Federal Court  Cour fédérale

Date: 20220405

Docket: IMM-2697-21

Citation: 2022 FC 475

Ottawa, Ontario, April 5, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

IRENE KUGONZA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated March 31, 2020, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant was not a *Convention* refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant is a citizen of Uganda. She claims fear of persecution and risk to her life at the hands of a wealthy Ugandan businessman, Joshua Tibagwa, and the Ugandan government due to her efforts to frustrate a government program related to oil exploration, refinery and waste disposition in the Hoima district by organizing the villagers to resist eviction from their land.

[3] With respect to the Applicant's section 96 claim, the RAD found that the source of the Applicant's claim was the land dispute between the Applicant and Mr. Tibagwa and that any government involvement was on the instruction or under the influence of the latter. While the Applicant made efforts together with other families in the community to reclaim their land, the RAD found that she had done so because of her desire to reclaim her land and that this advocacy could not be said to have occurred as a result of government opposition or political activity/opinion on the part of the Applicant.

[4] With respect to its section 97 inquiry, the RAD endorsed the RPD's finding that it was reasonable and consistent with the jurisprudence to expect the Applicant to take all reasonable measures to eliminate the risks she faces in Uganda before seeking refugee protection elsewhere. In particular, the RAD found it reasonable to expect the Applicant to forego and not pursue her land claim in order to protect herself. The RAD endorsed the RPD's finding that, if the Applicant abandoned her claim to land taken by Mr. Tibagwa, this would remove the motivation for him to continue pursuing her, and therefore she would not face a forward-looking risk. The RAD found this issue to be determinative of the section 97 claim.

[5] The Applicant asserts that the decision of the RAD was unreasonable on the basis that: (a) the RAD was unreasonably fixated on the land dispute to the improper exclusion of the political elements thereof and the evidence that supported the Applicant's profile as a political activist, which resulted in the RAD erring in upholding the RPD's finding that the Applicant had not established a nexus to a Convention ground; and (b) the RAD erred in finding that the Applicant had no forward-facing risk for the purpose of section 97 by ignoring the evidence that she will continue her advocacy efforts for the community if she returns to Uganda, regardless of whether she abandons her personal land dispute.

[6] For the reasons that follow, I find that the decision of the RAD is unreasonable. As a result, the application for judicial review will be allowed.

I. Analysis

[7] The sole issue for determination on this application is whether the RAD's decision was reasonable.

[8] The parties submit, and I agree, that the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised nor apply [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25]. In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the

decision maker". Both the outcome and the reasoning process must be reasonable [see *Vavilov*, *supra* at paras 83, 85 and 99].

[9] After reviewing the record and considering the submissions of the parties, I find that the determinative issue in this application is the RAD's assessment of the evidence leading to the characterization of the basis of the Applicant's claim as being a private land dispute between two individuals, rather than a claim falling within the category of political activity/opinion.

[10] In considering the characterization of the Applicant's basis of claim [BOC] and the evidence submitted by the Applicant, the RAD stated:

> [12] I do not find that the RPD misconstrued or erroneously assessed her evidence. The basis of the Appellant's claim is the loss of her land to J.T., who she says used false or fraudulent land title claims to take the Appellant's family's land, along with others in the same area. The claim has since been pursued in the courts in Uganda, according to the Appellant. As set out below with reference to the Appellant's Basis of Claim (BOC) and oral evidence, I find the source of the Appellant's claim is the land issue, and though she thereafter made efforts to reclaim the land and advocate for herself and the community, this advocacy relates to seeking the return of the land and cannot be said to have occurred as a result of government opposition or political activity/opinion on the part of the Appellant, nor am I persuaded on a balance of probabilities that the Appellant is viewed as such by the Ugandan authorities, according to her evidence and as set out below.
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> […]
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> [15] The Appellant argues in this appeal that the persecution she claims to have experienced in Uganda has a nexus to the Convention on the basis of political opinion, namely that she is seen by the state as being anti-government for her work to reclaim her land from J.T., and in mobilizing the community to do the same. Yet, I am not persuaded that the evidence supports this finding. The Appellant's BOC consistently indicates that the source of her problems emanates from an individual named J.T. who took her family land, and emphasizing that:

> [J.T.] is trying to use government through the police and the resident district commissioner to evict and harm me claiming that I am trying to frustrate government program related to the oil exploration, refinery and waste disposition in Hoima district by organizing the villager to resist the eviction from our land. [emphasis added]

Also the Appellant asserts "[T]his was all [J.T.] who had evicted people using state operatives and collaborating with the Regional Police Commander and Assistant Resident District Commissioner…" [emphasis added]. The Appellant states in her BOC that it was J.T. who has used his connections in government to influence those in power to suggest that the Appellant is anti-government and is trying to frustrate programs relating to oil in the area, and for this reason she started receiving threatening anonymous calls from "people claiming to be calling from State House" ordering her to stop fighting for the land. Therefore, in the RAD's view, the Appellant's evidence appears to demonstrate that she is/was being targeted by J.T., who used his government connections for reasons related to the land dispute, and not that she is being targeted by the Government of Uganda for reasons relating to her real or imputed political opinion or being "anti-government".

[16] The Appellant attempts to distinguish her case from *Ndambi*, and argues that in the case of *Ndambi*, it was an individual trying to get back land that he alleged belongs to him, while in her case the Appellant is fighting for land that belongs to the community against the interest of the government in an oil rich region of Uganda. She states that the RPD erred in "copying and pasting" the *Ndambi* case to her situation. The Appellant argues that her case is distinct in that she is a key witness in the land claim which will be heard by the Masindi High Court Appeal and that she has been mobilizing the community to go against the eviction, which she also asserted before the RPD. However, the RPD noted that the Appellant admitted that she had not submitted any evidence to substantiate her allegation that the Government of Uganda considers her anti-government. After my own individual assessment I have arrived at the same conclusion.

[17] I find that the Appellant's evidence suggests that her case is, in essence, a land dispute, and I do not find it is distinguishable from *Ndambi*. Nor is it a case of "opposition to corruption as an expression of political opinion", as characterized by the jurisprudence cited by the Appellant. While the Appellant has made efforts to mobilize the community to reclaim their collective land, her evidence indicates the impetus for doing so is not her political opinion, but rather a desire to reclaim her own land. I agree with the

> RPD in finding that the Appellant has failed to establish a nexus to the Convention, and as such her claim fails under section 96 of the IRPA.

[11] In considering the RAD's determination, it is critical to look at the evidence that was actually before both the RPD and the RAD. In addition to her BOC form and narrative and her testimony before the RPD, the record before the RPD included the following additional evidence tendered by the Applicant: (a) a sstatutory declaration from Atim Esiteri, Woman Councilor of the Rwamutanga internally displaced persons camp [IDP camp], sworn in November 2019; (b) a statutory declaration from Miramago Musinguzi, resident of the Rwamutanga IDP camp, sworn in November 2019; (c) a letter from Winfred Ngabiirwe, Executive Director of Global Rights Alert, dated November 6, 2019; (d) a letter from Edward Kamukumba, Chairman of Hoima Central Market, dated November 22, 2019; and (e) an article written by *Voice of America* entitled "Land Eviction Breed Violence in Oil-Rich Hoima, Uganda," dated September 24, 2014.

[12] Neither the RPD nor the RAD made any adverse credibility findings regarding the Applicant, nor raised any concerns with any of the evidence tendered by the Applicant, other than the *Voice of America* article. However, while the RPD stated that it had issued with the authenticity and independence of the article and its contents, the RAD did not refer to the article nor raise any concerns therewith.

[13] In *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at paragraphs 16-17, this Court held that the reasons given by administrative agencies are not to be read hypercritically by a court, nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it. However, the

more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a Court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence". Therefore, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[14] I find that the RAD's decision fails to meaningfully address the disturbing context in which the Applicant's claim arose. For example, there is no mention of the fact that the Applicant and her family were among 700 households that were violently evicted by Special Forces Command police officers led by the District Police Commander and Assistant Resident District Commission. The evidence before the RAD was that during this violent eviction, shots were fired in the sky, villagers were beaten and houses were set on fire. The villagers relocated to a small piece of land that eventually formed into the Rwamutonga IDP camp. The IDP camp conditions were reported to be inhumane, as basic necessities for life – such as potable water, food, medicine and shelter – were in short supply. This contextual evidence was given not only by the Applicant, but also by Ms. Esiteri and Miramago Musinguzi. Yet there is no mention of any of this context in the RAD's decision, leaving the impression that the Applicant and Mr. Tibagwa were simply engaged in a land title dispute being addressed in the Ugandan courts.

[15] Moreover, I find that the RAD failed to address evidence that points to the conclusion that the basis of the Applicant's claim was not a private land dispute, but rather arose as a result of her political opinion/activism and her efforts to mobilize the members of the IDP camp. By way of examples:

A. The Applicant testified before the RPD (who, like the RAD, took no issue with her credibility) that she was chosen by the members of the IDP camp to spearhead initiatives on behalf of the community to advocate for repossession of the village lands and to improve the living conditions in the IDP camp.

B. The Applicant reached out to numerous non-governmental organizations to seek humanitarian aid for the IDP camp and for assistance in reclaiming their land. As confirmed by Ms. Ngabiirwe (Executive Director of Global Rights Alert), the Applicant was specifically trained by Global Rights Alert on land rights and advocacy, was the team leader on behalf of the community to repossess their land and to engage a commission of inquiry to investigate the fraudulent titling of their land, and worked hand in hand with Global Rights Alert to improve the conditions in the IDP camp.

C. While the RAD noted that the Applicant's evidence was that as a result of her advocacy on behalf of the community she received phone calls from persons stating that they were from the Office of the Ugandan President (the State House) warning her to abandon her advocacy efforts, the RAD made no reference to the Applicant's additional evidence that those phone calls also included threats to her life, nor does the RAD refer to the fact that the threats were reported to the Kantonga police, who failed to provide any assistance to the Applicant.

D. Both the Applicant and Ms. Esiteri gave evidence that they attempted to obtain an audience with a regional Member of Parliament, who advised them to abandon their land claim and legal proceedings. The Member of Parliament reminded the group that they were battling rich and influential persons in government and that the President of Uganda "would not be amused" by their advocacy as it would frustrate government development programs.

E. Both the Applicant and Ms. Esiteri gave evidence that other individuals advocating on behalf of the IDP camp were arrested, tortured by the police and falsely charged with inciting violence. These individuals were later released on police bond and warned to desist from involving themselves in the land dispute.

[16] All of the aforementioned evidence supports the Applicant's assertion that she was acting as a political activist on behalf of the members of the IDP camp (and not simply out of personal interest) and that as a result of her activism, she has a well-founded fear of persecution not only from Mr. Tibawga, but also from the Ugandan government. However, the RAD failed to engage with any of this evidence.

[17] In the circumstances, I find that the RAD's decision lacks transparency and justification, as the RAD failed to address or reconcile the evidence that supported the political nexus of the Applicant's claim and that contradicted the RAD's conclusion that her claim was based on a private land dispute. Accordingly, the application for judicial review shall be granted and the matter shall be remitted to a differently-constituted panel of the RAD for redetermination.

[18] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-2697-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted to a differently-constituted panel of the Refugee Appeal Division for redetermination.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Ali Esnaashari	FOR THE APPLICANT
Aida Kalaj	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Esna Law Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT