Federal Court Cour fédérale

Date: 20220506

Docket: IMM-706-21

Citation: 2022 FC 649

Ottawa, Ontario, May 6, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ADEWOLE PETER ADIGUN
JUMOKE FLORENCE ADIGUN
AYODEJI OMOBOYE ADIGUN
EWAOLUWA OLAJUMOKE ADIGUN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Principal Applicant, Adewole Peter Adigun [PA], applies for judicial review of a January 6, 2021 decision made by the Refugee Appeal Division [RAD], which upheld a decision of the Refugee Protection Division [RPD] that the PA and his family [Applicants] are not

Convention refugees or persons in need of protection [Decision]. The PA claimed persecution by his political rivals. The determinative issue for the RAD was an internal flight alternative [IFA].

[2] The application for judicial review is dismissed.

II. Background

[3] The Applicants in this case are the PA, his spouse, and their two children. They are all citizens of Nigeria. The PA operated private schools in Nigeria. He became involved in local politics in his home city of Ibadan and in 2004, he was elected to the local legislative assembly as a People's Democratic Party [PDP] candidate. Later, he became the leader and speaker for the assembly. The PA's position within the PDP became tenuous because the PA supported democratic decision-making within the party and the removal of a corrupt party chairperson.

[4] In 2005, the PA was "ambushed" by a motion for his impeachment on the floor of the assembly. The PA's supporters took the PA to safety after violence ensued. The PA went into hiding for two months. Eventually, a truce was called with the PDP leadership. The PA was able to return safely and served the remainder of his term as a regular assembly member. He kept a low profile and avoided contentious political issues. His term ended in 2007 and he left local politics.

[5] In 2014, a new party split off from the PDP called the Accord Party [AP]. Leaders of the AP invited the PA to run in the primary race to be the AP's candidate in a different regional legislative assembly. The Applicant accepted because he believed that the danger he previously

faced was due entirely to the internal politics of the PDP. In March 2014, the PA held a meeting with 15 of his political supporters in his home. During the meeting, gunshots erupted on the street outside, provoking a stampede to exit the building. During the exit, the PA’s 10 year old daughter sustained injuries that resulted in her death.

[6] The PA sent his family to live with relatives in another city. He stayed in Ibadan with his brother-in-law to work for the AP and to monitor his business. He worked to support a number of AP candidates, but refused to support the AP candidate who had competed for his seat, Shakirat Adewoyin. The PA thought Ms. Adewoyin was responsible for the incident in March 2014. In the March 2015 election, Ms. Adewoyin did not win her seat. Following her loss, a number of AP supporters told the PA that they blamed him for her loss. One individual, who the PA later believed to be Oyebisi Ilaka, threatened him. In May 2015, a school bus at one of the PA’s schools was set on fire. He reported the incident to the police but never heard back from them. Following that event, he fled to join his family and secretly returned to Ibadan every month to check on his affairs.

[7] In April 2016, three men attacked the PA at a bus station. Following that event, he moved his family to a new city to live with the PA’s brother. In July 2016, the Applicants applied for visas to the United States [US] to visit the PA’s sister in Maryland. They left Nigeria in September 2016 and stayed in the US until they crossed the border into Canada in June 2019. They did not make a claim in the US because they feared the immigration policies of the US at the time. In late November 2016, during their stay in the US, the PA’s wife returned to Ibadan to assess whether it would be safe for their family to return. She visited the PA’s schools and his

close contacts. She stayed at her brother's residence. In January 2017, three men came to her brother's house and demanded to know where the PA was. Shortly thereafter, the PA's wife returned to the US.

III. The Decision

[8] The RAD upheld the RPD's finding that the Applicants were neither Convention refugees nor persons in need of protection. The determinative issue for the RAD was an IFA in Abuja, Nigeria.

[9] The PA submitted two pieces of new evidence with his appeal record at the RAD. Both pieces of evidence predate the RPD decision. The first piece of new evidence is a July 23, 2020 affidavit of Boladale Ismail Oduntan, which states that one of the AP members who is angry with the PA is Mr. Ilaka, who became the Chief of Staff to the PDP Governor of Oyo State. The second piece of new evidence is a May 29, 2019 news article confirming Mr. Ilaka's appointment as Chief of Staff. The PA only became aware of Mr. Ilaka's appointment after the negative RPD decision when trying to determine if it would be safe to return to Nigeria.

[10] The RAD Member refused to admit the new evidence on the basis that the information predated the RPD decision and was publicly available information, meaning it did not meet the requirements for new evidence set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[11] The RAD also rejected additional evidence pursuant to Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257 because it was not included in the appeal record. This additional evidence included 41 news articles relating to social unrest and the #endSARS movement, and 19 news articles related to Port Harcourt as an IFA. The RAD noted that, in order for new evidence to be accepted after the perfection of the appeal record, the Applicants must meet the requirements of Rule 29 and explain in their submissions how the evidence meets the requirements of subsection 110(4) of the *IRPA*. The RAD noted that it "must consider any relevant factors, including: the relevance and probative value of the document, any new evidence the document brings to the appeal, and whether the appellant could have, with reasonable effort, provided the document with the Appeal Record." The RAD found that Applicants did not make sufficiently detailed submissions to meet this standard for any of the Rule 29 evidence.

[12] The Applicants did not request an oral hearing and the RAD declined to hold an oral hearing on the basis that the new evidence was not admissible.

[13] The RAD found that the RPD had correctly determined the existence of an IFA. On the first prong of the IFA test, the RAD concluded that the Applicants failed to show that they were likely to be persecuted by Ms. Adewoyin or her supporters in the IFA on a balance of probabilities. The RAD found that the RPD reasonably considered the means and motivation of both Ms. Adewoyin and her supporters. The RAD did not engage with the second prong of the test, beyond saying that the RPD correctly concluded that it would not be unreasonable for the Applicants to relocate to Abuja. The RAD also noted that the Applicants did not raise concerns related to the second prong of the test in their submissions before the RAD.

IV. Issues

[14] After considering the parties' submissions, the issues are best characterized as:

1. Was the RAD's refusal to accept new evidence reasonable?
2. Was the RAD's IFA analysis reasonable?

[15] The Applicants raised a third issue about whether the RAD erroneously failed to conduct its own analysis of the second prong of the IFA test. In my view, that issue is best addressed under the second issue.

V. Standard of Review

[16] I agree with the parties that the appropriate standard of review is reasonableness. This case does not engage one of the exceptions set out in *Canada (MCI) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Therefore, the presumption of reasonableness applies (*Vavilov* at paras 23-25, 53).

[17] A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification. The reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87). A reasonable decision must be "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made, and

determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86).

VI. Parties' Positions

A. *Was the RAD's refusal to accept new evidence reasonable?*

(1) Applicants' Position

[18] The Applicants submit that the new evidence submitted with the Appeal Record meets the requirements of subsection 110(4) of the *IRPA*. They submit that the information contained in the new evidence was not reasonably available to them at the time of the hearing because they only learned of it from a third party after the RPD decision. The Applicants allege that the RAD speculated that the new evidence was publically available. The Applicants submit that information related to Mr. Ilaka's appointment could not have been known until Mr. Oduntan told the PA. The PA submits that he only became aware that Mr. Ilaka threatened him after reading the Oduntan affidavit.

[19] The Applicants contend that the failure to consider the new evidence led the RAD to focus on Ms. Adewoyin as the agent of persecution in the first prong of the IFA test, rather than considering the reach of her political network, which included Mr. Ilaka.

[20] The Applicants submit that they have a right to submit new evidence which contradicts the RPD's findings (*Ismailov v Canada (MCI)*, 2015 FC 967 at para 53 [*Ismailov*]).

[21] The Applicants also submit that the new evidence meets the test of newness, credibility, relevance, and materiality (*Raza v Canada (MCI)*, 2007 FCA 385 at para 13 [*Raza*]; *Canada (MCI) v Singh*, 2016 FCA 96 at paras 38, 44, 46 [*Singh*]).

[22] The Applicants argue that the RAD unreasonably refused to admit the new evidence submitted after the Applicants filed their appeal record. The Applicants argue that the RAD failed to appreciate the relevance, credibility, and probative value of the new evidence, resulting in a breach of procedural fairness (*Cox v Canada (MCI)*, 2012 FC 1220 at paras 26-27 [*Cox*]). In *Cox*, this Court recognized that relevance and probative value were important factors in determining the admissibility of new evidence, especially as it related to plausibility.

(2) Respondent's Position

[23] The Respondent submits that the RAD reasonably concluded that the new evidence submitted by the Applicants failed to meet the requirements of subsection 110(4) of the *IRPA* and the factors established in *Raza* and *Singh*. The Respondent disagrees that the new evidence should have been admitted because the Applicants could not have anticipated the RPD's concerns. The Respondent submits that applicants bear the burden of putting their best foot forward and that they may not submit new evidence whenever they are surprised by an outcome (*Marin v Canada (MCI)*, 2016 FC 847 at paras 26-27).

B. *Was the IFA analysis reasonable?*

(1) Applicants' Position

[24] The Applicants submit that the RAD erred in its application of the first prong of the IFA test by unduly focusing on Ms. Adewoyin as the agent of persecution. The Applicants submit that in doing so, the RAD failed to account for the extent of her political network, which included Mr. Ilaka.

[25] The Applicants also allege that the RAD misapplied the second prong of the IFA test. The Applicants state that the RAD failed to analyze whether it would be reasonable for the Applicants to relocate to Abuja without incurring undue hardship. They submit that the RAD was obligated to engage in its own independent analysis (*Gomes v Canada (MCI)*, 2020 FC 506 at paras 51-52 [*Gomes*]). Instead, the RAD briefly addressed the issue of the now-revoked Jurisprudential Guide on Nigeria.

(2) Respondent's Position

[26] The Respondent submits that the Applicants have the burden to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the IFA (*Thirunavukkarasu v Canada (MEI)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589). The test to show that the IFA is unreasonable is a very high one (*Ranganathan v Canada (MCI)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15).

[27] On the first prong, the RAD reasonably concluded that on the balance of probabilities there is no serious risk of persecution from Ms. Adewoyin or her supporters in the IFA. There

was no evidence that Ms. Adewoyin or her supporters had looked for the PA in Ekiti state or Ogun/Lagos state. Similarly, there was no evidence of a widespread political reach of Ms. Adewoyin as a result of being a candidate for the AP. Finally, neither the PA nor any of his affiants knew the whereabouts of Ms. Adewoyin.

[28] On the second prong, the RAD reasonably concluded that the RPD's analysis was thorough and correct. The Respondent points out that the Applicants did not file any affidavits calling into question any of the RPD's conclusions relating to their personal circumstances and the reasonableness of relocating to Abuja. As well, the Applicants' appeal submissions made no reference to any issues related to the second prong.

[29] The Applicants' submissions are merely an invitation to the Court to reweigh the evidence that was submitted to the RAD, which is not the purpose of judicial review.

VII. Analysis

A. *Was the RAD's refusal to accept new evidence reasonable?*

[30] The RAD did not err by refusing to admit new evidence. Subsection 110(4) of the *IRPA* stipulates that the RAD can only consider new evidence if it arose after the rejection of the RPD claim, if it was not reasonably available, or the person could not have been expected to have presented it at the time of the RPD's rejection of the claim. The RAD considered the new evidence in light of subsection 110(4) and *Raza* and, after assessing the factors, reasonably determined not to admit the new evidence. The RAD also noted that the Rule 29 documents were

submitted with a cover letter that stated they contain "articles not available at the time the record was filed." It was reasonable for the RAD to find that this explanation was insufficient.

[31] It is trite law that it is not the role of the RAD to provide an opportunity for an applicant to complete a deficient record. In *Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459, Justice Fothergill stated the following at paragraph 22:

> The Federal Court of Appeal held in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 that s 110(4) of the IRPA must be "narrowly interpreted" (at para 35), and "[t]he role of the RAD is not to provide an opportunity to complete a deficient record submitted before the RPD" (at para 54).

[32] *Ismailov* is distinguishable from the present matter. In that case, unlike the present matter, the new evidence related to credibility. I find that the circumstances of this case are similar to *Marin*. Being stunned or surprised by an outcome does not entitle an applicant to submit new evidence.

B. *Was the IFA analysis reasonable?*

[33] I find that the RAD's IFA analysis was reasonable. On the first prong, the RAD engaged with the Applicants' submissions and weighed the evidence before it. The RAD noted that there was no evidence that Ms. Adewoyin or her supporters looked for the PA in Ekiti state or in Ogun/Lagos state (where the PA stayed for several months). The RAD also noted that neither the PA nor those who provided letters or evidence know of Ms. Adewoyin's whereabouts or her current position. The RAD found that Ms. Adewoyin's candidacy for the AP does not mean she has a widespread reach. Finally, the RAD noted that the only instance of the agents of

persecution interacting with the PA's family was when three men visited the PA's wife at her brother's home in Ibadan. There was no evidence that any persons came looking for the PA or interacted with the Applicants' family members after this incident.

[34] The RAD determined that, under these circumstances, the Applicants did not satisfy their onus that the IFA was not viable. In particular, the Applicants did not establish that they face a serious possibility of persecution by Ms. Adewoyin or her supporters in the IFA, or a risk to life or of cruel or unusual punishment on a balance of probabilities. This is a reasonable determination.

[35] The extent of the RAD's reasons on the second prong of the IFA test are set forth below:

> Furthermore, a main reason why [the Jurisprudential Guide] was revoked largely related to new NDP evidence regarding the ability of single women to relocate to an IFA in Nigeria, which does not apply to the circumstances of the Appellants. In the Appellants case, the RPD utilized the framework of the former [Jurisprudential Guide]/Reason of Interest with respect to the second prong of the IFA analysis and relied on country documents that were valid. Specifically, the RPD correctly considered the Appellants religion, language, ethnicity, employment, accommodation, and school and concluded that relocation to the IFA would not be unduly harsh. The Appellants do not raise any specific concerns with the RPD's particular findings in these regard [*sic*]. Based on my independent assessment, I also do not find that the RPD in its assessment of the second prong of the IFA analysis concluded that it would not be unreasonable to expect the Appellants to relocate to the IFA of Abuja.

[36] The Applicants submit that the RAD did not conduct an independent assessment of the second prong. After reviewing the Applicants' submissions to the RAD, I agree with the Respondent that the Applicants did not raise any issues with the second prong of the IFA test. Of

the four issues identified in the Applicants' memorandum to the RAD, two of the issues related to the first prong of the IFA test. The remaining two issues related to the new evidence and the revocation of the Jurisprudential Guide. The text of the Applicants' RAD submissions did not address the factors related to the second prong of the IFA test.

[37] *Gomes* does not assist the Applicants. In *Gomes*, Justice Pamel stated that it is open for the RAD to adopt the RPD's lengthy and reasoned treatment of the record so long as the RAD also examines the record (at paras 35-36). The Applicants rely on passages from *Gomes* where the Court discusses the RAD's failure to be responsive to submissions. As stated above, the RAD in this matter did engage with the submissions of the Applicants. For the RAD, there was an absence of submissions relating to the second prong of the IFA test and the RAD's conclusion was responsive to the Applicants' submissions.

[38] This circumstance is similar to *Hamid v Canada (MCI)*, 2020 FC 145 [*Hamid*]. In *Hamid* Justice Pamel addressed similar arguments and stated the following:

> [52] I reject the Applicant's arguments for four reasons.
>
> [53] First, the Applicant's argument regarding the 'range of issues' under the second prong was not raised at the RAD level. The Applicant did not raise such arguments in his memorandum at the RAD, despite the Applicant's burden of proof to demonstrate how a proposed IFA would be unsuitable. Indeed, the Applicant merely challenges the RPD's analysis as to the level of state protection in Islamabad, a consideration that relates to the first prong of the *Rasaratnam-Thironavukkarasu* test (i.e., the analysis pertaining to the fear of persecution).
>
> [54] The Applicant's memorandum before the RAD does not mention the factors of transportation and travel, language, education, accommodation, religion, indigenous status and the availability of healthcare. As a result, the Applicant is attempting to raise new legal issues that could have been raised prior to this

> judicial review (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26; *Forest Ethics Advocacy Association v Canada (National Energy Board)*, [2015] 4 FCR 75, 2014 FCA 245 at paras 42-47; *Erasmo v Canada (Attorney General)*, 2015 FCA 129 at para 33).

[39] Lastly, I agree with the Respondent that the Jurisprudential Guide for Nigeria was revoked because of the new evidence related to single women, a consideration that does not apply in this case.

[40] I find the Decision is intelligible, transparent and justified. The Decision allows this Court to understand why the Decision was made. As such, it is within the range of acceptable outcomes defensible in respect of the facts and law and is, therefore, reasonable (*Vavilov* at paras 85-86).

VIII. Conclusion

[41] The application for judicial review is dismissed. The RAD did not err in its rejection of the new evidence and the RAD did not err in its IFA analysis.

[42] The parties do not propose a question for certification.

JUDGMENT in IMM-706-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification and none arises.

3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-706-21
STYLE OF CAUSE:	ADEWOLE PETER ADIGUN, JUMOKE FLORENCE ADIGUN, AYODEJI OMOBOYE ADIGUN, EWAOLUWA OLAJUMOKE ADIGUN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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