

Federal Court



Cour fédérale

Date: 20250401

Docket: IMM-8564-24

Citation: 2025 FC 606

Ottawa, Ontario, April 1, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

LATEEF OLAYINKA AKINGBADE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of the Refugee Appeal Division [RAD], upholding the determination of the Refugee Protection Division [RPD], which found that the Applicant, Lateef Olayinka Akingbade, is neither a Convention refugee nor a person in need of protection under ss 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

Background

[2] The Applicant is a citizen of Nigeria. He claims that he faces a risk of persecution and torture in Nigeria from the ruling party, which is targeting him due to his political profile and influence. Although he identifies as heterosexual, he claims that he supports the LGBTQ community and that the ruling party intends to use that support to imprison him on false charges of violating the Same Sex Marriage (Prohibition) Act [Act] in Nigeria.

[3] The RPD dismissed his claim, finding that the Applicant had a viable internal flight alternative [IFA] in Abuja. The Applicant then appealed to the RAD. In a decision dated April 30, 2024, the RAD found that the RPD was correct and dismissed the appeal. The RAD's decision is the subject of this judicial review.

Decision Under Review

[4] The RAD found that the determinative issue was the availability of a viable IFA.

[5] As to the motivation of the Applicant's agents of persecution, the RAD found that the Applicant did not provide sufficient evidence to establish that his personal political profile makes him an ongoing target for being silenced. The RAD agreed with the RPD's analysis that the Applicant's opponents made a politically motivated allegation against him in order to influence the outcome of the general election set to occur on March 11, 2023 [2023 Election]. They had achieved their aim and their interest in pursuing him ended shortly after the election.

[6] The RAD agreed with the Applicant that the RPD failed to consider that the Applicant faces a risk of persecution by the police for his past support of LGBTQ organizations, which is illegal under the Act. However, upon review of the evidence, the RAD concluded that the Applicant's fear that his support of LGBTQ organizations is being used by his agents of harm to be speculative and not supported by the objective evidence.

[7] The RAD also found that the RPD did not err in its assessment of a Letter of Invitation issued to the Applicant for questioning by the police. Further, with respect to a search of the Applicant's home shortly after the 2023 Election, it agreed with the RPD that, because no additional action had been taken by the police since that search, such as the issuing of a warrant, charges being laid, or questioning of the Applicant's family, that the motivation of the agents of persecution to pursue the Applicant ended at the time of the search.

[8] Having found that motivation had not been established, the RAD found it unnecessary to examine whether the agents of persecution have the means to locate the Applicant.

[9] The RAD also found that the IFA location is reasonable. With respect to the Applicant's assertion that he would have to live in hiding in the IFA, the RAD found that the RPD had correctly noted National Documentation Package [NDP] evidence that enforcement of laws by police in Nigeria is selectively driven by bribery and corruption. In this case, the RPD had found that the police were motivated by political corruption, which ended shortly after the election. The RAD concurred with the RPD's analysis and found that the Applicant did not establish that he is wanted by the police, faces a risk of arrest in Abuja, or that he would have to live in hiding there.

[10] The RAD found that the RPD had considered the Applicant's language, ethnicity, religion, and personal circumstances in finding that the IFA location of Abuja is reasonable, which analysis the Applicant had not challenged. The RAD found that the RPD's finding was correct and adopted its reasoning in finding that Abuja is a reasonable IFA location.

Issue and Standard of Review

[11] The sole issue in this matter is whether the RAD's decision was reasonable. The parties submit, and I agree, that the standard of review applicable to the merits of the decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25, 85, 86 and 99).

Analysis

[12] I have previously described the principles pertaining to IFA determinations in *Ullah v Canada (Citizenship and Immigration)*, 2022 FC 1777:

[20] An IFA has been described as “a fact situation in which a person may be in danger of persecution in one part of a country but not in another” (*Thirunavukkarasu v Canada (Minister of Employment & Immigration)*, 1993 CanLII 3011 (FCA) at para 2 [1994] 1 FC 589 (CA) [*Thirunavukkarasu*] at 592). Because an IFA in another part of the same country is determinative of refugee status, the onus is on an applicant to prove, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the proposed IFA (*Thirunavukkarasu*, paras 5 and 9; *Photskhverashvili v Canada (Citizenship and Immigration)*, 2019 FC 415 [*Photskhverashvili*] at para 28).

[21] The two-pronged test for establishing 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. conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, including the circumstances particular to the claimant, for the claimant to seek refuge there.

(*Thirunavukkarasu* at paras 5, 9; *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 (CA) at 711; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17-18); *Photskhverashvili* at para 29).

[22] The onus is on the claimant to demonstrate that [sic] at least one of the prongs has not been established. That is, the burden is on the claimant to establish that the IFA is not viable, either because there is a serious risk of persecution there or because it would be unreasonable for them to seek refuge there (*Thirunavukkarasu* at 590; *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) [*Ranganathan*] at paras 13-15, [2001] 2 FC 164). The Applicants must provide actual and concrete evidence of the existence of conditions that would jeopardize their lives and safety in relocating to the IFA (*Ranganathan*, at para 15; *Photskhverashvili* at para 31). Failure to meet that onus means the IFA is determinative of the claim for refugee protection.

[13] Regarding the first prong of the test, this Court has found that the applicant bears the onus of demonstrating that the proposed IFA is unreasonable because they fear a possibility of persecution throughout their entire country. Further, to discharge their burden, applicants must demonstrate that they will remain at risk in the proposed IFA from the same individual or agents of persecution that originally put them at risk. The risk assessment considers whether the agents of persecution have the means and motivation to cause harm to the claimant in the IFA (see, for example, *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1080 at para 17 [*Singh*]).

[14] Further, motivation findings, which are at the heart of the RAD's decision in this matter, are fact-specific decisions that may depend on how the RAD considered a number of factors including, among others: the identity and the nature of the agent of persecution; the reason the claimants were initially targeted; the steps the agents of persecution have taken; the length of time that has passed without contact; and the relationship the agents of persecution have to the applicants (*Canifru Candia v Canada (Citizenship and Immigration)*, 2024 FC 917 at para 19 [*Canifru Candia*]).

[15] The RAD employed the correct IFA test. However, the Applicant asserts that the RAD erred in various ways. I will address these in turn.

Applicant's Profile and Prospective Risk

[16] The Applicant asserts that the RAD did not consider his particular risk profile. He argues that he has readily established his political views, which are in opposition to the ruling government, and his support for the LGBTQ community in Nigeria, where homosexuality is illegal. Further, that if returned to Nigeria, he would espouse the same political views and will continue to support LGBTQ causes, thereby facing a serious possibility of harm on a balance of probabilities. The Applicant argues that the proper question before the RAD in assessing the viability of the proposed IFA is to ask whether the Applicant – cognizant of his political views and activism – would be harmed if returned to Nigeria, whether Abuja or elsewhere. He submits that the RAD's reasons are not responsive to his profile.

[17] The Applicant also submits that the RAD erred in failing to consider his prospective risk beyond the 2023 Election and in concluding that his political opponents' interest in pursuing him ended shortly after the election. He asserts that the RAD failed to recognize the motivation of those who have targeted him and does not take into account the fact that his home was searched after the election.

[18] I do not agree with the Applicant. His political involvement was fully explored by the RPD at the hearing as is evident from the transcript. He addressed his various political alignments and work over the years. He last ran for office in 2007 before re-entering politics in 2021, when he ran as a candidate for the African Democratic Congress [ADC] party for the 2023 Election. He testified that with respect to his candidacy in the 2023 Election, the ruling party, All Progressives Congress [APC], viewed him as a threat. As such, they threatened his supporters not to vote for him. And, while he was in Canada attending a conference, his wife called to tell him that the police had issued a Letter of Invitation inviting the Applicant to be questioned in relation to "a case of conspiracy and same sex activities involving you and some others". The Applicant's evidence was that his lawyer learned that there was a petition asserting that he is gay. He testified this was politically motivated and intended to keep him from participating in the election. He remained in Canada and forgoing his candidacy in the 2023 Election. On March 25, 2023, the Applicant's house was searched by the police. He testified that his wife and family remain in the same Nigerian state, Ibadan, but have not since been bothered by the police.

[19] The RAD noted that the RPD had found that the Applicant had not established that his political opponents or the police had the motive to search for him in the IFA location. The RPD

based this finding on several aspects of the evidence: 1) the police interest in the Applicant in Ibadan was corrupt and prompted by the Applicant's political opponents who sought to interfere in the 2023 Election; 2) there was no evidence of further inquiries by the police at the Applicant's home since shortly after the 2023 Election; 3) the police in Nigeria are generally corrupt and willing to abuse their authority for bribes; and 4) the Applicant's political opponents achieved their aim of preventing the Applicant from running in the 2023 Election and therefore are not motivated to continue to push for pursuit of him by the corrupt police. The RAD also addressed the Applicant's argument on appeal that it was unreasonable for the RPD to find that the Applicant's political opponents are no longer motivated to harm him, primarily based on an argument that APC controls the security apparatus of the state and the machinery of government. The RAD agreed that this is the situation in Nigeria but found that the Applicant had not provided sufficient evidence to establish that his personal political profile makes him an ongoing target for being silenced. Examining all of the evidence, the RAD concurred with the RPD's analysis and found that, on a balance of probabilities, the Applicant's opponents made a politically motivated allegation against him in order to influence the 2023 Election outcome, that they achieved their aim, and that the interest of his opponents in pursuing him ended.

[20] The RAD also noted the Applicant's argument that the RPD ignored that his house had been searched shortly after the 2023 Election, indicating ongoing motivation of the police to pursue the Applicant. However, the RAD found that as no additional action had been taken since the search, including warrants, charges or questioning of his family who remain in the town, the motivation of the agents of harm to pursue the Applicant ended at the time of the search.

[21] In my view, these conclusions were reasonable based on the evidence before the RAD. It is apparent from the decision that the RAD considered that the Applicant's agents of persecution searched his home shortly after the election. However, given the lack of evidence of any further actions by the police subsequent to the search, the RAD determined that the agents of persecution, having succeeded in the goal of preventing the Applicant from running in the 2023 Election, no longer had the motivation to pursue him.

[22] The RAD's reasoning demonstrates that it conducted a context-specific IFA evaluation based on the evidence and the RPD's reasons (see *Canifru Candia*, at para 19), including the length of time that had passed without contact. This was reasonable.

[23] The Applicant essentially challenges the RAD's finding as to motivation by way of his assertion that he had a long-standing passion for and involvement with politics, that he has maintained an active social media presence, and that the RAD erred in failing to consider this in regard to prospective risk. That is, because of his political opinions, his agents of persecution remain motivated to silence him.

[24] On this point, I would first note that this line of argument does not appear to have been argued before the RAD. However, and in any event, the Applicant's problems with his agents of persecution began when he ran for office in 2023, and his own evidence was that this was politically motivated to keep him from being elected. And, as both the RPD and RAD found, subsequent to his home being searched shortly after the election, there is no evidence that the opposition party, or anyone else, has threatened him or his family. Moreover, while he

mentioned his social media activism when testifying before the RPD, he provided no evidence to support these activities. And, more significantly, there was no evidence of any threats of harm made in relation to same.

[25] When appearing before me, the Applicant referred to the transcript of the RPD hearing to suggest that this risk existed prior to his 2023 candidacy. Specifically, he testified that in 2003, he was a candidate for the United Nigerian Party. On the day of the election, his opponent brought in political thugs who were “shooting sporadically”. The Applicant thought this was the “normal thuggery” but noticed he was being chased by some of the thugs, who he outran. He asserts that this was an assassination attempt. In 2007, he was a candidate for the All Nigerian Peoples Party. When asked if there were any threats against him or his party at that time, he testified that there is always a threat in Nigerian elections but there was no violence at that time. Again, it is not apparent that the Applicant made this assertion before the RAD. But, in any event, these incidents, as with the actions by his agents of persecution surrounding the 2023 Election, were connected with the Applicant’s candidacy in an election. He gave no evidence of any other threats over the years or subsequent to the 2023 Election arising from his political opinions. He also testified, when asked by the RPD if he would continue to support any political party, that some day he would engage in political activities but not now as there is no rule of law in Nigeria.

[26] In short, the RAD did not fail to consider the Applicant’s political profile or prospective risk in its IFA analysis.

Corruption of Police in Nigeria

[27] The Applicant argues that the RAD's comments regarding police corruption and ineffectiveness would appear to preclude that he would be safe anywhere in Nigeria given his political opinion, perceived sexual orientation, and his support for the LGBTQ cause in Nigeria. Further, that the RAD's decision indicates that there is no state protection in Abuja or anywhere inside Nigeria.

[28] On this point, the RAD summarized the RPD's reasons for finding that the Applicant had not established that his political opponents or the police had the motivation to search for him in the IFA location. As discussed above, those reasons included that the police interest in the Applicant in Ibadan was corrupt and prompted by his political opponents who sought to interfere in the 2023 Election and, that the police in Nigeria are generally corrupt and willing to abuse their authority for bribes. The RAD also stated that "the RPD correctly noted NDP evidence that enforcement of laws by police is selectively driven by bribery and corruption and found that, in this case, the police were motivated by political corruption" and that the motivation to harm the Applicant ended shortly after the election.

[29] Essentially, the Applicant's argument is that, if the Nigerian police are generally corrupt and willing to abuse their authority for bribes, as acknowledged by the RAD, then there is nothing to stop the police from succumbing to corruption and causing future harm to the Applicant.

[30] I agree with the Respondent that the Applicant cannot rely on the RAD's conclusion that the police in Nigeria are "generally corrupt" as a basis to find that he is at risk of harm anywhere

in Nigeria, including the IFA. As explained in *Singh*, the onus is on the Applicant to adduce sufficient evidence or facts to discharge their burden of proof and demonstrate, on a balance of probabilities, that the agents of persecution have the motivation to locate him in Abuja (*Singh* at para 17). Here, the Applicant failed to establish that his agents of persecution were motivated, after the 2023 Election, to engage the police (via bribe or otherwise) to harm the Applicant. Put differently, the Applicant did not establish an instigating factor that would trigger the country's generally corrupt police to locate and harm him in the IFA. As discussed below, the RAD also reasonably determined that the police would not locate and harm the Applicant of their own volition through enforcing the Act against him for his perceived sexual orientation.

[31] It is speculative to assert that general corruption of the police in Nigeria will, at some time and for some reason in the future, put the Applicant at risk by motivating the police to locate and harm him in the IFA.

[32] And, as noted by the Respondent, state protection was not the subject of the RAD's determination and its finding that the police in Nigeria are generally corrupt does not amount to a finding that state protection is unavailable to the Applicant.

Applicant's Profile as a LGBTQ Supporter and Perceived Gay Man

[33] The Applicant submits that while the RAD acknowledges the RPD's failure to examine his risk on account of his past support of LGBTQ organizations, it did not engage with his evidence regarding allegations made against him in which he had been accused of being homosexual. I disagree and find the RAD's treatment of this issue was reasonable.

[34] The Applicant's Basis of Claim [BOC] narrative, with respect to the petition made against him, stated that this was made by his political opponents and alleged both that he is a homosexual and that he supports homosexuals. His narrative states that he is not a homosexual but "I have unwavering support for the LGBTQ community and I have obviously supported the community several times in the past by giving donations for a few of their events. I believe the fact that some members of the LGBTQ community are my friends and strong supporters brought about the allegations [...]".

[35] The RAD assessed the two letters of appreciation from LGBTQ rights organizations provided by the Applicant as evidence of his support of the LGBTQ community. It noted that the letter from the expatriate organization Bisi Alimi Foundation expressed appreciation for unspecified support of an event in Lagos in 2019. The other, from Queer Alliance Nigeria, thanked the Applicant for providing a conference room for a workshop. The RAD found that while these letters were evidence of support of these LGBTQ community organizations, they were not evidence of the Applicant of having a profile of a public supporter. These were private letters to the Applicant and there was no evidence that the police or his political opponents are aware of the support he has provided or of these letters.

[36] The RAD also found that the Letter of Invitation made no mention of the Applicant being a supporter of LGBTQ organizations. And, while in his BOC narrative the Applicant states that his lawyer heard through a police officer friend that the allegations against the Applicant were that "I am a homosexual and that I also support homosexuals", this was third-hand information from an anonymous source with no context provided as to how he is aware of this information.

The RAD found that this was not probative of the allegation that the Applicant is wanted for his support of the LGBTQ community.

[37] The RAD concluded that the Applicant had not established on a balance of probabilities that his political opponents and the police are aware of his support of LGBTQ organizations, that they are using his support for these groups as evidence against him, or that his past support of LGBTQ organizations puts him at risk of harm in the IFA.

[38] On this point, the Applicant argues that the RAD failed to consider the letters and the Letter of Invitation as evidence of the Applicant's broad support for the Nigerian LGBTQ community and interpreted the Letter of Invitation too narrowly.

[39] In my view, this submission lacks merit. As seen from the above, the RAD did address this evidence. And, in any event, the RAD found that the Letter of Invitation was politically motivated by the Applicant's political opponent and reasonably concluded that his agents of persecution were no longer motivated to harm him after the conclusion of the 2023 Election. Thus, even if the RAD had considered these letters as evidence of the Applicant's broad support for the LGBTQ community in Nigeria, this would not affect the outcome in the absence of motivation.

[40] With respect to the Applicant's assertion that the RAD failed to consider that he is at risk as he is or will be perceived to be homosexual, in assessing the reasonableness of the IFA and the Applicant's assertion that he would be forced to go into hiding in the IFA as he is a victim of

“state-sponsored homophobia”, the RAD noted the RPD’s findings. This included that the country information indicates that the number of people arrested annually under the Act numbers in the tens, but that cases rarely go to court and seldom result in convictions. Further, while prohibited under the Act, LGBTQ organizations are generally able to operate without government interference, indicating that even if the Applicant’s support of these organizations was widely known, it is not likely to motivate the police to pursue enforcement of the Act against him.

[41] The RAD concurred with the RPD’s analysis, finding that on a balance of probabilities, the police’s interest in the Applicant “was motivated by corruption and not by a duty to uphold the law”. In other words, the evidence did not establish that the Applicant faced a serious possibility of persecution at the hands of the Nigerian police either because of his past or future support of LGBTQ organizations or because of a misperception that he is a homosexual. This evidence did not support that the police would have the motivation to locate and enforce legal penalties against the Applicant under the Act or as a supporter of LGBTQ organizations.

[42] In short, the RAD reasonably assessed the Applicant’s assertion that he would be at risk because of his past support of the LGBTQ community, the evidence of which was limited, and also the prospect that he would be at risk because of a perception that he is homosexual or that he supports homosexuals, which was not supported by the objective country conditions.

[43] In sum, for the reasons above I find the RAD did not err in its assessment of the first prong of the IFA test, which was reasonable. The Applicant has not challenged the second prong of the test.

JUDGMENT IN IMM-8564-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8564-24

STYLE OF CAUSE: LATEEF OLAYINKA AKINGBADE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 26, 2025

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DATED: APRIL 6, 2025

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