Federal Court  Cour fédérale

Date: 20220729

Docket: IMM-845-21

Citation: 2022 FC 1141

Ottawa, Ontario, July 29, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

IBIRONKE BAMITALE ADESHOLA
EMMANUEL AYOMIDE ADESHOLA
DAVID AYODEJI ADESHOLA
IDUNOLAMI AYOMIPOSI ADESHOLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the denial of their application for humanitarian and compassionate relief (H&C) under section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*].

[2] They claim that the Officer's decision denying their claim is unreasonable because it failed to engage with the relevant evidence, the Officer made several factual errors about key

evidence and ignored key evidence, and did not apply the best interests of the child analysis required by the jurisprudence.

[3] For the reasons that follow, the application for judicial review will be granted.

I. I Background

[4] Ibironke Bamitale Adeshola is the Principal Applicant , and she included her three children in her H&C application. The Principal Applicant and the two eldest children, aged 20 and 19 at the time of the decision, are citizens of Nigeria. The youngest child, aged 12, is a citizen of the United States.

[5] The Applicants came to Canada in 2013 and claimed refugee status based on the Principal Applicant's fear of her ex-husband because of his history of domestic violence. The Refugee Protection Division (RPD) dismissed their claims, essentially because it found that the Principal Applicant's evidence was lacking in credibility. This decision was upheld by the Refugee Appeal Division.

[6] The Applicants filed an application for H&C relief, in 2014, which was denied. In addition, they filed an application for a Pre-Removal Risk Assessment in 2016, but it was also denied. During this period the Principal Applicant was granted several study permits, the last of which will expire in 2023. In addition, she has obtained multiple work permits.

[7] The Applicants filed a further application for H&C relief in 2017, which was refused in April 2019. An application for judicial review from that decision was allowed, and the

Applicants submitted a further application for H&C relief in January 2020. The Applicants provided supplementary submissions on August 25 and August 31, 2020.

[8] The Applicants' H&C claim was based on hardship, establishment in Canada and the best interests of the children.

[9] The hardship claim relates to the risk the Principal Applicant said she faced from her ex-husband, as well as the difficulty the Applicants would face in Nigeria because of country conditions, including the situation of women in the workforce and more generally in society.

[10] The Principal Applicant claimed that she faced an ongoing risk from her ex-husband, and she pointed to two affidavits from her mother and sister. The mother said she had been shot while she was in Nigeria, and she connected this to the threats she had received from the ex-husband. The sister's affidavit stated that the ex-husband had come to her house in February 2019, and he threatened to cause harm to her and her family if she did not disclose the whereabouts of the Applicants. She also stated that the ex-husband said that the mother's shooting was an example of what he could do if the Applicants did not return to Nigeria. A former guest who lived at the sister's house confirmed as recently as October 2019 that the ex-husband continued to look for the Applicants.

[11] The Officer discounted this evidence, finding that it did not sufficiently substantiate the risks, and was thus insufficient to overcome the credibility findings of the RPD and the RAD. In particular, the Officer found that the affidavits "reiterate statements the RPD and RAD panels found to be unsubstantiated…".

[12] The Officer also considered the country condition evidence relating to the more general situation in Nigeria that would pose a hardship to the Applicants if they were forced to return there. The Officer found that the objective evidence did not support this claim, in part because the fears of living in poverty and being exposed to gender-based violence were based on speculation, and while country conditions were not entirely favourable, the Applicants had failed to demonstrate that the hardship they would face in Nigeria justified H&C relief.

[13] The claim for relief based on establishment in Canada was based on the 7 years the Applicants had spent in Canada, the fact that the Principal Applicant had been employed and her involvement in her church. In addition, evidence was provided showing the minor applicants' success at school and their active involvement in various extracurricular activities. There were also letters from the Principal Applicant's brother, sister and step-sister who live in Canada, indicating their close relationship and that they had provided financial and other support to the Applicants. The Applicants' contrasted their degree of establishment in Canada with their lack of establishment in Nigeria, where the Principal Applicant only had one remaining immediate relative, no job and no home.

[14] The Officer accepted that the Applicants would be separated from their family members in Canada, but found that these relationships could be maintained if they returned to Nigeria. The Officer noted that the evidence did not demonstrate a degree of interdependence that would create a hardship or sever the bonds that had been established. The Officer found that the Applicants' degree of integration into Canadian society demonstrated an ability to adapt to change, but that it was not beyond the type of establishment that would be expected after 7 years in Canada. The Officer also noted that the Principal Applicant knew she did not have permanent

status in Canada, which diminished the weight to be afforded to her time in Canada. The Officer concluded that the Applicants' family members had assisted them emotionally and financially while they were in Canada, and that they would be willing to continue to do so if they returned to Nigeria. Overall, the Officer granted minimal weight to their establishment in Canada, noting that they had lived the greater part of their lives in Nigeria and would be able to return and find employment and continue with their education there.

[15] The Applicants' submissions on the best interests of the child criteria stated that the three minor children have established their lives in Canada and will face hardship if they have to return to Nigeria. They pointed to the children's success at school, their involvement in extracurricular activities and the friendships they had formed in Canada.

[16] The Officer noted that the children had demonstrated their resiliency by their successful integration into education and life in Canada, which indicated they would be able to do the same upon the return to Nigeria. The Officer found they would be returning to Nigeria with their mother, and that their transition would be minimal because they had spent most of their lives in in that country. Insufficient evidence had been provided to demonstrate that the children would be denied access to education or extra-curricular activities in Nigeria, or that they would not continue to have the support of their extended family to help with their adjustment to life in that country. Overall, the Officer was not persuaded that the best interests of the children would be negatively impacted by a return to Nigeria.

[17] Based on all of these factors, the Office denied the Applicants' H&C application. The Applicants seek judicial review of this decision.

II. II Issues and Standard of Review

[18] The only issue in this case is whether the Officer's decision is reasonable in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Worker*s, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

III. III Analysis

[19] There is no doubt that the Officer made some mistakes in the decision under review. A key question in this case is whether the errors are sufficiently central to the analysis of the key questions the Officer was required to consider. Put another way, the question is whether the cumulative impact of the Officer's mistakes and any gaps in the analysis because of a failure to consider important evidence support a conclusion that the decision, taken as a whole, is unreasonable.

[20] The Applicants point to two key errors. First, in the initial summary of the Applicants' claim early on in the decision the Officer noted that there were three minor Applicants, two of whom were born in Nigeria and the third being born in the United States. However, in analyzing the best interests of the child criteria, the Officer finds that the children's transition to Nigeria

"would be minimal considering that they were born, raised and lived the majority of their lives in Nigeria." This is clearly wrong.

[21] Second, the Officer found that the affidavits on the risk the Principal Applicant faced from her ex-husband in Nigeria "reiterate statements the RPD and RAD panels found to be unsubstantiated…", but these affidavits relate to threats made subsequent to these decisions. This is also an error, to the extent that the Officer fails to acknowledge that the affidavits relate to subsequent events.

[22] The question is whether these mistakes constitute fatal flaws that undermine confidence in the reasoning process supporting the entire decision. If these were the only flaws in the decision, I may not have been persuaded that they are of sufficient importance to warrant overturning the decision. For example, the Officer was clearly aware that the third child was born in the United States, and it is true that the other two children spent a substantial portion of their young lives in Nigeria. The Applicants' evidence and submissions on the best interest of the child were lacking in detail, and the Officer could not be faulted for failing to explore all of the additional arguments on this point that were raised for the first time before the Court. The statement that the children would continue to live with their mother and have her ongoing care and support are true, and there is no evidence that they would be denied access to education or other services upon their return to Nigeria.

[23] The problem, however, is that this is an instance where the mistake made by the Officer calls into question whether the best interests of the child analysis reflects the care and rigour that the jurisprudence requires (see, for example: *Kanthasamy v Canada (Citizenship and*

Immigration), 2015 SCC 61). The fact that the Officer's analysis mistakenly fails to reflect that the youngest child has never set foot in Nigeria makes one wonder whether the consideration of best interests is truly based on a careful consideration of the circumstances of these particular children. Although not expressly stated, it is implicit in the *Vavilov* framework of analysis that the decision-maker must apply the actual facts of the matter to the analysis required by the law; that is to say, it is not sufficient for an Officer to correctly state the facts at the outset, but fail to apply them when it counts – when the Officer is analyzing the legal questions at issue in the case.

[24] As for the threats from the ex-husband, the Officer was wrong to fail to note that the events recounted in the affidavits related to events that post-dated the RPD and RAD decisions; however, the affidavits relate to the same sorts if incidents that the earlier decisions had been found to be unsubstantiated by credible evidence, and the affidavits themselves are somewhat lacking in details. However, that is not what the Officer stated, and it is not possible to reconcile the comment that the affidavits "reiterate" statements found to be unsubstantiated with the fact that these witnesses refer to events that happened at a later date.

[25] However, these errors are not the only significant failings in the Officer's analysis. Given that the matter will be returned for reconsideration by another Officer, it is neither necessary nor appropriate to review all of the issues with the decision; a few examples will suffice.

[26] As noted earlier, the Applicant submitted two additional packages of information to the Officer following the initial application. The first of these contains a statement and supporting documentation from the Principal Applicant's fiancé in Canada. He speaks to their relationship,

their plans for their future together, and the degree to which he was providing ongoing financial support to the Applicants. These statements are supported by documentary evidence. While this evidence may not have been determinative of the H&C claim, it is clearly relevant and significant. At a minimum, the hardship that would be caused to the Principal Applicant and her children from an enforced separation for an indeterminate period should have been analyzed.

[27] In addition, the Officer's analysis includes speculation on some points that does not appear to be supported by the evidence. This includes the Officer's finding that the Principal Applicants' immediate family would be prepared to continue to provide her financial support if she moved to Nigeria, and the conclusion that the children had been raised with an awareness of the culture and practices common in Nigeria. The first of these may be a logical inference from the declarations of the Principal Applicants' siblings, but the Officer did not express it in that way, nor explain why it flowed from the evidence that was presented. The second is unclear, and if it is an inference from the evidence, the Officer needed to explain and clarify this point.

[28] Overall, this decision simply contains too many errors, omissions and flaws to be reasonable. While none of these, in themselves, may have been fatal, their combined effect is sufficient to undermine confidence in the reasoning process and outcome. It bears repeating that the problems identified above relate to central elements of the Applicants' claim, and the errors reflect either a lack of attention to detail or a failure to express the Officer's reasoning process with the degree of clarity and precision that is called for in the circumstances.

[29] For all of these reasons, I conclude that the Officer's decision is unreasonable. The decision is quashed and the matter will be returned to a different Officer for reconsideration.

[30] There is no question of general importance for certification.

JUDGMENT in IMM-845-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The Officer's decision denying the Applicants' application for H&C relief is quashed.

2. The matter is remitted back for redetermination by a different Officer.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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