Federal Court Cour fédérale

Date: 20211201

Docket: IMM-3882-20

Citation: 2021 FC 1337

Ottawa, Ontario, December 1, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

TAGANG ADAMU SANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Tagang Adamu Sani [Mr. Sani] seeks judicial review of a decision of the Refugee Appeal Division [RAD] confirming the determination by the Refugee Protection Division [RPD] that he had a viable internal flight alternative [IFA] in Ibadan, Nigeria.

[2] Mr. Sani is a 33-year-old man who was born in Kaduna State, in northern Nigeria, but who lived most of his life in Lagos, in the south. His father had been part of the Kataf clan, a

Christian clan that was in regular ethnic and religious conflict with the Islamic sect, the Hausa Fulanis.

[3] In October 2017, while on family business up north in Kaduna State, Mr. Sani was abducted by two men and held for four days along with other individuals at an abandoned farm. The abductors were of an unidentified Islamist extremist sect believed to be Fulani herdsmen and, according to Mr. Sani, associated with the Boko Haram terrorist group. Mr. Sani managed to escape and returned back south to Lagos, however, not before his abductors took all of his belongings, including documents containing personal information and his telephone.

[4] His abduction looked to have been a random act, however, Mr. Sani testified that his abductors continued to contact and threaten him after he returned to Lagos. Afraid that the Islamist sect, armed with his personal information, would be able to locate him in Lagos, Mr. Sani decided to travel to the United States in November 2017; however, racial tensions in the United States were such that he later decided to cross into Canada to seek asylum.

I. The decisions

[5] On May 23, 2019, the RPD rejected Mr. Sani's claim for refugee protection on the basis that he had a viable IFA in Ibadan and Port Harcourt. The RPD determined that the sect to which Mr. Sani's abductors belong is active in the north of the country and that the evidence does not suggest any activity on their part in the south. In addition, the RPD stated:

> Finally, when I asked the claimant if he knew of any threats from this group since he left Nigeria, he testified that he had no information about that, other than learning that his house was broken into at one point. However, he confirmed that he did not

> know if this was a targeted attack or random crime. I therefore find that there is insufficient evidence before me to establish that the Islamic group has the capacity or motivation to harm the claimant in another city.

[6] On August 11, 2020, after reviewing the evidence and listening to Mr. Sani's testimony before the RPD, the RAD dismissed his appeal; the RAD agreed with the RPD that Mr. Sani had a viable IFA in Ibadan.

[7] As to the first prong of the IFA test, Mr. Sani argues that the RAD failed to take into consideration the evidence in the national documentation package pointing to the "prevalence of Islamic Fulani attacks in the south-west Nigeria, where Ibadan is located". The RAD determined that Mr. Sani's abductors were most likely Fulani herdsmen but found that regardless of whether Mr. Sani's abductors were Fulani herdsmen, Boko Haram, or another group, the evidence shows that they "act locally and that the conflict has not spread beyond the local area in Kaduna in which they operate." In the end, the RAD determined that Mr. Sani "has not demonstrated on a balance of probabilities that there is a serious possibility that he will be persecuted if he relocates to Port Harcourt or Ibadan."

[8] As to Mr. Sani's argument that it would be unduly harsh for him to relocate to Ibadan or Port Harcourt on account of him being non-indigene and subject to discrimination, the lack of employment opportunities, the high level of crime and the high cost of living, the RAD found that Mr. Sani's evidence pointing to challenges in relocating focused only on Port Harcourt and that even discounting that city as a possible IFA, the fact remains that Ibadan remains reasonable

as an IFA, being a city where Mr. Sani's situation would not be that much different from the conditions he lived through for many years in Lagos.

II. Issues and standard of review

[9] The sole issue raised by this judicial review is whether the RAD's decision is reasonable. In addition, the parties agree, as do I, that the standard of review applicable to the RAD decision is that of reasonableness (*Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11).

III. Analysis

[10] I should mention that there is no issue as to Mr. Sani's credibility; the evidence that his father's clan consisted of Christians who experienced conflicts with the Islamic community in Kaduna State and that Mr. Sani himself was abducted by an Islamic sect in Kaduna that then discovered his religion and ethnic lineage, was accepted by the RAD. The determinative issue before the RAD was the availability of a viable IFA.

[11] I had the occasion to summarize the test for a viable IFA in *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paragraph 15:

> The decisions in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589, have established a two-prong test to be applied in determining whether there is an IFA: (i) there must be no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v*

> *Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). Both prongs must be satisfied in order to make a finding that the claimant has an IFA.

[12] Mr. Sani argues that the RAD made findings of fact that were unsupported by the evidence, drew inferences that were unreasonable, misstated facts and failed to consider relevant evidence which went to contradict its findings. I am not persuaded that such is the case and find that Mr. Sani has not raised any reviewable error in respect of the RAD's decision.

[13] As to Mr. Sani's argument that the RAD mistakenly concluded that the Fulani herdsmen located in Kaduna State operate only in their local area in the north of the country and that Ibadan is not prone to attacks from that group, he bases his argument on documentary evidence suggesting that Fulani attacks may have spread across the country, moving south.

[14] The difficulty I have with Mr. Sani's argument is that articles and sections of the national documentation package upon which he relies are not included in his record. Rather, he relies on the excerpts from such articles and sections that he has cited in his memorandum of fact and law. Citations are not evidence before the Court, and it is difficult for the Court to assess selective bits and pieces of quotes from the documentary evidence to support a finding that the RAD erred in not addressing evidence that directly contradicted its findings, as argued by Mr. Sani.

[15] More to the point, however, Mr. Sani has not pointed to any evidence contradicting the RAD's findings. The RAD agreed with the RPD's findings that the evidence points to a finding that the likely abductors of Mr. Sani, as members of the Fulani herdsmen in the area of Kaduna,

act locally and that the conflict with Mr. Sani's sect has not spread beyond the local area in Kaduna. Nothing which Mr. Sani points to would contradict that finding, including selective quotes from material that suggest that Fulani activity generally seems to be moving south.

[16] It is not for the RAD to point to every piece of evidence that it took into account in coming to its decision, and the RAD is deemed to have considered all the evidence before it. As recently stated by Madam Justice McVeigh in *Kheimehsari v Canada (Citizenship and Immigration)*, 2021 FC 1149 at paragraph 14:

> [14] I begin my analysis on this point by noting the RAD is presumed to have reviewed the entirety of the evidence before it, whether or not it specifically indicates having done so in its reasons. The onus rests with the party asserting that they failed to do so to prove it (*Jorfi v Canada (MCI)*, 2014 FC 365 at para 31). The Applicant is arguing that the RAD's failure to make specific reference to the bank records went to the root of their findings and rendered the decision unreasonable. The onus is on the Applicant to prove this.

[17] Here, Mr. Sani has not established any failure on the part of the RAD to take relevant evidence into account in coming to its conclusions.

[18] As to the reasonableness of relocating to Ibadan, the RAD determined that Mr. Sani did not meet his burden of establishing that Ibadan was unreasonable as an IFA. As noted by the RAD, Mr. Sani conceded in his testimony that Ibadan would provide some safety but that, in his opinion, it would not be economically viable.

[19] Mr. Sani argues that the documentary evidence – again, selective quotes cited only in his memorandum of fact and law – points to the level of discrimination faced by non-indigenes in

areas across Nigeria and that the RAD somehow minimized the difficulties that would be experienced by Mr. Sani if he were to relocate to Ibadan. Mr. Sani also argues that the assessment as to the reasonableness of Ibadan as a viable IFA was not undertaken by the RAD, which simply found that Mr. Sani's evidence pointing to any unreasonableness of the IFAs addressed only Port Harcourt and not Ibadan.

[20] I think Mr. Sani is looking to reverse the burden of proof as regards the establishment, or negation, of a viable IFA. It is not up to the RAD to set out why a particular IFA would be safe; the burden is upon Mr. Sani to show that it is not (*Photskhverashvili v Canada (Citizenship and Immigration)*, 2019 FC 415 at para 32).

[21] As stated by Madam Justice Roussel in *Singh v Canada (Citizenship and Immigration)*, 2021 FC 459 at paragraph 23:

> [23] The RAD's IFA findings are essentially factual and are based on its assessment of all the evidence, including the documentary evidence, which includes more than the passages on which the applicants rely. The findings are within the RAD's area of expertise and require a high degree of deference from this Court. Based on all the evidence, the RAD could reasonably conclude that the applicant had failed to demonstrate, on a balance of probabilities, that he would be at risk in the cities proposed as IFAs. It is not the role of this Court to reassess and reweigh the evidence to reach a conclusion favourable to the applicants. The role of this Court is to assess whether the decision bears the hallmarks of reasonableness (*Vavilov* at paras 99, 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). This Court finds that it does.

[22] Mr. Sani is, in essence, also asking me to reweigh the evidence before the RAD and to come to a different conclusion. I will not do so, and I too find that in this case, the decision of the

RAD bears the hallmarks of reasonableness. I would, therefore, dismiss the present application for judicial review.

JUDGMENT in IMM-3882-20

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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APPEARANCES:

Idorenyin E. Amana	FOR THE APPLICANT
Édith Savard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Amana Law Office Cornwall, Ontario	FOR THE APPLICANT
Attorney General of Canada Montréal, Québec	FOR THE RESPONDENT