

Federal Court



Cour fédérale

Date: 20230220

Docket: IMM-276-22

Citation: 2023 FC 247

Ottawa, Ontario, February 20, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OLUMUYIWA OLANIYI WINLEKE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Olumuyiwa Olaniyi Winleke, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated December 20, 2021, upholding the finding of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). The RAD found that the Applicant lacked credibility.

[2] The Applicant submits that the RAD erroneously impugned his credibility based on his failure to seek asylum in the United States of America (“US”) and unreasonably relied on a selective assessment of the evidence in the remainder of its credibility findings.

[3] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is therefore dismissed.

II. Facts

A. The Applicant

[4] The Applicant is a 53-year-old citizen of Nigeria. He is from Ibadan, in Oyo State, Nigeria. Ibadan is ruled by the All Progressives Congress (“APC”) and the Labour Party is one of the opposition parties.

[5] According to the Applicant’s Basis of Claim (“BOC”) form and amended narratives, the Applicant claims that he worked as a personal assistant to Gideon Aremu (Mr. “Aremu”), a Labour Party member of the Oyo State legislature who was assassinated in 2016. The Applicant claims that the death was politically motivated.

[6] Shortly following Mr. Aremu’s death, the Applicant claims that he began receiving threats and was violently attacked by a group of unknown people. He claims that a group of people then came to his home, threatening to harm his family and kill one of his daughters, but that he and his family were saved by an intervening neighbour.

[7] The Applicant claims that he discretely relocated his family to Lagos, where they stayed at a friend's home, out of fear for his and family's lives. However, he claims that his friend also feared for his life, and advised him to leave Nigeria. The Applicant traveled to the United States ("US") on a visitor visa on May 17, 2017, and remained there for six months. He did not claim asylum in the US.

[8] The Applicant travelled to Canada from the US on November 13, 2017, and made a claim for protection on December 6, 2017, alleging fear of persecution on the basis of his political activities and his association with Mr. Aremu. The Applicant amended his BOC narrative twice thereafter, on August 13, 2018 and August 29, 2018.

B. *RPD Decision*

[9] The RPD rejected the Applicant's claim on July 14, 2021, finding the determinative issue to be the Applicant's credibility and the likelihood of harm.

[10] The RPD first drew a negative inference from the Applicant's failure to seek or attempt to seek asylum in the US. The RPD then found that the Applicant lacked credibility on the basis of inconsistent narratives regarding the following issues: the agent of harm, the reasons for harm, his alleged attack and subsequent hospitalization, and his going into hiding prior to leaving Nigeria.

[11] The RPD determined that the Applicant provided inconsistent responses regarding the alleged agent of harm, the APC. The RPD noted a similar discrepancy in the Applicant's

information regarding the party he belonged to and which group was allegedly threatening him. The Applicant attributed both these inconsistencies to mishearing the RPD panel and being unable to hear the panel's accent. The RPD did not find this explanation reasonable, given the reasonable expectation that the Applicant would have a certain political knowledge and that the Applicant declared that the information in his BOC form was complete and true.

[12] The RPD further found that the Applicant's ID card and Labour Party membership card were insufficient to prove that he was a personal assistant to a political figure, and that his answers to questions regarding his role as a personal assistant lacked details and substance. The RPD determined that the Applicant's country documents were insufficient to establish that members of the APC were seeking to harm him for his political activities. The RPD found that the Applicant's credibility was further undermined on the basis of the inconsistencies in his narrative surrounding the attack against him by APC members and his resulting hospitalization. The RPD also drew a negative credibility finding from the Applicant's inconsistent narratives regarding his entrance into hiding prior to leaving Nigeria.

[13] The RPD determined that its negative credibility findings extends to all the evidence proffered in support of the Applicant's claim and, therefore, there is no serious possibility of risk facing the Applicant upon his return to Nigeria.

C. *Decision Under Review*

[14] In a decision dated December 20, 2021, the RAD dismissed the Applicant's appeal and upheld the RPD's finding that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of *IRPA*.

[15] At the outset, the RAD denied the Applicant's preliminary request for an oral hearing, given that he had disclosed no new evidence, as required under subsection 10(4) of *IRPA*.

[16] On appeal, the Applicant submitted that the RPD engaged in an unreasonably microscopic analysis of the evidence; failed to acknowledge the Applicant's mental status in assessing the inconsistencies in his narrative and testimony; erred by failing to accept the Applicant's explanations for these inconsistencies as reasonable; erred in its assessment of the Applicant's credibility regarding his attack and subsequent hospitalization; and failed to engage in a proper assessment of the Applicant's claim under section 97 of *IRPA*.

[17] Although finding that the Applicant's failure to seek asylum in the US was not a determinative factor in assessing his subjective fear of persecution, the RAD agreed with the RPD that his failure to make any efforts to seek legal advice or seek support from an organization assisting refugees weighed negatively in the assessment. The RAD therefore found that the RPD did not engage in a microscopic analysis in finding that the Applicant's failure to claim protection in the US undermined his credibility.

[18] The RAD upheld the RPD's finding that the Applicant's various inconsistencies in his narrative ultimately cast doubt on his credibility. Conducting an independent assessment of the Applicant's evidence, the RAD found that the Applicant's inconsistent narrative regarding his hospitalization, where he relocated following the alleged attack, who he stayed with prior to leaving Nigeria, and the separate attack on his wife and daughter, are material differences that amount to an incomplete narrative and, ultimately, undermine the Applicant's credibility.

[19] The RAD further agreed with the RPD that the Applicant gave inconsistent narratives regarding his employment as a personal assistant to Mr. Aremu, which additionally undermines his credibility. The RAD noted that the Applicant's Schedule A form listed his employment as a "working technician", failing to mention any role as a personal assistant to Mr. Aremu, and that the Applicant was represented by counsel at the time of completing his initial and subsequent BOC forms. Finding that the Applicant's alleged employment as a personal assistant to an assassinated politician is integral to his claim, the RAD determined that its omission and the inconsistency surrounding this narrative is material and undermines his credibility.

[20] For these reasons, the RAD upheld the RPD's finding and found the Applicant lacked credibility, thereby refusing his refugee claim.

III. Issue and Standard of Review

[21] Whether the RAD's decision is reasonable.

[22] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[23] 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).

IV. Analysis

[24] The Applicant submits that the RAD erroneously concluded that his failure to seek asylum in the US impugns his credibility, and unreasonably assessed the inconsistencies in the Applicant’s narrative in the remainder of the credibility analysis.

[25] In my view, the RAD’s decision is reasonable in its credibility assessments, concerning both the Applicant’s failure to seek asylum in the US and the various inconsistencies in the Applicant’s evidence.

[26] The Applicant also submits that the RAD erred in failing to conduct an analysis under section 97 of *IRPA* altogether. However, I agree with the Respondent's submission that there is no merit to this particular argument, as the RAD explicitly stated that the credibility findings relating to the Applicant's alleged political activities extends to an analysis of whether he would be a person in need of protection within the meaning of section 97.

A. *Failure to Seek Asylum in US*

[27] The Applicant submits that both the RPD and the RAD unreasonably dismissed his explanation for failing to seek asylum during his six-month stay in the US. At the RPD hearing, the Applicant explained that the US government was known for its hostile immigration policies. The Applicant submits that this is a reasonable explanation, particularly in light of these circumstances falling under the exceptions to the Safe Third Country Agreement ("STCA") between Canada and the US. The Applicant further contends that the RPD's "intense questioning" at the hearing, where the Applicant was having difficulty deciphering the questions and the RPD often rephrased the same question multiple times, gave the impression that the RPD "adopted the role of an advocate for particular outcomes," rather than a fair and objective adjudicator.

[28] The Respondent maintains that the RAD reasonably found that the Applicant's failure to engage in any inquiry about how to seek protection in the US affects the credibility of his subjective fear of returning to Nigeria, and reasonably found that the Applicant's explanation for this failure was not reasonable. The Respondent submits that the Applicant's submissions on

judicial review fail to point to any reviewable error committed by the RAD or RPD in their assessment of the Applicant's credibility.

[29] I agree. While I find merit in the Applicant's explanation before the RPD that he did not make such efforts due to the US government's immigration policies, the Applicant does not point to a reviewable error made by the RAD. The RAD reasonably considered the Applicant's delay in seeking protection at the first possible opportunity in its assessment of whether his alleged fear of persecution upon to return to Nigeria is credible.

B. *Credibility Assessment*

[30] The Applicant submits that the RAD unreasonably upheld the RPD's credibility assessment of the Applicant, and erred in finding that the Applicant's inconsistent narrative with respect to multiple aspects of his claim undermined his credibility overall. The Applicant submits that the RAD unreasonably misapprehended the evidence relating to his employment, which was "not a formalized type of employment," and that both the RPD and RAD were unreasonably focused on mirror errors and inconsistencies between the Applicant's testimony and BOC forms, many of which were caused by language and accent barriers at the port of entry.

[31] The Applicant further submits that the RAD engaged in a selective analysis of the evidence, rendering the decision unreasonable as a whole. For instance, he contends that the RAD failed to consider that he is next in political succession to Mr. Aremu's position in the Labour Party. The Applicant submits that the RAD failed to identify APC as the agent of persecution, on the basis of the alleged lack of clarity surrounding his employment, when the fact

of Mr. Aremu's political assassination should have been determinative of this issue. The Applicant also submits that the RAD's dismissal of his explanations for the inconsistencies between his testimony and BOC forms is unreasonable, and amounts to a failure to properly account for and address the Applicant's evidence.

[32] The Applicant notes that upon an evaluation of the transcript of the RPD hearing, it is clear that the Applicant had difficulty deciphering the RPD's questions, and the RAD failed to find anything unfair about this challenging exchange. The Applicant submits that this results in a decision that failed to properly accommodate the Applicant's mental frailty and cultural context.

[33] The Respondent maintains that the RAD's assessment of the various inconsistencies in the Applicant's narrative is reasonable, and that the RAD's reasons demonstrate a thorough explanation of why these inconsistencies were material and the explanations for these discrepancies were not accepted as reasonable. The Respondent submits that the RAD is not required to accept the Applicant's explanations simply because they were proffered, and the RAD is entitled to find that these explanations do not compensate for the negative credibility findings flowing from the inconsistencies.

[34] The Respondent further submits that the Applicant's submission regarding the RPD's manner of questioning is not a valid basis upon which to review its decision because this issue was not raised on appeal before the RAD. The Respondent states that an application for judicial review is not a second chance for the Applicant to argue the case on its merits.

[35] In my view, when reading the decision as a whole and in light of the Applicant's evidence, the RAD's assessment of the Applicant's credibility is reasonable. I agree with the Respondent that a bulk of the Applicant's submissions appear to take issue with the RAD's weighing of the evidence or, in the case of the Applicant's allegation regarding the RPD's manner of questioning, attempt to impugn the RAD's decision for failing to cure alleged defects in the RPD's decision-making that were not squarely before it. This Court's role on review is not to reweigh or reassess the evidence before the decision-maker but, rather, to review the reasonableness of the decision in light of the evidence before it (*Vavilov* at paras 125-126).

[36] I have sympathy for the Applicant's difficulty in understanding the RPD's questioning during the hearing. It is clear from the transcript of the hearing that this exchange was not without challenges, and it is true that the decision-making process should be attentive to and accommodating of the barriers to a fair process. However, I do not find that the transcript reveals the RPD's failure to accommodate the Applicant's language barrier or, as the Applicant submits, exhibits a decision-making process that was focused on a singular outcome. Rather, after the initial portion of the hearing, the Applicant elected to use an interpreter for the remainder of the hearing. While some of the Applicant's differentiating responses may have involved miscommunications or difficulties understanding the question, other material inconsistencies in the Applicant's narrative went beyond such natural errors.

[37] It is reasonable for the RAD to find that the Applicant's alleged difficulty in understanding the panel's accent does not sufficiently explain the inconsistent narrative regarding core aspects of his claim, such as his employment as a personal assistant to Mr.

Aremu, the nature of the attacks against him and his family, and the seriousness of the alleged attack against him. The RAD reasonably noted that the Applicant was represented by counsel at the time that he completed his BOC forms, and reasonably concluded that the numerous inconsistencies are material to the claim and rationally lead to the finding that the Applicant lacks credibility.

V. Conclusion

[38] This application for judicial review is dismissed. The RAD's decision is reasonable, on the basis of the Applicant's evidence. No question for certification was raised, and I agree that none arise.

JUDGMENT in IMM-276-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-276-22

STYLE OF CAUSE: OLUMUYIWA OLANIYI WINLEKE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 7, 2022

JUDGMENT AND REASONS: AHMED J.

DATED: FEBRUARY 20, 2023

APPEARANCES:

Henry Igbinoba FOR THE APPLICANT

Leila Jawando FOR THE RESPONDENT

SOLICITORS OF RECORD:

Henry Igbinoba FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario