

Federal Court



Cour fédérale

Date: 20230922

Docket: IMM-7933-21

Citation: 2023 FC 1278

Ottawa, Ontario, September 22, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

BOLA CHARLES AKINDE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Bola Charles Akinde [Applicant] seeks judicial review of the Refugee Appeal Division's [RAD] October 7, 2021 decision [Decision], confirming the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection*

Act, SC 2001, c 27. The determinative issue for the RAD was the availability of a viable Internal Flight Alternative [IFA] in Lagos, Nigeria.

[2] The application for judicial review is dismissed. The RAD's IFA assessment was reasonable.

II. Background

[3] The Applicant is a citizen of Nigeria and has three children with his wife, all of whom continue to reside in Nigeria. The Applicant claims a fear of harm by the Yahoo Boys, the Nigerian police, and his neighbours in Olomore. The Applicant's Basis of Claim [BOC] narrative sets forth the background facts, which I have summarized.

[4] The Applicant served as the Chairman of Oke Anu II Community Development Association [CDA] in Olomore, which also involved membership in the Joint Communities Security Committee, overseeing the security of several regional communities. In 2015, the CDA began to take issue with the illegal activities of the Yahoo Boys in Olomore, specifically internet fraud, cyber crimes, telephone fraud as well as violence they were bringing into the community. In June 2017, the Applicant reported the Yahoo Boys to the Obada police. The Obada police arrested some Yahoo Boys but released them the following day upon payment of a bribe. The police informed the Yahoo Boys that the Applicant made the police report.

[5] As a result, the Yahoo Boys threatened the Applicant and vandalized his property. The Applicant reported the Yahoo Boys to the Lafenwa police station. The Applicant told the police

officers that the Obada police received bribes from the Yahoo Boys. The Applicant began receiving threatening phone calls.

[6] In January 2018, the CDA voted to expel the Yahoo Boys from the community. The Applicant reported the Yahoo Boys to the Lafenwa police again.

[7] In May 2018, the Applicant received a threatening phone call blaming him for the murder of a prominent Yahoo Boy because the CDA drove the individual out of the community. Several neighbours also threatened the Applicant because the neighbours relied on the high rent from their Yahoo Boy tenants.

[8] In December 2019, upon return from a business trip to Lagos, unknown individuals attempted to break in to the Applicant's home. While leaving for the Lafenwa police station, men on motorcycles chased the Applicant and fired two gunshots at his car.

[9] In January 2020, the Applicant and his family left to stay with his cousin in Ibadan. While there, the Applicant and his cousin were stopped at a police checkpoint. The police took the Applicant to the police station for questioning. One officer informed the Applicant that the police wanted to arrest him because he reported the police for taking bribes from the Yahoo Boys. Afterward, the Applicant and his family relocated to Abuja. While there, the Applicant received more threatening phone calls. The Applicant and his family relocated to his hometown of Igbogila.

[10] In February 2020, the Applicant fled from Nigeria to the United States. The Applicant crossed into Canada in March 2020 and made a refugee claim.

[11] On March 22, 2021, the RPD denied the Applicant's refugee claim. The RPD found that the Applicant had a viable IFA in Lagos, Nigeria. The RPD found that the Applicant did not establish his allegations about persecution by Nigerian police. The RPD focused the IFA analysis on the Yahoo Boys and the Applicant's neighbours. On the first prong of the IFA test, the RPD found that both agents of harm did not have the means or motivation to locate the Applicant in Lagos. On the second prong, the RPD found that the IFA was not unduly harsh given the Applicant's education, business experience, indigeneship, language, religion, and travel to Lagos.

[12] The Applicant appealed the RPD's decision to the RAD. The Applicant argued that the RPD erred in its credibility assessment of the police reports, ignored relevant country condition documentation concerning the Nigerian police, and underestimated the Yahoo Boy propensity for violence, including their ability to use the police to locate and harm the Applicant.

III. The RAD Decision

[13] The RAD upheld the RPD's decision. The determinative issue was an IFA in Lagos.

[14] The RAD set out the two-pronged test to be applied in order to find an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*]; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA)

[*Thirunavukkarasu*]). On the first prong, the RAD considered both the Nigerian police and the Yahoo Boys. The RAD found that the Applicant would not face a risk in the proposed IFA at the hands of either agent of harm.

[15] In relation to the Nigerian police, the RAD found that the RPD erred in assessing the police reports based on their omission of the Applicant's complaints against the Obada police. The RAD found that the RPD erred in finding that the police would not continue to look for the Applicant because they did not disclose their intentions to the Applicant's neighbours or leave communications for the Applicant.

[16] Despite these disagreements with the RPD, the RAD accepted the RPD's finding that the police have not contacted the Applicant's family. The RAD also found that the Nigerian police have little motivation to locate the Applicant in Lagos. The RAD agreed with the RPD that the country documentation in the National Documentation Package [NDP] confirmed that the Nigerian police regularly solicit and accept bribes and that those who report corrupt police behaviour are not sought after. Accordingly, the police would have little motivation to target an individual who reports that local police accepted bribes. The RAD also found that the Applicant's ability to exit Nigeria on his own passport indicated that the Nigerian police were not actively seeking him out as alleged. The country documentation indicates that the Nigerian police can track wanted individuals who are attempting to exit Nigeria at an international airport. Lastly, the RAD found that the police do not have the capabilities to locate the Applicant in Lagos, as demonstrated by their lack of a National Public Security Communication System and inter-state communication system.

[17] In relation to the Yahoo Boys, the RAD found that they also do not have the motivation or means to locate the Applicant in the proposed IFA. The RAD agreed with the RPD's finding that there was insufficient evidence to establish that the Yahoo Boys are motivated to locate the Applicant in Lagos. The documentary evidence did not support the Applicant's allegation that the Yahoo Boys retaliate against Nigerian citizens who aim to remove them from their communities. As for resources or capacity, the RAD noted that the term "Yahoo Boys" refers to individuals who engage in internet fraud by operating in distinct groups located in less developed areas. In short, the Yahoo Boys do not have a sophisticated organization with networks across Nigeria.

[18] On the second prong of the IFA test, the RAD concurred with the RPD in finding that the Applicant failed to establish that the proposed IFA would be objectively unreasonable or unduly harsh. The RAD noted that the RPD not only acknowledged that the Applicant previously travelled to Lagos for business without issue, but the RPD also considered the country condition documentation and Applicant's testimony concerning the high level of insecurity on road outside of metropolitan areas, particularly after dark. The RAD added that, in returning to Nigeria, the Applicant could fly directly to the international airport in Lagos in order to avoid road travel. The RAD agreed that the Applicant has a viable IFA in Lagos.

IV. Issues and Standard of Review

[19] After considering the parties' submissions, the sole issue is whether the RAD's IFA analysis was reasonable.

[20] It is clear that the appropriate standard of review is reasonableness. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[21] A reasonableness review is a robust form of review that requires the Court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, bears the hallmarks of reasonableness— justification, transparency and intelligibility— and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 14-15, 99). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). This may include instances where the reasons exhibit clear logical fallacies, or where decision-maker has fully misapprehended or failed to account for the evidence before it (*Vavilov* at paras 104, 126). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at para 85-86). The party challenging the decision bears the burden of showing that the decision was unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Was the RAD's analysis of the first prong of IFA reasonable?*

- (1) Did the RAD reasonably conclude that the Nigerian police lack the motivation and means to locate the Applicant in Lagos?

(a) *Applicant's Position*

[22] First, the RAD erred in its finding that the Nigerian police were unlikely to target an individual who reports local police that accept bribes, even if it involved the Yahoo Boys. The RAD failed to consider the NDP evidence explaining that individuals, not only journalists or traditional leaders, experience negative consequences after criticizing the authorities, particularly with regard to reporting bribery (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17 (*Cepeda-Gutierrez*)).

[23] Second, the RAD erred in importing the RPD's erroneous credibility finding and presupposing that the Applicant's ability to exit Nigeria indicated that the Nigerian police were not actively seeking him out. The RAD did not explain how it found the Applicant credible in crucial aspects of his testimony, yet still arrived at this conclusion (*Chachua v Canada (Citizenship and Immigration)*, 2017 FC 954 at para 19). In light of NDP Item 14.7, it is conceivable that the police were looking for the Applicant informally, without a warrant, which could be why the police did not detain him at the airport.

[24] Lastly, the RAD relied on selective portions of the NDP regarding the motivation and means of the Nigerian police to persecute the Applicant in Lagos, despite the section immediately preceding the RAD's reference states that police have a communication system between divisions and can track persons of interest (*Cepeda-Gutierrez* at para 17; *Onungbogbo v Canada (Citizenship and Immigration)*, 2021 FC 1240 at para 14).

(b) *Respondent's Position*

[25] First, the Applicant does not advance evidence that local police target individuals more frequently where reported corruption involves the Yahoo Boys. Further, the Applicant simply wants the Court to draw a different conclusion from the same documentary evidence. The other NDP evidence cited by the Applicant concerns instances where Nigerian citizens are asked to pay a bribe, not where they report the police for taking bribes. It also fails to demonstrate that “negative consequences” amount to violent reprisals or persecution.

[26] Second, the RAD did not presuppose that exiting Nigeria is determinative as to whether the police are seeking an individual. While the RAD found the Applicant credible regarding the facts within his knowledge, this does not mean that the RAD must accept the Applicant’s speculation about his subjective fear. There is no arrest warrant, no evidence of recent contact with the Applicant’s family, and no explanation as to why the police were originally looking for the Applicant. The NDP evidence states that individuals who are wanted by the police should be caught at the airport if they attempt to leave through an international airport.

[27] Lastly, the Applicant is asking the Court to reweigh evidence concerning whether local police have the means and motivation to locate the Applicant in Lagos. The evidence of police communication and coordination refers to communications across divisions where officers will be carrying out an operation. The Applicant has not advanced evidence that police carry out operations for individuals who report local police corruption, nor has the Applicant demonstrated that these individuals are persons of interest such that the police track these individuals.

Questions remain about why he was able to leave Nigeria or why the police has not approached his family about his whereabouts.

- (2) Did the RAD reasonably conclude that the Yahoo Boys lack the motivation and means to locate the Applicant in Lagos?

- (a) *Applicant's Position*

[28] The RAD's conclusion that the Yahoo Boys are not a sophisticated organization with networks across Nigeria is directly contradicted by NDP Item 7.28, which describes the Yahoo Boys as "[o]ne of these more sophisticated scam-based criminal enterprises."

[29] Further, the Yahoo Boys' focus on financial crimes is not indicative of a lack of risk. The RAD placed arbitrary limits on what the Yahoo Boys would do despite the Applicant's evidence that the Yahoo Boys sought serious revenge against the Applicant.

[30] Lastly, the RAD did not engage with the concern of the Applicant's cousin that the Yahoo Boys are using their technology to monitor the Applicant. The RAD also failed to explain how a technologically savvy group could not locate the Applicant in Lagos, as they did in Abuja.

- (b) *Respondent's Position*

[31] The Yahoo Boys are not a national organization but are small groups who engage in similar sophisticated scams. This does not make them a violent criminal organization. The evidence does not establish that the Yahoo Boys harm individuals who report them to the police.

[32] While the RAD accepted that the Yahoo Boys previously targeted the Applicant, the Applicant was required to show a forward-facing risk of persecution. The Applicant did not produce any evidence that the Yahoo Boys have the means or motivation to locate the Applicant throughout Nigeria. There is no evidence that the Yahoo Boys have sought to locate the Applicant or have demonstrated a continued interest in him since his departure from Nigeria.

(3) Conclusion

[33] The parties agree on the two-prong test for determining a viable IFA. First, the RAD must be satisfied that the claimant will not be subject to a serious possibility of persecution or subjected personally to a danger or torture, a risk to life, or a risk of cruel and unusual treatment or punishment in the proposed IFA. Second, the RAD must be satisfied in all the circumstances, including the particular circumstances of the claimant, that conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there (*Rasaratnam* at 710-711; *Thirunavukkarasu* at 595-597). Both prongs must be satisfied for a finding of a viable IFA.

- (a) *Did the RAD reasonably conclude that the Nigerian police lack the motivation and means to locate the Applicant in Lagos?*

[34] The RAD reasonably concluded that the Nigerian police lack the motivation and means to locate the Applicant in Lagos.

[35] First, I am not persuaded that the RAD erred in finding that local police would target the Applicant for reporting bribery on the part of another local police force. The Applicant points to the passage relied on by the RAD, however, on review of this passage, it refers to journalists,

bloggers and other individuals and organizations who publically criticized a Governor's policies or the military. Another portion relied on by the Applicant simply refers to the lack of follow up or some negative consequences after reporting bribery. This documentary evidence does not define what a negative consequence might be and it is not applicable to the Applicant's circumstances, where citizens, like he, report Nigerian police for bribery. I also agree with the Respondent that the Applicant has failed to establish that local police take out retribution on a different or more frequent basis for reported corruption involving the Yahoo Boys.

[36] Second, I am also not persuaded that the RAD erred in its finding concerning the Applicant's ability to exit Nigeria if he was, in fact, wanted by the Nigerian police. With respect, the RAD did not presuppose that exiting Nigeria is the determining factor of whether someone is wanted by the police. The RAD noted the documentary evidence indicating that there are various checkpoints within the airport and that the system requires the airport authorities to be notified. This, along with the Applicant's testimony that the police had not contacted anyone in his family about his whereabouts, were some of the reasons for the RAD's finding on this issue. Accordingly, I see no error on the part of the RAD in its consideration of this evidence.

[37] The Applicant also takes issue with the RAD's failure to consider the following NDP passage in its conclusion surrounding the police's ability to locate the Applicant:

According to the Nigerian law firm, the NPF has a communication system whereby information is shared among the various units in the force. For example, if officers from a different division are to carry out an operation in another division, the divisional head of that division will be notified accordingly (Nigerian law firm 22 Oct. 2020).

Without providing further details, the Senior Advocate of Nigeria similarly noted that the police have "a way of sharing information

and tracking persons of interest amongst their various formations where and when it is required” (Senior Advocate of Nigeria 21 Oct. 2020).

[Emphasis added.]

[38] The above excerpt from the Decision does not suggest that the RAD ignored this evidence. It does not contradict the RAD’s finding, which centres on the extent or viability of an inter-state police communication system for operations in another police division. In any event, this finding by the RAD does not alter the RAD’s conclusion regarding the police’s motivation to pursue the Applicant in Lagos, which I have found to be reasonable (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 15 [*Leon*]).

(b) *Did the RAD reasonably conclude that the Yahoo Boys lack the motivation and means to locate the Applicant in Lagos?*

[39] The RAD reasonably concluded that the Yahoo Boys lack the motivation and means to locate the Applicant in Lagos.

[40] The RAD clearly referenced the economic fraud section of the Nigeria 2020 Crime and Safety Report explaining that the Yahoo Boys are one of the “more sophisticated scam-based criminal enterprises...who use diverse ploys and platforms including dating sites, chat rooms, social media, and other online conduits to deceive their victims”. However, the RAD also considered other documentary evidence demonstrating that the Yahoo Boys are commonly university students who operate in distinct groups. It was in this context that the RAD concluded that the Yahoo Boys are not a sophisticated organization with networks across Nigeria. The RAD went on to explain that, “this means that the Yahoo Boys are a localized group that do not have a

national presence”, and therefore do not have the means to locate the Applicant in Lagos. While the Applicant reads the excerpt in a different light, it is not for this Court to reweigh evidence (*Vavilov* at para 125).

[41] Turning to motivation, I agree with the Respondent that the RAD accepted that the Yahoo Boys previously targeted the Applicant in Olomore. However, the RAD concurred with the RPD that there was insufficient evidence to establish that the Yahoo Boys are motivated to locate the Applicant in Lagos, in light of their lack of national presence and coordination. The Applicant also did not point to any evidence showing the Yahoo Boys contacted his family.

[42] As for the Applicant’s cousin, the RAD is presumed to have considered all of the evidence, and need not refer to every piece of evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1 [*Florea*]). I note that the Applicant did not raise this argument in its written submissions to the RAD. The RPD concluded that the calls made to the Applicant in Abuja stemmed from his publicly available phone number, and there was no evidence that the Yahoo Boys physically attempted to locate the Applicant in Abuja. For the RAD, there was a lack of evidence concerning the motivation or ability of the agents of harm to locate the Applicant in Abuja. Accordingly, I see no error in the RAD’s analysis in this regard.

B. *Was the RAD’s analysis of the second prong of the IFA reasonable?*

(1) Applicant’s Position

[43] First, the RAD failed to engage with the fact that facing no incidents in Lagos on his short business trip to Lagos does not mean he would not face risk in Lagos. The RAD also did not address the unchallenged evidence concerning the break in to the Applicant's home shortly following his return from Lagos, suggesting that the Applicant could have been tracked. The incidents following the Applicant's return also suggest that the Applicant faces a significantly heightened risk.

[44] Second, the NDP evidence that the RAD agreed with does not distinguish between cardinal directions regarding risk. The RAD's failure to identify this error suggests that it did not conduct an independent assessment of the evidence.

[45] Lastly, the RAD erred in noting that the Applicant can fly directly to the international airport in Lagos to avoid road travel. The RPD did not put this matter to the Applicant during the RPD hearing, nor did the RAD provide the Applicant an opportunity to respond to this proposition. The RAD does not know whether flying to Lagos is affordable or feasible for the Applicant, as he would likely need to return to his hometown first to settle his affairs.

(2) Respondent's Position

[46] The RAD reasonably agreed that the Applicant's business trip to Lagos demonstrated that he could safely relocate there. The RAD did engage with the evidence concerning the incidents following the Applicant's return from Lagos. However, the agents of harm did not target the Applicant in Lagos, which underscores the reasonableness of the finding.

[47] Second, it is unclear what road safety outside of major cities has to do with the Applicant's ability to live in Lagos without fear of persecution.

[48] Lastly, the Applicant knows that he can travel to Lagos by airplane. The Applicant has travelled by airplane to several countries and can clearly afford tickets.

(3) Conclusion

[49] The RAD's analysis of the second prong of the IFA was reasonable. As explained by the Federal Court of Appeal in *Thirunavukkarasu* at 598:

An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in traveling there or in staying there.

[Emphasis added.]

[50] The RAD specifically set out and engaged with the Applicant's argument that "the RPD erred in finding that, since the [Applicant] has travelled to Lagos for business previously and did not encounter any problems, he can safely relocate to Lagos". The RAD considered the RPD record and hearing transcript in concluding that the RPD correctly based its finding on both the Applicant's prior travel to Lagos as well as the objective documentary evidence. It is not for this Court to reweigh evidence (*Vavilov* at para 125). Further, it is unclear how the subsequent attack

in Olomore relates to the Applicant's road travel to Lagos or how it would be objectively unreasonable for the Applicant to seek refuge in Lagos in light of the conditions.

[51] The Applicant's final argument appears to be in relation to procedural fairness. The RAD did not err in concluding that the Applicant can fly directly to the international airport in Lagos upon his return to Nigeria without first putting this conclusion to the Applicant. The Applicant has not advanced any evidence of his inability to afford to fly into Lagos upon his potential return to Nigeria. It is also curious why the Applicant is now arguing that he must return to the place where his fear of persecution arose in order to "settle his affairs". The question before the RAD was whether the Applicant can reach the IFA without undue risk to his life. The RAD answered this question in the affirmative.

[52] In any event, any error by the RAD in considering the Applicant's ability to fly directly to Lagos is insufficient to render the Decision incorrect or unreasonable. The RAD clearly referenced this possibility in passing. The RAD's reasoning was not determinative to the Decision.

[53] Accordingly, the Decision was justified and intelligible.

VI. Conclusion

[54] For the above reasons, the application for judicial review is dismissed.

[55] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-7933-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7933-21

STYLE OF CAUSE: BOLA CHARLES ADKINDE v THE MINISTER OF
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PLACE OF HEARING: TORONTO, ONTARIO

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