Federal Court  Cour fédérale

Date: 20230725

Docket: IMM-174-21

Citation: 2023 FC 1017

Ottawa, Ontario, July 25, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Oladapo Daniel AJEKIGBE
Oluwaseyi Bolanle AJEKIGBE
Bryan Oluwatamilore AJEKIGBE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Oladapo Daniel Ajekigbe, the Principal Applicant [PA], and his wife are citizens of Nigeria, while their minor child is a citizen of the United States of America. The [PA] operated a business in Lagos, Nigeria installing home electronic systems such as CCTV, fire alarms, home automation devices and home cinemas. Shortly after starting work on a home theatre installation

contract he had been awarded, the PA received escalating threats from an unsuccessful bidder on the same job. The PA spent three weeks in Abuja in an effort to defuse the situation before returning to Lagos. Continuing threats led the family to eventually flee Lagos to Ibadan where they stayed for three months for safety reasons before leaving Nigeria altogether.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dismissed the Applicants' claim for refugee protection, while the Refugee Appeal Division [RAD] of the IRB dismissed their appeal. Both decisions turn on findings of an available internal flight alternative [IFA] in Abuja or Ibadan.

[3] The RAD also dismissed the Applicants' request to reopen their appeal. This resulted in some confusion about which RAD decision is the subject of the Applicants' judicial review application. The Court addressed this issue in advance of the judicial review hearing, and the parties agreed and confirmed with the Court that the Applicants seek judicial review only of the initial December 9, 2019 decision of the RAD [Decision] dismissing the appeal of the RPD decision.

[4] The main issue before the Court is whether the Decision is reasonable. Put another way, the Court must determine whether the decision is intelligible, transparent and justified, in accordance with the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99.

[5] For the reasons that follow, I find the Applicants have not met their onus of demonstrating that the Decision is unreasonable: *Vavilov*, above at para 100. I therefore dismiss this judicial review application.

II. Analysis

[6] I disagree with the Applicants that the RAD's mere mention of a revoked jurisprudential guide, that is RAD decision TB-19851 [JG], in the endnotes of the Decision is a reviewable error: *Ganiyu v Canada (Citizenship and Immigration)*, 2022 FC 296 at para 7; *Olagunju v Canada (Citizenship and Immigration)*, 2022 FC 110 at para 11; *Olusesi v Canada (Citizenship and Immigration)*, 2021 FC 1147, at para 34; *Adegbenro v Canada (Citizenship and Immigration)*, 2021 FC 290 at para 3.

[7] The JG remained in place until April 6, 2020 (i.e. four months *after* the Decision), when its status as such was revoked. The analytical framework of the revoked JG, which included the legal test for identifying a viable IFA, was preserved at the time of revocation as a RAD Reasons of Interest decision. The practical implication of this is that IRB members are still able to use its analytical framework, as long as they consider the facts of each case and the most current country of origin information.

[8] In my view, the RAD's reasons demonstrate that it conducted its own independent analysis of the record and came to its own conclusions; the JG was not binding on nor determinative of those conclusions. The specific paragraph of the JG the RAD cited mentions the need to assess the individual circumstances of the person, which the RAD here did. The reasons

permit the Court to understand the RAD's basis for dismissing the Applicants' appeal from the RPD.

[9] Turning next to the IFA analysis and the first prong of the test, the Applicants essentially disagree with the way the RAD considered whether the agent of persecution is connected to the police. In my view, the RAD reasonably weighed the evidence. The Decision turns on the insufficiency of evidence, and the Applicants have not demonstrated how the RAD misconstrued or ignored the evidence in this regard: *Ullah v Canada (Citizenship and Immigration)*, 2022 FC 1777 at paras 34-37.

[10] Further, a finding that a viable IFA exists indicates on its face that an applicant faces no serious possibility of persecution in the IFA; the lack of a state protection analysis in these circumstances thus "is of no moment": *Adams v Canada (Citizenship and Immigration)*, 2018 FC 524 at para 35.

[11] Lastly, I find the RAD reasonably concluded that the Applicants had a viable IFA in either of the two cities in which they previously spent time, absent evidence that they had ever been threatened there.

[12] Regarding the second prong of the IFA test, the Applicants complain about the length of the RAD's IFA analysis and that it is not personalized enough, in particular with respect to the cost of living in the IFAs. The Applicants' arguments regarding the level of detail they assert the RAD should have provided approach a correctness standard of review instead of a

reasonableness review. More importantly, the Federal Court of Appeal endorses a "very high threshold for the unreasonableness test," specifically the existence of conditions which would jeopardize the life and safety, "in sharp contrast with" undue hardship resulting from loss of employment, and other factors: *Ranganathan v Canada (Minister of Citizenship and Immigration) (CA)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164. I am not persuaded that the Applicants here have met this high threshold.

[13] As a final note, the Applicants proposed a possible question for certification at the hearing of this matter without notice to the Respondent or the Court. The proposed question broadly relates to the RPD's ability to raise an IFA at the outset of a hearing for a refugee claim and place the burden on refugee claimants to rebut it. Because the Applicants failed to provide proper notice to the Respondent in the proper format (further to the guidance in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at paras 34-45), and because the question fails to account for the well-established jurisprudence on this issue (see *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 58 and *Rasaratnam v Canada (Minister of Employment and Immigration)* (C.A.), 1991 CanLII 13517 (FCA), [1992] 1 FC 706), I decline to certify it in the circumstances.

III. Conclusion

[14] I conclude that the Applicants' arguments regarding the RAD's analysis of the IFA test demand an unwarranted level of perfection and, overall, are in the nature of disagreement, coupled with a request to reweigh evidence, contrary to the guidance in *Vavilov*, above at paras 91 and 125, regarding a reasonableness review.

[15] For the above reasons, I therefore dismiss the Applicants' judicial review application.

[16] No question is certified.

JUDGMENT in IMM-174-21

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. No question is certified.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	OLADAPO DANIEL AJEKIGBE, OLUWASEYI BOLANLE AJEKIGBE, BRYAN OLUWATAMILORE AJEKIGBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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