Federal Court  Cour fédérale

Date: 20180517

Docket: IMM-5024-17

Citation: 2018 FC 524

Ottawa, Ontario, May 17, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

ZUREKANENI ISSAH ADAMS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns a refugee protection claim that was denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]. The Applicant, Zurekaneni Issah Adams, appealed to the Refugee Appeal Division [RAD] of the IRB, which dismissed the appeal and confirmed the determination of the RPD that the Applicant is neither a

Convention refugee pursuant to section 96 nor a person in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] This application for judicial review is with respect to the RAD's decision. The basis of the Applicant's claim is that his uncle, an elder in their community of Hohoe, Ghana with ties to national security forces and the police, is threatening to kill the Applicant over an inheritance dispute. The sole issue to be determined is whether the RAD erred in finding that there is a viable internal flight alternative [IFA] available to the Applicant in Kumasi, Ghana.

[3] For the following reasons, I am not satisfied that the RAD committed any reviewable error. This application is accordingly dismissed.

II. Facts

A. *Background Facts*

[4] The Applicant is a citizen of Ghana born in 1980. His family lived in Hohoe, in the Volta region of Ghana, from the Applicant's youth until he moved to live with his aunt in Accra in 1999.

[5] The Applicant's father was an elder and a wealthy property owner in the community in Hohoe. After the Applicant's father died in 2010, the Applicant's uncle inherited the properties and a leadership role of the community.

[6] In February 2011, when the Applicant was about to get married, he asked his uncle to give him some cattle from his father's ranch. The uncle refused and the two quarreled. The uncle called the police, who came and beat up the Applicant. According to the Applicant, his uncle was an affiliate with the government who used to organize voters for the ruling party that was in power. The police gave the uncle security to protect and fulfill orders.

[7] The Applicant claims that he went back to the ranch to look for some of the cows. Someone called his uncle and he came with some bodyguards, who then tortured and threatened him with guns for two days. When the Applicant returned home, his aunt confided that his uncle had killed his father and cautioned that he would kill anybody who tried to get in his way.

[8] The Applicant states that he made a report to the police but didn't get any support because his uncle has many friends in the police. The Applicant claims that clan elders were corrupt and sided with his uncle.

[9] The Applicant sold to the church two plots of land that belonged to his father in Accra. When his uncle found out about the sale, he instructed the police to look for the Applicant. As a result, the Applicant went into hiding. He received threat messages on his phone from his uncle telling the Applicant how he would torture him before he would kill him the way he killed the Applicant's father.

[10] Out of fear for his safety, the Applicant decided to leave Ghana with the help of a friend. The Applicant left for Brazil on January 6, 2014.

[11] The Applicant travelled from Brazil through South and Central America to the United States where he filed an asylum claim that was refused. After being released from detention, he entered Canada on or about November 26, 2016 and made his protection claim.

[12] The Applicant claims that if he returns to Ghana, his life would be in danger.

B. *Decision of the Refugee Protection Division*

[13] The Applicant's claim was heard by the RPD on April 6, 2017. The RPD found that the Applicant was not a Convention refugee as he did not have a well-founded fear of persecution related to a Convention ground pursuant to section 96 of the IRPA. It also found that the Applicant was not a person in need of protection pursuant to section 97 in that his removal to Ghana would not, on a balance of probabilities, subject him personally to a risk to his life or a risk of cruel and unusual treatment or punishment.

[14] The RPD explained that the determinative issue was whether the Applicant has a viable IFA in Kumasi. The RPD found that if he were to return to Ghana and relocate to Kumasi, he would not face persecution or a risk to his life.

[15] The RPD found the Applicant's uncle did not have the power, influence or scope to be able to find and target him in other parts of the country, including Kumasi. The RPD stated that whatever influence the uncle may have was "limited to a small area of Ghana, and specifically to a small town or village". At the hearing before the RPD, the Applicant testified that Hohoe was "not much large" and later clarified that it was a small farming village.

[16] The RPD found that the statutory declarations and the affidavit that was provided in support of the claim simply corroborated the allegations outlined in the Basis of Claim Form and narrative and did not provide any information with respect to the uncle's influence to reach beyond the town of Hohoe and in other parts of the country, including Kumasi.

[17] The RPD found that should the Applicant seek help from the authorities in other parts of the country, protection would be forthcoming. The RPD declined to conduct a full state protection analysis as the determinative issue is the existence of an IFA. It noted however that the objective evidence indicated that Ghana is a stable and functioning democracy and that there was no apparent evidence of government meddling in judicial power. The RPD explained that in a democracy, the claimant will have a heavy burden when attempting to show that they should not be required to exhaust all recourses available to them domestically before claiming refugee status abroad.

[18] The RPD turned to the issue of the existence of an IFA and examined the objective evidence before the panel describing the country conditions in Ghana. The country has over 26 million people and Kumasi is the largest major urban area, with a population of over two and a half million people, larger than the capital Accra. The country is a stable democracy with good economic prospects, despite there being some challenges.

[19] The RPD found that the Applicant, a man of 36 years with a secondary-school level of education who speaks English and a number of African languages, has proven to be resourceful, travelling through many countries on his way to Canada. The Applicant worked in Accra for a

family bus company since 2001 and helped his uncle as a conductor or ticket collector before becoming a driver. The Applicant also helped his cousin in the United States in his barbershop. The RPD concluded that there is no reason to believe that the Applicant will not be able to find and obtain employment and be able to support himself if he is to relocate to Kumasi. Moreover, the Applicant has family members, including an aunt and two sons, who could travel and visit him in Kumasi.

C. *Decision of the Refugee Appeal Division*

[20] The RAD reached the same conclusion on the determinative issue and concluded that the RPD correctly found that the Applicant has a viable IFA in Kumasi.

[21] With respect to the first prong of the test for an IFA clarified by *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*], the RAD noted that the RPD concluded that the Applicant failed to provide any objective evidence as to his uncle's position or his power and that the uncle's influence did not extend beyond the village of Hohoe. The RAD noted that the Applicant did not challenge this finding and instead submitted that the RPD should have found that the Applicant would face a serious possibility of persecution in the proposed IFA. The RAD stated it did not agree with the Applicant's submission, essentially for the same reasons provided by the RPD. The RAD found that the Applicant could live in Kumasi without fear or the need to hide.

[22] With respect to the second prong of the test for an IFA, the RAD was not persuaded that it would be unreasonable for the Applicant to move to Kumasi, adopting the findings of the RPD.

The RAD rejected the Applicant's submission that it would be unreasonable for him to move to Kumasi, citing the absence of any evidence in support. The RAD also noted that the Applicant provided no persuasive evidence that he would not be familiar with cultural issues and norms in Kumasi. The RAD was satisfied that it would be reasonable for the Applicant to adapt to the city and that he would be able to find employment.

[23] The RAD confirmed the determination of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection and accordingly dismissed the appeal.

III. Standard of Review

[24] The parties submit, and I concur, that the standard of review to be applied in the review of the RAD's findings and assessment of the evidence is that of reasonableness (see *Huruglica v Canada (Minister of Citizenship and Immigration*), 2016 FCA 93 at para 35).

IV. Analysis

[25] The Applicant submits that in dismissing his appeal, the RAD ignored relevant considerations and applied the wrong legal test.

[26] The Applicant claims that four matters were ignored by the RAD: (a) the size of Hohoe; (b) the status of the uncle as a community elder; (c) the factor of clan membership and the need to hide; and (4) state protection. The Applicant filed a memorandum on appeal before the RAD

and did not submit any new evidence. No hearing was held by the RAD, which conducted its own analysis of the Record before the RPD to determine if the RPD erred.

[27] In his memorandum to the RAD dated May 18, 2017, former counsel for the Applicant states that the RPD made several errors in its decision. He generally asserts that the RPD: (a) erred in not considering all of the possible grounds for claiming refugee status by the Applicant; (b) erred in not applying the correct test for persecution; (c) erred in not assessing and analysing the harm posed to the Applicant from the identified agents of persecution; (d) ignored and rejected the Applicant's oral testimony concerning the risk he faced; (e) erred in rejecting the Applicant's evidence by preferring the documentary evidence; (f) erred in finding the availability of an IFA; and (g) erred by not making an independent assessment of the Applicant's case. Counsel then writes that: "[e]ach of the above-mentioned errors are being addressed below with reference to the facts of the applicant's case and the jurisprudence applicable to it". However, other than citing case law and making bald assertions, counsel does not make any substantive submissions regarding any errors of fact by the RPD, let alone the specific ones identified for the first time in this application for judicial review.

[28] Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257, requires an appellant to submit a record containing a memorandum that includes full and detailed submissions regarding: (i) the errors that are the grounds of the appeal, and (ii) where those errors are located in the RPD's decision, or in the transcript recording of its hearing. The RAD cannot be faulted for failing to consider arguments that were never raised.

[29] As was stated by Mr. Justice Patrick Gleeson in *Ghauri v Canada (Citizenship and Immigration*), 2016 FC 548 at para 34: "appellants before the RAD that fail to specify where and how the RPD erred do so at their own peril". If the Court on judicial review were prepared to condone such practice, it would effectively allow an appellant to circumvent and neuter the appeal route provided by statute while gutting the deference owed to the tribunal (see *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54).

[30] In the circumstances, the Applicant's submission that the RAD ignored relevant considerations is without merit. Nonetheless, I propose to briefly address each alleged matter identified by the Applicant in turn and then address his argument that the wrong legal test was applied by the RAD.

A. *Size of Hohoe*

[31] The Applicant submits that the RPD was mistaken in stating that the Applicant testified that he came from a small farming village. It is common ground that Hohoe is a place with over 56,000 inhabitants. According to the Applicant, the RPD wrongly assumed that an IFA was viable given the small size of Hohoe and erred in having no regard to country condition information in considering the size of Hohoe.

[32] I note that the RAD, whose decision is being reviewed, made no comment and does not appear to have been influenced by Hohoe's size in its analysis of an IFA. While the RAD did refer to Hohoe as a village in its reasons, it simply adopted the very word used by the Applicant

during the hearing before the RPD. I agree with the Respondent that neither the RPD nor the RAD can be faulted for using the same language to describe Hohoe.

B. *Status of the Uncle as an Elder*

[33] The Applicant argues that the RAD failed to appreciate the significance of his uncle's role as a community elder and how that position would impact the uncle's ability to locate him in Ghana. This argument is devoid of any merit. Both the RPD and the RAD clearly addressed the reach of the uncle's power and influence and concluded that there was no evidence showing that community elders in Ghana have an enhanced ability to track down and locate people anywhere in the country. After considering all of the evidence and noting the absence of any persuasive evidence that the Applicant's uncle would search for him and seek him out, the RAD found that the Applicant could live in Kumasi without fear or the need to hide. Other than disagreeing with the conclusion, the Applicant has not established any error was committed by the RAD.

C. *The Factor of Clan Membership and the Need to Hide*

[34] The Applicant submits that his clan membership would increase the likelihood that he would be located in Kumasi by the alleged agents of persecution. The Applicant claims a fear not only from his uncle, but also his bodyguards, family members and his political contacts. The Applicant never suggested to either the RPD or the RAD that his clan membership would be a problem in the proposed IFA. It was up to the Applicant to prove that he was at serious risk of being persecuted throughout Ghana and that it was objectively unreasonable for him to avail himself of an IFA. Both the RPD and the RAD applied the test as set out in *Thirunavukkarasu*

and concluded that the Applicant failed to meet his burden. No reviewable error has been established by the Applicant that would warrant this Court's intervention.

D. *State Protection*

[35] At paragraph 32 of his Reply, the Applicant states that a state protection analysis in the context of an IFA analysis "requires consideration whether state protection would be available in the internal flight alternative location when it is not available, as a finding or by assumption, in the home location". The Applicant submits the RAD erred by failing to conduct a state protection analysis in this case. I disagree. The fact that the RAD did not conduct a state protection analysis is of no moment in light of its finding that the Applicant faced no serious possibility of persecution in the proposed IFA of Kumasi and that the alleged agent of persecution lacked the ability to locate the Applicant there.

E. *Legal Test Applied by the Refugee Appeal Division*

[36] The Applicant submits that the RAD applied the wrong test for determining the viability of an IFA, relying on two decisions of this Court granting applications where evidence suggested that the Applicants would "eventually" become known to his or her persecutors in the proposed IFA: *Ng'aya v Canada (Minister of Citizenship and Immigration),* 2006 FC 1136 [*Ng'aya*] and *Lopez Martinez v Canada (Citizenship and Immigration),* 2010 FC 550 [*Lopez*]. According to the Applicant, the RAD erred by not applying the "test" applied in *Ng'aya and Lopez* and inquiring into whether the IFA would eventually become known to the feared agent of persecution.

[37] Upon reviewing the two decisions, I am not satisfied a new test for determining the viability of an IFA was developed. In the present case, both the RPD and the RAD found that evidence did not support the claim that the Applicant would be located in the proposed IFA. I agree with the Respondent that it is implicit in these findings that it would be unlikely that the Applicant would ever be located in Kumasi.

[38] In the circumstances, the Applicant has failed to establish that the RAD applied the wrong test.

V. Conclusion

[39] For the above reasons, and for the reasons set out in the Respondent's submissions, which I adopt and make mine, I am not satisfied that any reviewable error was made by the RAD. The basis for the determination by the RAD, as outlined in its reasons, is transparent, intelligible and justified.

[40] At the hearing of the application, counsel for the Applicant proposed certification of the following question: "[i]n a determination whether a refugee protection [sic] has an internal flight alternative to the location where the claimant has or is assumed to have a well-founded fear of persecution, is [the] ability of the feared agent of persecution to locate the claimant in the identified internal flight alternative location a legally proper test?"

[41] Given that the RAD reasonably concluded that there is no persuasive evidence that the Applicant's uncle would search for him in all parts of Ghana or that the uncle would have any

position of authority over the police to carry out a widespread and continuous search, I am not satisfied on the facts of this matter that the question proposed for certification would be dispositive of an appeal. The question proposed will accordingly not be certified.

JUDGMENT IN IMM-5024-17

THIS COURT'S JUDGMENT is that:

This application is dismissed.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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