Federal Court  Cour fédérale

Date: 20240725

Docket: IMM-6006-23

Citation: 2024 FC 1174

Ottawa, Ontario, July 25, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

T.T.O.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Nigeria who sought refugee protection after arriving in Canada in 2017. The Applicant, born in 1999, reports she fears being subjected to female genital mutilation and other traditional rituals at the hands of her father, who is influential in Nigeria, and his family.

[2] The refugee claim was denied on the basis that the Applicant had viable Internal Flight Alternatives [IFA] in Nigeria. The Applicant then applied for a Pre-Removal Risk Assessment [PRRA].

[3] In a decision dated February 10, 2023, the Applicant's PRRA was refused, the Senior Immigration Officer [Officer] concluding the evidence submitted was insufficient to displace the prior findings of viable IFAs in Nigeria.

[4] The Applicant brings this Application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the Officer's February 10, 2023 decision.

II. Preliminary Matter

[5] The Applicant seeks an Order to treat as confidential materials filed in support of this Application and to anonymize the style of cause to protect the Applicant's identity. The Court issued a Direction prior to the hearing requesting the Applicant clarify the specific relief being sought, and the authority relied upon.

[6] At the hearing and in correspondence subsequently served and filed with the Court, the Applicant clarified that Rule 8.1 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 is relied on in seeking an Order requiring that "all documents that are prepared by the Court and which may be made available to the public be amended and redacted to the extent necessary to make the identity of [the Applicant] anonymous."

[7] The Respondent does not object to an amendment to the style of cause to protect the identity of the Applicant but, noting the public interest in open and accessible court proceedings, did object to any further amendment or redactions to the record.

[8] I am satisfied that the limited nature of the anonymization order sought (limited to documents prepared by the Court that may be available to the public) is warranted and minimally impacts the public interest in open and accessible court proceedings. The request is granted and the style of cause is amended with immediate effect to identify the Applicant as "T.T.O.".

III. Decision under review

[9] In refusing the PRRA, the Officer noted that the Applicant relies on the same risks as were considered in the refugee claim. The Officer acknowledged that certain new evidence had been submitted, including (1) undated text messages, (2) a letter written by the Lagos State Government advising that the Applicant's mother, apparently a government employee, assumed new duties in August 2020, (3) a police report stating the Applicant's mother had been threatened by the Applicant's father, and (4) an affidavit from the Applicant. The Officer also acknowledged various other articles pre-dating the refugee claim but declined to consider that information because the Applicant had failed to explain why the evidence had not been placed before the Refugee Protection Division [RPD] or the Refugee Appeal Division [RAD].

[10] The Officer noted the purpose of the PRRA was to evaluate whether the new evidence demonstrated that the Applicant would be exposed to a serious possibility of persecution in the identified IFAs or that the IFAs would be otherwise unreasonable because the Applicant would

be exposed to a new risk that could not have been contemplated before the RPD and RAD. The Officer noted that a PRRA is conducted independently of the RPD and RAD findings, but in this case, gave the findings of the RPD and RAD considerable weight.

[11] In refusing the PRRA, the Officer cited the lack of evidence to establish the father's reported influence, identified inconsistencies in the evidence relating to threats from the father as reported by the Applicant's mother, and noted that evidence relating to travel advisories to Nigeria did not assist the Applicant given her profile and the identified IFAs.

[12] The Officer concluded the evidence to be insufficient to displace the IFA findings.

IV. Issues and Standard of Review

[13] The Applicant raises two issues:

A. Did the Officer err in the assessment of the Applicant's evidence and credibility in considering the ability and motivation of the agent of persecution to locate the Applicant in the IFA?

B. Did the Officer breach the Applicant's right to procedural fairness by making credibility findings without providing the Applicant with an oral hearing?

[14] The Officer's decision is reviewable on a standard of reasonableness (Issue A). A reasonable decision is one that is based on an internally coherent and rational chain of analysis

and that is justified in consideration of the facts and the law that constrain the decision maker (*Kiss v Canada (Citizenship and Immigration)*, 2024 FC 363 at paras 12-15 [*Kiss*]).

[15] The Applicant argues that the correctness standard of review is to be adopted in considering whether the Officer erred in failing to conduct an oral hearing (Issue B). I disagree. As I recently stated in *Ali v Canada (Citizenship and Immigration)*, 2024 FC 1032, determining whether to conduct an oral hearing in the context of a PRRA is a matter that is to be reviewed on the standard of reasonableness:

> [14] In *Lotsov*, Justice Glennys McVeigh relied on *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 (Justice Denis Gascon) and noted that the right to a hearing in the context of a PRRA application flows from subsection 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Where the evidence relates to the Applicant's credibility, is material to the decision, and could justify allowing the PRRA application, a decision maker may determine that an oral hearing is required:
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> |---|---|
> | **113** Consideration of an application for protection shall be as follows: | **113** Il est disposé de la demande comme il suit : |
> | [...] | [...] |
> | **(b)** a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required; | **b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires; |
> | [...] | [...] |
> | **167** For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following: | **167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise : |

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

> [15] Determining whether to conduct an oral hearing requires the Officer's interpretation and application of the IRPA and of the specific factors identified in the IRPR. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 teaches that a decision maker is generally entitled to deference when a question involves the decision maker's interpretation of its statutory grant of authority (paras 108-110). I share the view of Justices McVeigh and Gascon and have applied the reasonableness standard of review.

[16] Although, the outcome in this instance is the same regardless of the standard of review applied in considering Issue B, I have adopted the reasonableness standard.

V. Analysis

[17] The Applicant argues that the Officer mischaracterized evidence and drew conclusions from the evidence that the Applicant does not agree with. For example, the Applicant submits the

Officer falsely assumed that the father's use of a "common means" to contact the Applicant's mother displaced allegations of power and influence. The Applicant also takes issue with the Officer's conclusion to not consider certain evidence because it could have been placed before the RAD.

[18] The Applicant does not dispute the Officer's conclusion that evidence placed before the Officer was available and could have been placed before the RAD. Instead, the Applicant argues the Officer should nonetheless have considered this late evidence on the basis that it was "extremely relevant."

[19] The Applicant's argument amounts to a disagreement with the Officer and an invitation to reweigh the evidence. This is not the Court's role on judicial review and the Applicant cannot succeed on this basis.

[20] The Applicant further argues that, although the Officer relied on the insufficiency of the evidence to refuse the PRRA, the Officer actually engaged in an assessment of the credibility of the Applicant's allegations. Specifically, the Applicant submits that the Officer made credibility findings in questioning the degree of influence exercised by the father in Nigeria as well as the mother's apparent failure to change her residential address and to provide more detail in respect to the reported threats from the father. The Applicant also submits that the Officer made a credibility finding in stating that a link to a web-based video provided by the Applicant did not work.

[21] The line between an insufficiency of evidence finding and a veiled credibility finding is not always easy to draw, and that assessment must be undertaken within the context of the particular facts in each case (*Kiss* at paras 22, 25, citing *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 at para 22, and *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 41).

[22] In this instance, the Officer's analysis began with a detailed review of the new evidence and its deficiencies. The Officer noted that the provided text messages were not dated, and that the individual relied upon to demonstrate the Applicant's father had an ongoing interest in locating the Applicant and her mother was not identified. The Officer also held that there was an absence of evidence to establish the father's former or current political role or office in Nigeria. The Officer also addressed the documentary evidence as it related to "godfatherism" in Nigerian politics, noting the absence of any evidence indicating with whom the Applicant's father had such a relationship. Nor did the evidence indicate the father was standing for election for any position in upcoming Nigerian elections. On the basis of this analysis, the Officer then stated the following:

> Accordingly, on a balance of probabilities the supporting evidence I find has not altered the previous finding of the RPD with respect to the applicant's father's power or political connection as a source of influence through police or others [*sic*] sources to trace the applicant or displace the viable IFAs.

[23] This finding is premised on the insufficiency of the evidence and supported by a logical and rational analysis. The finding was reasonably available to the Officer and was determinative of the PRRA.

[24] I acknowledge that the Officer then provides further reasons to bolster the conclusion that the evidence was insufficient to displace the prior IFA findings to which the Officer had given considerable weight.

[25] Limited aspects of this further analysis may, if considered in isolation, engage the difficult question of where one draws the line between sufficiency of evidence and credibility findings. However, the Officer's further analysis cannot be read in isolation. The decision must be read as a whole in light of the particular facts and circumstances.

[26] Doing so, relying in particular on the Officer's determinative and reasonable insufficiency analysis and the resulting stand-alone conclusion that the evidence was insufficient to demonstrate the previously identified IFAs were not viable, I am satisfied that the insufficiency of the Applicant's evidence, rather than credibility concerns, formed the basis for the Officer's refusal of the PRRA. That the Officer then noted certain frailties and gaps in the Applicant's evidence or that the Officer noted a web-based video could not be accessed does not amount to a finding of credibility in these circumstances.

[27] Not having made credibility findings, the Officer was under no obligation to consider the need for an oral hearing.

VI. Conclusion

[28] The Application for Judicial Review is dismissed. The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-6006-23

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended, with immediate effect, to identify the Applicant as T.T.O.
2. The Application for Judicial Review is dismissed.
3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6006-23
STYLE OF CAUSE:	T.T.O. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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