

Federal Court



Cour fédérale

**Date: 20211005**

**Docket: IMM-7859-19**

**Citation: 2021 FC 1030**

**Ottawa, Ontario, October 5, 2021**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**WILLIAMS ABIODUN OBALADE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] Mr. Obalade is a citizen of Nigeria. He entered Canada in October 2017 and sought refugee protection shortly thereafter. Mr. Obalade fears persecution by the Nigerian government because of his bisexuality.

[2] To establish his sexual orientation, Mr. Obalade relied on testimony and evidence regarding (1) his relationships with men in Côte d’Ivoire and Canada and (2) two incidents that

caused him to fear exposure as a bisexual man and that prompted his two departures from Nigeria, first to Côte d'Ivoire (2004) and second to Canada (2017). The first incident occurred in 2004 when Mr. Obalade was at university in Nigeria. He informed a friend that he had strong feelings for him and wanted to be his romantic partner. His advances were rejected and the friend told other students at the university that Mr. Obalade was gay, leading to mockery and harassment. Mr. Obalade became depressed, dropped out of university and moved to Côte d'Ivoire. He returned to Nigeria in 2014 but left in 2017 because he feared his former Nigerian romantic partner, "TA", would reveal Mr. Obalade's sexual orientation to police after TA was himself arrested for a homosexual offence (the second precipitating incident).

[3] The Refugee Protection Division (RPD) heard Mr. Obalade's refugee claim over two days in September and November 2018 and rejected his claim in a decision dated December 20, 2018. The RPD determined that Mr. Obalade's testimony was not credible with respect to the two incidents in which his sexuality was allegedly revealed or with respect to his alleged relationships with two male partners. As a result, Mr. Obalade had not established his sexual orientation. The RPD concluded that there was not a serious possibility he would be persecuted or, on a balance of probabilities, would be personally subjected to torture or face a risk of serious harm or cruel treatment in Nigeria.

[4] Mr. Obalade appealed the RPD decision to the Refugee Appeal Division (RAD), arguing that the RPD erred in its overall assessment of his credibility and misevaluated his oral and documentary evidence.

[5] In a decision dated November 29, 2019 (the Decision), the RAD confirmed the RPD's refusal of Mr. Obalade's refugee claim and dismissed his appeal. The RAD centred its Decision on the issue of credibility. The RAD confirmed the RPD's conclusion that Mr. Obalade's testimony was evasive and his explanations for the issues identified at the hearing were not persuasive. Further, the RAD found that Mr. Obalade was not credible with respect to four material aspects of his narrative: (a) the disclosure of his sexuality in 2004 and 2017; and (b) two significant relationships with men, one in Côte d'Ivoire after he first left Nigeria, and the second more recently in Canada. Finally, although the RAD did not question the authenticity of the letters provided from LGTBQ organizations, the letters did not attest to or establish his bisexuality. Based on these adverse findings, the RAD concluded that Mr. Obalade was not a credible witness and had not established his sexual orientation on a balance of probabilities.

[6] In this application, Mr. Obalade challenges the RAD's credibility and evidentiary concerns. He submits that the RAD erred in finding that his testimony was evasive and hesitant because it relied on considerations of demeanour. Mr. Obalade argues that the RAD failed to take into account cultural and anxiety issues that could have influenced any perceived hesitation on his part. In his view, his testimony at the hearing was consistent and straightforward. To the extent he gave evidence inconsistent with his Basis of Claim (BOC) form, his testimony reflected information received since completion of the BOC.

## II. Analysis

[7] The issues raised by Mr. Obalade question the merits of the RAD's Decision and are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v*

*Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 9 (*Kanawati*). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and 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).

[8] Upon review of the Decision, I am satisfied that the RAD considered Mr. Obalade’s appeal submissions comprehensively and provided intelligible reasons for its findings. The Decision reflects a cumulative assessment of Mr. Obalade’s testimony and the four principal elements of his evidence and sets out a coherent chain of reasoning that reasonably explains the RAD’s dismissal of the appeal. The RAD considered Mr. Obalade’s BOC, appeal submissions, testimony and supporting evidence. In certain instances, the panel agreed with Mr. Obalade that the RPD had erred and in others, it confirmed the RPD’s analysis and conclusions. Following its review of the component parts of the narrative and evidence, the RAD explained why its findings led to the conclusion that Mr. Obalade had not established his sexual orientation on a balance of probabilities.

[9] I will first address Mr. Obalade’s recurring submission that the RAD was required to carry out its own comprehensive analysis of certain RPD findings despite the fact he did not challenge those findings on appeal. The RAD noted in the Decision that Mr. Obalade had not contested a number of the RPD’s conclusions, specifically that: an email purportedly from his sister submitted on the second day of the RPD hearing was fraudulent; Mr. Obalade had

re-availed to Nigeria in 2014 after his sexuality had been revealed and after 9 years in Côte d'Ivoire; his Canadian partner's failure to testify at the hearing was significant, in part because he remained in the relationship on the second day of the hearing; and, his failure to provide information regarding his partner in Côte d'Ivoire commensurate with a four-year relationship. In each case, the RAD reviewed and confirmed the RPD's analysis.

[10] In *Vavilov*, the Supreme Court stated that a reviewing court must "read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered" (at para 94). It is therefore necessary to look at how Mr. Obalade framed his appeal to the RAD (*Kanawati* at para 13). To do so, I have reviewed the appeal submissions to confirm that the RAD made no error with regard to the material RPD findings that were not questioned.

[11] Judicial review of a RAD decision by the Court is not an opportunity for an applicant to raise additional alleged errors by the RPD. Otherwise, the purpose and efficacy of the appeal mechanism is compromised. I agree with the Respondent that the RAD was not required to undertake an analysis of potential issues in the RPD's decision that Mr. Obalade did not raise (Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257; *Kanawati* at paras 23-24; *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at paras 30-39). I do not agree with Mr. Obalade's arguments to the contrary.

[12] On the issue of whether the RAD erred in finding that Mr. Obalade's oral testimony was evasive, I find that the RAD was mindful of the difficulties in relying on a refugee claimant's demeanour at the hearing and of the guidance provided in *Rahal v Canada (Citizenship and*

*Immigration*), 2012 FC 319. The RAD noted and agreed with the RPD's acknowledgement that demeanour is not determinative. The RAD also reviewed and confirmed the RPD's assessment of Mr. Obalade's 2018 treatment plan from a registered psychotherapist and the fact that it contained no indication of how Mr. Obalade's stress and social anxiety affected his testimony. The RAD found no indication in the audio recording of the hearing that his condition impeded his testimony. In this application, Mr. Obalade provides possible explanations for his hesitancy in answering the RPD's questions but those explanations were not before the RAD and, in my opinion, do not suggest a reviewable error in the RAD's analysis. The RAD's Decision was not based only on demeanour. Its adverse credibility findings were detailed and factual in nature.

[13] With respect to the feared disclosure of Mr. Obalade's sexual orientation in 2017, the RAD's negative credibility finding was largely premised on an inconsistency between his BOC and oral testimony. In his BOC narrative, Mr. Obalade stated that he left Nigeria because TA was arrested and he feared TA may tell police they were in a relationship. In contrast, in oral testimony, he stated that the boyfriend had in fact told police about the relationship. The RPD questioned the contradiction and Mr. Obalade then filed an amendment to his BOC prior to the second day of the hearing. Mr. Obalade explained that the late amendment resulted from the fact that he did not know the boyfriend had told police about the relationship when he first completed the BOC and did not know he could amend his BOC. He stated he learned of the disclosure from his sister in 2017.

[14] The RAD was not persuaded by the explanation for Mr. Obalade's failure to file a BOC amendment because the alleged actual disclosure of his bisexuality "raised the threat level" he

faced. What he feared might happen, had happened. In light of the significance of the information and the fact Mr. Obalade was represented by experienced counsel throughout the RPD proceeding, the RAD queried why the amendment was made only after the inconsistency was raised by the RPD. Although it disagreed with the RPD's findings regarding the provenance of the new information, the RAD confirmed the RPD's conclusion that Mr. Obalade had not credibly established the disclosure of his sexual orientation in 2017 based on three factors: (1) his confirmation at the beginning of the RPD hearing with his counsel present that his BOC remained complete and accurate; (2) the BOC amendment after the inconsistency was questioned; and (3) the RPD's unchallenged finding that the email from Mr. Obalade's sister was fraudulent, a finding the RAD reviewed in any event. I find no reviewable error in the RAD's reasoning or confirmation of the RPD's conclusion.

[15] Turning to the second principal element of Mr. Obalade's refugee claim, he submits that the RAD erred in concluding that he was not credible with respect to the disclosure of his sexuality in 2004 because he gave vague testimony regarding details of the disclosure. He argues that the RPD and the RAD misconstrued his difficulty in answering questions and providing concrete examples of the harassment he suffered, applied Western expectations to his testimony, and failed to apply the "Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression" (the SOGIE Guidelines). I am not persuaded by the submissions.

[16] The RAD reviewed the audio recording of the hearing and found that Mr. Obalade was unable to provide any details beyond his statement that he was harassed and mocked by other

students at university in 2004 after his sexuality was disclosed. He was provided multiple opportunities by the RPD to provide examples of any mistreatment but failed to do so. The RAD addressed a letter filed by Mr. Obalade from a university friend who states that he angrily confronted Mr. Obalade regarding his sexuality. Although Mr. Obalade submits the letter describes an incident of harassment, the RPD and the RAD placed little weight on the letter because it was unsworn and did not outweigh their credibility concerns.

[17] The RAD agreed that Mr. Obalade's testimony was vague and emphasized the importance of the 2004 disclosure as it was the cause of his first departure from Nigeria. The RAD also confirmed the RPD's analysis of his 2014 reavilment to Nigeria. I find that the RAD's analysis of Mr. Obalade's inability to provide any example of harassment or threats against him in 2004 following the purported disclosure of his sexuality, coupled with his reavilment to Nigeria, albeit some years later, reasonably supports the finding that he had not established the disclosure of his sexual orientation in 2004.

[18] Mr. Obalade has identified no specific errors in the RAD's analysis. His reliance on the general statement that his testimony was consistent and straightforward and that the SOGIE Guidelines should have been more fully considered is not sufficient to establish an error on the RAD's part. I emphasize that Mr. Obalade is not permitted to raise new arguments in this application regarding the RPD's treatment of his reavilment. In any event, neither the RPD nor the RAD erred in considering the reavilment in the absence of a sufficient explanation for the decision to return to Nigeria (*Avagyan v Canada (Citizenship and Immigration)*, 2014 FC 1004 at paras 27-28).



[19] Third, Mr. Obalade submits that the RAD erred in finding he was not credible because he could not recount basic details about Johnson, a Canadian partner of four months. Mr. Obalade argues that the RAD misconstrued his testimony in concluding that he did not know Johnson's last name because he stated only that he could not pronounce it. This argument is not persuasive because Mr. Obalade was asked by the RPD whether "Johnson" was his partner's first or last name. He did not answer the question. On appeal, Mr. Obalade stated that he testified he forgot Johnson's last name because it was difficult to pronounce, while in this application he states he knew the last name but could not pronounce it.

[20] Mr. Obalade also argues that the RAD erred in drawing a negative inference from the fact that Johnson failed to testify at the hearing, again an alleged error by the RPD that was not raised on appeal. The RAD recognized Mr. Obalade's statement that his relationship with Johnson by the second day of the hearing was not as strong as it once was, although they remained in a relationship, and that the SOGIE Guidelines indicate that corroborating evidence from a partner may not be available. I find the RAD made no error in drawing a negative inference from Johnson's failure to testify considering Johnson is in Canada and its concerns regarding Mr. Obalade's explanation of the state of the relationship (*Obinna v Canada (Citizenship and Immigration)*, 2018 FC 1152 at para 32).

[21] The RAD also found that Mr. Obalade was not credible with respect to his relationship with "WA", a partner of four years in Côte d'Ivoire. The RAD confirmed the RPD's finding that Mr. Obalade was unable to provide basic information about WA. The RPD provided ample opportunities to give examples of his characterization of WA as charismatic but Mr. Obalade

failed to do so. Although the RAD agreed that the RPD's reason for placing little weight on a letter from WA was an error, the RAD did have concerns regarding the circumstances in which the letter was obtained.

[22] The RAD's negative credibility inference rested primarily on Mr. Obalade's vague testimony and lack of knowledge of basic details regarding WA. Mr. Obalade submits that the RAD's assessment of his relationship with WA is a reflection of its personal view of how expressive someone should be about an intimate partner and relationship. However, the RAD did not centre its analysis on what an intimate relationship should look like but on Mr. Obalade's failure to provide basic details and characteristics of a four-year partner. This was not a case of the panel requiring an expression of feelings or a description of intimacy.

[23] Having reviewed the principal evidence in support of Mr. Obalade's sexual orientation, the events that led to his 2004 and 2017 departures from Nigeria and his significant male partners, the RAD considered two support letters from LGBTQ organizations. The RAD accepted the letters and Mr. Obalade's participation in the two groups but found that the letters did not establish that he is bisexual. The fact that the letters were authored by representatives of the organizations was immaterial. Substantively, they did not and could not establish Mr. Obalade's sexual orientation. Any reference in the letters to his allegations was derived from Mr. Obalade himself. I find no reviewable error in the RAD's analysis.

III. Conclusion

[24] To conclude, I am satisfied that, when read contextually and in its entirety, the RAD's Decision meets the reasonableness standard set out in *Vavilov*. The Decision is based on a series of internally coherent and cumulative reasons regarding the most important elements of Mr. Obalade's refugee claim and the reasons for his departure from Nigeria. The Decision is justified and intelligible in light of the relevant facts, the record and the law.

[25] The application is dismissed.

[26] Following discussion with the parties at the hearing, the style of cause for this application will be amended to name the Minister of Citizenship and Immigration as the Respondent.

[27] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-7859-19**

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

1. The style of cause is amended to reflect the name of the Respondent as  
"The Minister of Citizenship and Immigration."
2. The application for judicial review is dismissed.
3. No question of general importance is certified.

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-7859-19

**STYLE OF CAUSE:** WILLIAMS ABIODUN OBALADE v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 21, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** OCTOBER 5, 2021

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