

Federal Court



Cour fédérale

**Date: 20201021**

**Docket: IMM-4963-19**

**CITATION: 2020 FC 991**

**Ottawa, Ontario, October 21, 2020**

**PRESENT: The Honourable Justice Annis**

**BETWEEN:**

**ABDULRASHEED OWOLABI SAKA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated July 11, 2019 [the Decision], in which the Panel Member [the Member] refused the Nigerian Applicant's claim for refugee protection on the basis that his claim to fear persecution as a bisexual man was not credible. The Applicant had appealed the decision of the Refugee Protection Division [RPD] that originally found him not to be credible, which was sustained by the RAD, but for different reasons.

[2] The Appellant is a citizen of Nigeria who claims that in May 2016, while visiting a friend in United States his sexual orientation was discovered and reported to his family in Nigeria as well as the head of their community. On the suggestion of a friend, and considering the possibility that Donald Trump would become president United States he traveled to Canada and made a refugee claim.

[3] The RAD disagreed with the RPD regarding a negative inference explaining his two-month delay in leaving Nigeria, or for its finding of inconsistency about the timing of his fear of persecution based on his sexual orientation. Conversely, the RAD agreed with the RPD on three points regarding his lack of credibility, which form the basis of the Applicant submissions. For the reasons that follow, the application is dismissed.

## **II. Standard of Review**

[4] By the revised principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] S.C.J. No. 65 at para. 26 [*Vavilov*], reasonableness is presumed to be the applicable standard of review for all aspects of the decision. None of the exceptions described in *Vavilov* would affect the presumption that the reasonableness standard should apply in this matter.

[5] A reasonable decision requires internally coherent reasoning and should be justified in light of the legal and factual constraints that bear on the decision such that the decision as a whole is transparent, intelligible and justified. Therefore, “it is not enough for the outcome of a decision to be justifiable... the decision must also be justified.” (*Vavilov*, paras. 15, 83 and 86).

[6] The reviewing court may not re-weigh and reassess the evidence considered by the decision-maker, including the drawing of an inferred fact from the primary evidence. Applicants must demonstrate that exceptional circumstances apply which would permit the reviewing court to interfere with factual findings and inferential findings based on the evidence that was actually before the decision-maker. This would include where the decision maker has not taken the evidentiary record and the general factual matrix that bears on its decision into account. Examples include where there is a flawed logical process by which the fact is drawn from the evidence, where the decision maker has fundamentally misapprehended the evidence, or there was no evidence to support the fact (*Vavilov*, paras. 77, 125 & 126, and citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII), [2009] 1 SCR 339 at para 64; *Housen v Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235, at paras. 15-18, 22 & 23; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230, at para. 55; *Dr. Q. v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 (CanLII), [2003] 1 SCR 226, at paras. 41-42).

### **III. Analysis**

[7] The RAD agreed with the RPD that the Applicant was inconsistent and vague about whether he was gay, as opposed to being bisexual as claimed. The RAD's conclusion is based upon multiple evidentiary problems in the applicant policy is evidence. These include the Applicant's stating that he "is having sex with men" when asked about his sexual orientation; his alleged partner at the hearing not being aware of whether the Applicant was bisexual; his indication in his BOC when discussing a gathering in Nigeria that the person "set up gays in that hotel." The RAD also rejected contentions of confusion and unintended misstatements regarding

his sexual orientation, noting that the Applicant had spent an extensive amount of time at safe spaces for individuals of diverse sexual orientations such as 519 Church and the Metropolitan Community Church and had spoken to a counsellor about his sexual orientation.

[8] The RAD similarly found that the Applicant was inconsistent and superficial concerning the second point of contention concerning his relationship with friend/partner Ibrahim, to the point that it was unclear whether they were ever a couple. This was also supported by numerous elements of the Applicant's evidence including: his statement that Ibrahim was a good friend, thereafter and only with considerable prompting, stating that he was his partner, but they "had" a relationship, which he was unable to clarify under question from the RPD; that the Applicant had never been to Ibrahim's home, but he had come to his home on one occasion; that the only thing others might not know about Ibrahim was that they had sex together and what most people might know; that he did not trust Ibrahim and he had not enjoyed any good relationships since coming to Canada. Ibrahim was unequivocal that the two were boyfriends and that they had been seeing each other since August 2018.

[9] The Applicant's submission was only to effect that the Court should understand that the Applicant was "not enjoying the relationship, or that his partner is not behaving well", which does not respond to the fact that the evidence presented was both vague and inconsistent.

[10] The RAD also drew negative inferences for the Applicant's failure to claim asylum in the United States. It is well established that the RAD may draw an adverse inference about a claimant's subjective fear where he fails to claim protection at the first reasonable opportunity.

Bobic v. Canada (MICI), 2004 FC 1488 at para 6

Remedios v Canada (MCD, 2003 FCT 437 at paras 23-2

[11] Despite alleging that he feared for his personal safety in Nigeria due to the hotel incident in May 2016, the Applicant did not seek asylum when he arrived in the US. Instead, the Applicant stated that he intended to return to Nigeria. Further, even after his intimate acts with his U.S. same-sex partner was exposed, the Applicant nonetheless chose not to make a refugee claim in the U.S. The Applicant eventually arrived in Canada in October 2016 and initiated a claim for refugee protection.

[12] He testified that he only left United States when a man he had met a week earlier at a gay club suggested he seek refuge in Canada. Relatedly, the RAD found it was not reasonable that the Applicant would rely on the advice of a near stranger to travel thousands of kilometres to a different country. The Applicant argument he did not make a refugee claim in the U.S. because of the Trump administration's stance on immigration was reasonably rebuffed by the RAD, noting that the U.S. presidential election had not even taken place when the Applicant first arrived in Canada no seek protection.

[13] Nor did the RAD accept the Applicant's argument that he did not claim asylum in the US because he believed his sexual orientation would have to be exposed for him to do so. The RAD found this explanation inconsistent with the one he gave at his RPD hearing that when he arrived in the US that he had every intention of returning to Nigeria, but soon after changed his mind because he had been "outed" regarding his the sexual orientation, and that he would instead attempt to extend his student status. This latter claim is also found to be uncorroborated.

[14] The Applicant submitted that the panel engaged in unsubstantiated speculation, but failed to address the inconsistencies in his evidence, nor challenge the underlying evidence supporting the inferences.

[15] The Applicant relies on *Gbemudu v. Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 [*Gbemudu*]. It involved the somewhat similar circumstances of a Nigerian citizen living in the UK and then emigrating to Canada where he presented a refugee claim. The applicant cited paragraph 74 from the decision, as follows:

[74] In my view, it was not reasonable for the RAD to rely upon the Applicant's failure to claim in the UK for a conclusion that the Applicant's "failure to seek protection earlier and elsewhere, and his corresponding reason for not doing so, undermines his subjective fear as well as his overall credibility and that of his allegations of persecution." Refugee protection is not granted for persecution that may never materialize and where there is no evidence to establish that there is any real likelihood or possibility that it will.

However, in *Gbemudu*, the applicant claimed that he only learned about issues involving his persecution after leaving and arriving in Canada.

#### **IV. Conclusion**

[16] The Applicant has not demonstrated any circumstances apply which would permit this Court to interfere with the RAD's factual findings. The submission that the Member "mischaracterized" the evidence throughout the decision is simply a futile attempt to reframe the RAD's detailed negative credibility assessment of the Applicant's evidence regarding his sexual orientation based on his own evidence, and that of his witness. The Applicant is requesting the Court to perform an impermissible reweighing of the inferential conclusions, when the Member

has supported them with numerous examples of his inconsistent statements and implausible explanations that lack logic or any probative foundation from the primary evidence.

[17] Accordingly, the Court concludes that the decision is justified based on an internally coherent and rational chain of analysis, and the outcome justifiable in relation to the facts and law that constrain the officer, while bearing the hallmarks of reasonableness – justification, transparency and intelligibility. The application is dismissed, with no questions certified for appeal.

**JUDGMENT in IMM-4963-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed; and
2. No questions are certified for appeal.

“Peter Annis”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4963-19

**STYLE OF CAUSE:** ABDULRASHEED OWOLABI SAKA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING** JUNE 15, 2020

**JUDGMENT AND REASONS:** HONOURABLE JUSTICE ANNIS

**DATED:** OCTOBER 21, 2020

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