

Federal Court



Cour fédérale

Date: 20230831

Docket: IMM-4456-22

Citation: 2023 FC 1183

Ottawa, Ontario, August 31, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

OLAITAN ENIOLA OLADEJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Olaitan Eniola Oladeji, made a claim for refugee protection in Canada based on her fear of her husband's extended family. The Refugee Protection Division [RPD] rejected her claim, finding Ms. Oladeji not credible. Ms. Oladeji appealed the RPD's dismissal at

the Refugee Appeal Division [RAD], where she challenged a number of the RPD's credibility determinations and raised a new ground of persecution that arose after the RPD's rejection of her claim. Ms. Oladeji attempted to file new evidence about this new ground of persecution: her fear of both the Nigerian police and her husband's extended family because of her perceived sexual orientation, and her support of her half-sister, who is a lesbian. The RAD refused to admit this new evidence, finding it not credible. The RAD also did not accept Ms. Oladeji's challenge to the RPD's credibility determinations and refused her appeal.

[2] On judicial review, Ms. Oladeji challenges the RAD's dismissal and refusal to accept her new evidence. I see no basis to disturb the RAD's decision to not admit the new evidence. I also find the RAD provided transparent, intelligible and justified reasons for rejecting the appeal. Based on the reasons below, I dismiss the judicial review.

II. Issues and Standard of Review

[3] There were a number of issues raised on judicial review; two are procedural fairness issues and the others relate to the substance of the RAD's credibility determinations and assessment of the evidence. Ms. Oladeji argued that the RAD process was unfair because i) the RAD relied on a record that was incomplete; and ii) the RAD made credibility findings about the new evidence but did not put these concerns to Ms. Oladeji for a response. The general presumption of a reasonableness standard of review does not apply to procedural fairness issues (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77). The question I need to ask is whether the procedure was fair in all the circumstances (*Canada*

(*Minister of Citizenship and Immigration*) v Khosa, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[4] The remaining issues relate to the RAD's substantive credibility determinations and its assessment of the corroborative evidence. I review these issues on a reasonableness standard. The Supreme Court of Canada in *Vavilov* described a reasonable decision as "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). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

III. Gaps in the Hearing Record before the RAD

[5] The RAD only had access to the hearing recording for one day of a two-day hearing. Ms. Oladeji did not raise the incomplete hearing recording as an issue at the RAD. On judicial review, Ms. Oladeji argues that it is procedurally unfair for the RAD to have proceeded without a complete recording of the RPD hearing.

[6] Despite it not being raised by Ms. Oladeji, the RAD considered the incomplete hearing recording issue, and found that it could consider the appeal without the full record because: i) there is no statutory requirement that hearings be recorded; ii) the jurisprudence confirms that absent a statutory right to a recorded hearing, natural justice is only infringed where "the reviewing court has an inadequate record upon which to base its decision"; and iii) "the RPD's

summary of the Appellant's evidence and the recording of the second sitting provides an adequate record".

[7] I see no problem with the RAD's analysis. Ms. Oladeji did not argue either before the RAD or before this Court on judicial review that there were any issues with the RPD's description of her testimony, or that she did not remember her testimony and needed the recording to verify what was said. Ms. Oladeji does not explain the prejudice caused by not having the transcript of the first day of her hearing. Ms. Oladeji does not allege that the RPD misconstrued her testimony. In other words, there is no challenge to the summary of her testimony that the RPD produced and upon which the RAD relied. In these circumstances, I find that Ms. Oladjei has not established that the RAD acted unfairly.

IV. New Evidence Credibility Determination

[8] The RAD's credibility determination on the new evidence is primarily based on its finding that there are inconsistencies apparent on the face of the documentation, including that the dates on a number of documents are contradictory. Ms. Oladeji argued that she should have had an opportunity to explain these discrepancies. However, she did not provide any explanation for the discrepancies on judicial review; nor is there any indication that had she been given the opportunity, she would have been able to provide further information. Counsel speculated in submissions as to possible explanations for these discrepancies, but this only served to highlight the lack of evidence from Ms. Oladeji on this critical issue. I do not find there is a fairness problem in these circumstances. I also see no basis to interfere with the RAD's evaluation of the inconsistencies arising from the documents.

[9] Ms. Oladeji also argues the credibility finding about the new evidence was unreasonable because of the other factors the RAD considered as relevant in its assessment of this issue. First, the RAD considered the fortuitous timing of the multiple events happening in the short window of time following the RPD's refusal. Critically, the RAD acknowledged that "it is, of course, not impossible that the events would occur during this time and timing alone very well not be a basis to find the Appellant's story and the new evidence supporting it to be lacking in credibility." The RAD considered this to be a "relevant factor, to be combined with the other factors outlined" in their credibility evaluation of the new evidence. It was reasonably open to the RAD to consider this as relevant in combination with other factors, including, primarily, the inconsistencies in the evidence.

[10] Further, the RAD acknowledged that in considering Ms. Oladeji's affidavit about the new evidence, it would consider its own determination confirming the RPD's finding that she had submitted a fraudulent police report to the RPD. Again, this was not a determinative factor but formed a part of the RAD's contextual assessment. It was not unreasonable that this transparent acknowledgement to have formed part of the RAD's assessment of evidence emanating directly from Ms. Oladeji.

[11] Considering the RAD's reasons holistically and in the context of the submissions and evidence received, I see no basis to interfere with its evaluation of the new evidence and its decision to not admit this evidence based on credibility concerns.

V. Fraudulent Police Report

[12] Ms. Oladeji also challenges the RAD's determination that the police report was fraudulent. The RAD, like the RPD, found that Ms. Oladeji's testimony about obtaining the report was inconsistent and did not accept her arguments on appeal that this inconsistency was due to confusion. The RAD also found that there were inconsistencies between the report and the samples in the National Documentation Package. This in combination with the informal type of language used in Ms. Oladeji's report contributed to the RAD's finding that the document was fraudulent.

[13] On judicial review, Ms. Oladeji raises the same arguments made before the RAD. The RAD addressed these arguments and in some cases, as noted above, agreed with Ms. Oladeji; in other respects, it did not. Overall, I am not satisfied Ms. Oladeji has identified any sufficiently serious shortcoming in the RAD's analysis of the police report requiring the Court's intervention.

VI. Assessment of Other Corroborative Evidence

[14] The RAD also considered the Applicant's arguments on the remaining corroborative evidence. The RAD assessed each of the supporting documents and gave reasons for why it did or did not agree with the RPD's findings on each document. Like the RPD, the RAD found the letters from Ms. Oladeji's mother and husband to be vague. Unlike the RPD, the RAD did not take issue with the information missing from the declaration. The RAD also agreed with the RPD that Ms. Oladeji's inability to state how she came to have a document that describes the Olubase Royal Family's rituals undermines that document's credibility. Finally, the RAD agreed with

Ms. Oladeji that each document should be evaluated individually and that the fraudulence of one does not mean the fraudulence of another.

[15] Ms. Oladeji has not identified a serious shortcoming in the RAD's analysis of the corroborative evidence. The RAD made determinations that were reasonably open to it to make. The RAD explained its decision in a transparent, justified and intelligible way that was highly responsive to the submissions and evidence before it. I see no basis to interfere with its assessment.

VII. Disposition

[16] The application for judicial review is dismissed. No question for certification was proposed and I agree none arises.

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4456-22

STYLE OF CAUSE: OLAITAN ENIOLA OLADEJI v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 15, 2023

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