

Federal Court



Cour fédérale

Date: 20180629

Docket: IMM-5402-17

Citation: 2018 FC 679

Toronto, Ontario, June 29, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

ADEKUNLE BENJAMIN OLANREWaju

Applicant

and

**MINISTER OF IMMIGRATION, REFUGEES
AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Nigeria. In short, he claims that, while working as a pastor in Nigeria, he provided support and counseling to a young, homosexual member of his church, and also generally promoted tolerance towards members of the LGBTQ community in his teachings. The Applicant alleges that, as a result of his conduct, his church was attacked by Islamic militants, and that he was detained and physically assaulted by the police. He claims that he was

ultimately excommunicated from his church, and that he now fears returning to Nigeria as a result of his perceived sexual orientation and support of the LGBTQ community there.

[2] The Applicant's refugee claim was dismissed by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada on May 3, 2017, as a result of credibility concerns. He appealed to the Refugee Appeal Division [RAD], which confirmed the decision of the RPD on November 28, 2017. The Applicant now seeks judicial review of the RAD's decision. For the reasons that follow, I agree with the Applicant that the RAD's decision is unreasonable, and that it therefore must be set aside and the matter remitted for determination by a differently-constituted panel.

II. Analysis

[3] My task is to review the RAD's findings and treatment of the evidence on a standard of reasonableness (*Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 35; *Majoros v Canada (Citizenship and Immigration)*, 2017 FC 667 at para 24). Thus, to withstand judicial scrutiny, the RAD's findings must be justified, transparent, and intelligible, and fall within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[4] Although the Applicant has pursued a variety of arguments in his Application, I have found that the RAD's decision is fundamentally unreasonable due to two findings on matters which were central to the Applicant's claim. Had they been properly addressed, they may have

changed the outcome of the Applicant's appeal — although that will be for the RAD to decide upon reconsideration.

(i) Whether the Applicant pastored his own church

[5] The Applicant argued before the RAD that the RPD misapprehended the evidence by concluding that he was only ever an assistant pastor, and not the pastor of his own church. This was a critical finding by the RPD, from which many of its other findings flowed. The RPD held that since the Applicant "...was not a pastor of his own church he could not have met [the young congregant] the way he said he did and his church could not have been attacked the way he said it was".

[6] The RPD drew this conclusion because, when it asked the Applicant what he did for work in Nigeria, the Applicant described his role as an assistant pastor:

When I asked the claimant what he did for work in Nigeria, the claimant spoke about being an Assistant Pastor. [...] However, the claimant did not testify about being the Head Pastor of his own church in Kaduna despite the fact that he would have been acting in that capacity for approximately six (6) months immediately prior to his arrest. I asked the claimant why he did not mention his role as the Head Pastor of his own church. The claimant testified that I asked him about his role as an Assistant Pastor and if I had asked him about his role as a Head Pastor, he would have answered accordingly. However, this was not accurate. I did not ask him about his role as an Assistant Pastor, I asked him what he did for work. I repeated what my question had been to the claimant and he explained that he must have misunderstood the question. I do not find this explanation reasonable. When one is asked about what they did for work in their home country, it is more likely that they will discuss their most recent position; especially, if their most recent position was one that involved a great promotion that they would have taken extreme pride in. I find that, if the claimant

was a Head Pastor of his own church, he would have told me about this position, when asked what he did for a living in Nigeria.

[7] I further note that when closing submissions were made on the point at the hearing, the RPD panel interrupted Applicant's counsel, stating:

COUNSEL: ...[the Applicant] indicated in his basis of claim form narrative that he's a Nigerian citizen [...]

PRESIDING MEMBER: I'm just going to mention one thing before you start I also identified his identity as an issue and when I meant identity I meant his identity as a pastor

COUNSEL: Right

PRESIDING MEMBER: And I wanted to just say that I'm satisfied that he's a pastor so I don't need you to address that, so I don't know where you're going with your submissions but you don't need to address that okay thanks

[8] As mentioned above, the Applicant specifically challenged the RPD's finding on the pastor issue before the RAD, pointing out that the Applicant had clarified to the RPD that he believed he was being asked about his duties as an assistant pastor.

[9] In his written submissions to the RAD, the Applicant focused on this issue, and devoted a significant component of his submissions to explaining what he argued was the RPD's misapprehension of this central aspect of the claim. With his RAD appeal submissions, he included the following excerpt from the transcript of the RPD hearing:

PRESIDING MEMBER: Sorry so just so I understand what you're saying counsel you're saying that the way the claimant answered the question he was giving me a history of what he had done since he graduated, is that what you're saying

COUNSEL: Yes...

PRESIDING MEMBER: Okay

COUNSEL: Because he was asked what his work history and then he started narrating when he finished school after then he was sent from Benin headquarters to Kaduna, then he was seconded to a pastor there then after which he now was giving the mandate to open another church

[10] In subsequently analysing the issue on appeal, the RAD stated that it had reviewed the transcript, and was not satisfied that the Applicant had established that he was ever the pastor of his own church, writing in its decision:

I was able to review the Appellant's testimony, and therefore also find that he has not established on a balance of probabilities that he was the pastor of his own church. When asked about his duties, he indicates that he was "sent to assist our branch at Kaduna Kata," and that he preached in mid-week services and youth meetings rather than on the "main service" which takes place on Sundays. The Appellant further testified that he reported to the "Head Pastor," who handled the adults in the church while he helped with the choir, children and youth. I find that his testimony is consistent with the position of being an Assistant Pastor rather than the head of his own church, and that the RPD did not err in this finding.

[11] The RAD's analysis on this point is unreasonable. Nobody contests that the Applicant initially described his duties as an assistant pastor when asked by the RPD what he did for work in Nigeria. The issue before the RAD was whether the RPD erred in concluding that the Applicant was never a head pastor, because it did not accept the Applicant's explanation that he had misunderstood the RPD's question on his employment.

[12] I disagree with the Respondent's argument that the RAD's findings were based on a "thorough analysis" of the Applicant's testimony. In my view, it is apparent from the RAD's

analysis that it overlooked or misunderstood the feature of the Applicant's testimony that led to the RPD's finding that he was never a head pastor.

(ii) Decision to assign limited weight to the Applicant's supporting documents

[13] In addition, the RAD's treatment of certain documentary evidence was unreasonable. As with the key finding in respect of whether the Applicant pastored his own church, which the RAD failed to properly address, this documentary evidence, if found to be legitimate upon analysis, could be central to the Applicant's claim for the reasons below.

[14] The Applicant tendered several pieces of evidence in support of his claim, including: (i) two letters of employment, (ii) a letter relating to excommunication from his church in Nigeria, (iii) a letter from a Nigerian law firm retained by the Applicant to secure his release from his alleged detention, (iv) a police incident report regarding the Applicant's alleged detention, (v) an affidavit from the father of the young congregant whom the Applicant claims to have counselled, (vi) an affidavit from an individual who deposes to assisting the Applicant while he was in hiding from the police, (vii) an affidavit from the Applicant's sister corroborating his detention and escape, (viii) a letter from the Applicant's brother stating that he had advised him to seek refugee protection in Canada, and (ix) a letter from a medical clinic in Nigeria claiming that the Applicant received treatment there after being assaulted by police.

[15] The RAD concluded that two of the documents relating to the Applicant's employment as a head pastor and subsequent excommunication (items (i) and (ii) above) were likely fraudulent,

because of differences in signatures between the documents. Based upon this assessment, it went on to afford limited weight to the Applicant's other documents as follows:

[30] The Appellant also argues that the RPD erred in finding the other affidavits from the people he stayed with while in hiding not be genuine on the basis that it would be unlikely that the affiants would incriminate themselves, and because of the prevalence of fraudulent documents in Nigeria, and therefore, placing little weight on other documents such as a letter from the Appellant's Nigerian lawyer, an affidavit from the Appellant's father, a medical report and his sister's application for bail. I agree that the RPD erred in dismissing the affidavits and other documents on this general basis; however, given the fact that I have found that the Appellant has provided letters from his church that appear to have been forged, I place limited weight on the documents and find that they do not outweigh the credibility concerns addressed above.

[Emphasis added.]

[16] The Respondent argues in this application that once the RAD determined that the documents speaking to the Applicant's employment as a head pastor were fraudulent, the RAD was entitled to give limited weight to the remainder of his personal documents. The Respondent relies on a number of cases in support of this position, including *Fernander v Canada (Citizenship and Immigration)*, 2016 FC 912 [*Fernander*], in which Justice Manson held that "a refugee claimant's negative credibility can extend to all of their evidence, including documents, and can extent [sic] to requests to their acquaintances to corroborate allegations already found to be not credible" at para 18, citing *Moriom v Canada (Citizenship and Immigration)*, 2015 FC 588 at paras 24-27 [*Moriom*].

[17] *Moriom* had, in turn, relied on *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 [*Sellan*], for the principle that "where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is

independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim” (*Sellan* at para 3).

[18] However, unlike in cases such as *Fernander*, *Moriam*, and *Sellan*, this is not a case where the RAD made a general credibility finding against the Applicant and could therefore reasonably dismiss merely corroborative evidence coming from his acquaintances that were not ‘independent’. Rather, in this case, the Applicant provided several documents in support of his claim which, on their face, came from disinterested third parties, including the police and medical reports, and a letter from a Nigerian law firm. It was therefore unreasonable for the RAD to assign limited weight to all of the Applicant’s documentary evidence — as it did — on the sole basis of its earlier finding that other documents tendered by him were likely fraudulent.

[19] This case is more similar to *Hohol v Canada (Citizenship and Immigration)*, 2017 FC 870, where Justice Manson held that “a finding that one or more documents are fraudulent does not necessarily mean that all documents are fraudulent, even in a situation where fraudulent documents are readily available. The RPD must make some effort to ascertain the authenticity of documents that appear to be genuine” (at para 22).

[20] Here, the RAD unreasonably failed to make any effort to ascertain the authenticity and probative value of, for instance, the Applicant’s police and medical reports or the letter from his Nigerian lawyers.

[21] Lastly, I wish to thank Mr. Christopher Crighton, counsel for the Respondent, who, although unsuccessful in this judicial review, is to be commended exemplary advocacy.

Mr. Crighton showed remarkable professionalism and candour and was of great assistance to the Court.

III. Conclusion

[22] The Application is granted. No questions for certification were argued and I agree that none arise on the facts of this case.

JUDGMENT in IMM-5402-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.
2. The RAD's decision is set aside, and the matter remitted for redetermination by a differently constituted panel.
3. No question for certification was argued, and none arose.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5402-17

STYLE OF CAUSE: ADEKUNLE BENJAMIN OLANREWAJU v MINISTER
OF IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 27, 2018

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