

Federal Court



Cour fédérale

**Date: 20230207**

**Docket: IMM-8132-21**

**Citation: 2023 FC 178**

**Ottawa, Ontario, February 7, 2023**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**SILVER OGHENETEGA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Silver Oghenetega, fled Nigeria and sought refugee protection in Canada based on sexual orientation.

[2] The determinative issue for the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada was the Applicant's

identity. Confirming the RPD's decision, the RAD found that Applicant had not established her identity on a balance of probabilities [Decision]. On this judicial review, the Applicant seeks to have the Decision set aside and the matter reconsidered by a different RAD panel.

[3] In my view, the Applicant has not met her onus of demonstrating that the Decision is unreasonable; there is no dispute that the reasonableness standard of review applies to this judicial review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25, 100. For the reasons that follow, I therefore dismiss the application.

## II. Analysis

[4] I find that the Decision bears the hallmarks of justification, intelligibility and transparency, with a logical chain of analysis and internally coherent reasons that permit the Court to “to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn”: *Vavilov*, above at para 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11.

[5] Contrary to the Applicant's arguments, the RAD did not dispute whether the Nigerian High Commission in Ottawa “genuinely issued” a passport to the Applicant, nor whether the Applicant followed the accepted procedure to obtain the passport. The issue for the RAD, as it reasonably explained in my view, is the credibility of the documentation underlying the Applicant's previous passport which was the sole documentary basis for the issuance of the subsequent passport by the Nigerian High Commission in Ottawa.

[6] In particular, the Applicant's previous passport was obtained based on an Attestation of Birth, for which the Applicant provided contradictory testimony concerning the whereabouts of the document. The Applicant's evidence also was that the Attestation of Birth presented to the RPD and in turn to the RAD, which on its face indicates that it is a "Copy of a Copy," was obtained based on a Declaration of Age purportedly signed by the Applicant's mother.

[7] The RAD reasonably concluded, in my view, that the Declaration of Age, and hence the Attestation of Birth, that were before the RAD were fraudulent because the signature on the Declaration of Age varied greatly from the signature on the affidavit of the Applicant's mother. Neither the RPD nor the RAD was satisfied with the Applicant's explanation that her mother was not well educated as a reason why the Applicant's mother would sign her name in two very different styles.

[8] I find that this is not a case, as contended by the Applicant, where the RAD ignored or did not take into account the presumption that the passport issued by the Nigerian High Commission in Ottawa is *prima facie* evidence of the Applicant's identity. Rather, as the RAD logically explained in my view, the presumption was "eroded" or rebutted, on a balance of probabilities, by reason of the above fraudulent documents: *Teweldebrhan v Canada (Citizenship and Immigration)*, 2015 FC 418 at paras 14-15. Contrary to the Applicant's submission, the RAD did not arrive at this conclusion based solely on the Applicant's contradictory testimony about the location of the Attestation of Birth.

[9] In the circumstances, it was open to the RAD, in my view, to conclude that the passport issued by the Nigerian High Commission in Ottawa is not credible evidence of her identity and to give it no weight: *Ariyaratnam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1216 at para 8.

[10] Further, the Applicant's testimony about her knowledge of Nigeria or other documentation in evidence, including a university student identity card, photos, support letters and a psychotherapy report, did not dispel the RAD's concerns regarding her identity.

[11] I also am not convinced the RAD ignored the objective evidence in the National Documentation Package for Nigeria [NDP]. The Applicant fails to particularize how the NDP contradicts the RAD's findings, and merely seeks, in my view, to have the evidence reweighed, which is not this Court's role upon judicial review: *Vavilov*, above at para 125.

[12] In the end, I find that the RAD's "findings are entirely reasonable in light of all the evidence" and that its reasons "add up": *Anto v Canada (Citizenship and Immigration)*, 2017 FC 125 at para 18; *Vavilov*, above at para 104. In the circumstances, and though a harsh result, it was open to the RAD to decline to consider the merits of the Applicant's claim for protection. As observed by Justice Gascon of this Court, a claimant's identity "is a preliminary and fundamental issue" to their refugee protection claim: *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 at para 22.

III. Conclusion

[13] For the above reasons, I therefore dismiss the Applicant's judicial review application.

[14] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

**JUDGMENT in IMM-8132-21**

**THIS COURT'S JUDGMENT is that:**

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

"Janet M. Fuhrer"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8132-21

**STYLE OF CAUSE:** SILVER OGHENETEGA v THE MINISTER OF  
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**APPEARANCES:**

Ugochukwu Udogu FOR THE APPLICANT

Nick Continelli FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ugochukwu Udogu FOR THE APPLICANT  
Ugo Udogu Law Office  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario