

Federal Court



Cour fédérale

Date: 20211014

Docket: IMM-5134-20

Citation: 2021 FC 1069

Ottawa, Ontario, October 14, 2021

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**TOLANI OMOLABAKE FASOYIN
TOLUWALASE ANJOLAOLUWA
FASOYIN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

**(Delivered orally from the Bench by teleconference
at Ottawa, Ontario on September 27, 2021)**

[1] This application is for judicial review of a decision of the Refugee Appeal Division [the RAD] upholding a decision of the Refugee Protection Division [the RPD] in which it refused the refugee claims of Tolani Omolabake Fasoyin, the Principal Applicant, and her son, the Minor

Applicant, on the basis that they have a viable internal flight alternative [IFA] in Port Harcourt, Nigeria.

[2] The Principal Applicant and her son are citizens of Nigeria. The Principal Applicant's husband is also Nigerian. He is a medical doctor who works in Lagos. The Applicants based their claim for asylum on their fear of harm to the Minor Applicant at the hands of the Principal Applicant's in-laws and, in particular, her mother-in-law.

[3] Following the death of the Minor Applicant's grandfather, the Minor Applicant was chosen to be the next chief priest. Although the Principal Applicant and her husband opposed the appointment of their son to this position, the husband's parents carried out the first part of the initiation ceremony without the consent of the Minor Applicant's parents. At that time, the Minor Applicant was twelve years old. The ceremony did not involve an assault.

[4] However, the second part of the ceremony was scheduled to take place in January 2018. It involved 201 cuts being made to the Minor Applicant's penis [the Second Ceremony].

[5] The Principal and Minor Applicants fled to Canada in December 2017 to avoid the Second Ceremony. The Principal Applicant's husband remained in Lagos, but he is supportive of his wife's attempt to save their son. For this reason, the husband has been ostracized by his family.

I. THE RAD DECISION

[6] The Applicants submitted that Port Harcourt is not a viable IFA given that the Principal Applicant's mother-in-law travels there for political and religious reasons. In this regard, they offered six hand-written receipts for three return bus trips between Lagos and Port Harcourt, dated 2014 and 2017 [the Receipts] as new evidence before the RAD.

[7] The RAD held that the Receipts were inadmissible. Given their dates, the RAD found that they ought to have been submitted at the RPD hearing and that the Applicants' failure to produce them at that time had not been explained. In addition, the Receipts were found to lack credibility because the Applicants did not reveal how they were obtained. Given their fear of the husband's mother and given that the Principal Applicant's husband had been ostracized by his family, it seemed unlikely that the Receipts would be available.

[8] Although the RAD identified several errors made by the RPD it nevertheless concluded that Port Harcourt was a viable IFA.

[9] The following are the issues:

1. Did the RAD err in refusing to admit the Receipts as new evidence?
2. Did the RAD breach the rules of procedural fairness by failing to advise the Principal Applicant about its concern that the Receipts were not credible?
3. Did the RAD err in concluding that the Principal Applicant did not face significant barriers to her establishment in Port Harcourt?

II. DISCUSSION

ISSUES 1 AND 2

[10] The RAD rejected the Receipts because they predated the RPD hearing and because the Applicants provided no explanation for their failure to produce them at their hearing. This meant that the evidence was not admissible. In these circumstances, the RAD's comments about the credibility of the Receipts were *obiter*. Accordingly, without acknowledging that fairness required the RAD to advise the Applicants of its credibility concerns, the failure to do so was immaterial.

ISSUE 3

[11] The law is clear that having to start over and having difficulty finding a job are not significant barriers which make an IFA unreasonable. The RAD noted that the Principal Applicant's concerns were mitigated by her education, language skills, and work experience with the local government in Lagos.

[12] There was also evidence that the mother-in-law's trips to Port Harcourt were infrequent. Further, since the Applicants were not involved with the mother-in-law's political or religious groups, there was no reason to think they would encounter one another in Port Harcourt.

[13] In my view, given the Principal Applicant's circumstances, it was reasonable of the RAD to conclude that she did not face significant barriers to relocating in Port Harcourt.

III. CERTIFICATION

[14] No question was posed for certification for appeal.

IV. CONCLUSION

[15] The application for judicial review will be dismissed.

JUDGMENT IN IMM-5134-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5134-20

STYLE OF CAUSE: TOLANI OMOLABAKE FASOYIN, TOLUWALASE
ANJOLAOLUWA FASOYIN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY TELECONFERENCE

DATE OF HEARING: SEPTEMBER 27, 2021

JUDGMENT AND REASONS: SIMPSON J.

DATED: OCTOBER 14, 2021

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