

Federal Court



Cour fédérale

Date: 20220512

Docket: IMM-5610-21

Citation: 2022 FC 714

Toronto, Ontario, May 12, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

GRACE MUKADZEMBO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the Refugee Appeal Division's (RAD) decision to refuse her appeal on the basis that she had an internal flight alternative (IFA). After listening to the oral submissions from both parties, I provided my judgment, dismissing the judicial review at the end of the hearing, explaining my reasoning to the parties. However, I promised written reasons to follow. These are those reasons.

I. Background

[2] The Applicant is a 37-year-old citizen of Zimbabwe. She first arrived in Canada in July 2018 and made a claim for protection based on a fear that her uncles would subject her, as the youngest unmarried woman in the family, to female genital mutilation and forced marriage. The Refugee Protection Division (RPD) rejected the Applicant's claim, having found that she had an internal flight alternative in Bulawayo, Zimbabwe.

[3] In a decision dated July 28, 2021 (the Decision), the RAD refused the Applicant's appeal of the RPD decision, and determined that the RPD was correct to find that the Applicant is neither a Convention refugee nor a person in need of protection.

[4] The RAD began by acknowledging that its role is to consider all the evidence and decide whether the RPD made the correct decision, citing *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 and *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145. The RAD then noted that the Applicant's arguments on appeal were concerned with the RPD's analysis concerning the availability of an IFA in Bulawayo, applying the two part test and considering the relevant evidence per *Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 706 [*Rasaratnam*].

[5] With respect to the first prong of the test, the RAD agreed with the applicant on a pair of errors made by the RPD, first in its misstatement of the population size of Bulawayo and second

in its failure to consider the Applicant's evidence regarding her uncle's connection to the Zimbabwe African National Union – Patriotic Front (the ZANU-PF).

[6] However, the RAD ultimately concluded, according to its own analysis of the evidence, that the factual error regarding Bulawayo was not significant. As for the second error, the RAD determined that in any case, the Applicant had not provided sufficient evidence to establish her uncle's position or influence within the ZANU-PF or that he would be capable of using this position to locate her. The RAD specifically observed that the country condition evidence documenting the ZANU-PF's collusion with security forces, on which the Applicant relied in support of her risk in the IFA, consisted of politically motivated attacks against members of opposition parties. The RAD considered these were insufficient to demonstrate that her uncles would be able to influence state security forces to locate her for personal reasons, specifically for the purposes of a forced marriage. As such, the RAD found that despite the RPD's errors, its determination on the first prong of the IFA test was correct.

[7] After conducting a similar analysis with respect to the second prong of the IFA test, the RAD upheld the RPD's decision and refused the Applicant's appeal.

II. Issues and Analysis

[8] The only issue in this judicial review is whether the Decision was reasonable; any flaws or shortcomings must be more than superficial or peripheral to the merits of the decision and the court must be satisfied that they are sufficiently central or significant to render the decision

unreasonable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] at paras 99-100).

[9] The Applicant submits that the Decision was unreasonable on the basis that the RAD's analysis of the first prong of the IFA test ignored evidence and placed an overly onerous evidentiary burden on the Applicant with regard to the motivation and ability of her agents of persecution to locate her in Bulawayo. With respect, I must disagree.

[10] As I outlined above, and contrary to the Applicant's submission, the RAD did not ignore the Applicant's evidence of her uncle's connection to the ZANU-PF. At paragraphs 15-18 of the Decision, the RAD explicitly considered and accepted the Applicant's evidence that her uncle was an active supporter of the party and the country condition evidence suggesting the party had colluded with law enforcement officials to commit politically motivated acts of intimidation and violence. However, the RAD considered that there was insufficient evidence of her uncle's involvement to convince the RAD that he could somehow wield the party's influence to locate his niece for the purpose of resolving a personal family dispute, particularly in the absence of any indication of any alleged or real or perceived political views held by the Applicant.

[11] Here then, the Applicant's argument that relevant evidence was ignored is unfounded. To the contrary, the Decision explicitly grappled with the Applicant's evidence and simply found that it was insufficient to discharge her burden of establishing she would face a serious possibility of persecution or a risk to life or of cruel and unusual treatment or punishment in Bulawayo. The finding is also entirely justified when viewed against the original evidence

presented, including a reading of the relevant portion of the transcript of the Applicant's testimony before the RPD, as well as the Affidavit from her mother, and the letter from one of her other uncles. Her testimony on this subject provided almost no specifics on her uncle's role or involvement in the party, and neither the mother nor the other uncle provided any statement with respect to a threat coming from the alleged connections to the party that would impugn the RAD's finding on the first prong of the IFA test.

[12] The Applicant further claims that it was unreasonable and overly onerous to require her to provide evidence belonging to her agent of persecution, citing *Franco Taboada v. Canada (Citizenship and Immigration)*, 2008 FC 1122 at para 35 [*Taboada*] in support. However, I can see no resemblance between the present case and the excerpt cited from *Taboada*, which was concerned with credibility findings and the inappropriateness of requiring the applicant in that case to prove that her agents of persecution would act rationally.

[13] I do not find the RAD decision can be read to have required any such evidence. It would appear to me that the RAD was commenting on the absence of evidence to suggest that the ZANU-PF's influence over law enforcement in the pursuit of political dissidents could be wielded by supporters to resolve their personal family disputes in the absence of any political dimension. This finding is entirely reasonable, particularly in the absence of evidence that the uncle was anything more than a supporter of the party.

[14] As the Applicant challenges findings on the first, and not the second prong of the IFA test, I consider the RAD Decision to be reasonable, in that it was transparent and intelligible, in

addition to being justified according to the applicable case law and sensitive to the facts bearing on the decision. The Application is accordingly dismissed.

JUDGMENT in file IMM-5610-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.
2. No question for certification was submitted and I agree that none arise.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5610-21

STYLE OF CAUSE: GRACE MUKADZEMBO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 11, 2022

**REASONS FOR JUDGMENT
AND JUDGMENT:** DINER J.

DATED: MAY 12, 2022

APPEARANCES:

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