

Federal Court



Cour fédérale

Date: 20181204

Docket: IMM-1674-18

Citation: 2018 FC 1214

Ottawa, Ontario, December 4, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**NUEL IRUKA ONYEANWUNA
JOVITA ONYINYECHI ONYEANWUNA
PRECIOUS EBUBE ONYEANWUNA
EMMANUEL CHIZARAM ONYEANWUNA
MARVELLOUS DUBEM (DEBEM)
ONYEANWUNA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of Nigeria. They ask the Court to set aside a decision of the Refugee Appeal Division (RAD) confirming the denial of their refugee claim by the Refugee

Protection Division (RPD) under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The basis of the denial was credibility.

[2] I have concluded that there was no breach of procedural fairness by the RAD in refusing to convene an oral hearing and the Applicants have not demonstrated any errors by the RAD. For the reasons that follow, this judicial review is dismissed.

Background

[3] The Principal Applicant, Nuel Iruka Onyeawuna (the “PA”), his wife Jovita Onyinyechi Onyeawuna, and their three children, Precious, Emmanuel and Marvellous (collectively “the Applicants”) are citizens of Nigeria. The PA claims that his daughter, Ifeoma, died on January 6, 2003 after her grandparents forced her to undergo female genital mutilation (FGM).

[4] The basis of the PA’s claim for protection is twofold—first, that he is being targeted for refusing to have his daughter undergo FGM, and second, he is accused of supporting his brother who was arrested for being homosexual. The PA claims that the police suspect him of helping his brother escape from prison.

[5] The Applicants arrived in Canada in August 2015 on visitor visas and subsequently made refugee claims. In July 2017, the RPD determined that they were not Convention refugees or persons in need of protection. They appealed to the RAD.

RAD Decision

[6] In the March 15, 2018 decision, the RAD confirmed the RPD's finding that the Applicants were not Convention refugees or persons in need of protection.

[7] The RAD addressed the Applicants' request to introduce new evidence consisting of: a letter from a lawyer in Nigeria; a letter from the Nigerian police; a photograph of a sign in front of a police station; and a letter from the Nigerian National Population Commission. The RAD determined that this evidence met the statutory exceptions in subsection 110(4) of the *IRPA* and, therefore, the RAD proceeded to consider this evidence.

[8] The lawyer's letter claims that he was retained to assist the Applicants in getting the letter from the Nigerian police. The RAD noted that this letter does not explain how the lawyer, whose client (the PA) is a fugitive would be able to seek police assistance. The RAD found that the letter was "coloured with the same relevance and credibility problems as the new letter from the police".

[9] The letter from the Nigerian police simply asserted that the three police reports were accurate. However, as noted by the RAD, the letter did not explain how or why the police would assist a known fugitive. The RPD had concluded that the police reports were fraudulent as they were inconsistent and they lacked security features. As the new letter did not address the concerns raised by the RPD, the RAD concluded that it lacked credibility.

[10] The RAD found the photograph tendered was neither relevant nor credible since no context was provided as to the significance of the photograph in front of the police station. Further, the RAD was not satisfied that the photograph met the criteria of subsection 110(4) as it could have been produced before the RPD.

[11] The letter from the National Population of Nigeria purported to attest that the birth certificate for Ifeoma was genuine. The RPD found the birth certificate was fraudulent because it differed significantly from the death certificate, despite both documents being issued by the same government agency. With respect to the birth and death certificates, the RAD found that the RPD did not err in concluding that they were not genuine documents. The RAD also noted that the certificates had a number of inconsistencies for documents issued by the same agency, such as different logos, crests, watermarks, and stamps of the issuing office. For instance, the address listed in the death certificate was one at which Ifeoma never resided. Although the RAD noted that the RPD erred by not considering the PA's explanation for this discrepancy, the RAD discerned that nothing turned on this error, as the PA's explanation did not reasonably explain the discrepancy. The RAD determined this document did not have sufficient credibility as it did not respond to the concerns raised by the RPD.

[12] After assessing the evidence, the RAD determined that as no new admissible evidence had been tendered by the Applicants that raised a serious issue of credibility central and determinative of their claims, an oral hearing was not required.

[13] Aside from the new evidence, the issue for the RAD was if the RPD credibility findings were sustainable.

[14] The RAD concluded that the RPD did not err in finding that the medical report relating to Ifeoma's death was fraudulent. The RPD did not accept the PA's explanation regarding the address discrepancies and the dates of the reports.

[15] The RAD also considered the omission of Ifeoma's name from the Basis of Claim (BOC) and visa application. The Applicants argue that the BOC was prepared by a lawyer who did not give them time to review the application. The RAD did not accept this explanation, finding that the PA was a reasonably sophisticated individual. With respect to the failure to list her name on the visa application, the Applicants explained that culturally they do not list the dead with the living. The RAD did not accept this as a credible explanation.

[16] The RAD confirmed the RPD's finding that the police reports were not genuine. The RAD noted that there were inconsistencies on the face of the documents, including inconsistent logos and different signatures. This led to a negative inference on the probative value of this evidence.

[17] The RAD agreed with the RPD that the evidence regarding the PA's brother's arrest was inconsistent. The PA alleged that, while being pressured by his uncle Joe to have his daughter undergo FGM, there was a commotion outside. When the PA and his wife went outside with uncle Joe, they witnessed the PA's brother being arrested for homosexuality. However, there

were four inconsistent accounts from the PA as to who else was there when his brother was arrested. The RAD confirmed that the RPD did not err by finding these discrepancies could not be accepted as credible evidence.

[18] The PA provided five affidavits in support of his claim that he targeted because of his brother's homosexuality. The RAD found that the RPD correctly determined that the affidavits were not genuine. As homosexuality is illegal in Nigeria, the RAD determined it is unlikely that notaries would swear affidavits endorsing a criminalized activity.

[19] Finally, the RAD assessed the psychological report tendered by the PA but concluded that the report did not remedy the credibility problems. Although certain inconsistencies might be explained on the basis of memory issues that the PA suffers from, the RAD noted that this alone does not account for irregularities in supporting documentation and other evidence.

Issues

[20] The following are the issues to be determined:

- Did the RAD err in its treatment of the new evidence?
- Is the RAD decision reasonable?

Analysis

Standard of review

[21] Reasonableness is the standard of review of the decision of the RAD including its application of subsection 110(4) of the *IRPA* (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 74).

[22] Correctness applies to any procedural fairness issues (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

Did the RAD err in its treatment of the new evidence?

[23] The Applicants argue that the RAD erred in finding that the new evidence was not relevant or credible and erred by not convening an oral hearing to address credibility issues.

[24] Subsection 110(4) of the *IRPA* states as follows:

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[25] The conclusion of the RAD on this issue is as follows:

My jurisdiction to convene an oral hearing is limited; there must be admissible new evidence that raises a serious issue of credibility, is central, and determinative. No new evidence has been admitted,

and so no hearing can be convened. The Appellants' request for an oral hearing is denied.

[26] The letter from the Nigerian lawyer and the letter from the Nigerian police, even if admitted, do not raise new credibility issues. Rather, these documents were tendered by the Applicants as an attempt to address the credibility issues identified by the RPD. However, these new documents were also found to be unreliable and were marred with the same issues as the previous documents assessed by the RPD. Like the other police reports, the new police report is also impugned for appearing to be fraudulent. Further, the RAD noted that the Nigerian lawyer cannot verify the veracity of police reports. This is a reasonable finding.

[27] Overall, the new evidence assessed by the RAD was tainted by the same reliability issues as the evidence assessed by the RPD. The RAD concluded that the evidence was not reliable and therefore was not credible. In these circumstances, there was no obligation for the RAD to convene a hearing pursuant to subsection 110(6) of the *IRPA*. Furthermore, the RAD retains discretion not to hold an oral hearing even when the criteria under section 110, read as a whole, are met (*Siddiqui v Canada (Citizenship and Immigration)*, 2015 FC 1028 at para 104).

[28] Here, the RAD did not err in excluding the new evidence and did not err in determining not to convene an oral hearing.

Is the RAD decision reasonable?

[29] The Applicants argue that the RAD's credibility findings are unreasonable. Specifically, the Applicants argue that the RAD erred in its treatment of the corroborative evidence, being the

medical reports, evidence about Ifeoma, police reports and affidavits, and the psychological report.

Medical reports

[30] The RAD noted multiple errors on the face of these documents. The addresses for the Applicants differed between the original report and the “updated” report. While the RAD considered the PA’s explanation for this, it was not satisfied that it was credible. Further, the RAD noted that the address of the hospital had also changed between the reports. The RAD concluded that the PA did not have a reliable explanation for any of these issues.

Evidence about Ifeoma

[31] The Applicants argue that the inconsistencies in the birth and death certificates are due to the fact that they were issued from different regions in Nigeria. The RAD did not accept this as it did not address the PA’s inconsistent testimony regarding the relevant dates. Additionally, the documents, although issued by the same national commission, had significantly different crests, logos, and stamps.

[32] The omission of Ifeoma’s name from the BOC was also raised by the RAD as a credibility problem. Even if this was an innocent omission, the RAD also noted that the Applicants did not mention her on their visa application to Canada. The explanation that it was upsetting and that culturally they do not list the dead among the living were not accepted by the RAD as credible.

[33] Considering the claim for refugee protection is based in part on the events which transpired with Ifeoma, it was not unreasonable for the RAD to expect reliable evidence to support the claims made. It was reasonable for the RAD to conclude that the Applicants had not established Ifeoma's existence.

Police reports and Affidavits

[34] Both the RPD and the RAD doubted the authenticity of the tendered police reports due to inconsistencies in the appearance of the documents. Objective country evidence states that the police logo in Nigeria does not vary across the country. Further it was reasonable for the RAD to conclude that it is unlikely the police would agree not to pursue an action that is acknowledged to be illegal in Nigeria.

[35] Further, the RAD found the five affidavits unreliable and fraudulent. Based upon the objective evidence on the record, it was reasonable for the RAD to conclude that notaries would not swear affidavits attesting to knowledge of homosexuality, as such conduct is illegal in Nigeria. I disagree with the Applicants' suggestion that the RAD was confused that the PA himself was homosexual. The RAD simply found it implausible that notaries would openly swear to acknowledge someone being a homosexual considering homosexuality is illegal. This is a reasonable conclusion.

Psychological Report

[36] The PA tendered a psychological report to explain how his psychological issues may have impacted his ability to testify and therefore his perceived credibility.

[37] While this report makes note of the PA's memory issues, no particular diagnosis was made beyond a stressor-related disorder. Rather, his psychological issues result in periods of stress, forgetfulness and difficulty with comprehension. While this may explain the PA's inconsistent testimony surrounding the events with uncle Joe, it does not otherwise cure the defects in the documentary evidence which the RAD determined were fraudulent.

Conclusion

[38] There were multiple credibility findings on multiple factors which led the RAD to conclude that the overall claim was not credible. In such circumstances, and in applying a reasonable standard of review to the decision, this Court must assess the RAD decision as a whole.

[39] Here the RAD properly considered and independently assessed the evidence where necessary. The RAD provided intelligible explanations for each negative credibility finding. The RAD provided clear and cogent reasons for its findings and properly deferred to the RPD on matters the RPD was better placed to assess (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 22).

[40] The Applicants have not established any errors or breach of procedural fairness.
Therefore, this judicial review is dismissed.

JUDGMENT in IMM-1674-18

THIS COURT'S JUDGMENT is that

1. This judicial review is dismissed; and
2. There is no serious question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1674-18

STYLE OF CAUSE: NUEL IRUKA ONYEAWUNA, JOVITA ONYINYECHI
ONYEANWUNA, PRECIOUS EBUBE
ONYEANWUNA, EMMANUEL CHIZARAM
ONYEANWUNA, MARVELLOUS DUBEM (DEBEM)
ONYEANWUNA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: DECEMBER 4, 2018

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