

Federal Court



Cour fédérale

Date: 20210422

Docket: IMM-7856-19

Citation: 2021 FC 359

Ottawa, Ontario, April 22, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ADENIYI ADEWUNMI ADEFISAN

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In a decision dated November 27, 2019, the Refugee Appeal Division [RAD] dismissed the applicant's [Mr. Adefisan] appeal from a decision of the Refugee Protection Division [RPD] dated June 10, 2019 which denied Mr. Adefisan's claim for refugee protection. Both the RPD and the RAD rejected the claim due to credibility concerns relating to the alleged harm arising on account of inconsistencies in certain key elements in Mr. Adefisan's narrative and testimony.

[2] For the reasons set out below, I dismiss Mr. Adefisan's application for judicial review. In short, I see nothing unreasonable in the manner the RAD assessed discrepancies between Mr. Adefisan's Basis of Claim [BOC] narrative and his oral testimony before the RPD.

II. Facts

[3] Mr. Adefisan, a citizen of Nigeria, claims that members of his family have been engaged in a battle with his paternal uncle over the inheritance of family property left by his grandfather; that conflict has reached such a level that his life would be in danger if he returned to Nigeria. More specifically, Mr. Adefisan's uncle confessed to killing members of the family through the use of voodoo in order to obtain a larger part of Mr. Adefisan's father's estate, and was threatening to do the same if Mr. Adefisan did not relinquish his interest in that property.

[4] In January 2017, Mr. Adefisan travelled to the United States to escape his uncle's threat of voodoo, but a few months later, he returned to Nigeria where he had his business and with the intention of confronting his uncle about the family properties. While he was in Nigeria, Mr. Adefisan claims that his uncle used voodoo on Mr. Adefisan's daughter causing the young girl to suffer body pains. To spare his daughter from the influence of his uncle, Mr. Adefisan relocated his daughter "far away from home" and promised his uncle that he would leave his home and the contested property to him.

[5] After Mr. Adefisan's father passed away in August 2017, Mr. Adefisan's uncle allegedly burglarized his house and business. Mr. Adefisan did not report the incidents to the police, and claims that he heard second-hand that his uncle "was threatening to deal with him."

[6] In May 2018, Mr. Adefisan travelled to the United States to stay with another uncle. When that uncle's wife refused to accommodate him, Mr. Adefisan crossed into Canada and sought protection.

[7] In July 2019, the RPD denied Mr. Adefisan's claim, finding his alleged risk not to be credible. In particular, the RPD had serious reservations regarding the certificate of death of Mr. Adefisan's father, the uncle's influence among politicians and police, the uncle's threats to use voodoo and to kill Mr. Adefisan, and the confrontation between Mr. Adefisan and his uncle, which, cumulatively, caused the RPD to dismiss the claim.

[8] In November 2019, the RAD confirmed the decision of the RPD and dismissed the appeal. The RAD found that although the RPD erred in its assessment in respect of the death certificate and the uncle's threats of voodoo, it nonetheless agreed with the RPD's conclusions on account of other credibility issues. The RAD found that material omissions in Mr. Adefisan's BOC narrative undermined his credibility as to his alleged risk of persecution, and therefore dismissed his appeal.

III. Issue

[9] The sole issue before me is whether the RAD's assessment of Mr. Adefisan's credibility was reasonable.

IV. Standard of Review

[10] There is consensus that the reasonableness standard of review applies to credibility findings by the RAD (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23 and 25 [*Vavilov*]; *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27).

V. Analysis

[11] Mr. Adefisan argues that both the RPD and the RAD erred in their credibility findings in relation to a number of issues and the debate on the basis of the presumption of truthfulness as set out in *Pedro Enrique Juarez Maldonado (Applicant) v Minister of Employment and Immigration (Respondent)*, [1980] 2 FC 302 (CA) [*Maldonado*]. More specifically, Mr. Adefisan cites this Court's decision in *Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783 at paragraph 11 [*Vodics*]:

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.

[12] Mr. Adefisan's principal argument is that the RAD was not sensitive to the explanations provided with respect to discrepancies and omissions in the evidence, in particular the testimony regarding his uncle's influence, his uncle's threats, and his confrontation with his uncle.

[13] I will deal with each issue separately.

A. *The uncle's influence with the police and politicians*

[14] Mr. Adefisan testified before the RPD that he had not reported the incidents of burglary to the police on account of his uncle's influence with the police and politicians, and submitted two affidavits in support of that assertion. Neither the RPD nor the RAD afforded any weight to this evidence because the affidavits were neither sworn nor signed.

[15] Mr. Adefisan had not mentioned his uncle's purported influence with the police and politicians in his BOC, and the RPD was left to assess Mr. Adefisan's explanation for this omission, *to wit*, that Mr. Adefisan wished to wipe his uncle from his memory. The RPD found Mr. Adefisan's explanation of the omission implausible; if the assertion was true, it would only support Mr. Adefisan's claim of fear of his uncle. Moreover, it would normally be expected that Mr. Adefisan explain why he did not report the burglary to the police, and the assertion of his uncle's purported influence would have provided the very basis for such an explanation. Consequently if true, it was too important an element of evidence to have been truly omitted.

[16] The RAD agreed with the RPD and concluded that on the balance of probabilities, the uncle's influence with the police and politicians was not established.

[17] Asserting that he simply "wanted to wipe his uncle out of his memory" convinced neither the RPD nor the RAD, and for my part, I see nothing unreasonable with that conclusion.

[18] Mr. Adefisan submits that the RAD misapprehended who the agent of persecution truly was, being his uncle and not the police or politicians. To this effect, Mr. Adefisan alleges that the RAD unreasonably found that he had failed to establish a risk of harm due to this discrepancy, since Mr. Adefisan fears his uncle, not the police or politicians. Mr. Adefisan further submits that the omission as to the influence that his uncle had with the police is “a technical omission as opposed to a substantive omission”, which the RAD failed to acknowledge.

[19] Mr. Adefisan also submits that the RAD failed to appreciate that his oral testimony did not alter his story as a whole, but rather, provided more detail of his experiences; he argues that the omission should not be fatal to the claim in the same way that a direct contradiction would be, and cites this Court’s decision in *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 868 [*Li*] as support.

[20] I cannot agree with Mr. Adefisan.

[21] First of all, I do not see how *Li* assists Mr. Adefisan. The omission in *Li* was more peripheral to the claim of persecution in that case than the omission of Mr. Adefisan. His uncle’s influence with the police and politicians was central to Mr. Adefisan’s fear of persecution, even if the persecution did not come directly from the police and politicians. Thus, it was reasonable for the RAD to find that an omission in the BOC of an element of evidence of which goes to the heart of why he would avoid seeking state protection may reasonably cast doubts on Mr. Adefisan’s credibility.

[22] In this case, Mr. Adefisan's uncle is mentioned throughout his BOC. I can therefore very well understand why the RAD had difficulty believing Mr. Adefisan when he said he wanted to get his uncle out of his mind.

[23] Mr. Adefisan was not merely adding details to his narrative in his testimony before the RPD, neither was he correcting a "technical omission". He was presenting an entirely new element which was central to his claim of fear of persecution.

[24] As to the two unsigned affidavits, I must agree with the Minister that the RAD reasonably afforded no probative weight to them. In any event, Mr. Adefisan does not seem to challenge that conclusion in his submissions and arguments before me.

[25] On the whole, I do not see anything unreasonable with the RAD's conclusions on this issue.

B. *The uncle's threats*

[26] In his BOC narrative, Mr. Adefisan asserted that his uncle had stated that he would "deal with" Mr. Adefisan. When the RPD asked Mr. Adefisan what he meant when he stated in his BOC narrative that "on August 11, 2017 [...] the threat became imminent", and Mr. Adefisan added that his uncle threatened to kill him. When asked to explain why he had not specified something as serious as the threat of being killed in his BOC narrative, Mr. Adefisan pointed to his narrative where he mentioned that his uncle was threatening him.

[27] The RPD did not accept this explanation, because the omission of an actual death threat was too important. After considering the matter, the RAD found that “it weighs against the Appellant’s credibility that the significant detail of a threat to kill him, made in person, is given in oral testimony and was not included in the Appellant’s narrative”.

[28] The RAD rejected Mr. Adefisan’s explanation that the mention during his testimony of a death threat was merely an elaboration of what he meant in his narrative that his uncle would “deal” with him. The RAD found that there were two different types of threats: “threats of an unstated nature conveyed to the Appellant via unknown people and threats to kill the Appellant made directly to the Appellant”.

[29] Mr. Adefisan submits that he was only adding further details to his narrative during his RPD hearing, and that this Court has in the past held it unreasonable to draw negative credibility inference in such circumstances (*Ahangaran v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8128 (FC) [*Ahangaran*]). In addition, citing *Osagie v Canada (Citizenship and Immigration)*, 2007 FC 852 [*Osagie*], Mr. Adefisan submits that the RAD failed to properly engage with his explanation of the omission in his narrative.

[30] I see nothing unreasonable in the RAD determining that the threat to kill Mr. Adefisan was entirely different from a more generalized type of threats described by him in his narrative. The material threat to kill did not just reflect a difference of degree, but of kind.

[31] I do not see how *Ahangaran* supports Mr. Adefisan's argument that there is a distinction between omitted facts and details added in testimony. In *Ahangaran*, the Board based its credibility finding solely on matters pertaining to the applicant's travel following his departure from his country and thus erred by failing to consider the totality of the evidence tendered in support of the applicant's claim, especially evidence concerning the substance of his claim (*Ahangaran* at paras 3-5).

[32] In any event, and in contrast to the situation in *Ahangaran*, the nature and detail surrounding the uncle's threats in this case are substantial and directly related to Mr. Adefisan's claim of persecution. It was reasonable for the RAD to consider that discrepancy in the evidence and hence to draw a negative credibility inference.

[33] In addition, the RAD did not fail to engage with Mr. Adefisan's explanation, as was the case in *Osagie*; it did engage with it, but found it implausible. I see nothing unreasonable in the RAD's rejection of Mr. Adefisan's explanation.

[34] Finally, I cannot agree with Mr. Adefisan's argument that the RAD read the alleged threats in the BOC narrative in a "vacuum". Indeed, the fact that his uncle admitted to killing some family members using voodoo and that he threatened to use voodoo on Mr. Adefisan does not suggest in any way that the uncle threatened to kill Mr. Adefisan in person. Indeed, even though the uncle admitted to have used voodoo to kill family members, the uncle also claimed to have caused "body pains" to Mr. Adefisan's daughter using voodoo.

[35] I do not find any reviewable errors under this ground of review. It was open for the RAD to draw a negative credibility inference on this specific issue as well as on Mr. Adefisan's story.

C. *Direct confrontation with the uncle*

[36] When the RPD asked Mr. Adefisan why he had not left Nigeria before May 2018 given the alleged robbery at his home, his business having been vandalized, and the incident with his daughter, Mr. Adefisan stated that he had stayed to challenge his uncle about the family property, which he allegedly did at the end of December 2017 when he told his uncle that "God will not allow this" to which his uncle supposedly responded that he would fight Mr. Adefisan.

[37] When the RPD asked Mr. Adefisan why this event was not mentioned in his BOC, Mr. Adefisan again answered that "he wanted to wipe out his uncle from his memory". The RAD also rejected that explanation and found that this discrepancy cast further doubts on Mr. Adefisan's general credibility. The RAD found this event to be important because this was an alleged confrontation with the person "who had vandalized his home, burglarized his business, threatened his life and made his daughter ill: this was not a minor detail".

[38] The RAD further noted that Mr. Adefisan specifically came back from the United States to confront his uncle, which further indicates that this is not a detail of small importance. The RAD thus concluded that, on the balance of probabilities, Mr. Adefisan "has not confronted his uncle about the many forms of persecution he alleges at the hands of his uncle".

[39] Mr. Adefisan concedes before me that the omission was not helpful to his case. I agree, and find nothing unreasonable with the RAD's conclusions. The omission does not bear on a detail of small significance, such as the date of a specific event. Mr. Adefisan has not convinced me that it was unreasonable to expect this material incident to be mentioned in his narrative, and that its omission casts further doubts as to Mr. Adefisan's credibility.

[40] The RAD did not reject Mr. Adefisan's argument solely on account of this discrepancy alone; it found that numerous discrepancies, taken together, were, at the end of the day, fatal to Mr. Adefisan's credibility. Indeed, according to the RAD, Mr. Adefisan "has failed to establish several elements key to his claim: was he threatened with bodily harm and death by his uncle, was he unable to report to police or other authorities, and did he confront the uncle for the vandalism, burglary, illness of his daughter and threats?"

[41] The RAD concluded that, on a balance of probabilities, all of these questions had to be answered in the negative. I am of the view that the RAD reasonably found that the cumulative effect of the omissions of crucial events concerning Mr. Adefisan's refugee and protection claim in his narrative affected his credibility not only as to these specific issues, but as to his story as a whole. The "cumulative effect of minor inconsistencies and contradictions can support an overall finding that an applicant is not credible" (*Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4 citing *Feng v Canada (Citizenship and Immigration)*, 2010 FC 476).

VI. Conclusion

[42] I would dismiss the application.

JUDGMENT in IMM-7856-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7856-19

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