

Federal Court



Cour fédérale

Date: 20220311

Docket: IMM-6255-20

Citation: 2022 FC 334

Ottawa, Ontario, March 11, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

**FAITH OFURE AREWEL
DANIEL OSEMUDIAMEN AREWEL
PRINCE OSENIOR AREWEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Appeal Division (RAD) rejected the refugee claim of Faith Arewel and her son, Daniel, finding they did not produce sufficient credible evidence to establish their identities. For the reasons I give below, I find the RAD's decision was unreasonable and must be set aside. The RAD's rejection of the Arewels' arguments about the credibility of their Nigerian passports

materially relied on a clearly incorrect assertion that Ms. Arewel had filed no document other than her passport to establish her identity.

[2] The application for judicial review will therefore be allowed.

[3] In this judgment, I will refer to Ms. Arewel and Daniel using their names as presented, although their identities remain in issue.

II. Issues and Standard of Review

[4] The parties agree that the RAD's decision is subject to review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[5] The Arewels raise two issues going to the reasonableness of the RAD's decision:

(1) Did the RAD err in finding Ms. Arewel's and Daniel's passports to be insufficient identity documents?

(2) Did the RAD err in failing to consider the other personal documentation presented, including a court order dissolving Ms. Arewel's marriage to Daniel's father?

[6] For the reasons given below, I conclude that there is overlap between these issues, given the RAD's reasons for rejecting the passports.

III. Analysis

A. *The Arewels' Refugee Claim*

[7] Ms. Arewel claims her ex-husband's family issued demands for sacrifices and rituals, including female genital mutilation, after an idol/oracle named her ex-husband to succeed his uncle as priest. These threats continued after she travelled to Lagos, and her ex-husband was attacked. In December 2015, Ms. Arewel filed for divorce, and she fled Nigeria to the United States in 2016 with the couple's son, Daniel.

[8] The ex-husband visited Ms. Arewel while she was in the United States, a visit that led to Ms. Arewel giving birth to a second son, Prince, in November 2017. Ms. Arewel, Daniel, and Prince left the United States in April 2018 and sought refugee protection in Canada. In early 2019, Ms. Arewel's mother asserts she was attacked by men suspected to be relatives of Ms. Arewel's ex-husband.

[9] In support of their claim, the Arewels filed birth certificates and Nigerian passports for Ms. Arewel and Daniel; a letter from Daniel's father; a Decree Nisi of Dissolution of Marriage dated September 15, 2015 and the Certificate of Decree Absolute dated three months later, each issued by the High Court of Lagos State [the Nigerian Court Documents]; a letter from a childhood friend; an affidavit and medical report from Ms. Arewel's mother; and Prince's US Social Security card and birth certificate.

[10] The Minister intervened in the Arewels' claim, taking the position that the Arewels had not provided acceptable identity documentation. The Minister filed reports concluding that Daniel's birth certificate had likely been altered, and that Ms. Arewel's birth certificate was likely counterfeit.

[11] Before the Refugee Protection Division (RPD), Ms. Arewel testified that her sister had obtained the birth certificates for her from Nigeria shortly before the hearing. She said she previously had other birth certificates, which had been used to obtain her and Daniel's passports, but that she subsequently lost them and asked her sister to obtain replacements.

B. *The RPD's Decision*

[12] By decision dated November 19, 2019, the RPD rejected the Arewels' claim. It found Ms. Arewel's and Daniel's birth certificates were likely fraudulent, and that this undermined Ms. Arewel's credibility. The RPD did not find any issue with Ms. Arewel's or Daniel's Nigerian passports themselves. However, given the credibility concerns raised by filing false birth certificates, Ms. Arewel's inability to prove the existence of a prior birth certificate used to obtain the passport, and the possibility of fraudulently obtaining genuine documents in Nigeria, the RPD concluded on a balance of probabilities that Ms. Arewel had obtained the passports fraudulently and under false information.

[13] The RPD cited section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules]. The former requires the RPD to take into account, with respect to a claimant's credibility,

whether they possess “acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.” The latter, similarly, requires a claimant to “provide acceptable documents establishing their identity and other elements of the claim,” or else “explain why they did not provide them and what steps they took to obtain them.” The RPD concluded Ms. Arewel and Daniel had not produced sufficient credible evidence to establish their identity, and therefore rejected their claim.

[14] With respect to Prince’s claim, the RPD was satisfied that he had established his identity based on his birth certificate issued by the State of Georgia. However, the RPD rejected Prince’s refugee claim since he is an American citizen and would not face persecution or risk if returned to the United States.

C. *The RAD’s Decision*

[15] The Arewels appealed to the RAD. They did not challenge the rejection of Prince’s claim, but contested the RPD’s rejection of the passports and its credibility assessment. They also claimed the RPD had committed a breach of natural justice by failing to consider their refugee claim on its merits.

[16] With respect to the passports, the Arewels argued they were identity documents issued by a foreign state and entitled to a presumption of validity even if other documents were found fraudulent, citing this Court’s decisions in *Rasheed v Canada (Minister of Citizenship and*

Immigration), 2004 FC 587 at paras 19–20 and *Bouyaya v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1042 at paras 10–11.

[17] The RAD rejected the Arewels' arguments and dismissed the appeal on November 11, 2020. Of primary importance on this application is the RAD's treatment of the Nigerian passports. On this issue, the RAD found *Rasheed* distinguishable because in that case, "the applicant provided numerous documents to establish his identity and provided reasonable explanations regarding inconsistencies," whereas Ms. Arewel "has provided no other document other than her passport to establish her identity." It noted the RPD did not question the authenticity of the passport, but "the information provided to obtain it and thus the biographical information presented in the official document." The RAD agreed with the RPD that the submission of the false birth certificates was a valid reason to doubt the content of the passports.

[18] The RAD also agreed with the RPD's finding that the birth certificates were most likely counterfeit, and found the RPD was not required to address the merits of their refugee claim after finding that identity was not established. The Arewels do not challenge these findings in this Court.

D. *The RAD's Decision was Unreasonable*

[19] The Arewels argue the RAD's evaluation of the Nigerian passports was unreasonable. They rely on the presumption of validity of foreign-issued official documents, and argue that the authenticity of the passports should not be doubted because of the inauthenticity of the birth certificates, citing *Mohmadi v Canada (Citizenship and Immigration)*, 2012 FC 884. They also

argue the RAD failed to consider the other documentation going to identity, including the Nigerian Court Documents, noting that the RAD's statement that Ms. Arewel had provided no documents other than her passport to establish identity was incorrect.

[20] The Minister argues that the Arewels cannot now raise concerns about the failure to consider other documentation, since they did not raise these other documents before the RAD and judicial review is not “simply a second chance or an opportunity for different Counsel to reshape the case”: *Singh v Canada (Citizenship and Immigration)*, 2011 FC 1370 at para 12; see also *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–26; *Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6.

[21] Taking the Arewels' concerns about the failure to consider other documents as a stand-alone argument, I agree with the Minister. The RPD focused exclusively on the birth certificates and passports, and the Arewels did not argue to the RAD that it was an error for the RPD not to have considered the other documents, nor that the RAD should itself consider those documents.

[22] However, I agree with the Arewels that the RAD's conclusions with respect to the reliability of their passports—an issue squarely raised before and addressed by the RAD—were materially influenced by its conclusion that Ms. Arewel “provided no other document other than her passport to establish her identity.” The RAD used this fact to distinguish the case before it from *Rasheed*, where Justice Martineau of this Court concluded it was unreasonable for the RPD to have rejected Mr. Rasheed's documentary evidence because he lied about his identity and presented a false passport upon entry to Canada, given the other identity documents provided and

the presumption of authenticity: *Rasheed* at paras 7, 19–23. I agree that it is open to the Arewels to challenge the RAD’s reasoning on this issue even though the failure of the RPD to consider the other documents was not separately raised as an issue before the RAD.

[23] I also agree with the Arewels that the RAD’s statement that Ms. Arewel “provided no other document other than her passport to establish her identity” was not supported by the record. A number of the other documents filed by the Arewels spoke to Ms. Arewel’s identity, and could have corroborated the “biographical information presented” in her passport. This included the Nigerian Court Documents, which refer to Ms. Arewel, her marriage to her ex-husband, and their son Daniel; the affidavit of Ms. Arewel’s mother, who refers to her daughter by name; and Prince’s birth certificate from the State of Georgia, which identifies Ms. Arewel by name and date of birth and which was accepted as authentic and as establishing Prince’s identity.

[24] In this regard, I cannot agree with the Minister’s argument that the RAD’s statement should be read as referring only to other government-issued identity documents. The RAD did not limit its statement to such documents. Further, the RAD was purporting to distinguish *Rasheed*, in which the “numerous documents” presented to establish identity included both government-issued identity documents and other documents such as school documents, newspaper clippings, party membership cards, and an arrest warrant: *Rasheed* at paras 4–5. In any case, the other documents produced by Ms. Arewel include the Nigerian Court documents, which purport to be government-issued, and Prince’s birth certificate, which is a government-issued identity document, albeit one issued for Prince rather than Ms. Arewel. This Court has also recognized that documents that are not government-issued identity documents, such as

affidavits and letters, may be relevant to the determination of identity, even when the presumption of validity of identity documents is set aside: *Teweldebrhan v Canada (Citizenship and Immigration)*, 2015 FC 418 at para 19; see also *Kabongo v Canada (Citizenship and Immigration)*, 2013 FC 1086 at para 21; *Islam v Canada (Citizenship and Immigration)*, 2015 FC 226 at para 24. This is not to say that the requirement for acceptable identity documents in section 106 of the *IRPA* and Rule 11 of the *RPD Rules* is not critical to the assessment of evidence filed in support of identity. It is simply to say that the context does not permit me to conclude that the RAD was only referring to government-issued identity documents.

[25] Nor can I accept the Minister's argument that the RAD addressed the other documents with its reference to the RPD's conclusion that "the presumption that her remaining identity documents were valid could no longer be maintained." The entirety of the RAD's discussion on this issue, including the paragraph in which the foregoing sentence is found, relates to the biographical information contained in the authentic Nigerian passport. In any event, as noted above, even if the *presumption* of validity or authenticity is set aside, this does not alone mean that a document is inauthentic or its contents unreliable. It must still be assessed in light of the evidence as a whole: *Teweldebrhan* at para 19. In this regard, I reject as inconsistent with the jurisprudence the Minister's contention that a finding that if foundation documents such as birth certificates are determined to be problematic, other documents that present the same information cannot remain valid documents.

[26] While it is not the Court's role on judicial review to reweigh or reassess evidence, the reasonableness of an administrative decision "may be jeopardized where the decision maker has

fundamentally misapprehended or failed to account for the evidence before it”: *Vavilov* at para 126. In my view, the RAD’s rejection of the Arewels’ arguments relied materially on its erroneous conclusion that Ms. Arewel had filed no other documents going to identity. In particular, its conclusions that the passport should not be accepted and that there were reasons to doubt its contents might well have differed if other documents showing the same biographical information were considered. I therefore conclude that this error was sufficiently fundamental to render the decision as a whole unreasonable: *Vavilov* at para 100.

IV. Conclusion

[27] The application for judicial review is therefore granted and the Arewels’ appeal is returned to the RAD for redetermination.

[28] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-6255-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the Refugee Appeal Division dated November 11, 2020 is set aside and the applicants' appeal of the decision of the Refugee Protection Division dated November 19, 2019 is remitted to the Refugee Appeal Division for redetermination by a differently constituted panel.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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