Federal Court  Cour fédérale

Date: 20200901

Docket: IMM-5839-19

Citation: 2020 FC 876

Ottawa, Ontario, September 1, 2020

PRESENT: Madam Justice Walker

BETWEEN:

BASIRAT ADESHOLA ACHUGBE
ABIDEMI AUGUSTINA ACHUGBE
SULTAN GEORGE ACHUGBE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Basirat Achugbe and her two children, seek the Court's review of a decision of the Refugee Appeal Division (RAD) dated August 30, 2019 (Decision). The RAD found that the Applicants have an internal flight alternative (IFA) available to them in Port Harcourt, Nigeria and, on that basis, confirmed an August 23, 2018 decision of the Refugee Protection Division (RPD).

[2] For the reasons that follow, this application will be dismissed as the Decision is reasonable.

I. Background

[3] The Applicants are citizens of Nigeria. Ms. Basirat Achugbe is the principal applicant and the mother of the two additional applicants, a 19-year-old daughter, Abidemi, and a 13-year-old son. Mr. Lucky Achugbe is the principal applicant's ex-husband and father of the two children. Mr. Achugbe did not accompany his family to Canada and is not an applicant.

[4] Ms. Achugbe met Mr. Achugbe in secondary school. They married in 2005 and settled in Lagos, Nigeria. In 2011, Mr. Achugbe's mother visited the family in Lagos for three weeks. The mother disapproved of Ms. Achugbe due to tribal and language differences. The RPD and RAD characterized the mother's behaviour as highly negative towards Ms. Achugbe and found that she incited Mr. Achugbe to hit Ms. Achugbe on various occasions. Eventually, Ms. Achugbe discovered that the purpose of the mother's visit was to demand that the family send Abidemi, then 14, to Mr. Achugbe's village to undergo female genital mutilation (FGM) and marry an elder.

[5] In fear, Ms. Achugbe left the family home and took the children to stay with her mother in Ibadan. After Mr. Achugbe informed his mother where they were and she came to the Ibadan home to repeat her demands, Ms. Achugbe and the children moved to her aunt's home in Ibadan where Mr. Achugbe joined them. Mr. Achugbe's family continued to be very angry with Ms. Achugbe and she was told to "watch her back".

[6] In May 2014, Mr. Achugbe obtained visas for the family to travel to the United States and all four family members left Nigeria in August 2014 for Houston, Texas. While living in Houston, Mr. and Ms. Achugbe later separated due to his infidelity.

[7] In 2016, Ms. Achugbe and the children travelled to Canada with Mr. Achugbe's consent and claimed refugee protection.

[8] The RPD refused the Applicants' claim on the basis that they had not established more than a mere possibility of persecution or a risk of harm in Nigeria. The Applicants appealed the RPD decision to the RAD.

II. Decision under review

[9] The RAD found that the RPD failed to consider all of the evidence before it and erred in concluding that the Applicants had not established more than a mere possibility of persecution stemming from the threat to Abidemi of FGM at the hands of Mr. Achugbe's family. However, the RAD panel concluded that Ms. Achugbe and her children have an IFA in Port Harcourt and dismissed their appeal.

[10] The RAD considered the two prong IFA test established in *Rasaratnam* v *Canada (Minister of Employment & Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*). The panel first assessed whether there is a serious possibility of persecution, risk to life, or risk of cruel and unusual treatment or punishment for the Applicants in Port Harcourt. The RAD concluded that, while some of Mr. Achugbe's family members may still be motivated to look for the family

should they return to Nigeria, the Applicants had not established that those family members would be able to find them. There was no reason to believe that Mr. Achugbe would inform his family of the Applicants' whereabouts based on his actions over the past five years.

[11] The RAD then considered whether it would be unreasonable in the circumstances for the Applicants to seek refuge in Port Harcourt. The panel found that Ms. Achugbe has a high level of education and seven years' work experience, which she has upgraded while in Canada. She is fluent in English and would be able to adapt to life as the single head of the household in Nigeria. The RAD also found that the evidence in the National Documentation Package (NDP) regarding violence against women in Nigeria did not establish that the fact of being a single woman would make life unduly difficult for Ms. Achugbe and the children in Port Harcourt.

III. Issue and standard of review

[12] The sole issue in this application is whether the RAD erred in concluding that the Applicants have an IFA in Port Harcourt.

[13] I will review the RAD's conclusions in the Decision for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*)). None of the situations identified by the Supreme Court of Canada in *Vavilov* for departing from the presumptive standard of review apply in this case.

[14] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard, emphasizing the decision actually made, the decision maker's reasoning

process and the outcome for the person affected by the decision (*Vavilov* at para 83). The Supreme Court stated that the hallmark of a reasonable decision is "an internally coherent and rational chain of analysis" that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 32). I have applied the Supreme Court's guidance to my review of the Decision.

IV. Analysis

[15] The Applicants challenge the RAD's conclusions on both prongs of the IFA test.

First prong of IFA test

[16] The Applicants submit that the RAD erred in finding that Mr. Achugbe would not inform his family of their whereabouts should they return to Nigeria. They raise three arguments:

1. Past experience with Mr. Achugbe: Mr. Achugbe informed his mother where the Applicants were hiding in Ibadan in 2011 and could be forced to reveal the Applicants' presence in Port Harcourt due to his mother's continuing influence. The Applicants point to the mother's ability to force Mr. Achugbe to abuse Ms. Achugbe during her 2011 visit to the family home in Lagos.

2. Mr. Achugbe's family: The RAD found that Mr. Achugbe's family remains motivated to find the Applicants to inflict FGM on Abidemi.

3. Mr. Achugbe's letter of support: The Applicants submit that the one letter of support from Mr. Achugbe is insufficient to demonstrate that he is not subject to his mother's influence and that he will not, in the future, inform her that the Applicants have returned to Nigeria.

[17] The Applicants argue that the mother's history of influence over Mr. Achugbe, his prior disclosure of their location in Ibadan, and the continuing motivation of their agents of

persecution are sufficient to raise a mere possibility of persecution for the Applicants in Port Harcourt. They argue that Mr. Achugbe is now estranged from Ms. Achugbe, suggesting he is less likely to want to protect his ex-wife and children, and that the Applicants should not be forced to live with long-term continuing risk of being discovered in Port Harcourt. They cannot be expected to hide forever: Ms. Achugbe needs to work and the children need to attend school and, eventually, work themselves.

[18] The RAD acknowledged Mr. Achugbe's prior disclosure to his mother but notes that he subsequently re-joined his family in Nigeria and did not bow to any pressure to inform his family that the Applicants continued to reside in Ibadan. Rather, he took steps to protect his family. The RAD stated that Mr. Achugbe "agreed to file a visa application, assisted with selling property to gather the money for travel expenses, and brought the family to the United States. He lived with them and provided for them there by working as an auto mechanic for two years". The RAD acknowledged the breakdown of the marriage but relied on Mr. Achugbe's letter of support for the Applicants dated August 3, 2018. The RAD concluded:

> [26] I find that these actions and words are clearly those of a person who finally decided to cease trying to please his mother in 2014 and to protect the Appellants from then on. There is no evidence on record that suggests that he intends to come back on this decision which he took 5 years ago and continues to stand by today, as evidenced by the fact that he recently wrote a support letter to assist the claimants in their asylum claim. There is no reason to believe that he would tell his mother and her accomplices where the Appellants have settled in Nigeria.

[19] I find no reviewable error in the RAD's analysis of Mr. Achugbe's actions or of the Applicants' future risk in living in Port Harcourt. The RAD's analysis is internally consistent and its conclusion justified. The Applicants argue that the RAD erred in concluding that

Mr. Achugbe would not imperil them by disclosing their location to his family but have identified no errors in the RAD's description of the evidence before it. They argue that the mother continues to have a very strong influence over Mr. Achugbe but there is no evidence in the record that substantiates their submission. They emphasize that the fact he once revealed their location is evidence that he will do so again but ignore the RAD's detailed analysis of Mr. Achugbe's actions over the past six years. The Applicants effectively ask the Court to draw a different conclusion than that of the RAD based on the same evidence the RAD panel considered in some detail.

Second prong of the IFA test

[20] The Applicants' primary submission is that the RAD erred in failing to consider Ms. Achugbe's mental health and subjective fear of returning to Nigeria. They argue that, despite the absence of medical evidence, Ms. Achugbe's fragile mental health was in issue as the RPD referred to her anxiety in the face of being forced to return to Nigeria (*Cartagena v Canada (Citizenship and Immigration)*, 2008 FC 289 at para 11 (*Cartagena*)). The Applicants also argue that Ms. Achugbe's subjective fear of returning was not considered by the RAD, a reviewable error in and of itself (*Karim v Canada (Citizenship and Immigration)*, 2015 FC 279 at para 26 (*Karim*)).

[21] In its decision, the RPD acknowledged that Ms. Achugbe's painful treatment by her mother-in-law and Mr. Achugbe in 2011 "created a lot of anxiety" for her. There is no evidence in the record of any mental health concerns and the Applicants raised no such concerns before the RAD. I find that the RPD's acknowledgment of anxiety is not sufficient to put Ms. Achugbe's

mental health in issue such that the RAD's failure to undertake an analysis of her mental health in its IFA analysis was a reviewable error. *Cartagena* does not assist the Applicants. In that case, an RPD member failed to consider an applicant's vulnerable mental state despite the psychological opinion in evidence. Justice Mosley stated that "[p]sychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded" (*Cartagena* at para 11). The case does not stand for the proposition that the RAD must assess the mental state of each applicant who evidences anxiety before the RPD. Similarly, the Applicants' reliance on *Asif v Canada (Citizenship and Immigration)*, 2016 FC 1323 (*Asif*) is not persuasive as, there again, the Court was focussed on the decision maker's assessment of a psychologist's report regarding the applicant's mental health (*Asif* at paras 18, 33).

[22] The Applicants submit that the RAD improperly failed to consider Ms. Achugbe's subjective fear of returning to Nigeria and being faced with a constant fear of discovery. They state that she was found to be credible by the RPD and that her belief that she and her children will be located in Port Harcourt by their agents of persecution has not been challenged.

[23] The Applicants rely on the decision in *Karim*, a case that involved Christian applicants from Pakistan who feared persecution based on their religion. In *Karim*, Justice de Montigny, as he then was, noted that the RPD had acknowledged the discrimination and tensions that the applicants may face from the Pakistan religious community. However, the RPD panel did not turn its mind to the problems the principal applicant had encountered and his fear of persecution as a member of the Christian minority in Islamabad, the proposed IFA (*Karim* at para 26):

> [26] […] After all, the Board believed that the Applicant was targeted both because of his business and his faith as a Christian

> while he was working in Rawalpindi from 2005 to 2011, and also accepted the documentary evidence indicating that members of minority religious groups owning businesses are targeted by the Muslin majority. The Board also accepted that the Applicant was kidnapped in December 2012 by armed individuals who threatened to kill him unless he provided access passes to the diplomatic missions for which Ram Dev was providing security systems. In those circumstances, the fear of the Applicants was not beyond the pale or clearly irrational, and deserved to be assessed within the second prong of the IFA test to determine whether it would be unreasonable to expect the Applicants to relocate in Islamabad. Yet the Board does not mention this testimony anywhere in its IFA analysis. While the Applicant's state of mind may not have been determinative to the Board's finding, it is problematic that the Board altogether failed to mention this evidence at all in its analysis.

[24] In *Karim*, the RPD accepted that the applicants may face discrimination and tensions in the IFA based on their religious beliefs, leading to Justice de Montigny's finding that the principal applicant's subjective fear was not "beyond the pale or clearly irrational". In the present case, the RAD determined, as part of its assessment of the first prong of the *Rasaratnam* test, that the Applicants would not face a possibility of persecution or risk of harm in Port Harcourt because their agents of persecution would not find them.

[25] Therefore, I find that the RAD was not required to assess Ms. Achugbe's subjective fear of returning to Nigeria as her genuinely held belief was not supported by objective evidence that the feared events could or would occur.

[26] The Applicants also question the RAD's analysis of the hardships facing them in Port Harcourt. They refer to issues that will arise in Port Harcourt due to Ms. Achugbe's status as a

single woman, their non-indigene status and the general resentment to outsiders, the high cost of living in the city, and the difficulty of finding employment.

[27] The RAD's discussion of the second prong of the IFA test is brief but reasonably addresses gender, and the issues of violence and lack of employment facing single women in Nigeria with reference to the NDP. In addition, the RAD considered Ms. Achugbe's education and work experience in the context of her employment prospects. The Applicants submissions regarding difficulties in finding employment and the high cost of living in Port Harcourt are not sufficient to meet the high threshold for unreasonableness in the assessment of an IFA (*Olusola v Canada (Citizenship and Immigration),* 2020 FC 799 at para 9; *Adebayo v Canada (Immigration, Refugees and Citizenship),* 2019 FC 330 at para 59). Contrary to the Applicants' submissions, the NDP in fact suggests that the Applicants' non-indigene status is not an important factor in assessing whether they can relocate to a larger Nigerian city, like Port Harcourt.

[28] Finally, the Applicants note that the Jurisprudential Guide (TB7-19851) regarding Nigerian IFAs (Guide) was revoked in April 2020 due to changed conditions in Nigeria. They submit that the RAD should have focussed its analysis primarily on the evidence from the NDP package and not the Guide.

[29] The RAD referred to the considerations set out in the Guide only as a starting point for analysis. The panel then assessed the NDP and Ms. Achugbe's personal history in determining the Applicants' ability to live in Port Harcourt. I find no error in the RAD's analysis.

V. Conclusion

[30] The application is dismissed.

[31] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-5839-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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