

Federal Court



Cour fédérale

Date: 20210308

Docket: IMM-7902-19

Citation: 2021 FC 208

Ottawa, Ontario, March 8, 2021

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**FLORENCE MOYINOLUWA ALEX-ALAKE
OLUWATOBI KING FAVOUR ALEX-ALAKE
OLUWATOMI QUEEN GRACE ALEX-ALAKE
OLUWATAMILORUN ABISOLA PEACE ALEX-ALAKE
OLUWATENIOLA ABIMBOLA PRAISE ALEX-ALAKE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD], dated November 29, 2019, which confirmed that the Applicants were neither Convention

refugees nor persons in need of protection, as defined by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD found that the Applicants were not credible.

[2] For the reasons that follow, the application is granted.

II. **Background**

[3] The Applicants are citizens of Nigeria. The Principal Applicant gave birth in Nigeria to two sets of twins, a girl and a boy in November 2010, and two girls in December 2011. In her claim for protection, she asserts that her husband's family considered the birth of twins to be a bad omen. They demanded that the Minor Applicants undergo spiritual cleansing rituals, including female genital mutilation [FGM] for the girls. The Principal Applicant and her husband refused and, subsequently, were treated as outcasts. However, there were no concrete threats made against them until 2017, when the children had reached the age when the rituals were to be performed.

[4] Upon return from a vacation in the United States, the Principal Applicant claims that her husband's family confronted her again about the cleansing ritual and set a date for the rituals to occur. The Principal Applicant says she believed that the threats were serious and left to stay with her sister in Abuja in June 2017. She says that she was found there and assaulted by her father-in-law and some associates who left when they were confronted by her husband.

[5] The Applicants relocated to the United States on August 25, 2017. They came to Canada on February 23, 2018 and claimed protection.

[6] The Refugee Protection Division [RPD] found that the Applicants were not credible because of a number of issues with their story including delay in leaving Nigeria and the fact that the children had been left in Nigeria on several occasions when the Principal Applicant travelled to the United States. The Principal Applicant's evidence regarding the breakdown of the relationship with her husband, her husband's affidavit and a medical report relating to the alleged assault by the father-in-law were not accepted. Similarly, a police report of a complaint about the alleged threats was discounted.

[7] Based on its negative credibility findings, the RPD refused to give any weight to the report of a registered psychotherapist detailing the Principal Applicant's medical and psychological symptoms.

[8] The RAD confirmed the RPD's decision and dismissed the appeal. The RAD found that there was insufficient credible evidence of a threat of a cleansing ritual with FGM for the Minor Applicants in Nigeria.

III. **Issue**

[9] The sole issue is whether the RAD's decision is reasonable.

IV. **Analysis**

[10] The applicable standard of review in this matter is reasonableness: *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 30.

[11] In determining the reasonableness of a decision, reviewing courts are not to reweigh or reassess the evidence: *Vavilov* at para 125. Assessments of credibility and authenticity are part of the fact-finding process by decision makers and their findings should not be disturbed lightly: *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6 [Azenabor]. However, such findings are not immune from review: *Azenabor* at para 6.

[12] The Federal Courts have long held that the examination of an applicant's claim should not be microscopic and pursued with a zeal to impugn it: *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444. In this instance, the RAD devoted 26 paragraphs of its reasons to pick apart the Applicants' evidence with microscopic zeal as had the RPD in the decision under appeal.

[13] In *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 20-26, the Court summarized the main principles governing the assessment of credibility of refugee applicants. Among these principles is that a negative credibility finding cannot be founded on minor contradictions that are secondary or peripheral to the refugee protection claim:

...The decision-maker must not conduct a too granular or overzealous analysis of the evidence. In other words, not all inconsistencies or implausibilities will support a negative finding of credibility; such findings should not be based on a microscopic examination of issues irrelevant to the case or peripheral to the claim.

Lawani, at para 23; see also *Abou Loh v Canada (Citizenship and Immigration)*, 2019 FC 1084 at para 36.

[14] In the present matter, the RAD displayed zeal to find instances of contradiction in the Applicants' testimony, for which they had provided reasonable explanations, and was over-vigilant in its microscopic examination of the evidence. The Principal Applicant explained, for example, that she had no reason to fear that her husband's family would take action to subject the children to rituals including FGM until the children were older and only after concrete threats were made upon her return from the United States in 2017 to attend the funeral of her husband's grandmother.

[15] The RAD Member writes at para 12 of her reasons:

I do not find that there is a serious possibility of persecution for the Appellants. This is because there is insufficient credible evidence that there is a threat of a cleansing ritual with FGM in Nigeria.

[16] The RPD had accepted that the Principal Applicant had herself undergone FGM based on a Canadian medical report that she had submitted in evidence. Apart from herself, close family members had suffered serious consequences from the imposition of FGM. And she had been forced to undergo spiritual cleansing at great personal cost in order to become pregnant at the demand of her father-in-law. The RPD and RAD relied on these facts to find that the Principal Applicant's explanation for her actions in 2017 were not credible, a conclusion that the Court has difficulty understanding.

[17] The RAD Member accepted the RPD's conclusion that if there had been threats to the children, the Principal Applicant would have taken them seriously. Her failure to do so, the RAD found, weighed against her credibility and the likelihood the threats were made. The RAD accepted documentary evidence that parents in Nigeria can refuse FGM although it may lead to pressure from family. This, the RAD found, was not tantamount to serious harm and not persecution. Particularly where, as here, the evidence was that the husband was opposed to the procedure.

[18] The main concern the RAD had was with the Principal Applicant's alleged failure to take the threat of rituals seriously as evidenced by her actions. Similarly, the RPD had been concerned with her delay in leaving Nigeria to seek protection for herself and her children and her prior trips to the United States in August 2016 and May 2017 during which she had not sought asylum. While that was a factor to be taken into consideration, the Principal Applicant had explained to the RPD that the need to leave the country had not crystalized until her father-in-law sought to forcibly remove her children on July 20, 2017 for the purpose of carrying out the rituals, including genital mutilation, upon them. The reasons provided by the RAD for discounting this explanation delve at length into the Principal Applicant's personal experiences with such rituals. Although the RAD refers to the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guideline] it is not clear from the analysis that the RAD applied the Gender Guideline. The tone of the reasons throughout is skeptical about the risk of gender-based persecution in Nigeria.

[19] An affidavit from the Principal Applicant's sister described how the family had sought refuge with her to escape the rituals. However, it states that the Applicants fled to Lagos in June rather than July 2017 as stated in their claim. The discrepancy, they explained, was a typing error. The RAD found this to be significant inconsistency weighing against the reliability of the whole affidavit.

[20] The RAD also points to a minor difference between the husband's affidavit, that of the sister and the Principal Applicant's evidence as to who recommended that she seek refuge in Canada. While the RAD acknowledges that this is a minor inconsistency, the Member indicates that she took it into account in weighing the evidence against the likelihood of forced FGM and rituals.

[21] The police report about the complaint made by the Principal Applicant was discounted because it is dated December 13, 2018 rather than when the threats were made by the father-in-law. The explanation provided was that her husband obtained it for her later and that they had not thought to get one at the time as her husband sought to reassure her that he could deal with the situation. The RAD found that this was not reasonable because "it does not support a finding that they could refuse the FGM and the ritual." That conclusion is not intelligible.

[22] A hospital report was in evidence before the RPD indicating that the Principal Applicant had been treated and monitored overnight for a concussion resulting from a fist blow to the head on June 20, 2017. The report was not signed and indicated that it had been downloaded and printed on September 28, 2018. The RPD dismissed the report as it was not an original and was

not accompanied by other documents such as a timed and dated discharge statement. The RAD discounted it because it did not provide evidence that it was the agents of persecution who assaulted the Principal Applicant. In my view, the report was at least some evidence in support of the Applicants' claim worthy of consideration.

[23] The Principal Applicant's husband remains in communication with his children and swore an affidavit in support of the Applicants' claim. The RPD concluded from this that the Principal Applicant's relationship with her husband had not broken down, contrary to her evidence. For reasons that are unintelligible from the analysis, the RAD focused on whether the evidence established that the husband remained in Nigeria. But it is an example of how suspicion that the Principal Applicant and her husband concocted the story to claim protection in Canada permeates the RAD decision.

[24] The Principal Applicant was interviewed and tested by a registered psychotherapist in Canada. She was found to be experiencing symptoms of post-traumatic stress, generalized anxiety and major depression consistent with "someone who has experienced fear, harassment, threats, violence, and significant trauma." The RPD accepted the report and took steps to address the symptoms during the hearing. However, it did not give weight to the report as supporting the Principal Applicant's credibility about the history of events in Nigeria. Similarly, the RAD found that the report did not address the flaws that the panel had found in the evidence.

[25] While I agree with the Respondent that the weight to be afforded medical reports is dependent on the circumstances of each case, in my view it was unreasonable for the RAD to

refuse to accord any weight to the report simply because it did not address the flaws in the evidence to the member's satisfaction.

V. **Conclusion**

[26] In this matter, the RAD's zeal and microscopic analysis of the evidence is inconsistent with a reasonable decision. The RAD's decision is neither internally coherent nor justified in light of the legal and factual constraints.

[27] Despite credible supporting medical and psychological evidence, the RAD attempted to find instances of contradictions in minor discrepancies for which the Applicants provided reasonable explanations.

[28] The RAD's zeal to find instances of contradiction is evidenced by the RAD's own words:

There is inconsistency in the evidence about the reasons for the ritual. The RPD accepted that the Principal Appellant had undergone a spiritual cleansing. In doing so, it accepted that the family did put pressure on the Principal Appellant to undergo the ritual. There is insufficient evidence to contradict this account...
[Emphasis added.]

[29] It was not the role of the RAD to determine whether the evidence was sufficient to contradict the Applicants claim of persecution but rather whether the RPD had erred in its assessment of the claim.

[30] The application is granted and the matter will be remitted for reconsideration by a differently constituted panel. No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-7902-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted for reconsideration by a differently constituted panel; and
2. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7902-19

STYLE OF CAUSE: FLORENCE MOYINOLUWA ALEX-ALAKE
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V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE VIA OTTAWA AND
TORONTO

DATE OF HEARING: JANUARY 20, 2021

**JUDGMENT AND
REASONS:** MOSLEY J.

DATED: MARCH 8, 2021

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