Federal Court  Cour fédérale

Date: 20230418

Docket: IMM-1031-22

Citation: 2023 FC 564

Ottawa, Ontario, April 18, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

AKIN RICHARD OLUWAFEMI
OLUFUNKE MERCY OLUWAFEMI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision of the Refugee Appeal Division [RAD] dated February 25, 2021. The RAD confirmed the decision of the Refugee Protection Division [RPD] finding that the Applicants are neither Convention refugees nor persons in need

of protection pursuant to section 96 and subsection 97(1) of the *IRPA*. The determinative issue for the RAD was the existence of a viable Internal Flight Alternative [IFA] for the Applicants in the cities of Lagos and Abuja, Nigeria.

[2] For the following reasons, the application for judicial review is dismissed.

II. Background

[3] The Applicants, Akin Richard Oluwafemi [Principal Applicant] and his wife Olufunke Mercy Oluwafemi [Associate Applicant] are citizens of Nigeria. The Principal Applicant is 66 years old and the Associate Applicant is 53 years old. They fear violence at the hands of herdsmen from the Fulani ethnic group in Nigeria.

[4] The Applicants are from the town of Iju-Akure in Ondo state, Nigeria. They ran a farm growing food crops and the Principal Applicant managed a sawmill. The Principal Applicant was also the Public Relations Officer for the Ondo state branch of the Saw-Millers Association of Nigeria.

[5] On April 13, 2017, the Principal Applicant participated in a live television interview discussing the activities of Fulani herdsmen in western Nigeria. Two days after the programme aired, the Principal Applicant started receiving anonymous threatening messages and calls on his cellular phone, accusing him of speaking against the Fulani herdsmen and against Islam on television.

[6] For four months, the Principal Applicant did not take any action despite continuing to receive threatening messages and calls. On September 15, 2017, the Principal Applicant visited his farm with two of his sons. When they arrived at the farm, they saw 10 herdsmen armed with guns, cutlasses, and sticks grazing about 50 cows on the Applicants' crops.

[7] When the Principal Applicant confronted them, the herdsmen attacked and beat him and his sons. They were saved when two of the herdsmen intervened to spare their lives. The Principal Applicant and his sons sought medical attention. The Principal Applicant was discharged the following day and one of his sons spent six days in the hospital. The herdsmen told the Principal Applicant to move out of the farm.

[8] The Principal Applicant and his sons went to the police station and filed a report. The police took their statement and two officers returned with them to the farm to investigate. By the time they arrived at the farm, the herdsmen and the cattle were gone but the farm, the sawmill, and the Principal Applicant's vehicle had all been vandalized or destroyed. The police found one of the assailants on site and arrested him, but he refused to indicate where the rest of the herdsmen had gone and was later released for lack of evidence.

[9] Upon return to the police station, the Principal Applicant learned that his brother, also a farmer, had been killed on his own farm, allegedly by the same herdsmen, earlier that same day.

[10] The Principal Applicant reported to the police station on six different occasions. Each time he was told that the investigation was ongoing. He continued to receive threatening

messages and calls and decided to flee. During his testimony before the RPD, the Principal Applicant said that in October 2017, he left Iju-Akure. It appears that the Applicants first fled to Ado Ekiti in Ekiti state, while their sons fled to Lagos. Soon thereafter, the Applicants fled to Abuja for a week before moving to Lagos, where the Principal Applicant continued to receive threats. After October 2017, when in Lagos, the Principal Applicant heard from people in his hometown that the herdsmen were threatening to kill him for what he had said on television. He remained in Lagos and approached the US embassy for a visa, which he obtained on February 6, 2018.

[11] The Applicants lacked money and could not leave right away but eventually travelled to the United States on June 10, 2018. They did not claim asylum in the United States because they did not have the funds necessary to hire counsel. Instead, they were sheltered by a church in New Jersey for ten months before the pastor advised them to seek asylum in Canada, and gave them money to travel to the border. They arrived in Canada on May 1, 2019, and claimed refugee protection.

III. RPD Decision

[12] On August 24, 2020, the RPD refused the Applicants' claim in reasons delivered orally after the hearing.

[13] The RPD found that the Applicants had not established a nexus to a Convention ground under section 96 of the *IRPA* and assessed their claim under subsection 97(1). The determinative issue for the RPD was the existence of a viable IFA in the cities of Lagos and Abuja. The RPD

found that the country condition evidence in the National Documentation Package [NDP] for Nigeria indicated that while conflict between Muslim Fulani herdsmen and Christian farmers is common, the conflict in this case was not driven by religious difference; rather, it was generally driven by the Fulani herdsmen's desire for access to grazing lands for their cattle.

[14] The RPD concluded that the Applicants had not established that the Fulani herdsmen continue to have the interest or capacity to locate them in the proposed IFAs. The RPD noted that three of the Applicants' five to six children (the Principal Applicant declared six children and the Associate Applicant declared five children) still live in Iju-Akure where the September 2017 attack occurred, and that there was no evidence that the children were harassed by the Fulani herdsmen in order to find the Applicants. The RPD also found that the television programme aired in 2017, three years before the hearing and therefore it was unlikely that the Fulani would still be interested in the Applicants to this day. The RPD also found that the Principal Applicant testified that he never insulted the Fulani herdsmen's religion (saying only that Islam did not ask the herdsmen to kill people) and that the Fulani herdsmen are organized into clans that operate independently. Finally, the RPD held that the evidence demonstrated that the Fulani herdsmen do not have a common political objective.

[15] The RPD concluded that it would not be objectively unreasonable for the Applicants to relocate to the proposed IFAs, noting they both have university degrees and work experience in Nigeria and Canada that could help them overcome the high cost of housing in the IFAs. The RPD noted that the NDP evidence indicated that persons fearing non-state agents can generally relocate within Nigeria depending on the nature of the threat. The RPD also noted that the

Applicants managed to hide in Lagos from the end of October 2017 until June of 2018 without suffering any persecution.

IV. RAD Decision

[16] The RAD agreed with the RPD that the Applicants failed to establish a nexus to a Convention ground because farmers are not a particular social group for the purposes of section 96 of the *IRPA*. Further, the RAD agreed with the RPD that the Applicants' claim would fail under section 96 or subsection 97(1) because they have a viable IFA.

[17] The RAD noted that the Applicants did not specifically challenge the RPD's basis for finding that their agents of persecution lacked the means and motivation to locate them in the proposed IFAs. Instead, the Applicants only argued that the RPD erred by relying on Tab 3.1 of the NDP. The RAD agreed that the RPD erred by relying on Tab 3.1 of the NDP in making its finding in relation to the IFA, because Tab 3.1 does not mention the Fulani herdsmen. The RAD found that this error was not fatal, however, because other documents in the NDP (specifically Tabs 7.14, 7.20, 7.30, and 7.31) supported the RPD's conclusions regarding the Fulani herdsmen. Having considered this documentary evidence, the RAD arrived at the same conclusion as the RPD for the same reasons as the RPD.

[18] The RAD found that the RPD reasonably assessed the Applicants' claim under the second prong of the IFA test. The RAD rejected the Applicants' argument regarding the RPD's finding that persons fleeing non-state actors can generally relocate within Nigeria depending on the nature of the threat. The RAD noted that the onus was on the Applicants to establish that the

proposed IFAs were not viable and that the RPD considered both the objective evidence and the Applicants' personal characteristics in reaching its conclusion.

V. Issues and standard of review

[19] The issue in this judicial review is whether the RAD's decision that the Applicants failed to establish a nexus to a Convention ground because farmers are not a particular social group for the purposes of section 96 of the *IRPA*, and that there existed viable IFAs, was reasonable.

[20] The parties agree that the standard of review applicable to the merits of the RAD's decision is that of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 16-17, 91 [*Vavilov*]. In determining whether a decision is reasonable, this Court must analyze whether the reasons provide sufficient justification, transparency, and intelligibility, and whether it is consistent with the relevant factual and legal issues raised before the decision maker (*Vavilov* at para 99).

[21] As held by the Supreme Court of Canada in *Vavilov*, reasonableness review requires a deferential approach to the decision maker and the reviewing court must read the reasons holistically and contextually (at para 97). The Court must consider the outcome of the decision and its rationale in order to ensure that the decision as a whole is transparent, intelligible, and justified (at paras 15, 95, 136). Judicial review is not a "line-by-line treasure hunt for error" (at para 284). The decision maker does not have to respond to each argument nor refer to all the evidence – indeed, the decision maker is presumed to have considered all of the evidence and the arguments on the record (at paras 94, 127-128).

[22] In this case, I conclude that the RAD considered and properly assessed the relevant evidence. As explained below, the RAD justified in a transparent and intelligible manner why important evidence was excluded or assigned little weight. Therefore, I dismiss this application.

VI. The RAD's decision is reasonable

A. *The RAD conducted an independent assessment*

[23] The Applicants argue that the RAD failed to conduct an independent assessment and provide its own reasoning, and instead relied solely upon the RPD's decision (*Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at paras 54-56; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 59, 103; *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at paras 51-52; *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 [*Ajaj*] at paras 34-35).

[24] While I agree with the Applicants that the RAD must conduct an independent review, I do not find that the RAD failed to proceed to its own assessment of the evidence. Contrary to what the Court found in *Ajaj* at paragraphs 35-37, in this case, the RAD did carry out "the kind of independent review of the evidence that is required from an appellate tribunal". The RAD "analyzed and considered documentary evidence."

[25] As demonstrated by the RAD's reasons at paragraphs 23, 29-31, it conducted its own independent analysis of the situation and arrived at the same conclusion as the RPD. I find that

the RAD properly conducted its analysis based on the standard of correctness, as it ought to have done.

[26] The Applicants further argue that the RAD failed to make its own analysis, but they do so in reliance on new arguments made before this Court that were not made before the RPD nor the RAD. However, it is not open to the Applicants to undermine the RAD's conclusions with arguments they failed to present and give the RAD the opportunity to consider.

B. *"Farmers" are not a protected group under section 96 of the IRPA*

[27] The Applicants did not argue in their Memorandum of Fact and Law that the RAD erred in its conclusion that the Applicants did not discharge their burden and demonstrate persecution on the basis of a Convention protected group. Indeed, the alleged group of "farmers" is not a protected one under section 96 of the *IRPA*.

[28] There are examples where persecution from the Fulani herdsmen did qualify as persecution on a Convention ground. For example, in RAD decision VB9-05614 (dated February 24, 2021, at paragraph 45), the applicants were persecuted by the Fulanis for their "unique profile as a member of a Christian-based group who engaged in activities." Those applicants were granted refugee status because they were persecuted by the Fulanis on the basis of their religion.

[29] In this case, there is no allegation nor evidence that the Applicants were persecuted because of their religion. Rather, the Applicants allege persecution on the basis that they are

farmers. However, “farmers” or “*agriculteurs*” is not a recognized social group and, even if the persecution is motivated by revenge, the Applicants do not meet any of the Convention grounds of section 96 of *IRPA*. Their alleged persecution is based on vengeance, which is a section 97 ground of persecution.

C. *The RAD’s decision that there are viable IFAs is reasonable*

[30] It is well established that the burden of proof in IFA matters is on the Applicants. Thus, in this case, the Applicants must show that there is no other region in Nigeria that is safe and that they face a serious risk of persecution everywhere in the country. Furthermore, if there is an area that is safe, the Applicants must establish that it would be objectively unreasonable for them, given their profile, to avail themselves of this IFA (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [*Thirunavukkarasu*] 1993 CanLII 3011 (FCA), [1994] 1 FC 589 at p 597; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43-44; *Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at para 23) [*Djeddi*].

[31] In this case, the Applicants have not met their burden under either part of the test.

(1) The RAD reasonably found that there was a viable IFA under the first prong of the test

[32] In my view, the RAD reasonably found that the Applicants had not met their burden of demonstrating that the Fulani herdsmen continued to be motivated and capable of finding and persecuting them everywhere in Nigeria.

[33] On the issue of motivation, the evidence demonstrated that, following the Applicants' departure, the Applicants' three children who remained in the region were not harassed to obtain information in order to locate the Applicants. The failure by the Fulani herdsmen to do so is indicative of a lack of interest towards the Applicants (*Martinez v Canada (Citizenship and Immigration)*, 2022 FC 524 at paras 14-20).

[34] The Applicants submit that the RAD disregarded ample documentary evidence in the NDP describing many instances of violence between farmers and Fulani herdsmen, particularly around the time the Applicants were threatened. The Applicants also argue that the RAD erred by not considering important or contrary evidence in the Applicants' Basis of Claim – that the Fulani herdsmen are motivated by revenge (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17). They rely on *Onungbogbo v Canada (Citizenship and Immigration)*, 2021 FC 1240 at paras 11-13 where this Court recently found, in a similar case, that the RAD erred by failing to mention, on the basis of Tab 7.31 of the NDP, that the Fulani herdsmen are motivated by retribution or revenge and not just on clearing land.

[35] In my view, however, while Tab 7.31 of the NDP indeed states that some Fulani attacks may be driven by retribution or revenge, I do not find that the RAD was unreasonable. The RAD did consider Tab 7.31 (as well as Tabs 7.14, 7.20 and 7.30) at paragraphs 20-23 of the Decision and articulated why it was insufficient to discharge the Applicants' burden.

[36] Furthermore, the Applicants never clearly articulated or contested the RPD's decision on that basis before the RAD. The Applicants did not argue that the RPD erred in failing to weigh evidence on the Fulani's desire for vengeance. This argument is raised for the first time before this Court.

[37] As stated by Chief Justice Crampton in *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at para 35, permitting the Applicants to raise an issue that was not raised before the RAD would do an "end run" around the RAD. Moreover, as held by Justice Pamel in *Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 57, I cannot fault the RAD for having failed to consider arguments that were not raised by the Applicants. It is not the RAD's duty to sift through the NDP looking for reasons why the Applicants would meet the threshold necessary to be granted refugee status.

[38] In any event, a decision is only unreasonable when direct contradictory evidence is not considered nor discussed by the decision maker (*Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17; *Gill v Canada (Citizenship and Immigration)*, 2020 FC 934 at para 40; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 at para 15). In this case, the evidence in the NDP does not directly

contradict the RAD's findings on the evidence as a whole because there was not enough clear evidence to allow the Applicants to discharge their burden and prove that the Fulani herdsmen truly have, to this day, the motivation and capacity to persecute the Applicants. On the issue of capacity, the Applicants submit that the RAD erred in relying on the RPD's finding that the Fulani herdsmen have no common objectives and carry out their activities independently from other sections of Fulanis located elsewhere in the country, and in concluding that the Fulani lack the capacity to track the Applicants in the proposed IFAs. The Applicants note that the RAD overlooked evidence in the NDP indicating that the Fulani herdsmen have access to motorcycles and travel to conduct raids and attack people.

[39] In this case, it was reasonable for the RAD to consider that since three of the Applicants' children continue to live in Iju-Akure without incident, the Fulani herdsmen do not likely have the motivation necessary to find the Applicants in the IFAs. Therefore, the fact that the Fulani herdsmen may have access to motorcycles is not indicative of the Applicants' danger if they return to the proposed IFAs. Furthermore, I note that the Applicants did not submit this argument before the RAD and therefore, as mentioned earlier, I cannot fault the RAD for having failed to consider that particular argument.

(2) The RAD did not err in its analysis under the second prong of the IFA test

[40] The threshold for the second prong of the IFA test is very high. Individuals need to demonstrate that they would encounter great physical danger in the proposed IFA (*Elusme v Canada*, 2020 CF 225 at para 25; *Singh v Canada*, 2021 CF 341 at para 33; *Djeddi* at paras 34, 35). As held in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC

164 [*Ranganathan*] (FCA) at paras 11, 15 (see also *Akewushola v Canada (Citizenship and Immigration)*, 2023 FC 67 at paras 12-14), the Applicants have to provide actual and concrete evidence of conditions that would threaten their lives and safety in the proposed IFAs.

[41] Thus, to demonstrate that an IFA is unreasonable, a claimant cannot simply allege that he or she would lose his or her job or have a reduced quality of life. Such a situation cannot meet the threshold of the second test. Conversely, in *Thirunavukkasaru* at page 597 (see also *Ranganathan* at para 13), the Federal Court of Appeal gives some examples of situations that could not be expected of an applicant and therefore could be considered unreasonable, as they would jeopardize his/her life:

> Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one, that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.
>
> […]
>
> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that

> they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
>
> In conclusion, it is not a matter of a claimant`s convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.

[42] In order to discharge the burden of proving that it would be unreasonable to require an applicant to relocate to an IFA because his or her life and safety would be at risk, the applicant must demonstrate a personalized impact. In other words, the applicant cannot only rely on general conditions that exist in his or her home country (*Garcia Cuevas v Canada (Citizenship and Immigration*), 2021 CF 1478 at para 31; *Arabambi v Canada (Citizenship and Immigration)*, 2020 FC 98 at paras 38, 40-42; *Limones Munoz v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 1051 at para 47).

[43] I note that this Court has found that the mere fact that it would be difficult for an applicant to find employment was insufficient to render Lagos or Abuja as an unreasonable IFA (*Ajepe v Canada (Citizenship and Immigration)*, 2022 FC 91 at paras 24-26; *Ossai v Canada (Citizenship and Immigration)*, 2020 FC 435 at paras 26-27).

[44] In my view, the RAD reasonably found that Lagos or Abuja were appropriate IFAs. The Applicants have failed to provide actual and concrete evidence of conditions that would threaten

their life and safety if they had to relocate to Lagos or Abuja. There is also no evidence that they would encounter great physical danger or undergo undue hardship in relocating to the proposed IFAs (*Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at para 12; *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15; *Thirunavukkarasu*).

[45] Indeed, the mere fact that they did reside there for eight months prior to their departure to Canada is contrary to what the Applicants allege, and is quite indicative that this is a safe place for them to relocate.

[46] There is also no evidence to suggest that relocation to Lagos or Abuja would prevent the Applicants from finding employment. The RAD considered the personal characteristics of the Applicants, including the fact that they are both university graduates who have important work experience in management (at paragraph 32 of the Decision). While they assert that this is not indicative that they will find employment because they are farmers by trade and that it is difficult to find work generally, the RAD reasonably held that university education and work experience may assist them in finding housing and employment outside of farming. The Applicants have not demonstrated why it would be more difficult for them, considering their own circumstances, to find housing and employment in the proposed IFAs. The general challenges such as difficulties in finding housing and employment are similar to the ones existing for others in the same regions. The IFAs cannot be unreasonable on that basis.

VII. Conclusion

[47] For these reasons, the application for judicial review is dismissed.

[48] No issue of general application has been submitted for certification and the Court is of the view that none arise in this case.

JUDGMENT in IMM-1031-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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