Federal Court  Cour fédérale

Date: 20230426

Docket: IMM-2736-22

Citation: 2023 FC 610

Ottawa, Ontario, April 26, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

JOSEPH OJIMA SULE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 23 year-old citizen of Nigeria. After entering Canada irregularly from the United States on January 27, 2018, the applicant sought refugee protection principally on the basis of his fear of persecution because of his father's union activities in Kogi State, Nigeria. While this claim was pending, on August 28, 2018, the applicant's older sister entered Canada irregularly from the United States and sought protection on the same grounds.

[2] The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") heard the applicant's sister's case first. It rejected the claim on credibility grounds. However, on February 23, 2021, the Refugee Appeal Division ("RAD") of the IRB allowed an appeal from the RPD's decision and substituted a finding that the applicant's sister is a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[3] The RPD heard the applicant's claim on August 5 and September 17, 2021. In addition to his fear arising from his father's union work, the applicant based his claim on his fear of the Special Anti-Robbery Squad, a federal Nigerian police force, and his fear that, as a Christian, he will be a victim of the genocide against Christians that is taking place in Nigeria.

[4] The RPD rejected the claim in a decision dated October 27, 2021. It found that the applicant had not established that his alleged fears relating to the Nigerian police or a Christian genocide were well-founded. On the other hand, the RPD gave the applicant the benefit of the doubt that the Kogi government continued to target union leaders and their families in Kogi State. The determinative issue for the RPD in this respect was whether the applicant had a viable internal flight alternative ("IFA") in Lagos.

[5] Simply put, an IFA is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to which it would not be unreasonable for them to relocate. When there is a viable IFA, a claimant is not entitled to

protection from another country. To counter the proposition that they have a viable IFA, a party seeking protection has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to relocate there. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA).

[6] The RPD concluded that the applicant had not established that the Kogi government would be motivated to seek him out in Lagos or that it would be unreasonable for him to relocate there. The RPD therefore rejected the claim.

[7] The applicant appealed the RPD's decision to the RAD. In support of his appeal, the applicant sought to file 11 articles as new evidence. In his written submissions to the RAD, the applicant challenged the correctness of the RPD's determinations concerning the alleged Christian genocide and the viability of an IFA in Lagos.

[8] The RAD dismissed the applicant's appeal in a decision dated March 8, 2022. In doing so, the RAD admitted some of the articles provided by the applicant and refused to admit other articles. On the merits of the appeal, the RAD agreed with the RPD that the applicant's alleged fear of a Christian genocide was not well-founded. The RAD also agreed with the RPD that, with respect to his claim relating to his father's union activities, the applicant had a viable IFA in

Lagos. The RAD therefore confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

[9] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *IRPA*. He submits that the RAD's determinations with respect to the new evidence and with respect to whether Lagos is a viable IFA are unreasonable. As I explain in the reasons that follow, I do not agree. This application will, therefore, be dismissed.

[10] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard. This standard applies to the RAD's determinations with respect to the new evidence and with respect to the IFA issue.

[11] 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing 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).

[12] Looking first at the RAD's determinations with respect to the new evidence provided by the applicant, it admitted three articles dealing with the impact of the COVID-19 pandemic in Nigeria. The RAD refused to admit two other articles dealing with the pandemic because they pre-dated the RPD's decision and the applicant had not made any submissions on why they could not have been presented to the RPD before it rendered its decision. The RAD also refused to admit another article dealing with events in northeast Nigeria for the same reason. This accounts for six of the articles the applicant provided. The RAD's decision is silent, however, with respect to the remaining five. The applicant submits that the RAD's failure to address the other articles renders the decision unreasonable.

[13] I do not agree. There is no question that the RAD should have addressed the remaining five articles. Its silence means that, strictly speaking, there is no determination as to their admissibility. Nevertheless, I am satisfied that this does not undermine the overall intelligibility of the decision. This is because, first, the only reasonable conclusion is that the articles are not admissible as new evidence and, second, the rationale for this determination can be discerned from the record as a whole (including the articles themselves).

[14] Three of the articles pre-date the RPD's decision and there is no explanation in the record for why the applicant did not submit them to the RPD. They clearly do not meet the requirements of subsection 110(4) of the *IRPA.* The remaining two articles – one concerning religiously-motivated violence in Nigeria, the other reporting on calls for increased government funding for mental health services in Nigeria – do post-date the RPD's decision. However, there is no reasonable basis on which to find that they satisfy the test in *Singh v Canada (Citizenship*

and Immigration), 2016 FCA 96 at paras 38-47. In particular, there is no reasonable basis to conclude that the articles are material in the sense that they may have an impact on the RAD's overall assessment of the RPD's decision (*Singh* at para 47). The article concerning religiously motivated violence in Nigeria is not reasonably capable of affecting the RAD's assessment of the RPD's determination that the applicant's alleged fear of religiously-motivated persecution is not well-founded. Similarly, the article concerning mental health services in Nigeria is not reasonably capable of affecting the RAD's assessment of the RPD's determination that it would not be unreasonable for the applicant to relocate to Lagos.

[15] In short, I am satisfied that, while the RAD's failure to address the admissibility of the five articles is a flaw in the decision, it is a minor misstep that is peripheral at best to the merits of the decision. It does not warrant interfering with that decision on review: see *Vavilov* at para 100.

[16] Turning to the merits of the RAD's decision, the applicant does not challenge the RAD's conclusion that he did not have a well-founded fear of persecution on the basis of his religion. Rather, his principal focus is the reasonableness of the RAD's conclusion that he is not a Convention refugee or person in need of protection in relation to his father's union activities. As I will explain, I am not persuaded that this determination is unreasonable.

[17] Understandably, the applicant places significant emphasis on the different outcomes for himself and his sister despite the fact that both of their claims relate to their father's union activities. The applicant does not dispute that every claim for protection must be determined on

its own merits. Nor does he suggest that the RAD is bound by the determination of another panel in another matter, even a matter involving another member of the same family. Nevertheless, the applicant contends that the RAD's rejection of his case is unreasonable when viewed in light of a different panel's acceptance of his sister's case given their common elements.

[18] I do not agree. There is no doubt that there are substantial similarities between the applicant's circumstances and those of his sister. As a result, to be reasonable, there must be a reasoned and intelligible explanation for why the outcome of the applicant's claim differs from that of his sister's (*Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at paras 17-18). I am satisfied that there is such an explanation. On one key issue – whether they have a well-founded fear of persecution in Kogi State arising from their father's union activities – the two RAD panels reached the same affirmative conclusion. However, in the applicant's case, the determinative issue was the availability of an IFA in Lagos. The RAD provided extensive reasons for concluding that the applicant had a viable IFA there. In contrast, in the applicant's sister's case, the RAD dismissed the IFA issue in an entirely conclusory fashion, simply stating: "As the agent of persecution is the Kogi state authorities, I find that the Appellant would not receive State protection and that there is no viable IFA for the Appellant in Nigeria."

[19] The applicant relies on *Omar v Canada (Citizenship and Immigration)*, 2021 FC 1355, in support of his position that the RAD's decision is unreasonable in light of the favourable finding for his sister. In my view, this case, which concerned the reasonableness of different outcomes for parents and their minor child, is entirely distinguishable from the present case. While there is

a strong factual nexus between the applicant's case and his sister's, I cannot agree with the applicant that that nexus is of such a nature that the different outcomes in the two cases is simply inexplicable.

[20] The applicant also challenges the reasonableness of the RAD's findings under the two branches of the IFA test. I am not persuaded that either finding is unreasonable.

[21] On the question of whether the applicant would be safe from persecution in Lagos, the RAD found that the applicant had not established that his agents of persecution would be motivated to seek him out there. This is a point on which the applicant had the burden of proof. On the record before it, it was not unreasonable for the RAD to conclude that the applicant had failed to discharge that burden. There was simply no evidence that the agents of persecution would be motivated to pursue him in Lagos.

[22] With respect to the second branch of the IFA test, the RAD concluded that it would not be unreasonable in all the circumstances for the applicant to relocate to Lagos. The applicant submits that this determination is unreasonable in light of evidence suggesting that the applicant would be unable to obtain the mental health services and other supports he requires.

[23] I do not agree. The evidence of what mental health services the applicant required at the time of the RAD's decision was very weak. It consisted of a dated report from a psychotherapist stating that the applicant suffered from depression, that he required immediate assistance, and that 12 psychotherapy sessions were recommended. There was no evidence that, in the almost

year-and-a-half between that assessment and the RAD's consideration of the applicant's appeal, the applicant had followed the psychotherapist's recommendation or even that he was still suffering from depression. Nor was there any evidence that the applicant continued to be dependent on the support of his sister. On the record before it, it was open to the RAD to conclude that the applicant had not established that it would be unreasonable for him to relocate to Lagos because he would be unable to obtain the mental health services or other supports he requires.

[24] The RAD also reviewed the conditions generally in Lagos, including how it had been affected by the COVID-19 pandemic. The applicant has not persuaded me that the RAD's assessment of this evidence is unreasonable. While I agree with the applicant that the RAD's reference to paragraph 97(1)(b)(ii) of the *IRPA* is misplaced, the RAD's fundamental point that the applicant had not established that it would be unreasonable for him to relocate to Lagos is sound. The applicant's submissions essentially amount to an invitation to reweigh the evidence and reach my own conclusion on whether it would be unreasonable for him to relocate to Lagos. As I have already noted, that is not the role of a court on judicial review under the reasonableness standard.

[25] For these reasons, the application for judicial review will be dismissed.

[26] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d). I agree that no question arises.

JUDGMENT IN IMM-2736-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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