

Federal Court



Cour fédérale

Date: 20170711

Docket: IMM-5124-16

Citation: 2017 FC 673

Ottawa, Ontario, July 11, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

OLASUMBO MARY ADEDIPE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for leave and judicial review, under section 72(1) of the *Immigration and Refugee Protection Act [IRPA]*, of a decision of the Refugee Appeal Division (“RAD”), dated November 23, 2016, in which the RAD upheld the decision of the Refugee Protection Division (“RPD”), dated July 11, 2016, that the Applicant is neither a Convention

refugee nor a person in need of protection under sections 96 and 97(1) of the *IRPA* (the “Decision”).

II. Background

[2] The Applicant, Olasumbo Mary Adedipe, is a citizen of Nigeria. She alleges to be a bisexual woman, and is claiming refugee protection pursuant to sections 96 and 97(1) of the *IRPA*. The Applicant states that she fears returning to Nigeria, as she fears that she would be persecuted by her family, the Christian community, and the Nigerian government because of her sexual orientation.

[3] The Applicant claims that, in 2005, she was expelled from school and beaten by her father for attempting to hold a female classmate around the waist. Subsequent to this event, she attended a Muslim school, from which she graduated in 2008. After graduation, the Applicant met Shola Akinola (“Shola”) and the two women allegedly started a sexual relationship. The Applicant states that no one knew of her sexual relationship with Shola and that they would visit each other at their respective homes, which they shared with their parents, under the guise of merely being good friends. After some time, the Applicant’s mother allegedly became suspicious of the Applicant’s relationship with Shola and, in March 2009, the Applicant’s mother ordered her to never see Shola again. However, the two continued to meet in secret.

[4] In September 2009, the Applicant arrived in Winnipeg on a student visa, where she stayed with Lamide Abitogun, her mother’s friend’s daughter. The Applicant states that, although she was worried that Ms. Abitogun would discover her sexual orientation, she kept in

touch with Shola daily by phone. While in Winnipeg, the Applicant had nothing to do with the Lesbian, Gay, Bisexual, Transgender, and Queer (“LGBTQ”) community.

[5] In May 2011, the Applicant returned to Nigeria to see her parents and Shola. During this visit, the Applicant and Shola continued their clandestine relationship, and Shola gave the Applicant an album of intimate photos and the sex-toys they shared. The Applicant put the photos and sex-toys into a locker in her room; however, when packing to leave for Canada, she accidentally left the photos and sex-toys behind.

[6] The Applicant states that, upon her return to Winnipeg, Ms. Abitogun became suspicious of her regular calls to Shola. Therefore, the Applicant told her father that she wanted to change her college program and move to Toronto. She moved to Toronto in January 2012, where she lived with a friend of her father’s. In September 2012, the Applicant began attending Humber College.

[7] Sometime after moving to Toronto, the Applicant met a Nigerian man, Temitope Ojo. The Applicant told Mr. Ojo that she had a girlfriend in Nigeria and, despite his initial shock, the two began an intimate relationship, which lasted for over 1.5 years.

[8] In February 2014, the Applicant received a call from her father, who told her that he had found the intimate photos and the sex-toys. Her father stated that he would have the Applicant arrested when she returned to Nigeria and that he would no longer support her or pay her student fees. After this phone call, the Applicant left the home of her father’s friend. The Applicant

claims that she repeatedly tried to contact Shola by phone, but got the message that the number was unavailable.

[9] From July 2014 to June 2015, the Applicant was allegedly involved in a same-sex relationship with Aminata Lylah. In August 2014, in anticipation of her student visa expiring, the Applicant sought the advice of an immigration consultant, Assad Bajwa, who advised her to apply for a temporary resident permit and a work permit. The Applicant states that she was too scared to tell Mr. Bajwa about her sexual orientation, because she did not know that she would be able to make a refugee claim. In November 2015, the Applicant received a negative decision on her application for both permits. The Applicant claims that Ms. Lylah advised that she go to “the 519”, a Toronto based organization dedicated to LGBTQ advocacy, and tell them about her situation. Through the 519, the Applicant found out that she could request refugee protection in Canada.

A. *The Decision*

[10] The RAD acknowledged that it had to conduct its own analysis of the record to determine whether the RPD erred and noted that where the credibility of oral evidence was at issue, the RAD would defer to the findings of the RPD, because the RPD enjoyed an advantage in assessing the oral evidence of the witnesses before it.

[11] The RAD held that the RPD had reasonably considered the report of the psychologist, Dr. Browne, and concurred with the RPD’s decision to assign little weight to the report. The RPD found that the psychologist’s report did not sufficiently explain the inconsistencies found in the

Applicant's narrative and also found that there were discrepancies between the information provided to the psychologist and the information provided to the RPD. Therefore, although the RPD accepted the psychologist's diagnosis (i.e., the Applicant suffers from mild depression and anxiety) it did not find that this diagnosis affected its view of the Applicant's credibility.

[12] At the RAD, the Applicant asserted that the RPD's treatment of the psychologist's report was improper, in a manner similar to that in *Sterling v Minister (Citizenship and Immigration)*, 2016 FC 329 [*Sterling*]. In *Sterling*, the RPD made a "no credible basis" finding; however, the psychologist's report provided an explanation for the applicant's defective memory. The RAD noted that, in this case, the RPD did not make a "no credible basis" finding and the psychologist's report did not explain the inconsistencies in the Applicant's testimony and her basis of claim narrative. As such, the RAD held that the RPD had not erred in its treatment of the psychologist's report and agreed that the Applicant's mental state did not affect any of the RPD's credibility conclusions.

[13] The RAD also found that the RPD did not err in its treatment of either the letter (the "Mother's Letter") or the affidavit submitted by the Applicant's mother (the "Mother's Affidavit"). After assessing these documents, the RAD assigned little weight to both the Mother's Letter and the Mother's Affidavit because of the factual irregularities in the documents; the fact that the mother's signatures on the Mother's Affidavit, the Mother's Letter, and her government issued ID are noticeably different; and the fact that the letter was presented with an envelope that had a Nigerian stamp, but no marks indicating it had actually been sent through the postal system.

[14] Further, the RAD attached great importance to the fact that the Applicant did not provide any photographs of herself and Shola, and did not make a reasonable attempt to obtain the photographs that her father allegedly found. The RAD found that the RPD did not err in drawing a negative inference from the Applicant's lack of effort to obtain the photographs via her mother, particularly when her mother had been willing to send the Mother's Letter and Mother's Affidavit.

[15] Before the RAD, the Applicant had argued that the RPD rejected the emails between her and Shola merely because it had made the assumption that the documents could have been altered, since they were printouts from an unsecured computer. However, based on the inconsistencies between the contents of the emails and the Applicant's testimony, and the fact that the emails were not secure documents, the RAD held that the RPD's finding that the emails were not credible or trustworthy evidence was not an error.

[16] Finally, the RAD found that the RPD had considered the letter allegedly prepared by the Applicant's father (the "Father's Letter") appropriately, and concurred with the RPD's assignment of no weight to the Father's Letter. The RAD noted that the letter did not come in an envelope, the author of the letter could not be verified, and the details within the letter and the tone of the letter were incongruent with the Applicant's testimony.

[17] Based on their findings and the RPD's assessment of the Applicant's oral testimony, the RAD did not accept, on a balance of probabilities, the material events as described by the Applicant and found that the Applicant had not established, on a balance of probabilities, that she

is bisexual. Therefore, the RAD found that there was no serious possibility of persecution should the Applicant return to Nigeria.

III. Issues

[18] The issues are:

- A. Did the RAD ignore or misconstrue the evidence?
- B. Was the RAD's assessment reasonable?
- C. Did the RAD breach procedural fairness?

IV. Standard of Review

[19] The standard of review when reviewing a decision of the RAD is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30 to 35). The standard of review for procedural fairness is correctness.

V. Analysis

- A. *Did the RAD ignore or misconstrue the evidence?*

[20] The Applicant argues that the RAD misconstrued the purpose of the psychological report and the evidence it presented. She states that the purpose of the report is to provide information as to whether the Applicant is suffering symptoms consistent with the facts in her narrative. The Applicant also asserts that the RAD was supposed to review the report and apply the Chairperson's Guidelines for Women Refugee Claimants Fearing Gender-Related Persecution

(the “Gender Guidelines”), which the RAD did not do. The Applicant contends that it was improper for the RAD to reject the report simply because all of the information was provided by the Applicant to the psychologist.

[21] I find that RAD neither ignored nor misconstrued the psychologist’s report. The RAD stated that it accepted the professional opinion of the psychologist, but found that the evidence in the report could not explain the many inconsistencies in the Applicant’s testimony. Additionally, in light of the inconsistencies between the Applicant’s evidence and what she told the psychologist, I find that it was reasonable for the RAD to put little weight on the contents of the report, despite accepting the diagnosis of mild anxiety and depression. Further, the RAD appropriately deferred to the credibility findings of the RPD, who found that the Applicant lacked credibility, rather than accepting the report as corroborating the Applicant’s narrative (*Syed v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 597 at paras 21 and 25).

[22] Regarding the Gender Guidelines, as the Respondent asserts, the Applicant fails to state how the Gender Guidelines were not followed and does not demonstrate how the RAD lacked any sensitivity regarding the Applicant’s gender. Thus, I do not find that the Decision is unreasonable, on account of the Gender Guidelines not being explicitly discussed.

B. *Was the RAD’s assessment reasonable?*

[23] The Applicant states that the Decision is unreasonable because the RAD does not make a clear credibility finding and does not state whether it believes or does not believe that the

Applicant was sexually abused by her father as a minor. Additionally, the Applicant argues that the RAD never states whether it believes that she is bisexual. The Applicant further asserts that the RAD unreasonably cast suspicion on the Mother's Affidavit and Mother's Letter, without making a clear statement as to whether the documents were fraudulent. Similarly, the Applicant contends that the RAD unreasonably focused on the irregularities in the form of the Father's Letter, instead of considering the contents of the letter.

[24] The Applicant also argues that it was unreasonable for the RAD to place "great importance" the fact that the Applicant did not produce photos of herself and Shola. She submits that the emails and the psychologist's report are better evidence of her relationship with Shola, and that it was unreasonable for the RAD to find that the emails did not establish evidence of the relationship, because the emails are dated and are more recent documents.

[25] I find that the RAD made clear findings on both the Applicant's credibility and on whether they believed she was bisexual. Further, since the veracity of the claim that the Applicant's father abused her as a minor is not related to the refugee claim, it was reasonable for the RAD to omit discussing this issue.

[26] Although the RAD did not state that the Mother's Affidavit and Mother's Letter were fraudulent, the RAD discussed the inconsistencies that led to the low weight assigned to the documents and made clear findings that the documents lacked credibility. I find that the RAD's analysis of these documents was reasonable. Similarly, I find that the RAD's treatment of the

Father's Letter was reasonable, because the reasons for finding that the Father's Letter lacked credibility were justifiable and within the range of possible outcomes.

[27] Moreover, Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256, makes it clear that the burden is on the Applicant to either provide acceptable documents establishing the elements of his or her claim, or explain why the documents could not be provided. As such, it was open to the RAD to draw a negative inference from the fact that the Applicant neither tendered the photos as evidence nor gave a credible explanation for why she could not obtain the photos. I also find that the Applicant's argument that the emails and the psychologist's report are sufficient evidence of the relationship between her and Shola lacks merit. As the RAD noted, the contents of the emails are inconsistent with the Applicant's narrative and they are documents that lack any security features that could help establish their provenance.

[28] At the hearing, counsel for the Applicant raised the issue of the RPD ignoring evidence for the first time—this issue was not raised before the RAD on appeal and was therefore not considered by the RAD, which is reasonable in the circumstances.

[29] Therefore, I find that the Decision is reasonable.

C. *Did the RAD breach procedural fairness?*

[30] The Applicant argues that the Decision is procedurally unfair because it was entirely focused on the lack of evidence and that there was no discussion of how the evidence may support any of the issues in this case.

[31] This is not a breach of procedural fairness. A decision-maker is not required to refer to each and every detail supporting his or her conclusion, nor is he or she required to refer to every piece of evidence received that is contrary to his or her finding, and to explain how it was dealt with (*Canada (Minister of Citizenship and Immigration) v Suleiman*, 2015 FC 891 at 38). The Applicant had the opportunity to present her case and RAD provided clear reasons to the Applicant as to why her appeal of the RPD's decision was denied.

[32] There was no breach of procedural fairness.

JUDGMENT in IMM-5124-16

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5124-16

STYLE OF CAUSE: OLASUMBO MARY ADEDIPE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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