

Federal Court



Cour fédérale

Date: 20211020

Docket: IMM-3940-20

Citation: 2021 FC 1110

Ottawa, Ontario, October 20, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

WALE MATTHEW IFALOYE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Wale Matthew Ifaloye is a citizen of Nigeria. He seeks judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the determination of the Refugee Protection Division [RPD] of the IRB that Mr. Ifaloye is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and

97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The determinative issue was the existence of internal flight alternatives [IFAs] in Port Harcourt, Abuja, and Lagos.

[2] The onus was on Mr. Ifaloye to demonstrate that it would not be reasonable for him to relocate to any of the proposed IFAs. The onus was not on the RAD to demonstrate they were suitable. The RAD reasonably concluded that Mr. Ifaloye had failed to discharge the heavy burden of establishing that he could not seek refuge within Nigeria.

[3] The application for judicial review is dismissed.

II. Background

[4] Mr. Ifaloye's refugee claim was based on the threat he allegedly faces from members of his large, extended family. He says that they regard him as an obstacle to obtaining the significant property and other assets left behind by his wealthy and polygamous late father.

[5] Mr. Ifaloye was born in 1968 and lived at home until the age of five. Early in his life he was sent to stay with relatives. At the age of nine he asked his mother about his living arrangements. She explained that he had previously been mistreated, and there had been attempts on his life because he was his father's oldest son and heir apparent.

[6] Mr. Ifaloye was sent to boarding school. After completing his education, he joined his father's company where he showed an aptitude for increasing profits. The company employed a number of his relatives who became envious of his success.

[7] Mr. Ifaloye was eventually appointed Chief Executive Officer of his father's company. Not long afterwards, he was attacked in his home on December 4, 1988. Mr. Ifaloye was knocked unconscious, stabbed in the back, and doused with petrol before being set on fire. His recovery in a local hospital took one year. He was then transferred to Charing Cross Hospital in London, England, where he received further treatment and underwent three major surgeries.

[8] Mr. Ifaloye returned to Nigeria in 1993 and started his own business. When his father died in 2000, his extended family rushed to acquire the property, cars, and other material possessions. According to Mr. Ifaloye, the family understood they could not make use of the assets or money without explaining to him how and where they had obtained it.

[9] Mr. Ifaloye says he was subjected to continuous threats from his family. In December 2007 he was attacked at a restaurant by four gunmen. He requested protection from the police, but they advised him to flee the country. Mr. Ifaloye obtained a United States visa in 2009 and left Nigeria in September 2011.

[10] Mr. Ifaloye did not feel safe in the United States. His home was broken into twice, and he moved around the country five times. In 2017, his doctor informed him that he had renal failure

and would require dialysis. In 2018, after seeing a YouTube video about how refugees are treated in Canada, Mr. Ifaloye crossed the border at Lacolle, Quebec and requested protection.

[11] Mr. Ifaloye says he recently discovered that his brother had been killed in a dispute over whether to distribute and sell the remaining parts of the father's estate.

III. Issue

[12] The sole issue raised by this application for judicial review is whether the RAD's determination that Mr. Ifaloye has an IFA within Nigeria was reasonable.

IV. Analysis

[13] The RAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only if "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). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[14] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment and Immigration)*), [1992] 1 FC 707 (FCA) at paras 5-6, 9-10): first, the decision maker 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 where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

[15] For the purposes of its IFA analysis, the RPD accepted Mr. Ifaloye's allegations of persecution at the hands of his extended family. The RPD found that IFAs were available in Port Harcourt, Abuja, and Lagos, based in part on the Jurisprudential Guide contained in RAD decision TB7-19851. The Jurisprudential Guide addressed IFAs in major cities in south and central Nigeria for claimants fleeing non-state actors.

[16] The RPD held that Mr. Ifaloye had failed to establish that his extended family possessed the means and motivation to locate him in any of the proposed IFAs. While his father was a well-known philanthropist, the RPD found there was insufficient evidence to demonstrate that Mr. Ifaloye would be recognized or pursued in these major cities 20 years after his father's death.

[17] Mr. Ifaloye says that his severe and highly visible burn scars are a unique identifying characteristic. He notes that the RPD accepted his testimony that people from all over Nigeria came to visit him while he was recovering from his injuries. He says the RAD unreasonably endorsed the RPD's finding that his agents of persecution would be unable to find him, and its analysis was cursory at best.

[18] Because Mr. Ifaloye requires regular dialysis treatment, he says he will have to travel frequently and will inevitably be noticed by both medical professionals and the general public. Mr. Ifaloye asserts that medical professionals and members of the public will see his visible burn injuries and ask about them. He will then be left to the mercy of chance, hoping that his identity is not revealed to anyone connected to his extended family.

[19] The difficulty with Mr. Ifaloye's position is that he did not challenge the RPD's findings respecting the first prong of the IFA test before the RAD. This was explicitly mentioned by the RAD in its decision (at para 17):

The RPD found that the Appellant had not produced sufficient evidence to demonstrate that his agents of persecution have the means and motivation to locate him anywhere in Nigeria. The RPD considered the Appellant's testimony that he would be easily recognized anywhere in Nigeria because his father was a well-known philanthropist, but found insufficient evidence to show that his father was so well-known that the Appellant would be recognizable in all of the IFA locations. The Appellant does not contest these findings on appeal.

[20] The RAD cannot be faulted for failing to consider arguments that were never put to it (*Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109 at para 21, citing *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14). Appellants who fail to specify where and how the RPD erred do so at their peril (*Broni v Canada (Citizenship and Immigration)*, 2019 FC 365 at paras 15-18, citing *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548 at para 34).

[21] Mr. Ifaloye also takes issue with the RAD's finding that he had not sufficiently demonstrated an inability to find accommodation, work, or medical treatment in the proposed IFAs. The RAD endorsed the RPD's findings that Mr. Ifaloye has an above-average education, speaks both English and Yoruba, and has experience in business. The RAD also noted that his renal condition does not give rise to intellectual impairment.

[22] Mr. Ifaloye requires three dialysis treatments each week, with each session lasting four to six hours. He requires monthly bloodwork and is unable to stand or sit for lengthy periods of time. He suffers from fatigue and dizziness.

[23] The RAD acknowledged that Mr. Ifaloye's health condition may restrict the kind of work he can do. However, he presented no evidence that he would be unable to find a job that would accommodate his condition. The RAD noted that Mr. Ifaloye was able to support himself in the United States after he began hemodialysis in December 2017, even though he was without status in that country.

[24] The RAD found that both public and private health care are available in Nigeria, and treatment for kidney disease is "fairly accessible". While treatment for chronic kidney disease may not be economically or geographically accessible for disadvantaged people living in rural areas, all of the proposed IFA locations are in large urban centres. The RAD concluded that Mr. Ifaloye had failed to demonstrate that his condition cannot be treated within the public health care system.

[25] Furthermore, as the RAD observed at paragraphs 33 and 34 of its decision, Mr. Ifaloye's claim for protection was based on the assertion that he has been targeted because his late father left him in control of his vast estate. In his testimony before the RPD, Mr. Ifaloye said he could not sell any of the estate's property because it represents his father's legacy for the family, and the revenue it produces is required to continue running the estate. The RAD's analysis of this issue included the following remarks:

Although the RPD did not comment on this testimony in its decision, I find it important to note, given the Appellant's assertion that the IFA locations would not be reasonable because he would not be able to afford treatment for his condition. In my view, there are steps the Appellant could take that would enable him to access treatment for his disease, beyond accessing the public health care system. I therefore do not find the Appellant's argument that he could not afford to access treatment demonstrates that the IFA locations are unreasonable.

[26] Beyond an emotional attachment to his father's estate, Mr. Ifaloye did not provide the RAD with evidence of why he could not sell a portion of the real estate holdings to support himself economically and to secure better healthcare within the proposed IFAs.

[27] The onus was on Mr. Ifaloye to demonstrate that it would not be reasonable for him to relocate to any of the proposed IFAs. The onus was not on the RAD to demonstrate they were suitable. The RAD reasonably concluded that Mr. Ifaloye had failed to discharge the heavy burden of establishing that he could not seek refuge in Port Harcourt, Abuja, or Lagos.

[28] Finally, Mr. Ifaloye maintains that the RPD's decision was strongly influenced by a Jurisprudential Guide that was revoked on April 6, 2020. In *Liang v Canada (Citizenship and*

Immigration), 2019 FC 918, Justice Henry Brown held that “where a decision-maker expressly adopted the findings in the Jurisprudential Guide, revocation of the Jurisprudential Guide weakens the decision-maker’s findings on this issue” (at para 10). The reason for the revocation of the Jurisprudential Guide in this case was updated country condition documents, particularly those pertaining to the ability of single women to relocate to many of the identified IFAs.

[29] The RAD considered Mr. Ifaloye’s personal characteristics and circumstances. It did not refer to the Jurisprudential Guide in its reasons, except by noting briefly that Mr. Ifaloye did not contest the RPD’s finding, based on the Jurisprudential Guide, that the difficulty single women may face in securing accommodation did not apply to him (at para 35a). Mr. Ifaloye’s counsel did not address this argument in oral submissions. The written representations do not provide any particulars of how the Jurisprudential Guide may have undermined the RAD’s decision, beyond the bald assertion that its revocation has “removed all legal authority and effect attached to the reliance on the [Jurisprudential Guide]”. This is insufficient to demonstrate any reviewable error on the part of the RAD.

V. Conclusion

[30] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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