Federal Court  Cour fédérale

Date: 20221223

Docket: IMM-9535-21

Citation: 2022 FC 1798

Toronto, Ontario, December 23, 2022

PRESENT: Madam Justice Go

BETWEEN:

AYOBAMI MARY OLUSAKIN

Applicant

and

THE MINISTER OF IMMIGRATION REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Ayobami Mary Olusakin [Applicant], a citizen of Nigeria, seeks judicial review of the Refugee Appeal Division's [RAD] decision to uphold the Refugee Protection Division's [RPD] decision denying her claim for refugee protection.

[2] The Applicant has two Canadian-born children, a daughter and a son, from a relationship with her husband Oladap Mathew Olusakin [husband], a citizen of UK. The Applicant lived in the UK between 2008 and 2015 and had a previous marriage that ended in 2012. The Applicant met her husband in 2014, before returning to Nigeria in 2015. The couple separated some time in 2016.

[3] The Applicant came to Canada in February 2017 and initiated a refugee protection claim in October 2019, after completing her dental hygiene studies. The Applicant alleged in her claim that she fears persecution from her father's extended family [Paternal Family], who want to kill the Applicant to assure that she, the eldest child in the family, does not inherit her father's estate properties following his death in January 2017. The Applicant also alleged that she fears persecution from her husband's family [In-laws], who want to perform female genital mutilation [FGM] on her daughter.

[4] In a decision dated April 26, 2021, the RPD denied the Applicant's claim under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on the basis of a viable Internal Flight Alternative [IFA] in Akura or Benin City, Nigeria. The Applicant appealed the RPD's decision to the RAD. The RAD dismissed the appeal in a decision dated December 2, 2021, confirming that the Applicant is neither a Convention refugee nor a person in need of protection [Decision]. The Applicant challenges the Decision.

[5] I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[6] The main issue raised by the Applicant is whether the RAD's IFA analysis was reasonable.

[7] As a starting point, the Applicant bore the burden of proof before the RAD to establish through credible evidence that (1) she faces a serious possibility of persecution or likely risk of harm in the IFAs or (2) that it would be unreasonable in all the circumstances to relocate to the IFAs: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at para 13.

[8] The Applicant argues that the RAD erred in its assessment of the evidence in both prongs of the two-part IFA test.

[9] The parties agree that the RAD's IFA analysis is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] The Applicant also argues that the RAD failed to meet the Applicant's legitimate expectation that the Chairperson's Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guideline] would be considered in the analysis of her claim. In so doing, the Applicant submits the RAD breached procedural fairness.

[11] The Respondent disagrees with the Applicant's characterization of this issue as one of procedural fairness and maintains that the Applicant's arguments on whether the Gender

Guideline was improperly applied or ignored are arguments of substance going to the reasonableness of the Decision: *Manege v Canada (Citizenship and Immigration)*, 2014 FC 374 at paras 26-33.

[12] I agree with the Respondent. This Court has consistently reviewed the RAD's considerations – or the lack thereof – of the Gender Guideline on a reasonableness standard. See for instance: *Okpanachi v Canada (Minister of Citizenship and Immigration)*, 2022 FC 212; *Yu v Canada (Minister of Citizenship and Immigration)*, 2021 FC 625; *Szepesi v Canada (Minister of Citizenship and Immigration)*, 2022 FC 716; *Davis v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1036; and *Quele v Canada (Minister of Citizenship and Immigration)*, 2022 FC 108.

[13] I will thus apply the reasonableness standard throughout my review of the Decision.

[14] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. 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. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[15] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

III. Analysis

A. *Did the RAD unreasonably assess the first prong of the IFA test?*

[16] The Applicant submits that the RAD erred in the first prong of the IFA analysis by:

A. finding that the Paternal Family would not have the means to track down the Applicant in the proposed IFAs; and

B. finding that the In-laws would have no means to track her in the proposed IFAs.

[17] I will analyse each of these aspects of the Decision.

Paternal Family's means

[18] The Applicant submits that the RAD went in the "wrong direction" when it focused its assessment on how the Paternal Family would use their resources to influence authorities, describing this as an "extraneous issue" that the RAD introduced. The Applicant asserts instead that the issue before the RAD was whether the Paternal Family had the resources to seek the Applicant out based on their motivation, which was accepted.

[19] The Applicant also challenges the RAD's finding that the list of properties owned by her late father's estate did not provide clear evidence on the actual value of the estate. The Applicant submits that having 18 properties, including three gas stations, is demonstrative of one's wealth in any country. Further, the Applicant points out that the actual value of the estate was not raised by the RPD as an issue. The Applicant therefore suggests that it is common sense to draw a conclusion tying the Paternal Family's control over the (valuable) estate with their ability to seek out the Applicant in the IFAs.

[20] I reject the Applicant's arguments.

[21] I do not find the RAD erred by bringing in extraneous issues. The RAD's finding that the Applicant has not demonstrated the Paternal Family has connections was in response to the Applicant's testimony that the Paternal Family could locate her in the IFA locations because they have "connections everywhere."

[22] The RAD did address the Applicant's testimony and found this explanation unpersuasive, given the lack of specific evidence linking the Paternal Family to political parties, persons of influence, or state authorities in Nigeria. The Applicant has not pointed to any evidence that the RAD failed to consider in support of her explanation, nor do I find the RAD committed any error in view of the vague testimony in this regard.

[23] I also find that the RAD did not err by accepting the RPD's conclusion that the Applicant's Paternal Family lack the means to locate her.

[24] At the hearing, the Applicant continued to assert that someone who owns one gas station, let alone three, would have significant financial resources. The Applicant, in my view, is conflating property ownership with the actual value of a property. As the RAD pointed out accurately, the only evidence adduced to support this argument was a listing of the properties held by the estate, only three of which had a known value. The value of the remaining 15 properties is unknown.

[25] It was thus reasonable for the RAD to conclude that the Applicant provided insufficient evidence on the actual value of the estate and therefore failed to establish how having control of the estate would increase connections with the authorities in the IFA locations such that they would be able to locate the Applicant.

In-laws' means

[26] The Applicant also argues that the RAD erred in finding that the In-laws would have no means to track her in the proposed IFAs. The Applicant recalls the accepted evidence that the husband supports subjecting their daughter to FGM to avoid repercussions from the In-laws.

[27] Based on this evidence, the Applicant maintains that the husband and In-laws would have authority to retrieve the daughter from her in Nigeria and that the police would assist them in doing so. The Applicant relies on the Response to Information Requests [RIR] from the Immigration and Refugee Board stating that individuals that can show their relationship with someone they are tracking down and a compelling reason for doing so will receive assistance from Nigerian authorities. The Applicant also points out that by keeping custody and control of

their daughter in Nigeria, given the husband's paternal custody rights, the Applicant would be committing an offence under the *Nigerian Criminal Code Act*.

[28] I find the Applicant's argument unpersuasive for several reasons.

[29] First, as the Respondent points out, much of the Applicant's pleadings relying on the RIR are the same as the submissions made to the RAD. The Applicant's arguments amount to asking the Court to reweigh the evidence.

[30] Second, the Applicant bears the burden of establishing that her husband would be interested in claiming custody over their daughter and that he would do so by obtaining assistance from the police. The RAD did consider the RIR, but noted that the Applicant did not provide any evidence that her husband has taken any steps to obtain custody of or track down the children. On that basis, the RAD was not satisfied that there is a serious possibility that the husband would do so in Nigeria. The RAD's conclusion was reasonable in view of the insufficient evidence put forth by the Applicant and I see no basis to set this finding aside.

[31] The Applicant also argues that the RAD made a speculative assumption that the husband is no longer a citizen of Nigeria, and relied on this assumption to find that he could not lay a custody claim in Nigeria to access their daughter. The Applicant notes that the husband did come to Canada before to see 'his family' without being a citizen of Canada, and could do the same in Nigeria.

[32] The Applicant also points out that the issue of her husband's citizenship was never raised at the RPD hearing and that nonetheless, it was unreasonable to expect the Applicant to provide evidence on whether he is a dual citizen in the context of her refugee claim against Nigeria and their separation. The Applicant asserts that the fact they got married in Nigeria is demonstrative of the husband's strong ties to Nigeria despite his UK citizenship.

[33] Once again, I find none of the arguments raised by the Applicant amount to any reviewable error on the part of the RAD, as I find the Applicant has mischaracterized the RAD's finding with respect to the husband's citizenship.

[34] The RAD referred to the husband's citizenship in the context of its finding that the Applicant did not provide any evidence that her husband, being a UK citizen and resident, has any intentions of returning to Nigeria. The RAD then found, given that the couple has separated and the Applicant has primary custody of her children, that on a balance of probabilities, the Applicant would be responsible for making the decision on FGM. I see nothing unreasonable with this finding.

[35] The fact that the Applicant's husband has come to Canada to visit the children, and that the couple married in Nigeria, has no bearing on the RAD's findings with respect to the husband's intent to return to Nigeria.

[36] The RAD also addressed the question of whether the In-laws have the means to locate the Applicant in the IFAs. The RAD acknowledged the Applicant's submissions on the legal right of

the In-laws to recover the child from the Applicant and the willingness of the Nigerian authorities to assist them in doing so, but found that these submissions were not before the RPD. The RAD also considered the Applicant's testimony at the RPD hearing on how the husband's siblings in Nigeria are "aware of [this] circumcision thing", but found that this statement did not demonstrate the means in which the In-laws could pursue the Applicant in the IFAs.

[37] The Applicant has not pointed to any errors made by the RAD in this regard.

[38] In conclusion, the RAD's finding is reasonable in light of the insufficient evidence that the husband would return to Nigeria and seek custody and control of their daughter, and that the In-laws would have the means to locate the Applicant in the proposed IFAs.

B. *Did the RAD unreasonably assess the second prong of the IFA test*

[39] For the second prong of the IFA test, the RAD affirmed the RPD's finding that it would be reasonable, in all the circumstances, for the Applicant to relocate to Akura or Benin City.

[40] The Applicant argued that the RPD – and hence the RAD – failed to consider several of her personal circumstances in its analysis. Further, the Applicant submitted that the RPD and the RAD failed to consider the psychiatric evidence showing that her trauma would impact her ability to relocate to the IFAs.

[41] I will first address the Applicant's arguments with respect to her personal circumstances, followed by her arguments concerning the psychiatric evidence.

Did the RAD fail to consider the Applicant's personal circumstances?

[42] The Applicant testified at the RPD hearing that it would be unreasonable for her to move to Benin City due to her inability to find employment because of the unemployment rates, discrimination against women in the workforce, and lack of connections. Further, she testified that she could not secure accommodation without proof of employment or a bank account. The Applicant also testified that she would need a support network for her two children.

[43] The Applicant argues that in light of the country condition evidence, the Applicant would be particularly vulnerable as a single woman living in Nigeria, where men "control most things." The Applicant notes the evidence suggesting that she could be a target of dangerous terrorist and criminal gangs due to her gender and lack of resources. The Applicant also points to documents in the National Documentation Package [NDP] which address the struggles women face when leading their household, as well as the barriers for women to find accommodation and employment in Akura and Benin City.

[44] The RPD acknowledged that the Applicant would face challenges as a single woman with children and no family supports, but concluded that it would nonetheless be objectively reasonable for her to relocate to the IFA locations. The RAD found that the RPD correctly assessed the reasonableness of the proposed IFA locations.

[45] Before this Court, significant portions of the Applicant's submissions are the same as those submitted to the RAD on appeal from the RPD.

[46] The Applicant argues that assessing the reasonableness of proposed IFAs requires consideration of the Applicant's personal circumstances. The Applicant asserts that the RAD was not sensitive to her age, gender, level of education, ethnicity, religion, financial circumstances, ability to travel to the IFA destinations, ability to secure a livelihood, or ability to seek accommodation or a support network: *Idrees v Canada (Citizenship and Immigration)*, 2014 FC 1194 at para 32.

[47] The Applicant relies on *Utoh v Canada (Citizenship and Immigration)*, 2012 FC 399 [*Utoh*] for the proposition that factors like the ability of women to travel safely because of their gender should be considered in assessing the reasonableness of an IFA, as directed by the Gender Guideline: at para 18. The Applicant argues that the RAD was obliged but failed to consider the Gender Guideline in its assessment of reasonableness of the IFAs.

[48] Instead, the Applicant submits that the RAD merely performed a perfunctory assessment of her personal circumstances without actually addressing her submissions about the geographic spread of her father’s estate properties and the Paternal Family’s travel habits, while also failing to consider that she does not have housing or employment in the proposed IFAs. The Applicant argues that the RAD in effect ‘ratified’ the RPD’s findings rather than conducting its own analysis based on the evidence, suggesting that the RAD applied the wrong standard of review of reasonableness, rather than correctness, on the appeal.

[49] I am not persuaded by the Applicant’s submissions.

[50] In *Utoh*, the Court noted that the member did not make any comment on gender at all during its IFA analysis: at para 19. In this case, while brief, the RAD did expressly review the RPD's finding of facts and its rationale behind these findings before accepting them. At paragraph 44 of the Decision, the RAD noted:

> The RPD considered the Appellant's education, work experience, high rate of unemployment, discrimination faced by women in finding employment, her ability to safely travel to Benin City, practice her religion, access to schooling for the children and access to health care. The RPD was cognizant that the Appellant would face challenges as a single women with children and no family support network. After taking all these factors to into consideration, the RPD concluded that it would be objectively reasonable for her relocate to the IFA locations. I have considered the Appellant's circumstances, and the country evidence, and I come to the same conclusion that the IFA locations are reasonable. Therefore, I find that the RPD did not err.

[51] The Applicant's submission does not point to any reviewable error arising from this passage of the Decision.

[52] Moreover, as the Federal Court of Appeal [FCA] noted in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*], the threshold for assessing reasonableness of a proposed IFA is "very high" and the conditions in an IFA must not amount to a claimant's "life or safety" being jeopardized: at para 15. This threshold, as the FCA explained, is in "sharp contrast" with "undue hardship resulting form loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations": *Ranganathan* at para 15.

[53] I agree with the Respondent that the RAD adequately considered the country condition evidence, such as the document the Applicant refers to from the NDP. The RAD's observation that the Applicant "would face challenges as a single woman" makes it clear that it did consider the submissions the Applicant made on appeal, including those relating to her gender.

[54] As such, I find no reviewable error with respect to the RAD's analysis of the Applicant's personal circumstances in the context of assessing the reasonableness of the IFAs.

Did the RAD err in its assessment of the psychiatric evidence?

[55] In support of her refugee claim, the Applicant submitted a psychologist's report dated April 24, 2020 [Psychologist's Report], which states that the Applicant suffers from a stressor-related disorder with prolonged duration and that the recommended treatment includes stress-management training and supportive counselling. The Applicant relies on the Psychologist's Report as evidence to establish a specific personal circumstance that would render her relocating to an IFA unreasonable. The Applicant argues that the RAD failed to properly apply the Psychologist's Report in the IFA analysis by making adverse credibility findings "on issues that were not germane to the Applicant's claim", rather than considering how the Applicant's trauma would impact her ability to relocate to the proposed IFAs.

[56] The Applicant relies on *Okafor v Canada (Citizenship and Immigration)*, 2011 FC 1002 [*Okafor*] at para 13 which states that "[p]sychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded": citing *Cartagena v Canada (Minister of Citizenship and Immigration)*, 2008 FC 289 [*Cartagena*] at para 11. In both of these cases, the

Court found that the decision-maker “failed to thoroughly assess the reasonableness of the locations suggested as viable IFAs in the context of [the applicant's] situation and vulnerable mind-set”: *Okafor* at para 13 citing *Cartagena* at para 11.

[57] The Applicant again appears to rely on the same submissions that she made before the RAD and hopes to get a different outcome from the Court. I find the Applicant’s arguments lack merit and the cases cited by the Applicant distinguishable on the facts.

[58] The RAD reviewed the Psychologist’s Report and noted that the Applicant did not provide evidence that she is undergoing treatment in Canada, nor whether the treatment, if any, is required on an ongoing basis if successful. The RAD acknowledged that the Psychologist’s Report stated that the Applicant’s condition would deteriorate if exposed to further threats of harm, but found that it did not explain why this would occur in the context of a relocation to the IFAs. The RAD emphasized that it was the Applicant’s onus to show that her condition would worsen upon relocation to the proposed IFAs, and concluded that the Applicant did not provide evidence demonstrating that her mental health issues would require ongoing care.

[59] The RAD found in the alternative that even if the Applicant requires mental health services, she would be able to access these services in Nigeria. The RAD noted that the Applicant did not provide evidence on the accessibility and affordability of mental health treatment in the proposed IFAs. The RAD reviewed the state of mental health services throughout Nigeria and found that it is available, albeit difficult to obtain. The RAD agreed with

the RPD that the Applicant did not discharge her burden to show that the proposed IFAs would be unreasonable on the basis of access or ability to pay for mental health services.

[60] The RAD therefore found that it would not be objectively unreasonable, in all the circumstances, for the Applicant to relocate to either Akura or Benin City.

[61] The RAD's findings, as summarized above, reveal that the RAD conducted a thorough review of the Psychologist's Report. Contrary to the Applicant's assertion, the RAD did not fail to properly consider the psychiatric evidence, nor did it make adverse credibility findings on issues not germane to the issue.

C. *Did the RAD fail to consider the Gender Guideline?*

[62] The Applicant asserts that the RAD, if properly applying the Gender Guideline, was obliged to view the evidence through the lens of the Applicant's state of mind: *John v Canada (Citizenship and Immigration)*, 2011 FC 387 at para 7. Instead, the Applicant submits that the RAD rejected the Applicant's claims based on speculative findings.

[63] The Applicant maintains that merely mentioning that the Gender Guideline was applied in the Decision without going further is insufficient. The Applicant relies on *Odia v Canada (Citizenship and Immigration)*, 2014 FC 663, where the Court stated that "[i]t is not sufficient for the RPD to simply say that the Gender Guidelines were applied and then fail to demonstrate how they were applied", and that the analysis on whether a decision-maker sufficiently applied the Gender Guideline "requires an inherently fact-specific analysis by the Court": at para 18.

[64] As such, the Applicant argues that the RAD failed to apply the Gender Guideline meaningfully and was not sensitive to the risks the Applicant would face if returned to Nigeria as a woman. The Applicant submits that this error renders the Decision unreasonable.

[65] Like the rest of the Applicant's arguments, the Applicant's submission on the Gender Guideline must fail because the Applicant does not link her assertions to the Decision itself.

[66] I note that the RAD began its Decision by noting that the Gender Guideline was considered. Further, as noted above, I find the RAD did not err by failing to consider the Applicant's personal circumstances, including her gender, and her status as a single mother. I also agree with the Respondent the cases relied on by the Applicant do not suggest how the RAD may have erred in this regard in the case at bar.

[67] As such, I conclude that the Applicant has not raised a reviewable error on how the RAD assessed or applied the Gender Guideline in the Decision.

IV. Conclusion

[68] The application for judicial review is dismissed.

[69] There is no question for certification.

JUDGMENT in IMM-9535-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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