Federal Court  Cour fédérale

Date: 20230331

Docket: IMM-4169-22

Citation: 2023 FC 462

Ottawa, Ontario, March 31, 2023

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

OROBOSA GODWIN ASOWATA
AUGUSTINA OGHOGHO ASOWATA
DELIGHT EWINAOSA ASOWATA
DIVINE OBOSAMAGBE OLUWANIFEMI ASOWATA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated April 11, 2022, which affirmed a decision by the Refugee Protection Division [RPD] to refuse the Applicants' request due to concerns about credibility.

II. Issue

[2] The Applicant submits the following issues:

1) Whether the RAD erred in rejecting the Applicants' new evidence?

2) Whether the RAD erred in assessing the four affidavits which corroborate the central aspects of the Applicants' claim?

3) Whether the RAD erred in drawing a negative inference based on the lack of corroborative evidence?

4) Whether the RAD erred in its assessment of the two letters by the village elders?

5) Whether the RAD erred in assessing the Applicants' BOC omission?

6) Whether the RAD erred in drawing a negative inference regarding the circumstances in which the Principal Applicant left for the US?

7) Whether the RAD erred in finding that the principal Applicant failed to produce credible relevant evidence that he lived in Delta State?

[3] In response, the Respondent rejects these concerns and submits that the decision of the RAD is reasonable.

[4] The only issue is whether the RAD's decision is reasonable.

III. Standard of Review

[5] The applicable standard of review is reasonableness. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[6] That said, the Supreme Court of Canada in *Vavilov* makes it clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". No such circumstances exist in the case at bar. The Supreme Court of Canada instructs as follows:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[7] In addition, the Federal Court of Appeal recently held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

IV. Facts

[8] The Applicants are the Principal Applicant [PA], his wife, and minor children, all of whom are citizens of Nigeria from Delta State. For these purposes and because I find the Decision reasonable, I adopt and outline the facts as set out by the RAD:

> For generations, Chief Priests were chosen from his family. This included his father, who due to his Christian faith, refused to become the next Chief Priest and who, "was assassinated due to his refusal."
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> In June 2016, three village elders informed him that he was nominated by the oracle to become the next Chief Priest, to be ordained during the year's coronation in August 2016, and after his father's younger brother, Acha, who was the Chief Priest died.
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> When he rejected the offer due to his Christian faith, the village elders renewed their demand in July 2016 and which he rejected again. He was given one more year to think about it. At the expiration of the deadline in June 2017, he was accused of holding the village ransom for the wrath of the Gods with his reiusal, and that he has to go into exile or be sacrificed to the gods.
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> During the second week of June 2017, his cousin Health informed him that the gas station which he operated in Iduneha, north of his village (Delta State), and which he inherited from his father, was bulldozed. He also told him that his properties were taken away from him because of his refusal.
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> On the same day, his friend lyobosa informed him that the village elders had sent someone to assassinate him. He therefore sent the other Appellants to safety in Lagos State. He alleges that he was too scared to inform the police "because I do not want to expose myself to the danger I am running from" and because the police will not interfere in what they consider to be a traditional issue.
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> He went to Ogun State to stay with his friend Adeleke for one week, but then felt unsafe because he saw two people from his village there, "who were even congratulating me of the upcoming event in my dialect."

> After discussing the matter with his wife, he left to the US. When he moved from his friend's house into a Catholic Church where he was advised to move to Canada, which he did.

V. Decision under review and analysis

[9] In broad strokes, the RAD affirmed the correctness of finding by the RPD that the Applicants were neither *Convention* refugees nor persons in need of protection, and dismissed their appeal. Specifically, the RAD determined their new evidence did not meet the legislative requirements for material submitted on an appeal to the RAD, and further that the Applicants were not credible with respect to their claim which was correctly dismissed.

[10] I am not persuaded the RAD made reviewable error. I will briefly outline the RAD's decision and set out the Court's findings with respect of the same, which for the most part turns on the application of constraining law as discussed above..

A. *New evidence*

[11] I preface this assessment by saying I was not persuaded the RAD erred in setting out the constraining law in terms of the RAD's powers to admit new evidence under subsection 110(4) of *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the relevant jurisprudence, namely the well known *Raza/Singh* factors.

[12] As part of additional materials submitted to the RAD, the Applicant provided two affidavits and an email from the PA's spouse's sister alongside a photo of the alleged gas station belonging to the PA and a screenshot of the license status of his business.

[13] I am also of the view the RAD's reasons in this respect and generally are both careful and detailed. With respect, this aspect of the application for judicial review along with the submissions on the merits are essentially issue by issue invitations to the Court to reweigh and reassess the evidence and testimony of the Applicants and inferences therefrom, and to make findings in favour of the Applicants in terms of credibility, plausibility, weight, assessment of the evidence and inferences. As the jurisprudence cited establishes this is not the role of the Court on judicial review, which is to determine the reasonableness of the Decision as a whole having regard to principles of transparency, intelligibility and justification per *Vavilov*.

[14] With respect to the two new affidavits, the RAD found that while the evidence did not arise before the RPD's decision, but noted that the information in them predated the RPD decision. The RAD found that the PA had not established that the affidavits were not reasonably available at the time of the RPD's decision. As such, the RAD concluded that the PA had ample time to provide the evidence before the decision was rendered, and did not admit the affidavits. In my view this finding was open to the RAD on the record and does not present a reviewable error; this is simply a dispute on a matter within the RAD's purview.

[15] With respect to the email, the RAD noted the information contained within is not new, as it repeats the allegations the affiant had made in a previous email submitted to the RPD. Neither did it indicate that any new developments had taken place after the RPD rendered its decision. It was, therefore, not admitted into evidence. Likewise this also asks the Court to reweigh and reassess the evidence which it declines to do.

[16] Concerning the picture of the gas station, the RAD found the same picture was submitted to the RPD by the PA. Therefore, the RAD considered it already part of the RPD record, and did not admit it into evidence. This manifestly does not constitute reviewable error.

[17] Finally, concerning the screenshot of the business license, the RAD found the Applicant had not established that this evidence was not reasonably available at the time of the RPD decision nor that they could not reasonably have been expected in the circumstances to rely on it at the hearing. Moreover, the RAD noted that even if the document met the requirements under section 110 of the IRPA, it did not meet all of the factors outline in *Canada (Citizenship and Immigration) v Singh*, 2016 FC A 96, and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385. Specifically, the RAD was concerned with the document's credibility because its source was not indicated or available. This assessment again was open for the RAD to make.

B. *Production of affidavits*

[18] The RAD agreed with the Applicants not all of the Affidavits had been sworn on the day as the RPD stated. However, the RAD did not find this error to be so significant as to undermine the correctness of the overall RPD decision. The RAD noted the RPD was correct in concluding the explanation provided by the PA was not credible. Specifically, the RPD did not find it reasonable that the affiants would travel hundreds of miles from one state to Lagos to have the affidavits sworn. The RAD acknowledged that this was possible, but concluded on the evidence this is not what happened. The assessment of reasonableness is an essential part of the fact-finding, fact weighing and fact assessing job assigned to the RAD, and does not amount to reviewable error.

[19] Moreover, the RAD noted significant discrepancies in the Applicants' testimony and evidence as to why and how the affidavits were coordinated. Specifically, the RAD noted that if the affidavits were not sworn on the same day as the Applicants contend, this undermines the credibility of his assertion that the reason they were all sworn in Lagos was because a bus took them altogether in an effort to coordinate the swearing of the oath. I decline the invitation to reweigh and reassess the evidence in this respect.

[20] Additionally, the RAD did not accept the Applicants' explanation regarding the reason they chose Lagos as the place for swearing their oaths. The Applicants had asserted that the affiants could not do so in Delta State as the village elders had associates present in the area that might end up harming them. However, the RAD did not find this convincing given the Applicant's testimony that the village elders had people working in Lagos as well. This assessment again was open to the RAD.

[21] The RAD also noted the affidavits contained numerous contradictions between the information contained within and the oral and written testimony of the Applicants. Given these concerns, the RAD assigned these documents little probative value. Again, the weighing and assessment of evidence is for the tribunal, and in this case once again I see no reviewable error.

C. *Lack of corroborating evidence*

[22] The RAD acknowledged that the presumption from *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA), implies that requiring objective corroborative evidence to support statements coming from the knowledge of a claimant is

generally unwarranted; however, the RAD in terms of applying constraining law correctly noted the presumption is rebuttable where the evidence on the record is inconsistent with a claimant's sworn testimony; where there are grounds to find that the refugee claimant's testimony lacks credibility; or where the Board was not satisfied with a claimant's explanations for the inconsistencies in the evidence. In this regard, Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 requires a refugee protection claimant to provide, "acceptable documents establishing their identity and other elements of their claim". A claimant who does not provide such documents must explain why they did not provide the documents and what steps they took to obtain them. Here, the RAD took specific issue with the PA's failure to produce a death certificate for his father. The RAD determined that the PA failed to show that he had reasonable effort to obtain the certificate after he left Nigeria through familial connections in order to corroborate this central aspect of his claim. I see no reviewable error in this weighing and assessment of the evidence.

[23] The RAD also affirmed the RPD's expectation of corroborative evidence with respect to his father's death at the hands of the alleged agent of harm. In the RAD's view, this allegation is central to the Applicant's refugee claim and led to his departure from Nigeria. It seems to me this is exactly the position of the Applicants. I am not persuaded this finding is unreasonable given the jurisprudence on corroborative evidence.

[24] The RAD disagreed with the RPD's finding that the PA should have provided evidence to corroborate his allegations that his uncle was also Chief Priest before he died. The RAD made this finding due to the RPD's not raising the issue with the Applicants during the hearing.

Despite this, the RAD did not find the RPD's error to be sufficiently serious as to undermine the overall correctness of the decision that the Applicants were not credible with respect to central aspects of their claim. This again is a matter of weighing and assessing the evidence and testimony, and inferences therefore. In this respect, as in the foregoing, the Court has concluded it will pay respectful deference to the RAD's determinations and finds no basis to interfere given their reasonableness.

D. *Evidence not credible*

[25] In its decision, the RPD found two letters submitted as being from village elders were not genuine. According to the panel, this is because the letterhead features the image of Guy Fawkes, which is a symbol of a notorious anonymous hacker group. In its own assessment, the RAD found conversely that the RPD had erred in drawing a negative inference from the image of the letterhead since it did not have any way of knowing what the letterhead of the village should look like. Despite this, however, the RAD did not find this error serious enough to undermine the RPD's decision. In conducting its own assessment of the letters, the RAD found the documents to have low probative value in establishing the PA's allegations of harms at the hands of village elders. In sum, the RAD found that neither letter corroborated the Applicants' assertion that the village elders seek to harm or kill the family if they return to Nigeria, as opposed to return to the village, because of the PA's refusal to become Chief Priest. This is a matter of weighing and assessing evidence, and no reviewable error arises.

E. *Insufficient Basis of Claim form*

[26] The RPD had drawn a negative inference from the Applicants' failure to mention in their written narratives of a robbery to their home in November 2016 for which they submitted a police report and affidavit of the PA. The RAD rejected the RPD's decision to draw a negative inference from the fact that the police report was only submitted in August 2021. In the RAD's view, the Applicants were entitled to disclosure documents before the RPD hearing takes place, as long as proper procedures are followed. However, the RAD found the RPD was correct in pointing out to the PA's wife that despite remembering the event, she still failed to include it in her narrative, which she also had plenty of time to update since she first wrote it in 2017. This finding is in my view reasonable on the record.

[27] The RAD also disagreed with the Applicants' assertion that the RPD expected them to have an encyclopedic recitation of the evidence. Moreover, after assessing the PA's affidavit and police report, the RAD did not find that it corroborated their allegation that the assailants were sent by the village elders. Specifically, the RAD noted no mention in the police report of any allegations that the robbers were sent by the village elders. I am not persuaded this assessment raises a reviewable error.

F. *Varying narratives*

[28] The RAD agreed with the RPD's decision to draw a negative inference from the discrepancies existing in the written and oral testimony of the PA and his wife with respect to the former's departure from Nigeria. The RAD agreed that the explanations are mutually exclusive,

the variation then undermines the credibility of the claim. Moreover, the RAD did not find the Applicants' explanation on this discrepancy persuasive given that it relates to a central aspect of the Applicants' allegations. In my view, the drawing of inferences is as core a part of the RAD's role weighing and assessing evidence in the first place. This, like many if not all of the foregoing, is simply another area in respect of which the Applicants disagree with conclusions against them and ask this Court to reweigh and reassess the evidence and inferences, which is not its role absent exceptional circumstances which do not exist in this case.

G. *Place of residence and business in Nigeria*

[29] The RAD agreed with the RPD's decision to draw a negative inference from material contradictions/omissions in the Applicants' oral and written testimony with respect to their habitual place of residence in Nigeria. This is manifestly again part of the RAD's correctness review in terms of weighing and assessing the evidence in the case before it.

[30] Moreover, the RPD found similar inconsistencies and a lack of evidence with regards to the PA's oil and gas business license. The RAD found that the PA failed to produce evidence that the RPD reasonably expected was available in his circumstances and did not provide a reasonable explanation for failing to produce that evidence. Specifically, the RAD took issue with contradiction between the PA's initial testimony that the only document he had was his business license, and his late statement that he did in fact keep business records but did not disclose them because the business was demolished.

[31] I am not persuaded in either respect that the Applicants have established a reviewable error; they simply disagree with credibility findings made against them.

[32] The RAD rejected the RPD's finding that he cannot rely on a business license that restricts his activities to a specific location. Rather, the RAD found no information in the National Documentation Package [NDP] on Nigeria that contradicts the testimony of the PA, or that corroborates in any way, the RPD's conclusions that he cannot rely on such a business license. Despite this, however, the RAD in its independent assessment of the case did not find this error to be so serious as to undermine the RPD's overall decision. In conducting an independent assessment of the document, the RAD found the license to state Lagos as the place of business with no other branches. This assessment was open to the RAD on the record.

[33] Neither was the RAD convinced the PA had inherited the gas station or piece of land from his father as alleged. This finding was made because there was no evidence tendered to establish this claim; it also is a finding manifestly within the scope of the RAD's independent assessment.

[34] Similarly, the RAD dismissed two photos submitted by the PA that depict the inherited land and a sign that reads: "Do Not Enter-Native Area". The RAD found that these pictures did not persuasively establish that they are property of the PA.

[35] Both of the foregoing are matters of weighing and assessing the evidence and inferences therefrom and are conclusions in respect of which I see no reviewable error.

VI. Conclusion

[36] I have not been persuaded of that any of the RAD's determinations with respect to its weighing and assessing of evidence in this case are matters requiring judicial intervention, nor am I persuaded they require judicial review when assessed collectively. Given the above, this application for judicial review is dismissed.

VII. Certified Question

[37] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-4169-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4169-22
STYLE, OF COURSE:	OROBOSA GODWIN ASOWATA, AUGUSTINA OGHOGHO ASOWATA, DELIGHT EWINAOSA ASOWATA, DIVINE OBOSAMAGBE OLUWANIFEMI ASOWATA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
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