Federal Court  Cour fédérale

Date: 20230503

Docket: IMM-4410-22

Citation: 2023 FC 640

Ottawa, Ontario, May 3, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

OLUROTIMI RAYMOND EDWARDS
ABIMBOLA DAMILOLA EDWARDS
TIWATOPE OLUWATOMISIN EDWARDS
OLUWATAMILORE OLUWAFIKAYOMI EDWARDS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision (the "Decision") of the Refugee Appeal Division ("RAD") dated April 13, 2022.

[2] The RAD dismissed the Applicants' appeal, finding that the RPD was correct in determining that the Applicants were neither Convention refugees nor persons in need of protection, in accordance with sections 96 and 97 of the *IRPA*.

[3] For the reasons that follow, I find the Decision is reasonable and will dismiss this application for judicial review.

II. **Background**

[4] Olurotimi Raymond Edwards, the Principal Applicant (PA), his spouse, and their daughters (the minor applicants), are all citizens of Nigeria.

[5] They sought protection in Canada, fearing the PA's maternal uncle and aunt, who they claim, want to kill the adult applicants and kidnap and perform female genital mutilation (FGM) on the minor applicants.

[6] The PA also fears persecution at the hands of the Reformed Ogboni Fraternity due to his refusal to join their cult.

[7] The Applicants left Nigeria for the United States of America in November 2017, crossing the border to claim refugee protection in Canada.

[8] The RPD refused the Applicants' claim on April 9, 2021. The determinative issue was credibility.

[9] The Applicants appealed the RPD's negative decision to the RAD with the assistance of their former counsel. After the appeal was filed, the RAD provided a notice to the Applicants, dated September 22, 2021 advising them that it would be considering Abuja as a viable IFA and seeking submissions in response.

[10] The Applicants' former counsel ignored this correspondence and advised them there was no need to respond to it.

[11] On October 18, 2021, the RAD dismissed the Applicants' appeal solely on the IFA issue it raised in the notice.

[12] The Applicants filed an application to reopen their appeal based on their former counsel's incompetence. The RAD decided to reopen their appeal on December 9, 2021.

[13] With the assistance of new counsel, the Applicants provided the RAD with supplementary submissions as well as new evidence addressing the issue of an IFA in Abuja.

[14] On April 13th, 2022, the RAD once again dismissed the Applicants' appeal based on a viable IFA in Abuja.

III. **Issues and Standard of Review**

[15] There are two issues in this judicial review: (1) the Applicants challenge the reasonableness of the RAD's IFA analysis and, (2) the Applicants contend that the RAD committed a reviewable error in refusing to admit new evidence.

[16] The parties agree, as do I, that the appropriate standard of review is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[17] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires a reviewing court defer to such a decision: *Vavilov* at para 85.

[18] To set a decision aside, a reviewing court must be satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

IV. **Analysis**

A. *The RAD's refusal to admit new evidence*

[19] The Applicants asked the RAD to admit several documents as new evidence, including support letters from close family members.

[20] In response to the Board's notice that an IFA in Abuja was being considered, the Applicants also tendered country conditions evidence specifically relating to the security situation there.

[21] The RAD refused to admit any evidence pre-dating the RPD's decision stating: "As the RPD clearly identified that a potential IFA in Abuja was in issue, I am not prepared to admit into evidence any articles that were published before the RPD decision in April 2021."

[22] The Applicants submit that the RAD unreasonably dismissed their new evidence despite acknowledging that IFA was a new determinative issue, breaching the Applicant's right to respond to newly raised concerns.

[23] More specifically, they assert that once the RAD issued an *Alazar* notice, it "opens up the door for the Appellant to put forth a full response that is not otherwise restricted by the RAD rules of new evidence".

[24] I cannot agree with the Applicants' submissions on this point. First, they have provided no authority to support the proposition that an *Alazar* notice substantially changes the criteria for the admission of new evidence under subsection 110(4) of the *IRPA*.

[25] Second, the RAD reasonably relied on the fact that the Applicants were aware that an IFA in Abuja was a live issue before the RPD.

[26] Indeed, a thorough review of the RPD transcript reveals that the RPD did notify the Applicants that IFA was an issue that it would be considering. The Member specifically questioned them about the possibility of relocating to Abuja. For instance, the following excerpt from the transcript makes it clear that the Applicants were questioned about Abuja and were given an opportunity to provide evidence:

> **Member:** Okay. So we will now discuss IFA. Is there a way, that's the way, to place the camera so I can see both of you. So I also have to assess whether you could relocate in Nigeria, so for my analysis I have to propose a place, so I will propose the federal capital territory of Abuja. Just give me one second.
>
> So should you relocate to Abuja do you think you would still have any problems?

[27] The Applicants went on to give extensive testimony about Abuja, how it is the "seat of power" and how the individuals he fears are "just a phone call away". I also note that the Applicants' former counsel made submissions on the issue of IFA at the conclusion of the hearing.

[28] In light of this context, it was not unreasonable for the RAD to find that evidence pre-dating the RPD's decision could not be admitted per the statutory criteria outlined in subsection 110(4) of the *IRPA.*

B. *The RAD's IFA Analysis*

[29] When determining whether there is an IFA, the decision maker must consider the two-pronged test developed in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) [*Rasaratnam*] and *Thirunavukkarasu v*

Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA) [*Thirunavukkarasu*].

[30] On a balance of probabilities, the Board must be satisfied there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists; and the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for them to seek refuge there.

[31] The Applicants submit the RAD erred in its assessment of both prongs of the IFA test by ignoring significant personal and objective evidence that an IFA is not available in Abuja.

[32] Under the first prong, the RAD found that the agents of persecution have neither the means nor motivation to locate the Applicants in Abuja, stating:

> With respect to the first prong, the main evidence of the means and motivation of the Appellants' family members was speculation on the part of the adult Appellants that their family is highly connected and could somehow get the police to find them if they were to return to Nigeria. This conjecture was based in part on the ability of the Principal Appellant's uncle to find Mrs. Edwards' mother's address and because the extended family was able to discover that they had left Nigeria. This evidence falls short of meeting the evidentiary onus on the Appellants to establish a serious possibility that the agents of harm could find them if they were to now return to Nigeria, more than four years after they left the country.

[33] The Applicants argue that testimony about their family members being “well-connected” demonstrated through their ability to find the PA’s mother-in-law’s address was, in the absence of an adverse credibility finding, erroneously rejected.

[34] The Applicants rely on the presumption that a claimant’s testimony is truthful: *Maldonado v Canada (Minister of Employment and Immigration*),1979 CanLII 4098 (FCA), [1980] 2 FC 302 at para 5 (FCA) and the principle that it is an error to reject a claim because of a lack of corroborative evidence in the absence of a reason to doubt the claimant’s credibility, citing *Dayebga v Canada (Citizenship and Immigration)*, 2013 FC 842 at para 28.

[35] Further, they assert that the RAD’s analysis of the means and motivation of the agents of persecution constitute veiled credibility findings framed as insufficiency of evidence.

[36] I am not persuaded by the Applicants’ submissions.

[37] I agree with the Respondent that the RAD’s findings are reasonably based on the Applicants’ failure to meet the evidentiary burden of establishing risk in the IFA.

[38] Contrary to the Applicant’s submissions, the RAD was not required to accept unsupported assertions. It is the Applicants’ onus to demonstrate a serious possibility of persecution or section 97 risk of harm in the IFA: *Rasaratnam* at para 6; *Thirunavukkarasu* at paras 6 and 9.

[39] The RAD was entitled to assess whether there was sufficient, reliable evidence to meet that onus.

[40] It was open to the RAD to find that the evidence presented did not support the allegation that the PA's uncle could track the Applicants down.

[41] Having reviewed the totality of the record before this Court, I find the RAD reasonably concluded the Applicants' beliefs and the objective country condition evidence did not establish they face a serious possibility of persecution in Abuja.

C. *IFA-Second Prong*

[42] The Applicants also challenge the RAD's findings under the second prong of the IFA test, submitting that the RAD failed to consider the factors that make it objectively unreasonable for them to relocate to Abuja.

[43] In finding that the Applicants would be able to find gainful employment to support their family, the RAD reasonably considered they are well educated and have extensive professional experience as a legal practitioner and an accountant.

[44] The Applicants assert however, that the RAD "totally disregarded" the economic conditions in the proposed IFA, rendering the analysis unreasonable.

[45] I disagree. The RAD acknowledged the Applicants' concerns with respect to economic conditions but reasonably found that nothing in the country condition evidence or the Applicants' materials suggested that "things are so dire that the adult Appellants would be unable to find gainful employment to support their family".

[46] The Applicants also assert that their minor children will be adversely impacted by a relocation to Nigeria, jeopardizing their life and safety.

[47] Specifically, their three-year-old daughter has a developmental delay, and she has currently been receiving speech therapy and occupational therapy in Canada. Further, their youngest daughter suffers from a stutter and may require speech therapy.

[48] On appeal to the RAD, the Applicants argued that healthcare inadequacy in Nigeria had led to the death of their first son in 2017. He sadly died of leukemia.

[49] The Applicants fear their daughters will similarly receive poor medical treatment if forced to relocate to Abuja.

[50] Documentation was provided to the RAD suggesting that Nigeria has a shortage of doctors, its healthcare system is underfunded and its workers underpaid, and most healthcare expenses are not covered by the government so they have to be paid out-of-pocket.

[51] The RAD found that, "…[w]hile it is clear that the Nigerian healthcare system is not on par with Canada's, the evidence before me does not establish that the Appellants' children are unlikely to be able to access speech therapy or other general assistance, although there is a good chance that they will have to pay for it out-of-pocket."

[52] In my view, the RAD's findings in this regard are not unreasonable. The RAD is entitled to a high degree of deference in its factual findings and weighing of the evidence: *Sisay Teka v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 314 at para 35. Based on the record before it, it was open to the RAD to conclude the available objective country conditions evidence did not support a finding that the proposed IFA was unreasonable.

[53] The Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) [*Ranganathan*] specified the requirements for unreasonableness, characterizing the threshold as being very high with a requirement of actual and concrete evidence:

> [15] We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.
>
> [my emphasis].

[54] The RAD's decision must be assessed in the context of the "very high threshold" for establishing unreasonableness. Again, this is in "sharp contrast" from the hardship arising from loss of employment, status, quality of life, or aspirations: *Ranganathan* at para 15.

[55] The role of this Court is not to reweigh and reassess the evidence: *Doyle v Canada (Attorney General)*, 2021 FCA 237. I therefore find the RAD's IFA conclusions drawn by the RAD to be reasonable.

V. **Conclusion**

[56] For the foregoing reasons, this application for judicial review will be dismissed.

[57] Neither party proposed a serious question of general importance, and none arises on these facts.

JUDGMENT IN IMM-4410-22

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. There is no serious question of general importance to certify.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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