Federal Court Cour fédérale

Date: 20220607

Docket: IMM-2146-21

Citation: 2022 FC 838

Ottawa, Ontario, June 7, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

IKENNA STANLEY OPARAJI AND NDIDI JULIANA OPARAJI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ikenna Stanley Oparaji and Ndidi Juliana Oparaji are married and citizens of Nigeria who fear the Fulani Herdsmen because of their Christian beliefs and preaching. Following an attack by the Herdsmen against the Applicants and their evangelization group, they fled to Lagos, where they received threatening phone calls from unidentified callers. Deciding to leave Nigeria,

they went first to the United States of America and then later to Canada where they claimed refugee protection.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] found, and the Refugee Appeal Division [RAD] confirmed on appeal, that the Applicants have an IFA in Port Harcourt and, therefore, they are neither Convention refugees nor persons in need of protection. The Applicants seek judicial review of the RAD decision.

[3] There is no dispute that the sole issue for determination is the reasonableness of the RAD's decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. I find that none of the situations that could displace the presumptive reasonableness standard of review arises in the matter before me: *Vavilov*, at para 17.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I am not persuaded that the RAD decision was unreasonable. For the more detailed reasons below, I therefore dismiss this judicial review application.

II. Analysis

[5] I find that the Applicants have not satisfied their burden to show that the RAD decision regarding the viability of Port Harcourt as an IFA is unreasonable.

[6] I note that the Applicants have not challenged the RAD decision regarding the second part of the applicable test. Only the reasonableness of the RAD decision regarding the first part of the test, therefore, is relevant.

[7] The two-part test for assessing the viability of an IFA can be described as whether, on a balance of probabilities: (i) the Applicants would face a serious possibility of persecution or risk of torture, cruel and unusual treatment or death in the IFA; or (ii) it would be unreasonable objectively or unduly harsh, in their personal circumstances, to move to the IFA: *Olasina v Canada (Citizenship and Immigration)*, 2021 FC 103 at para 4; *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 at para 29.

[8] The Applicants argue that there is a distinction between inference (which the RAD was not prepared make) and speculation (in which the RAD found the Applicants engaged) regarding the identity of the phone callers in Lagos who threatened the Applicants. The Applicants urge the Court to find it unreasonable that the RAD would not infer, based on the facts, that the callers were Fulani Herdsmen.

[9] In my view, this argument is tantamount to a request for the Court to reweigh the evidence reviewed by the RAD and come to a different conclusion. This is not the role of the Court, however, when judicially reviewing an administrative decision: *Vavilov*, at para 125; *Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at para 3.

[10] The fact that it was open to the RAD to make an evidentiary inference more favourable to the Applicants does not mean that the RAD's evidentiary assessment was flawed: *Zhou v Canada (Citizenship and Immigration)*, 2020 FC 676 at para 21; *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43.

[11] The Applicants also submit that because they were tracked to and monitored in Lagos, they could be located in any other city in Nigeria, in other words that the Herdsmen would have the means and motivation to do so. In my view, this argument is speculative, and again, asks the Court to reweigh the evidence.

III. Conclusion

[12] For the above reasons, I am not convinced that the RAD decision is unreasonable. I therefore dismiss the Applicants' judicial review application.

[13] No party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-2146-21

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2146-21
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