

Federal Court



Cour fédérale

Date: 20230803

Docket: IMM-4187-21

Citation: 2023 FC 1068

Montréal, Quebec, August 3, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

OLUBUNMI OLOLADE SUMONU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Olubunmi Ololade Sumonu, is a citizen of Nigeria. Ms. Sumonu is seeking judicial review of a decision rendered on May 10, 2021 [Decision], whereby the Refugee Appeal Division [RAD] dismissed her appeal and confirmed the decision of the Refugee Protection Division [RPD]. Both the RPD and the RAD found that Ms. Sumonu is neither a

Convention refugee nor a person in need of protection pursuant to section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Sumonu asks the Court to set aside the Decision and remit her case to the RAD for redetermination. She submits that the RAD erred in its analysis of her fear of harm because of her gender and of her HIV-positive status, and in its assessment of cumulative persecution. The sole issue to be determined is whether the Decision is unreasonable.

[3] For the reasons that follow, this application for judicial review will be dismissed. Ms. Sumonu has failed to demonstrate that the Decision is flawed in any way that would warrant the Court's intervention.

II. Background

A. *The factual context*

[4] On September 26, 2018, Ms. Sumonu left Nigeria for Canada on a visitor visa.

[5] In January 2019, Ms. Sumonu claimed refugee protection on the basis that she fears persecution from her in-laws for being infertile, and from the Nigerian society for being HIV-positive.

[6] In its decision dated August 14, 2020, the RPD dismissed Ms. Sumonu's claim for refugee protection.

[7] The RPD found that Ms. Sumonu, despite being HIV-positive, failed to demonstrate that she would be a victim of discrimination amounting to persecution in Nigeria for that reason.

Further, the RPD observed that subparagraph 97(1)(b)(iv) of the IRPA does not cover risks which are caused by the inability of a country to provide adequate health and medical care to an applicant. Accordingly, the fact that the Canadian healthcare system is better than the Nigerian healthcare system was not a relevant consideration for the purpose of Ms. Sumonu's application. Finally, the RPD held that Ms. Sumonu had a viable internal flight alternative [IFA] in Port Harcourt.

B. *The RAD Decision*

[8] Ms. Sumonu appealed the RPD decision to the RAD. In the Decision, the RAD found that the RPD did not err when concluding that Ms. Sumonu would not face a serious possibility of persecution in Nigeria as a result of her HIV-positive status.

[9] The RAD held that, although it accepted that discrimination against persons with HIV occurs in Nigeria, Ms. Sumonu's particular circumstances of discrimination do not amount to persecution. More specifically, the RAD found that Ms. Sumonu's loss of customers at her business, due to her HIV-positive status, was not sufficient to amount to persecution, and that Ms. Sumonu failed to provide any further evidence that she would face systemic, persistent, or cumulative discrimination in any other manner.

[10] Furthermore, the RAD held that subparagraph 97(1)(b)(iv) of the IRPA was applicable to Ms. Sumonu's case, and that, in any event, there was no evidence that Ms. Sumonu would be unable to receive HIV treatment in the viable IFA identified by the RAD.

[11] Finally, the RAD found that Ms. Sumonu did have a viable IFA in Port Harcourt. On the first prong of the well-recognized test for IFA, the RAD found that there was no serious

possibility that Ms. Sumonu's alleged agents of persecution would have either the means or the motivation to pursue her in Port Harcourt. The RAD held that, apart from general statements made by Ms. Sumonu herself and from relatives, there is no probative documentary evidence that would support the means or the motivation, or the current interest of her in-laws to seek her out in Port Harcourt.

[12] On the second prong of the test, and after having considered the specific requirements of *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guidelines], the RAD found that Ms. Sumonu would not undergo undue hardship in the proposed IFA. The RAD determined that any challenges in finding employment and accommodation in Port Harcourt would not be objectively unreasonable for Ms. Sumonu, especially considering the support she would receive from her husband. Further, since Ms. Sumonu speaks Yoruba and English, she would not have a language barrier in the IFA location. Ms. Sumonu would also be able to continue practising her religion there, and would not face hardship with respect to her indigenous status, since recent documentation on the country conditions states that indigenous status is less important in large Nigerian cities such as Port Harcourt.

C. *The standard of review*

[13] Ms. Sumonu and the respondent, the Minister of Citizenship and Immigration [Minister], both submit that the RAD's findings regarding claims for refugee protection are reviewable under the reasonableness standard. I agree (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh*] at para 17; *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419 [*Ifeanyi*] at para 11).

[14] Reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review. Two exceptions rebut the presumption and require judicial review under the correctness standard, namely, when legislative intent or the rule of law requires it (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 17). Here, none of these exceptions applies.

[15] Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). A reasonable decision is justified with transparent and intelligible reasons that uncover an internally coherent reasoning (*Vavilov* at paras 86, 99). The reviewing court must be knowledgeable of the factual and legal constraints upon the decision maker (*Vavilov* at paras 90, 99), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[16] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must instead be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

A. *Status as a Convention Refugee or person in need of protection*

[17] It is well established that refugee claimants must establish an objective and subjective basis for their fear of persecution (*Kifungo v Canada (Citizenship and Immigration)*, 2016 FC 599 at para 32). Accordingly, “in order to succeed on his or her refugee claim, a claimant must

not only have a subjective fear of persecution, but also demonstrate that his fear is objectively well-founded” (*Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 [*Munderere*] at para 36). Nonetheless, the RAD “has a duty to consider if events that may not individually amount to persecution do so on a cumulative basis” (*Iraqi v Canada (Citizenship and Immigration)*, 2019 FC 1049 at para 25, citing *Munderere* at para 42 and *Canada (Citizenship and Immigration) v Hund*, 2009 FC 121 at para 34). This principle reflects the fact that “prior incidents are capable of forming the foundation of present fear” (*Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 [*Mete*] at para 5).

[18] Ms. Sumonu submits that the RAD erred in requiring her to prove that she suffered harm in the past, and wrongly focused on the availability of treatment for HIV in Nigeria. Further, Ms. Sumonu claims that her fear of harm based on her HIV-positive status and on her gender was unreasonably assessed by the RAD.

[19] I am not persuaded by Ms. Sumonu’s arguments.

[20] The RAD began its analysis by reviewing national documentation indicating that persons with HIV-positive status experience discrimination on multiple levels, including employment. However, relying on this Court’s decision in *Ifeanyi*, the RAD held that “not all HIV-positive persons are subject to persecution or physical harm in Nigeria, and it is necessary to examine the particular circumstances of each case” (Decision at para 21). The RAD then spent several paragraphs considering Ms. Sumonu’s particular situation. Further to its analysis, the RAD concluded that Ms. Sumonu had failed to demonstrate that she personally experienced discrimination amounting to persecution, or that there is a real risk she will do so in the future. No matter how “strong and compelling” the evidence is on country conditions, it was Ms.

Sumonu's burden to establish a link between the country documents and her personal situation; however, she has not done so (*Ifeanyi* at para 33). The RAD repeated, on multiple occasions, that the problem resided in the absence of evidence on Ms. Sumonu's alleged risk of discrimination amounting to persecution (*Ifeanyi* at para 29).

[21] I find no shortcomings in the RAD's analysis of Ms. Sumonu's subjective and objective fear of persecution because of her HIV-positive status.

[22] First, it was open to the RAD to find that the loss of business activities alleged by Ms. Sumonu did not rise to the level of persecution. Mr. Justice Annis, in *Campaz Arce v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 1016 [*Campaz Arce*], found that discrimination limiting employment opportunities "does not rise to the requirements of either section 96 or 97 of the IRPA" (*Campaz Arce* at para 30).

[23] Second, on the issue of finding accommodation as a HIV-positive female, the RAD reasonably determined that, in Ms. Sumonu's circumstances, any discrimination on that aspect would not amount to persecution. In any event, with the support of her husband — who was described as a "successful businessman" by Ms. Sumonu —, the RAD reasonably concluded that any hardship she would face as a female with HIV would be attenuated by her husband's financial help in terms of accommodation and assisting her until she finds employment.

[24] The RAD's analysis is well explained by the lack of evidence of persecution that a person in the same circumstances as Ms. Sumonu would face in Nigeria. The RAD clearly stated that, in the case of Ms. Sumonu, the limited evidence of discrimination did not cumulatively amount to persecution. At paragraph 28 of the Decision, the RAD held as follows:

In light of my review of the Appellant's evidence, I find that the Appellant has not provided sufficient credible and trustworthy evidence that she has personally experienced stigma and discrimination based on her HIV-positive status that amounts to persecution. In fact, her allegations of discrimination remain speculative. I also find that the evidence presented does not cumulatively amount to persecution in that the acts were not of a persistent and repeated which caused her physical or psychological harm or denial of basic human rights.

[25] I can detect no error in the inference-making process conducted by the RAD and in the analysis it conducted in the Decision. In her written and oral submissions, Ms. Sumonu has been unable to point to any specific evidence in the record that would allow me to question the factual findings made by the RAD.

[26] Finally, the access to HIV treatment in the IFA location is undisputed by Ms. Sumonu. In any event, the fact that Canada has better HIV treatments than Nigeria would not be determinative of the case, since subparagraph 97(1)(b)(iv) of the IRPA clearly states that a country's inability to provide adequate health or medical care is not a risk covered by section 97 of the IPRA.

[27] At the hearing before the Court, Ms. Sumonu relied on the *Mete* decision to argue that the RAD had failed to take into account the cumulative nature of the various acts of harassment and discrimination directed at her. With respect, I am not convinced by Ms. Sumonu's arguments. In the present case, the RAD considered the allegations of discrimination made by Ms. Sumonu but did not find that those prior events translated into consequences of a substantially prejudicial nature for Ms. Sumonu nor rose to the level of persecution. A review of the Decision leaves no doubt that the RAD considered Ms. Sumonu's events cumulatively, but found that they were insufficient to amount to persecution in Nigeria as a result of her HIV-positive status. In the

Decision at paragraphs 12 and 13, the RAD clearly laid out the general principles pertaining to when discrimination rises to persecution. These principles correctly reflect the state of the law on the issue. Then, the RAD reviewed the evidence to assess whether Ms. Sumonu's personal circumstances, when considered cumulatively, supported a finding of persecution. The RAD concluded that they did not.

[28] The party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Ms. Sumonu did not convince me that there is such a shortcoming. In this case, I am satisfied that the RAD's reasoning can be followed without a decisive flaw in rationality or logic and that the reasons were developed in such a way that the analysis could reasonably lead the RAD, having regard to the evidence and the relevant legal and factual constraints, to conclude as it did (*Vavilov* at para 102). There is no serious deficiency in the Decision that would taint the analysis and that would be likely to undermine the requirements of justification, intelligibility, and transparency.

[29] In light of the above findings, I am not satisfied that Ms. Sumonu demonstrated any errors from the RAD that would warrant the Court's intervention.

B. *Viable IFA in Port Harcourt*

[30] At the hearing before the Court, Ms. Sumonu mentioned to the Court that she was not challenging the RAD's conclusions on the existence of a viable IFA in Port Harcourt. As correctly pointed out by counsel for the Minister, this, in and of itself, is fatal to Ms. Sumonu's

application for judicial review. If the RAD's IFA finding stands, this is sufficient to maintain the Decision.

[31] Nevertheless, since some of Ms. Sumonu's written submissions appear to question the RAD's conclusions on the existence of a viable IFA, I have reviewed these findings.

(1) The applicable test

[32] The test to determine the existence of a viable IFA comes from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*]. Those decisions state that two criteria must be met in order to find that a proposed IFA is reasonable:

- 1) There is no serious possibility of the applicant being persecuted in the part of the country in which the IFA exists; and
- 2) It is not unreasonable for the applicant to seek refuge there, given all the circumstances of the individual applicant.

[33] In *Singh*, this Court noted that "the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the country of origin is unable to provide to the person requesting refugee protection adequate protection everywhere within their territory" (*Singh* at para 26).

[34] If an IFA is established, the onus is on the applicant to demonstrate that the IFA is inadequate (*Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Thirunavukkarasu* at para 12; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020

FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44).

(2) Reasonableness of the RAD’s analysis of a viable IFA in Port Harcourt

[35] Ms. Sumonu relies on her previous submissions made before the RAD to argue that the proposed IFA is not viable because of her HIV-positive status, which would allegedly affect her business and her ability to find rent, and put her at risk of physical violence. She submits that the RAD erred in finding that the evidence she adduced was insufficient, since the RPD never doubted the credibility of her testimony. Further, Ms. Sumonu suggests that the RAD erred in not recognizing that the risk of physical violence was not sufficient to render the IFA location inappropriate.

[36] As mentioned above, the RAD properly weighed the evidence on the record to determine that Ms. Sumonu failed to demonstrate a serious possibility of being persecuted in Nigeria because of her HIV-positive status. It is not necessary to go over this argument again.

[37] However, it is true that the RAD did not directly address the risk of physical violence alleged by Ms. Sumonu based on past altercations with her in-laws. In her basis of claim form, Ms. Sumonu stated that she was attacked by her husband’s sister for not being able to have children. Nonetheless, I am not convinced that the RAD’s failure to explicitly address this argument is an error that would be “sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). Indeed, the RAD found that the agents of persecution did not have the means or motivation to pursue Ms. Sumonu in Port Harcourt, and the fact remains that there is no sufficient evidence to the contrary. Accordingly, whether or not Ms. Sumonu

would face a future risk of persecution because of her in-laws' past acts of violence against her is not determinative, since the RAD reasonably determined that they would not have the means or motivation to find her in the IFA location.

[38] Also, the RAD made no error in distinguishing the sufficiency of evidence from credibility issues. As the RAD duly pointed out in the Decision, Mr. Justice Grammond, in *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC at paragraph 11, held as follows:

One might be forgiven for thinking that there is no meaningful difference between insufficiency and lack of credibility. In this regard, counsel for the applicants argued that a conclusion that the applicants have brought insufficient evidence practically means that the Court does not believe them. Even though both situations may lead to the rejection of the claim, there is nonetheless a significant distinction. As counsel for the Minister noted, the applicants may well have a sincere belief in the power and influence of the agent of persecution. Without sufficient evidence, however, a decision-maker is unable to ascertain that this belief is objectively grounded. Thus, a conclusion of insufficiency is logically distinct from a negative credibility finding.

[39] This is not an “additional criteria” as Ms. Sumonu claims. Rather, it is a known legal principle that the RAD could rely on in order to fulfill its mandate and determine Ms. Sumonu’s appeal.

[40] Ultimately, in light of all the above findings, I am satisfied that the RAD made no error in concluding that there is a viable IFA in Port Harcourt for Ms. Sumonu, considering all of her circumstances. I find that Ms. Sumonu failed to demonstrate how the proposed IFA location is inadequate. Ms. Sumonu does not point to any evidence that the RAD failed to account for, nor to any error that would render the Decision unreasonable. Ms. Sumonu simply disagrees with the RAD’s assessment of the evidence. However, this is not sufficient for the Court to intervene as,

on judicial review, a reviewing court cannot reweigh or reassess the evidence duly considered by the decision maker (*Vavilov* at para 125).

IV. Conclusion

[41] For the reasons set forth above, this application for judicial review is dismissed. I am satisfied that the RAD reasonably considered the evidence in concluding that the discrimination alleged by Ms. Sumonu did not amount to persecution. There are no grounds for the Court to intervene.

[42] There are no questions of general importance to be certified.

JUDGMENT in IMM-4187-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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