Federal Court  Cour fédérale

Date: 20211105

Docket: IMM-1299-21

Citation: 2021 FC 1184

Ottawa, Ontario, November 5, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ONYINYECHI JOSEPHINE EGEMBA
MICHELLE CHISOMBILI OKWULEHIE MICHAEL

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Appeal Division ("RAD") of the Immigration and Refugee Board ("IRB") finding that the Respondents were convention refugees and had no viable Internal Flight Alternative ("IFA") in Nigeria. In concluding this, the RAD allowed an appeal of the RPD decision finding they had viable IFAs.

II. Background

[2] The Respondent, Onyinyechi Josephine Egemba ("Principal Respondent") is a Nigerian citizen who arrived in Canada in March 2018 with her minor daughter (collectively, the "Respondents"). Upon their arrival, the Respondents filed a refugee claim on the grounds that they were escaping abuse from the Principal Respondent's partner. The Principal Respondent had commenced a relationship in late 2012 in which by late 2014, her partner became abusive (physically, emotionally, and sexually). She became pregnant by her partner and gave birth in 2015, to a daughter (the "Minor Respondent"). The Principal Respondent's partner's mother wanted to subject the child to female circumcision.

[3] The Principal Respondent tried to leave her partner in 2017 and relocated to another city in Nigeria. Her partner found her and demanded she return home, or he would have her charged with kidnapping their daughter. She returned to him, and was subject to more abuse, as well as further threats if she were to leave. The Respondents obtained United States visas in August 2017 and travelled there in December 2017. The Respondents allege that the Principal Respondent's partner looked for them at her sister's home in December 2017. In March 2018, they were told that the partner was travelling to the United States to locate them. The Respondents entered Canada that same month, and were detained for unauthorized entry. At that time, they claimed refugee protection on grounds of fears of the partner and his family.

[4] The RPD rejected the Respondents' (in that instance, Applicants) claims because it was determined they have a safe and reasonable IFA in Nigeria – namely, in either Lagos or Ibadan.

The RAD allowed the Respondents' appeal, and substituted their own decision that the Appellants are Convention refugees without a viable IFA.

III. Issue

[5] The issue in this judicial review is whether the RAD's decision was reasonable.

IV. Standard of Review

[6] The standard of review in this case is that of reasonableness (*Canada (MCI) v Vavilov*, 2019 SCC 65 [*Vavilov*].

V. Analysis

[7] The test for the existence of a viable IFA is well-settled, and was set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA). The two-pronged test, for which both prongs must be satisfied, is as follows:

- "… 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."
- 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.

[8] The RAD correctly notes that once the IRB proposes a specific IFA, the onus or burden is on the Respondents (Appellants, as they then were) to establish that the proposed IFA is not safe and reasonable. If this is established, the burden then flips to the Applicants (Respondents, as they then were) to rebut this.

[9] The RAD, in this case, determined that the second prong of the test had not been met, rendering it unnecessary to address the first prong. In the second prong of the test, having proposed possible IFAs, the RAD asks whether the Respondents have established, on a balance of probabilities, that relocating to the proposed IFAs would be unreasonable. The threshold for establishing unreasonableness is very high, requiring concrete evidence that the claimant's life and safety would be in jeopardy in travelling or remaining in the IFA (*Flores Argote v Canada (MCI),* 2009 FC 128).

[10] The Applicant argued that the RAD reversed the onus on the second prong of the IFA test of whether it was reasonable to relocate to the IFA. The Respondents acknowledge the onus as being on the refugee to establish that the proposed IFA is unreasonable, but submits that this does not equate to precluding the panel from considering the country conditions. They assert that the RAD reasonably assessed the evidence on this second prong of the IFA test, and rather than filling in the blanks, that the RAD drew reasonable inferences. Specifically, the RAD considered and gave more weight to a report as to the Principal Respondent's psychological state than the RPD did. Based on this, they concluded that the second branch of the test had been met and then took into account country conditions and the NDP. The Respondents say that the RAD's analysis that no viable IFAs existed was reasonable.

[11] However, in conducting a reasonableness review of the RAD decision, I find it to be unreasonable. The determinative issue on judicial review is that the RAD based their decision almost exclusively on objective country condition evidence, without sufficiently engaging with the subjective personal circumstances of the Respondents. The limited consideration of the Respondents' subjective circumstances by the RAD was its consideration of the Principal Respondent was to accept a psychological assessment report indicating her ailments. The RAD used this, coupled with the use of general country condition documents to conclude that the IFAs were unreasonable due to the inadequacy of mental health services in Nigeria, as well as difficulties facing a single woman in Nigeria.

[12] There was no specific analysis of the availability of treatment in the IFAs for the Principal Respondent, but rather only analysis as to mental health resources in Nigeria more broadly. In this case, there was insufficient mention of specific treatment requirements for the Principal Respondent in the report. Only general conditions and statements are made by the RAD, without looking to the IFAs proposed or sufficient specificity as to the Respondents' specific needs. It is of note that the Respondents (then the Applicants) did not file any evidence of the availability of mental health services in the two IFAs. Take, for instance, paragraph 27 of the RAD's decision, where they note that "mental health services are only available to the wealthy in Nigeria," and that "there was no evidence before the RPD to suggest (the Respondent) is wealthy." The RAD then concluded that, based on this, the proposed IFAs were unreasonable. The RAD's inference is that if the general country conditions are a certain way, then the Respondents' (then the Applicants) position must be similar. There was insufficient evidence regarding the Respondents' (then the Applicants) actual situation as it applies to the second

prong of the test. The onus – and a high one – is on the Principal Respondent (then the Applicant) to provide evidence that she was in a situation such that relocation to a proposed IFAs were objectively unreasonable. The RAD's finding it is not reasonable.

[13] Similarly, the RAD found that, generally, single women face extensive discrimination and hardship in finding employment and housing throughout Nigeria, including in the proposed IFA's. The RAD then considered that the Principal Respondent (then Applicant) had a University degree and employment experience, but in contrast to this relied on the objective evidence that says it is generally difficult for a single woman with a child without support from a man. The Principal Respondent (then Applicant) had not filed evidence of her lack of ability to be employed or obtain housing in the IFAs. Due to a lack of evidence filed by the Principal Respondent (then Applicant) about her family support, other than her having three sisters and that her parents are deceased, the RAD unreasonably then inferred that she would certainly have no support and her sisters would also have no means to assist her in housing and employment. Again, as noted, the onus was on the Principal Respondent (then Applicant) to adduce evidence; in this case, to file evidence of her family situation to demonstrate her lack of family support and inability to obtain employment and housing. The onus was on the Respondents (then Applicants) to prove it is not reasonable to relocate to the proposed IFAs. In doing so, they must adduce evidence of why this is in the case based on the Principal Respondent's (then Applicant) personal circumstances. This subjective, personal evidence may then be supported by general country conditions. This is not what occurred here, and as such, the RAD's decision was unreasonable.

[14] It is well-established that it is not the role of this Court on judicial review to reweigh evidence which was before the decision-maker. However, it is rightfully the role of this Court to conclude that the RAD drew unreasonable inferences about the Respondents' specific circumstances from the general country conditions, despite a lack of subjective evidence indicating that this was the case specifically for the Respondents. Further, their analysis focused on the general country conditions in Nigeria, rather than properly considering the second prong of the test – whether it was objectively reasonable for the Respondents to relocate to the proposed IFAs, which the RPD concluded that it was. In doing so, on the second prong of the IFA test, the RAD reversed the onus, and erred in breaking from an internal coherent and rational chain of analysis which is justified in light of the facts and law before them (*Vavilov*, at para 85).

[15] For this reason, I find the decision to be unreasonable, and will grant the application for judicial review. I will send this matter back to be redetermined by a different decision-maker, with further submissions by the parties if they choose, as directed by the RAD.

[16] I do not need to address any other issues, as this is determinative.

[17] The parties did not present any certified questions.

JUDGMENT IN IMM-1299-21

THIS COURT'S JUDGMENT is that:

1. This application is granted and referred back to be re-determined by a different decision-maker;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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