Federal Court  Cour fédérale

Date: 20181114

Docket: IMM-1886-18

Citation: 2018 FC 1150

Toronto, Ontario, November 14, 2018

PRESENT: Mr. Justice Grammond

BETWEEN:

KELVIN CHINEDU OBINEZE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Obineze sought asylum in Canada on the basis of religious persecution in his home country, Nigeria. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] denied his claim, because it found that Mr. Obineze could escape persecution by relocating elsewhere in Nigeria. He now applies for judicial review of the RPD's decision. I dismiss his application, because the RPD's findings were reasonable.

[2] Mr. Obineze's father was the chief priest of the Ovum Shrine, in the state of Abia, in southeast Nigeria. After the death of his father in January 2012, Mr. Obineze refused to become the chief priest, as this would be contrary to his Christian beliefs. Members of the community exerted pressure on Mr. Obineze and suggested that the refusal to assume the office of chief priest would lead to his death. Mr. Obineze fled his community, travelled to Canada and sought asylum.

[3] The RPD denied his claim for asylum on March 27, 2018. The RPD believed Mr. Obineze's story. However, it held that Mr. Obineze could escape persecution by relocating elsewhere in Nigeria. In refugee law, this is known as an "internal flight alternative" [IFA]. The RPD found that Mr. Obineze could relocate to Port Harcourt or Abuja, major cities in Nigeria. Accordingly, the RPD found that Mr. Obineze did not meet the definition of Convention refugee.

[4] This Court reviews decisions of the RPD on a standard of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, at paras 30-35). My role is to ensure that the RPD's decision is based on a defensible interpretation of the relevant legal principles and a reasonable assessment of the evidence.

[5] In this case there is no disagreement as to the applicable legal principles. Both parties recognize that there is an IFA where the claimant is not likely to suffer from persecution in a certain part of his country and it is not unreasonable for the claimant to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at 711 [*Rasaratnam*]; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*,

[1994] 1 FC 589 (CA); *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*]).

[6] In order to show that the RPD's decision was unreasonable, Mr. Obineze first argues that residents of his village are able to find him anywhere in Nigeria, including in Port Harcourt and Abuja. Before the RPD, Mr. Obineze asserted that residents of his village had spiritual powers and had sent messengers to community members living in other cities in order to find him. The RPD noted, however, that Nigeria is a country of over 190 million inhabitants and that Port Harcourt and Abuja are large cities with a population of over two million each. In my view, the RPD's conclusion that Mr. Obineze would not be found in Port Harcourt or Abuja is reasonable.

[7] Mr. Obineze also relies on the fact that the terrorist group Boko Haram has attacked places of worship, including churches, in Abuja in recent years. This argument, however, was not put forward before the RPD, and the RPD's reasons do not refer to it. In any event, the risk of such attacks can only be considered a generalized risk that does not give rise to a claim for asylum. In this connection, one should keep in mind that about 40% of the population of Nigeria is Christian.

[8] Likewise, Mr. Obineze's argument with respect to religious strife in the central part of Nigeria does not appear to have been raised before the RPD. In this regard, it is enough to say that the conflict in question is between farmers and cattle herders. Thus, it would not extend to cities such as Abuja and Port Harcourt.

[9] Lastly, Mr. Obineze argues that it would be unduly harsh to require him to relocate to Port Harcourt, given the "socio-economic and cultural obstacles" that he would face there. In a nutshell, he argues that life is very expensive in Port Harcourt and that it is difficult for Nigerians coming from other regions to secure employment there, as their ethnic background would be easily recognized by local residents. The RPD acknowledged, in general terms, that "relocation would be difficult" and that it will cause "a degree of hardship". It concluded, however, that this was not enough to make relocation unreasonable, so that the second prong of the *Rasaratnam* test would not be met.

[10] The RPD's findings in this regard were reasonable. They took into account available information concerning conditions in Nigeria. The RPD did not fail to engage with the evidence regarding the difficulties associated with relocating in Port Harcourt. Much is needed, however, to show that a proposed IFA is unreasonable. In *Ranganathan*, Justice Gilles Létourneau of the Federal Court of Appeal stated that "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" (at para 15) are usually not sufficient to meet the test. The objections raised by Mr. Obineze with respect to relocating to Port Harcourt are of a similar nature.

[11] I also note that Mr. Obineze does not make similar arguments with respect to Abuja. Thus, even if Mr. Obineze was right to say that relocating to Port Harcourt would be unduly difficult, Abuja would still be an appropriate IFA.

[12] At the hearing, counsel for Mr. Obineze raised a new argument. He took issue with the RPD's finding that, because Mr. Obineze had adjusted to life in Canada over the last six years, he could also adjust to life in Abuja or Port Harcourt. This argument was not made in Mr. Obineze's application for judicial review or memorandum of fact and law. As I noted in *Zhou v Canada (Citizenship and Immigration)*, 2018 FC 182 at para 6:

> …the memorandum of argument plays a crucial role in ensuring the fairness and efficiency of the Court's process. If an applicant makes arguments that were not announced in the memorandum, then it is difficult for the respondent to provide meaningful submissions and for the Court to study the case. The Court may decline to hear arguments that were not included in the memorandum…

[13] In this case, raising this new argument at the hearing deprived the respondent of any meaningful opportunity to review the record, which spans more than 400 pages, in search of evidence that would support an answer. Accordingly, I decline to consider this new argument.

[14] In conclusion, Mr. Obineze has not persuaded me that the RPD rendered an unreasonable decision. As a result, this application for judicial review is dismissed.

JUDGMENT IN IMM-1886-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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