision maker and to 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). The Court must examine whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99).

[9] It is not disputed that the underlying principle to an IFA analysis is that international protection can only be provided if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. The onus rests upon the applicant to prove, on the balance of probabilities, that he risks a serious possibility of persecution throughout his entire country of origin (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), FCJ No 1172 (FCA) at para 2; *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), FCJ No 2118 (FCA) at para 13; *Emezieke v Canada (Citizenship and Immigration)*, 2014 FC 922 at para 28; *Nunez Mercado v Canada (Minister of Citizenship and Immigration)*, 2011 FC 792 at para 12).

[10] The test for determining whether a viable IFA exists is two-pronged. First, the RAD must be satisfied on a balance of probabilities that there is no serious possibility that the applicant will be persecuted in the proposed IFA. Second, the conditions in the proposed IFA must be such that it is not unreasonable for the applicant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), FCJ No 1256 (FCA) at para 13).

[11] Mr. Kodom has not challenged the second prong of the IFA analysis before the RAD and it is consequently not before the Court. The sole issue before the Court is whether the RAD could reasonably conclude that Mr. Kodom had adduced insufficient evidence to support his claim that his uncle would come to know of his whereabouts, despite having acknowledged that the uncle visits Mr. Kodom’s family.

[12] Mr. Kodom has not convinced me that the RAD's conclusion is unreasonable. Notably, Mr. Kodom did not argue before the RAD, and there is no evidence on the record to support the proposition that, once in Accra, he would be unable to share his location information with his family, that he would have to hide, or that he would have to cease all communication with them.

[13] In *Shakil Ali v Canada (Citizenship and Immigration)*, 2023 FC 156, the Court stated that: "Relying on cases such as *Ali v Canada (Citizenship and Immigration)*, 2020 FC 93, and *AB v Canada (Citizenship and Immigration)*, 2020 FC 915, the applicants also argue that if they return to India, they will need to withhold their contact information from family and friends, which amounts to living in hiding. The holdings in these cases are fact-specific and cannot be generalized to every IFA situation: *Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at paragraph 15. Moreover, such an assertion must be assessed based on the facts found by the RAD, not on the facts alleged by the applicants: *Pastrana Acosta c Canada (Citoyenneté et Immigration)*, 2023 CF 139 at paragraphs 6–9".

[14] Mr. Kodom's situation and evidence is factual distinctively different than the one outlined in the *Ali* decision he relied on. There is here no evidence that Mr. Kodom's family would be threatened in disclosing his location, and notably there is likewise no evidence that once in Accra, Mr. Kodom would be unable to share his location information with his family, or again that he would have to cease all communication with them.

[15] Given record and the evidence before the RAD in in this case, its decision bears the hallmarks of reasonableness - justification, transparency and intelligibility. I will consequently dismiss the Application for judicial review.

JUDGMENT in IMM-1656-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1656-22

STYLE OF CAUSE: KOFI KODOM v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUÉBEC

DATE OF HEARING: FEBRUARY 23, 2023

JUDGMENT AND REASONS: ST-LOUIS J.

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