

Federal Court



Cour fédérale

**Date: 20210304**

**Docket: IMM-1534-20**

**Citation: 2021 FC 197**

**Ottawa, Ontario, March 4, 2021**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**OLABADEJOKO TEMITOPE OLAJIDE  
OLANREWAJU ADEOLA OLAJIDE  
DANIELLA ADEMIDUN OLAJIDE  
MICHELLE OLUWASEMILORE OLAJIDE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Olajide family seek judicial review of the dismissal of their claim for refugee protection. They argue that the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] improperly found that Mr. Olajide's testimony was not credible and that the events alleged in support of their claim for refugee protection did not take place. I am dismissing their

application, as the RAD reasonably based its findings on contradictions and omissions in Mr. Olajide's testimony.

I. Background

[2] The Olajide family's claim for refugee protection is based on three events allegedly taking place in November and December 2016, in the context of the ongoing conflict between Christian farmers and Muslim Fulani herdsmen in Kaduna State in central Nigeria. The Olajides, who were previously living in Ibadan, relocated to the family farm in Kaduna in January 2016.

[3] The first event took place in November 2016. Members of a criminal gang associated with the Fulani herdsmen came to the farm and attempted to kidnap the Olajides' daughter, Daniella, without success.

[4] The second event took place on December 19, 2016. About a hundred Fulani herdsmen invaded the farm, but Mr. Olajide and his employees were eventually able to convince them to leave, although the intruders said they would come back. After these events, Ms. Olajide and her daughter left for Lagos, where she stayed with her parents.

[5] The third event took place on Christmas Eve, December 24, 2016. Mr. Olajide organized a celebration at the farm. At about midnight, immediately after Mr. Olajide went to sleep, Fulani militants invaded the farm, set buildings on fire and murdered several persons, including Mr. Olajide's brother and sister-in-law. Mr. Olajide was able to hide from the attackers and survived. He hid in the surrounding areas for a number of days, was rescued and eventually made his way

to Lagos, where he received medical treatment. Shortly afterwards, the Olajides travelled to the United States and then to Canada, where they claimed asylum.

[6] The Refugee Protection Division [RPD] of the IRB dismissed the Olajides' claim. The RPD identified many contradictions and omissions in Mr. Olajide's testimony. At the hearing, the panel member raised these contradictions and omissions with Mr. Olajide, but found his explanations unsatisfactory. The RPD explicitly found that the November 15, 2016 and December 24, 2016 incidents did not happen. The RPD then reviewed the documents filed by Mr. Olajide in support of the claim and ascribed them no probative value. In particular, the RPD noted that a medical report indicated that Mr. Olajide was treated in Lagos before the date he testified he reached the city; that various events or transactions involving Mr. Olajide's father occurred after the latter is supposed to have died; and noticed irregularities with other documents. The RPD also found that the Olajides had not proved that they owned a farm in Kaduna State and declined to assess the risk associated with such a profile.

[7] The RAD dismissed the Olajides' appeal. It engaged in a detailed review of the inconsistencies and omissions identified by the RPD. With one exception, the RAD agreed with the RPD's findings. As a result, it found that the alleged events did not take place. The RAD also reviewed the documentary evidence and agreed with most of the RPD's findings in this regard, except with respect to police reports. However, given the other negative credibility findings and the availability of forged documents in Nigeria, the RAD gave no weight to the police reports.

[8] The Olajides now seek judicial review of the RAD's decision.

## II. Analysis

[9] The Olajides' main challenge to the RAD's decision pertains to the assessment of Mr. Olajide's credibility. They also argue that the RAD should have taken into account the risk associated with the conflict in central Nigeria.

### A. *Credibility*

[10] The RAD dismissed the Olajides' claim based on several important contradictions between Mr. Olajide's narrative and testimony. The RAD found that the events forming the basis of the claim did not happen. Having reviewed the file, I conclude that the RAD's decision in this regard was reasonable.

#### (1) Assessing Omissions and Contradictions

[11] Assessing a claimant's credibility is a delicate task involving several factors: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 19; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraphs 20-26 [*Lawani*]. One of these factors is internal consistency and consistency with previous statements: *Garay Moscol v Canada (Citizenship and Immigration)*, 2008 FC 657 at paragraph 21. We assume that claimants who underwent difficult and sometimes traumatic events giving rise to a well-founded fear of persecution remember these facts accurately and are able to provide a complete and consistent account at several stages of the claim process. Thus, where claimants contradict themselves or testify about an event omitted from previous statements, their credibility is affected.

[12] Nonetheless, witnesses are human beings. We should not hold their testimony to a standard of perfection. A witness may be believed despite contradictions in his testimony, as in *FH v McDougall*, 2008 SCC 53, [2008] 3 SCR 41. In particular, the IRB Chairperson's Guideline No 8, *Procedures With Respect to Vulnerable Persons Appearing Before the IRB*, recognizes that "a person's vulnerability may affect memory, behaviour and their ability to recount relevant events" and that their symptoms may "have an impact on the consistency and coherence of their testimony."

[13] This is why our Court has frequently warned decision-makers not to be overzealous in finding contradictions and omissions: see, for example, *Lawani*, at paragraph 23. We have overturned decisions where a negative credibility finding was based solely on a minor contradiction: *Kanagarasa v Canada (Citizenship and Immigration)*, 2015 FC 145, at paragraph 13; *Mojica Romo v Canada (Minister of Citizenship and Immigration)*, 2006 FC 543; *Jakaj v Canada (Citizenship and Immigration)*, 2012 FC 677 at paragraphs 17-19; *Venegas Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475, at paragraphs 3-6. But there is no hard and fast rule. A minor contradiction may unfairly tarnish a truthful witness, but it may also unravel a sophisticated lie.

[14] Claimants often provide documents to buttress their credibility. This Court has set forth guidelines for their assessment. Foreign public documents are presumed to be authentic: *Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at paragraphs 85-87 [*Liu*]. A document may not be set aside for the sole reason that forged documents are widely available in a particular country: *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at paragraph

12; *Liu*, at paragraphs 79, 88. Typographical errors alone are not sufficient to reject a document: *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170. The mere lack of corroborative documents is not a reason to doubt a claimant's testimony: *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968.

[15] These guidelines constitute rebuttable presumptions. They may be set aside where the claimant's credibility is in doubt for independent reasons. In other words, when unravelling a false story, the trier of fact must pull another thread first. For instance, the availability of forged documents cannot be the "seed of incredulity:" *Ortega Ayala v Canada (Citizenship and Immigration)*, 2011 FC 611 at paragraph 20. Nonetheless, it is entirely acceptable to give little or no weight to supporting documents when there are significant pre-existing credibility concerns: *Liu*, at paragraph 90; *Lawani*, at paragraph 24, citing *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA) at 244.

[16] On judicial review, courts typically show deference to factual findings, in particular those related to credibility: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 125 [*Vavilov*]; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA). This is because "[i]t is very difficult for a [decision-maker] to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events." *R v Gagnon*, 2006 SCC 17 at paragraph 20, [2006] 1 SCR 621. Nevertheless, judicial review remains

available where “the decision maker has fundamentally misapprehended or failed to account for the evidence before it.” *Vavilov*, at paragraph 126.

(2) Mr. Olajide’s Story

[17] The RAD’s findings regarding Mr. Olajide’s credibility were reasonable. Major contradictions cast a doubt on his whole testimony. As the RAD noted, Mr. Olajide testified that he worked for his father after he graduated from high school, while also testifying that his father died when he was nine years old. He provided documents purporting to show that his father transferred ownership of the farm to him, eleven years after his father’s death. He also provided a report describing treatment he received at a Lagos hospital on January 13, 2017, even though he testified he arrived in Lagos only on January 27. Mr. Olajide’s explanations for these contradictions were simply not credible. Moreover, when testifying, he omitted the December 19 incident, even though it was described in his narrative. In my view, it was reasonable to disbelieve Mr. Olajide’s story based on these contradictions and omissions.

[18] It then becomes useless to analyze each of the other contradictions or omissions identified by the RAD to assess whether, taken in isolation, they would have been sufficient to affect Mr. Olajide’s credibility: *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at paragraphs 33-34 [*Jele*]. For example, it may have been unduly harsh to fault Mr. Olajide for initially omitting the fact that the attackers held a knife to his daughter’s face during the November incident and only mentioning that they had a knife and made threats. This, however, is of no moment, because credibility must be assessed in a holistic manner. When there are enough major contradictions and omissions, the tipping point is reached and it does not assist

Mr. Olajide to argue that other parts of his testimony were not inconsistent enough to provide additional independent grounds to impeach his credibility.

[19] Mr. Olajide also challenges the RAD's treatment of his supporting documentation. It may be that, had there been no concerns with Mr. Olajide's credibility, the issues identified by the RAD would not have been sufficient to assign no weight to the documents. The RAD, however, did not pull this thread first. For example, its discussion of the lack of signatures on the land transfer documents must be read in the context of Mr. Olajide's testimony that his father had died many years earlier. Likewise, having found that the alleged incidents did not take place, the RAD was entitled to give no weight to documents purporting to corroborate them and to take into account the availability of forged documents in Nigeria. The presumptions that I mentioned above were rebutted by Mr. Olajide's lack of credibility; see, in this regard, *Jele*, at paragraphs 45-48.

B. *Conflict in Nigeria*

[20] On judicial review, the Olajides argue that the RAD should have assessed the risk to which they are exposed given their profile as Christian farmers in central Nigeria, according to the principle laid out in cases such as *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (CA). The RPD declined to perform this assessment, because it concluded that "the claimants have not established that they were farmers living in Kaduna." It is unclear whether they raised this issue before the RAD. Be that as it may, as the RAD found Mr. Olajide not to be credible, there is no evidence linking his family to the conflict involving Fulani herdsmen and Christian farmers.



C. *Other Arguments*

[21] In their memorandum of fact and law, the Olajides invoked rights guaranteed by the *Canadian Charter of Rights and Freedoms* and international treaties. They also asserted that the decision-makers were not impartial. At the hearing, they did not pursue these arguments. This was a wise course of action.

[22] The *Immigration and Refugee Protection Act*, SC 2001, c 27, was carefully crafted to safeguard the rights enshrined in the Charter and international treaties. Absent a challenge to the validity of provisions of the Act, it is well established that Charter rights can be invoked only at the removal stage: *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 at paragraph 52, [2020] 2 FCR 355. It is simply not useful to make wide-ranging and unsupported allegations of this nature in the context of a claim for refugee protection.

[23] The only basis for the allegation of bias is the fact that the decision-makers took a dim view of Mr. Olajide's credibility. This, however, is entirely devoid of merit. The decision-makers were not partial merely for finding that Mr. Olajide was not a credible witness. Allegations of partiality are serious. When they are made without basis, they risk undermining public confidence in the judicial system. Before making such allegations, applicants and their counsel should carefully review the facts in light of the case law, as my colleague Justice John Norris recently emphasized in *Dixon v TD Bank Group*, 2021 FC 101 at paragraph 15.

III. Conclusion

[24] For the foregoing reasons, the application for judicial review is dismissed.

**JUDGMENT in IMM-1534-20**

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

1. The style of cause is changed to describe the respondent as “The Minister of Citizenship and Immigration.”
2. The application for judicial review is dismissed.
3. No question is certified.

"Sébastien Grammond"

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Judge

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

**DOCKET:** IMM-1534-20

**STYLE OF CAUSE:** OLABADEJOKO TEMITOPE OLAJIDE,  
OLANREWAJU ADEOLA OLAJIDE, DANIELLA  
ADEMIDUN OLAJIDE, MICHELLE  
OLUWASEMILORE OLAJIDE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC

**DATE OF HEARING:** FEBRUARY 24, 2021

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** MARCH 4, 2021

**APPEARANCES:**

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