Federal Court  Cour fédérale

Date: 20191018

Docket: IMM-1228-19

Citation: 2019 FC 1308

Ottawa, Ontario, October 18, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KABIRU ORIYOMI AKINOLA
OLUWAKEMI ADELEYE AKINOLA
IBRAHIM AKINOLA (BY HIS LITIGATION GUARDIAN KABIRU ORIYOMI AKINOLA)

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the Refugee Appeal Division [RAD]'s decision affirming the Refugee Protection Division [RPD]'s finding that the Applicants are not

Convention refugees or persons in need of protection as defined in sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[2] Mr. Kabiru Oriyomi Akinola, Ms. Oluwakemi Adeleye Akinola, and their son Ibrahim Akinola [collectively the Applicants] are citizens of Nigeria. Mr. Akinola is a Muslim. Ms. Akinola and Ibrahim are Christians.

[3] Mr. Akinola and Ibrahim are members of the Mosaaju ruling house in Wasimi Alafia, Ogun State, Nigeria. The Mosaaju ruling house rotates the throne with four other ruling houses and, at the time of the claim, was next in line to assume the throne. The male who takes the throne is given the title of *baale*. This title is best understood as a king, but can also be understood as a chief.

[4] In his Basis of Claim [BOC], Mr. Akinola explains that the traditional practice is to initiate all first sons of the ruling houses into the Oro cult so they may fully participate in the traditional rites and rituals associated with the royal family, and be prepared for leadership should the incumbent ruler pass away. Mr. Akinola was not initiated because his own father resisted the practice and sent him away to school to avoid initiation into the cult. Mr. Akinola's father told him he was sent away to preserve his life, because other members of the family were pressuring him to have Mr. Akinola initiated into the Oro cult as the firstborn son.

[5] In 2017, the village Chief Musendiku Atanda Akinola [the Chief] informed Mr. Akinola that the oracle for Yorubaland had chosen his son Ibrahim to represent the Mosaaju ruling house and serve as the next *baale* of their village. This required Ibrahim to undergo initiation into the Oro cult.

[6] The Chief instructed Mr. Akinola to bring Ibrahim to the village to be inducted into the cult on May 17, 2017, but Mr. Akinola resisted, as both Christianity and Islam forbid such fetish practices. When Mr. Akinola explained why he could not allow Ibrahim to undergo the initiation into the Oro cult, the Chief threatened him and his wife. After the proposed initiation ceremony date passed, the Chief phoned Mr. Akinola to remind him of the consequences of defying the gods, and threatened that he "should not do anything that [would] hasten [his] going to join his father where he went."

[7] Mr. Akinola reported this to the police, but the police would not intervene. A police officer informed him the Chief was highly connected as the Chief is a retired senior police and intelligence officer.

[8] The Applicants fled to different parts of Nigeria and lived with various relatives and family friends not affiliated with the Mosaaju household. In August 2017, the Applicants returned to their home in Lagos because they thought any risk had subsided.

[9] On September 2, 2017, the Applicants' house in Lagos was invaded and extensively damaged while they were away. Mr. Akinola's neighbour gave evidence that the invaders were

chanting a Yoruba-language chorus with intermittent warrior songs. The police were called, but did not come. The Applicants abandoned their home and stayed with other relatives until they were able to fly to the USA on September 10, 2017.

[10] The Applicants spent several months in the USA before coming to Canada in January, 2018.

[11] The RPD rejected the Applicants' refugee claim due to lack of subjective fear and the availability of an Internal Flight Alternative [IFA]. The RPD based its subjective fear assessment on the Applicants' failure to apply for asylum in the USA, and identified both Port Harcourt and Abuja as IFAs. The Applicants appealed to the RAD.

III. Impugned Decision

[12] In a decision dated January 28, 2019, the RAD dismissed the Applicants' appeal, and confirmed the RPD decision that the Applicants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the IRPA.

[13] The RAD declined to hold a hearing pursuant to subsection 110(6) of the IRPA. The RAD did not show any deference to the RPD's credibility findings, stating it was in an equally advantageous position to assess the Applicants' credibility as there were no issues with Mr. Akinola's testimony or demeanor. The RAD member made no adverse credibility findings.

[14] The RAD concluded that delay did not weigh against the Applicants' refugee claims, as they were only in the USA for approximately three months. Therefore, the determinative issue before the RAD was the availability of an IFA.

[15] The RAD applied the two-pronged test for an IFA set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA):

> 1. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
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> 2. Moreover, 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 claim, for him to seek refuge there.

[16] The RAD then set out the principles governing the existence of an IFA, and confirmed that it considered Mr. Akinola's affidavit testimony about indigenous policies of the government, language barriers, economic problems, political instability, crisis, and a lack of freedom to practice religion.

[17] On the first prong, the RAD concluded the Applicants did not provide sufficient evidence to demonstrate a serious possibility of persecution in the cities of Port Harcourt or Abuja.

[18] The RAD rejected the Applicants' argument that the Chief, as a retired police officer and "powerful man" could use his contacts to track them down. The RAD characterized this argument as speculative, citing insufficient evidence.

[19] The RAD also rejected the Applicants' argument that they would be found when Ibrahim applied for university due to the Joint Admission and Matriculation Board ("JAMB") university admission system, and would instead have to live in a remote and unknown village. The RAD rejected this argument, noting that a remote and unknown village is still an IFA, and that this argument was speculative.

[20] The RAD further found the Applicants' allegations that the Chief would go to such lengths to find Ibrahim were not consistent with the documentary evidence, which showed a person could refuse a chieftaincy. The RAD reviewed the RPD's assessment of the consequences of refusing a chieftaincy in depth. It noted the RPD's reference to an IRB Response for Information Request NGA103485.E [RIR 1], including portions the Applicants alleged the RPD ignored. The RAD found that RIR 1 confirmed that if a person wanted to refuse to become a chief, they could do so with little or no consequences.

[21] The RAD acknowledged there were two opinions on this issue included in RIR 1, but found the majority of experts stated that a refusal would not be an issue. The RAD accepted the majority view.

[22] The RAD rejected the Applicants' arguments about a generalized risk of violence in Nigeria, finding that the evidence does not show, on a balance of probabilities, that the Applicants would be unsafe in Port Harcourt or Abuja.

[23] On the second prong of the test for an IFA, the RAD concluded the Applicants had failed to prove it was unreasonable for them to relocate to Port Harcourt or Abuja.

[24] The RAD rejected the Applicants' submission that they would be unable to work in either city, and found that none of the Applicants had provided sufficient evidence of risk due to practicing Christianity or Islam.

[25] The RAD rejected the Applicants' argument that they did not speak the language local to Port Harcourt. The RAD dismissed this on the basis that English is the official language of Nigeria, and all of the Applicants are proficient in English. The RAD concluded by finding there are airports in Abuja and Port Harcourt, and travelling there would not be an issue.

IV. Issue

[26] The sole issue in this application is whether the RAD's decision that the Applicants had an IFA in Port Harcourt or Abuja was reasonable.

V. Standard of Review

[27] The parties agree that the appropriate standard of review is reasonableness.

VI. Analysis

[28] The Applicants submit the RAD's conclusion on the first prong of the IFA analysis is unreasonable. In the Applicants' view, because the interests at stake are high, the Court should apply reasonableness in a more exacting way (*Sharif v Canada (Attorney General)*, 2018 FCA 205 at paras 9-12).

[29] While I accept that the Court should take "colour from the context" of the facts in the record before the Court, the standard to be applied is nevertheless reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[30] The Applicants contend that absent any credibility analysis by the RAD, the Applicants' story must be taken as true (*Sanchez v Canada (Citizenship and Immigration)*, 2008 FC 971 at para 13). Given that their testimony was uncontested, the RAD was therefore required to accept their testimony that the Chief and extended family had both the "means" and the "motivation" to locate the Applicants in the proposed IFAs.

[31] The crux of the Applicants' argument is that because the RAD member did not impugn their credibility, it cannot simply ignore or discount the Applicants' evidence in favour of evidence from the RIRs without a reasonable explanation.

[32] The Minister submits that the RAD's IFA analysis was reasonable and considered all relevant evidence. The Applicants simply failed to discharge their onus, and now ask this Court

to reweigh the evidence. The fact that the RAD did not question the credibility of the Applicants' evidence does not also indicate that the RAD gave great weight to that evidence (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 26-27 [*Ferguson*]).

[33] I find that contrary to the RAD member's view, there is nothing speculative about the prospect that the Chief, a well-connected retired police officer operating in a corrupt country, would be able to use his resources to locate the Applicants. The RAD was required to consider the resources available to the Chief when assessing whether the Applicants would be safe in either of the IFAs (*Meneses Arias v Canada (Citizenship and Immigration)*, 2009 FC 604 at para 24).

[34] Moreover, I also find that the RAD erred in assessing the Chief and extended family's motivation to locate the Applicants. RIR 1 relied on by the RAD has no relevance to the Applicants' claim and it is unreasonable for the RAD to have relied solely on that RIR. Instead, RIR NGA103996.E [RIR 2] is the appropriate reference document, but appears to have been erroneously ignored (*Hinzman v Canada (Citizenship and Immigration)*, 2010 FCA 177 at para 38). One opinion included in RIR 2 states that threats and even murders can occur if a person were to refuse a chieftaincy.

[35] There was some indication in the Minister's written and oral submissions that the RAD member may have referred to RIR 1 in error, and meant to instead refer to RIR 2. The RAD's decision on the RIR evidence is unintelligible, as it does not allow the Court to understand what evidence from the RIRs the RAD member actually relied on.

[36] Further, the lecturer's opinion contained in RIR NGA104602.E [RIR 3] was general in nature, and the RAD member did not explain why she preferred this evidence over the more specific evidence contained in RIR 2 and Mr. Akinola's affidavit.

[37] As well, the RAD's conclusion that the neighbour's affidavit did not establish a sufficient link between the home invasion and the alleged risk is unreasonable. The neighbour explicitly references traditional Yoruban practices like white dress, chorus incantations, and the fetish sacrifice, and on a balance of probabilities that affidavit serves as corroborative evidence that the Chief has both the means and motivation to pursue the Applicants.

[38] The IFA is a cumulative test. An unreasonable error in any portion of the test renders the entire decision unreasonable and demands it be set aside as a whole.

[39] This Court has held that credible testimony with respect to a refugee claimant's fear does not alleviate the need to provide sufficient objective evidence (*Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at para 37). However, this Court has also found credible and uncontested testimony can, on its own, meet the evidentiary threshold required for demonstrating the first prong of the test (*Zablon v Canada (Citizenship and Immigration)*, 2013 FC 58 at paras 21-24).

[40] The majority of the Applicants' evidence on the test for an IFA comes from Mr. Akinola's affidavit, which was found to be credible and which was supported by a neighbour's affidavit.

[41] The RAD member did not reasonably engage with the evidence that the Chief is an influential and powerful man in the government who could use police contacts to find the Applicants, merely stating that she found this to be speculation. The RAD member further did not reasonably engage with the conflicting information regarding refusal of a chieftaincy contained in the RIRs. This resulted in an unreasonable finding related to the first prong of the IFA analysis.

JUDGMENT in IMM-1228-19

THIS COURT'S JUDGMENT is that

1. The application is allowed and the matter is referred to a different panel member for reconsideration.
2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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