

Federal Court



Cour fédérale

Date: 20210520

Docket: IMM-7685-19

Citation: 2021 FC 468

Ottawa, Ontario, May 20, 2021

PRESENT: Madam Justice Simpson

BETWEEN:

**OLAYINKA RASHEEDAT ADERIBIGBE
HUSSEIN DAMLARE ADERIBIGBE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS
(Delivered orally from the Bench by teleconference
at Ottawa, Ontario on April 30, 2021)

[1] This application is for judicial review of a decision of the Refugee Appeal Division [the RAD] of the Immigration and Refugee Board [the Board] dated November 19, 2020 [the Decision], in which it dismissed the Applicants' appeal from a decision of the Refugee Protection Division [the RPD] of the Board denying their refugee claims. The Applicants are a mother [the Principal Applicant] and her adult son [the Associate Applicant]. They are citizens

of Nigeria. The RAD Member dismissed their appeal on the basis that they have a viable internal flight alternative [IFA] in Nigeria in either Abuja or Port Harcourt.

[2] The Principal Applicant's younger daughter, aged seventeen [the Daughter], was granted refugee status in Canada in the RPD's decision. It found that she did not have an IFA in Nigeria. The Principal Applicant's husband [the Husband] has remarried and lives in Nigeria. He will not join the Principal Applicant in an IFA location.

[3] Prior to their departure from Nigeria, the Applicants lived in Lagos. The Principal Applicant was self-employed. She ran a stall in a market where she operated a business as a beverage distributor.

[4] The Principal Applicant claims to fear for her safety at the hands of her Husband's father and brothers because of her refusal to allow her Daughter to undergo female genital mutilation [FGM].

[5] The Associate Applicant fears persecution by the Black Axe cult. Its members attacked him in August 2017 and a month later killed one of his friends.

I. **The RAD Decision**

[6] The RAD Member found that the determinative issue was the availability of an IFA and that, as a result, issues of credibility and state protection, which had been decided by the RPD, did not need to be addressed.

[7] The RAD Member applied the two pronged test articulated in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.). It reads:

1. ...the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
2. Moreover, conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances including those particular to the claimant, for him to seek refuge there.

II. The First Prong of the Test

[8] The RAD Member found that the evidence did not establish that either of the agents of harm had the motivation or means to locate the Applicants in the proposed IFA locations.

[9] Regarding the Principal Applicant, the RAD Member noted that her Husband, who had also been opposed to FGM being performed on the Daughter, had continued to live in Lagos unharmed. He faced only a grudge from his family. The RAD Member found this to be consistent with the documentary evidence which indicated that social exclusion rather than violence is a common family response to parents who oppose FGM.

[10] The RAD Member also found that the Principal Applicant's belief that her in-laws would find her was purely speculative and that their profiles (a Muslim cleric, contractors and bank

employees) did not suggest they would have either the funds or the network needed to locate the Principal Applicant.

[11] Regarding the Associate Applicant, the RAD Member found that the Black Axe cult lacked the motivation and means to find the Associate Applicant. He had had only one negative encounter with cult members in Lagos and it occurred after he was randomly spotted in the street. Thereafter he remained in Lagos for a year without incident.

[12] Furthermore, the documentary evidence clearly indicated that changing universities to one in the IFA cities was a viable way to avoid the cult's attention.

III. **The Second Prong of the Test**

[13] The RAD concluded that the Associate Applicant could be supported by his mother and could study at the post-secondary level in both IFA cities. The RAD Member's conclusions that the IFAs were reasonable hinged on his finding that the Principal Applicant had a ten-year history of successful self-employment as a beverage distributor in Lagos. He therefore concluded that she could work and support herself and her son. This conclusion allowed the RAD Member to find that the Principal Applicant could secure accommodation even though it was expensive. The Member also concluded that the documentary evidence did not specifically mention discrimination on religious grounds. This meant that the IFAs were reasonable even though the Applicants would be members of the Muslim minority.

IV. **The Issues**

1. Was it unreasonable of the RAD Member to find that the Applicants had IFAs when the RPD had not found one for the Daughter?
2. Was it unreasonable of the RAD Member to conclude that the Husband's family lacked the motive and means to find the Applicants when the RPD had concluded that they did have the motive and means to find the Daughter?
3. Was it unreasonable of the RAD Member to conclude that because the Husband was not attacked by his family, the Applicant would be treated in the same way and would not be at risk of violence?
4. Was it unreasonable of the RAD Member to ignore the Associate Applicant's evidence that he was in hiding in Lagos for the year in which he was not attacked by cult members?
5. Was it unreasonable of the RAD Member to ignore evidence that the Black Axe cult operated on university campuses in the IFA cities?
6. Was it unreasonable of the RAD to conclude that the Principal Applicant could support herself and her son?
7. Was it unreasonable of the RAD to conclude that the Applicant could avail herself of mental health services in the IFA locations?

V. **Discussion and Conclusions**

A. *Issues 1 and 2*

[14] The RPD did not provide any analysis of risk when it concluded that the Daughter did not have an IFA in Nigeria. It simply concluded that she could not relocate alone. Further, when the RPD concluded that the Daughter would face a risk from her father's family if she returned to

Nigeria, it is clear that this statement was made in the context of her returning to Lagos. There was no discussion of her risk in any other locations.

[15] Further, the RPD's statements about the Daughter's potential IFA and risk were unsupported by any analysis. It was therefore reasonable of the RAD to disregard the RPD's findings when independently considering the Applicant's potential IFAs. This is particularly the case given that the Daughter, who is now safe in Canada, and who was the focus of the Husband's family's actions, would not be with the Applicants in the IFA locations. Accordingly, the issue of FGM for the Daughter was no longer a motivation for the Husband's family to locate the Principal Applicant, and there was nothing in the documentary evidence to suggest that there would be retaliation for her opposition to FGM.

B. *Issue 3*

[16] The fact that the evidence showed that families who supported FGM shunned parents who did not was borne out by the way the Husband's family treated him. It was reasonable of the RAD Member to note that fact, particularly in circumstances as described above in which there was no longer any prospect of FGM. Further, the documentary evidence did not indicate that spouses who were not blood relatives were treated differently.

C. *Issue 4*

[17] There is no evidence that the Associate Applicant was in hiding in the year before he left Lagos. However, he did testify that he kept a low profile and did not attend school or work. It

was unreasonable of the RAD to ignore this when relying on the fact that he was not attacked by the cult. However, in my view this error was not material. The finding about the son's risk was based on the documentary evidence that said that risk of unwanted attention from cults could be avoided by changing universities.

D. *Issue 5*

[18] The Associate Applicant did testify before the RPD that the Black Axe cult operated in universities in Port Harcourt and Abuja. However, the RAD Member reasonably found that this fact was not sufficient to create a risk that he would be identified and targeted in those universities because he had refused to join the cult in Lagos. The documentary evidence clearly stated that the way to escape unwanted attention from campus cults was to change universities. There was no suggestion that the cults in various locations communicated with one another about students who had failed to join their ranks.

E. *Issue 6*

[19] In my view, it was reasonable of the RAD to conclude on the available evidence that the Applicant could support herself and her son given her business experience as a self-employed beverage distributor. On her US visa application, the Principal Applicant noted that when self-employed she made 400,000 naira per month. The Principal Applicant did not dispute this monthly income figure before the RPD or the RAD and did not provide any evidence to relate it to the cost of living in the IFA locations.

[20] Here I should note that in her affidavit to the RAD, which introduced her new evidence, the Principal Applicant included a statement to the effect that she had no means to restart her business in an IFA. However, this statement was not offered as new evidence in accordance with the RAD rules and the RAD mentioned in the decision that it did not accept it.

F. *Issue 7*

[21] The medical reports indicated that the Principal Applicant suffered from PTSD, anxiety, and depression. Weekly counselling sessions were recommended. However, no medication was prescribed in connection with these disorders. The Principal Applicant attended monthly, not weekly, counselling sessions. In the Principal Applicant's opinion, there were no mental health services available in the IFA locations. The documentary evidence, however, showed that her subjective view was wrong. She also expressed concerns before the RPD about not being able to afford the services, and this concern was not mentioned by the RAD. In my view, this is explained by the RAD's conclusion that her self-employment would generate the funds required to cover her expenses.

VI. **Conclusion**

[22] The onus is on an applicant to show that an IFA is unreasonable. In my view, in the complete absence of any evidence about the amount of money needed to start her business, and about the purchasing power represented by her potential earnings, and about the cost of counselling by mental health practitioners, the finding that the IFAs were reasonable was itself reasonable.

[23] For all these reasons, the application for judicial review will be dismissed.

[24] No question was posed for certification for appeal.

JUDGMENT IN IMM-7685-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7685-19

STYLE OF CAUSE: OLAYINKA RASHEEDAT ADERIBIGBE, HUSSEIN
DAMLARE ADERIBIGBE v THE MINISTER OF
CITIZENSHIP, AND IMMIGRATION

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