Federal Court  Cour fédérale

Date: 20231211

Docket: IMM-10648-22

Citation: 2023 FC 1671

Toronto, Ontario, December 11, 2023

PRESENT: Madam Justice Go

BETWEEN:

Rasheed Adewale FASHOLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Rasheed Adewale Fashola [Applicant], a citizen of Nigeria, alleges fear of persecution from his great uncle over a land dispute, and from Black Axe, a criminal organization trying to recruit him.

[2] The land in question is located in Ogun State, where the Applicant was born and lived with his family until 2020, when he moved to Lagos. The Applicant came to Canada in May 2021, and sought refugee protection shortly after.

[3] On May 25, 2022, the Refugee Protection Division [RPD] determined the Applicant was neither a Convention refugee nor a person in need of protection and that the Applicant had a viable Internal Flight Alternative [IFA] in Lagos or Ibadan.

[4] On October 7, 2022, the Refugee Appeal Division [RAD] dismissed the appeal, finding that the Applicant had an IFA in Lagos [Decision]. The Applicant seeks judicial review of the Decision. I dismiss the application for reasons set out below.

II. Issues and Standard of Review

[5] The Applicant submits the following two issues:

a. Did the RAD err in assessing the first prong of the IFA test?
b. Did the RAD err in assessing the second prong of the IFA test?

[6] The parties agree the standard of review in this case is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[7] 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.

[8] 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

[9] The two-pronged test for finding a viable IFA is well-established. The decision-maker must be satisfied on a balance of probabilities that (1) there is no serious possibility of the claimant being persecuted in the proposed IFA, and (2) the conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge in the IFA: *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*] at 711 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (C.A.), 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*] at 592-593.

[10] The first prong will not be met if an applicant shows that the agent of persecution would have the means and motivation to search for and locate the applicant: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 996, *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21, and *Vartia v Canada (Citizenship and Immigration)*, 2023 FC 1426 at para 29.

[11] To refute the second prong, an applicant must show that the conditions in the IFA would jeopardize their life and safety: *Ranganathan v Canada (Minister of Citizenship and Immigration)* (C.A.), 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] at para 15.

A. *Did the RAD err in assessing the first prong of the IFA test?*

[12] The Applicant argues the RAD improperly applied the first prong in finding that the Applicant failed to establish that his great uncle can find and harm him in the proposed IFA. The Applicant further submits the RAD unreasonably discounted the credibility of threatening Instagram messages the Applicant alleges he received from Black Axe two months before the RPD hearing.

[13] I will deal with these two arguments separately.

(i) Threats from the Applicant's Great Uncle

[14] The Applicant makes several arguments to challenge the RAD's finding that the threat of harm from the Applicant's great uncle was limited to the land itself.

[15] First, the Applicant argues it was unreasonable for the RAD to accept that his great uncle was "wealthy and connected," yet still find that he had no interest in locating and harming the Applicant in Lagos. The Applicant submits this finding was speculative and made no regard to the harms his great uncle caused to him and his family. The Applicant points to his narrative, where he indicated he would not be safe in Nigeria so long as the land dispute was ongoing. The Applicant submits that it would be "hard to say" his great uncle would not perceive his return to Nigeria as an affront.

[16] I reject this argument, noting that the Applicant's position is itself based on speculation.

[17] Moreover, I find the RAD reasonably concluded that the great uncle does not have the motivation to harm the Applicant in Lagos on the basis that the threat was contained to the disputed land. As the RAD noted, the attacks against the Applicant and his family only occurred when they approached the land, and the Applicant remained in Nigeria for years after the last threat, including about six months' time in Lagos. It was open to the RAD to find there was insufficient evidence the great uncle is motivated to find and harm the Applicant in Lagos. The Applicant has not pointed to any evidence, other than his own assertion, that would contradict this finding.

[18] Second, the Applicant submits it was unreasonable of the RAD to suggest the Applicant can forgo his right of inheritance to secure his safety. The Applicant argues the inheritance of the land is not up to him; rather, his father's refusal to give up his property rights is what led to the attacks and his sister's murder. The Applicant submits he fears the same fate.

[19] I note, first of all, that the Applicant's argument before the Court is inconsistent with the argument he made before the RAD, which was summarized in the Decision as follows:

> The [Applicant] has argued that he will have title to the land; he testified [*sic*] did not have it as of the time of the hearing, but he anticipated that he and his sibling would inherit it.

[20] Further, as the Respondent argues, and I agree, the Court has found that refugee claimants who can make a reasonable choice to avoid a risk of harm must be expected to pursue those options: *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 [*Malik*] at paras 25-30 (which the RAD also cited), and *Olori v Canada (Citizenship and Immigration)*, 2021 FC 1308 at para 32. I see no error arising from the RAD's reliance on *Malik* to conclude that if the Applicant's safety hinged on foregoing his inheritance, then it would be reasonable to expect the Applicant to do so.

[21] Third, the Applicant argues the RAD placed too high of an evidentiary burden of demonstrating his great uncle's motivation. The Applicant submits that the appropriate test should be whether there is a reasonable chance of persecution, not whether the Applicant can provide evidence of his great uncle's motivation: *Rasaratnam* at 710 and *Thirunavukkarasu* at 592-593.

[22] The Applicant makes a similar argument with respect to forward-looking risk, arguing that his great uncle had already targeted his family and there still is a serious possibility of persecution if he returns to Nigeria. The Applicant also argues that the RAD incorrectly mentioned the Applicant was not harmed by the incidents targeting his family members.

[23] In sum, the Applicant submits the RAD did not apply the correct test for determining harm in Nigeria, and required the Applicant to meet a more onerous evidentiary test than a "mere possibility" or "reasonable chance" of harm: *Adjei v Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 (FCA), [1989] 2 FC 680.

[24] I note that the RAD did not in fact find that the Applicant was not harmed during the incidents against his family members. Rather, the RAD found there was a lack of forward-looking risk in Lagos because the attacks and threats last happened years ago, and they were localized.

[25] I also find the Applicant's argument conflates the standard of proof with the legal test of harm. The Applicant's tragic family circumstances notwithstanding, the burden is on him to show that the IFA is not available to him.

[26] In a recent decision, *Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1333 [*Mohammed*], the applicant similarly tried to argue that by requiring him to prove persecution would be more likely than not, or on a balance of probabilities, the RAD elevated the legal standard from what should have been required, which is a serious possibility of persecution: *Mohammed* at para 19.

[27] Justice Diner disagreed, finding the RAD applied the accepted IFA test in concluding that "on a balance of probabilities, the [applicant] would not face a serious possibility of persecution or risk to life or cruel and unusual treatment or punishment or danger" and the RAD was simply

unsatisfied with respect to the sufficiency of the evidence: *Mohammed* at para 20. Justice Diner determined the applicant was only disagreeing in the manner in which the RAD applied the test, and weighed the evidence under it: *Mohammed* at para 21.

[28] As Justice Diner notes, the standard of proof must not be confused with the legal test to be met, such that while refugee claimants do not need to establish that persecution would be more likely than not, they must still establish their case on a balance of probabilities: *Mohammed* at para 35.

[29] The comments by Justice Diner in *Mohammed* are equally applicable to this case. I see no indication that the RAD failed to apply the correct legal test. Rather, the Applicant disagrees with the RAD's findings on the sufficiency of evidence and its conclusion that on a balance of probabilities the Applicant has failed to establish he would face a serious possibility of persecution in the IFA.

(ii) Threats from Black Axe

[30] According to the Applicant, on February 8, 2022, a month and a half before the Applicant's refugee claim hearing, the Applicant received threatening messages through Instagram, which he alleges were from Black Axe.

[31] The RAD observed it had good reason to question the timing of the threats, just as the Court did in *Meng v Canada (Citizenship and Immigration)*, 2015 FC 365 [*Meng*] and *Jiang v*

Canada (Citizenship and Immigration), 2021 FC 572 [*Jiang*]. The RAD concluded it is more likely the Applicant was last in contact with Black Axe in 2017.

[32] The Applicant submits there is nothing inherently implausible about the timing of the Instagram messages and argues the RAD relied on its skepticism of the messages to impugn the credibility of key evidence.

[33] The Applicant distinguishes *Meng*, arguing that the threat in *Meng* occurred before the applicants made their claim for refugee protection, whereas in his case, the Applicant raised his fear of Black Axe from the beginning of his claim which was already underway when he received the Instagram messages. The Applicant contends that had he indeed wanted to submit inauthentic evidence, he would have done so shortly after he made his claim instead of weeks before the hearing.

[34] The Applicant submits the RAD made an implausibility finding, as per *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*], and argues that there was no reasonable convincing explanation from the RAD as to why the Instagram messages were inherently implausible. The Applicant submits that the RAD must provide some evidentiary basis for its conclusion, not just its subjective perception. That is, the RAD should "provide a reliable and verifiable evidentiary base against which the plausibility of the Applicants' evidence might be judged:" *Gjelaj v Canada (Citizenship and Immigration)*, 2010 FC 37 at para 4.

[35] I am not persuaded by the Applicant.

[36] As confirmed by *Valtchev,* implausibility findings should be made in the clearest of cases only, with an attentiveness to a claimant's cultural background, and specific and clear reference to the evidence. Having said that, I disagree with the Applicant that the RAD only took issue with the timing of the messages, but failed to provide any other reason. Rather, the RAD provided several reasons for its finding on the Instagram messages, noting that the sender does not identify himself or herself as a member of the Black Axe, and that the evidence regarding the link to Black Axe is vague. It was after the RAD had made these observations that it turned to the issue of timing.

[37] The Court in *Meng* found that when the timing of events is "extraordinarily coincidental," that is "suspiciously convenient," and it is open to a tribunal to question this evidence: *Meng* at para 22. I agree with the Respondent that whether the threat occurred before or after the Applicant made his refugee claim is not a distinguishing fact.

[38] In *Jiang*, another case cited by the RAD, the impugned document was submitted by the applicant two years after he allegedly left the country and around the time that his appeal was being considered by the RAD. The court found the RAD had good reason to be suspicious of the timing of the document in question, citing *Meng*. Also in *Jiang*, the applicant's claim of persecution was also included in his Basis of Form claim, and the impugned document was submitted to demonstrate an ongoing interest of the agent of persecution: *Jiang* at paras 41-44.

[39] I find the Applicant's situation is similar to that in *Jiang*. I also find *Meng* is not distinguishable simply because the Instagram messages were submitted before the RPD hearing.

B. *Did the RAD err in assessing the second prong of the IFA test?*

[40] On the second prong, the RAD found that given the Applicant's experience and background, he had employment prospects in Lagos and would be able to find appropriate accommodation. The RAD also noted the Applicant spoke the two main languages in Nigeria, Yoruba and English, and that as a Muslim, the Applicant practiced the country's dominant religion. Last, the RAD found that the violence in Nigeria was generalized. The RAD concluded that the cumulative effects of these factors rendered Lagos a reasonable IFA for the Applicant.

[41] The Applicant challenges the RAD's second prong findings on several grounds.

[42] First, while acknowledging the test as set out in *Ranganathan* at para 15, the Applicant disagrees with the RAD that this entails a high threshold; rather, he submits the second prong is a lower threshold that should include "undue hardship."

[43] With respect, this argument has no merit.

[44] The jurisprudence confirms that the second prong of the IFA test is a high threshold and requires proving more than undue hardship: *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at para 12; *X v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1668 at para 54; *Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at para 32;

Henao v Canada (Citizenship and Immigration), 2020 FC 84 at para 11; *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at para 9; *Oluwafemi v Canada (Citizenship and Immigration)*, 2023 FC 564 at para 40; *Madaan v Canada (Citizenship and Immigration)*, 2023 FC 1216 at para 15.

[45] The Applicant further argues it would be unreasonable to relocate to Lagos because of the conditions in the city and his own personal circumstances. The Applicant focuses on two particular issues: the lack of employment prospects and family connections in Lagos.

[46] The Applicant submits the RAD erred in its assessment of his employment skills, arguing that he only worked in an unpaid internship at an insurance company for four months and with his father before that. As a 30-year old with no proper work experience, combined with Nigeria's worsening economic conditions, the Applicant argues that being in Lagos does not necessarily mean he would be able to obtain employment. The Applicant points to the National Documentation Package [NDP] Item 1.26 to highlight the deteriorating economic conditions in Nigeria.

[47] The Applicant also argues he would face hardship in relocating to Lagos because he does not have family members there to support him. The Applicant argues the RAD was wrong in suggesting that since he had already lived in Lagos without his family that it would not be unreasonable for him to do so again, since his former stay in Lagos was on a temporary basis.

[48] I reject the Applicant's arguments.

[49] I note, first of all, that the RAD applied the proper analysis in considering various factors – employment, accommodation, indigeneity, and violence – before concluding that the potential hardships of relocating would be surmountable and the Applicant's life and safety would not be in jeopardy in Lagos.

[50] The RAD acknowledged the extensive poverty and significant unemployment rate in Nigeria. But it also noted, according to the NDP, that Lagos is described as "an economic hub, a financial capital, and the most productive and dynamic part of the Nigeria's economy." The RAD also noted that skilled people with experience are more likely to get a job, citing the same NPD that the Applicant seeks to rely on. Given the evidence before the RAD showing that the Applicant has worked with his father in construction, has helped with charity work at a shelter in Canada, and has worked as a machine operator, the RAD's conclusion that the Applicant "has skills" and that there is likely work available for him was reasonable.

[51] As to family connections, the RAD acknowledged the Applicant has none in Lagos, but found that given the Applicant lived in Lagos before and that there is no evidence he faced any issues with indigeneity then, it was unlikely he would face issues if he relocates now. This finding was also reasonable.

[52] The Applicant cites *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141 [*Haastrup*], where Justice Kane overturned an RPD decision, finding it had failed to reconcile relevant evidence about the applicants' particular circumstances and country conditions evidence that supported their submission that relocating to the IFAs would likely jeopardize their lives and

safety due to their inability to acquire, among other things, accommodation, employment, and health services (*Haastrup* at para 31).

[53] However, Justice Kane also confirmed an applicant needs to demonstrate more than undue hardship under the second prong:

> [30] In order to find that an IFA is not reasonable in their particular circumstances, a refugee claimant must establish more than the undue hardship resulting from loss of employment, separation from family, difficulty to find work, and a reduction in the quality of life. While circumstances that jeopardize the life and safety of a refugee claimant clearly point against the proposed IFA, other types of undue hardship may not meet the very high threshold. The dividing line will vary.
>
> [Emphasis added]

[54] Finally, the Applicant suggests that the RAD dealt with the second prong factors categorically and analyzed them in a vacuum without observing that cumulatively, these factors make Lagos an unreasonable IFA. The Applicant submits that an unreasonable error in any portion of the IFA test, which is a cumulative test, renders the entire decision unreasonable: *Akinola v Canada (Citizenship and Immigration)*, 2019 FC 1308 at para 38.

[55] This argument is directly contradicted by the Decision which notes, at para 45:

> I have considered the cumulative effect of the barriers in the context of the evidence of the [Applicant's] skills and resources. I find that given his background, his characteristics such as his ethnicity and age, and his skills, the challenges he could face in Lagos do not amount to undue hardship.

[56] The Respondent submits, and I agree, that ultimately the Applicant is requesting the Court to reweigh the evidence, and fails to establish any reviewable errors in the Decision.

IV. Conclusion

[57] The application for judicial review is dismissed.

[58] There is no question for certification.

JUDGMENT in IMM-10648-22

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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