

Federal Court



Cour fédérale

Date: 20220929

Docket: IMM-5450-20

Citation: 2022 FC 1364

Ottawa, Ontario, September 29, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

OLUWAFEMI SUNDAY AYEYEMI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Oluwafemi Sunday Ayeyemi (“Mr. Ayeyemi”), made a claim for refugee protection in Canada. He is a citizen of Nigeria. His refugee claim was based on his fear of persecution by his extended family in Nigeria. The Refugee Protection Division (“RPD”) dismissed his refugee claim. Mr. Ayeyemi appealed this decision to the Refugee Appeal Division

(“RAD”). The RAD dismissed his appeal. Mr. Ayeyemi now challenges the RAD’s refusal in this judicial review.

[2] Mr. Ayeyemi raises three issues on judicial review. First, he argues that the RAD erred in not admitting into evidence an opinion from a lawyer working in Nigeria about the ability to relocate within Nigeria. Second, he challenges the RAD’s determination on internal flight alternative (“IFA”), primarily arguing that the RAD ignored or misconstrued the objective evidence and did not properly consider his personal evidence. Lastly, Mr. Ayeyemi argues that the RAD’s finding that he lacked subjective fear was unreasonable given that no other negative inferences were drawn about his credibility.

[3] Mr. Ayeyemi has not demonstrated that there is a basis for me to interfere with the RAD’s determination. The RAD addressed Mr. Ayeyemi’s arguments on appeal. The RAD provided thorough, transparent, justified, and intelligible reasons for dismissing his appeal. As I set out in more detail below, I do not find any sufficiently serious shortcomings in the RAD’s analysis to require that the appeal be redetermined. I dismiss the application for judicial review.

II. Background

[4] In June 2017, Mr. Ayeyemi’s uncle passed away, leaving behind his wife and two children. In accordance with the family’s traditional customs, Mr. Ayeyemi was selected as the family member who was required to marry his uncle’s widow. If Mr. Ayeyemi does not marry her, his extended family members believe that grave misfortune would befall the family.

[5] Mr. Ayeyemi is already married with children and does not share the traditional beliefs of his extended family. Mr. Ayeyemi alleges that his extended family did not accept his refusal, threatened him, and physically assaulted him. Mr. Ayeyemi approached the police for assistance and alleges that the police would not intervene because they viewed this as a family matter.

[6] Mr. Ayeyemi, his wife, and his children eventually left their home in Ogun State and moved to a friend's house in Lagos. Mr. Ayeyemi alleges that, a few weeks later, the chiefs of his village and other men found him at his friend's home and threatened and assaulted him.

[7] The following month, unknown individuals attacked Mr. Ayeyemi in Lagos. Mr. Ayeyemi went to the police station and explained that he suspected his family had arranged the attack. The police did not assist him. After the attack, Mr. Ayeyemi's father warned him that the family was planning further attacks and advised him to flee.

[8] Mr. Ayeyemi left Nigeria, first travelling to the United States and then arriving in Canada, where he sought refugee protection in April 2018.

[9] Mr. Ayeyemi's wife returned to Ogun State after she and her family were discovered in Lagos. Upon her return, Mr. Ayeyemi's wife was approached by members of the extended family, who told her that if Mr. Ayeyemi did not return within two months, they would evict her from the home and take her children away. Mr. Ayeyemi's wife and children relocated within Nigeria. They have since moved to a more discreet location in the same region.

[10] The RPD held Mr. Ayeyemi's refugee hearing on March 27, 2019 and rejected his claim on April 5, 2019. After Mr. Ayeyemi filed his appeal with the RAD, the RAD invited him to make additional submissions on an item in the National Documentation Package ("NDP") for Nigeria which addresses the impact of indigeneship on internal relocations in Nigeria, which he did.

[11] In a decision dated October 5, 2020, the RAD dismissed Mr. Ayeyemi appeal, finding that he had a safe and reasonable IFA in Abuja.

III. Issues and Standard of Review

[12] The Applicant raises three issues on judicial review: i) the RAD's refusal to consider the evidence from a lawyer working in Nigeria; ii) the RAD's determination that there was a safe and reasonable IFA in Abuja; and iii) the RAD's finding on the Applicant's subjective fear.

[13] In reviewing the RAD's reasons, I apply a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. None of the exceptions to the presumption of a reasonableness standard of review apply in this case.

IV. Analysis

A. *Refusal to admit new evidence*

[14] Mr. Ayeyemi filed as new evidence with the RAD an opinion from a lawyer working in Nigeria. The document contained the lawyer's opinion about general country conditions, the security situation in Nigeria, and the ability to relocate specifically to Port Harcourt. The RAD found the evidence inadmissible under section 110 (4) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. Mr. Ayeyemi has not convinced me that there is any basis to disturb the RAD's finding on this issue.

[15] The RAD found that the information in the lawyer's opinion did not relate to matters arising after the RPD decision and therefore could not be considered "new" (*IRPA, s 110 (4)*). The RAD also found that Mr. Ayeyemi failed to show that this type of evidence was not reasonably available or that Mr. Ayeyemi could not reasonably have been expected to produce it at the RPD (*IRPA, s 110 (4)*).

[16] The RAD noted that Mr. Ayeyemi's only argument about whether the documents met the requirements of section 110(4) was that he learned that the RPD identified Port Harcourt as a viable IFA at the RPD hearing. The RAD found that the RPD identified two possible IFAs (Port Harcourt and Abuja) at the outset of the hearing and that Mr. Ayeyemi did not ask to provide further evidence on the proposed IFAs. Other than disagreeing with the RAD's conclusion, Mr. Ayeyemi has not raised any sufficiently serious shortcomings in the RAD's analysis.

B. *IFA in Abuja*

[17] Mr. Ayeyemi makes two arguments challenging the RAD's IFA finding.

[18] The first prong of the IFA test evaluates the safety of relocating to Abuja. Mr. Ayeyemi argues that the RAD unreasonably found that he had not provided sufficient evidence that his extended family had the means and motivation to find him in Abuja. The RAD relied on a number of factors to make this determination, including: that there was no corroborative evidence about the nature of the Applicant's extended family's power; that when Mr. Ayeyemi was found outside of his home state, he was staying at a friend's home; that the extended family approached his wife when she was staying in their home in Ogun State; and that the extended family had not approached his wife since she relocated approximately two years ago.

[19] I do not agree with Mr. Ayeyemi that the RAD's analysis indicates an approach that preferred objective evidence over the personal evidence of Mr. Ayeyemi. The RAD's analysis on this issue considered the previous attempts of the extended family to locate Mr. Ayeyemi, their attempts since he has left the country, and the profile of the persecutor. Nor do I agree that the RAD's reasons "do not reflect an understanding of the motivations of the agents of persecution." Mr. Ayeyemi does not point to anything specific in the reasons to support his assertion, other than broadly arguing that families who adhere to these types of traditional practices are strongly motivated to uphold those traditions.

[20] I am not assisted by the Applicant's references to *Akinola v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1308, where this Court found that the RAD unreasonably assessed the persecutor's motivation to locate the applicants. These are context-specific evaluations that depend on the facts of the claim and the reasons given by the decision-maker.

[21] On the second prong of the IFA test, Mr. Ayeyemi argues that the RAD ignored and/or misconstrued the evidence before it in finding that it was reasonable for Mr. Ayeyemi to live in Abuja. I have reviewed the sections of the evidence that Mr. Ayeyemi alleges demonstrate that the RAD selectively relied on the documentary evidence and mischaracterized the evidence before it. I do not agree with Mr. Ayeyemi. I do not find that the passages relied on by Mr. Ayeyemi demonstrate that RAD mischaracterized the evidence or that it ignored relevant evidence that directly contradicted its findings.

[22] I do not find that Mr. Ayeyemi has established sufficiently serious shortcomings in the RAD's IFA analysis to render it unreasonable. I find that the RAD reviewed Mr. Ayeyemi's arguments on appeal, considered both the objective and personal evidence, the relevant legal test, and set out its reasons in a transparent and coherent way.

C. *Subjective fear finding*

[23] Mr. Ayeyemi also challenged the RAD's finding that he lacked subjective fear based on his return to his home after he was found and attacked in Lagos. Mr. Ayeyemi argues, relying on *Shanmugarajah v Canada (Minister of Employment and Immigration)*, [1992] FCJ 583, that the RAD erred in finding that Mr. Ayeyemi lacked subjective fear in the absence of a broader

negative credibility finding. I do not find it necessary to address this issue. The RAD did not rely on its finding on subjective fear elsewhere in the decision. The RAD did not make Mr. Ayeyemi's lack of subjective fear or credibility a basis on which it dismissed the decision nor did it rely upon it in making its IFA finding. Therefore, even if he had demonstrated that the subjective fear finding was unreasonable, it would not have been a sufficient basis to set aside the decision.

V. Conclusion

[24] The application for judicial review is dismissed. No party raised a serious question of general importance for certification and I agree that none arises.

JUDGMENT IN IMM-5450-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5450-20

STYLE OF CAUSE: OLUWAFEMI SUNDAY AYEYEMI v THE
MINISTER CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 17, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: SEPTEMBER 29, 2022

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