Federal Court  Cour fédérale

Date: 20201126

Dockets: IMM-6810-19

Citation: 2020 FC 1091

Montréal, Quebec, November 26, 2020

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

TOJU LISA OSAZUWA
FRANKLIN IMIEFAN OSAZUWA-OSAGIE
GABRIELLA ADESUWA OSAZUWA-OSAGIE
DANIELLA ABIEYUWA OSAZUWA-OSAGIE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a mother [the principal applicant] and her son and twin daughters, are citizens of Nigeria. They seek judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision from the Refugee Appeal Division

[RAD] dated October 15, 2019, which dismissed their appeal and confirmed the decision of the Refugee Protection Division [RPD] refusing their refugee claim.

[2] The principal applicant fears that her father-in-law who lives in Benin City will, with the complicity of the Ogboni fraternity, subject her daughters to female genital mutilation [FMG] and forcefully initiate her son into the village cult. The father-in-law, a militant member of Ogboni, wanted his son, the principal applicant's husband, to take his position within Ogboni, which he refused. Following the birth of their twin daughters, the couple refused that they be given tribal marks on their face and undergo FGM. From there on, the father-in-law tormented the couple, attempted to assassinate the principal applicant's husband and to kidnap their daughters. The couple and children left Nigeria, and arrived in Canada in March 2018, after having first travelled through the United States. The principal applicant's husband was not included in the claim because he was facing an inadmissibility hearing.

[3] The existence of a viable internal flight alternative [IFA] was the determinative issue in this case. First, the tribunal must be satisfied on a balance of probabilities that there is no serious possibility of the applicant being persecuted in the part of the country to which an IFA exists (section 96 of the IRPA), or that the applicant would not be personally subjected to a danger described in paragraph 97(1)(a), or to a risk described in paragraph 97(1)(b) of the IRPA. Second, the tribunal must determine that, in all of the circumstances, including the circumstances particular to the claimant, conditions in the part of the country where a potential IFA has been identified are such that it would not be objectively unreasonable for the claimant to seek refuge there, before seeking protection in Canada.

[4] The RPD found that the Applicants had not demonstrated that they would not have an IFA in Lagos or Ibadan. The RAD determined that there was an IFA, but in light of recent documentary evidence, modified the IFA to Port Harcourt. Regarding the first prong of the test for an IFA, the RAD stated that the principal applicant's father-in-law clearly does not have any higher influence on State authorities to track and find the Applicants if they move to another area or state such as Port Harcourt. Regarding the second prong of the test for an IFA, the RAD concluded that the principal applicant is highly educated, speaks fluent English, has several years of work experience and can therefore easily find employment in Port Harcourt and find housing. Moreover, the documentary evidence does not suggest that criminality and violence exists to the point that it would be unreasonable to live in Port Harcourt for a single woman with young children (even though she is clearly married and nothing indicates that the couple has the intention to separate).

[5] The Applicants submit that the RAD erred in its assessment on both the first and second prongs of the IFA test and that the impugned decision is unreasonable, which is disputed by the defendant who seeks the dismissal of the present judicial review application.

[6] Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 82 [*Vavilov*]). When conducting reasonableness review, a reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention, seeking to understand the

reasoning process followed by the decision-maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker.

[7] The Applicants submit that the RAD erred regarding the first prong of the IFA test in respect of the influence of the principal applicant's father-in-law: despite the several complaints made by the principal applicant's husband, who was himself a police officer, nothing was done by the authorities to arrest him except to simply speak with him. Since the documentary evidence shows that corruption is rampant in Nigeria, and that regulations and security measures are lax regarding confidentiality of personal information with banks or cellphone providers, it would be unreasonable to conclude that the principal applicant's father-in-law could not retrace the Applicants in Port Harcourt.

[8] Here, the Applicants simply dispute the characterization of the evidence and weight attributed to same. While a different interpretation is possible, if an inference can reasonably be made from the evidence, it should be allowed to stand. Contrary to what the Applicants contend in their written submissions, the principal applicant's father-in-law appears from the evidence to have been arrested, but released on bail and the investigation is still ongoing (see Exhibit B in support of the applicant's affidavit, Applicants' record at pages 25-28). The Applicants acknowledged this during the hearing but submitted that, while he has been arrested, he is always released and nothing other than ongoing investigations has taken place. They submit that this is evidence that the principle applicant's father-in-law has influence. However, the Applicants' speculations on this point are unsupported by the record. It was therefore reasonable for the RAD

to conclude that the Applicants have failed to demonstrate how the principal applicant's father-in-law has the influence or resources to get help to locate them.

[9] The RAD also relied on recent documentary evidence that shows that the Ogboni society has declined over the past decades, and its power and influence is now almost defunct. The Applicants also challenge this finding. However, the Applicants have not satisfied this Court that the RAD made a selective reading of the documentary evidence. The RAD's determination that there was insufficient evidence on the record to establish that the persecutors have the capacity, reach or influence to locate the Applicants in Port Harcourt is a finding of fact warranting a high level of deference and a reviewing court should not be prompt to substitute itself to the RAD.

[10] The Applicants are also challenging the conclusion of the RAD regarding the second prong of the IFA test. In particular, the Applicants are stating that the documentary evidence does not support the conclusion that it would be reasonable for a woman with young children to live in Port Harcourt. There is no reason to disturb this finding. The sole question is whether there is evidence supporting the rationale and conclusion of the RAD that, in all circumstances, conditions in Port Harcourt are such that it would not be unreasonable for the Applicants to seek refuge there, before seeking protection in Canada. The answer in this case is yes. It was open to the RAD to find, that relocating to Port Harcourt was overall reasonable based on the personal circumstances of the Applicants, namely in the case of the principal applicant, her level of education which is above the total years of education completed on average for Nigerian woman, her many years of stable work experience in quality jobs, and the fact that she speaks Yoruba and is also fluent in English.

[11] For greater certainty, I also dismiss the reproach that the RAD ignored or made a selective reading of the documentary evidence in regard of the situation of single women (without the support of a male relative). The Applicants are a family. The principal applicant's husband is apparently also seeking asylum in another proceeding. There is nothing on the record indicating that the principal applicant is divorcing or separating from her husband. I therefore see no merit to this argument.

[12] Overall, the Court sees no reason to intervene and disturb the general conclusion reached by the RAD. In essence, the Applicants are asking this Court to reweigh the evidence regarding the proposed IFA. As per *Vavilov*, decision-makers may assess and evaluate the evidence before them and "absent exceptional circumstances, a reviewing court will not interfere with its factual findings" (*Vavilov* at para 125).

[13] The application for judicial review is dismissed. No question of general importance has been raised by counsel.

JUDGMENT in 6810-19

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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