

Federal Court



Cour fédérale

Date: 20221220

Docket: IMM-301-22

Citation: 2022 FC 1765

Ottawa, Ontario, December 20, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

**IZUCHUKWU CHRISTOPHER
ONWUASOANYA
MUNACHIMSO ANGEL ONWUASOANYA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Izuchukwu Christopher Onwuasoanya, is a citizen of Nigeria. He arrived in Canada with his spouse and two daughters in December 2017. His daughter, Munachimso Angel Onwuasoanya, is the second Applicant and a citizen of the United States.

Mr. Onwuasoanya's wife and eldest daughter were not part of the proceedings before the

Refugee Appeal Division [RAD] as the Refugee Protection Division [RPD] accepted their claims for refugee protection.

[2] Mr. Onwuasoanya seeks judicial review of a decision of the RAD of the Immigration and Refugee Board of Canada dated December 16, 2021, in which the RAD confirmed the decision of the RPD that Mr. Onwuasoanya is not a Convention refugee or a person in need of protection. The dismissal of Munachimso's claim by the RPD was not challenged before the RAD or this Court.

[3] The determinative issues for the RPD were credibility and an objective basis for the fear. The RAD found that the determinative issues on appeal were also credibility and the objective basis for the fear of persecution.

[4] Mr. Onwuasoanya submits that the RAD's decision is unreasonable on the basis that the RAD failed to meaningfully take into account the report from the psychotherapist as his issues relating to memory loss. Mr. Onwuasoanya argues that this failure resulted in the RAD rendering a decision as to his credibility that is not justified in relation to the facts in the record or the law that constrains the RAD.

[5] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, Mr. Onwuasoanya has failed to persuade me that the RAD's decision is unreasonable. For the reasons below, this application for judicial review is dismissed.

II. Issue and Standard of Review

[6] The sole issue is the RAD's credibility determination, and in particular, whether it erred in its treatment of the report from the registered psychotherapist, Adetoun Ahmed, dated January 22, 2021 [Psychotherapist's Report].

[7] The parties agree that the standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (Vavilov at para 85). It is Mr. Onwuasoanya, the party challenging the decision, who bears the onus of demonstrating that the RAD's decision is unreasonable (Vavilov at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (Vavilov at para 100).

[8] Reasonableness is a deferential, but robust, standard of review (Vavilov at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (Vavilov at para 125). A reasonableness review also is not a "line-by-line treasure hunt for error," the

reviewing court simply must be satisfied that the decision maker's reasons "add up" (*Vavilov* at paras 102, 104).

III. Analysis

[9] The central issue is the RAD's determination as to Mr. Onwuasoanya's credibility.

[10] Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned "in the clearest of cases" (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12). Credibility determinations have been described as lying within "the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[11] The Basis of Claim form [BOC] was signed on December 19, 2017, and significantly amended on February 21, 2021. The RPD found that, even in light of the contents of the Psychotherapist's Report, Mr. Onwuasoanya had not provided a reasonable explanation for the significant amendments to the BOC and the failure to provide supporting documentation. The RPD concluded that the information contained in the amendments were likely embellishments.

[12] The RAD considered the contents of the February 2021 amendments, along with the additional supporting documentation, and concluded that the RPD did not err in its assessment. The RAD states that the Psychotherapist's Report identified that Mr. Onwuasoanya had difficulty with concentration, memory, and focusing his attention, along with general anxiety disorder, severe depression, and post-traumatic stress disorder. The RAD noted the Psychotherapist's Report was filed in February 2021, along with the RPD's conclusion that the Psychotherapist's Report did not adequately account for Mr. Onwuasoanya's omissions and the time elapsed between December 2017 and February 2021.

[13] Mr. Onwuasoanya submits that the RAD's decision is unreasonable on the basis that the RAD failed to meaningfully take into account the Psychotherapist's Report and that failure impacted the RAD's credibility findings. Mr. Onwuasoanya argues that the RAD's reasons do not permit one to understand why the Psychotherapist's Report did not sufficiently address the RAD's credibility concerns.

[14] I have not been persuaded that the RAD erred for three reasons. First, having considered the credibility findings, namely that the details added to the BOC represent embellishments, and the record upon which they were based, I am not persuaded that the RAD's findings are unreasonable. Having reviewed the Psychotherapist's Report, it was open to the RAD to nevertheless conclude that it did not adequately explain the omissions or Mr. Onwuasoanya's failure to adequately account for them. Given the RAD's findings are credibility findings, the RAD is to be afforded significant deference in this regard and I decline to intervene.

[15] Second, Mr. Onwuasoanya did not raise the issue of the Psychotherapist's Report in his submissions before the RAD. The RAD can hardly be faulted for not considering the Psychotherapist's Report in greater depth, when the issue was not actually raised before it on appeal (*Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14; *Enweliku v Canada (Citizenship and Immigration)*, 2022 FC 228 at para 42).

[16] Third, I agree with the Respondent, the Psychotherapist's Report cannot act as a cure-all for the deficiencies in Mr. Onwuasoanya's evidence and the resulting negative credibility findings (*Khatun v Canada (Citizenship and Immigration)*, 2012 FC 159 at para 94).

IV. Conclusion

[17] For the reasons set out above, I am of the view that Mr. Onwuasoanya has failed to meet his burden of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). I therefore dismiss this application for judicial review.

[18] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-301-22

THIS COURT'S JUDGMENT is that:

1. The Applicants application for judicial review is dismissed; and
2. There is no question for certification.

“Vanessa Rochester”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-301-22

STYLE OF CAUSE: IZUCHUKWU CHRISTOPHER ONWUASOANYA
ET AL v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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DATE OF HEARING: DECEMBER 7, 2022

JUDGMENT AND REASONS: ROCHESTER J.

DATED: DECEMBER 20, 2022

APPEARANCES:

Julien Saint-Amour Lavigne FOR THE APPLICANTS

Julien Primeau-Lafaille FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Julien Saint-Amour Lavigne FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec