Date: 20230613

Docket: IMM-3818-22

Citation: 2023 FC 837

Ottawa, Ontario, June 13, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MIKE OSHEKU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I.   **Overview**

[1]   The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD],

dated March 28, 2022 [Decision]. The RAD confirmed the decision of the Refugee Protection

Division [RPD], finding the Applicant is not a Convention refugee or person in need of

protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [*IRPA*].

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

II.   **Background**

[3]   The Applicant is a citizen of Nigeria. He is a banker with over 20 years of experience in the industry.

[4]   Mr. Osheku fears returning to Nigeria because of his whistleblowing activities in the banking sector in April 2018. He alleges that his actions resulted in exposing corruption and money laundering activities to the Nigerian anti-corruption agency, the Economic and Financial Crimes Commission of Nigeria (EFCC).

[5]   The Applicant claims that this ultimately led to several threats on his life, and caused him to fear for his and his family's safety.

[6]   The Applicant fled Nigeria to Canada on June 27, 2018 and subsequently initiated a claim for refugee protection.

[7]   The RPD found that the Applicant was not a credible witness with respect to his allegations of acting as a whistleblower with respect to corruption and money laundering activities taking place in a certain bank account at the First City Monument Bank (FCMB) in Nigeria. The RPD identified several other inconsistencies in the Applicant's testimony and evidence.

[8]   The Applicant appealed the decision to the RAD, asserting that the RPD erred in assessing his credibility.

III.   **Issues and Standard of Review**

[9]   The Applicant asserts that the RAD's Decision is unreasonable and has raised seven issues. In my opinion, it is appropriate to re-formulate those issues as follows:

    a. Did the RAD err by refusing to admit new evidence?

    b. Is the RAD's credibility assessment reasonable?

    c. Did the RAD err in concluding that the Applicant failed to establish a subjective fear of persecution?

[10]   The parties agree, as do I, that the appropriate standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[11]   On a reasonableness review, the Court considers the reasons provided to determine if they are based on an internally coherent and rational chain of analysis and are justified in relation to the facts and the law that constrain the decision maker: *Vavilov* at para 85.

IV.   **Analysis**

A.   *New Evidence*

[12]   The Applicant sought to tender five documents to the RAD as new evidence:

a. A copy of a sworn affidavit from the Applicant's lawyer Mr. Promise Mbani, dated December 29, 2021;

b. A copy of a sworn affidavit from the Applicant's friend Mr. Chris Akede, dated December 30, 2021;

c. A copy of a sworn affidavit from Mr. Abdulkadir Idris Danesi, alleging to have worked under the supervision of Mr. Adewale Aderounmu at Fortis Bank, dated December 29, 2021;

d. A copy of a letter from Fortis Bank to the Applicant, dated February 3, 2015;

e. A copy of a letter from the Appellant's lawyer, Mr. Ibrahim Idaiye, dated January 6, 2022.

[13]   The Applicant submitted to the RAD that he could not have reasonably been expected to submit these documents sooner because he did not anticipate the credibility findings the RPD made.

[14]   The RAD rejected the Applicant's explanation and refused to admit any of the Applicant's new evidence.

[15]   The RAD explained that the Applicant was informed at the beginning of his very first hearing before the RPD in January 2021, that credibility was the determinative issue in his claim. The RAD also noted the Applicant was represented in both of his hearings before the RPD and the burden of proving his refugee claim rested with him.

[16]   The RAD concluded that the Applicant's new evidence was an attempt to complete a deficient record and to bolster his appeal.

[17]   In this Application, the Applicant essentially reiterates the same arguments he made on appeal to the RAD. He submits that the RAD should have admitted the new documents because the Applicant could not have known what the RPD would accept as true and it was "impossible" to anticipate every credibility finding that the RPD would make.

[18]   I am not persuaded by the Applicant's submissions.

[19]   For new evidence to be admissible, it must fall within one of the three categories set out in subsection 110(4) of the *IRPA* and contain: (i) evidence that arose after the RPD rejected the refugee claim; (ii) evidence that was not reasonably available; or (iii) evidence that was reasonably available, but that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at paragraph 34.

[20]   This Court's role is not to reassess whether the new evidence should have been admitted, but to determine whether the RAD reasonably found that the new evidence did not satisfy the criteria set out in *Singh* and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385.

[21]   As the Respondent notes, the Applicant had two hearings before the RPD in January and February 2021, but only rendered its decision nine months later in November 2021.

[22]   Upon review, the RAD provided thorough reasons that demonstrate an analysis of the

criteria in subsection 110(4) of the *IRPA* and the relevant jurisprudence. The RAD considered all

five of the new documents and explained in detail why each exhibit was being excluded.

Considering the RAD's analysis and the documents before it, I find that the Applicant has failed

to identify a reviewable error in the RAD's decision to reject the new evidence.

B.   *The RAD's Credibility Assessment was Reasonable*

[23]   The Applicant submits that all of the RAD's credibility findings are unreasonable and

demonstrate a "zeal to discredit him".

[24]   With respect, I cannot agree with the Applicant's characterization of the RAD's Decision.

[25]   Contrary to the Applicant's submissions, the RAD conducted an independent assessment

of the record and on several occasions disagreed with the credibility conclusions drawn by the

RPD. For example, with respect to the RPD's conclusion that the threatening text messages he

submitted as evidence could have been written by anyone, the RAD stated:

> While 1 do not agree with the Appellant that the RPD did not have
> a valid reason more generally to rebut the truthfulness of the
> Appellant's testimony, and will indicate in my decision where and
> when that is the case, I find that the RPD speculated when it found
> that anyone could have sent this message to the Appellant,
> including himself, using another phone, or anyone he chose to
> commission and to therefore assign them little weight. More
> generally, I fail to see what lengths a refugee protection claimant
> would need to go in order to demonstrate that the text message,
> sent from an unknown number, was actually sent by the alleged
> agent of harm. The RPD's reasoning, that it could have been sent
> by anyone would raise the evidentiary bar to an impossible level.

[26]   This statement, explicitly impugning the RPD's reasoning, seriously undermines the

Applicant's submission that the RAD demonstrated a "zeal" to discredit the Applicant. In my

view, the Decision demonstrates a highly nuanced and well-reasoned analysis of the entire record

before the RAD.

[27]   Despite accepting that the Applicant received a threatening text message, the RAD

concluded the Applicant failed to establish that he was threatened because of his role in

uncovering alleged fraudulent banking activities. The RAD arrived at this conclusion by

explaining, in great detail, several inconsistencies, contradictions, and omissions in the

Applicant's oral and written testimony and discrepancies between his testimony and the personal

evidence he submitted with respect to the central allegations to his claim.

[28]   As Madam Justice Rochester recently held in *Ali v Canada (Citizenship and

Immigration)*, 2022 FC 1207 at para 26:

> Credibility determinations are part of the fact-finding process, and
> are afforded significant deference upon review (*Fageir v Canada
> (Citizenship and Immigration)*, 2021 FC 966 at
> para 29 [*Fageir*]; *Tran v Canada (Citizenship and
> Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada
> (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such
> determinations by the RPD and the RAD demand a high level of
> judicial deference and should only be overturned "in the clearest of
> cases" (*Liang v Canada (Citizenship and Immigration)*, 2020 FC
> 720 at para 12 [*Liang*]). Credibility determinations have been
> described as lying within "the heartland of the discretion of triers
> of fact […] and cannot be overturned unless they are perverse,
> capricious or made without regard to the evidence" (*Fageir* at
> para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and
> Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada
> (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[29]   In oral submissions before this Court, the Applicant submitted that the RAD misconstrued his evidence with respect to the number of threatening notes he received. While it does appear that there was some confusion in the RAD's decision on this point, I am not persuaded that this error undermined the entire risk assessment in the manner the Applicant suggests it did. Ultimately, the credibility issue identified by the RAD was not the result of ambiguity about the number of notes the Applicant received, but with his explanation for why he retained some and not the others.

[30]   Having considered the credibility findings by the RAD, and the details of the record upon which they were based, I am not persuaded the Decision is unreasonable. The RAD, in this regard, is to be afforded a significant level of deference.

[31]   Furthermore, I find the RAD's reasoning exhibits the requisite degree of justification, intelligibility and transparency required by *Vavilov.*

C.   *Subjective Fear*

[32]   The Applicant submits that the RAD erred in finding the Applicant failed to demonstrate a subjective fear of persecution, as he provided reasonable explanations for the issues raised by the RPD in this respect.

[33]   These concerns raised under the subjective fear analysis included: a) the Applicant's decision to post his identity and location on LinkedIn, after stating that there are many Nigerians in the US and Canada who can "trace him", b) that the Applicant gave the keys to his house in

Nigeria to his cousin, c) that the Applicant's wife and children remained in Nigeria despite holding US visas, d) the Applicant's decision not to flee to the US with his whole family despite the fact that they all had valid US visas because of concerns over US gun violence.

[34]   Though the RAD disagreed with some of the RPD's reasons in its subjective fear analysis, it ultimately concluded that the Applicant lacked a subjective fear of persecution.

[35]   The Applicant has essentially re-stated the same submissions it made to the RAD on appeal, namely, that he provided reasonable explanations to all the concerns cited above, which ought to have been accepted.

[36]   The Applicant's submissions amount to an impermissible request for this Court to re-weigh and reassess the evidence. I decline to do so.

V.   **Conclusion**

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

[38]   There is no serious question of general importance for certification.

<u>JUDGMENT IN IMM-3818-22</u>

THIS COURT'S JUDGMENT is that

1. This application for leave and judicial review is dismissed.

2. There is no serious question of general importance to certify.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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