Federal Court Cour fédérale

Date: 20210202

Docket: IMM-7429-19

Citation: 2021 FC 111

Ottawa, Ontario, February 2, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

TUNDE IKECHUKWU OGUNKUNLE
TEMITAYO MARY OGUNKUNLE
OLUWADEMILADE REHOBOTH OGUNKUNLE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision from the Refugee Appeal Division (RAD) dated November 21, 2019, which confirmed the refusal of the refugee claim of the Applicants as there was a viable internal flight alternative (IFA).

[2] The principal Applicant (PA), his wife and their minor daughter are citizens of Nigeria and are claiming refugee protection for fear of female genital mutilation and tribal markings by family members. They also have a daughter born in Canada that is not part of the claim. The Applicants received United States visas in March 2017 and left Nigeria for the United States in September 2017. They arrived in Lacolle, Québec, Canada, in October 2017 and sought asylum therein.

[3] The Refugee Protection Division (RPD) rejected the claim, as there was a viable IFA in Port Harcourt, Nigeria. The RAD confirmed the decision based on the IFA, including the credibility (as is evident in the RPD decision to which reference is made by the RAD) of the evidence relating to the agents of persecution and the IFA.

[4] An IFA is a concept whereby a person may be a refugee in one part of a country, but not in another. The burden is on the refugee claimant to establish, on a balance of probabilities, that they seriously risk persecution in the IFA or that the conditions are such that it would be objectively unreasonable in the circumstances that they seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at pp 593, 597 (FCA)). This second prong of the analysis requires "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15).

[5] This judicial review relates to the reasonability of the RAD's findings on a viable IFA and its consideration of the jurisprudential guide (JG). A reasonable decision is internally

coherent, rational and justified in light of the factual and legal constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[6] The Applicants advance preliminarily, inarticulately, that as the JG TB7-19851 was relied on by the RAD and that it is now revoked, the claim should be remitted for consideration.

[7] Subsidiarily, the Applicants argue that they face persecution in the IFA as the PA has family in the IFA, which weighs on the agents of persecution's capacity to locate the Applicants upon relocation. They further raise that this is not remedied by the fact that the IFA is a large urban area, nor does the presence of a large population render the IFA reasonable.

[8] It is also argued, in considering the Chairperson's Gender Guidelines, that the IFA is unreasonable due to community rejection and stigmatization from refusing to circumcise the daughters; alternatively, this would need to be concealed.

[9] Firstly, with regard to the use of the JG, notwithstanding its revocation, the Chairperson of the Immigration and Refugee Board indicated that the framework of analysis, absent factual findings, may be of reference. The Federal Court has also recently confirmed its use provided the "nature and degree of the RAD's reliance on the JG … do[es] not weaken its conclusions to the point of unreasonableness" (*Agbeja v Canada (Citizenship and Immigration)*, 2020 FC 781 at para 78). This Court should then pursue its review on the reasonableness of the RAD's decision.

[10] In the present matter, the RAD conducted an independent analysis of the evidence and considered the Chairpersons' Guidelines on Child Refugee Claimants and the Chairperson's Gender Guidelines.

[11] The RAD determined on the first prong of the IFA analysis that the Applicants failed to establish the power and the reach of the agents of persecution, indicative of serious risk of persecution in the IFA. Specifically, amongst other evidentiary issues, it noted that the PA's testimony was confusing and vague as to what family was in the IFA and their level of contact over the years. The PA, therefore, failed to establish credibly that there was family in the IFA to fear. Even were this credibly established, the RAD remarked that the Applicants' location would not be known without disclosure and there is no serious possibility of random encounter in the IFA.

[12] On the second prong of the IFA test, the RAD examined the conditions of the IFA, as well as the Applicants' circumstances – family unit, faith, language, education and professional experience – and found that they had not established that the IFA is unreasonable. While the situation is not mirrored, the RAD considered here the JG insofar as it offered insight into various considerations in finding a viable IFA for those fleeing non-state actors in Nigeria.

[13] With respect to the misapprehension of the evidence, it does not appear that the RAD has unreasonably considered the evidence or overlooked the latter in referencing to circumstances of the IFA. Furthermore, the RAD is presumed to have assessed and weighed the entire record before it (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24). The

Applicants' contention goes to, in essence, the appreciation or weight of the evidence and it is not the role of this Court to entertain such an exercise (*Vavilov*, above, at para 83).

[14] This Court should also dismiss the Applicants' secondary arguments on the reasonableness of the IFA as it was not part of the record before the RAD (*Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 23-24). Regardless, the arguments do not meet the bar required by case law on the second prong of the IFA test.

[15] Lastly, upon review of the RAD's decision, it cannot be said that the JG was relied on such that the reasons are not justified on the Applicants' personal circumstances – these supporting a finding that the IFA is reasonable. The JG, as a relevant analysis framework that does not encroach on actual factual determinations, was indeed recently acknowledged by the Federal Court of Appeal (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at paras 75, 95, 98, 100).

[16] For the aforementioned reasons, the judicial review is dismissed.

JUDGMENT in IMM-7429-19

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed. There is no serious question of general importance to be certified. The style of cause is amended to replace the "Minister of Immigration, Refugees and Citizenship" with the "Minister of Citizenship and Immigration".

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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