Federal Court  Cour fédérale

Date: 20240510

Docket: IMM-9521-22

Citation: 2024 FC 724

Toronto, Ontario, May 10, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

AFOLASHADE IDOWU ABIOLA
HAFSAT ADEWUNMI ABIOLA
HIQMAT ADESOPE ABIOLA
ADEWALE ALABI ABIOLA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants ask the Court to review and set aside a decision of the Refugee Appeal Division [RAD] finding that they are neither Convention refugees nor persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] because they have an internal flight alternative [IFA] in Abuja, Nigeria.

[2] The Applicants submit that there was a breach of procedural fairness and that the RAD unreasonably assessed the viability of Abuja as an IFA as they argue neither prong of the IFA test is met.

[3] For the reasons that follow, I dismiss this application as I find that the RAD decision is both fair and reasonable.

I. Background

[4] The Applicants are citizens of Nigeria. The Principal Applicant and her daughters made their initial claim for refugee protection in Canada in December 2017. The Associate Applicant later arrived in Canada in January 2018, and the Applicants then made their claim for refugee protection together.

[5] The Applicants allege that they are at risk in Nigeria because the Principal Applicant provided information about Ijaw militants to the police in September 2015. They allege that this made them targets for the militants, as they claim that the militants subsequently infiltrated the Principal Applicant's residence compound and continued to search for them around their house. They relocated to Ogun, a southern Nigerian state, where the Principal Applicant alleges that she saw a member of the militants while shopping at a local market. The Applicants also claim that the Ijaw militants visited the Principal Applicant's parents when they were already in Canada. The militants allegedly beat and severely injured her parents when they refused to divulge the Principal Applicant's location.

[6] On September 20, 2022, the RAD denied the Applicants' claim for refugee protection. The determinative issue was the existence of a viable IFA in Abuja. The RAD agreed with the Refugee Protection Division [RPD] that the Applicants failed to demonstrate that the Ijaw militants have the means and motivation to locate them in Abuja, a northern state in Nigeria.

II. Standard of Review

[7] I agree with the parties that, other than the issue of procedural fairness, the standard of review is reasonableness, as articulated by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[8] That being said, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it 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.

[9] Both parties argued as if reasonableness was also the standard of review for the procedural fairness issue raised. I prefer the view expressed by Justice Rennie of the Federal Court of Appeal in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at paragraph 34 that on issues related to breach of procedural

fairness, the standard is akin to correctness. "The ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond": *Canadian Pacific* at para 56.

III. Analysis

A. *The decision is fair*

[10] The Applicants submit that the RAD, in adopting the RPD's findings, failed to note that the RPD breached procedural fairness. Specifically, they say that near the end of the RPD hearing, the Associate Applicant addressed the RPD member with additional, new evidence that he had procured on his phone regarding the presence of Ijaw militants in Benin City, originally one of the IFA locations under consideration.

[11] In response, the RPD member told the Associate Applicant that she would consider only one article as part of her decision and would not accept any others:

> So, are you -- I am not going to accept kind of every article that you can Google – certainly, but that first article on Benin State (sic), if you send that to Counsel, I will accept that first article on Benin State, okay?

[12] The Applicants submit that this statement "essentially tells the Applicant[s] that the RPD will not accept any document from Google other than the one already presented." They say that this breaches their right to procedural fairness because: (1) it dissuaded them from presenting new evidence during the hearing; and (2) they were not given the opportunity to present

additional evidence after the hearing, as was their right under Rule 36 of the *Refugee Protection Division Rules*, SOR/2012-256.

[13] I reject this submission. I agree with the Respondent that the Applicants have not provided evidence that demonstrates that they were prevented from submitting new evidence post-hearing, or even that they attempted to do so. More importantly, they did not submit nor attempt to submit any new evidence before the RAD, as was open for them to do. As the Respondent aptly put it during the hearing, the Applicants maintained the evidentiary burden of establishing their case. In the absence of proof of such material evidence, the Applicants cannot show a breach of procedural fairness.

B. *The decision is reasonable*

[14] There is a two-pronged test for establishing the viability of an IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*] at 711; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at 597 [*Thirunavukkarasu*]. Both prongs must be satisfied in order to make a finding that a claimant has an IFA.

[15] The first prong is to establish, on a balance of probabilities, that there is no serious possibility of the claimant being subject to persecution in the proposed IFA: *Rasaratnam* at 710. In the context of section 97 of the Act, it must be established that the claimant would not be personally subjected to a section 97 danger or risk in the proposed IFA.

[16] The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including the claimant's personal circumstances, for the claimant to seek refuge there: *Thirunavukkarasu* at 597-98.

[17] The burden of proof rests with the claimant to demonstrate that either prong of the test is not met on a balance of probabilities: *Thirunavukkarasu* at 590; *Yafu v Canada (Citizenship and Immigration)*, 2014 FC 293 at para 8; *Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109 [*Ogunjinmi*] at para 26.

[18] On the first prong, the Applicants submit that the RAD erred in finding that the Ijaw militants' activities are constrained to southern Nigeria (i.e., not in Abuja). They rely on their submission that their fairness rights were breached by the RPD not admitting further evidence that could demonstrate the pervasiveness of the Ijaw militants across Nigeria. I have already found that there was no breach and thus this submission does not support that the decision on the first prong of the test was unreasonable.

[19] The Applicants also claim that the RAD erred in finding that their submission that the Ijaw militants are able to track them throughout Nigeria was speculative. As the RAD already accepted the Applicants' credibility, they argue that any lack of documentary or corroborative evidence is not fatal to their case: *Gergedava v Canada (Citizenship and Immigration)*, 2012 FC 957 at para 15. They point to their testimony which they say demonstrates that the Ijaw militants can operate outside southern Nigeria. They further argue that even if the evidence shows that the Ijaw militants are mostly contained in southern Nigeria, they have the means and motivation to travel to other parts of the country, including Abuja.

[20] I find that it was reasonable for the RAD to consider that the Applicants' claim was speculative. No objective evidence was offered to bolster their testimony and the onus remained on them to demonstrate that the Ijaw militants pose a risk to them in Abuja: *Thirunavukkarasu* at 590. It was open for the RAD to find that the evidence that the Applicants adduced, none of which pointed towards the presence of the Ijaw militants in northern Nigeria, was insufficient in establishing that they would face a section 97 risk in Abuja.

[21] On the second prong, the Applicants submit that the RAD applied an incorrect, higher threshold in determining whether it was reasonable for the Applicants to relocate to Abuja. They submit that the RAD was instead tasked to consider any "undue hardship" that the Applicants would face, particularly as it relates to their limited employment opportunities and the inadequate healthcare in Nigeria: *Thirunavukkarasu* at 598. They also submit that the RAD misinterpreted the Associate Applicant's testimony to determine that the Applicants do not face significant barriers in relocating to Abuja. I am not persuaded.

[22] Contrary to the Applicants' submissions, the RAD applied the correct threshold in assessing whether it was reasonable for them to relocate to Abuja. The jurisprudence establishes a "high threshold" to find unreasonableness, requiring "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area": *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15.

[23] Further, contrary to their submissions, the RPD did consider their arguments with respect to their employment and medical concerns but found that they were not compelling to find the

IFA was unreasonable. The RAD upheld this finding upon its review of the RPD decision, and I see no reason to disturb its factual finding, especially as it is consistent with the jurisprudence that states "[h]umanitarian and compassionate considerations […] will not suffice:" *Ogunjinmi* at para 27. The RAD also reasonably interpreted the Associate Applicant's statement that there are not "major" concerns with relocating to Abuja, and certainly none that rise to the high threshold required under the second prong of the IFA test.

IV. Conclusion

[24] Therefore, there was no breach of procedural fairness, and the RAD reasonably assessed both prongs of the IFA test.

[25] The parties raised no question for certification and I agree none arise.

JUDGMENT in IMM-9521-22

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9521-22
STYLE OF CAUSE:	AFOLASHADE IDOWU ABIOLA, HAFSAT ADEWUNMI ABIOLA, HIQMAT ADESOPE ABIOLA, ADEWALE ALABI ABIOLA v MINISTER OF CITIZENSHIP AND IMMIGRATION
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