Federal Court  Cour fédérale

Date: 20210729

Docket: IMM-7693-19

Citation: 2021 FC 801

Ottawa, Ontario, July 29, 2021

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MARY TITILAYO GRILLO
NAOMI FOLAWE GRILLO (A MINOR)
ELIZABETH FOLAJUWON GRILLO (A MINOR)
DAVID FOLABOMI GRILLO (A MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant (PA) is challenging the Refugee Appeal Division (RAD) decision dated November 20, 2019 upholding the decision of the Refugee Protection Division (RPD) finding that she and her three minor children (collectively, the applicants) were not Convention refugees

nor persons in need of protection pursuant to s.96 and s.97 of the *Immigration and Refugee Protection Act,* SC 2001 c 27 [*IRPA*] because they had an Internal Flight Alternative (IFA) in Benin City (the Decision).

[2] The applicants are citizens of Nigeria. The PA also has a one-year old daughter who was born after her arrival in Canada.

[3] The PA purportedly fears persecution or harm in Nigeria from members of the Ogboni Society of Iledi Igbonla (Ogboni) because the PA's husband refused to assume leadership of the group following his father's death on January 23, 2018.

[4] For the reasons that follow, this application is dismissed.

II. **Preliminary Matter**

[5] The Respondent requests that the style of cause be amended to include the PA's three minor children who were appellants in the RAD decision: Naomi Folawe Grillo, Elizabeth Folajuwon Grillo, and David Folabomi Grillo.

[6] This is appropriate and it is so ordered, effective immediately.

III. **Relevant Facts**

[7] The PA's husband, Habeeb Folarin Grillo, was selected to lead the Ogboni Society by an oracle but refused because he had converted to Christianity in June 2017. The PA claims the Ogboni Society is a cult with rituals involving idol worship, human sacrifice, and drinking blood.

[8] The PA claims her family has been receiving death threats from members of the group following her husband's refusal to assume leadership. The PA alleges that the initiation of a new leader must include his wife and first-born son and it involves incisions on their bodies, lying naked for three days while rituals are performed, drinking blood, being indoctrinated and secluded for seven days.

[9] After mounting threats from the Ogboni Society, the PA made arrangements to leave Nigeria.

[10] On March 25, 2018, the applicants fled Nigeria and travelled to the United States. They entered Canada on April 1, 2018 through an irregular border crossing.

[11] On April 18, 2018, the PA's husband was harassed by the Ogboni. He went into hiding in Lagos then fled to the city of Port Harcourt where he was discovered by cult members several months later. He was harmed and taken back to Lagos, his international passport was seized, and he faced severe pressure to produce his family.

[12] The applicants filed claims for refugee protection on April 30, 2018.

[13] On April 16, 2019, the decision of the Refugee Protection Division (RPD) rejecting their claims was rendered.

[14] The appeal to the RAD was received on May 13, 2019.

IV. **Decision Under Review**

[15] The RAD found the determinative issue was whether the applicants had a viable IFA in Benin City.

[16] The RAD conducted an independent review of the entire record including listening to the recording of the proceeding before the RPD. The RAD identified and applied the test set out in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*], discussed below.

[17] The RAD acknowledged the applicants' challenges to the RPD's determinations on credibility and subjective fear of persecution but did not address these issues given that the viability of the IFA was determinative.

[18] The RAD held that the applicants had not shown, on a balance of probabilities, that members of the Ogboni Society have the means to locate them throughout a country with over 192 million inhabitants, or specifically in Benin City. The RAD also found it was not objectively unreasonable for the applicants to relocate to Benin City.

V. **Issue and Standard of Review**

[19] The sole issue in this application is whether the RAD's IFA finding was reasonable.

[20] In *Huruglica* the Federal Court of Appeal set out in some detail the nature of the role of the RAD when reviewing a decision of the RPD. The conclusion was that the RAD reviews the RPD decision on a standard of correctness. On judicial review, reasonableness is the standard to be applied by this Court to a decision of the RAD: *Huruglica* at paras 30 and 35.

[21] The Supreme Court has confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions, none of which apply to these facts: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] at para 23.

[22] When applying the reasonableness standard while conducting judicial review, a Court is to refrain from deciding the issue afresh. The Court is to consider only whether the Decision, including the rationale for it and the outcome to which it led, is unreasonable: *Vavilov* at paragraph 83.

[23] The requirements of a reasonable decision were re-stated in *Vavilov* as being one that possesses an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker. The reasonableness standard requires a reviewing court to defer to such a decision: *Vavilov* at paragraph 85.

[24] A reviewing court must also remember that the written reasons given by an administrative body are not to be assessed against a standard of perfection. If the reasons given for a decision do not include all the arguments, statutory provisions, jurisprudence or other details a reviewing judge would have preferred, that, on its own, is not a basis to set aside the decision. The court's review is not to be divorced from the institutional context in which the decision was made nor from the history of the proceedings: *Vavilov* at paragraph 91.

VI. **The two-pronged IFA test**

[25] The applicants submit that the RAD erred in its application of the two-pronged test articulated in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at page 711:

> In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in Colombo and that, in all the circumstances including circumstances particular to him, conditions in Colombo were such that it would not be unreasonable for the appellant to seek refuge there.

[26] The onus is on the applicants to defeat at least one prong of the two prong test: *Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 895 at para 9.

[27] In carrying out this analysis, a decision-maker "must assume the claimant has a well-founded fear of prosecution in one part of the country and proceed to determine if that fear extends to the whole country": *Sendaheerage v Canada*, 2020 FC 968 at para 49.

[28] If there is a serious possibility of persecution to the applicants in Benin City, or if it is not reasonable for them to move to Benin City, then it is not a viable IFA. Whether an IFA is reasonable or not is determined objectively.

[29] The threshold for proving objective unreasonableness is very high. Actual and concrete evidence of the existence of conditions that would jeopardize the life and safety of the applicants in travelling or temporarily relocating to Benin City is required: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) [*Ranganathan*] at para 15.

VII. **Did the RAD err in finding the Applicants will not be persecuted in Benin City?**

[30] The applicants have put forward a number of arguments in support of their proposition that they will be persecuted in Benin City and that the RAD erred in finding it was a viable IFA.

A. *Did the Ogboni have the means to find the applicants in Benin City?*

[31] The applicants note that a serious possibility of harm in an IFA can be established if the agents of persecution have both the means and motivation to locate them. They state the motivation here is not in question but, the RAD found the applicants had not demonstrated that the Ogboni cult had the means to locate them in Benin City.

[32] More generally, the applicants submit that the RAD relied heavily on the 2019 Request for Information (RIR) document but committed errors by using the evidence selectively. They say the RAD failed to properly contextualize the evidence and turned a blind eye to crucial portions of the RIR.

[33] The respondent disagrees. He outlines and relies upon the facts considered by the RAD in finding that the Ogboni did not have the means to locate the applicants in Benin City.

[34] These facts and the location of their discussion in the Decision are set out below. My comments are set out separately, after each paragraph reference:

a) Nigeria has a population of over 192 million people - para 18;

The RAD found the applicants did not establish on a balance of probabilities that the agents of harm would have the means to locate them throughout a country with that many inhabitants or, more specifically, in Benin City.

b) The Ogboni Society influence has declined to the point it is "almost defunct" - para 20;

The applicants were given 10 days to make submissions to the RAD about the new 2019 RIR (updating the 2012 RIR relied upon by the applicants); they submitted that the PA's credible experiences, accepted by the RPD, provide an objective basis for her well-founded fear of persecution given the lack of knowledge of recent cases of targeting or killing as expressed in the RIR.

The RAD ejected that submission, finding that the evidence in the two RIRs - from 2012 and 2019 - reveals that the Ogboni does not have the means to locate the applicants in Benin City, which is far removed from the restricted areas in which the almost defunct group has a limited ability to intimidate people into joining.

Considering the high degree of deference owed to the decision-maker, the expertise of the RAD and that I am not to re-weigh or re-assess the evidence, I find that determination by the RAD is reasonable.

c) There is no evidence the Ogboni influences the police or Nigerian authorities - para 21, referring to the 2019 RIR;

Here, the RAD was rejecting the argument that because they are well-connected in government, the police, business and political candidates, the Ogboni could pursue the applicants in Benin City.

The RAD states that "[t[he more recent 2019 RIR, however, now paints a very different picture, and notes that there is 'no evidence' that the Ogboni society has influence on the police in main cities in Nigeria . . . the group is not recognized and not known to have influence within Nigerian authorities." Instead, the 2019

RIR observes that "there is a 'great belief' that securing a prominent government or law enforcement position requires being a member."

That finding is reasonable as it is reflected in the RIR. There is no basis upon which to disagree with the RAD conclusion.

d) The PA's testimony supports the Ogboni's limited influence - para 22;

The RAD in arriving at this conclusion noted that the only concrete example the PA could give of an influential person linked to the Ogboni was a secretary working at the education ministry in Abuja.

There is no basis upon which to disagree with this finding by the RAD.

e) The PA's husband provided scant evidence on the means or motivation to locate him in other parts of Nigeria - para 22;

In arriving at this conclusion, the RAD reviewed three affidavits provided by the husband. The RAD then noted that the rest of the documentary evidence, which included letters from the Ogboni Society and police diary extracts, did not demonstrate that the group has the means to locate the applicants in Benin City.

Put another way, the applicants did not meet their onus to show they would not be safe in Benin City.

f) The PA's husband was only located in Lagos because his mother, who is a member of the Ogboni, informed the group of his whereabouts. There is no evidence to establish ties to friends and family in Benin City - para 23.

In one of the three affidavits submitted by the husband it was claimed that he relocated to Port Harcourt after members of the Ogboni located him in Lagos. The RAD found that even if the allegation was accepted it did not demonstrate that members of the Ogboni had the means to locate the applicants in Benin City.

This finding by the RAD is consistent with the jurisprudence of this Court, which was recently reviewed by Mr. Justice Grammond in *Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 [*Essel*]. Justice Grammond found "the fact that the Applicants' agents of persecution may be able to locate [the husband] in [Port Harcourt] does not negate the RAD's finding that they would not have the ability to do so [in Benin City]": *Essel* at para 13 and cases cited therein, modified to refer to the facts of this application.

[35] The applicants note that there is a disclaimer in the introduction of the RIR indicating that little concrete information or evidence was available on the Ogboni that is not speculative. I find this reference unhelpful as it aids, or harms, both parties in that it cuts both ways.

[36] The applicants point out that the RIR indicated that “locally held beliefs about the cult were strong and local sources were fearful of speaking openly about the Ogboni Society”. They say this shows that the cult is still feared and strongly suggests that the cult remains powerful.

[37] I do not agree. The RAD was fully aware of the evidence in the RIR that the influence of the Ogboni was “almost defunct”. That is the antithesis of power. The RAD is required to weigh the evidence before it. This court is not permitted to re-weigh it.

[38] The respondent submits that in the context of the whole document, it is emphasized multiple times that the Ogboni is in decline to the point of having no power. As such, any strong presence is offset by the lack of power. I agree.

[39] The applicants say that the RIR states that the Ogboni has a strong presence or operation in Benin City. By ignoring this evidence the RAD erred because the RIR corroborates the applicants’ claim that the Ogboni has the means to locate them in Benin City. The RAD therefore either willfully ignored this portion of evidence to justify the negative decision or overlooked this crucial piece of evidence contrary to *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53.

[40] The respondent notes that the RAD did not ignore evidence of the Ogboni operations in Benin City. The RAD found the RPD had erred by not addressing the 2012 RIR on the Ogboni. The RAD reviewed the 2012 RIR, cited specific passages from it and found that it did not establish that the Ogboni had the means to locate the applicants in Benin City.

[41] The RAD's failure to mention the presence of Ogboni in Benin City does not establish that the Decision was unreasonable. Viewed in context, there were several other factors that contributed to the RAD's conclusion that there was no serious possibility of harm in the proposed IFA. Those factors were addressed at paragraph 34.

[42] The applicants are urging a different interpretation of the evidence considered by the RAD. However, as previously stated, a reviewing court is to refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

[43] Importantly, it is also the case that a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion. The reasons should allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

[44] The reasons provided by the RAD clearly, logically, rationally and coherently set out how and why it arrived at the outcome in the Decision.

[45] Considering all the evidence, I find it was reasonable for the RAD to conclude that the waning power and influence of the Ogboni outweighed their presence in Benin City and there was not a serious possibility of harm to the applicants.

VIII. **Did the RAD err in finding it would not be unreasonable for the applicants to live in Benin City?**

[46] It has been held that the threshold for this prong of the IFA test is very high. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions: *Ranganathan* at paragraph 15.

[47] The RAD's decision must be assessed in the context of how the applicants framed their appeal – the RAD is not required to consider potential errors that an applicant did not raise: *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 23.

[48] The applicants' submissions to the RAD on the second prong of the IFA test were brief. They centered on the assertion that the PA would stand out for speaking a different language, and that the RPD ignored the PA's mental health issues. Nonetheless, the RAD canvassed several common factors including employment, travel, accommodation, language, indigeneship, healthcare, and education.

[49] The RAD concluded that, in spite of Nigeria's high rate of unemployment and economic discrimination against women, the PA would be able to find employment in Benin City based on her education, bilingualism, and work history.

[50] The applicant cites *Okonkwo v Canada (Citizenship and Immigration)*, 2019 FC 1330 (*Okonkwo*) where Mr. Justice Martineau acknowledged that not speaking the local language in the proposed IFA was more likely than not to hinder an applicant's capacity to find employment.

[51] The respondent submits that *Okonkwo* is distinguishable from the applicants' matter. In *Okonkwo*, the applicant was a 19 year old female who had never worked before, had little or no financial resources, and had always lived with her parents before coming to Canada. In this case, the applicant has a university degree in finance and banking and has been self-employed as an event planner and interior decorator. Though it is unclear how prevalent English is in Benin City, as Nigeria's official language, the RAD noted that the applicants speak both Yoruba and English. As a result of these factors, the RAD found that the PA, particularly as an educated woman, would likely be able to find employment in Benin City. The applicant's inability to speak the local dialect is not sufficient to render Benin City an objectively unreasonable IFA.

[52] The RAD also noted that the National Documentation Package (NDP) stated that indigeneship status was less important in big cities. On this point, the applicant referred to an NDP published on November 29, 2019 that states non-indigenous migrants face obstacles in large cities if they are not financially strong and the ability to find employment was a key factor in finding housing. However, that NDP was not published at the time the Decision was issued on November 20, 2019 and it cannot be considered now as it was not before the RAD: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 (*Access Copyright*) at paragraph 19. Therefore, this new NDP cannot be relied upon to challenge the reasonableness of the Decision.

[53] It is well established that an applicant may not impugn the reasonableness of a decision on the basis of an issue that is raised for the first time on judicial review: *Joseph v Canada (Citizenship and Immigration)*, 2020 FC 24. As the Decision notes, the PA's submission to the RAD did not argue how her mental health would affect the reasonableness of Benin City as an IFA. Having failed to do so, the PA cannot present arguments in this application to fill the gaps in the submissions to the RAD.

[54] Finally, the PA claims that her children would be unable to register in a Benin City school because her uncle, the Secretary for the Minister of Education, could check whether the children were registered. The RAD found that the evidence did not support a finding that a person in her uncle's position would have such access to student records. The applicant did not challenge the reasonableness of this finding on judicial review so the finding stands.

IX. **Conclusion**

[55] For the foregoing reasons I find the applicants have not met their onus to show that the RAD erred with respect to its IFA analysis under either of the two prongs.

[56] After considering several potential obstacles raised by the applicants under each prong of the IFA test regarding relocation in Benin City, the RAD reasonably concluded that it was not objectively unreasonable for the applicants to relocate there.

[57] The reasons provided by the RAD are thorough. They are internally coherent and there is a rational chain of analysis that is justified in relation to the facts and law that constrained the RAD.

[58] As a result, the reasonableness standard requires this reviewing Court to defer to the Decision: *Vavilov* at paragraph 85.

[59] This application is dismissed, without costs. There is no certified question.

JUDGMENT IN IMM-7693-19

THIS COURT'S JUDGMENT is that the application is dismissed. There is no question for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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