

Federal Court



Cour fédérale

Date: 20190927

Docket: IMM-443-19

Citation: 2019 FC 1243

Toronto, Ontario, September 27, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

RAY PRINCE ABBA-OKEREKE

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a refugee claim by the Applicant, a citizen of Nigeria. The decision under review was made by the Refugee Appeal Division (RAD), dated December 13, 2018, on appeal from a rejection decision rendered by the Refugee Protection Division (RPD), dated December 6, 2017.

[2] In the decision, the RAD gives the following description as an overview:

The Appellant alleges that his cousin [name] was arrested for homosexual acts in September 2016 and remained in custody until he died in January 2017. During that entire period, the Appellant repeatedly petitioned for his cousin's release and retained a lawyer to assist him. The Appellant alleges that [his cousin's] death was a result of police torture. After his cousin's death, the Appellant continued to pressure the police in an attempt to hold them accountable for his cousin's death. The Appellant began to feel threatened and unsafe, and he believed that he and his family were being followed by plain-clothed police officers. Police also searched for the Appellant at his workplace. The Appellant fled Nigeria when he began to feel increasingly unsafe and vulnerable. The RPD rejected the claim, finding that the Appellant was not a credible witness.

[3] The RAD agreed with the RPD's finding of negative credibility. The RAD addressed two primary issues: (1) the RPD's finding that there was a lack of documentary evidence surrounding the closeness of the Applicant to his cousin, and (2) the RPD's giving no probative value to supporting documents provided by the Applicant.

[4] The RAD made the following findings at paragraphs 7 and 8 of its decision:

The RPD did not err when it took issue with the lack of documentary evidence surrounding the closeness of the Appellant to [his cousin]

7 The RPD drew a negative inference on the credibility of the Appellant because of a lack of documentary evidence surrounding the relationship. The Appellant argues that the RPD was not sensitive to the realities of Nigeria, where documentation is not always available or necessary.

8 I find that the RPD was correct to be concerned regarding the lack of documentation. According to the Appellant's own testimony, [his cousin] lived with the Appellant for about ten years and the Appellant was responsible for [his cousin's] schooling during that time. While the RPD mentioned the lack of [the cousin's] birth certificate or school documents, these are just examples of documents the RPD might expect to see admitted into evidence. The Appellant's wife's affidavit does mention the

relationship, including “taking him like a son” and “I could remember how [the cousin] babysitted all my children when I gave birth to them.” However, there is no explicit mention of [the cousin] living with the Appellant for a significant period of time. Additionally, there should have had some documentary evidence from that time. I find that the lack of this documentary evidence negatively affects the Appellant’s credibility.

[Footnotes omitted]

[5] The RAD’s analysis quoted above does not conform with the law. The decision in *Maldonado v. M.E.I.*, [1980] 2 F.C. 302 was not addressed.

[6] In *Zakhour v MCI*, 2011 FC 1178, it states at paragraph 4:

I find that each of the implausibility statements quoted do not conform with the existing law for the making of implausibility findings as stated in *Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783 at paragraphs 10 and 11:

With respect to making negative credibility findings in general, and implausibility findings in particular, Justice Muldoon in *Valtchev v Canada (MCI)*, 2001 FCT 776 [at paragraphs 6 and 7]:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the Maldonado principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn

can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis in the original]

It is not difficult to understand that, to be fair to a person who swears to tell the truth, concrete reasons supported by cogent evidence must exist before the person is disbelieved. Let us be clear. To say that someone is not credible is to say that they are lying. Therefore, to be fair, a decision-maker must be able to articulate why he or she is suspicious of the sworn testimony, and, unless this can be done, suspicion cannot be applied in reaching a conclusion. The benefit of any unsupported doubt must go to the person giving the evidence.

[7] In *Galamb v MCI*, 2018 FC 135, it states at paragraph 10:

As to the requirement of supplying corroborating evidence, the Immigration and Refugee Board's on-line publication *Assessment of Credibility in Claims for Refugee Protection, Legal Services, January 31, 2004*, provides the following statement of the state of the law:

2.4.3. Corroborative Evidence Unless there are valid reasons to question a claimant's credibility, it is an error for the RPD to require documentary evidence corroborating the claimant's allegations. In other words, the RPD cannot disbelieve a claimant

merely because the claimant presents no documentary or other evidence to confirm his or her testimony. Thus, generally, a failure to offer documentation cannot be linked to the claimant's credibility where there is no evidence to contradict the claimant's allegations. In [*Kaur v. Canada (Minister of Employment and Immigration)* (1993), 21 Imm. L.R. (2d) 301 (F.C.T.D.)] the Federal Court held that if a panel dispenses with the need to call a witness to corroborate the claimant's testimony, it cannot then make an adverse finding of credibility because of a lack of corroboration of that testimony.

(<http://www.irbcisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx#n243>)

[Footnotes omitted] [Emphasis added]

[8] This Immigration and Refugee Board's publication cited in *Galamb*, and the above quoted portion, still appear on the IRB website at <<https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/Credib.aspx#n243>>.

[9] *Maldonado* and *Zakhour* demonstrate that implausibility findings should only be made in the clearest of cases, i.e. where the facts are outside the realm of what could reasonably be expected. *Galamb* states that it is an error for the RPD to require corroborative evidence. Here, the RPD found that the Applicant's testimony about his close relationship with his cousin was implausible, and required documentary evidence corroborating their closeness. The RAD failed to identify these RPD errors.

[10] Secondly, the RAD made the following findings at paragraphs 9 and 10 of its decision:

The RPD did not err when it gave no probative value to supporting documents

[9] The RPD gave no probative value to the death certificate, the hospital report, various photographs and burial documents. The Appellant argues that the RPD's questions regarding these documents "illustrate a concerning bias against the Appellant."

[10] I find that the RPD did not err. Having reviewed the RPD's findings, I see no evidence of bias, rather the RPD made meaningful and correct credibility findings that in my view were open to it to make. The documents in question do not assist in establishing the cousin's sexual orientation or the reasons for his death, and the RPD was correct to engage the evidence and probe for its relevance. The RPD found that the documents were fabricated. I disagree, but regardless, as noted above, the Appellant has not demonstrated how these documents relate to the core of his claim and his argument must fail.

[Emphasis added]

[11] A quick review of the hospital report makes it clear that it has high probative value.

[12] The hospital report states that the Applicant's cousin died on February 16, 2017, and that the cause of death was as follows:

Primary cause: HEMORRHAGIC SHOCK
Secondary cause: TRUAMATIC [sic] INJURY TO ABDOMEN
(CTR p. 48)

[13] The hospital report therefore does assist in establishing the reasons for the cousin's death, and does go to the core of the Applicant's claim.

[14] As a result, the cardinal errors just described render the RAD's decision unreasonable.

JUDGMENT IN IMM-443-19

THIS COURT'S JUDGMENT is that for the reasons provided, the decision under review is set aside and the matter is referred back for determination by a different Member.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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