Federal Court  Cour fédérale

Date: 20190912

Docket: IMM-832-19

Citation: 2019 FC 1166

Ottawa, Ontario, September 12, 2019

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

IBE FELIX AMADI,
QUEENETT OGECHI IBE-FELIX,
ADRIEL EKWUNDAZI IBE,
ELIORA SHINE IBE AMADI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a family of four, seek judicial review of the decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated January 9, 2019. The RAD dismissed the Applicants' appeal of the decision of the Refugee Protection Division [RPD] which had denied their claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act].

[2] For the reasons set out below, the Application is denied. The determinative issue for both the RPD and RAD is the existence of an Internal Flight Alternative [IFA] for the Applicants within their home country of Nigeria. The RAD reasonably found that the Applicants have an IFA in Ibadan.

I. Background / Overview

[3] The Applicants, Mr. and Mrs. Amadi and their minor son and daughter, are citizens of Nigeria. The Applicants recount that they are Christians, but belong to a powerful extended family that adheres to traditional practices, such as female genital mutilation and other rituals. They allege that if they return to Nigeria, including to the proposed IFA in Ibadan, their extended family would abduct them and subject them to rituals, including the forced female genital mutilation [FGM] of Mrs. Amadi and their young daughter. They also allege that their son would risk being kidnapped and held ransom until Mrs. Amadi and their daughter submit to the rituals.

[4] In Mr. Amadi's narrative, which is attached to his Basis of Claim form, he recounts that his extended family are "idol worshippers". He states that his extended family attributed the recent deaths of particular family members to the Applicants' refusal to subject themselves to traditional rituals, in particular FGM.

[5] Mr. Amadi recounts that he first learned about his extended family's plans to subject them to rituals on September 2, 2017. He claims that he approached the local Nigerian police but they refused to assist him and responded that this was an issue of culture and tradition to be resolved within his extended family.

[6] Mr. Amadi explains that on the advice of his lawyer, he and his family fled to the United States [US]. Concerned that their claims for asylum in the US would not be granted, they entered Canada and claimed refugee protection on September 12, 2017.

A. *The RPD Decision*

[7] The RPD refused their claim, noting some credibility issues, including about the Applicants' claim that their family were non-Christian and idol worshippers, given that family members had been buried in the Anglican cemetery. The RPD also noted concerns about the timing of the Applicants' departure from Nigeria which they claimed was necessary to flee the risk from their family, but which coincided with Mr. and Mrs. Amadi leaving their jobs and the refusal of their application for a Canadian visa. However, the RPD found that the determinative issue is that the Applicants have a viable IFA in various cities in Nigeria, particularly in Ibadan.

[8] The RPD noted the two-prong test for an IFA established in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at paras 9-10, [1991] FCJ No 1256 (QL) (FCA) [*Rasaratnam*].

[9] The RPD found that there was no serious possibility of persecution in the proposed IFAs, noting that the Applicants did not provide sufficient evidence of their extended family's alleged influence and ability to locate them in the proposed IFAs. The RPD also found that it would be reasonable for the Applicants to relocate to the proposed IFAs. Although the Applicants did not make submissions on the second prong of the IFA test, the RPD considered the Applicants'

religion and language, as well as the availability of accommodations, employment, health care, education and social services in the IFA locations.

[10] The Applicants appealed the RPD's decision to the RAD.

II. The Decision under Review

[11] The RAD conducted an independent analysis of the evidence on the Record and concluded that the RPD did not err. The RAD addressed each of the Applicants' several grounds for appeal.

[12] With respect to the Applicants' argument that the RPD breached procedural fairness by ignoring evidence, the RAD correctly noted that failure to mention each piece of evidence is not a breach of procedural fairness.

[13] The RAD found that the RPD did not err in its IFA analysis or findings. The RAD found that the Applicants failed to establish a well-founded fear of persecution in the proposed IFA locations, focussing on Ibadan. The RAD noted the objective documentary evidence that acknowledged that FGM continues to be practiced in Nigeria, but that where both parents oppose the practice, it will not typically be imposed. The RAD noted that the documentary evidence explains that Nigeria is characterized as a "moderately low" to "low prevalence country". The RAD cited the country condition documents, noting, among other information, that: Nigerian parents may refuse to have their daughter undergo FGM; more educated individuals have greater capacity to resist cultural pressure; within the large cosmopolitan city of Lagos (which was one

of several possible IFAs), parents are not pressured regarding FGM; and, families can safely relocate within Nigeria.

[14] The RAD also considered the affidavits submitted by the Applicants, including from their brother and sister-in-law describing their own experience with forced FGM. The RAD attributed low probative value and little weight to the affidavits, noting that they did not address the key issue of the viability of an IFA for the Applicants within Nigeria and pointing out several irregularities in all of the affidavits.

[15] The RAD found that, contrary to the Applicants' argument that they were not questioned about how their family could find them in the proposed IFA, the RPD had in fact probed this issue, noting three specific inquiries. The RAD concluded that the Applicants had the opportunity to explain how their family could locate them, but failed to persuade the RPD that this would occur.

[16] With respect to the Applicants' argument that the RPD did not consider the psychological report regarding Mr. Amadi when assessing his testimony, the RAD found that the Applicants had not provided any particulars about how his testimony was compromised by his psychological condition and that there was no instance when Mr. Amadi's alleged psychological symptoms appeared to impede his testimony.

[17] With respect to the second prong of the IFA test, the RAD found that claimants would not need to live in hiding in the proposed IFA. The RAD noted that the RPD had found there was

no serious possibility of persecution, since the Applicants had not established that their family had the capacity or influence to find them. The RAD similarly concluded that the Applicants could live freely in Ibadan. The RAD found that, although the Applicants may have family in various parts of Nigeria who are ‘affiliated’ with the police, there was no evidence that the police would collude with the Applicants’ extended family.

[18] The RAD concluded, based on its review of all the evidence and the Jurisprudential Guide on Nigeria, that the conditions in the proposed IFA were such that it would not be unreasonable for the Applicants to relocate to Ibadan.

[19] With respect to the Applicants’ argument that the RPD erred by not separately considering their risk under section 97 of the Act, the RAD found that the RPD correctly applied sections 96 and 97. The RAD noted that a finding that a claimant has a viable IFA pursuant to section 96 forecloses the possibility of protection under section 97 given that subparagraph 97 (1)(b)(ii) requires that the risk be faced “in every part of that country”.

[20] The RAD rejected the Applicants’ argument that the RPD member’s comments regarding the Applicants’ failure to mention Ibadan in their long list of disputed IFA locations demonstrated a reasonable apprehension of bias. The RAD noted that the high threshold to establish bias had not been met.

[21] The RAD rejected the Applicants’ argument that the RPD failed to consider the Chairperson’s Gender Guidelines, noting that the RPD’s credibility findings pertained to issues

that were not connected to the Applicants' genders, such as the timing of alleged events and the traditional religion of the Applicants' extended family.

[22] The RAD also rejected the Applicants' argument that the RPD failed to apply the Guidelines on Child Refugee Claimants because it did not make separate refugee determinations for each child. The RAD found that all of the Applicants' claims were intertwined and addressed together. The RPD's conclusions with regard to the adult Applicants applied equally to their minor children.

III. The Issues

[23] The Applicants raise many of the same arguments on this judicial review as they raised in their appeal to the RAD.

[24] Their arguments can be summarized as follows:

- the RAD erred by failing to consider all of the risks alleged by each of the Applicants and focussed only on the risk of FGM to their daughter;
- the RAD erred in its IFA analysis by ignoring relevant evidence that contradicted its findings; and by selectively relying on the documentary evidence with respect to the risk of FGM.

[25] The key issue is the reasonableness of the RAD's finding that the Applicants have an IFA in Ibadan. The Applicants' arguments have been considered in this context.

IV. The Standard of Review

[26] The Applicants have characterized their arguments – that the RAD failed to consider all the risks, ignored evidence and failed to provide adequate reasons for doing so – as a breach of procedural fairness. The Applicants submit that these failures denied them a fair hearing of their claim. However, the issues raised by the Applicants, properly characterized, do not relate to procedural fairness but to the reasonableness of the decision. The Applicants have not made any allegations that they were denied an opportunity to present their claims or were prevented from giving their testimony or responding to questions from their counsel or from the RPD.

[27] The Applicants' arguments relate to the assessment of the evidence, determinations of fact, and the application of law to the facts. There is no dispute that the reasonableness standard of review applies to these issues (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190 [*Dunsmuir*]).

[28] The determinative issue for the RAD was the finding that the Applicants have an IFA in Ibadan. The issue for the Court is whether the RAD's finding is reasonable (*Ugbekile v Canada (Citizenship and Immigration)*, 2016 FC 1397 at paras 12-14, 275 ACWS (3d) 360.)

[29] The reasonableness standard focuses on "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[30] Contrary to the Applicants' allegation that the RAD's reasons are inadequate and that this results in a breach of procedural fairness, the jurisprudence has established that the adequacy of reasons should be addressed in the consideration of whether the decision is reasonable.

[31] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*], the Supreme Court of Canada elaborated on the requirements of *Dunsmuir*, noting at paragraphs 14-16 that reasons are not required to set out all the arguments, statutory provisions, jurisprudence or other details that a reviewing Court might prefer. Nor is the decision-maker required to make an explicit finding on each element that leads to the final conclusion. The inadequacy of the reasons is not a stand-alone ground of judicial review, rather, the reasons are to "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses*, at para 14). In addition, where necessary, courts may look to the record to assess the reasonableness of the outcome (*Newfoundland Nurses*, at para 15).

V. The Applicants' Submissions

[32] At the hearing of this Application, the Applicants focussed on two arguments: that the RAD had failed to consider the risks alleged by all four Applicants and failed to provide reasons for doing so; and that the RAD ignored the oral testimony of Mr. Amadi regarding how his extended family would find them in the proposed IFA. In the written submissions the Applicants raised additional arguments. All the arguments have been considered in determining the reasonableness of the RAD's finding that the Applicants have an IFA in Ibadan.

[33] The Applicants submit that the RAD selectively relied on parts of the country condition documents to find that their daughter would not be at risk of FGM. They argue that the RAD ignored the parts that stated that parents who refuse face risks to their lives and that police do not offer protection from forced traditional practices. The Applicants also submit that the RAD failed to consider that Mrs. Amadi is at a heightened risk as both a parent and a target for FGM.

[34] The Applicants submit that the RAD erred in its application of both prongs of the IFA test. First, the Applicants argue that they would face a serious possibility of persecution in the proposed IFA of Ibadan because many members of their extended family reside nearby. The Applicants acknowledge that they do not have family in Ibadan, but they claim that its location and proximity to Lagos, where the family holds its meetings, would bring them within reach of an influential family leader, Chief Bidi Amadi.

[35] Second, the Applicants rely on *Thirunavukkarasu v Canada (Minister of Employment & Immigration)*, [1994] 1 FC 589 at para 14, [1993] FCJ No 1172 (QL) (FCA) [*Thirunavukkarasu*], and submit that it would be unreasonable for them to reside in Ibadan as they would need to live in hiding to prevent their extended family from finding them. They note that the jurisprudence has established that an IFA is not reasonable if a claimant is compelled to live in hiding.

[36] The Applicants submit that the RAD ignored Mr. Amadi's testimony regarding his family's influence and ability to find them. The Applicants point to Mr. Amadi's responses at the RPD hearing to questions posed to him by counsel on re-direct examination. The Applicants

submit that Mr. Amadi's testimony may have been weak in his direct examination due to his psychological condition and that this should have been taken into account. However, they submit that his later responses were clear.

VI. The Respondent's Submissions

[37] The Respondent submits that the RAD independently assessed the evidence and reasonably found that the Applicants could relocate to Ibadan.

[38] With respect to the first prong of the IFA test, the Respondent submits that the Applicants' submission that Ibadan is close to places where the extended family live does not explain how their extended family could find them in the large city of Ibadan.

[39] With respect to the second prong of the test, the Respondent submits that the Applicants did not demonstrate that they would be compelled to live in hiding in Ibadan. The Respondent notes that the RAD reasonably found that they could live freely in Ibadan given that there was no persuasive evidence that they were at risk of the alleged rituals or that their family members had the ability to find them in Ibadan.

[40] The Respondent submits that the RAD expressly referred to Mr. Amadi's oral evidence throughout the decision. The Respondent adds that the psychological report regarding Mr. Amadi had no bearing on his ability to provide his testimony.

VII. The RAD's Decision is Reasonable

[41] As noted above, the determinative issue for the RPD and the RAD is the finding that the Applicants have an IFA in Ibadan and can relocate there. I do not agree that the RAD ignored the risks to Mrs. Amadi or to the Applicants' son. In any event, whether or not each risk was individually assessed does not change the fact that the Applicants, whose claims were made and assessed together, have a viable IFA in Ibadan.

[42] It is trite law that seeking refugee protection of another country should be the last resort and that internal relocation must first be considered. *In Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 at para 25 [*Siliya*], Justice Boswell agreed with the RAD that, "[t]he question of internal flight alternative is integral to both the definition of a Convention refugee and that of a person in need of protection."

[43] The two-part test for an IFA established in *Thirunavukkarasu* reflects the principles previously established in *Rasaratnam.* The test is: (1) the decision-maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; and, (2) conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[44] As noted in *Thirunavukkarasu* at para 14:

> [14] 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 travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
>
> [Emphasis added]

[45] There is a high onus on the applicant to demonstrate that a proposed IFA is unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, [2000] FCJ No 2118 (FCA) at para 15).

[46] In *Argote et al v Canada (Minister of Citizenship and Immigration)*, 2009 FC 128 at para 12, [2009] FCJ No 153 (QL) [*Argote*], the Court noted that the onus is on an applicant to establish on objective evidence that the relocation to the IFA is unreasonable.

[47] Contrary to the Applicants' submission, the RAD considered all of the alleged risks. The RAD noted at the outset of the decision that the risk of harm asserted by the family relates primarily to the female Applicants. The RAD also noted the broader claim that the Applicants are at risk of traditional practices, "including FGM". The RAD's approach to focus on FGM is reasonable given that the Applicants' claims focussed on the risk of FGM and that they stated

that their son would be at risk of kidnapping if the female applicants did not undergo FGM. Clearly the risks to each Applicant were interdependent and arose from the primary risk of FGM to the female Applicants. In addition, in addressing the Applicants' allegations that the Guidelines on Child Refugee Claimants had not been applied, the RAD again noted that all the claims were intertwined.

[48] I do not agree that the RAD selectively relied on the documentary evidence to assess the risks the Applicants would face, including in the IFA. The RAD acknowledged that FGM continues to be practiced in Nigeria but that the prevalence was "moderate low" or "low". The RAD noted that parents in Nigeria – especially those who are educated and who live in urban areas – are generally able to refuse to have their children subjected to FGM. The RAD referred to the information in the country condition documents that was relevant to the Applicants' claims as educated parents, who were opposed to the practice.

[49] The Applicants seek to reinterpret other passages in the country condition documents to support their claim of risk of FGM. The country condition documents include references to articles noting possible "societal discrimination and ostracism for going against cultural or family tradition" and comments by those who stated that they do not want to face the consequences of refusal. However, the passages relied on by the Applicants do not suggest that those who refuse FGM risk their lives.

[50] The Applicants acknowledge that the RAD was not required to refer to every piece of evidence that was before it. They acknowledge that the RAD is presumed to have considered all

the evidence presented to it unless the contrary can be shown. The Applicants have not shown that the RAD did not consider all the evidence, only that it did not expressly mention particular passages or interpret the country condition documents in the same manner as the Applicants.

[51] Although the documentary evidence acknowledges that Nigerian state laws against FGM have been criticized as ineffective and unenforced, the determinative finding is that the Applicants will not be at risk of being subjected to such practices in Ibadan. They do not claim that the state would subject them to rituals, but rather, their extended family. The RAD reasonably found that they can safely relocate to Ibadan without being found by their extended family.

[52] Contrary to the Applicants' argument, the RAD did not err in not specifically mentioning Mr. Amadi's oral testimony in response to questions from his counsel at the RPD hearing. The RAD is not required to refer to every piece of evidence; the RAD is presumed to have considered all the evidence before them unless otherwise demonstrated. (*Florea v Canada (Minister of Employment and Immigration)*, [1993] ACF No. 598 at para 1, [1993] FCJ No. 598 (CA) [*Florea*]; *Newfoundland Nurses* at para 16).

[53] The Applicants focus on a few questions put to Mr. Amadi regarding whether the Applicants would be safe in the proposed IFA locations; in particular, Ibadan, where the Applicants have no extended family. Mr. Amadi responded that they would not "feel safe" and would have to live in hiding, because Chief Bibi Amadi lives two hours away in Lagos and his reach extends to the whole region, including Ibadan. This evidence simply reiterated what

Mr. Amadi had stated in his written narrative and in his direct examination. The statements – which the Applicants argue were ignored – do not address how the Applicants' family is influential or how the Applicants could be located in Ibadan, a city of over three million people. This testimony does not provide the objective evidence required to establish that the proposed IFA is unreasonable (*Argote*, at para 12).

[54] The RAD noted that it had reviewed all the evidence on the record, including Mr. Amadi's testimony, and conducted an independent analysis. The RPD heard Mr. Amadi's testimony and noted that he repeated that the Chief would be able to find the Applicants but did not provide any details. There is no reason to doubt that the RAD considered all the evidence.

[55] The RAD did not err in finding that the psychologist's report had no bearing on the testimony given by Mr. Amadi. The Court notes that the psychologist's report says nothing about Mr. Amadi's ability to give testimony. Moreover, the psychologist cautions that Mr. Amadi's reported symptoms, many of which were described in the extreme, were internally inconsistent. The psychologist notes that his collective observations raise questions about the validity of the information reported. The psychologist concluded that it was not possible to establish a definitive diagnosis.

[56] Finally, with respect to the determinative issue, the RAD did not err in its articulation of the test for IFA or its application to the facts.

[57] The onus was on the Applicants to establish that they would face a risk of persecution in the proposed IFA and that it would not be reasonable in all the circumstances to relocate to that IFA. They failed to do so. The Applicants did not provide objective evidence of their extended family's influence or ability to locate the Applicants in Ibadan. The Applicants simply reiterates their claim that their extended family would find them – a finding which was rejected by the RAD. In *Thirunavukkarasu* at paras 12-14, the Court explained that it must be objectively reasonable to live in the IFA. In other words, the reasonableness of the IFA is not based only on the claimant's subjective view. The Court's reference to claimants not being expected to live in hiding refers to far more extreme circumstances to avoid detection.

[58] The RAD did not err in its articulation of the test for an IFA or its application. The RAD considered both prongs of the IFA test and reasonably found that the Applicants would not be at risk of persecution in Ibadan. The RAD also found that relocation to Ibadan would be reasonable for the Applicants in their circumstances. The RAD agreed with the RPD's assessment which noted several social, economic and cultural considerations, including the fact that the Applicants spoke English, are educated, could find employment and accommodations, could access social services and health care and could practice their religion as Christians given that half the Nigerian population is Christian.

JUDGMENT in file IMM-832-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-832-19
STYLE OF CAUSE:	IBE FELIX AMADI, QUEENETT OGECHI IBE-FELIX, ADRIEL EKWUNDAZI IBE, ELIORA SHINE IBE AMADI v THE MINISTER OF CITIZENSHIP, AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 4, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	KANE J.
DATED:	SEPTEMBER 12, 2019

APPEARANCES:

Josephat Nwabuokei	FOR THE APPLICANTS
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Blue House Law Professional Corporation Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT