Federal Court  Cour fédérale

Date: 20210223

Docket: IMM-146-19

Citation: 2021 FC 167

Ottawa, Ontario, February 23, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

MODUPE REKIAT SALIU
OMOTATO MARY BALOGUN
OLUWADARASIMI TABITHA BALOGUN
BOLUWATIFE ELIAS BALOGUN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Modupe Rekiat Saliu [Ms. Saliu], her daughter Omotato Mary Balogun [Ms. Balogun], as well as Ms. Balogun's minor children, Oluwadarasimi Tabitha Balogun, age 7 and Boluwatife Elias Balogun, age 11, are all citizens of Nigeria and of the Christian faith. They seek judicial review of a decision dated August 14, 2019 of the Refugee Appeal Division [RAD]

which dismissed their appeal of a decision dated December 21, 2018 of the Refugee Protection Division [RPD] which rejected their claim for refugee protection.

[2] The determinative issue in this case is the availability of an Internal Flight Alternative [IFA] for the Applicants in Port Harcourt.

[3] For the reasons that follow, I dismiss the present application.

II. Facts

[4] Ms. Saliu is 67 years old, was born in Lagos, and is a member of the Yoruba ethnic group. She speaks Yoruba, and her command of the English language is minimal at best. She lost her parents at the age of five in a car accident, and lost her husband and her brother in 1999. She suffered from domestic violence at the hands of her husband while he was alive, and has since been living with the stigma of being a widow in Yoruba society. Although she has two sisters still living in Nigeria, her only support in the last 20 years has been her daughter, Ms. Balogun.

[5] Ms. Saliu fears for her life after being attacked and accused by her son-in-law (Ms. Balogun's husband) and his family of harbouring her grandson Boluwatife and preventing that he, as the first-born son, be initiated into the Ogboni Fraternity, a family tradition on his father's side; Ms. Balogun's father-in-law is a high chieftain of the Ogboni Fraternity. Ms. Saliu says that the Ogoni Fraternity is a secret cult, and that their membership includes very powerful politicians, judges, business people and members of the police force within Nigerian society.

[6] Ms. Balogun is 37 years old, educated and urban. She holds a university degree after studying in English, and has worked in the banking sector in Nigeria for between seven to ten years before coming to Canada. Since coming to Canada, Ms. Balogun has been working for one of the large Canadian chartered banks as a sales representative in its insurance department.

[7] Ms. Balogun has also been the victim of domestic violence since her marriage in 2010 at the hands of her husband. Her attempts to stop the cycle of violence proved unsuccessful, as neither the local police, the Lagos State Government Citizens Mediation Center, nor her father-in-law could control her husband's depravity. She also reported being sexually abused by her father-in-law.

[8] Ms. Balogun now fears for her life and that of her children. She says that on the morning of March 24, 2017, her husband approached her and began pressuring her to have young Boluwatife, then age 7, be brought to his father, a very rich and powerful high chieftain of the Ogboni Fraternity, for initiation into the organization. Ms. Balogun put off the issue, and brought her children to stay with their grandmother, Ms. Saliu, who lived in the town of Magboro, about 40 kilometres north of Lagos.

[9] The next morning, while at home Ms. Balogun pleaded with her husband not to allow her son to be initiated into the Ogboni Fraternity; more violence and an emergency hospital visit for Ms. Balogun ensued as a result.

[10] Upon release from the hospital six days later, on March 31, 2017, Ms. Balogun reported her husband's attack to the police, which only further infuriated her husband who, after being released by the police upon posting bail, responded by packing Ms. Balogun's bags and leaving them outside the front door of their home; Ms. Balogun was forced to sleep at a neighbour's home that evening.

[11] The next morning, Ms. Balogun saw her husband drive by, and rolling down his car window: "told [Ms. Balogun] that he gave me only 48 hours more to produce his son if I still want to live in the same country with him. He told me he is done with our marriage but he is not going to give me a divorce".

[12] The Applicants fled to Ibadan, Oyo State, some 130 kilometers north of Lagos, and with the assistance of Ms. Balogun's uncle who lives in Ibadan, ended up spending over two weeks sleeping in a local church, hiding from Ms. Balogun's husband. The Applicants then relocated to Ms. Saliu's nephew's home in Warri, Delta State, about 430 kilometers east of Lagos on April 17, 2017, fleeing Ibadan after Ms. Balogun received a call from her husband telling her that he knew she was in Ibadan and threatening more violence.

[13] On the strength of United States [U.S.] visas already in hand, Ms. Balogun and her children travelled to the U.S. on April 24, 2017, staying with friends of her uncle. Three days later, Ms. Saliu, who had returned to her home in Magboro, telephoned Ms. Balogun in the U.S. to say that four unidentified men came to her home looking for Ms. Balogun, and that they beat Ms. Saliu when she would not give them any information.

[14] Sensing danger, on April 29, 2017, Ms. Saliu also flew to the U.S. to join her daughter after Ms. Balogun had made the arrangements.

[15] Quite surprisingly, leaving her mother and children in the U.S., Ms. Balogun returned to Lagos on May 20, 2017, supposedly because she had kept confidential client documents with her and had to return them to her employer. Why she did not simply courier them to Lagos remains a mystery especially since she admitted knowing that she was putting herself in danger in returning to Nigeria.

[16] Ms. Balogun remained with her cousin in Lagos for three months. While in Nigeria, she applied for visas for her and her family to travel to Canada. On August 5, 2017, she received a call from an unknown person who said that they knew she was back in Nigeria and that "he hope [*sic*] [Ms. Balogun] brought the boy". For reasons that are unclear, Ms. Balogun immediately withdrew her application for a Canadian visa.

[17] Why Ms. Balogun simply did not change her telephone number, again, remains a mystery. It is also unclear why she did not claim refugee protection in the U.S. In any event, Ms. Balogun travelled back to the U.S. where she remained for about two months, until October 6, 2017, when the Applicants crossed the U.S. border into Canada and claimed refugee protection.

III. The impugned decisions

[18] The Applicants claim that they fear Ms. Balogun's husband, his family and the Ogboni Fraternity.

[19] On November 29, 2018, the RPD dismissed their refugee claim. There were no credibility issues as the RPD accepted for the purposes of its analysis that the allegations of the Applicants and testimony of Ms. Balogun were true, save as to speculative assertions not based on facts. In the end, the RPD found that the Applicants have a viable IFA in the city of Port Harcourt, a major city some 615 kilometers east of Lagos.

[20] First, the RPD attributed little weight to Ms. Balogun's assertion that her husband's family had meaningful connections within government, the judiciary and the police, and could thus find them anywhere in Nigeria, as no evidence was produced to support such an assertion. The RPD concluded that it would be unlikely that Ms. Balogun's husband would have the ability to find the Applicants in the IFA.

[21] The RPD found that the reports in the National Documentation Package [NDP] for Nigeria regarding the influence of Ogboni Fraternity within government, the judiciary and the police were contradictory, and included reports that the organization is today less influential than in the past. In addition, and although open to some interpretation within the NDP, the RPD also found that membership in the Ogboni Fraternity was voluntary, militating against that organization searching for the Applicants. The RPD also found that there was no evidence that the organization had ever made a nationwide search for anyone so as to force them to join the group or to submit to Ogboni Fraternity rituals.

[22] In the end, the RPD concluded that it would be unlikely that the Ogboni Fraternity would search for the Applicants in Port Harcourt, in particular as members of that organization are not generally found in that area of the country.

[23] As to the issue of the reasonableness of Port Harcourt as a viable IFA, the RPD found that, in view of Ms. Balogun's education and professional experience, as well as of the fact that she speaks English, the official language of Nigeria, it would likely not be unduly harsh for the Applicants to relocate and for Ms. Balogun to find employment in that city.

[24] On August 14, 2019, the RAD confirmed the RPD's decision and dismissed the Applicants' appeal.

[25] As to the Applicants' claim that they would continue to be persecuted in the IFA, the RAD rejected the Applicants' arguments. First, the RAD did not accept that the RPD had misapplied the Jurisprudential Guide [JG] for Nigeria. The JG relates to refugee claimants fearing non-state actors in Nigeria, and there was no evidence to support the Applicants' contention that the Ogboni Fraternity are somehow state actors, regardless of the assertion that the organization's members are very influential within the government, the judiciary and the police.

[26] The RAD rejected the Applicants' argument that the RPD failed to refer in any way to the three supporting affidavits from family and friends relating to the Appellants' several attempts to relocate within Nigeria on the basis that the Affidavits simply confirm the fact that the

Applicants were being sought in Lagos State, Oyo State and Delta State, but make no mention of any concerns with respect to the Applicants' safety in Rivers State where the city of Port Harcourt is located. The RAD found that all of the evidence provided in the affidavits simply corroborated the Applicants' story, which was assumed from the outset by the RPD to be true. Consequently, the RPD addressing them specifically was unnecessary, especially when they had nothing to add as regards the proposed IFA.

[27] The RAD also found that the RPD did not err in reviewing the Response to Information Requests [RIR] of the NDP for Nigeria in concluding that membership to the Ogboni Fraternity was a voluntary organization. The RAD also rejected the Applicants' claim that voluntariness must be viewed from the perspective of young Boluwatife who was only 7 years old at the time. The RAD found that the RPD was correct to consider the voluntary character of the Ogboni Fraternity in the context of determining whether the organization would want to forcibly recruit the young boy, and more importantly, whether the organization had an interest in tracking down the Applicants throughout Nigeria.

[28] In addition, as the RPD also based its conclusion on this issue upon other evidence in addition to the voluntary nature of the organization, in particular the lack of evidence of any influence Ms. Balogun's father-in-law would have with authorities in tracking down his wife and children, the RAD found no error in the RPD's finding that it is unlikely that the Ogboni Fraternity would have the means or the interest to locate the boy in Port Harcourt.

[29] The RAD also rejected the Applicants' claim that the RPD failed to consider the history of domestic abuse and that any possible future divorce and custody proceedings would expose the whereabouts of the Applicants to her husband and his family. First, and although the RAD accepted that domestic violence was part of Ms. Balogun's unfortunate history with her husband, the RAD concluded that it was unlikely that her husband could, in any event, locate her in Port Harcourt – the risk of harm must be prospective. In addition, as to the issue of the prospect and possible consequences of divorce proceedings, the RAD noted that this argument was not presented to the RPD, and thus could not fault the RPD for not considering the issue. The RAD added that the RPD should not be expected to consider arguments that were not based on the evidence before it.

[30] Thus, on the first prong of the IFA test, the RAD found that even though the Applicants have shown that Ms. Balogun's husband's family may still be interested in finding them, they have failed to demonstrate that they have the means to locate them in the IFA.

[31] As to the reasonableness of Port Harcourt and the second prong of the IFA test, the RAD was unconvinced by the Applicants' unsupported allegation to the effect that the conditions in Port Harcourt are "unreasonable in all circumstances".

[32] The only details offered concerning the potential hardship of relocating to Port Harcourt pertained to Ms. Saliu, a 67 year old woman with no male support, virtually no education or work history, and only speaks Yoruba. However, the RAD examined Ms. Saliu's personal circumstances and her situation in context. The absence of male presence in Ms. Saliu's life

dates back to June 1999 when she lost both her brother and her husband. From that moment, the only person supporting her was Ms. Balogun.

[33] In addition, the Applicants continue to live as a family unit in Canada, and would likely continue to do so in Nigeria. Ms. Balogun speaks English, is university educated, and has almost continually been employed in the banking sector for over a decade, both in Nigeria and Canada. She is the "breadwinner and backbone" of the family. In such circumstances, the RAD found that the Applicants did not establish the existence of any conditions which would render Port Harcourt unreasonable as a possible IFA for Ms. Saliu.

[34] The RAD similarly rejected the Applicants' arguments as to the vulnerability of Ms. Balogun, in particular given her history of domestic abuse. The RAD acknowledged that it may be more difficult to relocate as a married but separated woman in charge of two children. However, the RAD found that the "impressive education and work record" of Ms. Balogun, including here in Canada, would likely offset the reluctance of employers and landlords to accept a single woman with children. In any event, the RAD adds that nothing in the NDP indicates that the mere fact of having children would, in itself, lead to undue hardship in the circumstances.

[35] Finally, the RAD found that the RPD properly addressed the evidence concerning the difficulty arising from possible language and indigeneship barriers, and found that no additional evidence was adduced in support of this argument on appeal.

IV. Issues

[36] The Applicants challenge the RAD's decision on two fronts. First, they argue that the RAD, and the RPD before it, relied too heavily on the JG TB7-19851 and misinterpreted the RIR. Second, they argue more specifically that the RAD failed to properly apply the IFA test.

V. Standard of Review

[37] The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10 and 23; *Boluwaji v. Canada (Citizenship and Immigration)*, 2020 FC 416 at para 15).

VI. Discussion

A. *Did the RAD rely too heavily on the JG and misinterpret the RIR?*

[38] The Applicants submit that the RAD and the RPD fettered their discretion by blindly applying the JG and the RIR without nuance and without analysis.

[39] The Applicants repeated before me their argument before the RAD that the RPD did not properly apply the JG given that, unlike their situation, the JG only involved persecution on the part of non-state actors. Also, the persecutors in the JG were solely family members whereas in the present case, the Applicants are not only being persecuted by Ms. Balogun's husband, but also by the Ogboni Fraternity who can be considered as tantamount to a state actor given its influence with high ranking individuals who can assist in finding the Applicants.

[40] I see nothing unreasonable in the RAD's finding on this issue, nor any meaningful distinction between their situation that those highlighted by the Applicants in the JG. In addition, the Applicants have provided no evidence to suggest that the Ogboni Fraternity has influence over state actors so as to be able to locate the Applicants in the IFA.

[41] The Applicants then submit that, relying on the RIR, the RAD unreasonably concluded that membership in the Ogboni Fraternity is voluntary, thus supporting its conclusion that the organization would likely not be inclined to search for the Applicants. Again, I have not been convinced that the conclusion of the RAD is unreasonable; the Applicants are simply asking me to interpret the RIR in the manner in which they read it, rather than how the RAD has read it. I find nothing unreasonable in the manner in which the RIR was interpreted by the RAD.

[42] Finally, and although the point was not argued by the Applicants, the Minister did concede that the JG was revoked on April 8, 2020, following the RAD decision (Immigration and Refugee Board of Canada, *Notice of Revocation of Jurisprudential Guide – Nigeria, April 8, 2020*), however, this does not affect the reasonableness of the RAD's determination considering that the Applicants' situation was thoroughly considered by the RAD (*Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2019 FC 1126 at para 171 (rev'd in part on other grounds 2020 FCA 196); *Oyewoley v Canada (Citizenship and Immigration),* 2021 FC 21 at paras 18 and 19).

[43] I am of the view that the RAD did not overly rely on the JG so as to fetter its discretion. It examined the Applicants' personal circumstances to find that they have a viable IFA in Port

Harcourt. This is clear throughout the decision. I cannot accept that the RAD blindly applied the JG and RIR.

B. *Did the RAD fail to properly apply the IFA test?*

[44] The two-pronged test for the determination of an IFA was recently set out by Justice McHaffie in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 [*Olusola*]:

> [8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12.
>
> [9] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) at para 15. Once the potential for an IFA is raised, the claimant bears the onus of establishing it is not viable: *Thirunavukkarasu* at pp 594–595.

[45] Once the issue of an IFA is raised, the burden of demonstrating that, on a balance of probabilities, an IFA is unreasonable in a given case rests with the applicant and is quite an exacting one (*Olusola* at para 7; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA) at pp 597-599; *Ogundairo v Canada (Citizenship and Immigration)*, 2017 FC 612 at para 18; *Jean-Baptiste v Canada (Citizenship and Immigration)*,

2019 FC 1106 at para 20; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at paras 26 and 42 [*Singh*]; *Adebayo v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 330 at para 53).

[46] A serious possibility of the Applicants being persecuted can only be found if it is demonstrated that the agents of persecution have the probable means and motivation to search for the Applicants in the suggested IFA (*Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 43 [*Feboke*]; *Nimako v Canada (Citizenship and Immigration)*, 2013 FC 540 at para 7; *Mayorga Gonzalez v. Canada (Citizenship and Immigration)*, 2012 FC 987 at paras 30, 31).

[47] It is not the task of this Court to reweigh the evidence or to reassess the RAD's findings of fact and substitute its own (*Singh* at paras 32 and 39; *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99).

(1) First prong of the test

[48] The Applicants argue that the RAD imposed a harsher burden upon them in assessing the ability and willingness of Ogboni Fraternity and the husband's family to find and harm them in Port Harcourt, in particular by expecting "clear evidence" that the husband's family has the necessary contacts with government, the judiciary and the police to find them in the IFA.

[49] I must disagree with the Applicants. In assessing the issue as to whether Ms. Balogun's husband's family has influence over government officials, judges and the police because of past

financial contributions to political parties allowing them to track the Appellants in Port Harcourt, the RAD noted that there was "no clear evidence that the family has contacts that are able and willing to assist them in finding the Appellants today".

[50] The RAD's comments are not evidence of a higher burden of proof being imposed on the Applicants. The RAD was simply alluding to the fact that there existed nothing other than speculation on the part of the Applicants to support such an assertion. The fact that the RAD found that there was no "clear evidence" to meet the burden of proof upon the Applicants does not mean that it applied the wrong legal framework. In fact, the RAD explicitly stated in its decision that it must be satisfied on the balance of probabilities that the IFA is not viable.

[51] Here, the Applicants did not provide any evidence supporting their contention that they could be found anywhere in their country. Simply alleging that Ms. Balogun's husband's family has financially supported politicians in the past does not amount to demonstrating that they still do today, nor that such financial support would translate into a willingness and ability on the part of the authorities to locate the Applicants throughout Nigeria (*Feboke* at para 43; *Ogundairo* at para 19; *Osagie v Canada (Citizenship and Immigration)*, 2017 FC 635 at paras 15-16).

[52] In this case, I see nothing unreasonable with the RAD's findings that the Applicants failed to demonstrate that they would be at serious risk of persecution upon their return to Port Harcourt, considering the lack of evidence supporting their allegations and the documentary evidence taken into consideration by the RAD's analysis.

[53] The RAD found that Ms. Balogun's husband's family's search for the Applicants in Lagos after they had departed for Canada "tends to indicate" that the family does not necessarily have the means to locate the Applicants throughout Nigeria. The Applicants find such a conclusion to be speculative and unreasonable. I have not been convinced that the RAD's assertion was unreasonable.

[54] It is worth noting that the RAD's conclusion on the lack of means of the family to locate the Applicants in Port Harcourt is not based solely on this issue, but is mainly based on the ground that the Applicants had not provided any evidence save mere allegations in support of the proposition that the family was influential enough to be able to locate them anywhere in Nigeria. Again, I must say that the burden is on the Applicants to make out their case, and they must present evidence in support of their allegations.

[55] I see no reason to disturb the RAD's finding on this issue.

(2) Second prong of the test

[56] Before me, the Applicants argue that the RAD did not raise and discuss in any meaningful way a number of issues identified in the JG regarding relocation to Port Harcourt, including the availability of transportation and travel, language, education and employment, accommodations, religion, indigeneship status, and the availability of medical and mental healthcare.

[57] This may be correct in part, however the issues that were raised and discussed in the JG and not raised by the RAD simply did not form part of the arguments raised by the Applicants as to why Port Harcourt would not be a reasonable IFA. I cannot therefore fault either the RPD or the RAD for not considering issues that were not raised by the Applicants. At the end of the day, it is not for the RPD or RAD to sift through the NDP looking for reasons why a proposed IFA is unreasonable.

[58] The Applicants argue, however, that indigeneship and culture are serious barriers to relocation in Port Harcourt. In support of this assertion, they refer to Tabs 12.6 and 13.1 of the NDP. They cite document "NGA104216" and Tab 2.1 of the "US Country Reports" to the effect that discrimination based on indigeneship exists in Nigeria. However, this issue was never raised before the RAD let alone the RPD. I fail to see how this Court can now consider it (*Constant v Canada (Citizenship and Immigration)*, 2019 FC 990 at para 25).

[59] The Applicants dispute as unreasonable the RAD's finding that the Applicants will not suffer undue hardship in relocating to Port Harcourt on account of Ms Saliu and Ms. Balogun's status as women, notably because of accessibility to housing. In addition, they submit that the RAD unreasonably found that Ms. Balogun's hardship in relocating to Port Harcourt will be eased because she speaks English, the official language in Nigeria; they submit that the official language of a country is not determinative of how someone can be understood in that country, and cite Canada as an example. I remain unconvinced.

[60] In the end, I think the RAD considered the Applicants' personal circumstances and found that it would not be unreasonable for them to relocate to Port Harcourt considering that Ms. Balogun has 18 years of education, which is 10 years more than that of the average woman in Nigeria. Ms. Balogun also held stable positions in banks in Nigeria and Canada, making her the "breadwinner and backbone of the family". It was not unreasonable for the RAD to find that these factors would greatly facilitate the Applicants' relocation to Port Harcourt, even though Ms. Balogun is a single woman with children.

[61] The RAD also considered Ms. Balogun's fear of returning to Nigeria based on claims of domestic abuse but found that it would not be unreasonable for her to relocate to Port Harcourt as it would not be unduly harsh for Ms. Balogun to relocate in Nigeria to escape localized threats from members of her family (*Ngaju v Canada (Citizenship and Immigration)*, 2019 FC 29 at paras 20-23, 28).

[62] In addition, the Applicants submit that the RAD unreasonably found that the Applicants' fear of different criminal or terrorist organizations in the proposed IFA is a generalized risk faced by all Nigerians, and that it is unreasonable to expect that the Applicants would relocate in an unsafe area of Nigeria. However, the Applicants have not established being personally targeted by criminal or terrorist organizations. I see nothing unreasonable with the RAD's conclusions on this issue (*Olusola* at para 7; *Barragan Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 502 at para 46; *Correa v. Canada (Citizenship and Immigration)*, 2014 FC 252 at para 77).

[63] At the end of the day, and as regards Ms. Saliu, the Applicants conceded that Ms. Saliu has been taken care of for years by her daughter and that there is no reason to believe that they will cease living as a family unit back in Nigeria.

[64] The RPD and the RAD clearly canvassed the issues of age, education, employment prospects and language, issues that were specifically raised by the Applicants. I am satisfied that the RAD took into consideration the Applicants' personal characteristics, as well as the NDP, JG and the RIR on the conditions in Nigeria in a meaningful way. I will not reassess the evidence simply because the Applicants did not agree with the RAD's findings.

VII. Conclusions

[65] I would dismiss the application.

JUDGMENT in IMM-146-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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