Federal Court  Cour fédérale

Date: 20220720

Docket: IMM-2893-21

Citation: 2022 FC 1079

Toronto, Ontario, July 20, 2022

PRESENT: Madam Justice Go

BETWEEN:

DESTINY IMEOKPARIA IGHODALO (A.K.A DESTINY IGHODALO IMEOKPARIA)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Destiny Imeokparia Ighodalo, is a citizen of Nigeria. In April 2016, he entered Canada on a study permit and submitted a refugee claim on grounds of sexual orientation. In August 2016, the Refugee Protection Division [RPD] refused his refugee claim on

credibility grounds. The Refugee Appeal Division [RAD] dismissed his appeal and the Federal Court denied his application for leave and judicial review.

[2] In November 2017, the Applicant obtained a work permit and several extensions thereafter, the last of which was valid until February 2020. He worked full-time during this time.

[3] In April 2019, he submitted an H&C application, which was refused.

[4] In August 2020, the Applicant submitted a second H&C application, relying on his establishment in Canada, as well as hardship in Nigeria. A Senior Immigration Officer [Officer] refused the application in a decision dated April 9, 2021 [Decision]. The Officer gave no weight to hardship in Nigeria, citing the RPD's negative credibility findings as to his sexual orientation. The Officer gave "some favourable weight" to his establishment, given his full-time employment during several years. However, the Officer noted that the Applicant had not submitted financial information and that he had submitted only one letter of support, concluding that his establishment was not significant.

[5] The Applicant seeks judicial review of the Decision, arguing that the Officer made an unreasonable decision and breached procedural fairness.

[6] For the reasons set out below, I find the Decision reasonable and I find no breach of procedural fairness. I therefore dismiss the application.

II. Issues and Standard of Review

[7] The Applicant argues that the issues are: (1) whether the Officer's finding is reasonable in light of all the evidence, and (2) whether it is within an H&C Officer's jurisdiction to consider the same factors as are applicable in a claim for refugee protection. The Applicant's submissions also raise the issue of (3) whether the Officer unreasonably dealt with the issue of support letters, and (4) whether the Officer breached procedural fairness by not asking for the Applicant's notice of assessment before finding that it was lacking.

[8] The parties both submit that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Neither party addresses that the Applicant's fourth argument is based on procedural fairness, for which a standard of review does not apply: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at para 54.

[9] Reasonableness is a deferential, but robust, standard of review: *Vavilov*, at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[10] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

[11] For issues of procedural fairness, the central question is whether the procedure was fair having regard to all of the circumstances, including whether the applicant knew the case to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company* at paras 54-56.

III. Analysis

A. *Were the Officer's findings reasonable in light of all the evidence?*

[12] The Applicant argues that the Officer's failure to consider material evidence is a reviewable error. Specifically, the Applicant argues that the Officer ignored the National Documentation Package [NDP] for Nigeria, which showed massive unemployment, a rise in violent crimes, and a specific targeting of young people similarly situated as the Applicant.

[13] While the Applicant cites several cases from the 1980s, this principle is better represented in *Vavilov* at para 126 and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC).

[14] I find the Officer committed no such error given that the Applicant did not include the NDP, nor make any submission based on the NDP in his H&C submissions.

[15] The Respondent submits the NDP is extrinsic evidence in the context of an H&C application and is not automatically part of the record in an H&C unless the applicant submits it: *Desta v Canada (Citizenship and Immigration)*, 2021 FC 1028 at para 26. I agree that, in the context of this case, the Applicant – who was represented by counsel in his H&C application – cannot fault the Officer for not addressing evidence and submissions that he has not submitted.

[16] At the hearing, counsel for the Applicant quoted two additional cases in support of his position: *Begum v Canada (Minister of Citizenship and Immigration)*, 2013 FC 824 [*Begum*] and *Ocampo v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1290 at paras 12-13 [*Ocampo*]. Neither of these cases assist the Applicant. *Begum* confirms that, while publicly available, NDP materials are extrinsic evidence and Officers who rely on these materials have a duty to give the applicant an opportunity to respond: *Begum*, para 41. In *Ocampo* the Court confirms at paragraph 16 that there is no legal obligation on the part of an officer to consult the NDP.

[17] The same conclusion must be drawn with respect to the Applicant's contention that he would face hardship as a young Nigerian man with dreadlocks, making him a target for police harassment, beatings, robbery and possibly killing. The Applicant did not raise this argument in his H&C application, and therefore cannot impugn the Decision with new evidence and arguments on judicial review.

[18] I also reject the Applicant's written argument that the Officer unreasonably assumed that the Applicant's family would be willing to take him in upon his return, in view of his estrangement from his family due to his sexual orientation. The case of *Manickan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1525, cited by the Applicant can be distinguished, as in that case the RPD accepted the claimant's identity and profile, whereas here neither the RPD nor the RAD accepted the Applicant's sexual orientation, an issue I will address further below.

B. *Did the Officer err by considering the same factors as are applicable in a claim for refugee protection?*

[19] The Applicant argues that the Officer fettered their discretion by relying on a decision made by the RPD under a different test. The Officer addressed the refugee claim decisions as follows:

> While I am not bound by these findings for the purpose of this application, I give them much weight as the applicant had the opportunity to testify, present evidence, and establish facts over the issues he advanced before the RPD and RAD. Moreover, although I acknowledge the different legal tests for refugee protection versus an application on H&C grounds, I also note that facts for each are established on a balance of probabilities. I therefore find that simply reiterating the same material allegations in this application that were already determined to lack credibility does not provide sufficient evidence to demonstrate that the applicant faces any probable hardships or challenges in Nigeria.

[20] In the Applicant's view, it is irrelevant for the Officer to state that the standard of proof for both is a balance of probabilities when the legal test for H&C applications and refugee claims is very different. The Applicant's argument has no merits. The Officer acknowledged the

different tests for H&C applications and refugee claims and the Applicant has not shown that the Officer has applied a wrong legal test.

[21] The Applicant also argues that the RPD decision never determined whether he is gay or bisexual, but rather addressed issues like the plausibility of him becoming friends with his roommate who was blackmailing him. The Applicant's submission is directly contracted by the following findings of the RPD:

> [21] After carefully considering the evidence and submissions in this case, the Panel finds that the Claimant is not credible. This is a global finding that extends to all of his testimony; he is simply an untrustworthy witness. The several negative inferences about the Claimant's general credibility outweigh the very limited corroborative evidence. In the absence of credibility on the part of the Claimant, a single email from Michael does not establish that the Claimant is bisexual.
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> …..
>
> [23] The Panel finds that the Claimant has failed to establish his allegations, including bisexuality, on a balance of probabilities with credible or trustworthy evidence.

[22] In addition, the Applicant argues that the RPD did not do an analysis of s 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 to consider the objective reality facing the Applicant if he were simply perceived to be gay in a deeply homophobic country like Nigeria. Once again, contrary to the Applicant's assertion, the RAD considered this argument and found the credibility concerns to be determinative of a s 97 claim.

[23] The Respondent cites *Sanabria v Canada (Citizenship and Immigration)*, 2020 FC 1076 at para 14, where Justice McHaffie states: "the case law reflects the principle that, when

weighing the evidence before them, H&C officers may take into account adverse credibility findings made by the RPD and the RAD regarding fear of removal to the country of origin."

[24] I find Justice McHaffie's comment aptly applies to the case at hand. Faced with the same evidence and argument on hardship based on the same non-credible narrative that the Applicant advanced in his refugee claim, it was eminently reasonable for the Officer to conclude as follows:

> …simply reiterating the same material allegations …that were already determined to lack credibility does not provide sufficient evidence to demonstrate that the applicant faces any probable hardships or challenges in Nigeria.

C. *Did the Officer unreasonably consider the issue of support letters?*

[25] The Officer noted that the Applicant had provided only one letter of support, finding that although the contents of the letter were positive and deserving of some weight, this weight was restricted by the absence of other letters or an explanation for why he could not secure more letters. The Applicant argues that the Officer has failed to point to any objective threshold for determining when the Applicant has provided enough letters.

[26] I reject this argument for two reasons. First, the Officer was not, in my view, expecting a certain number of support letters based on a certain threshold. As noted in the Decision, the Officer commented on the scant number of support letters in the context of assessing the Applicant's personal ties in Canada, such as friends or co-workers, as part of the global assessment of the Applicant's establishment.

[27] Second, as the Respondent points out, it was not the Officer's role to set a threshold for the degree of establishment required, for example by the number of support letters. As Justice Diner noted in *Regalado v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 540 [*Regalado*]:

> [8] …it is not the role of an officer to speculate as to what additional facts or circumstances would have triggered a section 25 exception. Rather, it is the Applicant's role to demonstrate exceptional circumstances, including establishment, rather than simply expected (*Baquero Rincon v Canada (Minister of Citizenship and Immigration*), 2014 FC 194 at para 1).

[28] The Applicant made the choice of submitting just one support letter to demonstrate his establishment. The Decision was reasonably supported by the evidence that the Applicant chose to submit.

D. *Did the Officer breach procedural fairness?*

[29] The Applicant argues that the Officer blamed him for not providing a notice of assessment, despite acknowledging that he had provided a letter from his employer confirming he was employed full-time since 2017. The Applicant submits the Officer did not mention why it was crucial to know how much he earns or why the absence of that information should be counted as a negative factor. According to the Applicant, even if he works only 37.5 hours per week, making only minimum wage, this will amount to at least $28,275 per annum. The Applicant argues that the purpose of providing a job letter is to prove that he is self-sufficient, not relying on government assistance, and therefore it is curious why the Officer would require a notice of assessment too. As such, the Applicant submits that the Officer breached procedural

fairness by their unstated demand for additional documents, as the Officer had the opportunity and the duty to request additional documents but failed/refused/neglected to do so.

[30] The Applicant's argument is misguided. As noted above, it was the Applicant's role to demonstrate establishment (*Regalado,* at para 8), including financial establishment. In the context of this case, I agree with the Respondent that there was no breach of procedural fairness because the Officer had no duty to request further evidence.

[31] Besides, the Officer did explain why, having given the Applicant's employment some positive weight, more information was needed to assess the Applicant's establishment:

> I note that the applicant does not submit any information or evidence concerning his finances, such as notices of assessment or bank statements from Canada or Nigeria. I also note that the applicant does not provide a reason for why any such information or evidence could not be submitted. It is reasonable to believe that the applicant could provide at least some basic information in this regard, particularly since he has been gainfully employed and earning a full-time wage since November 17, 2017, as discussed above. In the absence of any such information or evidence, I am not satisfied that the applicant has established that he has achieved some measure of financial stability in Canada and therefore cannot give this aspect of establishment any favourable weight.

[32] The Applicant's failure to provide evidence of his financial circumstances was inextricably linked to the Officer's finding that the Applicant did not "satisfactorily establish that his financial situation is currently stable." I see no basis to interfere with the Officer's conclusion.

IV. Conclusion

[33] The application for judicial review is dismissed.

[34] There is no question for certification.

JUDGMENT in IMM-2893-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2893-21
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