

Federal Court



Cour fédérale

Date: 20230220

Docket: IMM-8145-21

Citation: 2023 FC 245

Ottawa, Ontario, February 20, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

**GBENGA LANREWAJU STEPHEN ODERINDE
OLUFUNKE FATIMA ODERINDE
OREOFE CROWTHER ODERINDE
IDUNNU GREATNESS ODERINDE
AYOOLUWALEY AWESOME ODERINDE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, a family from Nigeria, sought refugee protection upon their arrival in Canada based on a fear of persecution or harm by members of their extended family, who oppose their conversion from Islam to Christianity. On this application for judicial review, the

applicants challenge a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board that dismissed their appeal and confirmed the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RAD dismissed the applicants' claim principally based on credibility. The RAD also found the applicants had not established that their agents of persecution have a continuing motivation to harm them.

[3] The applicants submit the RAD's decision is unreasonable. They allege the RAD erred in impugning their credibility, by adopting an approach that failed to account for significant corroborative evidence and latched on to minor inconsistencies without providing concrete reasons for disbelieving sworn testimony. The applicants allege the RAD's approach tainted its assessment of evidence that showed the agents of persecution were highly motivated to punish the applicants for apostasy.

[4] For the following reasons, the applicants have not established the RAD's decision is unreasonable. Accordingly, this application is dismissed.

II. **Issue and Standard of Review**

[5] The sole issue on this application is whether the RAD's decision is unreasonable, based on alleged errors in assessing the applicants' credibility and the motivation of their agents of persecution.

[6] The reasonableness of the RAD's decision is reviewed according to the guiding principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Background**

[7] Mr. Gbenga Lanarewaju Stephen Oderinde, his wife Olufunke Fatima Oderinde, and two of their children are citizens of Nigeria. Their youngest child was born after the family fled Nigeria, and is a citizen of the United States of America.

[8] Mr. and Ms. Oderinde are Christian converts. After the birth of their first child, Mr. Oderinde's extended family discovered his conversion to Christianity. Mr. Oderinde's father, who is an Imam, and his uncle, who is a high-ranking Sheikh, were furious with his decision and his refusal to convert back to Islam. Mr. Oderinde alleges his father and uncle threatened that, because of his conversion, he would meet the same fate as his sister and his uncle's son. The applicants believe the father and uncle were behind a car accident that killed Mr. Oderinde's sister and the mysterious disappearance of the uncle's son after they converted to Christianity.

[9] The applicants allege there was a break-in at their home in October 2013 and strangely, nothing was stolen. The applicants moved to a different city and learned through former neighbours that members of Mr. Oderinde's family were looking for them, and had threatened a neighbour who refused to disclose the applicants' location. The applicants state they were tracked down in October 2015, when another of Mr. Oderinde's uncles confronted Ms. Oderinde at their new home while Mr. Oderinde was on a business trip. The uncle threatened that Mr. Oderinde would be killed for bringing shame to his family.

[10] After this encounter, the applicants began making plans to leave Nigeria. They applied for U.S. visas but their applications were denied.

[11] Mr. Oderinde alleges he was kidnapped at gunpoint in February 2016 by three men he did not recognize, blindfolded, and taken to a location where he was held captive. Mr. Oderinde claims that when his blindfold was removed, he saw his father, uncle, and other Muslim clergymen. He states he was held in chains and threatened with death if he did not immediately accept Islam. Mr. Oderinde states he was held captive for three weeks before he managed escape.

[12] Ms. Oderinde states she reported Mr. Oderinde's disappearance to the police and returned to the police with Mr. Oderinde after his escape. Mr. and Ms. Oderinde say the police made arrests the next day, but released the men a few days later. They believe the police did so because Mr. Oderinde's uncle is very influential.

[13] Mr. and Ms. Oderinde decided to travel to Kenya with their children in order to establish a travel history before reapplying for U.S. visas. They reapplied after returning from Kenya and were granted U.S. visas in August 2016, but did not leave Nigeria immediately as they needed to save money.

[14] In September 2016, in what the applicants believe was an intentional crash, the family car was rear-ended and sent off the road. The applicants booked flights to New York the next month and landed in the U.S. on December 25, 2016.

[15] The applicants state their plan was to claim asylum in the U.S. However, they became fearful a claim for asylum would be unsuccessful in light of U.S. immigration policies and instead followed the advice of friends, who suggested that the couple get divorced and arrange for Mr. Oderinde to marry an American woman who would sponsor him and the children. When U.S. immigration authorities became suspicious that Mr. Oderinde's new marriage was not genuine, the plan fell through. The applicants came to Canada in December 2019 and filed claims for refugee protection.

IV. Analysis

A. *Did the RAD err in impugning the applicants' credibility?*

[16] The applicants submit that the RAD erred by relying on questionable inconsistencies about minor points to impugn their overall credibility and find their narrative was not credible.

These were:

- i. an inconsistency between Mr. Oderinde’s testimony that his captors brought him food after morning prayers on the first day of captivity, and the basis of claim (BOC) narrative that states his captors did not give him any food for the first four days; the applicants contend this is a minor detail that is readily explained by the fallibility of human memory, particularly in the context of torture (*Niyongira v Canada (Minister of Citizenship and Immigration)*, 2021 FC 911 at para 16 [*Niyongira*]) and Mr. Oderinde’s circumstances of being kidnapped, chained, and forced to convert back to Islam on threat of death;
- ii. an inconsistency between Ms. Oderinde’s testimony that when she reported her husband was missing, she did not tell the police the details about Mr. Oderinde’s family or if she suspected his father or uncle were behind the disappearance, and her account according to the police report which states her husband had been threatened by his family for converting to Christianity and she suspected he had been kidnapped; the applicants concede that this is an inconsistency, but argue that it would be unreasonable for one genuine inconsistency to weigh against Mr. and Ms. Oderinde’s credibility in light of the RAD’s remaining, unreasonable reasons for impugning their credibility;
- iii. an inconsistency between Ms. Oderinde’s testimony that the day after she and Mr. Oderinde reported his kidnapping to the police, the police took Mr. Oderinde to Ibadan and arrested his father and uncles, and a statement she made to her psychotherapist that she and Mr. Oderinde “went to the police to file an official complaint; however, the police denied their claim as the police will never go against the Muslim religious activists”; the applicants contend the statement “the

police denied their claim” is merely a shorthand account that does not actually contradict Ms. Oderinde’s testimony; they state the RAD speculated about what it expected the therapist to include in his report, and the RAD was being overly zealous in looking for inconsistencies.

[17] Furthermore, the applicants submit that the RAD erred in giving no weight to a letter from a police officer who oversaw the kidnapping investigation because it was not written on police letterhead, the signature on the letter did not match the signature on the officer’s identification badge, and the officer’s name was not on the police reports. The applicants submit the RAD did not to grapple with their arguments that the RPD had erred by unreasonably expecting that a letter describing a failure of a police investigation would be on official police letterhead. They also submit that the RAD assumed the signature on the officer’s badge should be the signature of the bearer, rather than the person authorized to issue it, and that the names of all investigating police officers would appear on police reports.

[18] Finally, the applicants assert that the RAD erred in impugning their credibility based on a failure to seek asylum in Kenya, and delay in leaving Nigeria. The applicants state the trip to Kenya was part of their ultimate escape plan and it was highly artificial for the RAD to presume that if they were truly fearful, they would reconsider an escape plan that was already in motion. The applicants state they also reasonably explained the delay in leaving Nigeria—the airplane tickets were expensive, and they needed to raise money to live on. They submit it was particularly unreasonable for the RAD to rely on a two-and-a-half month delay between the date they purchased airline tickets and the departure date, as they were not asked about this period

specifically at the RPD hearing and, in any event, the explanation that they needed money to sustain themselves in the U.S. reasonably explained the entire period of delay. The applicants point to decisions where this Court has expressed skepticism about whether a failure to claim asylum while transiting through a country indicates a lack of subjective fear: *Tung v Canada (Minister of Employment & Immigration)*, [1991] FCJ No 292 (FCA) [*Tung*]; *Ahani v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 5 (FCTD) [*Ahani*]; *Soueidan v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 956 [*Soueidan*]. They also contend the RAD relied on plausibility findings in circumstances where their explanations were not obviously implausible: *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at para 23.

[19] I am not persuaded that the RAD committed a reviewable error in its credibility findings. The RAD did not rely on minor inconsistencies or inconsistencies that were peripheral to the applicants' claim for protection, and explained that it was the collective effect of inconsistencies that undermined the applicants' credibility.

[20] In my view, *Niyongira* is distinguishable. In that case, the Court found the RAD had focused on peripheral details and failed to consider whether an experience of torture may have affected the way in which the applicant gave evidence. The Court found that the RAD may have had reason to doubt the applicant's claim, but the RAD's reasoning did not stand up to scrutiny—in other words, the decision may have been justifiable but it was not justified by way of the reasons. In this case, the RAD did not rely on peripheral details, and its reasons justified the overall negative credibility finding.

[21] The RAD found that not being fed was fundamental to Mr. Oderinde's narrative of being imprisoned and mistreated, and the inconsistency about how long he was deprived of food was material. The RPD's decision had noted Mr. Oderinde's testimony of what he endured while in captivity, which was being chained, forced to drink a concoction, and having his head shaved. Mr. Oderinde testified that he was not physically beaten and this mental torture was the abuse that he suffered. Being deprived of food was a key aspect of Mr. Oderinde's allegations of mistreatment while in captivity, and in my view, it was open to the RAD to find that the inconsistency was material.

[22] I am not persuaded that it was unreasonable for the RAD to find Ms. Oderinde's testimony to be inconsistent with statements made to her psychotherapist. The RAD's main concern was that Ms. Oderinde's testimony was inconsistent with the documentary evidence. In this regard, the RAD noted the discrepancy between Ms. Oderinde's testimony about what she had recounted to the police and the details of her account as recorded in the police report, which the applicants concede was a genuine inconsistency. The RAD's finding that Ms. Oderinde's testimony was inconsistent with what she had told her psychotherapist was an additional inconsistency related to the same event.

[23] With respect to the police officer's letter, in their written memorandum the applicants argued that the officer may have made an intentional choice not to use official letterhead and to use an alternative signature, to distinguish the letter as being personal in nature because it speaks against the police department's practices. In my view, this is speculation that does not establish a reviewable error with the RAD's analysis. The letter is not a personal letter. It openly

provides the officer's credentials and the address for police headquarters, and states the officer was in charge of the kidnapping investigation in February 2016. The letter is dated February 18, 2020, the same date as the Extract from Crime Diary that sets out, on police letterhead, Mr. and Ms. Oderinde's reports to the police about the February 2016 kidnapping. In my view, the applicants have not established that it was unreasonable for the RAD to question why the officer's letter was not on police letterhead.

[24] At the hearing, the applicants argued that it was unreasonable for the RAD to assume that the signature on the officer's identification badge was his signature. The applicants have not presented evidence to establish whether the signature on the badge is in fact the signature of a different person; however, even accepting that the RAD erred by assuming that the signature on the badge was the officer's, I am not satisfied the error amounts to a shortcoming that renders the RAD's decision unreasonable.

[25] Reasonableness review considers the challenged decision as a whole, and is not a "line-by-line treasure hunt for error": *Vavilov* at paras 99, 102. Before a decision can be set aside as unreasonable, the reviewing court must be satisfied that the alleged shortcomings are sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100. As noted above, the RAD found that inconsistencies in the applicants' evidence undermined their credibility. The officer's letter was tendered to corroborate Mr. Oderinde's evidence of his kidnapping, and in my view, the applicants have not established the RAD erred by giving the letter no weight as corroborative evidence to establish Mr. Oderinde's allegations. Decisions about the weight

afforded to evidence are factual findings within the RAD's purview that should only be disturbed in exceptional circumstances: *Vavilov* at para 125.

[26] I am not persuaded that the RAD erred in finding that the applicants' failure to make a refugee claim in Kenya and their delay in leaving Nigeria undermined their credibility and subjective fear. I do not agree with the applicants that their escape plan was fully in motion when they travelled to Kenya months before they were granted U.S. visas. *Tung, Ahani* and *Soueidan* are distinguishable in my view, because the applicants were not in transit to the U.S. when they travelled to Kenya. The applicants returned to Nigeria after their trip, and it was always their intention to return. The RAD noted that the applicants returned to the home Mr. Oderinde's father and uncle knew and where he had been kidnapped, and they remained there for eight months before leaving for the U.S. The record and the RAD's reasons reasonably support the RAD's inference of a lack of subjective fear based on the applicants' failure to seek protection in Kenya and their delay in leaving Nigeria.

[27] As the applicants concede that the RAD's global credibility finding, if upheld, would have been sufficient to reject their claim, it is unnecessary to address their other submissions.

V. **Conclusion**

[28] In conclusion, the applicants have not established that the RAD's decision was unreasonable. Accordingly, this application for judicial review is dismissed.

[29] Neither party proposed a question for certification. I find there is no question to certify.

JUDGMENT in IMM-8145-21

THIS COURT'S JUDGMENT is that:

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

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8145-21

STYLE OF CAUSE: GBENGA LANREWAJU STEPHEN ODERINDE,
OLUFUNKE FATIMA ODERINDE, OREOFE
CROWTHER ODERINDE, IDUNNU GREATNESS
ODERINDE, AYOOLUWALEY AWESOME
ODERINDE v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 5, 2022

JUDGMENT AND REASONS: PALLOTTA J.

DATED: FEBRUARY 20, 2023

APPEARANCES:

Adam Wawrzekiewicz FOR THE APPLICANT

Nur Muhammed-Ally FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario