

Federal Court



Cour fédérale

Date: 20180305

Docket: IMM-3058-17

Citation: 2018 FC 246

Ottawa, Ontario, March 5, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MONISOLA OLUWASEYI ADEOYE

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a Refugee Appeal Division (RAD) decision, which determined the Applicant was not a Convention refugee or a person in need of protection under ss 96 and 97 of the *Immigration and Refugee Protection Act [IRPA]*. Specifically, the Applicant alleges the RAD breached procedural fairness by relying on different grounds than the Refugee Protection Division [RPD] to dismiss the Applicant's claim and that the RAD's

credibility findings were microscopic or overzealous. The Minister of Citizenship and Immigration opposes the application.

II. Background

[2] The Applicant is a 20 year-old citizen of Nigeria. She alleges being forced to marry an older man named Alhaji Abass (“Alhaji”) by her father in exchange for forgiving a 10 million naira debt, which her father owed to Alhaji for a failed investment. The Applicant describes Alhaji as a wealthy and powerful individual in Nigeria who has three wives and several bodyguards. To avoid the marriage, the Applicant alleges meeting with an agent through her church to apply for a student visa in Canada. The Applicant received the student visa in August 2016, arrived in Canada on October 11, 2016, and claimed refugee protection on December 5, 2016.

[3] At a hearing dated January 30, 2017, the RPD rejected the Applicant’s claim citing credibility as the determinative issue. The Applicant appealed to the RAD, which in a decision dated June 21, 2017, also dismissed the Applicant’s claim based on negative credibility findings. This is a review of the RAD’s decision.

III. Decision Under Review

[4] The RAD found the RPD erred in some credibility findings such as analyzing the Applicant’s ability to recall the exact amount of money her father owed to Alhaji or the Applicant’s ability to remember seeing her father and Alhaji smiling after arranging the

marriage. However, these were not fatal to the final determination that the Applicant was not a Convention refugee or a person in need of protection.

[5] In addition, the RAD found an additional basis for undermining the Applicant's credibility based on the Applicant's submitted documents. The Applicant included an acceptance letter from the University of Regina dated March 10, 2016, which pre-dated when the Applicant claimed she learned of the forced marriage to Alhaji. According to the RAD, this document contradicted the Applicant's claim that she applied for the student visa to avoid persecution since she already arranged to come to Canada before discovering the plan to marry Alhaji. This finding confirmed the issues of credibility of the claimant.

[6] The RAD also gave little weight to the Applicant's corroborative evidence, which included the mother's affidavit, pictures of Alhaji, and a psychological report.

IV. Standard of Review

[7] The parties submit, and I agree, the standard of review for the RAD's decision itself is reasonableness (*Minister of Citizenship and Immigration v Huruglica*, 2016 FCA 93 at para 35; *Chen v Canada (Citizenship and Immigration)*, 2017 FC 539 at para 18; *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 at para 10). Under this standard, the Court will look at the existence of justification, transparency, and intelligibility in the RAD's decision, such that the result falls within the range of reasonable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 11; *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9 [*Dunsmuir*] at paras 47-48).

[8] Similarly, the RAD's credibility findings draw deference and also fall under the reasonableness standard (*Majoros v Canada (Citizenship and Immigration)*, 2017 FC 667 at para 24; *Shabab v Canada (Minister of Citizenship and Immigration)*, 2016 FC 872 at para 16; *Ahmed v Canada (Citizenship and Immigration)*, 2016 FC 763 at para 14).

[9] In contrast, the standard of correctness governs whether the RAD relied on findings that were not before the RPD and were not raised by the parties on appeal (*Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at para 19; *Ortiz v Canada (Citizenship and Immigration)*, 2016 FC 180 at para 17). The ability to respond to new issues on appeal relates to procedural fairness and this Court does not owe the RAD deference on such questions (*Dunsmuir* at para 50).

V. Issues

[10] This application for judicial review raises the following issues:

- A. *Did the RAD breach procedural fairness through considering an issue that was not raised at the RPD hearing or by either party on appeal?*
- B. *Were the RAD's credibility findings against the Applicant microscopic or over-zealous?*

VI. Analysis

- A. *Did the RAD breach procedural fairness through considering an issue that was not raised at the RPD hearing or by either party on appeal?*

[11] In my view the RAD did not raise a new issue for two reasons. First, the Applicant's credibility was already in question before the RPD and second, the alleged new evidence, being the University of Regina acceptance letter, was part of the official record at the RPD and was properly considered by the RAD.

[12] New issues arise on appeal when there is a basis for potentially finding error in the impugned decision beyond the grounds found by the parties (*Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at para 67 [*Ching*]; *Tan v Canada (Citizenship and Immigration)*, 2016 FC 876 at para 30). These new issues require notice to the parties and an opportunity to respond as a matter of procedural fairness.

[13] In this case, the RAD did not raise a new issue on appeal because the Applicant's credibility was already at issue before the RPD. There is no procedural fairness issue when the RAD finds an additional basis to question the Applicant's credibility using the evidentiary record before the RPD (*Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at paras 27-32). The Applicant was already on notice that credibility was a live issue based on the RPD's original decision.

[14] The RAD's conclusions that the University of Regina acceptance letter and the Global Case Management System notes about paying university fees goes to the consistency of the Applicant's story and ultimately her overall credibility. This is not a new issue because the parties already knew credibility was in dispute (*Ching* at para 67).

[15] Overall, this case is analogous to *Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2016 FC 380 at paras 21-30), where the RAD found additional evidence in the record to undermine the Applicant's credibility. In this case, the Applicant cannot claim to be taken by surprise when the RAD examines the very documents she submitted to the RPD.

B. *Were the RAD's credibility findings against the Applicant microscopic or over-zealous?*

[16] In my view, the RAD was not overzealous or microscopic in assessing the Applicant's credibility. Rather, the RAD overruled or qualified several RPD findings that were excessively scrutinizing but which were not fatal to the overall decision. The RAD based its own credibility findings on inconsistencies between the Applicant's testimony and her Basis of Claim Form and mother's affidavit along with vague and evasive answers when pressed on these inconsistencies. The RAD also articulated why it gave limited weight to the Applicant's corroborative evidence and these findings attract deference from this court.

VII. Conclusion

[17] For the above reasons the application for judicial review is dismissed. No question of general importance is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question of general importance is certified.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3058-17

STYLE OF CAUSE: MONISOLA OLUWASEYI ADEOYE v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 6, 2018

JUDGMENT AND REASONS: FAVEL J.

DATED: MARCH 5, 2018

APPEARANCES:

Daniel Etoh FOR THE APPLICANT

Amy Lambiris FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Daniel Etoh FOR THE APPLICANT
Barrister, Solicitor and Notary
Public
Toronto, Ontario

Attorney General for Canada FOR THE RESPONDENT
Toronto, Ontario