

Federal Court



Cour fédérale

Date: 20210526

Docket: IMM-185-20

Citation: 2021 FC 495

Ottawa, Ontario, May 26, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

BOLARINWA AHMED YUSUFF

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Bolarinwa Ahmed Yusuff, is a citizen of Nigeria who alleges a fear of persecution or harm by unknown kidnappers targeting him for his perceived wealth. This application for judicial review relates to a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, confirming the Refugee Protection Division's (RPD) determination that Mr. Yusuff is not a Convention refugee or a person in need of protection

under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because Mr. Yusuff is unlikely to face risk if he relocates to Port Harcourt.

[2] Mr. Yusuff ran a construction supply business in Lagos. After a series of incidents beginning in July 2016, where Mr. Yusuff, his wife, and his children were followed or threatened by unknown men, the family left their home. Mr. Yusuff's wife and children went to Ibadan to stay with extended family and Mr. Yusuff stayed with friends and in hotels. In February 2017, Mr. Yusuff's home and office were vandalized and his assistant was kidnapped by unknown men who inquired about him by name. Mr. Yusuff reported the incidents to police, but received no assistance. As he had a Canadian visa, Mr. Yusuff left Nigeria, on the assumption that he was the target. Mr. Yusuff alleges that the same men behind the incidents made threatening calls to his wife in Ibadan, saying they would kidnap her and the children if Mr. Yusuff did not come out of hiding. His wife and children relocated to his mother-in-law's home, also in Ibadan, where they have remained since that time.

[3] The RPD rejected Mr. Yusuff's claim for refugee protection on the basis that he has a viable internal flight alternative (IFA) in Port Harcourt. The RPD also found that Mr. Yusuff failed to establish a connection or "nexus" to a Convention ground of race, religion, nationality, membership in a particular social group or political opinion under s. 96 of the *IRPA*; however, that finding was not determinative in view of the RPD's IFA findings. The RAD dismissed Mr. Yusuff's appeal, on the same basis as the RPD.

[4] On this application for judicial review, Mr. Yusuff submits the RAD erred in finding that his claim has no nexus to a Convention ground. In addition, he submits that the RAD erred in its IFA analysis.

[5] For the reasons below, Mr. Yusuff has not established that the RAD's decision is unreasonable on the basis of the alleged errors. Accordingly, this application for judicial review is dismissed.

II. Issues and Standard of Review

[6] The issues on this application for judicial review are:

- (1) Did the RAD err in finding that Mr. Yusuff's claim has no nexus to a Convention ground?
- (2) Did the RAD err in its IFA analysis?

[7] Both issues are reviewable according to the reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]; see also *Gray v Canada (Citizenship and Immigration)*, 2020 FC 240 at para 12 and *Arabambi v Canada (Citizenship and Immigration)*, 2020 FC 98 at para 20.

[8] Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis, and it

is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

The party challenging the decision bears the onus of demonstrating that it is unreasonable:

Vavilov at para 100.

III. Analysis

A. *Did the RAD err in finding that Mr. Yusuff's claim has no nexus to a Convention ground?*

[9] Mr. Yusuff submits that the RAD erred in finding his claim has no nexus to a Convention ground. He argues that he was not a random victim of crime; rather, he was specifically targeted due to his perceived wealth as a result of the success of his business. Thus, Mr. Yusuff argues his claim satisfies the requirements of s. 96 of the *IRPA*, as he was the target of persecution due to his membership in a particular social group, or social class. Mr. Yusuff suggests that an IFA analysis serves no purpose where a claim has no nexus, and maintains that his claim has a nexus. Mr. Yusuff argues that he faces a specific risk in the same way as the applicant in *Cejudo Hernandez v Canada (Citizenship and Immigration)*, 2019 FC 1019 [*Cejudo Hernandez*], who was specifically targeted and extorted due to his direct access to funds.

[10] In my view, Mr. Yusuff's argument that an IFA analysis serves no purpose without a nexus to s. 96 of the *IRPA*, and his reliance on *Cejudo Hernandez*, are misplaced. There is no discussion of a nexus to a s. 96 Convention ground in *Cejudo Hernandez*. In that case, the RAD considered whether the applicant was personally targeted in order to assess his personalized risk of harm in the proposed IFA locations within his home country under s. 97(1)(b)(ii) of the *IRPA*, which provides that an applicant must be personally subjected to a risk that "would be faced by

the [applicant] in every part of that country and is not faced generally by other individuals in or from that country.”

[11] I am not persuaded of an error in the RAD’s finding that Mr. Yusuff’s claim has no nexus to a Convention ground under s. 96 of the *IRPA* on the basis of being a target of persecution due to his perceived wealth. This Court has consistently held that perceived wealth, without more, does not constitute a particular social group: *Étienne v Canada (Citizenship and Immigration)*, 2007 FC 64 at paras 15-17; *Cius v Canada (Citizenship and Immigration)*, 2008 FC 1 at paras 18-20; *Navaneethan v Canada (Citizenship and Immigration)*, 2015 FC 664 [*Navaneethan*] at para 53.

[12] The nature of Mr. Yusuff’s risk based on perceived wealth is a risk of being targeted due to general criminality, not the targeting of a particular group in a discriminatory fashion: *Cius* at para 18. Despite being targeted multiple times, I agree with the respondent that the source of Mr. Yusuff’s risk remained perceived wealth derived from his business activities, which is not an immutable characteristic. The RAD was not persuaded by Mr. Yusuff’s argument that his business activities were fundamental to his human dignity.

[13] Furthermore, I agree with the respondent that the RAD’s finding on a nexus to a Convention ground was not determinative, as the RAD did not limit its IFA analysis to s. 97 of the *IRPA*. The RAD also considered the risk of persecution in the IFA of Port Harcourt, and found that Mr. Yusuff would not face a serious possibility of persecution.

[14] Mr. Yusuff has not established that the RAD's decision is unreasonable based on an error in the RAD's finding that his claim has no nexus to a Convention ground.

B. *Did the RAD err in its IFA analysis?*

[15] Mr. Yusuff submits the RAD erred in its IFA analysis by failing to properly consider the evidence in a number of ways, as summarized below. The alleged errors relate to the RAD's findings that Mr. Yusuff is unlikely to face a risk of persecution or harm in Port Harcourt, and that it would not be unreasonable for Mr. Yusuff to relocate there. According to Mr. Yusuff, the RAD erred by:

- 1) failing to conduct a forward-looking risk analysis (*Arocha v Canada (Citizenship and Immigration)*, 2019 FC 468) and speculating without an evidentiary basis that the agents of persecution would lack the means and motivation to find him in Port Harcourt (*Builes v Canada (Citizenship and Immigration)*, 2016 FC 215);
- 2) failing to explain why the kidnappers, who were able to find Mr. Yusuff's wife and children in Ibadan, could not attempt to find them again, even if it had been many months since his family had been last contacted—Mr. Yusuff states that the RAD failed to consider whether his absence from Nigeria could explain the lack of further contact (*Cejudo Hernandez*);
- 3) speculating that Mr. Yusuff could maintain a low profile (*Amit v Canada (Citizenship and Immigration)*, 2012 FC 381 at para 4) while running a business in Port Harcourt, as a business registration would make him visible and running a business would entail advertising and promotion, thereby increasing his risk of being located by the kidnappers who were able to find him in the larger city of Lagos;
- 4) relying on contradictory logic by characterizing Mr. Yusuff's evidence of a vision to grow the business via additional marketing tools as speculative, while the RAD engaged in speculation that Mr. Yusuff's past business success in Lagos would translate into future business success in Port Harcourt;
- 5) making inconsistent findings that Mr. Yusuff was “an excelling and successful entrepreneur in Lagos” and that “there was no evidence before the RPD to indicate that [Mr. Yusuff] is such a high-profile entrepreneur as to be readily identifiable and targeted nationally”;

- 6) misconstruing country documentation about kidnappings in the Niger Delta, by exaggerating the number of kidnappings that are related to the oil industry; Mr. Yusuff also points to the U.S. Department of State Report on Human Rights for Nigeria (2017) (U.S. DOS Report) to corroborate his fear of being kidnapped for ransom due to perceived wealth;
- 7) engaging in a speculative analysis of whether it would be reasonable, in view of Mr. Yusuff's personal circumstances, to relocate to Port Harcourt;
- 8) failing to consider the lack of accommodation and employment discrimination faced by non-indigenes, and that Mr. Yusuff would be greatly disadvantaged in finding employment or starting a business in Port Harcourt;
- 9) improperly dismissing the psychotherapist's report without reasons (*Maharaj v Canada (Citizenship and Immigration)*, 2019 FC 78 at para 13); and
- 10) ignoring evidence of widespread police corruption, as well as Mr. Yusuff's evidence that the police were unable or unwilling to protect him and his family in the past, in the RAD's analysis of state protection.

[16] I am not persuaded by Mr. Yusuff's arguments. On judicial review, the burden is on an applicant to show that there are sufficiently serious shortcomings in the RAD's decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov* at para 100. It is within the RAD's discretion and expertise to assess and evaluate the evidence: *Vavilov* at paras 125-126.

[17] In my view, the alleged errors above amount to a disagreement with the RAD's findings, and a request to reweigh and reassess the evidence considered by the RAD, something this Court must not do on judicial review: *Vavilov* at para 125. Mr. Yusuff has not established that the alleged errors, individually or cumulatively, render the RAD's decision unreasonable.

[18] The RAD considered and addressed the issues that Mr. Yusuff raised on appeal regarding the RPD's assessment of the risk that he would face from the kidnappers who were allegedly

pursuing him and his family. Mr. Yusuff alleged that the RPD had applied an incorrect test by imposing an obligation to show that the agents of persecution would be able to locate Mr. Yusuff in the IFA location, and by failing to properly consider evidence of the kidnappers' propensity to attack persons close to Mr. Yusuff in order to get to him. The RAD conducted an independent assessment of the evidence, and found there was a lack of evidence that the kidnappers have a current or ongoing interest in locating and harming Mr. Yusuff or his family who live in Ibadan. The RAD noted that the last telephone call to Mr. Yusuff's wife was in March 2018. The RAD found that if the kidnappers were unable to locate the family after they moved to a different location within Ibadan—during a period of more than 20 months—it was unlikely they would be able to locate the family in Port Harcourt. The RAD also found that Mr. Yusuff does not have such a high profile as to be readily identifiable and targeted nationally—a finding that is consistent with the evidentiary record, and is not inconsistent with the RAD's finding that Mr. Yusuff's business in Lagos was successful.

[19] The RAD also considered Mr. Yusuff's allegation that the RPD erred in its assessment of risk from "low profile" advertising and ignored the forward-looking risk of alternative forms of marketing. The RAD found that Mr. Yusuff was able to run a business in Lagos using flyers and word of mouth referrals, and that Mr. Yusuff's plan to engage in wider marketing efforts was speculative. These findings were open to the RAD. Mr. Yusuff's evidence falls short of the cogent evidence required to establish a forward-looking risk, and the RAD reasonably concluded that the kidnappers are unlikely to have an interest or ability to locate Mr. Yusuff or his family in Port Harcourt.

[20] With respect to alleged error (6) above, the respondent agrees with Mr. Yusuff that the RAD made a mistake in summarizing the country documentation about kidnappings related to the oil industry in the Niger Delta, but argues that the error is not sufficiently serious to render the RAD's decision unreasonable because the RAD's determination is adequately supported by other findings. Contrary to the parties' submissions, it is not clear that the RAD made a mistake in stating that, according to the country documentation, most kidnappings in the Niger Delta relate to the oil industry. In support of his argument that wealthy individuals are kidnapped in Port Harcourt, Mr. Yusuff's written submissions to the RAD included a quote from the country documentation that relates entirely to conflict in the Niger Delta over the oil industry, which the quote describes as being marked by vandalism, protests, and the kidnapping of oil workers for ransom and to bring attention to the issues. Nonetheless, if the RAD's summary is inaccurate, I agree with the respondent that this does not constitute a sufficiently serious shortcoming in the RAD's decision: *Vavilov* at para 100.

[21] The RAD did not err in its assessment of whether Mr. Yusuff's personal circumstances would render the proposed IFA unreasonable—something that requires nothing less than the existence of conditions that would jeopardize his life and safety: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, [2000] FCJ No 2118 [*Ranganathan*]. The RAD reasonably found that indigeneship status is less important in big cities such as Lagos, Abuja, and Port Harcourt and that non-indigenes are generally able to find employment. As noted by the RAD, Mr. Yusuff has experience in the construction/building supplies sector, and there was no evidence to suggest that he would face difficulties as a non-indigene in establishing a business or finding alternate employment in Port Harcourt.

[22] Furthermore, to reach the high threshold of establishing that a proposed IFA is unreasonable, it was incumbent upon Mr. Yusuff to go beyond an assertion that he would be placed at a disadvantage. Hardship resulting from the loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones, and frustration of one's wishes and expectations is not sufficient: *Ranganathan* at para 15.

[23] Regarding the psychotherapist's report, the RAD provided clear and justified reasons on why the report was insufficient to establish that Mr. Yusuff's medical condition would render it unreasonable for him to relocate to Port Harcourt. The report did not specify why Mr. Yusuff would be unable to obtain treatment in Nigeria or how his condition might deteriorate.

[24] With respect to state protection, the RAD reasonably found that the police responded to complaints by Mr. Yusuff's family in the past, and while corruption exists and state protection may not be perfect, it could not be said that state protection is inadequate or inoperable so as to render the IFA unreasonable.

[25] In summary, the RAD reasonably assessed the evidence to find that Mr. Yusuff had not established more than a mere possibility of persecution or a risk to his life in the proposed IFA of Port Harcourt, and that it would not be unreasonable for Mr. Yusuff to relocate there. I agree with the respondent that the RAD dismissed Mr. Yusuff's appeal based on a failure to meet his onus. The RAD's findings in this regard are transparent, intelligible, and justified.

IV. **Conclusion**

[26] The RAD's decision is reasonable, and accordingly, this application for judicial review is dismissed.

[27] Neither party proposes a question for certification. In my view, there is no question to certify in this case.

JUDGMENT in IMM-185-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-185-20

STYLE OF CAUSE: BOLARINWA AHMED YUSUFF v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 3, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: MAY 26, 2021

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