

Federal Court



Cour fédérale

Date: 20220302

Docket: IMM-3671-21

Citation: 2022 FC 268

Ottawa, Ontario, March 2, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

PATRICIA NKEMKAMMA ROBERT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

I. Introduction

[1] The Applicant, Ms. Patricia Nkemkamma Robert, challenges the decision the Refugee Appeal Division [RAD] rendered on April 15, 2021, dismissing her appeal of the decision of the Refugee Protection Division [RPD] that had found her not credible and rejected her claim.

[2] In brief, the RAD dismissed Ms. Robert's appeal and found the RPD was correct in finding that she was not credible. The RAD confirmed the decision of the RPD that Ms. Robert is neither a Convention refugee nor a person in need of protection.

[1] For the reasons exposed below, I will dismiss the application for judicial review.

II. Context

[2] Ms. Robert is a citizen of Nigeria. From December 26, 2016 to May 2017, Ms. Robert visited the United States; she did not claim refugee protection. On July 24, 2017, Ms. Robert returned to the United States; again, she did not claim refugee protection.

[3] On May 3, 2018, Ms. Robert entered Canada from the United States and claimed refugee protection in Canada. On May 10, 2018, Ms. Robert signed her Basis of Claim [BOC] form and provided no information in regards to the basis of her claim.

[4] On June 4, 2018, Ms. Robert amended her BOC and included a narrative (CTR at 55). Ms. Robert indicated that on September 3, 2003, her husband went missing and that shortly thereafter, that her husband's family took control of his business. She added that in 2017, hence 14 years after her husband disappeared, her in-laws learned of a way for his safe return that required her daughter to be circumcised to appease the gods. Ms. Robert refused to bring her daughter to her in-laws and in 2017, her brother-in-law threatened to kill her and to bath in her blood. Ms. Robert indicated that the threats escalated, that she was attacked at the bus station until, ultimately, she enrolled her daughter in a boarding school and left Nigeria for the United

States. Finally, she indicated that the United States was not the best option because of the stance of the administration and she came to Canada to claim protection.

[5] On February 12, 2020, Ms. Robert submitted an amended narrative. She indicated that her in-laws considered she was responsible for her husband's disappearance. She then indicated that upon returned from the United States in 2017, her sister told her that the family-in-law had been harassing her. In her amended narrative, Ms. Robert made no mention of her in-laws' intentions to circumcised her daughter nor of the incident at the bus station.

[6] On March 10, 2020, the RPD heard Ms. Robert's claim where she testified repeatedly, *inter alia*, that the threats against her had started in 2003, while both her narratives stated it had started in 2017. On July 7, 2020, the RPD dismissed the claim because of credibility concerns. The RPD noted that Ms. Robert indicated that she feared serious harm or persecution at the hands of her in-laws, because she refused to give up her daughter for, female genital mutilation [FGM]. The RPD noted that Ms. Robert claimed her in-laws had been harassing and blaming her for the disappearance of her husband in 2003, and that they believed that if her daughter was circumcised, her husband would be found. The RPD noted that in her amendment, Ms. Robert stated that her in-laws blamed her for killing her husband but that she removed her allegation regarding her in-laws insisting that her daughter go through FGM her allegation regarding an incident wherein she had an altercation with two men.

[7] The RPD noted that testimony is presumed to be true unless there is reason for doubting its truthfulness, reasons that it found existed here. The RPD found that Ms. Robert was

frequently not spontaneous, detailed or forthright in her responses, that she added significant allegations at the hearing and that her risk allegations were undermined by inconsistencies between her initial BOC narrative, her amendment and her testimony.

[8] In regards to the ritual rites, the RPD noted that Ms. Robert testified that her family-in-law wanted her to drink water at a shrine for the disappearance of her husband but that she had not included this in her narrative. In addition, the RPD found the objective evidence was silent on the rituals as described for *disappeared* husband and that the omission and lack of objective corroborating evidence undermined Ms. Robert's credibility.

[9] Ms. Robert appealed the decision before the RAD, and on April 15, 2021, it dismissed her appeal. The RAD decision is the one subject to this judicial review.

III. The RAD decision

[10] In its decision, the RAD underlined that Ms. Robert alleged to be at risk due to the disappearance of her husband. The RAD noted that in her initial narrative, Ms. Robert alleged that her family-in-law was instructed by the oracle to commit female FGM on her daughter in order to find her husband and that she was harassed and blamed since the disappearance of her husband. The RAD noted in contrast that in her amended narrative, Ms. Robert alleged that her family-in-law blamed her for killing her husband, while she made no mention of the FGM and of another incident where her family-in-law sought to harm her.

[11] Considering the issues raised in the appeal, the RAD examined particularly (1) the inconsistencies regarding the threats and accusations; (2) Ms. Robert's reavilment in Nigeria; (3) her risk of being forcefully returned to Nigeria (4) the inconsistency regarding FGM allegations; (5) the omission regarding ritual rites; and (6) other evidence.

[12] In regards to the inconsistencies regarding the threats and accusations, the RAD noted that Ms. Robert testified having started to receive threats from her family-in-law in 2003 and having feared from her life from this point, which contradicted her original and her amended narratives.

[13] Her original narrative stated that Ms. Robert received a call from her brother-in-law threatening to kill her when she returned from the United States in 2017, while her amended narrative indicated that she was told by her sister that the family-in-law was harassing her, calling her a husband killer when she returned from the United States in 2017.

[14] The RAD found the RPD correctly found the inconsistency undermined Ms. Robert's credibility. The RAD noted that both the narrative and amended narrative omitted the 2003 threats, and that the narratives contradicted each other as to when and who first threatened or accused Ms. Robert. The RAD did not accept the explanations, which in fact added yet another level to the inconsistency.

[15] In regards to Ms. Robert's stays in the United States, the RAD found that she made unreasonable efforts to inform herself about claiming for asylum there. It notes that Ms. Robert

was in the United States for months, relied on the advice of one friend, is well educated, speaks English, was able to obtain a visa for the United States and travelled alone to the United States.

[16] In regards to the FGM allegations, the RAD noted that they were omitted from the amended narrative and that it undermined her credibility. The Rad added that the explanation, i.e., lack of corroborative documents, was not reasonable.

[17] In regards to the omission regarding the rituals, the RAD noted that Ms. Robert testified her family-in-law wanted her to go and drink at a shrine for the disappearance of her husband, which was not disclosed. The RAD found it was correct for the RPD to consider the objective evidence in light of the credibility issue, but found the RPD's application of the objective evidence was incorrect. The RAD specified that the RPD found that the objective evidence spoke of traditional rites and drinking from the shrine, but only as it relates to dead husbands. The RAD considered that, since Ms. Robert was being accused by the husband's family of having killed her ex-husband, there was no inconsistency with the objective evidence in this regard. Nonetheless, the RAD found that the serious omission of the ritual rites undermined Ms. Robert's credibility and it thus reached the same conclusion as the RPD based on this omission.

[18] To conclude, the RAD stated that the RPD correctly determined that Ms. Robert is not credible, on a balance of probabilities. The RAD specified that it would not address the RPD's findings on Ms. Robert's testimony about the in-laws' death threats as they are not determinative. The RAD concluded that the RPD correctly found that Ms. Robert has not established a serious possibility of being persecuted or, on a balance of probabilities, a risk to her

life. It dismissed the appeal and confirms the RPD decision that she is neither a Convention refugee nor a person in need of protection.

IV. Issues before the Court

[19] I agree with the parties that the applicable standard of review of the RAD decision is presumptively that of reasonableness as none of the exceptions to this presumption applies here. The Court must thus determine if Ms. Robert, who bears the burden, has shown the RAD decision to be unreasonable.

[20] In *Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18 at paragraph 27 [*Bafakih*], the Federal Court of Appeal recently outlined again that on a reasonableness review, the focus of the inquiry “must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83 [*Vavilov*]). Ultimately, the reviewing court must be satisfied that the administrative 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).

[21] The Federal Court of Appeal also reminded us that, as affirmed in *Vavilov*, a reviewing court applying the standard of reasonableness must refrain from deciding itself the issues that were before the administrative decision-maker (*Bafakih* at para 52). The Federal Court of Appeal further outlines that “[i]n other words, it ‘does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the ‘range’ of possible

conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the ‘correct’ solution to the problem.’ (*Vavilov* at para 83)”.

[22] Furthermore, the Court is mindful of the particulars when credibility findings are at play. As stated in *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at paragraph 11, “[...] the credibility finding is a question of fact that deserves deference and ought to be reviewed under the reasonableness standard: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No. 9 at para 53; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 42 ACWS (3d) 886, at para 4 (FCA); *Gatore v Canada (Minister of Citizenship and Immigration)*, 2009 FC 702, [2009] FCJ No. 871 at paras 27-28”. In her decision *Charles v Canada (Citizenship and Immigration)*, 2021 FC 520 at paragraph 22, Justice Walker recently held that “[t]he Court owes deference to the RAD’s credibility findings (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42). The RAD closely examined the RPD’s findings, the evidence and the arguments in the applicants’ appeal memorandum. The RAD does not conduct a ‘line-by-line treasure hunt for error’ (*Vavilov* at para 102)”. The Court must “[...] defer to the RAD’s credibility findings and consider the reasons as a whole in light of the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Odia v Canada (Citizenship and Immigration)*, 2018 FC 363 at para 6)” (*Ba v Canada (Citizenship and Immigration)*, 2019 FC 233 at para 10). Similarly, this Court held in *Kindu Lukombo v Canada (Citizenship and Immigration)*, 2019 FC 126 at paragraph 13 that it recognizes that “[...] significant deference is owed to credibility determinations made by the RAD (*Odia v Canada (Citizenship and Immigration)*, 2018 FC 363 at para 6)”.

[23] Ms. Robert submits that the decision of the RAD is unreasonable for two reasons. At the hearing, Ms. Robert added an argument in regards to the treatment that must be reserved, by the RPD and the RAD, to a claimant's amendment of their narrative. This argument was not raised by Ms. Robert's memorandum and according to the relevant jurisprudence, I will not consider it. I may indicate however that in this case, the RPD and the RAD did not take issue with the fact Ms. Robert amended her narrative, but found the explanation she provided for the substantial changes unreasonable. There is therefore no merit in that argument in any event.

[24] First, Ms. Robert submits that the RAD failed to exercise its appellate power as required by section 111 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the Act].

[25] More precisely, she submits that the RAD failed to conduct its own analysis and to exercise its appellate power as it identified an error in the RPD decision of the objective evidence but nonetheless reached the same credibility conclusion in regards to the ritual rites. Ms. Robert adds that the omission is not central to her claim because it has nothing to do with the threats, and that the RAD provided no explanation on how this ritual is central to the claim.

[26] In addition, Ms. Robert takes issue with the RAD not addressing the RPD's findings in regards to the death threats, asserting they are central to her claim and that the RAD erred.

[27] Second, Ms. Robert submits that the RAD erred in upholding the RPD's credibility findings and failed to apply the presumptions of the veracity of testimony while correctly citing

Maldonado v Canada (Minister of Employment and Immigration), [1980] 2 FC 302

[*Maldonado*].

[28] Ms. Robert does not deny the inconsistencies or omissions between her BOC, the amendment and her testimony, but asserts they related to issues that are trivial or peripheral. She adds that the fact that she did not claim refugee status in the United States does not constitute a waiver of his or her right to claim that status in another country citing *Gavryushenko v Canada (Minister of Citizenship and Immigration)*, 194 FTR 161.

[29] The Minister responds that Ms. Robert has not shown that the RAD decision to be unreasonable and that the decision is reasonable. The Minister thus responds that: (1) the Applicant's three different versions regarding the first time she was threatened or accused of killing her husband does undermine her credibility; (2) the Applicant's reavaiement to Nigeria and her failure to seek asylum at the first safe opportunity is incompatible with her alleged subjective fear and the RPD could rightly make an adverse credibility finding; (3) the Applicant's second trip to the United States and did not seek asylum, is also incompatible with her alleged subjective fear; (4) the Applicant's inconsistent statements about the alleged risks of FGM faced by her daughter and the lack of credible explanation for this negatively impacts her credibility; (5) the RPD was correct in drawing a negative inference from the Applicant's failure to mention in her amended narrative her in-laws' demand to drink water at the shrine to prove her innocence; and (6) the RPD correctly found that the evidence adduced by the Applicant does not corroborate that she is being sought and targeted by her family-in-law.

V. Decision

[30] Ms. Robert has not convinced me that the RAD failed to exercise its appellate power as required by section 111 of the Act, or that the RAD erred in upholding the RPD's credibility findings or in applying the veracity presumption.

[31] In brief, the record shows that the RAD (1) did conduct its own analysis; (2) did not err in reaching the same conclusion as the RPD in regards to the impact of the ritual rites omission on Ms. Robert's credibility, despite disagreeing on the objective evidence; (3) did not err in deciding not to address the RPD' death threats findings; and (4) did not fail to correctly apply the presumptions of the veracity of testimony.

[32] The RAD conducted its own independent assessment of the evidence, including Ms. Robert's testimony before the RPD, examined the arguments raised on appeal, and concluded, as the RPD had done, that her story lacked credibility. The mere fact that the RAD agreed with the RPD's findings is no indication that it did not conduct its own independent review. The RAD decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker, as the standard of reasonableness commands (*Vavilov* at para 85).

[33] As underlined by the RAD, Ms. Robert provided three substantially different versions regarding the source informing her of the threats (brother-in-law or sister), their substance (threats to kill her or threats to have her daughter undergo FGM), and lastly their timing (not long

after the husband's disappearance in 2003 or some 14 years later, in 2017, when she returned from the United States). Given the record, it was reasonable to conclude that Ms. Robert failed to provide a credible explanation for this inconsistency.

[34] On the issue of the ritual rites, there remained the omission between Ms. Robert's narrative and her testimony, and it was open to the RAD to find this omission alone further undermined Ms. Robert's credibility. I agree with the Minister that the fact Ms. Robert's family-in-law allegedly requested her to drink water from the shrine to prove her innocence was indeed an important element regarding the alleged harm to which they wanted her to be subjected. As the RAD explained, it was reasonable to expect Ms. Robert to include such information in her narrative "[...] as it details how her family-in-law wanted to harm her" (RAD decision at para 28).

[35] These inconsistencies were central to Ms. Robert's claim and the RAD reasonably decided that it was unnecessary to examine other RPD findings. Her credibility was already fatally undermined.

[36] The Court does not dispute the general principles of the presumption of truthfulness. However, the presumption of truthfulness can be rebutted due to credibility concerns arising from contradictions, inconsistencies, omissions, and implausibility. The *Maldonado* decision merely established that "[w]hen [a claimant] swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness" [Emphasis added.] (*Maldonado* at para 5).

[37] The RAD, like the RPD, rebutted the presumption here as it clearly examined the allegations raised by Ms. Robert and found inconsistencies, or omissions, while no reasonable explanations were provided regarding (1) the threats and accusations as well as their timing, ie in 2003 or in 2017; (2) Ms. Robert's reavilment in Nigeria; (3) her stay in the United States; (4) the omission regarding her daughter's FGM allegations in her second narrative; and (5) the omission regarding the ritual rites.

[38] The RAD did not err in noting Ms. Robert's inconsistent statements about the alleged risks of FGM faced by her daughter and the lack of credible explanation for the omission. It was reasonable for this RAD to conclude that this negatively impacted her credibility. The record confirms the omissions and inconsistencies did occur, Ms. Robert confirmed as much, and the RAD reasonably concluded that they were sufficient to rebut the presumption and undermine Ms. Robert's credibility. Furthermore, these omissions and inconsistencies were central to her claim, there is no merit in Ms. Robert's argument that these are peripheral or trivial in regards to her claim.

[39] Ms. Robert did submit documents that corroborate she has a daughter, that her husband disappeared, and that she reached out to the police for assistance. However, these documents do not establish that she faces a risk of harm upon return to Nigeria. It is reasonable to conclude that the evidence tendered has no probative value to support her risk allegations.

[40] Finally, the RAD could consider that the voluntary return of a claimant to her country of origin is a behaviour that is incompatible with an alleged subjective fear of persecution, and that

while a delay in claiming refugee protection is not determinative with respect to the outcome of a refugee claim, it can undermine the person's credibility (*Hartono v Canada (Citizenship and Immigration)*, 2017 FC 601 at para 21; *Renee v Canada (Citizenship and Immigration)*, 2020 FC 409 at para 27; *Bouarif v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 49 at para 15).

[41] Ms. Robert has not established any reviewable error and I will thus dismiss the application for judicial review.

ORDER in IMM-3671-21

THIS COURT ORDERS that:

1. The Application for judicial review is dismissed;
2. No question is certified;
3. No costs are awarded.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3671-21

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