

Federal Court



Cour fédérale

Date: 20200319

Docket: IMM-4083-19

Citation: 2020 FC 391

Ottawa, Ontario, March 19, 2020

PRESENT: THE CHIEF JUSTICE

BETWEEN:

**OCHUKO IBIWUNMI IBIKUNLE
ADEMILOLA SOBOWALE IBIKUNLE (A
MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The principal applicant, Mrs. Ibikunle, and her minor son are citizens of Nigeria. They are seeking refugee protection in this country based on their fear of harm at the hands of her husband's family, who have allegedly threatened to kill them for refusing to participate in certain rituals.

[2] Their applications were rejected on credibility and other grounds by the Refugee Protection Division [“**RPD**”] of the Immigration and Refugee Board. The Refugee Appeal Division [“**RAD**”] then dismissed her appeal and confirmed the RPD’s decision after concluding that the applicants had not credibly established their claims under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27*.

[3] Mrs. Ibikunle submits that the RAD unreasonably found that:

- i. There were contradictions in her evidence regarding her agents of persecution;
- ii. She ought to have included in her application for protection the names of her alleged persecutors and the date they allegedly threatened to kill her;
- iii. She ought to have provided corroboration for her assertion that her husband’s family hails from the State of Ogun, in Nigeria;
- iv. Her credibility was further undermined by the fact that she did not challenge two particular adverse credibility findings that were made by the RPD; and
- v. Other documents tendered in support of her claim were not sufficient to establish her claims.

[4] For the reasons that follow, I disagree. This application will therefore be dismissed.

II. **Background**

[5] In support of her claim for refugee protection, Mrs. Ibikunle alleged that members of her husband's family threatened to kill her husband and her after he refused to become the next traditional ruler in his home town, in the State of Ogun.

[6] She explained that one of the reasons for her husband's refusal was that he feared that she and her unborn child would die if they participated in certain "ritual rites" that are associated with becoming a traditional ruler in Ogun. In this regard, she maintained that her husband's elder sister died as a result of blood loss following a similar ritual.

[7] After some of "the kinsmen" went to their home and threatened them, she left for the United States and crossed the border into Canada less than a week later.

III. **Issue**

[8] Mrs. Ibikunle identified the issue raised in this application as being whether the RAD committed error(s) of law. In my view, the issue is whether the RAD's decision was unreasonable.

IV. **Standard of Review**

[9] In the absence of a legislated standard of review or a statutory right of appeal applicable to RAD decisions, such decisions are presumed to be reviewable on a standard of

reasonableness. That presumption can be overcome where an alleged error concerns a constitutional question, a general question of law that is of central importance to the legal system as a whole, or a question regarding the jurisdictional boundaries between two or more administrative bodies: *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 at paras 53 and 69 [“*Vavilov*”]. Given that none of the alleged errors identified by Mrs. Ibikunle falls into one of these three categories, the presumption stands and the RAD’s decision is reviewable on a standard of reasonableness.

[10] When reviewing a decision on a standard of reasonableness, the Court must approach the decision with “respectful attention” and consider the decision “as a whole”: *Vavilov*, at paras 84-85. Its review will be “concerned with *both* outcome *and* process”: *Vavilov*, at para 87. In this regard, the Court will assess whether the decision is appropriately justified, transparent and intelligible. In other words, it will consider whether it is able to understand “the basis upon which the decision was made” and then to determine whether it “falls within range of possible, acceptable outcomes which are defensible in respect of the facts and the law”: *Vavilov*, above, at paras 97 and 86.

[11] A decision which is appropriately justified, transparent and understandable is one that reflects “an internally coherent and rational chain of analysis and is justified in relation to the facts and the law that constrain the decision maker”: *Vavilov*, at para 85. It should also reflect that the decision maker “meaningfully grapple[d] with key issues or central arguments raised by the parties”: *Vavilov*, at para 128.

[12] However, it does not need to “include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred”: *Vavilov*, at para 91. Before a decision may be set aside, “the Court must be satisfied that any shortcomings or flaws relied upon by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov*, at para 100. While the Court may look to the record to “connect the dots on the page where the lines, and the direction they are headed, may be readily drawn”, it cannot resort to that record to “supply the reasons that might have been given and make findings of fact that were not made”: *Vavilov*, at para 97, quoting *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, at para 11.

V. **Assessment**

A. *Was the RAD’s decision unreasonable?*

i. The contradictions in Mrs. Ibikunle’s evidence

[13] In her application, Mrs. Ibikunle stated that she feared harm at the hands of her “husband family” [*sic*]. She then described an incident when “the kinsmen” came to her house and threatened her and her husband.

[14] When asked, during the hearing before the RPD, who she feared in Nigeria, she replied “my husband’s people”. When pressed to be more specific, she stated: “I fear the community rulers”. When requested to identify those people, she stated that she did not know their names.

When further pressed as to whether she feared anyone in her husband's family, she replied: "No".

[15] When faced with the discrepancy between the latter statement and the statement in her application, she then explained that her "husband's family is the community rulers". When further pressed on this, she stated that she feared her husband's "uncles", who were in charge. However, she subsequently clarified that the person she fears is one "uncle", named Ley Shefiu. When asked how that person is related to her husband, she replied that he is an extended cousin who is not really related to her husband. She explained that she refers to him as an "uncle" because he is an old man.

[16] Given the foregoing, I consider that it was reasonably open to the RAD to find that the RPD was correct in concluding that the discrepancy in Mrs. Ibikunle's evidence regarding the identity of her alleged agents of persecution undermined her credibility. Even allowing Mrs. Ibikunle some latitude to use cultural terms such as "kinsmen", and "my husband's people", it was not unreasonable for the RAD to find that there was an important discrepancy between her testimony that she was not afraid of anyone in her husband's family, and her written statement that she feared her husband's family.

ii. The failure to include certain information in her application

[17] In her application for refugee protection, Mrs. Ibikunle did not mention Mr. Ley Shefiu (see above), the threats that she testified were made on June 20, 2017, or the threats that were

made against her minor child. The RPD found that her failure to mention those facts further undermined her credibility.

[18] Before the RAD, Mrs. Ibikunle maintained that she assumed she would be able to provide such “elaboration” at the hearing. However, the RAD disagreed. In confirming the RPD’s finding on in this regard, it noted that this information constituted “key details such as specific threats, and the perpetrators of specific threats”. It also noted that Mrs. Ibikunle is well educated, speaks English, confirmed that her application was complete, and was assisted by legal counsel.

[19] I agree. As the RAD also noted, the Basis of Claim form specifically asks for dates and names to be provided, including with respect to any threats that may have been made. With this in mind, I consider that it was reasonably open to the RAD to find that Mrs. Ibikunle’s omission of the above-mentioned information from her application were significant and undermined her credibility.

iii. The failure to corroborate that her husband hails from the State of Ogun

[20] In her application for refugee protection, Mrs. Ibikunle did not provide any corroboration for her claim that her husband was from the State of Ogun. The RPD found that this was not reasonable and drew a negative credibility inference.

[21] Before the RAD, Mrs. Ibikunle maintained that the documents were not relevant, that there was no evidence that she could have provided such documentation, and that she was under no obligation to provide such evidence.

[22] The RAD disagreed. In brief, it found that the documents were indeed relevant, that it is reasonable to require corroboration where there are omissions from the evidence, and that Mrs. Ibikunle did not substantiate her position that the documentation in question was not available. Accordingly, it drew the same negative inference that the RPD drew.

[23] Relying on *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302, at para 5 [*“Maldonado”*], Mrs. Ibikunle maintains that her statement that her husband was from the State of Ogun was entitled to a presumption of truthfulness.

[24] I disagree. The *Maldonado* presumption falls away when there is any “reason to doubt [the] truthfulness” of a refugee applicant’s claims: *Maldonado*, above. Therefore, if credibility concerns have been identified in respect of other aspects of an applicant’s evidence, the presumption of truthfulness will no longer apply. That presumption will also no longer apply where an applicant fails to reasonably explain a failure to provide corroboration for assertions that strain credulity, in light of other evidence before the decision-maker: *Canadian Association of Refugee Lawyers v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1126, at para 184.

[25] Considering the foregoing, it was not unreasonable for the RAD to have drawn a negative inference from Mrs. Ibikunle's failure to provide any corroboration for her claim that her husband and his family were from the State of Ogun. In brief, there were already reasons to doubt the truthfulness of various other aspects of Mrs. Ibikunle's claims. Moreover, she failed to provide a reasonable explanation for why she did not provide corroboration for an assertion that went to the heart of her claims. The burden is upon a refugee applicant to establish his or her claims. Once credibility concerns have been raised in relation to any aspect of the applicant's evidence, it is reasonable to require corroboration for those claims, or at least a persuasive explanation for why such corroboration has not been provided.

iv. The failure to challenge two adverse credibility findings made by the RPD

[26] Before the RPD, Mrs. Ibikunle maintained that she left Nigeria without her husband and that he had since gone missing. The RPD found that these assertions undermined her credibility because, given the risk that he allegedly faced there, it was not plausible that he would remain behind. The RPD also found that it was implausible that she would not have reported husband's disappearance.

[27] Before the RAD, Mrs. Ibikunle did not challenge those plausibility findings. Likewise, she did not challenge a negative credibility inference made by the RPD in respect of a police report that her father had made, which Mrs. Ibikunle stated had been filed "in order to show Canadian immigration authorities". The RAD found that Mrs. Ibikunle's failure to challenge this

adverse inference and the adverse plausibility findings with respect to her husband further undermined her credibility.

[28] Mrs. Ibikunle maintains that it was clear from her submissions to the RAD that she “took issue with the entirety of” the RPD’s decision.

[29] I disagree. There is nothing in the list of errors that Mrs. Ibikunle alleged were made by the RPD which directly, indirectly or implicitly alluded to the adverse plausibility findings that it made regarding her claim that her husband did not leave Nigeria with her and had since gone missing. The same is true with respect to the RPD’s findings regarding the police report that her father allegedly filed.

[30] Accordingly, those aspects of the RPD's decision stand and cannot now be raised before this Court: *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at para 35; *Liao v Canada (Citizenship and Immigration)*, 2017 FC 1163, at para 7. By failing to challenge those findings before the RAD, Mrs. Ibikunle went before the RAD with two credibility strikes already against her. It was not unreasonable for the RAD to essentially recognize that fact by holding that her failure to challenge those findings undermined her credibility.

v. The other documents tendered in support of her claim

[31] In support of her application, Mrs. Ibikunle provided an affidavit from her father as well as an affidavit and a letter from the pastor of her church in Nigeria. The RPD observed that those

documents had no security features, were not verifiable, and could have been produced by anyone, anywhere. With that in mind, and given that they were authored by persons who have close relationships to Mrs. Ibikunle, the RPD found that the documents were of insufficient probative value to establish her claims. In addition, it found that other documents, related to her marital status, her education, her birth and the minor applicant's birth, provided no corroboration for the allegations that were central to her claim.

[32] Mrs. Ibikunle submits that the RAD treated the documents in question “in the same cavalier and unreasonable manner as did the RPD”.

[33] I disagree. Given the various adverse credibility findings that were made by the RAD, it was reasonably open to the RAD to conclude that the two affidavits and the letter in question were insufficient to establish her principal allegations.

v. Conclusion

[34] For the reasons set forth in sections (i) – (iv) immediately above, I consider that the RAD's treatment of the issues that Mrs. Ibikunle has raised before this Court was reasonable.

[35] The RAD's treatment of those issues, and indeed its decision as a whole, was appropriately justified, transparent and intelligible. It enabled the Court to understand “the basis upon which the decision was made” and then to determine that it fell “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law”: *Vavilov*, above, at paras 86 and 97. It also reflected “an internally coherent and rational chain of analysis” as well as

a reasonable effort “to meaningfully grapple with key issues” and “central arguments”: *Vavilov*, at paras 85 and 128.

VI. **Conclusion**

[36] For the reasons set forth above, this application will be dismissed.

[37] At the end of the hearing in this application, counsel to the parties stated that the facts and issues in this proceeding do not raise a serious question of general importance for certification. I agree.

JUDGMENT IN IMM-4083-19

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. There is no question for certification pursuant to paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4083-19

STYLE OF CAUSE: OCHUKO IBIWUNMI IBIKUNLE ET AL v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 3, 2020

JUDGMENT AND REASONS: CRAMPTON C.J.

DATED: MARCH 19, 2020

APPEARANCES:

Laurence Cohen FOR THE APPLICANTS

Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

Laurence Cohen and Associates FOR THE PLAINTIFFS
Toronto, Ontario

Department of Justice Canada FOR THE RESPONDENT
Toronto, Ontario