Federal Court  Cour fédérale

Date: 20230405

Docket: IMM-2895-21

Citation: 2023 FC 488

Ottawa, Ontario, April 5, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OLUSOLA AKINBOLA GLOVER
OLUWAFUNKE MARY GLOVER
OLUWAFIREFUNMI SAMUEL GLOVER (MINOR)
OLUWAFEYIFUNMI ISRAEL GLOVER (MINOR)
OLUWAFAYOFUNMI PRINCESS GLOVER (MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision dated April 7, 2021, by a Senior Immigration Officer (the "Officer") with Immigration, Refugees and Citizenship Canada ("IRCC"). The Officer refused the Applicants' application for permanent residence on

humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer found that upon considering the Applicants' establishment in Canada, the hardship they would face upon returning to Nigeria, and the best interests of their children ("BIOC"), an H&C exemption is not warranted in their case.

[3] The Applicants submit that the Officer granted an unreasonable amount of weight to the reasons of the Refugee Protection Division ("RPD") in refusing the Applicants' previous refugee claim and engaged in an unreasonable assessment of the BIOC factor.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicants*

[5] Olusola Akinbola Glover (the "Principal Applicant"), Oluwafunke Mary Glover (the "Associate Applicant") and their three children (collectively the "Applicants") are citizens of Nigeria.

[6] The Applicants entered Canada on May 1, 2018. They made a refugee claim, which was refused by the RPD in a decision dated March 26, 2019, on the basis that the Applicants had a

vailable Internal Flight Alternative ("IFA") in Ibadan and Port Harcourt, Nigeria. The Refugee Appeal Division denied the appeal of the RPD's decision on January 17, 2020.

[7] The Principal Applicant is employed as a driver with Uber Canada. The Associate Applicant has been attending the Peel Adult Learning Centre since November 2018 and working with Acclaim Health since October 2020. The Applicants are financially self-sufficient and involved in their local church. Their three children attend school and have friends in Canada.

[8] The Applicants claim that they were forced to flee Nigeria to seek protection from the Principal Applicant's family members and community, who were forcing him to assume the role of Chief Priest of his village. The Applicants claim that this role would involve subjecting their daughter to female genital mutilation ("FGM") and their son being taken away to undergo family rituals to appease the community. The Principal and Associate Applicants assert that they left their jobs in order to seek protection and therefore have no employment or home in Nigeria.

[9] In submissions provided in support of their H&C application, the Applicants noted that the RPD found their narrative to be credible when assessing their refugee claim and the claim was rejected based on an available IFA. They further noted that the Jurisprudential Guide ("JG"), which the RPD relied on in their IFA assessment, has not been revoked due to the drastically changed situation in Nigeria. The Applicants claim that they have significant positive establishment in Canada, they would face hardship upon removal to Nigeria, and it would be in the BIOC for them to remain in Canada.

B. *Decision Under Review*

[10] In a decision dated April 7, 2021, the Officer refused the Applicants' permanent residence application on H&C grounds.

(1) Establishment

[11] The Officer accepted that the Applicants are good tenants in their rented apartment, that the Principal and Associate Applicants are employed, and that they are financially self-sufficient. The Officer further noted that the Applicants have established a strong social network through their involvement in church. This is supported by multiple photographs showing the Applicants with their friends and participating in various church activities, and by letters of support by their friends, attesting to their good character and involvement. The Officer granted positive weight to the Applicants' establishment in Canada.

(2) Hardship

[12] The Officer relied significantly on the RPD's assessment of their refugee claim, which was refused based on an available IFA in Ibadan and Port Harcourt. The Officer accepted the Applicants' submission that in making its decision, the RPD relied on the JG for Nigeria, which has since been revoked by the Immigration and Refugee Board ("IRB") on April 6, 2020. The Officer noted, however, that the revoked JG decision was significantly distinguishable from the Applicants' case and emphasized the assessment of each case on its particular facts. The Officer

found that the RPD conducted the required IFA analysis and there is little evidence to indicate that the decision was “unlawfully fettered” by the JG.

[13] The Officer granted considerable weight to the RPD’s decision, given the similarity of the Applicants’ submissions in their H&C application and the RPD’s analysis of the same risk as that presented to the Officer. The Officer acknowledged the Applicants’ submission that the Principal Applicant’s family and community members will continue to pursue them, and that they have money and powerful connections to do so. Despite these claims, the Applicants did not proffer any evidence to show how the Principal Applicant’s family or community members have the motivation or ability to pursue them anywhere in Nigeria, whom they are connected to, or how wealthy Nigerians are able to locate others in the country. The Officer found that the Applicants’ evidence was insufficient to overcome the RPD’s findings, and the revocation of the JG referenced by the RPD did not render its decision inapplicable.

[14] The Officer noted the Applicants’ assertion that Nigeria suffers from poor economic conditions and the Applicants quit their jobs in order to leave the country and seek protection. They submitted that they have limited supports in Nigeria and would be forced to return to their family for help. The Officer accepted that economic conditions in Nigeria are not perfect and may cause the Applicants some difficulty, but noted that the Principal and Associate Applicants worked in Nigeria before their arrival in Canada, both have a degree, and have gained work experience in Canada. The Officer acknowledged that returning to Nigeria would require finding new employment and may cause short-term hardship on the Applicants, but also noted that the Applicants were able to relocate to Canada and find employment.

[15] The Officer considered the hardship for the Applicants in leaving their connections in Canada. The Officer noted that they were able to establish friendships and relationships in Canada and there is little to suggest that they would be unable to establish similar connections upon return to Nigeria. The Officer further found that the Applicants could remain connected with their friends in Canada through other means of communication.

[16] The Officer concluded that although there is inevitable hardship associated with leaving Canada, significant weight is granted to the RPD's assessment of the risk associated with the Applicants returning to Nigeria and little weight is granted to the factor of hardship.

(3) BIOC

[17] The Officer acknowledged the Applicants' fear that their daughter would be forced to undergo FGM if they returned to Nigeria. The Officer recognized the existence of FGM as a practice in Nigeria, despite the lack of evidence proffered by the Applicants on its prevalence and despite its criminalization in Nigerian federal law. The Officer stated that the decision to subject a child to FGM is ultimately with the child's parents, and neither the Principal nor Associate Applicant have expressed a wish for their daughter to undergo FGM.

[18] The Officer further noted the Applicants' fear that their son would be taken away to undergo certain family rituals, but did not state which rituals or how this would be harmful. The Applicants' relocation to another area in Nigeria would mitigate these risks to their children.

[19] The Officer acknowledged that the Applicants' children have been attending school and church in Canada, that leaving this social network would not be in the BIOC, and that growing up in Canada would benefit the children. Although the Officer noted that the children could maintain their friendships through other means of communication, and their young age would ease their reintegration into Nigerian society, the Officer ultimately found that returning to Nigeria would not be in the BIOC, due to their establishment in Canada.

[20] The Officer concluded that a cumulative assessment of the H&C considerations does not warrant granting the application for permanent residence on H&C grounds. The Officer found that the Applicants will inevitably face some hardship associated with removal from Canada and there is minimal evidence proffered by the Applicants to warrant more than little weight to the factor of hardship in this case. The Officer found that while it is in the BIOC to remain in Canada, the hardship caused to the children by removal is mitigated by their relocation within Nigeria and by the fact that the Principal and Associate Applicants can protect their children from the risk of undergoing FGM or other forced rituals. The Officer concluded that while the BIOC favours an H&C exemption, a cumulative assessment of the factors does not.

III. Preliminary Issue

[21] The Applicant's memorandum indicates the respondent as the Minister of Immigration, Refugees and Citizenship. The proper respondent is the Minister of Citizenship and Immigration. The style of cause is hereby amended as such, effectively immediately.

IV. Issue and Standard of Review

[22] While the Applicants propose several issues, they can all be framed as the sole issue of whether the Officer's decision is reasonable. Although the Applicants submit that the Officer's decision also raises an issue of procedural fairness, I find that this allegation lacks merit and will therefore not be considered.

[23] The applicable standard of review for the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*").

[24] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[25] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing

evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

V. Analysis

[26] The Applicants submit that the Officer's decision unduly relied on the RPD's previous refusal of the Applicants' refugee claim and conducted an unreasonable analysis of the BIOC factor, rendering the decision unreasonable as a whole.

[27] The Applicants first submit that the Officer relied on the RPD's refusal of the Applicants' refugee claim to an unreasonable extent and was unduly influenced by the RPD in the H&C assessment. The Applicants reiterate that the RPD relied on the revoked JG and submit that the RPD found the Applicants' claim to be credible, finding the determinative issue to be the availability of an IFA. The Applicants submit that in stating that the Applicants "have not provided sufficient evidence to overcome the finding of the RPD," the Officer placed an unreasonable burden on the Applicants to provide such evidence, rather than assessing the H&C application separately, as required. The Applicants submit that this resulted in a "robotic" and uncompassionate decision.

[28] The Applicants further submit that the Officer erred by failing to conduct an adequate analysis of the BIOC, and that it is insufficient to simply state that the Officer has been alive, alert and sensitive to the BIOC. The Applicants submit that the Officer's reasons exhibit a lack

of attentiveness to the BIOC, without meaningful consideration of the effects of removal and resulting hardship for the children.

[29] The Respondent maintains that the Officer's assessment of the H&C considerations is reasonable in light of the Applicants' circumstances and evidence. The Respondent submits that the Officer is entitled to find that the hardship caused by removal is mitigated by certain aspects of the Applicants' circumstances, including skills acquired in Canada, educational background, and the availability of relocation within Nigeria. The Respondent contends that the Officer is also entitled to rely on a previous decision by the IRB when analyzing hardship.

[30] With respect to the BIOC, the Respondent submits that the Officer reasonably concluded that the possibility of the children undergoing FGM and other rituals is slim if the Principal and Associate Applicants oppose these practices and the family relocates to an IFA.

[31] The Respondent notes that the Applicants bear the burden to provide evidence to demonstrate that an H&C exemption is warranted in their circumstances, and the Officer reasonably weighed the evidence and the factors presented. The Respondent submits that the Applicants' submissions amount to a request that this Court reweigh the evidence before the Officer, which is not this Court's role on reasonableness review.

[32] I agree with the Respondent. Many of the Applicants' submissions, as the Respondent submits, request that this Court reweigh the evidentiary record, which is not this Court's role on review (*Vavilov* at para 125).

[33] I do not find that the Officer unreasonably relied on or was unduly influenced by the RPD's decision to refuse the Applicants' refugee claim. The Officer stated that while different tests are used to assess hardship in an H&C application and risk in a refugee claim, the Applicants' submission regarding the difficulty they would face upon return to Nigeria are the same in both applications.

[34] More importantly, the Officer's assessment of the hardship factor does not end there. The Officer goes onto assess hardship at length, reasonably noting the lack of evidence proffered to corroborate the Applicants' claim that they would be pursued by the Principal Applicant's family upon return to Nigeria. The Officer took a thorough analysis of the Applicants' circumstances to reasonably conclude that certain considerations mitigate the hardship that they may face in Nigeria, including their employment experience, their educational background, and the possibility of relocation within Nigeria. The Officer's analysis and overall conclusion is therefore intelligible and justified (*Vavilov* at paras 85, 95).

[35] I also do not find that the Officer inadequately assessed the BIOC in the Applicants' case. The reasons clearly show that the Officer was attentive to, and meaningfully grappled with, the BIOC factor as it pertains to the three children (*Vavilov* at para 128). The Officer granted positive weight to the children's establishment in Canada and acknowledged that removal would cause them some hardship. The Officer transparently and intelligibly explained that while the BIOC favours granting an H&C exemption, this is mitigated by the parents' ability to protect their children from the risks that they claim are associated with returning to Nigeria and by the cumulative assessment of the other H&C considerations.

[36] The BIOC is a significant factor in the H&C assessment and should be given substantial weight, but it is not necessarily determinative of the application (*Maradani v Canada (Citizenship and Immigration)*, 2022 FC 839 at para 35; *Hawthorne v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2002 FCA 475 at paras 2, 8). The Officer's reasons on the BIOC exhibit a rational line of reasoning that accords with the evidence (*Vavilov* at paras 102, 105).

VI. Conclusion

[37] This application for judicial review is dismissed. The Officer engaged in a justified, transparent and intelligible weighing of the evidentiary record to arrive at a reasonable conclusion. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2895-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause is amended to reflect the proper respondent as the Minister of Citizenship and Immigration, effectively immediately.

3. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2895-21
STYLE OF CAUSE:	OLUSOLA AKINBOLA GLOVER, OLUWAFUNKE MARY GLOVER, OLUWAFIREFUNMI SAMUEL GLOVER (MINOR), OLUWAFEYIFUNMI ISRAEL GLOVER (MINOR) AND OLUWAFAYOFUNMI PRINCESS GLOVER (MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 26, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	APRIL 5, 2023

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