

Federal Court



Cour fédérale

Date: 20191129

Docket: IMM-3368-19

Citation: 2019 FC 1533

Ottawa, Ontario, November 29, 2019

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

EHIKIOYA IMOEH I OMOIJIAD E

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ehikioya Imoehi Omoijiade, [Mr. Omoijiade], seeks judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated April 24, 2019. The RPD rejected Mr. Omoijiade's claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act] and found that his claim was manifestly unfounded, in accordance with section 107.1 of the Act.

[2] For the reasons that follow, the Application is dismissed.

I. Background

[3] Mr. Omoijiade is a citizen of Nigeria. He alleges that he is bisexual and would face persecution due to his diverse sexual orientation if returned to Nigeria.

[4] Mr. Omoijiade recounts that he had sexual experiences with various men and women in Nigeria, including being sexually abused by a male teacher when he was 9 years old.

[5] Mr. Omoijiade recounts that on May 27, 2017, a local vigilante group discovered him with a male friend, Kayode, having sex at a motel in Edo State, Nigeria. Mr. Omoijiade recounts that the group beat him and Kayode and then called the police. However, a police officer recognized Mr. Omoijiade and released him and Kayode. The police officer later reported that the two men had overpowered the police and escaped.

[6] Mr. Omoijiade alleges that several days after the incident, the Nigerian police attempted to arrest his father to pressure him to reveal Mr. Omoijiade's whereabouts. Mr. Omoijiade claims that his father avoided arrest and detention due to his connections in the government.

[7] On June 7, 2017, Mr. Omoijiade travelled to the United States [US] on a valid visa that he had obtained to attend a Rotary Club international conference. He recounts that he had planned to return to Nigeria after a few months, once rumours about him and Kayode had cooled down.

[8] Mr. Omoijiade further recounts that on October 13, 2017, *The Nigerian Observer* published a news article identifying him as wanted by the police for having engaged in criminal homosexual acts with Kayode. At around the same time, Mr. Omoijiade states that an unknown man, claiming to be a friend, visited his wife in Nigeria looking for him.

[9] Mr. Omoijiade's wife joined him in the US sometime in October 2017, also on a visa obtained to attend the Rotary Club conference (which had already occurred in June 2017). Mr. Omoijiade states that his wife left Nigeria due to problems she faced from his family. It appears that Mr. Omoijiade told his wife about the article after she arrived in the US. Mr. Omoijiade stated that he and his wife did not seek refugee protection in the US fearing they would not be successful and decided to come to Canada.

[10] On October 30, 2017, Mr. Omoijiade and his wife entered Canada and claimed refugee protection.

[11] The RPD held the first hearing for the joint refugee claim of Mr. Omoijiade and his wife on November 9, 2018. At the hearing, Mr. Omoijiade, in the absence of his wife, disclosed that he was maintaining a casual sexual relationship with a man in Ottawa. This information had not been included in his Basis of Claim [BOC] or in any update to his BOC.

[12] Counsel for Mr. Omoijiade expressed surprise at this new revelation and advised that Counsel could not continue to represent the couple given that Mr. Omoijiade's wife was not aware of the relationship with the Ottawa man and Counsel would have to inform her.

[13] The RPD then separated Mr. Omoijiade's refugee claim from that of his wife and adjourned the hearing to permit Mr. Omoijiade to retain new counsel.

[14] On January 25, 2019, the RPD (the same member) heard Mr. Omoijiade's claim for refugee protection.

[15] On March 1, 2019, the RPD disclosed a Country of Origin Inquiry [COI] which was the Report of the European Asylum Support Office [EASO Report] and was part of the National Documentation Package to Mr. Omoijiade. (The Report described the origins of *The Nigerian Observer*, its ownership, wide circulation and some current challenges). Mr. Omoijiade provided his comments to the RPD by letter dated March 12, 2019.

[16] On April 24, 2019, the RPD rejected Mr. Omoijiade's refugee claim finding that it was manifestly unfounded in accordance with section 107.1 of the Act. This finding precluded Mr. Omoijiade from appealing the decision to the RAD in accordance with subsection 110 (2) of the Act.

II. The Decision under Review

[17] The RPD rejected Mr. Omoijiade's claim for refugee protection, finding him to be generally lacking in credibility and finding that his claim was fraudulent. The RPD focused on the newspaper article, in both its online and print versions, and Mr. Omoijiade's alleged relationship with a man in Ottawa.

[18] The RPD made several adverse findings regarding the article from *The Nigerian Observer*. The RPD could not locate the online article on the newspaper website, despite Mr. Omoijiade's claim that he had found the article online. Mr. Omoijiade offered two possible explanations: that the article might have expired; and, that the website only published articles that appear on the front page of the print copy. The RPD found no evidence that articles expired. The RPD also found that Mr. Omoijiade's explanation about the front page made no sense because he claimed to have found the article online, even though it was not a front-page article.

[19] With respect to the print article (i.e. the paper copy of the newspaper), the RPD noted that page 5 was included three times (the page containing the article in question), pages 11 and 12 were blank, and the images throughout the paper were heavily pixelated or digitally distorted. The RPD found that these defects, taken together, raised serious doubts about the authenticity of the article. The RPD noted that Mr. Omoijiade submitted the article as evidence that he is on a high priority police search list in Nigeria due to his sexual orientation, which caused him to flee.

[20] The RPD did not accept Mr. Omoijiade's explanation that Nigerian newspapers often contain formatting and typographical defects. The RPD acknowledged the EASO Report, which noted that there were technical and staffing problems at *The Nigerian Observer*. The RPD was not persuaded that this explanation accounted for the defects. The RPD further noted that the objective country condition documents described a high prevalence of fraudulent documents in Nigeria.

[21] The RPD noted that when questioned about how Mr. Omoijiade obtained the print copy of the newspaper, his Counsel responded, indicating that someone in Nigeria had sent the newspaper directly to her and that Mr. Omoijiade had not received it prior to its submission to the RPD.

[22] The RPD concluded that the article was fraudulent based on the RPD's inability to find the article online and the several defects in the print version. The RPD found that this undermined Mr. Omoijiade's credibility on his key allegations regarding his sexual orientation and his motivation for leaving Nigeria.

[23] The RPD did not believe that Mr. Omoijiade had a casual sexual relationship with a man in Ottawa. At the first hearing, the RPD suggested that Mr. Omoijiade call the Ottawa man on the phone. However, the RPD ultimately concluded that this would not be appropriate as it could cause the Ottawa man to reveal his sexual orientation and could have repercussions for him.

[24] The RPD noted that because Mr. Omoijiade's sexual orientation and contact with other men was central to his claim, the RPD was not precluded from asking questions about the relationship. The RPD did so at both hearings. The RPD noted that Mr. Omoijiade's testimony about his contact with the Ottawa man was vague, that he omitted to describe this relationship in his BOC (which he did not update), and, that he did not call the Ottawa man as a witness or provide any letter from him. The RPD concluded that these findings, taken together, undermined the credibility of Mr. Omoijiade's alleged relationship.

[25] The RPD gave little weight to the letter written by Mr. Omoijiade's father noting that it repeated much of the same information as in Mr. Omoijiade's BOC.

[26] With respect to the *sur place* claim, the RPD attributed little weight to a YouTube video showing Mr. Omoijiade attending a LGBT event in Canada. The RPD noted that Mr. Omoijiade was not easily identifiable in the video and, consequently, the video posed no further risk that he would be identified and persecuted by the Nigerian government. The RPD added that there was no evidence to support the assertion that the Nigerian government monitors foreign pride parades.

[27] The RPD found that Mr. Omoijiade was generally not credible. The RPD did not believe on a balance of probabilities that he was in a relationship with Kayode in Nigeria or in a relationship with a man in Ottawa or that he has a diverse sexual orientation. The RPD did not believe that Mr. Omoijiade is wanted by authorities in Nigeria or would face persecution there for his sexual orientation or perceived sexual orientation.

[28] The RPD also concluded that Mr. Omoijiade attempted to deceive and mislead the Board by producing a clearly fraudulent newspaper article to attempt to gain refugee protection. The RPD noted that the fraudulent online and print newspaper article was tendered to attempt to demonstrate his sexual orientation, his pursuit by the Nigerian authorities and the risk he would face. The RPD found that Mr. Omoijiade's refugee claim was clearly fraudulent and manifestly unfounded pursuant to section 107.1 of the Act.

III. Issue and Standard of Review

[29] The Issue is whether the RPD's decision that Mr. Omoijiade's claim is fraudulent and manifestly unfounded is reasonable.

[30] The standard of review of issues of mixed fact and law, including credibility and findings that a claim is manifestly unfounded, is reasonableness (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at paras 25-26, 267 ACWS (3d) 918 [*Warsame*]; *Liang v Canada (Citizenship and Immigration)*, 2019 FC 58 at para 14, 301 ACWS (3d) 825).

[31] To determine whether a decision is reasonable, the Court looks for "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Deference is owed to the decision-maker and the Court does not re-weigh the evidence.

[32] In addition to the general principles regarding the assessment of reasonableness, it is well established that boards and tribunals, such as the RPD, are best placed to assess credibility (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4, 160 NR 315 (CA); *Mavangou c Canada (Citoyenneté et Immigration)*, 2019 FC 177 at para 11, 302 ACWS (3d) 823) and that their credibility findings should be given significant deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ

No 1329 (QL); *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43).

IV. The Applicant's Submissions

[33] Mr. Omoijiade submits that the RPD unreasonably concluded that the newspaper article was fraudulent. He submits that he is not responsible for explaining defects in the newspaper, yet he did provide reasonable explanations for the deficiencies in both the online and print versions of the article.

[34] Mr. Omoijiade submits that the RPD's analysis of the newspaper article was microscopic. He argues that it is plausible that the print article would have some defects, particularly in light of the EASO Report describing *The Nigerian Observer's* obsolete equipment and staffing problems. Similarly, it is plausible for the online article to have expired or for the website to publish only front-page articles.

[35] Mr. Omoijiade argues that although the RPD was unable to find the online article through the website search engine, the website does not guarantee the quality of its search service. Mr. Omoijiade notes that the EASO Report indicated that the website search function was not operating at the time of its reporting. He adds that the RPD found that the YouTube video could expire, and the same could occur with the online paper.

[36] Mr. Omoijiade submits that the RPD speculated that the article was fraudulent simply because other articles from the same newspaper edition were searchable online.

[37] Mr. Omoijiade argues that the RPD's negative credibility finding regarding his relationship with the Ottawa man was unreasonable because the RPD ignored his explanations. He explained that he did not disclose this relationship in his BOC because he did not want his wife to know, given that he and his wife were attempting to restore their relationship following his revelation about his sexual orientation. He also explained that he did not think the casual relationship was important and that he only revealed it in response to the RPD's question whether he had any same-sex relationships in Canada.

[38] Mr. Omoijiade submits that his explanations were not contradicted by any other evidence and were corroborated by his wife's testimony that their relationship was strained after she learned about his sexual orientation.

[39] Mr. Omoijiade also submits that his testimony about the Ottawa man was not vague; he described the Ottawa man's physical appearance, age, job, status in Canada, and place of origin in Nigeria.

[40] Mr. Omoijiade submits that a high threshold must be met to support a manifestly unfounded finding given its consequences. He notes that this finding deprives him of appealing to the RAD, which, among other things, could have provided an opportunity to submit new evidence.

[41] Mr. Omoijiade argues that the RPD's finding that his claim is manifestly unfounded does not meet the high threshold, which requires an element of deliberate deceit that goes to the core of the claim. He submits that there is no evidence that he created the news article or otherwise attempted to deceive the RPD (*He v Canada (Citizenship and Immigration)*, 2019 FC 2 at para 21, 301 ACWS (3d) 146 [*He*]; *Warsame*, at para 31.).

[42] Mr. Omoijiade further submits that the RPD's finding is not based on an analysis of all the evidence. The RPD failed to consider other evidence of his sexual orientation, including his wife's testimony, the letter of support from Mr. Omoijiade's LGBTQ+ Support Worker, and a letter provided by an Ottawa Counsellor.

V. The Respondent's Submissions

[43] The Respondent submits that the RPD's decision is well-supported on the facts given the two key credibility findings regarding the newspaper article and Mr. Omoijiade's relationship with the Ottawa man. The finding that the claim is manifestly unfounded meets the legal test as it is based on the finding that the newspaper article, relied on to support the central elements of Mr. Omoijiade's claim, was fraudulent.

[44] The Respondent submits that the RPD reasonably concluded that Mr. Omoijiade's credibility was undermined by the many unexplained deficiencies in the online and print versions of the article. These deficiencies included the RPD's inability to find the article online, the formatting defects in the print article, and the objective country condition evidence noting the

high prevalence of fraudulent documents in Nigeria. The Respondent submits that the RPD is best placed to assess the authenticity of the article.

[45] The Respondent submits that the RPD's negative credibility finding with respect to Mr. Omoijiade's claimed casual relationship with the Ottawa man was reasonable, given that he failed to disclose anything about the Ottawa man in his BOC, provided vague testimony at the first hearing, provided only slightly more detailed testimony at the second hearing, and failed to produce the Ottawa man as a witness or provide a letter from him at the second hearing.

[46] The Respondent submits that the RPD correctly applied section 107.1 of the Act regarding "manifestly unfounded" claims. The Act requires that a claim be "clearly fraudulent", which can be based on falsehoods or deceptions that relate to an important aspect of a claim. In the present case, the newspaper article goes to the core aspect of Mr. Omoijiade's claim regarding his sexual orientation and the reason he fled Nigeria.

VI. The Decision Is Reasonable

[47] The RPD's decision is based on its assessment of Mr. Omoijiade's credibility and the authenticity of the newspaper article he relied on to support his claim. The RPD's findings are owed significant deference.

[48] As noted by Justice Gleason in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 42, [2012] FCJ No 369 (QL) [*Rahal*], the Court's role in reviewing credibility findings is very limited:

[42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. As stated in *Aguebor* at para 4:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. . .

(see also *Singh* at para 3 and *He v Canada (Minister of Employment and Immigration)*, 49 ACWS (3d) 562, [1994] FCJ No 1107 at para 2).

[49] The RPD considered the evidence of Mr. Omoijiade over two hearings. It should have been apparent to Mr. Omoijiade at the first hearing that the RPD had concerns about the newspaper article – which was central to his claim – and about his alleged relationship with the Ottawa man. Yet his testimony did not dispel the RPD’s concerns, despite the RPD’s extensive questioning. The RPD’s findings are explained in its reasons and are supported by the evidence on the record. The RPD’s findings with respect to both the relationship with the Ottawa man and the fraudulent newspaper fall within the range of reasonable outcomes.

[50] The RPD did not ignore Mr. Omoijiade's explanations about the article's provenance and deficiencies; rather the RPD found that the explanations were not satisfactory. With respect to the online article, Mr. Omoijiade's explanations that the article may have expired or that it only provided online versions of the first page of the paper were not supported by any evidence and were contradicted by his own testimony that he had found the article, which appeared on page 5, online. The RPD's findings that the newspaper was not authentic were based on several factors, including the several defects in the print version and the inability to find the online version of the article in question, although other articles from the same date could be found online. The EASO Report did not dispel the concerns with respect to the multiple copies of page 5, missing pages or visual distortions, particularly in light of the objective country condition evidence regarding the prevalence of fraudulent documents in Nigeria. The copy of the print version on the Record reveals additional anomalies.

[51] Contrary to Mr. Omoijiade's submission that he is not responsible for the quality of the newspaper, he is responsible for the quality of the evidence to support his claim. He is not absolved from a finding that the paper is fraudulent because the article was sent directly to his Counsel. His evidence is that a friend told him about the article while he was in the US and this caused him to come to Canada to seek refugee protection. His evidence is that he found the article online and that he also asked his friend to send the print version. The article was the centrepiece of his claim and he chose to submit that evidence.

[52] Contrary to Mr. Omoijiade's submission, his wife's testimony did not corroborate anything about the newspaper article. His wife's testimony at the first hearing, before the claims

were separated, was only that Mr. Omoijiade told her that someone had told him about the newspaper article.

[53] The RPD's finding that Mr. Omoijiade did not have a casual relationship with the Ottawa man is reasonable. Although Mr. Omoijiade provided basic information about the Ottawa man, including where they met, his appearance, age and that he was from Eastern Nigeria, details were not provided. Mr. Omoijiade's explanation for not producing the Ottawa man at the second hearing, although he was clearly aware that the RPD had concerns about his earlier testimony, was simply that the man had a work engagement and could not testify. No explanation was offered for why an affidavit or letter was not provided. The RPD had the benefit of hearing Mr. Omoijiade's testimony firsthand, based its findings on several factors, and as noted above, the RPD's credibility findings are owed deference.

[54] Mr. Omoijiade's wife's testimony did not corroborate Mr. Omoijiade's relationship with the Ottawa man. She was not even aware of the relationship at the time of the first hearing, and it is not clear when she was advised. She only noted her strained relationship with Mr. Omoijiade after she learned about his sexual orientation.

[55] The RPD's finding that Mr. Omoijiade generally lacked credibility affects all relevant evidence, including documentary evidence (*Chinwuba v Canada (Citizenship and Immigration)*, 2019 FC 312 at para 25, 303 ACWS (3d) 833; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 22, 188 ACWS (3d) 1123). The RPD was not required to

make explicit findings on the letter from Mr. Omoijiade's father, which merely recounted information in his BOC, or the letters from his support worker and counsellor.

[56] The RPD did not err in its understanding of the legal test to find a claim manifestly unfounded or in its application of that test.

[57] Section 107.1 provides:

107.1 If the Refugee Protection Division rejects a claim for refugee protection, it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent	107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse
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[58] Section 110(2)(c) provides that where the RPD states that the claim is manifestly unfounded, there is no appeal to the Refugee Appeal Division.

[59] In *Warsame*, at para 24, Justice Roy explained that there must be evidence to show that the claim is clearly fraudulent. Justice Roy elaborated at para 30:

For a claim to be fraudulent, it would be required that a situation be represented of being of a certain character when it is not. But not any misstatement or falsehood would make a refugee claim fraudulent. It must be that the dishonest representations, the deceit, the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way. It seems to me that a claim cannot be fraudulent if the dishonesty is not material concerning the determination of the claim.

[60] Justice Roy provided guidance about the meaning of “clearly fraudulent” at para 31, noting:

Similarly, clearly fraudulent would in my view signal the requirement that the decision maker has the firm conviction that refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted. Falsehoods that are merely marginal or are antecedent to the refugee claim would not qualify.

[61] In *He*, Justice Norris summarized the same test for finding that a claim is “manifestly unfounded”, at para 21:

It requires more than simply the rejection of the claim. The decision maker must find that the claimant has deliberately portrayed matters that go to the core of the claim for protection falsely (citing *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 31).

[62] In the present case, the RPD did not err in its understanding of the test for a “manifestly unfounded” claim or in its application of the test.

[63] The RPD first assessed the online and print versions of the newspaper and provided several reasons, based on the evidence, why it found that the article was not authentic – i.e. fraudulent. The RPD also found that the article was submitted by Mr. Omoijiade to demonstrate his sexual orientation, his pursuit by the Nigerian authorities and the risk he would face. In other words, the article was the key piece of evidence about the central or core aspect of his claim. The RPD expressed its “firm conviction” that Mr. Omoijiade sought refugee protection through fraudulent means.

[64] Mr. Omojiade argued that there was no evidence that he created the article rather that a friend told him about the article and later sent the print version to his Counsel. However, Mr. Omojiade submitted the print version to the RPD and relied on the online version. As the RPD found, he is accountable for the evidence that he relies on to support his claim.

[65] The RPD concluded that Mr. Omojiade submitted the article in an attempt to deceive the RPD and to gain refugee protection based on its cumulative findings regarding the article. The RPD's conclusion is justified, intelligible and transparent and falls within the range of reasonable outcomes.

JUDGMENT in file IMM-3368-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3368-19

STYLE OF CAUSE: EHIKIOYA IMOEHI OMOJIJADE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 13, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANE J.

DATED: NOVEMBER 29, 2019

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