

Federal Court



Cour fédérale

Date: 20170707

Docket: IMM-5062-16

Citation: 2017 FC 661

Toronto, Ontario, July 7, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

**ATINUKE ALAKE DOHERTY
OLUWADOLAPO DERON DOHERTY
OLUWADEMILADE DONALD DOHERTY**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [Act or IRPA] of a November 10, 2016 negative decision [the Decision] of the Refugee Appeal Division [RAD or Board]. For the reasons explained below, I am dismissing this judicial review.

[2] The principal applicant [Applicant] and her two minor sons are citizens of Nigeria. The Applicant, her husband, and their sons came to Canada in late March 2016 on vacation. She alleges that while in Canada, they learned that the prophet of their religious community, the Celestial Church of Christ [Celestial Church or Church] located in Calabar, Nigeria, had a vision and falsely accused her of practising witchcraft.

[1] Her husband subsequently returned to Nigeria, where he alleged that the danger persisted, and he thus sought the help of the police, to no avail.

[2] The Applicant is seeking protection in Canada because she claims she fears for her life in Nigeria due to threats of harm from Church members and her husband's family, on account of her witchcraft.

[3] On July 12, 2016, the Applicant's refugee claim was dismissed by the Refugee Protection Division [RPD], finding that the Applicant and her sons were not Convention refugees or persons in need of protection. The refusal was based on adverse credibility findings and an internal flight alternative [IFA].

[4] The RAD, in its Decision, did not make a finding on the RPD's credibility determination. Rather, it focused solely on what it identified as the determinative issue, concluding that the Applicant has an accessible and viable IFA in Lagos, Nigeria.

II. Analysis

[5] The Applicant submits that the RAD erred in three ways, namely by:

- i. refusing to admit new evidence;
- ii. failing to properly consider credibility and state protection; and
- iii. erring in its IFA assessment.

[6] The reasonableness standard of review applies to the issues raised (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica*]).

A. *Refusal to Admit New Evidence*

[7] The Applicant argues that the RAD should have accepted the various letters and affidavits tendered before the RAD as new evidence under subsection 110(4) of IRPA. I disagree.

[8] First, the Applicant does not contradict the RAD's finding that the additional evidence could have been provided to the RPD before the hearing date, at the hearing, or even in post-hearing submissions, i.e. all evidence could have been furnished before the decision was rendered back in July 2016. These observations and conclusions are reasonable.

[9] Second, the Applicant objected to the treatment of the psychotherapist's report [Report], which was the only 'new evidence' the RAD provided reasons for rejecting, albeit as an alternative ground. In other words, the Board provided its reasons for rejecting the Report only in

the event that it would have accepted the evidence. The RAD concluded that in the alternative, the Report was unreliable, finding that even if it had been accepted as new evidence, it would have been given little probative weight because, among other weaknesses, it was based on a one-hour interview of the Applicant without any psychological testing. The RAD also found that the position that Applicant asserted – namely of no medical treatment available in Nigeria – to be unsupported by the documentary evidence. I find these conclusions entirely justifiable in light of the evidentiary record.

[10] In sum, I am satisfied that RAD reasonably determined that the additional documents should not be admitted as “new”, in accordance with subsection 110(4) of the IRPA, and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96.

B. *Credibility Findings*

[11] The Applicant argued at the hearing that the RAD erred in failing to address credibility findings made by the RPD. When asked, the Applicant was unable to provide any case law supporting the proposition that every ground relied upon by the RPD (in its credibility analysis), and every challenge on appeal, had to be addressed by the RAD. Indeed, I agree that the RAD was not required to assess any of the credibility findings in the circumstances, due to the IFA being the determinative issue.

C. *Internal Flight Alternative*

[12] In assessing the IFA in Lagos, the RAD correctly applied the two-prong test from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA), namely that:

1. the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; or,
2. conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[13] The Applicant had the onus of demonstrating that members of the Church could find her in Lagos, a large city with a population of over 13 million, a 10-hour drive away from Calabar.

[14] The Applicant argues that the RAD failed to adequately assess country documentation listing 48 parishes of the Church situated in Lagos alone, its largest concentration in the country, where it also has its headquarters. The Applicant says that the RAD both misunderstood, and failed to meaningfully consider this evidence.

[15] I find the RAD's finding of insufficiency of evidence (as provided by the Applicant with respect to the Church's influence throughout Nigeria and/or in Lagos), to have been reasonable. Before the RPD, the Applicant provided evidence that the Celestial Church "has a parish in

Lagos” (Certified Tribunal Record at 277). This testimony, along with her responding submissions on appeal, are appropriately summarized in the RAD Decision (at paras 46-47), where the Board found no compelling evidence to support her claims of risk in Lagos.

[16] In short, I find no reviewable error in the Board’s determination that on a balance of probabilities, there is no serious possibility of the Applicant being discovered and harmed or otherwise persecuted in Lagos. The Board’s conclusion with respect to the first branch of the IFA test was therefore reasonable.

[17] The Applicant also challenged the finding under the second branch of the IFA test, namely that it would be unreasonable for her to relocate to Lagos given the Church’s wide presence in the country. Specifically, the Applicant argues that the RAD overlooked evidence when it deemed that there was insufficient evidence relating to the persecution of accused witches in Nigeria, such as herself.

[18] The Board addressed these submissions when it found that the Applicant “failed to provide a reasonable explanation as to why she believes she and the sons would be discovered and/or harmed in Lagos” (Decision at para 53). Furthermore, the RAD also found that there was no evidence that the Applicant was charged with being a witch (Decision at para 50), which is a crime in Nigeria.

III. Conclusion

[19] In sum, I find the RAD's conclusions on both parts of the IFA test were both open to it, and determinative. For all the reasons provided above, the RAD's decision is reasonable, and the application for judicial review is accordingly dismissed.

JUDGMENT in IMM-5062-16

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There are no questions for certification, and none arise.
3. No costs will be ordered.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5062-16

STYLE OF CAUSE: ATINUKE ALAKE DOHERTY ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 16, 2017

**REASONS FOR JUDGMENT
AND JUDGMENT:** DINER J.

DATED: JULY 7, 2017

APPEARANCES:

Peter Lulic FOR THE APPLICANTS

Veronica Cham FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter Lulic FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario