Federal Court  Cour fédérale

Date: 20220927

Docket: IMM-5899-21

Citation: 2022 FC 1346

Ottawa, Ontario, September 27, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

PATIENCE BAKALIMAH SAABON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Patience Bakalimah Saabon, seeks judicial review of a decision by the Refugee Appeal Division (the "RAD"), which upheld the Refugee Protection Division's (the "RPD") decision that the Applicant had a viable Internal Flight Alternative ("IFA").

II. Background

A. *The Applicant*

[2] The Applicant is a 30 year old woman who is a member of a northern tribe in the Ghanaian village of Pelungu, She studied accounting until 2015 in nearby Bolgatanga and had planned to work as an accountant to help with her parents' with the farming finances. Her parents died in a car accident in 2014.The Applicant's only living relative is her paternal grandmother who resides in the village of Pelungu. This village is where her father grew up and the Applicant lived most of her life. After her parents death she resided with her grandmother.

[3] After she finished her accounting course in July 2015, the Applicant returned to Pelungu. To her surprise, one day in October, she learned that her grandmother had arranged for her to marry the village chief in exchange for a bride price of four cows. That same day she was taken away to live with him. At that time she was 23 years old and the village chief was 68 years old with four (4) other wives and 17 children.

B. *The Applicant's Claim*

[4] The basis of the Applicant's refugee claim was that she fears her husband. In her Basis of Claim ("BOC"), the Applicant says her husband sexually assaulted her, was physically violent, and subjected her to coercive control through intimidation and control of her movements. She said that she suffered two miscarriages because of physical abuse. She was never subjected to

female genital mutilation as her parents did not agree with it. However, her husband had wanted her to undergo the procedure as an adult. She has not.

[5] In 2016, the Applicant fled by bus to the neighbouring country of Togo. She was met by her husband and his entourage when she disembarked and was immediately returned to Pelungu. Upon her return, she claims her husband threatened her with a machete and said he would kill her if she ran away again.

[6] The Applicant says she sought help from police on several occasions but they would not interfere in a marital relationship. The RAD accepted that the Applicant's husband is powerful and has many connections in their community, including the police and other village leaders.

[7] In April 2019, the Applicant left Pelungu for the capital city Accra with the help of a school mate "Joyce Antwi", who currently lives in the UK. The Applicant fled while her husband attended a funeral outside of the village. She says that she lived with Joyce's sister Mary in Accra until July, when her friend Joyce arranged to pay for her flight to Canada.

[8] Upon arrival in Canada, the Applicant filed a claim for refugee protection in August 2019. The RPD found that she had an IFA in Accra. The RAD upheld the RPD's decision, agreeing that she had an IFA in Accra.

III. Issue

[9] The issue is whether the RAD's IFA analysis was reasonable.

IV. Standard of Review

[10] Both parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). I agree.

V. Analysis

[11] The Applicant alleges the RAD's decision is unreasonable for three reasons:

a) The Applicant was in hiding when she stayed in Accra;

b) The RAD misapprehended the number of agents of harm; and

c) To avoid discovery in the IFA, the Applicant bears an unreasonable burden because living in Accra requires loss of all familial and tribal connections.

A. *Whether the Applicant was in Hiding in Accra*

[12] The Applicant submits that the RAD failed to consider the fact that she was in hiding and not merely staying with a friend in Accra for a few months before travelling to Canada. She relies on *Zaytoun v Canada (Citizenship and Immigration)*, 2014 FC 939 [*Zaytoun*] and *Murillo Taborda v Canada (Citizenship and Immigration)*, 2013 FC 957 [*Murillo Taborda*] as authority for the proposition that a refugee claimant cannot be expected to live in hiding to remain safe. The Applicant argues that similarly to *Zaytoun* and *Murillo Taborda*, the analysis of the IFA is unreasonable because the Applicant would have to live in hiding to remain safe. The Applicant maintains that this expectation is unreasonable.

[13] Applicants bear the onus to demonstrate a serious possibility of persecution (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 1991 CanLII 13517 (FCA) at 709). The IFA analysis is an inherent part of the assessment of a Convention refugee or person seeking protection, and refugee claimants bear the onus to establish that the proposed IFA location is unreasonable. The RAD and RPD look to the conditions and personal circumstances of the applicant, as put forward by the applicant (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 2000 CanLII 16789 at para 13 citing *Thirunavukkarasu v Canada (Minister of Employment and Immigration*), [1994] 1 FC 589, 1993 CanLII 3011 (FCA)).

[14] I agree with the Applicant that an IFA cannot force a person seeking protection into hiding. However, on the facts provided before the RPD and RAD, there is no evidence that supports the Applicant's now stated position that she was in hiding before and would have to be again if she lived in Accra.

[15] The transcript from the RPD hearing that was before the RAD does not demonstrate that the Applicant was in hiding. Although, the Applicant's BOC Narrative does indicate that when she was in Accra she did not go outside and went to the airport in the evening. However, that is all the evidence in the record. There is no evidence as to why the Applicant would have to hide, aside from explaining that she thinks people from her small village would find her in the 2.3 million people who live in Accra. Unfortunately, there is insufficient evidence to support that she would have to live in hiding. But there was evidence that she was not found in Accra in the six months before she left for Canada which is supportive of the IFA

[16] The RAD found it unlikely the Applicant's husband would be able to look for her because she had cut ties with the village. This finding is reasonable given that, when in Accra, she had no contact with her grandmother nor anyone from the village and only communicated with a few school friends not in the village. In response, the Applicant argues it is unreasonable to establish that an IFA would force her to completely break from her past. However, the Applicant's own evidence is that she has already broken ties with her previous community.

[17] Both the RPD and RAD's findings were based on the Applicant's husband being a person of limited influence, given that he is the traditional chief of a small village several hours away from Accra. The Applicant did not present any evidence to dispute this. On this point, the Applicant argues if her husband could find her in Togo he can find her in Accra. However, this argument is flawed. The Applicant's evidence was that she was found in Togo because she told a friend what she was doing and where she was going.

[18] The Applicant submits that the RAD made implausible assumptions and speculated that the friend was in allegiance with the Chief. Here, the nature of the friend's loyalty is immaterial. I do not find the RAD erred, as the fact the friend told the chief does make it an allegiance, even if only for that one time. The onus is on the Applicant and the Applicant's evidence provided nothing more than the fact she told than she told a friend what she was doing. The trend in this case is to fault the officer when in fact the Applicant did not provide any evidence that could support her own speculation of how her husband will find her in Accra. Thus there is no reasons for her to hide in Accra.

[19] With sympathy to the Applicant, this Court's role on judicial review is to review the evidentiary record that was before the decision-maker (*Paramasivam v Canada (Citizenship and Immigration)*, 2022 FC 1084 at para 21 citing *Association of Universities and Colleges of Canada v Access Copyright*, 2012 FCA 22). Unfortunately for the Applicant, there was insufficient evidence put forward to establish that she was in hiding, as well as her argument that she can be found in Accra. The RPD and RAD cannot be faulted when the issue lies with the inadequate evidence that was presented.

B. *Number of Agents of Harm*

[20] The next argument turns on the number of agents of harm, where the Applicant alleges that everyone with ties to the village can be presumed to be an agent of harm.

[21] The Applicant argues that the IFA finding was unreasonable because her location can become known. The Applicant relies on cases that dealt with isolation, proximity to hometowns, and family communication networks which is not the case on these facts *Ng'aya v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1136 [*Ng'aya*] set aside a pre-removal risk assessment on the basis that total isolation from family was an impossible burden, as well as the discovery being inevitable. *Lopez Martinez v Canada (Citizenship and Immigration)*, 2010 FC 550 turned on the proximity to the applicant's hometown. Finally, in *Khan v Canada (Citizenship and Immigration)*, 2020 FC 1101 [*Khan*], the Court accepted that other cases adopted an approach of assessing the applicant's location "would eventually become known" to the feared agent of persecution (at para 21). However, that argument failed in *Khan* because the applicant was not targeted by persecutors who were family members.

[22] Based on this jurisprudence, the Applicant submits the IFA case law that involves a family or tribal member is distinct from situations where the applicant fears political, ethnic, or criminal organizations. Accordingly, the Applicant contends the RAD erred by requiring the Applicant to disassociate from "every single relative and tribal member", which is a "practical impossibility."

[23] This Court has rejected the proposition that *Ng'aya* creates a new IFA test, where the analysis entails whether the IFA would "eventually become known" to the feared agent of persecution (*Adams v Canada (Citizenship and Immigration)*, 2018 FC 524 at paras 36-37). Although there is not a separate test for determining the viability of an IFA, I accept the Applicant's position that the analysis will turn on the specific circumstances of the claim (*Ng'aya* at para 14). Regardless, these cases do not assist the Applicant.

[24] The RAD came to the conclusion it did based on the evidence provided. The RAD did not pull an impractical impossibility from nowhere but instead looked to the evidentiary record. The Applicant's own evidence was that she has no ties to her community and she no longer has any communications with her grandmother. The RAD did not expect the Applicant to disassociate herself, as that was already the state of her relations.

[25] To avoid indirect refoulement, an IFA cannot be considered viable if it presents a risk to the Applicant's security. The RAD's summary of the facts did not call into question the reach, motivation or influence of the Applicant's husband to force to return to the village, as demonstrated by her failed escape to Togo. The Applicant had been picked up at a location that

is just as far from Pelungu as Accra. His “influence, connections or motivation” were not in question. Instead, the RAD’s conclusion rests on the unlikelihood that the Applicant’s husband would be able to discover her presence in Accra.

[26] On this point, the Applicant argues that any absence of contact since 2019 is due to the Applicant’s discretion and severing all ties to the village, which would be untenable upon return to Accra.

[27] “[The] absence of evidence is an element that can reasonably support a finding of a lack of ongoing interest in pursuing the applicant and therefore a finding of an IFA” (*Leon v Canada (Citizenship and Immigration),* 2020 FC 428 at para 16; *AB v Canada (Citizenship and Immigration)*, 2020 FC 915 at para 23).

[28] The issue was whether or not the Applicant’s husband was actively looking for her; if not, the original risk would be negated. To support the fact that her husband is actively looking for her, the Applicant relied on the fact she had been in hiding. This she said was support for an inference that living in Accra in the open would put her in danger.

[29] However, as already noted, there is insufficient evidence in the record to suggest that the Applicant was in hiding. As such, it was open to the RAD to look to the absence of evidence and reasonably conclude that there was a lack of ongoing interest in pursuing the Applicant.

C. *The RAD's IFA Reasoning*

[30] There is a very high threshold for the second part of the IFA test, which looks at whether it is objectively reasonable for the Applicant to relocate without jeopardizing her life and safety. This assessment considers an Applicant's specific situation (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA), 2000 CanLII 16789 at para 15).

[31] Hardship because of the loss of family and tribal connections is another factor to be considered, and one that has resulted in quashing IFA decisions when isolation becomes an absolute requirement for security (*Ali v Canada (Citizenship and Immigration)*, 2020 FC 93 at para 50).

[32] The RPD did consider whether it was a hardship and found (at para 16):

> …She is **not** in contact with her grandmother. She has only remained in contact with **friends who she knew from school and are not connected to the village**. **It would be reasonable that in returning to Ghana the claimant would continue to no longer have contact with these persons that hold allegiance to her ex-husband.** Further eroding his connections to be able to locate her as he had done in the past. I find that there is insufficient objective evidence to establish that more likely than not that this agent of harm has the means or ability to locate her in Accra as she fears.
>
> [Emphasis added]

[33] The RPD and RAD's decisions are reasonable given the evidence before the decision-maker. In the transcript, the Applicant was definitive that she had no relatives but her grandmother, who she has nothing to do with. There was no evidence of any contact with her grandmother or anticipated contact. Likewise, regarding any contact with friends, the evidence

was that she had no contact with anyone from the village. The RAD cannot be faulted for making the conclusion on the only evidence before them. The loss of contact was not a factor that would meet the first part of the test.

[34] The Applicant raised other arguments that, in reality, amount to disagreement with the RAD findings. A review of the evidence, including the transcript of the RPD hearing confirm that the Officer's decision was reasonable.

[35] This woman has sympathetic circumstances but I cannot find that the Officer erred in determining she has an IFA in Accra.

[36] No question was presented for certification.

JUDGMENT IN IMM-5899-21

THIS COURT'S JUDGMENT is that:

1. This matter is dismissed;

2. There is no question for certification.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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