Federal Court Cour fédérale

Date: 20201027

Docket: IMM-6769-19

Citation: 2020 FC 1006

Ottawa, Ontario, October 27, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MUSIBAU THOMPSON ONJOKO
MARYAM DOLAPO ONJOKO
MUSTAPHA AYODEJI ONJOKO
MUBARAQ OLAMIDE ONJOKO
MONSTURAT JADESOLA ONJOKO

Applicants

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Musibau Thompson Onjoko [Mr. Onjoko] and his four children, Maryam (24 years old), Mustapha (20 years old), Mubaraq (18 years old), and Monsturat (12

years old), are citizens of Nigeria. Mr. Onjoko and his children fear persecution in Nigeria and have sought protection in Canada.

[2] Mr. Onjoko reports that he is next in line to be king of his town in Nigeria and fears he will be forced to accept the position. He details that his father, uncle, and two brothers died while holding the position and he believes their deaths were the result of poisoning. Mr. Onjoko also reports the ceremony that would install him in the position requires one of his daughters to participate in traumatic rituals, rituals that have resulted in serious mental heath issues and death for those who have performed them in the past.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected the claim for protection on the basis that the applicants had a viable internal flight alternative [IFA] in Abuja. In a decision dated October 22, 2019, the Refugee Appeal Division [RAD] identified analytical errors within the RPD decision but concluded that those errors did not undermine the correctness of the RPD decision.

[4] The applicants apply under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for review of the RAD decision. They submit the RAD erred in assessing the second prong of the two-part IFA test by ignoring or disregarding relevant evidence that demonstrated the IFA was objectively unreasonable. The respondent submits the RAD reasonably assessed the evidence relating to conditions within the proposed IFA and that it was reasonably open to the RAD to conclude, as it did, that Abuja provided the applicants with a

viable IFA. I am unable to identify any error warranting my intervention. The Application is dismissed for the reasons that follow.

II. Preliminary Matter

[5] Counsel for the respondent notes that the proper respondent in this Application is the Minister of Citizenship and Immigration, not the Minister of Immigration, Refugees and Citizenship, and submits that the style of cause should be amended. The applicants do not take issue with the proposed amendment and I am satisfied that the correct respondent in this matter is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, r 5(2) and IRPA, s 4(1)). Accordingly, the style of cause is amended to name the Minister of Citizenship and Immigration as the respondent (*Federal Courts Rules*, r 76).

III. Decision under Review

[6] The RAD set out the two prong test to be applied in assessing an IFA. The first prong assesses whether the claimants would face a serious possibility of persecution in the part of the country where the IFA is located. The second prong assesses whether it would be objectively unreasonable for the claimant to seek refuge in the proposed IFA, taking into account all of the circumstances, including those specific to the claimant.

[7] The RAD recognized that the second prong of the IFA test is an objective test, that a claimant must overcome a very high threshold to demonstrate an IFA is unreasonable, and that

conditions that demonstrate jeopardy to the life or safety of a claimant would satisfy that threshold. The RAD then noted that in assessing the second prong of the test the claimant's personal circumstances, the conditions in the IFA, and the claimant's ability to access the IFA are all circumstances to be considered.

[8] The RAD found that generalised risks of violence posed by Boko Haram terrorism and high crime rates are relevant factors to consider under the second prong of the IFA test but noted the level of indiscriminate terrorism or generalized criminal violence would have to be very high to render the IFA unreasonable. The RAD noted that the applicants have not taken the position that they would be personally targeted by Boko Haram in the IFA or that their beliefs or opinions place them at additional risk.

[9] The RAD concluded, relying on *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643, that the degree of risk posed by Boko Haram and generalized criminal violence did not rise to a level that would render the IFA unreasonable and that there was no evidence of increased future risk. The RAD acknowledged that the evidence indicated that newcomers are often required to live on the outskirts of Abuja and that this may increase exposure to Boko Haram activity. However, the RAD relied on evidence indicating that areas to the east and southeast of Abuja had not experienced Boko Haram activity and that the applicants had not identified any circumstance that would prevent them from residing in these areas.

[10] In addressing the risk of travel to Abuja, the RAD noted that Abuja has a major airport and that travel could be accomplished without crossing battle lines between government forces

and Boko Haram. The RAD also acknowledged evidence identifying a risk of carjacking on roads leading to airports in Nigeria but noted there was no evidence to demonstrate that this was a significant possibility for any one vehicle.

[11] The RAD found, based on education and work experience, that despite the difficult circumstances in Abuja, Mr. Onjoko would be comparatively well positioned to obtain employment and housing. The RAD noted that although the applicants did not have other family in Abuja, they were in a position to provide each other with mutual support.

IV. Issues and Standard of Review

[12] The applicants raise three issues relating to the RAD's consideration of the second prong of the IFA test:

A. Was the RAD's decision regarding the threat of terrorism in Abuja reasonable?

B. Was the RAD's decision regarding the danger in travelling to Abuja reasonable?

C. Was the RAD's decision regarding the applicants' employment prospects reasonable?

[13] The RAD's IFA determination is to be reviewed against the standard of reasonableness (*Pidhorna v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1 at para 20). None of the factors that could rebut the presumption of reasonableness are present in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 33, and 53 [*Vavilov*]). Reasonableness review focuses on both the reasons for the decision and the outcome.

A decision will be reasonable if it "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" (*Vavilov* at para 85). To be reasonable a decision must be justifiable, intelligible, and transparent to those subject to the outcome (*Vavilov* at para 95).

V. Analysis

A. *The RAD reasonably concluded that the risk of violence posed by Boko Haram terrorism did not render the IFA unreasonable*

[14] The applicants argue that the RAD ignored key evidence when finding that the current and future risk posed by generalized violence linked to terrorism did not rise to the level that would render the IFA unreasonable. Relying on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) [*Cepeda-Gutierrez*], the applicants submit that the RAD ignored, disregarded, or misconstrued documentary evidence that reported there had been significant attacks in the IFA and that further attacks were likely in the future.

[15] Contrary to the applicants' submissions, the RAD does not conclude that there is no future risk of a terrorist attack in Abuja. Rather the RAD acknowledges Boko Haram activity in northern Nigeria, including the evidence of increased activity in the three northeastern states. The RAD notes that Boko Haram had carried out bombings in Abuja in 2011 and 2014 and sets out a summary of the impact of Boko Haram activity in Abuja since 2011. On the basis of this analysis, and noting the absence of any evidence of an increased risk of attack in Abuja the RAD reasonably concludes that there is "no evidence that Boko Haram has carried out bombings or killings in Abuja since 2014. While there will likely be further attacks in Nigeria, there is no

evidence that there is an increased risk of such attacks occurring in Abuja." While the applicants may disagree with the manner in which the RAD has interpreted and characterized the level of violence, this disagreement does not render the decision unreasonable (*Amadi v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1166 at para 50 and *Singh v Canada (Minister of Citizenship and Immigration)*, 2020 FC 350 at para 39).

B. *The RAD did not err in assessing the risk posed in travelling to the IFA*

[16] The applicants argue that the RAD should have overturned the RPD decision because the RPD decision was unreasonable. The applicants point to the RAD's finding that the RPD erred in failing to adequately address the risk Boko Haram terrorism posed to the applicants in travelling to the IFA. The RAD found the RPD's error did not affect the correctness of the decision. The applicants further argue that the RAD's assessment of the evidence relating to travel risk was unreasonable as it failed to engage with evidence that carjacking is a concern on roads leading to airports in Nigeria.

[17] The applicants have misstated the role of the RAD. The RAD's role is to review RPD decisions on the correctness standard. This requires that the RAD consider the RPD decision, then carry out its own analysis of the record and reach a final determination, either confirming the RPD decision or setting it aside and substituting its own determination on the merits of the refugee claim. It is only when the RAD is of the opinion that it cannot provide such a final determination without hearing the oral evidence presented to the RPD that the matter can be referred back to the RPD for redetermination (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103).

[18] Again, the RAD did not ignore the evidence relating to the risk of carjacking. Instead it recognized the evidence that carjacking on roads leading to airports is a particular concern. However, the RAD also noted that there was no evidence to establish that a carjacking on a road to or from an airport was a “significant possibility for any one vehicle.” In the absence of any evidence quantifying the generalized risk or demonstrating that the applicants’ personal circumstances placed them at a particular risk, I am unable to find that the RAD’s determination was unreasonable.

C. *The RAD’s conclusion regarding the applicants’ employment prospects was reasonable*

[19] The applicants argue the RAD’s decision regarding employment prospects was unreasonable for three reasons. First, the RAD unreasonably ignored evidence of Nigeria’s high unemployment rate, which the applicants contend is relevant evidence for determining whether Mr. Onjoko and his eldest daughter could find employment in Abuja. Second, the RAD relied on the IRB’s Jurisprudential Guideline TB7-19851 [JG] to support its conclusion that Abuja was a viable IFA. However, the JG was subsequently revoked. Third, the applicants submit the RAD’s conclusion that, in the absence of family in Abuja, the applicants can provide each other with mutual support is a finding made without foundation that trivializes the challenges the applicants would face in Abuja and renders the decision unreasonable.

[20] A decision maker is presumed to have weighed and considered all evidence before it and is not required to refer to every piece of evidence (*Cepeda-Gutierrez* at para 16 and *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24).

[21] In this instance, the RAD does not specifically site documentary evidence detailing the high unemployment rate in Nigeria. However, the RAD does refer to the JG. The JG includes a preamble that describes circumstances in Nigeria that are relevant to an assessment of whether an IFA is reasonable. Education and employment in Nigeria is addressed and the JG sets out information that is fully consistent with that contained in the documentary evidence the applicants rely upon. The JG notes that the evidence indicates that there is a high unemployment rate in Nigeria and that obtaining employment can be difficult.

[22] In its decision the RAD acknowledges that in terms of employment and accommodations the applicants may well face challenges in establishing themselves in Abuja, but concludes the evidence does not demonstrate a situation that rises to the level of rendering the IFA unreasonable. While the RAD does not specifically address the evidence relating to unemployment, I am satisfied that the RAD, in referencing the JG and recognizing the employment challenges the applicants may face, was aware of and considered this evidence. While the applicants take issue with the RAD's conclusion, the conclusion was reasonably available to the RAD on the evidence before it. The RAD's decision is also consistent with this Court's jurisprudence to the effect that poor job prospects or a high unemployment rate are not enough to render an IFA objectively unreasonable (*Adebayo v Canada (Minister of Immigration, Refugees and Citizenship)*, 2019 FC 330 at para 59 and *Jean Baptiste v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1106 at para 28).

[23] Citing *Cao v Canada (Minister of Citizenship and Immigration)*, 2020 FC 337 [*Cao*], the applicants argue that the withdrawal of the JG after the RAD's decision renders the RAD's determination unreasonable.

[24] This Court has held that the revocation of a JG that was in force and adopted by the RAD at the time a decision was rendered will undermine support for the RAD's findings on the issues for which the JG was relied upon (*Liang v Canada (Citizenship and Immigration)*, 2019 FC 918 at para 10 and *Cao* at para 39). However, where the RAD refers to a JG but recognizes the applicants' specific circumstances and comes to its own conclusions on the facts, the RAD's reliance on the JG will not necessarily weaken the conclusions reached to the point of unreasonableness (*Agbeja v Canada (Minister of Citizenship and Immigration)*, 2020 FC 781 at paras 77—78).

[25] In this case, the RAD does reference the JG, but only for the purposes of pointing out the applicants' circumstances relating to accommodations and employment within the IFA differ from those of the claimant in the case addressed in the JG, a single mother. The RAD independently considered and assessed the applicants' circumstances. It referenced the JG for the purposes of reinforcing its independent finding that challenges in securing accommodations and employment are not a basis upon which to conclude the IFA is unreasonable. The JG was not the basis for that finding.

[26] As was the case in *Agbeja*, the nature and degree of the RAD's reliance on the JG in this instance does not weaken the decision to the point of unreasonableness.

[27] Turning to the RAD's reference to the applicants providing mutual support, I appreciate and understand the applicants' view that these words fail to recognize the hardship that inevitably results from loss of employment and relocation. However, I find no fault in the RAD having expressed the view it did. I am unable to conclude, as the applicants have argued, that the RAD was unaware of the serious challenges the applicants will face in Abuja.

VI. Conclusion

[28] The Application is dismissed. No serious question of general importance has been identified by the parties and none arises.

JUDGMENT IN IMM-6769-19

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;
2. The style of cause is amended, removing the Minister of Immigration, Refugees and Citizenship, and naming the Minister of Citizenship and Immigration as the respondent; and
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6769-19
STYLE OF CAUSE:	MUSIBAU THOMPSON ONJOKO MARYAM DOLAPO ONJOKO MUSTAPHA AYODEJI ONJOKO MUBARAQ OLAMIDE ONJOKO MONSTURAT JADESOLA ONJOKO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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