

Federal Court



Cour fédérale

Date: 20200325

Docket: IMM-3382-19

Citation: 2020 FC 416

Ottawa, Ontario, March 25, 2020

PRESENT: Madam Justice Walker

BETWEEN:

**JULIANA DAMILOLA BOLUWAJI
OLAKUNLE JOSHUA BOLUWAJI
ANJOLAOLUWA DAMILOLA BOLUWAJI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Juliana Damilola Boluwaji, her husband, Olakunle Joshua Boluwaji, and their daughter, seek judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada dated April 12, 2019 (Decision). The RAD confirmed a June 27, 2017 decision of the Refugee Protection Division (RPD) and found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to

sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The determinative issue before the RAD was whether the Applicants had an internal flight alternative (IFA) available to them in Nigeria. The Decision marks the second refusal by the RAD of the Applicants' appeal of the RPD's decision.

[2] By way of preliminary matter, the style of cause in this matter is hereby amended to reflect "The Minister of Citizenship and Immigration" as the Respondent.

[3] For the reasons that follow, the application is dismissed.

I. Background

[4] The background to the Applicants' refugee claim is set out in the November 15, 2018 decision of Justice Manson allowing the Applicants' application for judicial review of the initial RAD refusal of the Applicants' appeal (*Boluwaji v Canada (Citizenship and Immigration)*, 2018 FC 1154 (*2018 Boluwaji Decision*)).

[5] Briefly, the Applicants are a family of three who fled Nigeria in 2017 because they feared influential members of Mr. Boluwaji's family who wanted to force female genital mutilation (FGM) on both Ms. Boluwaji and the minor Applicant. Mr. Boluwaji and his daughter are members of a royal family in Lagos, Nigeria, and the agents of persecution are said to be two of Mr. Boluwaji's uncles.

[6] In its June 2017 decision, the RPD determined that the Applicants had a viable IFA in Port Harcourt, Nigeria, and refused their refugee claim. The panel dismissed as speculative the Applicants' evidence that they would be identified by members of their ethnic group living in Port Harcourt who would report back to Mr. Boluwaji's uncles. The RPD found that there was no evidence that Mr. Boluwaji's family was looking for the Applicants or that the family had influence that extended throughout Nigeria. The panel also reviewed the National Documentation Package (NDP) for Nigeria and found that FGM was outlawed in Port Harcourt, located in Rivers State, and that "[w]hile the law may not be effectively enforced, in that police will not prevent mutilations, this does reduce the likelihood that there would be any concerted effort to find the claimants in which other police officers would assist".

[7] The first RAD decision (First RAD Decision) is dated March 8, 2018. The RAD addressed two aspects of the RPD's decision. First, the panel agreed with the RPD that there was insufficient evidence to show that Mr. Boluwaji's family had particular influence to order the police in Nigeria to enforce FGM against Ms. Boluwaji and the minor Applicant.

[8] Second, the RAD concluded that the RPD erred in its analysis of Port Harcourt as an IFA for the Applicants. Although FGM had been criminalized by the enactment of a federal law in Nigeria, the Violence Against Persons (Prohibition) Act (VAPP), the RAD found that the VAPP had not been adopted in many regions of Nigeria, including Port Harcourt. As a result, although the Applicants had no greater profile than that of ordinary Nigerians, if they were located in Port Harcourt by Mr. Boluwaji's family, a serious possibility remained that they would not be able to obtain police assistance to prevent FGM.

[9] The RAD then considered the city of Abuja as an IFA for the Applicants. The panel reviewed the Applicants' written submissions regarding Abuja but found that they repeated the assertion that Mr. Boluwaji's family had sufficient links to the police that, when coupled with the Applicants' elevated profile, would override any police protection otherwise available to them. The RAD did not accept the Applicants' position. Based on information in the NDP, the panel determined that police protection would be available in Abuja where the VAPP had been adopted. The RAD concluded that Abuja would be a safe and reasonable IFA for the Applicants and dismissed the appeal.

[10] Justice Manson allowed the Applicants' application for judicial review of the First RAD Decision, finding that the RAD's failure to recognize and consider the distinction between the enactment of the VAPP and its enforcement in Abuja rendered the decision unreasonable (*2018 Boluwaji Decision* at para 24).

[11] I note that the Applicants also argued before Justice Manson that the initial RAD panel erred in concluding that Mr. Boluwaji's family did not have particular influence over the police in Nigeria. Justice Manson disagreed and found that the RAD had considered all of the evidence regarding the influence of the royal family and that the Applicants were asking the Court to re-weigh the evidence before the RAD.

II. Decision under review

[12] In the Decision, the RAD focussed on the viability of an IFA for the Applicants in Port Harcourt and did not assess a possible IFA in Abuja. The RAD found that the Applicants face no

serious possibility of persecution in Port Harcourt because their alleged agents of persecution, members of the royal family of Lagos, do not have the means, ability or influence to either locate the Applicants in Port Harcourt or to leverage others to do so. In reaching its conclusion, the panel rejected the Applicants' submissions that were intended to demonstrate that:

(1) Mr. Boluwaji's two uncles are highly influential and powerful, particularly in relation to the Nigerian police; and (2) the RPD erred in failing to recognize the Applicants' elevated status as members of the royal family and, therefore, that they were subject to threat from their ethnic Yoruba community.

[13] The RAD then considered whether it would be unreasonable for the Applicants to move to Port Harcourt. The panel concluded that the RPD properly turned its mind to the psychological evidence presented for Ms. Boluwaji and confirmed the RPD's analysis of the adult Applicants' ability to relocate to Port Harcourt in light of their education and employment history.

III. Issue and standard of review

[14] The sole issue in this application is whether the RAD erred in concluding that the Applicants have an IFA in Port Harcourt.

[15] The RAD's findings in the Decision will be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*)). None of the situations identified by the Supreme Court of Canada in *Vavilov* for departing from the presumptive standard of review apply in this case.

[16] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard. I have applied that guidance in my review, exercising restraint but conducting a robust review of the Decision for justification and internal coherence (*Vavilov* at paras 12-15, 85-86, 99; see also *Canada Post Corp. v Canada Union of Postal Workers*, 2019 SCC 67 at paras 28-29).

IV. Analysis

[17] The Applicants argue that the Decision is unreasonable because the RAD erred in concluding that there is no serious possibility they will be found by Mr. Boluwaji's family in Port Harcourt. Therefore, the RAD's failure to address the lack of enforcement of the VAPP in the region is also a reviewable error.

[18] The Applicants maintain their argument that they will not be safe in Nigeria due to the reach of their agents of persecution who have influence and power throughout the country. They submit that, as members of the Lagos royal family, they will be recognized by their Yoruba kinsmen in Port Harcourt who will, out of loyalty, inform Mr. Boluwaji's family of the Applicants' whereabouts. The Applicants also submit that the RAD ignored evidence in the NDP of the continued influence of traditional rulers in Nigeria.

[19] The Applicants state that their evidence with regards to the reach of the Lagos royal family is uncontradicted but I do not agree. The RPD found that the Applicants were generally credible except as to their evidence regarding the possibility of an IFA. Each of the RPD, the RAD, and this Court has examined and rejected their arguments regarding: the power and

influence of Mr. Boluwaji's family; the role of the King or "Oba", one of the uncles, and his retirement from the police force in 2002; the sphere of influence of the royal family specifically and tribal leaders generally; and, the Applicants' profile as no different from that of other Nigerians. In addition, the RPD discounted the Applicants' submissions regarding the likelihood that members of the Yoruba community in Port Harcourt would report their presence to the agents of persecution and the second RAD panel agreed with the RPD's analysis. I find no error in the RAD's consideration of this issue in the Decision.

[20] The Applicants' second submission parallels the concerns of the first RAD panel regarding the lack of enforcement of the VAPP in Port Harcourt. The Applicants submit that the second RAD panel failed to address the absence of police protection in Port Harcourt should they be found by their persecutors. They argue that their discovery in Port Harcourt remains a serious possibility but I do not find their argument persuasive.

[21] In the First RAD Decision, the RAD found that there was insufficient evidence to show that Mr. Boluwaji's family has particular influence on the police to enforce FGM against Ms. Boluwaji and the minor Applicant. The panel also found that the Applicants have no higher profile and are at no greater risk than ordinary Nigerians. Nevertheless, the RAD concluded that Port Harcourt is not a viable IFA for the Applicants because of the possibility the Applicants could be located in the city by Mr. Boluwaji's family. In such event, they would not be able to rely on the police for help to prevent FGM.

[22] In contrast, in the Decision under review, the RAD found that there was insufficient evidence to establish that Mr. Boluwaji's uncles had the means, ability or influence to locate the Applicants in Port Harcourt or to leverage others to do so. In addition, there was no evidence before the RPD or the RAD that the uncles were in fact continuing their search. The second RAD panel concluded that the Applicants do not face a serious possibility of persecution in Port Harcourt with the result that the question of police enforcement of the VAPP in Port Harcourt was not determinative:

[32] The Appellants argue that the RPD erred in its analysis of the laws of River State with respect to FGM. I do not find this analysis to be determinative in this appeal. The second prong of the IFA is to consider the Appellants' specific needs in relation to the IFA. As I have found that there is no risk in relation to the first prong, essentially that there is no evidence that indicates that the Appellants are being sought, and the persecutors' sphere of influence has not been established, I do not find the issue of whether the laws of FGM are enforced to be determinative.

[23] The RAD's conclusion that an analysis of the VAPP was not determinative in the appeal is justified and logical in light of its factual conclusion that the Applicants would not be pursued or found in the city. The second RAD panel independently analysed the RPD decision and the evidence in the record, and made factual findings that differ from those of the initial RAD panel.

[24] In the Decision, the RAD reviewed the RPD's findings against the evidence provided by the Applicants and the documents in the NDP. The second RAD panel addressed and rejected the Applicants' submissions that:

- Mr. Boluwaji's family are highly influential and powerful people, one of the uncles being both the Oba and a former high-ranking police officer in Nigeria and the other uncle being the Chief of Lagos Island;

- Mr. Boluwaji's uncles can leverage individuals, including the police, in Nigeria to locate the Applicants; and
- as Yoruba, the Applicants would be identified by any members of their ethnic group living in Port Harcourt and their location reported to Mr. Boluwaji's family.

[25] As noted above, the RAD also considered the passage of time since the threats and incidents that prompted the Applicants' departure from Nigeria. The precipitating incident dated from February 2017 and there was no indication of any subsequent efforts on the part of the agents of persecution to locate the Applicants. The second RAD panel agreed with the RPD that there was no evidence to conclude that Mr. Boluwaji's family continued to be interested in looking for them. The initial RAD panel did not address the question of any continuing search for the Applicants.

[26] I find no error in the RAD's analysis of the RPD decision and the evidence before it. The second RAD panel directly addressed the Applicants' primary submission regarding the ability of Mr. Boluwaji's family to locate them in Port Harcourt, particularly through the network of other Yoruba living in the city. The RAD's finding that the Applicants' agents of persecution do not have the means, influence or continuing interest to locate them in Port Harcourt is supported by the evidence and was fully explained in the Decision. The RAD's conclusions in the Decision that the Applicants face no forward-looking possibility of persecution in Port Harcourt and that the issue of enforcement of the VAPP in Port Harcourt was, therefore, not determinative of the Applicants' appeal, are justified and intelligible (*Vavilov* at para 96).

V. Conclusion

[27] The application is dismissed.

[28] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3382-19

THIS COURT'S JUDGMENT is that:

1. The style of cause in this matter is amended to name "The Minister of Citizenship and Immigration" as the Respondent.
2. The application for judicial review is dismissed.
3. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3382-19

STYLE OF CAUSE: JULIANA DAMILOLA BOLUWAJI, OLAKUNLE
JOSHUA BOLUWAJI, ANJOLAOLUWA DAMILOLA
BOLUWAJI v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATES OF HEARING: MARCH 4, 2020

**CONTINUATION OF HEARING HELD VIA VIDEO CONFERENCE ON MARCH 12,
2020 FROM OTTAWA, ONTARIO AND TORONTO, ONTARIO**

JUDGMENT AND REASONS: WALKER J.

DATED: MARCH 25, 2020

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