Federal Court  Cour fédérale

Date: 20220909

Docket: IMM-8585-21

Citation: 2022 FC 1272

Ottawa, Ontario, September 9, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

OLANREWAJU ADEGBOYEGA OLA
CATHERINE IMIEGHOME OLA
OLUWADARA JESSE DANIEL OLA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Olanrewaju Adegboyega Ola, his wife, Catherine Imieghome Ola, and their son, Oluwadara Jesse Daniel Ola, seek judicial review of a decision dated November 8, 2021, by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD decision confirmed the decision of the Refugee Protection Division

[RPD], which held that the Applicants were neither Convention refugees nor persons in need of protection pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protect Act*, SC 2001, c 27 [IRPA]. As a result, the Applicants were not eligible for protection under either section 96 or subsection 97(1) of the IRPA.

[2] For the reasons that follow, the application is granted.

II. Background Facts

[3] The Applicants are citizens of Nigeria. Up until August 2017, the Applicants resided in Lagos, Nigeria.

[4] After losing their jobs in 2014 and 2010 respectively, the Principal Applicant purchased land to start a farm and his wife opened up a restaurant and catering business.

[5] In February 2015, the Fulani herdsman broke into the family's farm, ransacked it and threatened to kill the Principal Applicant if he ever returned. The Principal Applicant was discouraged from reporting the incident to the police due to the strong political backing of the Fulanis.

[6] Another incident occurred in November 2015 when a group of Fulani herdsman arrived at the farm and started shooting at the Principal Applicant. Following this incident, the Principal Applicant started receiving threatening phone calls from the Fulani herdsman.

[7] The Applicants ultimately abandoned their land and closed their restaurant and catering business due to the threats from the Fulani and the economic recession.

[8] In August 2017, the Applicants entered the United States on a six-month visiting visa. Mrs. Ola's mother, who is an American citizen, had previously filed a sponsorship application for the Applicants' permanent residency; however, the application was denied.

[9] On February 15, 2018, after the expiration of their visitor's visa, the Applicants entered Canada via the United States and sought asylum as refugee claimants.

III. RPD Decision

[10] On February 22, 2021, the RPD concluded that the Applicants are neither Convention refugees nor persons in need of protection within the meaning of section 96 and subsection 97(1) of the IRPA. It found that the Applicants have an internal flight alternative [IFA] in Abuja, Nigeria, that is safe and reasonable in their particular circumstances.

[11] Although the RPD found the Applicants' evidence generally credible, it was not persuaded the Applicants faced a serious possibility of persecution in Abuja due to alleged threats from Islamic extremists, Boko Haram and the Fulani herdsman. Moreover, the RPD concluded there was insufficient reliable and trustworthy evidence to demonstrate it would be unreasonable for the Applicants to live in Abuja.

IV. The RAD Decision under Review

[12] The Applicants appealed the RPD's decision to the RAD, contesting the RPD's finding that they had a viable IFA.

[13] The RAD concurred with the RPD's assessment that the Applicants are neither Convention refugees, nor persons in need of protection pursuant to section 96 and subsection 97(1) of the IRPA. It agreed with the RPD that the dispositive issue was whether there was a viable IFA.

[14] After reviewing item 12.5 of the National Documentation Package for Nigeria [NDP], the RAD found that the RPD erred by misconstruing the evidence that states that Christians live peaceably along with people of other religions in Lagos, to Abuja. The RAD agreed with the Applicants that item 12.5 of the NDP indicates that Boko Haram insurgence is a threat for Christians in Abuja, as evidenced by several attacks by Boko Haram on churches, mosques and public spaces in 2014 and 2015.

[15] The RAD then went on to rely on more recent documentation, item 7.4 and item 7.12 of the NDP; published two months after the Applicants perfected their appeal record, to conclude that there is a limited threat for Christians in Abuja. It found that the Applicants would not be subjected to a serious possibility of persecution from Boko Haram or other terrorist organizations as "violence from this extremist group has declined in recent years and is considered limited in the capital city."

[16] The RAD found that the two-pronged test was met: (i) there is no serious possibility of the claimant being persecuted in Abuja, and (ii) it is not unreasonable for the Applicants to seek refuge there.

V. Analysis

[17] Two issues are raised in this application: (i) whether the principles of procedural fairness were breached because the RAD Member relied on novel extrinsic evidence and failed to provide the Applicants an opportunity to review and comment on it; and (ii) whether the RAD erred in determining the Applicants had a viable IFA in Abuja.

[18] Given my conclusion below that there was a breach of procedural fairness, it is not necessary to address the second issue.

[19] The Applicants submit that the RAD's reliance on item 7.4 and 7.12 of the NDP to dismiss the Applicants' contention that Abuja is not a viable IFA, without giving the Applicants an opportunity to respond, is a breach of procedural fairness because the information was novel.

[20] The Respondent argues that the NDP cannot be characterized as novel because the information contained in the revised version was an update of prior publicly available information. This Court has consistently stated that "publicly available information is not extrinsic evidence so long as it is not novel" (*Aladenika v Canada (Citizenship and Immigration)*, 2018 FC 528 at para 16; *Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705 at paras 32-33).

[21] Whether the more recent information is sufficiently novel and significant and may affect the decision is a question of degree. As noted in *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 (FCA) [*Mancia*], this requires a case by case assessment. The Federal Court of Appeal noted that the considerations in determining whether documentary evidence available in the public domain must be disclosed to a claimant include the nature of the proceeding and the rules under which the decision-maker is acting, the context of the proceeding, and the nature of the documents at issue in such proceedings.

[22] In the present case, it is clear that the RAD conducted their own independent research and relied upon it to counter the Applicants' submissions that Abuja is not a viable internal flight alternative. The Applicants were not given notice of the updated NDP documents on Nigeria. They were also denied an opportunity to comment on these updated publications or to draw attention to other portions of the NDP before the RAD rendered its decision.

[23] The Applicants submit that the RAD engaged in a selective reading of the country condition documents by focusing only on the portions of the evidence that supported their findings. They claim that the RAD ignored relevant and important aspects of the evidence that the "Boko Haram insurgency has spread across northern and central Nigeria and into neighbouring countries. The group has also carried out attacks against the police and UN headquarters in Abuja," and that "there have been a significant number of attacks elsewhere. Significant attacks have occurred in Gombe, Kano, Kaduna, Jos and Bauchi States and in the Federal capital, Abuja. Further attacks are likely." The Applicants should have been provided with an opportunity to make submissions in response to the information.

[24] The RAD's failure to do so amounted to a breach of procedural fairness: see *Zhang v Canada (Citizenship and Immigration)*, 2015 FC 1031 at paras 48-51; *Zheng v Canada (Minister of Citizenship & Immigration)*, 2011 FC 1359 at paras 10, 13). For this reason alone, the Court's intervention is required.

[25] There is no need to consider the issue of whether the RAD erred in its assessment of the IFA as this will require reconsideration based on the reception of the Applicants' submissions in response to the recent country condition documents.

[26] As a result, the appeal must be remitted to the RAD for redetermination.

VI. Conclusion

[27] The application for judicial review is granted. The matter shall be remitted for reconsideration by the same or another RAD member.

[28] Neither party proposed a question for certification and no question is certified.

JUDGMENT IN IMM-8585-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is sent back to the Refugee Appeal Division for reconsideration once the Applicants have been afforded an opportunity to file responding submissions to address items 7.4 and 7.12 of the National Documentation Package.

3. No question is certified.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	OLANREWAJU ADEGBOYEGA OLA, CATHERINE IMIEGHOME OLA, OLUWADARA JESSE DANIEL OLA v MINISTER OF CITIZENSHIP AND IMMIGRATION
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