

Federal Court



Cour fédérale

Date: 20220509

Docket: IMM-5269-21

Citation: 2022 FC 677

Ottawa, Ontario, May 9, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

OGUNLEYE MORUFU OLADITI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background and underlying decisions

[1] The applicant, Morufu Oladiti Ogunleye, claims to fear religious extremists who purportedly threatened him following his conversion to Christianity. Mr. Ogunleye seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated July 20, 2021, finding that he had not established, on a balance of probabilities, the material elements of his claim for refugee protection.

[2] Mr. Ogunleye is a 54-year-old citizen of Nigeria born in Ibadan into a Shiite Muslim family. In 1974, when he was six years old, he and his family moved to Kano City in northern Nigeria. His education is limited to Islamic studies; Mr. Ogunleye claims that his father was a leader of an Islamic organization in Nigeria and refused to send him to public school. He claims that he was “not happy with religion” and that his father forced him to follow Islamic teachings. After witnessing abhorrent behaviour by what Mr. Ogunleye calls “Islamic Extremists” – confirmed during the hearing as being the same group that he was a young member of and that his father was the leader of – Mr. Ogunleye was persuaded by one of his friends to attend a church so that he could be introduced to Christianity; Mr. Ogunleye converted on January 10, 2005, at the age of 37, three years after his father’s death. According to Mr. Ogunleye, certain members of the Islamic extremist group saw him in church on the day of his initiation to Christianity and as a result, his home and car were destroyed. He claims that on account of such attacks and a series of threatening telephone calls, he decided to move to Lagos and then Abuja in October 2005.

[3] In Abuja, the violence continued. Mr. Ogunleye was attacked twice in his home and, in February 2006, he moved to Ibadan. While living in Ibadan, he was attacked once again in his home. He therefore left Ibadan in December 2008 and moved to Lagos a second time. He claims that the threatening telephone calls continued and that nearly seven years later, in March 2015, unknown individuals set fire to his car, on which they had written: “You will die.” In September 2017, he received a letter with bloodstains on it, purportedly from Boko Haram, threatening his life. He never went to the police in Lagos to seek help because he claims that nothing would

have come of it. Mr. Ogunleye left Nigeria for the United States on November 13, 2017, on the strength of a visitor's visa, and entered Canada on December 19, 2017.

[4] In a decision dated December 16, 2020, the Refugee Protection Division [RPD] found Mr. Ogunleye not to be credible; his testimony was vague and provided few details regarding his conversion to Christianity and his stated reasons for his conversion were inconsistent. In addition, the RPD did not believe, on a balance of probabilities, that Mr. Ogunleye was perceived as a convert to the Christian faith by the Islamic extremists whom he claims to fear. The RPD gave no weight to the threatening letter purportedly from Boko Haram or to the photographs of the remnants of his burnt vehicle on account of inconsistencies between Mr. Ogunleye's narrative, his friend's affidavit, his friends' letters, and the evidence. Finally, the RPD drew a negative inference regarding Mr. Ogunleye's credibility on account of his failure to provide a reasonable explanation for not filing an asylum claim while he was in the United States.

[5] The RAD sent a notice of new issues to Mr. Ogunleye, requesting further written representations on some elements of his narrative; additional submissions were provided. The determinative issue before the RAD was credibility. The RAD found that the RPD erred in respect of certain non-determinative issues; the RAD agreed with Mr. Ogunleye that the RPD focused too narrowly on his knowledge of the Christian faith and on inconsistencies regarding his motivation for converting. Although the RPD took into consideration the fact that Mr. Ogunleye was illiterate, the RAD found that the RPD set too high a standard when assessing his knowledge of Christian faith. The RAD further determined that the RPD erred by drawing a

negative inference from the fact that Mr. Ogunleye did not apply for asylum when he was in the United States because the objective situation in that country was generally well known and inevitably resulted in his inaction.

[6] However, the RAD nonetheless found that Mr. Ogunleye had not credibly established the material elements of his claim. First, Mr. Ogunleye was unable to provide consistent and credible details of the supposed Islamic extremists whom he feared, in particular the group's name. Even though Mr. Ogunleye's father was a leader of the group when he was young and Mr. Ogunleye was a member of that group from the age of 10 until his purported conversion to Christianity at the age of 37, Mr. Ogunleye was unable to provide the name of the group's founder and current leader. In the end, the RAD determined that Mr. Ogunleye did not establish, on a balance of probabilities, the material elements at the heart of his claim on account of the significant inconsistencies and contradictions, which negatively affected his credibility. The RAD found that the supporting documentation provided by Mr. Ogunleye did not overcome its credibility concerns.

[7] The RAD also determined that Mr. Ogunleye established no link to Boko Haram to support his assertions that it would seek to harm him. In fact, the reason why Boko Haram would be targeting Mr. Ogunleye, considering that it was not the extremist group to which he previously belonged, was never satisfactorily explained; the threatening letter which was initially said to have been sent by Boko Haram was later identified as possibly having been sent by the Islamic extremists looking to compel Mr. Ogunleye to return to the fold. Moreover, and although Mr. Ogunleye and the letters from friends claim that the letter from Boko Haram showed

bloodstains and the Boko Haram “logo” on it, the actual document tendered by Mr. Ogunleye had no logo, no clear bloodstains, and was actually a white sheet of paper titled “Islamic Society of Kano State” with the threats themselves handwritten on the document; considering the inconsistencies, the RAD gave no weight to the letter. The RAD also remained unsatisfied with Mr. Ogunleye’s explanation as to why the words “You will die,” which he claimed were written on his car that was set ablaze in 2015, were not evident from the photographs of the vehicle, and agreed with the RPD as regards the inconsistencies between Mr. Ogunleye’s narrative, his friend’s affidavit, and his friends’ letters. Therefore, the RAD found that Mr. Ogunleye did not establish, on a balance of probabilities, that he was being threatened by Boko Haram or any other group.

II. Issue and standard of review

[8] The sole issue in this application for judicial review is whether the RAD’s decision is reasonable.

[9] The parties agree that the applicable standard of review for the merits of an administrative decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17; *Reyes Ramirez v Canada (Citizenship and Immigration)*, 2021 FC 472 at paras 10-11). Reasonableness is concerned with the existence of justification, transparency and intelligibility in the reasoning process of the decision maker (*Vavilov* at para 99). The Court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

A. *The RAD did not err in its assessment of Mr. Ogunleye's knowledge of the Islamist group that he used to follow*

[10] Mr. Ogunleye submits that the RAD came to the improper conclusion that he was not credible because of the inconsistencies in his narrative and testimony regarding the name of the Islamist group of which he was a member for so many years. The RAD found that Mr. Ogunleye's knowledge about the group was insufficient:

[37] [Mr. Ogunleye] was asked to provide additional clarifications on these discrepancies as well as the exact name of the group, via notice, to which he has responded that the exact name of the organization was Jamaat Tabligh of Nigeria, an Islamic organization adhering to the Shia tenets of Islam. He claims that he believed that it was also called "Islamic Progress Asalludin" and "Shiite Islamic Organisation". He was also asked to specify the name of the founder of this group, as well as its current leader, and he has responded that he does not know either one. The Appellant was further asked to provide additional information on his role(s) within the organization, and he replied that he only followed them from one place to another in Kano and did not have any specific role. I find his knowledge of the group insufficient and lacking in personalization.

[11] Mr. Ogunleye claims that the RAD substituted its own interpretation of the events that led to the protection claim and applied a rigid approach by completely dismissing the presumption of truthfulness approach set out in *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 at para 5 [*Maldonado*]. I disagree. First, according to the *Maldonado* principle, when a refugee claimant swears the truth of certain allegations, this creates a presumption that those allegations are true unless there is a reason to doubt their truthfulness. However, this presumption can be rebutted when there are grounds to find that the claimant's testimony lacks credibility on account of contradictions, inconsistencies, omissions, and implausibility (*He v Canada (Citizenship and Immigration)*, 2019 FC 2 at para 22; *Robert v*

Canada (Citizenship and Immigration), 2022 FC 268 at para 38); here, there were sufficient grounds to rebut that presumption. Moreover, the RAD found that the inconsistencies were such that Mr. Ogunleye's illiteracy could not overcome the credibility issues:

[40] I am sensitive to the fact that the Appellant is illiterate and has no formal education, as I noted previously, but I find that it cannot explain the glaring inconsistencies regarding the core of his claim, namely, the exact group which is seeking to harm him and the reasons for this.

[41] The Appellant's illiteracy does not take away his onus to provide accurate and truthful information to support his claims and it does not mean the information contained in his BOC or other documents provided cannot be accurate or truthful. There is no known correlation in one's ability to tell the truth and one's literacy. The Appellant had confirmed at the outset of the RPD hearing that his BOC was accurate and complete. The Appellant has also not applied for vulnerable person status or provided medical evidence on the record which would support his inability to recall key information at the centre of his claim.

[42] In the case of *Olajide* referenced by the Appellant, it was also reiterated that an important factor in assessing credibility is internal consistency and consistency with previous statements and found, relating to the facts therein, that "when there are enough major contradictions and omissions, the tipping point is reached". I find that it was also the case here.

[43] In my opinion, the Appellant's vague and insufficient knowledge to establish his past membership to Jamaat Tabligh, coupled with the inconsistent statements made regarding the name of the group to which he belonged, clearly indicate that this material element of the Appellant's claim is not credible.

[44] I further note that the Appellant has not presented any corroborating evidence to support a finding that he was previously affiliated with this group to overcome this.

[Emphasis added.]

[12] I find nothing unreasonable with the RAD determining that Mr. Ogunleye's inability to clearly identify the name of the Islamic group of which he was a member for 27 years and which

he now claims to fear, regardless of the fact that he may not have played a significant role in the organization, strikes at the heart of his credibility; the fact that he is illiterate does not save him as regards this fundamental issue. Unlike the situation in *Yilmaz v Canada (Minister of Citizenship and Immigration)*, 2003 FC 844, I have not been convinced that one would normally need to be an active member in order to know basic facts such as the name of the group or the name of its founder or current leader.

[13] Mr. Ogunleye referred to the group as “Islamic Extremists” in his initial BOC narrative, as “Shiite Islamic Organisation” in his updated BOC, as “Islamic Progress Asalludin” during his testimony at the hearing, and as “Jamaat Tabligh of Nigeria” in his additional submissions. Putting aside the difference between Shia and Sunni Muslim groups, the RAD did not accept the explanations that Mr. Ogunleye provided in his additional submissions that he believed that the “Jamaat Tabligh of Nigeria” was also called the “Islamic Progress Asalludin” and the “Shiite Islamic Organisation.” It is open to the RAD to consider the explanation for these inconsistencies and determine whether it is sufficient (*Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at para 10). For the RAD, the inconsistencies and Mr. Ogunleye’s lack of such basic knowledge were such that it drew a negative inference, and I see nothing unreasonable with such a finding. It is not the role of this Court to reweigh the evidence (*Vavilov* at para 125).

B. *The RAD did not err in its assessment of Mr. Ogunleye’s claim that he is being sought by Boko Haram*

[14] Mr. Ogunleye submits that the RAD was overzealous in finding contradictions and omissions because he did not know which faction of Boko Haram threatened him; knowing that

the letter came from Boko Haram is enough to establish that he was sought by the group. He adds that the RAD erred in finding that Boko Haram has limited influence beyond the north-east region of Nigeria as the objective evidence from the National Documentation Package [NDP] indicates that although it is mainly based in this region, the insurgency recently has begun to expand across northern and central Nigeria and neighbouring countries. Mr. Ogunleye further submits that the RAD misunderstood his additional submissions by finding that he seemed to suggest that Jamaat Tabligh was the group that sent the letter instead of Boko Haram.

[15] The determinative factor for the RAD was that Mr. Ogunleye did not establish a link between his claim and Boko Haram:

[49] As confirmed in the NDP, Boko Haram is a group of “Salafi-jihadist” (Sunni) ideology. Given that the Appellant claims to have been a member of a Shia group, Jamaat Tabligh, there is no established link to Boko Haram to support his assertions that they would now seek to harm him. This is further bolstered by documentary evidence showing that Boko Haram operates and is active in the north-east region of Nigeria (primarily Borno, Adamawa, and Yobe states) but that it has limited influence beyond these areas and rarely ventures into other parts of the Muslim North or the Christian South of Nigeria.

[50] The absence of link to Boko Haram also extends to the threatening letter which the Appellant had initially claimed was sent to him by Boko Haram, stating that it showed bloodstains and the Boko Haram “logo” on it. This letter was tendered after the RPD hearing but contains no “logo” whatsoever and is a written paper titled “Islamic Society of Kano State”, thus once again establishing no clear link to Boko Haram, or Jamaat Tabligh for that matter.

[16] Even if Mr. Ogunleye was able to establish that the influence of Boko Haram extended beyond the north-eastern region of Nigeria, it remains that the RAD gave no weight to the handwritten letter allegedly sent by Boko Haram:

[51] When asked additional information on appeal as to why Boko Haram would be sending him a letter written in English to threaten him, given that he cannot read or write, he responded that they knew that his in-laws could read and would read it to him. He also appears to suggest, in his additional responses to the RAD, that Jamaat Tabligh were the ones who sent him the letter because they want the Appellant to return to the group, and that he in fact received similar threatening letters from both groups; but this is inconsistent with the Appellant's prior testimony according to which Boko Haram were the ones to do so, as well as his BOC which only mentions that Boko Haram had threatened him.

[52] Finally, the RPD had noted that the letter itself mentions it is the third one sent, which is also not consistent with the Appellant's assertions who did not state that he had received three letters.

[53] Given these inconsistencies, and that the handwritten letter does not bear any logo or show any link to either of the organizations mentioned by the Appellant, I find that it carries no weight in corroborating the Appellant's claims that he was threatened by Boko Haram or Jamaat Tabligh, as claimed.

[17] The RAD was unsatisfied with Mr. Ogunleye's explanations regarding the authors of the letter and their motivation. Mr. Ogunleye argues that the RAD misunderstood his explanation as he did not discuss the letter in his additional submissions. However, even if the RAD misunderstood Mr. Ogunleye's explanations, the RAD also found that the letter could not establish the link with Boko Haram considering the absence of Boko Haram's logo on the letter, which was contrary to his description of the letter in his BOC and the description provided by his friends. It is the applicant who bears the onus of establishing the material elements of his claim, and, considering the lack of evidence, I find that the RAD did not err in finding, on a balance of probabilities, that Mr. Ogunleye has not established that he was threatened by Boko Haram. In the end, the RAD considered that there were inconsistencies and contradictions in Mr. Ogunleye's testimony on material facts at the heart of his claim – i.e., his fear of being pursued by religious extremist groups, including Boko Haram, because of his conversion to

Christianity – and the supporting documentation that he provided did not overcome these credibility concerns.

[18] I find that the RAD did not err in its assessment of the evidence. For the RAD, the inconsistencies in Mr. Ogunleye’s narrative, his testimony, and the documentary evidence were such that it found his claim not to be credible and I see no reviewable error in the RAD’s decision.

III. Conclusion

[19] I would dismiss the application for judicial review.

JUDGMENT in IMM-5269-21

THIS COURT'S JUDGMENT is that:

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

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5269-21

STYLE OF CAUSE: OGUNLEYE MORUFU OLADITI v MINISTER OF
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