

Federal Court



Cour fédérale

Date: 20181213

Docket: IMM-2406-18

Citation: 2018 FC 1263

Toronto, Ontario, December 13, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**CHINYERE OYIMA EFE-AGBONAYE
IWINOSA SAMUEL CHIMAMANDA EFE-
AGBONAYE (MINOR)
IYOSAYI GRACE UCHECHUKWU EFE-
AGBONAYE (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated April 18, 2018, in which the RAD

dismissed the Applicants' appeal from the decision of the Refugee Protection Division [RPD], finding that the Applicants are not Convention refugees or persons in need of protection.

[2] As explained in more detail below, this application is dismissed, because I have found that the RAD reached a reasonable conclusion that there was a viable internal flight alternative [IFA] available to the Applicants in Port Harcourt, Nigeria.

II. Background

[3] The principal Applicant, Chinyere Oyima Efe-Agbonaye, is a 37-year-old citizen of Nigeria. The two minor Applicants, Iyosayi Grace Uchechukwu Efe-Agbonaye and Iwinosa Samuel Chimamanda Efe-Agbonaye, are her children and are also Nigerian citizens.

[4] Ms. Efe-Agbonaye is a medical radiographer and worked in this profession in Nigeria. In July and August 2016, she and her children visited Canada. While here, her husband contacted her from Nigeria and told her not to return. He explained that his father and his father's kinsmen insisted that their daughter, one of the minor Applicants, be subjected to female genital mutilation [FGM] because it is tradition. Fearing for her daughter and for herself were she to try to prevent her daughter being subjected to FGM, Ms. Efe-Agbonaye remained in Canada with her two children and sought refugee protection. Her husband remained in Nigeria.

[5] The RPD denied the refugee claim on credibility grounds. While not the determinative issue for the RPD, it also canvassed with Ms. Efe-Agbonaye at the hearing the issue of an IFA in

Port Harcourt. In considering the appeal, the RAD identified the IFA of Port Harcourt as a new issue and provided the Applicants an opportunity to make submissions on the proposed IFA.

III. Decision under Review

[6] The RAD's decision to dismiss the Applicants' appeal turned on its finding that Port Harcourt represented a viable IFA. In reaching this conclusion, the RAD reviewed the test for an IFA, as set out in *Rasaratnam v Canada (Minister of Employment & Immigration)*, [1991] FCJ No 1256 (Fed CA), expressed by the RAD as follows:

- A. [T]he Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- B. [C]onditions in the part of the country [considered to be an IFA] must be such that it would not be unreasonable, in all the circumstances, [including those particular to the claimant] for the claimant to seek refuge there.

[7] In addressing the first prong of the IFA test, the RAD noted that Ms. Efe-Agbonaye stated before the RPD that she could not relocate to Port Harcourt because her husband has family and kinsmen there. However, the RAD noted that Ms. Efe-Agbonaye testified that she did not know the family members from Port Harcourt, that she met them only once (at her wedding in 2011), that she did not know specifically which extended family members she feared, and that her husband did not specify who, other than her father-in-law, was seeking her out. The RAD concluded that Ms. Efe-Agbonaye had provided little information on who lives in Port Harcourt

or how they would know she is there. The RAD also noted that the members of the extended family who attended the wedding would never have met Ms. Efe-Agbonaye's daughter, who was born the following year. The RAD found it unlikely that anyone would know Ms. Efe-Agbonaye was in Port Harcourt or would recognize her given the passage of time.

[8] The RAD also observed that, although FGM is prohibited in the state in which Port Harcourt is situated, the practice continues in Nigeria because of a lack of political will to further criminalize and prosecute the practice. However, the RAD explained that the documentary evidence indicates that, generally, where both parents refuse to comply with a family request for FGM, the decision is left to the parents. In the present case, both Ms. Efe-Agbonaye and her husband have refused to have their daughter subjected to FGM, and the RAD held that there was not more than a mere possibility that the extended family of Ms. Efe-Agbonaye's family would locate her in Port Harcourt.

[9] Turning to the second prong of the IFA test, the RAD considered the conditions in Port Harcourt and the profile of the Applicants, concluding based on her education, past employment, and age that Ms. Efe-Agbonaye would be at no more a disadvantage than any other Nigerian in Port Harcourt. The RAD also noted that her husband would join her in the IFA. The RAD reviewed the evidence of the security situation in Port Harcourt, referring to warring cults and vigilante groups active in the region whose killings include civilians. The RAD found, however, that the Applicants would be at no more risk than anyone else.

[10] The RAD also referred to documentary evidence that there is a high level of crime and conflict in the region, attributed to the effects of petroleum industry, including evidence of kidnapping and ransom demands, but found that the Applicants' profiles would not place them at higher risk than other Nigerians.

[11] The RAD concluded that the challenges in Port Harcourt did not meet the threshold to make the proposed IFA unreasonable. Finding it unlikely that the Applicants would face a serious possibility of persecution in Port Harcourt, the RAD determined that it was a viable IFA.

IV. Issues and Standard of Review

[12] The sole issue raised by the Applicants for the Court's consideration is whether the RAD erred in its assessment of the evidence relating to its IFA analysis. The parties agree, and I concur, that the standard of review is reasonableness.

V. Analysis

[13] Beginning with the first prong of the IFA test, the Applicants submit that the RAD erred by focusing on whether Ms. Efe-Agbonaye knew the identities of members of her husband's extended family living in Port Harcourt who could be agents of persecution. The Applicants emphasize Ms. Efe-Agbonaye's evidence that there was a bus full of people who attended from Port Harcourt for her wedding and that photographs were taken, which the Applicants submit would enable the relatives to recognize her. The Applicants argue that they would be required to live in hiding in Port Harcourt to avoid the risk of Ms. Efe-Agbonaye being recognized.

[14] Applying the reasonableness standard of review applicable to the RAD's analysis, I find no reviewable error in its conclusion under the first prong of the IFA test. While the RAD could have reached a different decision on the possibility of Ms. Efe-Agbonaye's husband's family identifying her in Port Harcourt, I find that it was available to the RAD, based on the evidence before it, to reach the conclusion that it did. The RAD considered the viability of Port Harcourt as an IFA in the context of its population of 2.34 million people and found not only that it was unlikely that she would be recognized, given the passage of time since meeting her husband's family, but also that it was unlikely that anyone would know she was in Port Harcourt. I do not find the Applicant's arguments surrounding the number of people from Port Harcourt who attended the wedding or the fact that they may have photographs of Ms. Efe-Agbonaye to undermine the reasonableness of this conclusion.

[15] The Applicants also argue that the RAD erred in its consideration of the country condition documentation surrounding the practice of FGM in Nigeria. They submit that the documentary evidence indicates that the police treat FGM as a family and cultural matter and are unlikely to provide protection to the Applicants. However, the RAD expressly acknowledged that, while FGM is banned in Port Harcourt, there is evidence that it is still practised and of a lack of political will to prosecute the practice. Therefore, the decision cannot be interpreted as indicating that the RAD overlooked the point upon which the Applicants rely.

[16] Rather, the RAD relied on the documentary evidence to the effect that, generally, if both parents refuse to comply with a family request for FGM, it is left to the parent's decision. Given that both Ms. Efe-Agbonaye and her husband oppose FGM, the potential risk arose due to her

husband's extended family's wish to have their daughter circumcised, and the RAD concluded that there was not more than a mere possibility of the family locating the Applicants in the proposed IFA. I find nothing unreasonable in the RAD's treatment of this aspect of the documentary evidence.

[17] Turning to the second prong of the IFA test, the Applicants submit that the RAD erred in finding that only people with certain profiles were the subject of attacks and kidnappings that take place in Port Harcourt. The Applicants argue that, contrary to these findings, the documentary evidence indicates that ordinary citizens are also subject to this risk. In my view, this submission misunderstands the RAD's finding. The RAD referred to documentary evidence as to warring cults and vigilante groups that have committed killings, including targeting civilians, but it found that the evidence did not indicate that the Applicants were at greater risk than anyone else. While the RAD did note from the evidence that the threat of kidnapping for ransom was higher for those who are perceived to be wealthy, such as political figures, foreign nationals, higher profile Nigerians, doctors, teachers, businessmen and religious leaders, it observed that such kidnappings can also occur in the general population. The RAD concluded that the Applicants were not of a profile considered to be higher risk and that there was no evidence placing them at particular risk higher than that of other Nigerians. I find no reviewable error in this component of the RAD's analysis.

[18] Finally, the Applicants submit that the RAD erred in concluding that it would be reasonable for them to relocate to Port Harcourt, because the RAD failed to consider the high

rate of unemployment as well as social, cultural and economic difficulties they would face as a result of discrimination based on their ethnicity, language and culture.

[19] With respect to employment, the RAD found that, based on Ms. Efe-Agbonaye's age, education, and history of successful employment, there was no evidence to suggest she would be at a greater disadvantage than other Nigerians in establishing herself in Port Harcourt. I find no reviewable error in this conclusion. With respect to the effects of the Applicants' ethnicity, language and culture, I agree with the Respondent's position that these issues were not raised by the Applicants in their submissions to the RAD and that the RAD therefore cannot be faulted for not having considered these arguments (see, e.g., *Abdulmaula v Canada (Minister of Citizenship and Immigration)*, 2017 FC 14 at para 15).

[20] Having found the RAD's decision to be reasonable, this application for judicial review must be dismissed. Neither party raised any question for certification for appeal, and none is stated.

JUDGMENT in IMM-2406-18

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2406-18

STYLE OF CAUSE: CHINYERE OYIMA EFE-AGBONAYE ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 11, 2018

JUDGMENT AND REASONS SOUTHCOTT, J.

DATED: DECEMBER 13, 2018

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