Federal Court  Cour fédérale

Date: 20210506

Docket: IMM-4237-20

Citation: 2021 FC 407

Toronto, Ontario, May 6, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

INNOCENT KEWO OBOTUKE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews a decision of the Refugee Appeal Division ("RAD") of August 31, 2020, which found that the Applicant has an internal flight alternative ("IFA") available in Abuja and Ibadan, two cities in Nigeria. For the reasons that follow, I find that the RAD did not make a reviewable error regarding the availability of the two IFAs and will therefore dismiss this application.

II. Background

[2] The Applicant is a citizen of Nigeria, born in Orogun on August 4, 1989. From childhood until the age of 28, he played soccer to support himself, relying on "tips" from spectators as his main source of income. In 2017, encouraged by his friend, an engineering student at the University of Benin, the Applicant relocated to Benin City to pursue job opportunities. He moved in with his friend ("Friend").

[3] In Benin City, the Applicant did odd jobs to support himself, as well as continuing to play soccer as a hobby, sometimes at the University of Benin soccer field. In September 2017, a Black Axe cult ("Cult") member, Mr. S, approached the Applicant and invited him to join the Cult, promising opportunities to improve his life. The Applicant replied that he would think about it and get back to him. However, the Applicant did not want to join the Cult.

[4] A number of further recruitment attempts followed, before Mr. S's demeanour became aggressive and threatening. Despite the added pressure, the Applicant refused to join the Cult. On January 12, 2018, members of the Cult killed the Applicant's Friend in his apartment. The Applicant learned of his murder from a phone call from a neighbour, who said that Cult members had arrived at their shared apartment, and shot and killed his roommate.

[5] The Applicant immediately fled Benin City and went to stay with his sister in Orogun City, about three hours away in Ebo State. However, on February 10, 2018, members of the Cult discovered the Applicant at his sister's house. While he managed to escape, his sister was killed.

[6] The Applicant fled to Lagos and Abuja, alternating residences between his parents' and brother while he arranged to leave Nigeria.

[7] On April 18, 2018, the Applicant arrived in the US. On April 22, he arrived in Canada and immediately sought refugee protection.

III. Decision under Review

[8] The RAD found the decision of the Refugee Protection Division ("RPD") that the Applicant had internal flight alternatives available in Abuja and Ibadan ("IFAs") was correct.

[9] The RAD noted the arguments of the Applicant regarding the RPD's decision. First, the Applicant argued that the RPD had made no adverse credibility findings with respect to his claim. As such, the Applicant submitted that the RPD accepted that the Cult had attempted to recruit him, killed his roommate, and tracked him down at his sister's house in a city three hours away and killed her. The Applicant argued that these facts demonstrate that the cult was willing to expend resources to find him.

[10] Second, the Applicant argued that the RPD unreasonably ignored evidence, preferring older documentary evidence without explanation. Specifically, he argued that the RPD ignored recent evidence that the Cult no longer confined its activities on university campuses, contrary to the RPD's conclusion.

[11] Finally, the RAD noted that the Applicant pointed to country condition evidence that stated that Nigerian police are corrupt and that they have been known to pay the Cult to do certain tasks for them. The Applicant submitted that this supports the risk that the Cult could use the Nigerian police to track him down in the IFAs.

[12] The RAD disagreed that the evidence showed that the Applicant faces a risk of persecution in the IFAs. With respect to the documentary evidence claims, the RAD acknowledged the Applicant's argument that more recent evidence suggested that cults in general are now no longer confined to university contexts and are active even outside urban areas. However, it found that this evidence was not persuasive enough to demonstrate that this Cult was active in the IFAs, such that the Applicant could be located in them by the Cult.

[13] Moreover, the RAD found that although the Applicant had submitted documentary evidence that the Cult was active in Canada, it determined that the fact did not pose a reasonable threat to the Applicant. It dismissed as "speculative" that the Cult could use the police to track down the Applicant in Nigeria. The RAD concluded that the Applicant did not meet his burden of showing that the IFAs were not reasonably available to him.

IV. Analysis

[14] The determinative issue before this Court is whether the RAD's decision to consider Abuja and Ibadan as IFAs is reasonable. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court pronounced that a presumptive reasonableness standard of review applies, and the presumption can only be set aside on the basis

of a prescribed set of circumstances (*Vavilov* at paras 33-52). None of these circumstances arise in this case, and reasonableness applies (see, in relation to IFAs: *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708; and *Singh v Canada (Citizenship and Immigration)*, 2020 FC 807).

[15] The test for an IFA is two-pronged. At the first prong, a decision-maker 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 in which an IFA exists. Second, the Board must determine whether it is objectively reasonable to expect the claimant to seek safety in the proposed IFA before seeking a haven in Canada or elsewhere: *Hamdan v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10-11 [*Hamdan*].

[16] Refugee claimants bear the onus of establishing that a proposed IFA is not available and can discharge the onus by defeating at least one prong of the two-prong test for the availability of an IFA. The onus of demonstrating the second stage of an IFA is unreasonable is quite an exacting one, and claimants must produce concrete evidence of conditions that make it objectively unreasonable to live in an IFA without fear of persecution (*Elusme v Canada (Citizenship and Immigrations)*, 2020 FC 225 at paras 25-26; *Hamdan* at para 12).

[17] The Applicant has not shown that the Decision is unreasonable. The RAD explained in a justifiable and intelligible manner why the objective country condition evidence did not demonstrate a serious possibility of persecution in the proposed IFAs, and why they were distant

– both geographically and in terms of the risk posted – from the locations where the Applicant had previously been targeted by the Cult.

[18] First, the RAD observed that the proposed IFAs are far away from the cities in Edo and Delta States in which he had previously resided. It then pointed to the documentary evidence showed that the Cult has limited influence in the IFAs, particularly when compared to evidence of violence in both locations in which the Applicant had previously resided. Contrary to the Applicant's arguments, the Board did not ignore evidence, from an older (but still relevant) Response to Information Request comparing the risk in different regions of the country, to more recent documentation that addressed current risks.

[19] The RAD also analysed the country condition evidence related to the Cult's connection to state officials including politicians, finding that the risk that the Cult may use such officials to track down the Applicant was speculative. This was a reasonable finding. While some evidence showed that politicians and state officials use the Cult to exercise violence for the officials' purposes, the RAD noted that the evidence does not suggest that the relationship works both ways: there was no evidence that politicians are willing to engage in work on behalf of the Cult, or that the Cult could use these connections to locate the Applicant in the IFAs. In light of the totality of the evidence, and the lack of any specificity with respect to the claimed fear at the hands of state officials, the RAD's conclusion was entirely justifiable.

[20] The RAD also found that the affidavits and his sister's death certificate, which the Applicant provided, did not demonstrate an ongoing risk of persecution in the proposed IFAs,

given the objective evidence regarding the two IFAs being dissimilar to the potential danger to the Applicant in Edo and Delta states. Similarly, because the RAD found that the Applicant's father's affidavit, which states that "the hunt for him continues", is not supported by how the father reached this conclusion, the RAD's conclusions with respect to this documentation were also reasonable.

[21] On the second prong of the IFA test, the RPD determined that the Applicant had not shown that it would be unreasonable for him to relocate to the IFAs. At the RAD, the Applicant did not dispute this second prong of the IFA test. The RAD is not required to consider potential errors in an RPD decision if the Applicant did not raise them: *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 39; *Canada (Citizenship and Immigration) v Kaler*, 2019 FC 883 at paras 12-13.

[22] Simply put, it is not the role of this Court on judicial review to intervene on an issue that was not raised before the RAD. As this Court said in *Caleb v Canada (Citizenship and Immigration)*, 2018 FC 384 at para 37:

> The jurisprudence does not impose a duty on the RAD to independently identify and address issues. It would in turn be inconsistent with the role of a court on judicial review to intervene where the issue was not raised before the RAD. Indeed, there is case law to suggest if the RAD were to determine an issue that was neither addressed by the RPD nor raised on appeal by either party, the RAD would be infringing the applicant's statutory rights (*Ojarikre v Canada (Citizenship and Immigration)*, 2015 FC 896 at para 21).

[23] Given the fact that the Applicant did not contest the RDP's finding before the RAD regarding his ability to settle in the IFAs, this Court cannot fault with the RAD's findings (which

were that the RPD had not erred in its conclusion on the second prong). For the Applicant's edification, I find neither the RAD's nor the RPD's conclusion on the second part of the IFA test – namely that it would not be unreasonable for him to relocate in either of the IFAs – to be unreasonable.

[24] I will simply note in closing that, as pointed out at the hearing, Applicant's counsel was restricted by the water that had already passed under the bridge at the RPD and RAD stages, where he did not represent counsel. Limited by the record with which he was presented, he represented his client as well as could have been expected in the circumstances, and for that, he is to be commended.

[25] However, the reasonableness of the decision being challenged simply does not allow this Court to interfere despite his efforts. *Vavilov* instructs that a reviewing Court can only intervene in a decision where "there are sufficiently serious shortcomings […] such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). I find the RAD's decision to have fallen well short of this mark in this case.

V. Conclusion

[26] For the reasons noted above, the judicial review is dismissed.

JUDGMENT in IMM-4237-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance for certification was proposed and none arises.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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