

Federal Court



Cour fédérale

Date: 20210112

Docket: IMM-7857-19

Citation: 2021 FC 39

Ottawa, Ontario, January 12, 2021

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

**OLUWASOLA OLAYINKA OMOTAYO
OLAWALE OMOTAYO
OLUWADEMILADE OMOTAYO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Oluwasola Olayinka Omotayo and her two children applied for refugee protection in Canada based on Ms Omotayo's fear of her first husband in her home country of Nigeria. A panel of the Refugee Protection Division [RPD] dismissed Ms Omotayo's application based

primarily on its finding that she could live safely in Port Harcourt (i.e. she had an Internal Flight Alternative, or IFA, in Nigeria). Her first husband lived in Lagos.

[2] Ms Omotayo appealed the RPD's decision to the Refugee Appeal Division [RAD]. The RAD upheld the RPD's decision, concluding that Ms Omotayo had an IFA in Port Harcourt because she and her children would not be at risk and could reasonably move there.

[3] Ms Omotayo maintains that the RAD's decision on the IFA was unreasonable. First, she contends that the RAD overlooked important evidence and made unfounded credibility findings. Second, she submits that the RAD erred in finding that it was reasonable for her to move with her children to Port Harcourt. She asks me to quash the RAD's decision and order another panel to reconsider her claim.

[4] I agree with Ms Omotayo that the RAD's decision was unreasonable. In particular, I find that the RAD's conclusion on the question of the suitability of Port Harcourt as an IFA was unreasonable. In my view, the RAD overlooked evidence showing that Ms Omotayo would likely have difficulty finding employment in Port Harcourt, and would experience mental health challenges if she were compelled to move there.

[5] The sole issue is whether the RAD's decision was unreasonable.

II. The RAD's Decision

[6] The RAD began by summarizing the basis for Ms Omotayo's refugee claim. It noted that she feared her ex-husband would harm her if she returned to Nigeria. The physical abuse she experienced at his hands began in 2012 when she discovered his infidelity; the couple then separated. In 2016, Ms Omotayo and the children visited the United States. There, she met and married an American citizen (the marriage did not last). When Ms Omotayo's first husband learned of the marriage, he threatened to kill her if she ever returned to Nigeria. He also burned down her uncle's house.

[7] While the RPD had concerns about Ms Omotayo's credibility, the RAD found that the determinative issue in her case was the IFA. The RAD correctly set out the two-part test for an IFA. First, there must be no serious possibility of the claimant being persecuted, or subjected to serious mistreatment, in the location under consideration. Second, it must be reasonable in the circumstances to expect the claimant to move there (see *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (AD)).

[8] On the first branch of the test, the RAD found that Ms Omotayo and the children would be unlikely to experience persecution or serious mistreatment in Port Harcourt. It reasoned that the problems in her marriage to her first husband would likely have escalated at the time of their divorce, not when she remarried in the United States. The RAD doubted Ms Omotayo's evidence in that regard. Further, while Ms Omotayo testified that her first husband, a successful IT specialist, could access government databases and track her down in Port Harcourt, she had not

mentioned that concern in her Basis of Claim form. The RAD doubted Ms Omotayo's credibility on that point, as well.

[9] With respect to the second branch of the test, the RAD found that, while unemployment was a serious problem in Port Harcourt, unemployment was a problem throughout Nigeria. It noted that Ms Omotayo was highly educated and experienced, qualities that would assist her in finding employment in Port Harcourt. The RAD also discounted her other concerns about the frequency of kidnappings and the poor water quality in Port Harcourt.

[10] Based on these findings, the RAD found that a viable IFA existed in Port Harcourt.

III. Was the RAD's Decision Unreasonable?

[11] Since I have concluded that the RAD erred in its consideration of the second branch of the IFA test, I need not discuss its findings in respect of the first.

[12] The Minister argues that the RAD reasonably addressed Ms Omotayo's concerns about the situation in Port Harcourt. In addition, while Ms Omotayo had presented to the RPD psychological reports in respect of her and her daughter, the RAD did not err, according to the Minister, in failing to discuss them. The reports did not affect the issue of IFA.

[13] I disagree with the Minister's submissions.

[14] On the subject of unemployment, the documentary evidence before the RAD stated that it is almost impossible to find employment in Port Harcourt, except as a skilled mechanic. It is especially difficult for women to find work there. The RAD did not make reference to this evidence when it found that Ms Omotayo could likely find suitable employment in Port Harcourt.

[15] With respect to the psychological reports, the RPD had concluded that they did not militate against an IFA finding. It noted that the family could obtain mental health treatment in Port Harcourt, if they needed it. The RAD did not refer to the reports at all.

[16] The psychological reports referred to the fact that Ms Omotayo was experiencing symptoms of post-traumatic stress disorder. Those symptoms impaired her functioning in occupational, social, and interpersonal situations. In my view, it was an error for the RAD to conclude that it was reasonable to expect Ms Omotayo to move to Port Harcourt and obtain employment there without considering her mental health circumstances.

[17] Therefore, I find that the RAD's analysis of the second branch of the IFA test was unreasonable, given the absence of consideration of the evidence relating to employment in Port Harcourt and the psychological evidence.

IV. Conclusion and Disposition

[18] The RAD's finding that Ms Omotayo and her children could reasonably relocate to Port Harcourt in Nigeria was unreasonable given its failure to address evidence about the employment

situation there and Ms Omotayo's mental health challenges. I must, therefore, allow this application for judicial review and order another panel of the RAD to reconsider her appeal. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-7857-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and the matter is returned to the RAD for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7857-19

STYLE OF CAUSE: OLUWASOLA OLAYINKA OMOTAYO,OLAWALE
OMOTAYO,OLUWADEMILADE OMOTAYO v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARING HELD BY VIDEOCONFERENCE IN
TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 08, 2020

JUDGMENT AND REASONS O'REILLY J.

DATED: JANUARY 12, 2021

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