

Federal Court



Cour fédérale

Date: 20230612

Docket: IMM-6020-22

Citation: 2023 FC 834

Ottawa, Ontario, June 12, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

EMMANUEL IFEANYI OKORO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision dated May 31, 2022 [Decision] in which the Refugee Appeal Division [RAD] dismissed his appeal and confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] Both the RPD and the RAD concluded that the Applicant lacked credibility and dismissed his claim.

[3] For the reasons that follow, this application for judicial review is dismissed.

II. **Background**

[4] The Applicant is a citizen of Nigeria. He alleges that he fears for his life because of his sexual orientation as a bisexual man. He submits that he was arrested and detained for four days by the Nigerian police in July 2017 because of homosexual explicit material the authorities found in his phone.

[5] After his arrest, the Applicant moved to South Africa and entered into a relationship with a man. At the time, the Applicant's new partner was dating a woman while being involved with the Applicant.

[6] In December 2018, the Applicant claims he was attacked by a group of individuals upon the request of his partner's girlfriend. The Applicant claims that this is the reason why he left for the United States in January 2019.

[7] The Applicant stayed in the United States for 9 months before coming to Canada in October 2019 where he initiated a claim for refugee protection.

[8] The Applicant's hearing before the RPD took place on May 21, 2021. The RPD found that there were several contradictions in the Applicant's evidence that undermined the Applicant's credibility regarding his sexual orientation.

[9] On appeal before the RAD, the Applicant submitted new evidence.

III. **Decision under Review**

[10] First, the RAD rejected the new evidence submitted by the Applicant. The RAD held that the information in these documents was either reasonably available before the RPD rendered its decision, or was not relevant to the proceedings.

[11] The RAD also found the RPD did not err in its credibility assessment of the Applicant. Despite the RPD's overemphasis on minor inconsistencies in the evidence, the RAD held that its own assessment of the evidence revealed numerous additional inconsistencies that allowed it to uphold the RPD's credibility findings.

IV. **Issues and Standard of Review**

[12] The Applicant submits that the RAD erred in its assessment and analysis of his credibility and on its refusal of the new evidence.

[13] The parties agree, as do I, that the applicable standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[14] The onus is on the Applicant to prove that the RAD's Decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2015 SCC 65 [*Vavilov*] at paras 75, 100).

[15] For the reviewing court to intervene, the challenging party must satisfy the court that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”, and that such alleged shortcomings or flaws “must be more than merely superficial or peripheral to the merits of the decision”: *Vavilov* at para 100.

[16] Reasonableness review focuses on the decision made by the administrative decision maker, which must justify its outcome with transparency and intelligibility: *Vavilov* at paragraphs 86, 99. The reviewing court must be knowledgeable of the factual and legal constraints upon the decision maker: *Vavilov* at paragraphs 90, 99. Any shortcomings must be more than merely superficial for the reviewing court to intervene: *Vavilov* at paragraph 100.

V. Analysis

A. *New Evidence*

[17] Six months after the appeal memorandum was filed with the RAD, the Applicant submitted as new evidence, three support letters and part of his application for divorce.

[18] The first letter, dated March 9, 2022, was from the Canadian Centre for Victims of Torture [CCVT letter]. The CCVT letter indicated that the Applicant was a client of the Centre for two weeks and had shared that his sexual orientation exposed him to danger in Nigeria.

[19] The second letter, dated March 4, 2022, was from Mohamed Necib [Necib letter]. Mr. Necib stated that he had known the Applicant for two years and knew that the Applicant was bisexual. The Necib letter indicated that the Applicant and Mr. Necib had sexual relationships on several occasions since June 2021.

[20] The third letter, dated March 8, 2022, was from Jennifer El-Aou [El-Aou letter]. It described Ms. El-Aou's friendship with the Applicant and that she had knowledge of his bisexuality. The El-Aou letter also indicated that the Applicant had informed Ms. El-Aou that he was no longer having sexual relations with his wife.

[21] The RAD found that the Applicant failed to explain why the El-Aou letter and the Necib letter could not have been submitted sooner. Since Ms. El-Aou and Mr. Necib knew about the Applicant's sexual orientation before the RPD's hearing, the RAD concluded that these statements could have been submitted at either the time of the RPD's proceedings or when the appeal memorandum was filed.

[22] As for the CCVT letter and the Applicant's application for divorce, the RAD held that they were not relevant for its purposes. The former would be self-serving as it only establishes

that the Applicant made a statement to the Centre about his sexual orientation, whereas the latter would not be evidence of the Applicant's sexual orientation.

[23] I find the RAD did not commit a reviewable error when it refused the documents as new evidence within the meaning of subsection 110(4) of the *Immigration and Refugee Protection Act* (SC 2001, c 27). The Applicant did not identify any substantial shortcomings in the Decision on this matter. While the Necib letter reports facts that only happened after the RPD's hearing, those facts were available when the Applicant filed his appeal with the RAD. Indeed, Mr. Necib explained in his letter that he and the Applicant started having sexual relations in June 2021, but the appeal to the RAD was not perfected until September 29, 2021. Therefore, the RAD reasonably rejected the evidence on the basis that the statement could have been submitted at either the time of the RPD's proceedings or when the appeal memorandum was filed.

[24] The RAD has considerable expertise with the assessment of evidence in immigration proceedings, and is therefore owed a high degree of deference from the Court: *Grillo v Canada (Minister of Citizenship and Immigration)*, 2021 FC 801 at para 34. It is important to note that "[t]he role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected": *Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at para 54. In the present circumstances, the documents submitted by the Applicant appear to be intended to complete the record and further address the RPD's concerns.

[25] As noted by this Court in *Vijayakumar v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1160 at paragraph 15, “[e]vidence that simply corroborates facts or contradicts the RPD’s findings does not fall within the meaning of “new evidence” for the purposes of s 110(4) of the IRPA (*Singh* at paras 35, 50, 51)”.

B. *Reasonableness of the RAD’s Credibility Findings*

[26] The Applicant submits a number of arguments to demonstrate that the Decision is unreasonable. However, I find the RAD’s credibility findings are determinative in this case.

[27] The Decision demonstrates that the RAD conducted its own review of the evidence. The RAD referred to multiple excerpts of the Applicant’s testimony and statements from his friends in identifying inconsistencies in each of their own versions of events that occurred. Among others, the RAD identified inconsistencies concerning the Applicant’s departure for the United States, his relationship with former partners, his arrest by the Nigerian police and the content of his medical report concerning the alleged police brutality during his detention in Nigeria.

[28] The Applicant failed to identify any serious shortcomings that would allow this Court to intervene. As the Supreme Court of Canada stated, “the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100. Contrary to what the Applicant suggests, the RAD did not engage in “microscopic analysis and cherry-picking evidence”: Applicant’s memorandum at paragraph 41. The path that the Applicant is attempting to take the Court on leads to a reassessment of the evidence and a treasure hunt for errors, which

is not the role of this Court on judicial review: *Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 122.

[29] To explain some of the credibility issues, the Applicant relies on the Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) Guidelines and submits that the RAD failed to apply them in this case. I agree with the Respondent that the jurisprudence does not require that the Guidelines be explicitly referenced so long as they are respected and evidence is treated sensitively: *Eze v Canada (Citizenship and Immigration)*, 2021 FC 730 at para 29.

[30] The Applicant in this case has not demonstrated how the RAD failed to respect the spirit of the Guidelines. Contrary to the Applicant's submissions, the RAD considered the Applicant's PTSD diagnosis and reasonably found it insufficient to explain the inconsistencies between his testimony and documentary evidence.

[31] The RPD and the RAD are "best positioned to assess an applicant's credibility, as [they have] the benefit of hearing his or her testimony": *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 22, and they are "entitled to draw conclusions concerning an applicant's credibility based on implausibilities, common sense and rationality": *Lawani* at para 26. This is exactly what the RAD did in the circumstances.

VI. Conclusion

[32] For the foregoing reasons, this application for judicial review is dismissed.

[33] The parties did not submit a serious question of general importance for certification, and I agree that none arises on these facts.

JUDGMENT IN IMM-6020-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6020-22

STYLE OF CAUSE: EMMANUEL IFEANYI OKORO v THE MNISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 22, 2023

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JUNE 12, 2023

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