

Federal Court



Cour fédérale

Date: 20210826

Docket: IMM-4790-20

Citation: 2021 FC 882

Ottawa, Ontario, August 26, 2021

PRESENT: Madam Justice Walker

BETWEEN:

PAUL NDUBISI ADESOMI ANYIRA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Paul Anyira is a citizen of Nigeria. He seeks judicial review of a September 9, 2020 decision of the Refugee Appeal Division (RAD) confirming the refusal of his refugee claim. The RAD agreed with the Refugee Protection Division (RPD) that Mr. Anyira has a viable internal flight alternative (IFA) in Lagos, Nigeria.

[2] For the reasons that follow, the application will be dismissed. Briefly, I find that the RAD committed no reviewable error in its analysis of Mr. Anyira's new evidence. The analysis is

detailed and transparent. The RAD set out the requirements for admission of new evidence on appeal and reasonably assessed each new document filed by Mr. Anyira against those requirements. Further, the RAD applied the well-established test for a viable IFA and thoroughly weighed the documentary evidence for Nigeria and the admissible appeal evidence in its decision. The RAD's conclusion that Mr. Anyira's agents of persecution, Boko Haram extremists, do not have the means or motivation to track him to Lagos reflects a reasoned consideration of the group's current reach and activities and Mr. Anyira's personal circumstances.

I. Background

[3] Mr. Anyira worked as a graphic artist and operated a farm in Borno state, Nigeria. On December 2, 2017, he was at a market selling stock when Boko Haram suicide bombers detonated two bombs. Mr. Anyira states that he intervened with a third suicide bomber and prevented further loss of life. He also states that Boko Haram witnessed his intervention and that he has been targeted by the group since his intervention in the attack.

[4] Mr. Anyira alleges that Boko Haram members slaughtered livestock on his farm on December 3, 2017. When informed of the attack, Mr. Anyira travelled to the farm but decided not to confront the men. Instead, he went to the police station to file a complaint and returned to the farm with two police officers. The Boko Haram members approached the officers and admitted the destruction. The officers advised Mr. Anyira to take pictures and return to the station. Mr. Anyira began photographing the aftermath of the slaughter but was assaulted and fled, returning to his home in Abuja.

[5] Mr. Anyira states that Boko Haram found and ransacked his Abuja house on December 19, 2017.

[6] Mr. Anyira alleges that he and his family have been subjected to telephone threats from Boko Haram that began in December 2017. He also alleges that those threats have continued since his departure from Nigeria and that his family have moved from place to place within the country due to their fear of the group.

[7] On February 24, 2018, Mr. Anyira left Nigeria. He arrived in Canada in March 2018 and claimed refugee protection the following month.

[8] On August 19, 2019, the RPD rejected Mr. Anyira's claim on the basis that his core allegations lacked credibility.

[9] On appeal to the RAD, Mr. Anyira argued that the RPD's credibility assessment was incorrect and that the RPD ignored his explanations for the purported inconsistencies and deficiencies in his evidence. He submitted new evidence to the RAD in support of his submissions.

[10] Upon receipt of Mr. Anyira's appeal record, the RAD notified him that it would consider the issue of an IFA in Nigeria as part of the appeal. Mr. Anyira provided submissions in response, arguing that he will not be safe anywhere in the country because Boko Haram operates throughout Nigeria and the police cannot protect him.

II. Decision under review

[11] The RAD reviewed the new evidence submitted by Mr. Anyira against the statutory requirements of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) and the requirement that the evidence be new, credible and relevant (citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 (*Raza*), confirmed in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 (*Singh*)). The RAD admitted a number of police reports and news articles that postdate the RPD decision and a letter from Mr. Anyira's wife dated August 26, 2020. The panel excluded other documents on the basis that they predated (or contained information that predated) the RPD decision, were undated, or were reasonably available to Mr. Anyira prior to the date of the RPD decision. I will refer to this latter category of documents as the Excluded Evidence.

[12] The RAD then dismissed the appeal and confirmed that Mr. Anyira is neither a Convention refugee nor a person in need of protection because he has a viable IFA in Lagos. In arriving at this conclusion, the member agreed generally with Mr. Anyira that the RPD erred in its adverse credibility findings. The RAD accepted his allegations as credible unless otherwise stated in the decision.

[13] Addressing the first prong of the test for an IFA, the RAD concluded that there is no serious possibility that Mr. Anyira would be persecuted or subject to a section 97 risk in Lagos on a balance of probabilities. The member considered each of Mr. Anyira's submissions, including his argument that Boko Haram operates everywhere in Nigeria and that his family have relocated continuously since his departure to remain safe from the group. The RAD found that

the evidence did not establish that his family's relocations resulted from ongoing threats from Boko Haram or that the group could locate them in Lagos. The member noted that there was no evidence of threats since 2018 and no indication that Boko Haram remained motivated to find Mr. Anyira.

[14] The RAD considered the evidence regarding Nigeria in the National Documentation Package (NDP) and the reach of Boko Haram within the country. The member found that the group's activities in the Lagos area are limited and that Mr. Anyira had not established that the group has the means to locate him there. In addition, in the RAD's view, Mr. Anyira does not have the profile of an individual Boko Haram would be likely to pursue. Finally, the RAD found that Mr. Anyira's position that Boko Haram could track him using phone and other electronic systems was speculative.

[15] The RAD also considered the second prong of the IFA test and concluded that Mr. Anyira had not established that a relocation to Lagos would be unreasonable for him. Despite observing that he had made no concrete arguments in this regard, the member canvassed Mr. Anyira's personal circumstances, his linguistic proficiency and religion, and the availability to him and his family of public resources, including education and healthcare, in Lagos.

III. Preliminary issue – Admissibility of Mr. Anyira's affidavit.

[16] The Respondent submits that significant portions of Mr. Anyira's affidavit dated October 30, 2020 are inadmissible or should be given little weight in this application because they do not comply with Rule 81(1) of the *Federal Courts Rules*, SOR/98-106. The Respondent

argues that the impugned portions consist of opinions, arguments and/or legal conclusions and do not present factual information necessary to the application.

[17] Mr. Anyira's affidavit focusses on the testimony he gave at the RPD hearing and challenges a number of the conclusions drawn by the RPD. He argues that he did not receive a fair hearing. Mr. Anyira also refers to facts already in evidence and attempts to explain aspects of his original and new evidence.

[18] The purpose of an affidavit is to put before the Court facts relevant to the dispute. In *Canada (Attorney General) v Quadrini*, 2010 FCA 47 (at para 18), the FCA stated that a court may strike all or part(s) of an affidavit where they are abusive or clearly irrelevant or "where they contain opinion, argument or legal conclusions". Mr. Anyira's affidavit contains relevant background information which is within the permitted scope of an affidavit but also contains opinions, arguments and legal conclusions regarding the issues before me and regarding issues that are not at play in this application. In the interests of proceeding efficiently, I will not parse the affidavit and strike individual paragraphs but will exercise my discretion and give no weight to those paragraphs of the affidavit that contain Mr. Anyira's arguments and opinions (*Abi-Mansour v Canada (Attorney General)*, 2015 FC 882 at para 30).

IV. Issues and standard of review

[19] Mr. Anyira submits that the RAD erred in rejecting the Excluded Evidence as it responds directly to the viability of Lagos as an IFA. He also submits that the RAD applied the wrong

criteria to the issue of a viable IFA and ignored evidence material to his personal circumstances and Boko Haram's operations and reach in Nigeria.

[20] The RAD's refusal to admit the Excluded Evidence and the merits of its decision are reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Onuwavbagbe v Canada (Citizenship and Immigration)*, 2020 FC 758 at para 20; *Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at paras 27-28 (*Okunowo*)).

[21] 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 (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 32).

[22] The onus is on Mr. Anyira to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the Court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. Analysis

1. *The RAD's treatment of the Excluded Evidence*

[23] It is important to bear in mind as a starting point that an appeal to the RAD of an RPD decision is intended to be paper-based (*Ching v Canada (Citizenship and Immigration)*, 2015 FC

725 at para 59). A RAD appeal is not a second chance for the claimant to submit evidence to answer weaknesses in their case identified by the RPD (*Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 15).

[24] Subsection 110(4) of the IRPA allows a claimant to present new evidence to the RAD in limited circumstances:

Evidence that may be presented	Éléments de preuve admissibles
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[25] In deciding whether to accept Mr. Anyira's new evidence, the RAD first had to determine whether it was admissible under subsection 110(4) of the IRPA. I agree with the Respondent that a claimant's new evidence must fall into one of the three categories described in subsection 110(4) (*Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at para 17) before the RAD considers the *Raza* factors in the context of the appeal (*Okunowo* at para 41; see also, *Singh* at para 63).

[26] Mr. Anyira submits that the RAD should have admitted the Excluded Evidence for two main reasons. He argues that his omission to file the Excluded Evidence with the RPD was largely the result of his former counsel's determination that it was not required as part of the

RPD's assessment of his claim. He also argues that, in any event, the RAD should not exclude evidence that is directly relevant to his case.

[27] The RAD examined each document or group of documents put forward by Mr. Anyira and provided concise and logical reasons for the inclusion or exclusion of the particular evidence. The member first applied the requirements of subsection 110(4) and then applied the *Raza* factors to the new evidence that satisfied the statutory requirements. The majority of the Excluded Evidence predated the RPD decision (medical records, phone purchase receipts, 2018 email) or was undated (letter from Mr. Anyira's wife, WhatsApp conversation). The RAD did not accept Mr. Anyira's explanation that he did not provide much of the Excluded Evidence to the RPD because his prior counsel did not suggest he do so. In the absence of an allegation of incompetence against his prior counsel, and after review of the substance of the evidence, the RAD concluded that Mr. Anyira could reasonably have been expected to provide the Excluded Evidence that predated the RPD's decision.

[28] Upon review of the Excluded Evidence and Mr. Anyira's submissions, I find no reviewable error in the RAD's reasoning or in the clarity of its refusal to admit the Excluded Evidence. The fact that current counsel disagrees with the determinations made by Mr. Anyira's prior counsel does not render the Excluded Evidence admissible. Mr. Anyira argues that it is unreasonable to expect perfection of counsel but I do not agree with this characterization of the RAD's decision. The RAD did not impose a standard of perfection on counsel. Rather, the RAD required evidence of incompetence of prior counsel and not merely a difference of opinion on the part of current counsel. Mr. Anyira's submission, coupled with his position that the RAD should

not exclude directly relevant evidence, undermines the RAD's role as an appellate tribunal and ignores the statutory requirements imposed by Parliament in subsection 110(4).

2. *The merits of the RAD's decision*

[29] The concept of an IFA is integral to the definition of a Convention refugee. If a claimant can seek refuge within their own country, there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country. Put differently, a claimant must be a refugee from a country and not only from one part of the country to be entitled to Canada's protection (*Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 39).

[30] The test for determining if there is a viable IFA was set out by the Federal Court of Appeal (FCA) in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*). The RAD must be satisfied on a balance of probabilities that:

1. Mr. Anyira will not be subject to a serious possibility of persecution or a section 97 risk in the proposed IFA; and
2. Conditions in the part of the country proposed as an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to Mr. Anyira, for him to seek refuge there.

[31] The test has been cited many times in the jurisprudence of this Court. The onus rests on Mr. Anyira to demonstrate that at least one prong of the test has been defeated (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) (*Thirunavukkarasu*); *Obotuke v Canada (Citizenship and Immigration)*, 2021 FC 407 at para 16).

[32] Mr. Anyira first argues that the RAD applied the wrong criteria to its determination of a viable IFA in Lagos. I do not agree. The RAD based its decision on the test in *Rasaratnam* and, in considering each element of the test, addressed Mr. Anyira's submissions and admissible evidence. Where relevant, the member considered the criteria highlighted by Mr. Anyira.

[33] Mr. Anyira's principal submission is that the RAD ignored evidence of his personal circumstances and documentary evidence regarding Boko Haram, resulting in an unreasonable decision. I note that, in the course of his submissions, Mr. Anyira relies at times on the Excluded Evidence. As I have found no error in the RAD's assessment of the proposed new evidence, I also find no error in the fact that the RAD did not refer to the Excluded Evidence in its substantive analysis.

[34] The RAD's decision rests on its findings that Boko Haram lacks the ability and motivation to track Mr. Anyira to Lagos. Mr. Anyira challenges these findings with arguments that rely on the general documentary evidence and on his personal circumstances and continuing profile as a specific target of the group.

[35] Mr. Anyira places considerable emphasis on Boko Haram's countrywide reach and its tentacles in the government and military forces of Nigeria. He argues that the RAD ignored documentary evidence that supported his contention that he could be found by the group in Lagos.

[36] I do not find Mr. Anyira's argument persuasive. His submissions are effectively a request that the Court reweigh the documentary evidence before the RAD and reach a different outcome, which is not the purpose of judicial review. I find no reviewable error in the RAD's analysis of Boko Haram's ability to locate individual citizens throughout Nigeria.

[37] The RAD reviewed the documentary evidence regarding Boko Haram at length in the decision. The member considered sources from the United Kingdom and Australia, among others, and a Response to Information Request from the Immigration and Refugee Board that indicate Boko Haram's capacity to pursue individuals who relocate is greatest in the northeast with diminishing capacity moving away from this region. The RAD pointed to evidence that Boko Haram's ability to function has diminished and that the group has limited capacity south of Abuja. The RAD also states that the evidence indicates that Boko Haram is not sufficiently sophisticated to track individuals using electronic or phone systems. The member concluded that Boko Haram would not have the means to locate Mr. Anyira in Lagos, on a balance of probabilities. In so doing, the RAD acknowledged news articles he provided that suggest the group continues to operate everywhere in the country but concluded that the articles could not be read as broadly as Mr. Anyira suggested. The articles in question did not outweigh the evidence in the NDP.

[38] Mr. Anyira relies on his family's personal experience with Boko Haram to bolster his contention that the group will be able to find him anywhere in Nigeria should he return. He submits that the RAD failed to reasonably consider the evidence of his family's continuous

relocation in Nigeria. He argues that they have moved repeatedly to evade Boko Haram and that he and they remain in danger to this date.

[39] The RAD made two findings in concluding that neither his past relocation nor his family's continued moves establish a section 96 or 97 risk to Mr. Anyira in Lagos. Mr. Anyira's evidence included a letter from his wife that stated she had moved a number of times within Calabar, a city in south Nigeria. The member stated that evidence regarding moves within Calabar is not evidence that Mr. Anyira could be located in Lagos. Moreover, the RAD found no link between his family's relocations and a fear of Boko Haram. His wife had not received any threats from Boko Haram. She felt only that she was being watched by members of the group who were hoping for a reappearance of her husband. As a result, the RAD found no evidence that Boko Haram had made threats against Mr. Anyira or his family since February 2018. I find no reviewable error in the RAD's consideration of the evidence.

[40] The RAD then assessed whether Boko Haram has any remaining motivation to locate Mr. Anyira. The RAD noted reports that Boko Haram tend to target high status individuals and those who have a public profile. The member stated that Mr. Anyira is not such an individual. While he may have been of interest to the group in 2017 and 2018 because of his intervention in the suicide bombing, he does not now have a prominent profile. Mr. Anyira argues that he remains of interest to Boko Haram because of the intervention but I am not persuaded by his argument. The fact that his account of the 2017 suicide bombing was found credible does not mean that the group necessarily continues to be interested in retribution.

[41] Mr. Anyira argues that the RAD erred in focusing on Boko Haram's motivation to find him, stating that when the risk of harm to him is certain, motivation is irrelevant. He relies on Justice Grammond's decision in *Gomez Dominguez v Canada (Citizenship and Immigration)*, 2020 FC 1098 (*Gomez Dominguez*). However, Mr. Anyira's reliance on the decision does not take into account the facts of the case and the dual aspect of Justice Grammond's analysis (*Gomez Dominguez* at para 30):

[30] In this case, the evidence shows that the FARC has murdered or abducted eight members of Ms. Gomez's family, that the latest of these murders is relatively recent and that Ms. Gomez has been personally threatened. These facts are not in dispute. They are proven on a balance of probabilities. They establish that the FARC has demonstrated, over a long period of time, an extraordinary motivation to attack family members, and the capacity to carry out its plans. However, the RAD concludes that this motivation and capacity have been lost due to the fragmentation of the FARC following the peace accord and the prolonged absence of Ms. Gomez and Mr. Cajiao. These conclusions are not findings of fact, but rather a risk assessment.

[42] The RAD's consideration of both Boko Haram's limited capacity to operate in southern Nigeria and the diminishing circumstances in which it is motivated to exercise that capacity is logical and comprehensive. The facts and evidence on which Mr. Anyira relies are significantly different from those in *Gomez Dominguez* where Justice Grammond found both capacity and "extraordinary motivation" on the part of the agents of persecution.

[43] Mr. Anyira submits that the RAD failed to assess the evidence of Boko Haram's influence in the Nigerian government. I do not agree as the member addressed this submission, albeit briefly. The RAD acknowledged an article that spoke to the group's informants within the government but concluded that the article did not establish means or motivation to track

Mr. Anyira because the article discusses those informants as being concerned with military matters.

[44] Turning to the second part of the IFA test, I find that Mr. Anyira's submissions regarding the difficulties he may encounter in relocating to Lagos do not identify a reviewable error in the RAD's decision. He has identified no evidence and made no submission that would suggest he has met the demanding requirement for unreasonableness that is the hallmark of the second prong of the *Rasaratnam* test (*Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at para 20, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) and *Thirunavukkarasu*).

[45] The RAD noted that Mr. Anyira pointed to jurisprudence regarding the impact of relocation on a claimant's children, his age, likelihood of safely reaching the IFA, and ability to reside there legally, but did not explain how these considerations applied to him. Nevertheless, the RAD considered issues of travel and transportation to Lagos, accommodation, religion and healthcare. The member also considered Mr. Anyira's education and employment prospects together with his linguistic capabilities. The RAD's analysis of the second prong of the IFA test is logical and justified taking into account the evidence and Mr. Anyira's submissions.

VI. Conclusion

[46] The application is dismissed.

[47] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4790-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4790-20

STYLE OF CAUSE: PAUL NDUBISI ADESOMI ANYIRA v THE
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APPEARANCES:

Stewart Istvanffy FOR THE APPLICANT

Chantal Chatmajian FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude Légale Stewart Istvanffy FOR THE APPLICANT
Barristers and Solicitors
Montréal, Québec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Québec