

Federal Court



Cour fédérale

Date: 20170609

Docket: IMM-5209-16

Citation: 2017 FC 565

Toronto, Ontario, June 9, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**IYOBOSA ALADENIKA
ELIZABETH ALADENIKA (A MINOR)
GODWIN ALADENIKA (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an immigration officer [the Officer] dated October 31, 2016, in which the Officer refused the Applicants' application for a Pre-Removal Risk Assessment [PRRA]. The principal Applicant, Ms. Iyobosa Aladenika, claims fear of female genital mutilation [FGM] of her daughter, one of the minor Applicants, Elizabeth

Aladenika. The Applicants received a negative PRRA decision, based on the Officer's conclusion that there were viable Internal Flight Alternatives [IFAs] to which the Applicants could relocate.

[2] As explained in more detail below, this application is allowed, because I have found that the Officer rendered an unreasonable decision, by failing to properly consider evidence that the Applicants' alleged agents of persecution had pursued and located members of the families of the principal Applicant and her husband, in both proposed IFAs, in efforts to impose FGM on the minor female Applicant and another minor female.

II. Background

[3] The Applicants are Ms. Aladenika, her daughter Elizabeth, age 14, and her son Godwin, age 8. They are citizens of Nigeria who arrived in Canada on August 14, 2013 with the Applicant's husband, who is also the father of the children. Ms. Aladenika states that, following their arrival in Canada, her husband's family set fire to his sawmill business in Nigeria, and he returned to Nigeria. Her husband eventually returned to Canada after his family threatened his life because of his objection to their insistence that his daughter be subjected to FGM. Ms. Aladenika and her husband are now separated.

[4] The Applicants made a claim for refugee protection, which was rejected by the Refugee Protection Division [RPD] on February 19, 2014, based on a finding that the Applicants had viable IFAs in either Benin City or Lagos. The Applicants appealed this decision to the Refugee

Appeal Division [RAD], which upheld the RPD's decision on July 4, 2014. On June 30, 2015, the Federal Court denied leave for judicial review of the RAD decision. The Applicants then applied for a PRRA.

[5] The Applicants submitted new evidence in support of their PRRA application. This evidence included affidavits from Mr. Taiwo Oluwaseun Faneti, who is a cousin of Ms. Aladenika's husband and resides in Lagos, and from Ms. Aladenika's father, Mr. Harrison Owen Uwagboe, and half-sister, Ms. Osade Ogbekhilu, who both reside in Benin City, as well reports on Ms. Aladenika's psychological condition.

III. Impugned Decision

[6] In the PRRA decision, the Officer considered the new evidence submitted by the Applicant and agreed that the determinative issue in the PRRA was the proposed IFA in either Benin City or Lagos. The Officer set out the two-pronged test for an IFA: first, whether there is a serious possibility of risk in the IFA, and second, whether the proposed IFA is reasonable given the particular circumstances of the Applicants. The Officer noted that the RPD and RAD had previously found Benin City and Lagos to be viable IFA cities for the Applicants and that the Federal Court refused to grant leave for judicial review of the RAD decision.

[7] The Officer considered the evidence of the status of Ms. Aladenika's husband's family, as powerful and influential members of the Nigerian military, and the affidavit from Mr. Faneti, who eventually gave in to family pressure and allowed his daughter to be circumcised. However,

the Officer noted that Mr. Faneti and his family did not attempt to relocate to Benin City or Lagos and found that Mr. Faneti's evidence did not equate to the circumstances of the Applicants.

[8] The Officer also considered the affidavits from Ms. Aladenika's family and acknowledged that members of her husband's family had visited and threatened them. However, the Officer noted that the RPD had considered this issue, having observed that Ms. Aladenika's husband's family had already gone to look for them at her sister's home in Lagos and Benin City and that her husband's family has relatives in the Nigerian police and military. The RPD found that, because Ms. Aladenika and her husband are now separated, it was reasonable to believe that his family is not interested in pursuing her to the extent she suggests.

[9] In relation to the psychological reports, the Officer noted that it is natural that the Applicants will face psychological distress at the possibility of a return to Nigeria and found that the IFAs continued to be reasonable in light of this evidence.

[10] Taking into account the new evidence provided since the RPD and RAD decisions, the Officer determined that the Applicants had not provided sufficient evidence that there is a serious possibility of risk in the proposed IFAs or that the relocation is unreasonable.

IV. Issues and Standard of Review

[11] The Applicants articulate the issue for the Court's consideration as whether the Officer unreasonably assessed the evidence and/or reached conclusions that are irreconcilable with the totality of the undisputed facts.

[12] The parties are in agreement, and I concur, that the applicable standard of review is reasonableness (see *Cabral De Medeiros v Canada (Minister of Citizenship and Immigration)*, 2008 FC 386, at paras 12-15).

V. Analysis

[13] My decision to allow this application for judicial review turns on my conclusion, as explained below, that the Officer unreasonably assessed whether there is a serious possibility of risk to the Applicants in each of the proposed IFAs.

[14] In relation to Lagos, the Officer considered the affidavit of Ms. Aladenika's husband's cousin, Mr. Faneti, and noted his evidence that for a long time he resisted pressure from his family, including those in the military, but that he eventually gave in to such threats and pressure and allowed his daughter to be circumcised. The Officer also noted that Mr. Faneti states that relocating did not prevent the location from being known to the extended family. However, the Officer found that this did not equate to the current circumstances of the Applicants, because Mr. Faneti and his family had not attempted to relocate to Benin City or Lagos.

[15] As acknowledged by the Respondent, the Officer made a factual error, in that it is clear from Mr. Faneti's affidavit that it was Lagos to which Mr. Faneti and his immediate family relocated in an effort to resist the pressure from his extended family to have his daughter circumcised. The Respondent nevertheless argues that this error was immaterial, because Mr. Faneti's evidence did not address the Applicants' own personal situation, particularly taking into account the fact that Ms. Aladenika was separated from her husband and therefore no longer a member of the family that had wished to subject her daughter to FGM. The Respondent also argues that Mr. Faneti's evidence does not address findings by the RPD and the RAD related to lack of interest by Ms. Aladenika's husband's family in pursuing the Applicants.

[16] I find no merit to the Respondent's argument. The agents of persecution feared by the Applicants are Ms. Aladenika's husband's family. Mr. Faneti is a member of that family. While he and his immediate family oppose the practice of FGM, his evidence is that they relocated to Lagos in order to escape precisely the same sort of pressure, to have his daughter circumcised, as gives rise to the Applicants' fear. Notwithstanding that relocation, Mr. Faneti's family was located by his relatives at their home in Lagos. He was attacked and eventually succumbed to the pressure and threats and agreed to have FGM performed upon his daughter. While this evidence may not be determinative of the question whether the agents of persecution would have the interest and capacity to locate the Applicants if they were to move to Lagos, it is certainly relevant to that determination. The Officer's assessment of the viability of Lagos as an IFA is therefore unreasonable, because the Officer based the conclusion that Mr. Faneti's evidence did not equate to the Applicants' situation on the factual error that Mr. Faneti and his family did not attempt to relocate to Lagos.

[17] My conclusion that the Officer's assessment of Lagos as an IFA was unreasonable does not on its own render the Officer's overall decision unreasonable, as there were two IFAs under consideration. In relation to Benin City, the Officer's conclusion, that the Applicants would not face a serious possibility of risk if they relocated, appears to be based on the RPD's decision. The RPD found that, because Ms. Aladenika and her husband were separated, it was reasonable to believe that her husband's family was not interested in pursuing her to the extent she suggested. Reviewing the RPD's decision, I see that in making this finding the RPD referred to Ms. Aladenika's evidence at the hearing that the last time her husband's family members had gone looking for her at her sister's home in Lagos and Benin City was in September 2013 and that they had not returned since. The RPD appears to have relied on that evidence, and the fact of Ms. Aladenika's separation from her husband, to conclude that her husband's family was no longer interested in pursuing the Applicants. The RAD subsequently found that this analysis by the RPD was not unreasonable, and the Applicants' application for leave to judicially review the RAD's decision was dismissed. As such, this finding by the RPD, upon which the Officer relied, has not been impugned.

[18] However, the purpose of the PRRA was to perform an updated assessment of risk, including the consideration of new evidence. This new evidence included affidavits from Ms. Aladenika's father and half-sister. While the Officer noted that these affidavits referred to visits and threats from family members, the Officer does not consider the fact that these visits and threats continued into 2015. The affidavit of the father, Mr. Uwagbo, describes relatives of Ms. Aladenika's husband attacking him at his home in Benin City in April 2015, demanding that he produce his daughter and granddaughter. The affidavit of the half-sister, Ms. Ogbekhilo,

describes relatives of Ms. Aladenika's husband harassing her in September 2015 and stating that Ms. Aladenika cannot hide from them forever.

[19] These affidavits represent evidence of relatives of Ms. Aladenika's husband pursuing the Applicants in Benin City and demonstrating a continued interest in the Applicants as recently as September 2015. This evidence postdates the RPD's July 4, 2014 decision and updates the evidence before the RPD, which had then demonstrated that Ms. Aladenika's husband's relatives had not been looking for her since September 2013. It was therefore unreasonable for the Officer to reach conclusions on the risk faced by the Applicants if they were to relocate to Benin City, in reliance on the RPD's finding that the relatives were not interested in pursuing them, without analyzing this evidence of more recent interest.

[20] It is therefore my conclusion that the Officer has performed an unreasonable assessment of both proposed IFAs and that this application for judicial review must be allowed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, and the matter is remitted back to a different officer for reconsideration. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Kingsley I. Jesuorobo FOR THE APPLICANTS
Alex C. Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley I. Jesuorobo FOR THE APPLICANTS
Barrister & Solicitor
North York, Ontario
William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada