

Federal Court



Cour fédérale

Date: 20210726

Docket: IMM-3137-20

Citation: 2021 FC 767

Ottawa, Ontario, July 26, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

**MARY IDAHOSA AND SOPHIE OMOSEDE
IDAHOSA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Mary Idahosa and her minor daughter Sophie [collectively, the Applicants] seek judicial review of the March 12, 2020 decision of the Refugee Appeal Division [RAD].

[2] The RAD confirmed the November 13, 2019 decision of the Refugee Protection Division [RPD], rejecting the Applicants' claim as Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [the *Immigration Act*].

[3] For the reasons set out below, the Application for judicial review [the Application] will be dismissed.

II. Facts and context.

[4] The Applicants are both Nigerian citizens. In March 2018, they were granted each an American Visitor's Visa, and on April 15, 2018, they were admitted in the United States.

[5] On April 18, 2018, the Applicants entered Canada and claimed refugee status. Upon their entry, the Applicants did not have a valid passport; they presented a photocopy of each their passport identification page and of a Nigerian birth certificate for Sophie. The photocopy of Sophie's passport identification page, as well as of her birth certificate, confirmed she was born in Lagos, Nigeria, while her birth certificate further indicated that her birth was registered in 2013, hence 3 years before Sophie was actually born, in December 2016.

[6] However, officers located a Japanese birth booklet in Ms. Idahosa's luggage that revealed Sophie was actually born in Japan, in December 2016, not in Nigeria, and that she received a vaccine, in Japan, on May 16, 2017. Although she was born in Japan, it is undisputed that Sophie

does not hold Japanese citizenship. On April 20, 2018, as the Minister of Citizenship and Immigration had a number of concerns related to the Applicants' identity, they were detained.

[7] Also on April 20, 2018, Ms. Idahosa signed her Generic Application Form for Canada, where she confirmed, *inter alia*, that she had not lived in another country than Nigeria for more than 6 months (page 117 of the Certified Tribunal Record [CTR]) and that her daughter Sophie was born in Lagos, Nigeria. On the same date, she completed the Schedule A Declaration and confirmed that from April 2013 to June 2017, she worked as the store owner in Nigeria, and that from 2013 to 2018, she lived at an address in Nigeria.

[8] On April 23, 2018, the Immigration Division held a detention hearing. On April 24, 2018, an officer interviewed Ms. Idahosa who despite her earlier declarations, confirmed she was in fact in Japan from 2013 to June 8, 2017, date she returned to Nigeria, and that she had two living siblings, Kell and Merry, as her two other siblings were dead.

[9] On April 30, 2018, Ms. Idahosa, assisted by counsel, signed her Basis of Claim [BOC] whereby confirming she had four siblings, all living in Nigeria, and named Kingsley, Osazwa, Mercy and Oyhoju.

[10] On May 22, 2018, Ms. Idahosa signed the related narrative where she outlines she is asking for refugee protection in Canada in order to save her daughter from the barbaric and inhuman ritual of female genital mutilation, and save herself from domestic violence and cruel and unusual punishment for refusing to allow her daughter to be circumcised. She indicates that

her problems started in March 3, 2017, when she visited the family of Victor, Sophie's father, in the Edo State, in Nigeria, where she was informed her that her daughter would be circumcised before turning two, and precisely on June 2, 2018. Ms. Idahosa conversely indicates that following these events, in March 2017, her daughter's circumcision was imminent, for the following June. She outlines that her brother Kingsley counseled her to leave Nigeria and that he assisted her in doing so, and she thus left Nigeria in April 2018.

[11] On May 7, 2018, the officer again interviewed Ms. Idahosa who then indicated she was expecting ID documents, and, *inter alia*, that she had three siblings named Kingsley, Kelly and Mercy, and that Kingsley was deceased. On May 25, 2018, the officer confirmed Canada Border Services Agency [CBSA] was satisfied with the Applicants' identity and requested their release.

[12] On July 2, 2018, the Minister filed a Notice of Intervention (pages 180 to 183 of the CTR), outlined his concerns and opined that the Applicants' refugee claim had no credible basis. The Minister stressed the fact that the events Ms. Idahosa said occurred in March 2017 in Nigeria could not have occurred as stated, since Ms. Idahosa and her daughter were in Japan at that time.

[13] On July 23, 2019, Ms. Idahosa amended her BOC narrative to change the dates of the meeting with her in laws, in Nigeria, to June 23, 2017, rather than March 3, 2017.

[14] On October 1, 2019, the RPD heard the Applicants' claim, where Ms. Idahosa testified, and indicated that she has four siblings, all alive. On November 13, 2019, the RPD rejected the

Applicants' claims. The RPD found the determinative issue was credibility, and that Ms. Idahosa was not a credible witness because of significant inconsistencies in her evidence and testimony about the dates that she lived in Japan, the dates that she traveled to visit Victor's family, where she had lived while in Nigeria, and her description of her family members, both alive and deceased.

[15] The Applicants appealed the RPD decision to the RAD. In the Memorandum of Argument presented to the RAD, the Applicants acknowledge the inconsistencies raised by the RPD, but argued the RPD erred in drawing negative inferences, as said inconsistencies have nothing to do with the central event upon which basis of persecution is claimed. They further argued that Ms. Idahosa's mental health was a significant factor affecting her cognition, concentration and memory

[16] Ms. Idahosa explains that the stress of her and her daughter's detention caused her to make mistakes in her initial narrative, which she later corrected.

III. The Decision

[17] The RAD found that the RPD's decision was correct, dismissed the appeal, and confirmed the RPD's decision that the Applicants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the Immigration Act.

[18] The RAD confirmed the fact that the Appellants did not dispute the validity of the RPD's credibility findings, but disputed the weight the RPD gave them. The RAD examined the

evidence related to Ms. Idahosa's mental health, the credibility findings and, per the Appellants' arguments, whether the credibility findings were, or not, central to their claim.

[19] In regards to the mental health issue, the RAD considered the assessment report dated October 10, 2018, and the letter dated August 9, 2018, both by the therapist, a Clinical Social Worker. The RAD set out the deficiencies in the evidence, and noted that the report and letter lacked details regarding the structural and clinical approach adopted, which diminished the reliability of the assessment. The RAD noted the factually incorrect narration, by the therapist, of Ms. Idahosa's history, as it was based on Ms. Idahosa's narrative. Ultimately, due to all the problems outlined in the report and letter, the RAD found the clinical conclusions in these documents unreliable and consequently found they deserved little weight.

[20] The RAD noted that the RPD's decision was based on four findings related to Ms. Idahosa's credibility, hence: (1) Ms. Idahosa's evidence about the dates she lived in Japan; (2) the dates she traveled to meet with her spouse's family; (3) her claim that she had lived with her parents while in Nigeria, before traveling to her spouse's family; and (4) her contradictory evidence about the composition of her family, the names and genders of her siblings and whether they were alive or dead.

[21] The RAD first found that the evidence regarding Ms. Idahosa's mental health did not solve the credibility concerns. In essence, the RAD noted that it had found the report and letter unreliable, and outlined having no other mental health evidence for Ms. Idahosa to show that she has been formally diagnosed with any conditions.

[22] The RAD confirmed the credibility issues, and found the inconsistencies were not minor or peripheral but rather that they went to the heart of the claim. The RAD thus found that the time in Japan, and date of the meeting with Victor's family affected the core of the claims, and were central to the claims. The RAD also found the composition of Ms. Idahosa's family to be central because of the significant role that one sibling, Kingsley, is alleged to have played in advising Ms. Idahosa to leave Nigeria, assist her in doing so and in providing a supporting affidavit. However, the very existence of this brother is called into question by Ms. Idahosa's testimony and evidence. Ultimately, the RAD finds Ms. Idahosa has not established, on the strength of her testimony alone, that she has a brother named Kingsley. The RAD nonetheless examined the affidavit, outlined deficiencies and gave it no weight.

[23] The RAD therefore found, on a balance of probabilities, that Ms. Idahosa was not called to a meeting with her in-law's family, in either March or June and that Sophie was not threatened with circumcision at the time. Consequently, the RAD found the Applicants do not face a serious possibility of persecution and, on the same standard, that they will not face a risk to their lives or cruel and unusual treatment or punishment.

IV. Parties' Submissions and Analysis

A. *Arguments raised before the Court*

[24] The Applicants submit that the RAD's findings on credibility are unreasonable and, even if upheld, do not lead to the dismissal of her refugee claim. They initially focused on three RAD

findings, but at the hearing confirmed they did not pursue the arguments raised in regards to the negative inference regarding where Ms. Idahosa stayed in Benin.

[25] Although the Applicants had not disputed the validity of the RPD's credibility findings before the RAD, they submit they can challenge the RAD's own credibility findings before the Court.

[26] Considering, as exposed below, that I find the RAD's findings and conclusion reasonable, there is no need for me to discuss this issue further.

B. *Standard of Review*

[27] I agree with the parties that the presumptive standard of review is reasonableness, and nothing refutes the presumption in this case (*Momodu v Canada (Citizenship and Immigration)*, 2015 FC 1365; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[28] When the reasonableness standard of review is applied, the burden is "on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus must be "on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and [...] is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 99).

[29] On judicial review, the Court must refrain from *reweighing* and reassessing evidence (*Vavilov* at para 125).

[30] A high degree of deference is required when the impugned findings relate to the credibility and plausibility of a refugee claimant's story, given the RPD and the RAD's expertise in that regard and their role as the trier of fact (*Vavilov*; *Michera v Canada (Citizenship and Immigration)*, 2020 FC 804; *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93).

C. *Negative inference regarding the dates on which the Applicants left Japan and met with the father's family in Nigeria*

[31] The Applicants submit that Ms. Idahosa, while in detention, provided inconsistent information regarding these dates, which was resolved by her amended narrative. They criticise the RAD's finding that, as Ms. Idahosa could recall date on which she left Japan, it was unlikely that she could not recall the date of her meeting with the father's family. The Applicants state that only the latter date was connected to a traumatic experience, and add that the RAD's finding that Ms. Idahosa was not too stressed or depressed to recall the date of her meeting with the father's family is contrary to the evidence. The Applicants add that Ms. Idahosa's statements regarding her depression while in detention was not questioned by the RPD, and that the RAD failed to consider this evidence and failed to assign any caution as to when those statements were made. The Applicants cite case law to the effect that statements provided at the point of entry should not be given excessive reliance (see e.g. *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116). They add that the same should be said of statements given while

in detention, and stress that the meeting with the father's family was a traumatic experience and that the RAD's implicit position is that it was not – which is contrary to the evidence. Finally, the Applicants note that the rejection of their appeal largely hinges on this finding.

[32] The Minister responds that Ms. Idahosa provided inconsistent testimony on the date of her visit at her in-laws, and only amended her version of events when the Minister intervened before the RPD and showed that Ms. Idahosa was in Japan, in March 2017, at the time of her alleged visit. The Minister adds that this date is fundamental to the Applicants' claim and that it is reasonable to expect her to remember it. The Minister adds that an inability to do so raises questions as to the other details of her narrative. The Minister stresses that Ms. Idahosa presented incorrect documents and information prior to being detained, and initially denied that she resided in Japan and that her daughter was born in Japan. The Minister further notes that the RAD found that this indicated a fictional narrative and that a truthful applicant could not be so inconsistent regarding her country of residence and the birthplace of her child.

[33] The Minister submits that the RAD considered the evidence regarding Ms. Idahosa's stress and depression while detained. The Minister adds that the issue is not whether Ms. Idahosa was stressed or depressed, but whether her stress and depression explain the inconsistencies in her statements. The RAD analysed the evidence and gave it little weight. The Minister adds that our Court has expressed concern with reports from psychologists which lack sufficient methodology and cross into advocacy (citing, *inter alia*, *Moffat v Canada (Citizenship and Immigration)*, 2019 FC 896). Without the report and letter, Ms. Idahosa solely relies on her testimony on these issues, which is insufficient. The Minister submits that, even if Ms. Idahosa

was depressed and stressed, her condition could not explain the inconsistencies – which do indicate a fabricated story.

[34] As the Minister notes, the RAD undertook a thorough analysis of the evidence regarding Ms. Idahosa's mental health and its impact on the inconsistencies, and its findings are reasonable. Ms. Idahosa did present incorrect information, on central issues, upon her arrival in Canada, which preceded her detention, and it was thus reasonable to conclude that her inconsistencies could thus not be explained by the stress she experienced while being detained. Conversely, the RAD did note that statements made at the point of entry may be less reliable, but found that her inconsistent statements were not made only at the point of entry. The RAD's finding that she should be able to recall the date of the incident is intelligible, and, based on the evidence, it is also reasonable.

D. *Finding regarding the Kingsley affidavit*

[35] The Applicants submit that the RAD erroneously found that the affidavit from Kingsley was fraudulent, although they nuanced this argument at the hearing to acknowledge that the RAD did not find it to be fraudulent, but actually but gave it no weight. The Applicants submit that the signatures are indeed similar and that the RAD has likely confused Kingsley's signature with another signature on the licence, that of the issuing authority. The Applicants submit that this is an error of fact and a misapprehension of the evidence. They also state that the RAD's finding that the photo on the licence failed to cover the text of the affidavit appears unsubstantiated. The Applicants add that, in the absence of such evidence, the RAD's statements

regarding the prevalence of document fraud in Nigeria are not sufficient to support the finding (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390).

[36] The Applicants further submit that the credibility findings on the two dates are not sufficient to dismiss their claim, where there is evidence that is otherwise unimpugned (citing, *inter alia*, *Balyokwabwe v Canada (Citizenship and Immigration)*, 2020 FC 623). They add that the RAD could not reach a conclusion on this evidence and dismiss the entirety of the evidence inconsistent with its finding (*Chen v Canada (Citizenship and Immigration)*, 2013 FC 311). The Applicants explain the RAD only made a finding on the date of the alleged meeting with the father's family, without assessing the other aspects of her narrative independently, such as whether her daughter was set to undergo female genital mutilation. It would be possible, in the absence of general finding of lack of credibility by the RAD, for the RAD to find that she was not truthful on the date, but was on other aspects of her testimony (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381).

[37] The Minister responds that Ms. Idahosa failed to provide basic information on the identity of her siblings and whether they are dead or alive. He adds that this is the baseline of her claim and there is no reasonable explanation for the inconsistencies. This is crucial given the importance of Kingsley in Ms. Idahosa's narrative, and it calls into question the existence of Kingsley.

[38] Regarding the affidavit, the Minister submits that Ms. Idahosa's statement that the RAD considered the wrong signature is untenable. The Minister notes that neither signature matches

the deponent's signature. The Minister does acknowledge that the second criticism of the RAD, that the driver's licence does not cover the affidavit, is confusing, as the licence does not appear on the same page as the affidavit. The Minister submits that the RAD's other findings regarding the signature are sufficient to support the RAD's conclusion and that the finding should be read in conjunction with the inconsistencies in Ms. Idahosa's testimony regarding her siblings. The Minister further submits that the affidavit, even if given some weight, would not be sufficient to change the outcome of the appeal, as it is minor compared to the other inconsistencies and contradictions.

[39] The Minister notes that Ms. Idahosa has not pointed to any corroborative evidence and that the only other evidence in the file was the letter and report from her psychologist.

[40] Overall, the Minister submits that there was ample grounds for the RAD's findings regarding Ms. Idahosa's credibility and that the RAD provided a justification for each of its findings. The Minister also submits that a general finding of lack of credibility is allowable and can extend to all relevant evidence (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238).

[41] I agree with the Minister that it was open to the RAD to draw a negative inference given first the numerous inconsistencies from Ms. Idahosa regarding her siblings, as to their numbers and as whether they are alive or deceased, as I have detailed earlier. I am also satisfied that the RAD's finding on this document's irregularities is not material, as the analysis comes after the RAD's finding that Kingsley may not have existed.

V. Conclusion

[42] Finally, given the RAD's reasonable findings that (1) the mental health situation was not shown to explain the inconsistencies; (2) the meeting with the in-laws never occurred; and (3) Kingsley may not have existed or have been alive, and the letter from Kingsley granted no weight, there was simply nothing left to substantiate the claim.

[43] The RAD reasonably found these findings were central to the Applicants' claim.

[44] For these reasons, the Application will be dismissed.

JUDGMENT IN IMM-3137-20

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;
2. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3137-20

STYLE OF CAUSE: MARY IDAHOSA AND SOPHIE OMOSEDE
IDAHOSA v THE MINISTER OF CITIZENSHIP AND
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