

CANADA / JUDGMENT

Oguntayo v. Canada (Citizenship and Immigration)

2024 FC 1773

COURT

Federal Court

DECIDED

7 November 2024

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20241107 Docket: IMM-9532-22 Citation: 2024 FC 1773 Calgary, Alberta, November 7, 2024
PRESENT: The Honourable Madam Justice Heneghan BETWEEN: ADEBAYO OLADAPO
OGUNTAYO ADEBOWALE ESTHER ADEBIYI DONALD ADEMUREWA OGUNTAYO Applicants and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent REASONS AND JUDGMENT

- [1] Mr. Adebayo Oladapo Oguntayo (the “Principal Applicant”), his wife Adebowale Esther Adebisi and their son Donald Ademurewa Oguntayo (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing their appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). In its decision, the RPD had dismissed the Applicants’ application for protection as Convention refugees or persons in need of protection, pursuant to section 96 and subsection 97(1), respectively, of the Immigration and Refugee Protection Act, S.C. 2001, c. 27.
- [2] The Applicants are citizens of Nigeria. The Principal Applicant worked in the agricultural sector. He alleged to be at risk from Fulani herdsmen in the Benue State area of Nigeria.
- [3] The Applicants’ claim was first assessed by the RPD in July 2019. Upon appeal to the RAD in January 2020, the RAD allowed the appeal and sent the matter back to the RPD, with directions that the RPD address the issues of Internal Flight Alternative (“IFA”) and any others they find relevant.
- [4] The RPD reheard the claim in February 2021 and again dismissed it. Upon appeal, the RAD dismissed the appeal on the grounds that an IFA is available to the Applicants in Port Harcourt, in the southern area of Nigeria.

- [5] The Applicants now plead that the RAD breached their right to procedural fairness by making its decision upon the issue of IFA, without giving them the opportunity to address that issue. As well, they argue that the RAD's decision about the availability of an IFA in Port Harcourt is unreasonable.
- [6] The Minister of Citizenship and Immigration (the "Respondent") submits that the RAD did not breach procedural fairness, that the matter of an IFA was squarely before it and known to the Applicants. Otherwise, he argues that the decision of the RAD meets the applicable standard of review, that is reasonableness.
- [7] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.
- [8] The overriding concern is that the Applicants knew the case to be met; see the decision in *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69.
- [9] Following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the merits of the decision are reviewable on the standard of reasonableness.
- [10] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov*, *supra*, at paragraph 99.
- [11] I agree with the submissions of the Respondent about the alleged breach of procedural fairness. The submissions filed with the RAD in support of the last appeal clearly addressed IFA.
- [12] The RAD conducts an appeal from the RPD upon the standard of correctness, following the decision of the Federal Court of Appeal in *Huruglica v. Canada (Citizenship and Immigration)*, [2016] 4 F.C.R. 157. That decision prescribes that this Court review decisions of the RAD upon the standard of reasonableness; see paragraphs 12 and 35.
- [13] I am not persuaded that the Applicants were unaware that IFA was an issue before the RAD. No one could know until the RAD delivered its decision that IFA would be the "determinative" issue but that does not mean that the Applicants suffered any breach of procedural fairness.
- [14] Submissions were made to the RAD about IFA. The Applicants were responsible for the sufficiency or otherwise of those submissions.
- [15] I am satisfied that there was no breach of procedural fairness relative to the manner in which the RAD dealt with the issue of IFA.
- [16] Likewise, I am not persuaded that the RAD unreasonably found that an IFA is available to the Applicants in Port Harcourt.

- [17] The test for an IFA was set out by the Federal Court of Appeal in *Rasaratnam v. Canada* (Minister of Employment and Immigration), [1992] 1 F.C. 706 at 710-711 (F.C.A.). The test is two-part and provides as follows: -First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA. -Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.
- [18] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize their life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v. Canada* (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 F.C. 589 at 596-598 (F.C.A.).
- [19] I am satisfied that, in light of the evidence before the RAD, including the testimony of the Principal Applicant and his wife and the documentary evidence, that the RAD reasonably concluded that the Fulani herdsmen would not pursue the Applicants to Port Harcourt.
- [20] The RAD's conclusion about the second part of the test, that is whether the Applicants could "reasonably" relocate to Port Harcourt, meets the standard of reasonableness.
- [21] In the result, the Applicants have failed to show a breach of procedural fairness or any other reviewable error and the application for judicial review will be dismissed. There is no question for certification. JUDGMENT IN IMM-9532-22 THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There is no question for certification. "E. Heneghan" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-9532-22 STYLE OF CAUSE: ADEBAYO OLADAPO OGUNTAYO ADEBOWALE ESTHER ADEBIYI DONALD ADEMUREWA OGUNTAYO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: CALGARY, ALBERTA DATE OF HEARING: NOVEMBER 4, 2024 REASONS AND JUDGMENT: HENEGHAN J. DATED: NOVEMBER 7, 2024 APPEARANCES: Gen Zha FOR THE APPLICANTS Galina Bining FOR THE RESPONDENT SOLICITORS OF RECORD: Arkham Law Barristers & Solicitors Calgary, Alberta FOR THE APPLICANTS Attorney General of Canada Calgary, Alberta FOR THE RESPONDENT

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