Federal Court  Cour fédérale

Date: 20240829

Docket: IMM-9999-23

Citation: 2024 FC 1345

Toronto, Ontario, August 29, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

OLAMIDE TOSIN OLUSOLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant is a citizen of Nigeria. He seeks judicial review of a Pre-Removal Risk Assessment [PRRA]. In that decision, a PRRA Officer found that the Applicant did not face a risk of harm in Nigeria that warranted a grant of protection under either section 96 or 97 of the *Immigration and Refugee Protection Act* [IRPA].

[2] For the reasons that follow, I have found that the PRRA Officer's decision was reasonable. As such, I dismiss this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] The Applicant entered Canada on a student visa, and made a refugee claim. His claim was denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]. He appealed to the Refugee Appeal Division [RAD] of the IRB, which denied his appeal. He applied for leave and judicial review of the RAD decision, which this Court denied. The Applicant also submitted an application for permanent residence on humanitarian and compassionate grounds in 2022.

[4] The Applicant came to the attention of the Canada Border Services Agency on March 10, 2023, after York Police Services arrested him on an outstanding warrant. He was offered a PRRA, which was submitted on March 21, 2023.

[5] The Applicant alleges risk in Nigeria due to his bisexuality, his medical conditions, i.e. Hepatitis C and mental illness; risks posed by individuals who kidnapped his parents, and general country conditions.

[6] The Applicant's risk profile as a bisexual man was before the RPD and the RAD. The risk allegations based on the Applicant's medical conditions and his parents' kidnappers were new to the PRRA application. In support of these new risk allegations, the Applicant tendered

new evidence: a) a written letter from a friend regarding his parents' kidnapping; b) medical and healthcare documentation; c) a psychosocial evaluation report; and d) country conditions evidence related to healthcare in Nigeria.

B. *Decision under Review*

[7] The Applicant's PRRA was refused in a decision dated August 2, 2023. The Officer determined that the Applicant had not established that he would face more than a mere possibility of persecution under section 96 of the IRPA. Similarly, the Applicant had not established that he would face a risk of torture, risk to life, or a risk of cruel and unusual treatment or punishment as described in section 97 of IRPA.

[8] On the Applicant's asserted risk related to his sexual identity, the Officer excerpted the RPD and the RAD's findings, in which it was determined that he had not credibly established his alleged same-sex relationship, and thus his sexual orientation. The Officer noted that the risk alleged was the same as was articulated before the RPD, and that the Applicant had not provided new evidence to rebut the RPD's and the RAD's findings. Therefore, the Officer also concluded that the Applicant would not face s.96 or s.97 risk based on his sexual orientation.

[9] The Officer acknowledged the Applicant's request for an oral hearing, "to explore and observe the credibility of the applicant in relation to the new threats from the Nigerian and his dire medical condition". The Officer rejected the request, noting that the burden of proof rests with an applicant, to adduce sufficient evidence in support of their claim – and that the Applicant was given that opportunity.

[10] The Officer found that the letter from the friend, which described the Applicant's parents' kidnapping, had no probative value, as the letter: i) was unsigned and undated by the writer; ii) did not indicate the address and location of the writer; iii) did not provide a date of the kidnapping, beyond being in late 2020; and iv) did not explain how the writer came to know of the kidnapping, or if it was reported to the authorities. The Officer noted that the Applicant did not provide other corroborative evidence of the kidnapping, such as a police report or a request for ransom. The submissions therefore did not establish that the Applicant's parents had been kidnapped, or that he has been targeted by anyone in Nigeria.

[11] The Officer admitted the psychosocial evaluation report provided by the Applicant, but ultimately placed little weight on it. The report did not corroborate the Applicant's fears related to the kidnapping situation. The Officer also noted that the report does not provide a recommended treatment plan and does not identify the effect removal would have on the Applicant, and that the Applicant had not provided other evidence of a diagnosis of a mental illness, or of receiving treatment for a mental illness. The Officer further determined that the evidence did not establish that the Applicant would be perceived as a person with a mental illness. As such, the Officer was unable to conclude that the Applicant's mental health challenges would likely put him at risk of harm or ill-treatment pursuant to s.96 or s.97, in Nigeria.

[12] Finally, the Officer found that the country conditions evidence does not establish individualized risk to the Applicant. The Officer also noted that further to s.97(1)(b)(iv) of IRPA, a risk to an individual's life cannot be caused by the inability of the country to provide adequate health or medical care.

III. ISSUES

A. *Preliminary Issue – Counsel Representation and New Evidence Submitted on Judicial Review*

[13] As a preliminary matter, I note that the Applicant has included in his application record several documents that were not before the PRRA Officer. There are two concerns that arise from this.

[14] First, counsel for the Applicant has not provided any relevant argument as to why these documents come under any of the exceptions to the general rule that judicial review is to be conducted on the basis of the record that was before the underlying decision-maker. In the absence of a coherent argument as to the admissibility of these documents, I indicated at the hearing into this matter that they would not be considered in respect of the judicial review: see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 for authority on this finding. It should also be noted that counsel for the Applicant has already been cautioned by this court for straying from the tribunal record in the judicial review process: see *Iwuanyanwu v. Canada (Citizenship and Immigration)*, 2022 FC 837 at para 11.

[15] Second, in the affidavit supporting this application for judicial review, the Applicant stated that he was not represented by counsel in his PRRA application, and that it was only after a discussion with his new lawyer – the counsel of record in this matter, Mr. Matthew Tubie – that he identified the new documents now improperly submitted on judicial review. This statement is flatly contradicted by the record, which not only indicates that the Applicant *was* represented in

his PRRA application, but that he was represented by Mr. Tubie. This is frankly bizarre. Mr. Tubie, who commissioned the affidavit, was either aware that the Applicant was swearing an inaccurate affidavit, or simply forgot that he had represented the Applicant in respect of the PRRA application. Either way, I am very concerned at the representation that the Applicant has received in this matter. My concerns were not assuaged by the fact that Mr. Tubie arrived at the hearing into this matter 25 minutes late, with little by way of explanation and no advance warning that he would be late.

[16] In any event, as I advised at the hearing into this matter, I have considered this judicial review without consideration of the documents that were not before the PRRA Officer, namely those found at Exhibit "C" of the Applicant's affidavit.

B. ***Remaining Issues***

[17] The broad issue to be determined on this application is whether the decision under review was reasonable.

[18] In arguing that the underlying decision was unreasonable, the Applicant makes two key points. First, the Applicant argues that the Officer erred with respect to his parents' alleged kidnapping. Second, the Applicant asserts that the Officer erred in dismissing his allegations of risk related to his mental health.

IV. STANDARD OF REVIEW

[19] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65* at para 23 [*Vavilov*]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[20] The rights at stake in PRRA decisions are considerable. The allegations associated with such cases are invariably serious, as are the consequences of any decision made in relation to these allegations, as they can result in the removal of individuals from Canada. In *Vavilov*, the Court noted that the reasons provided in support of a decision must reflect the stakes of the proceedings, which in this matter are at the high end of the spectrum: *Vavilov* at para 133.

V. ANALYSIS

A. ***The Kidnapping Incident***

[21] The Applicant argues that the PRRA Officer erred in discounting the evidence related to the kidnapping of his family members. While the letter in question may have been "a crude piece of evidence", the Applicant argues that it emanated from his friend in Nigeria and ought to have been duly and adequately examined.

[22] I find that the Officer in this case examined the letter adequately, indeed thoroughly, and reasonably found it lacking in probative value for the reasons identified at paragraph 10, above. The Applicant's argument in this regard is precisely the kind of request to reweigh evidence that this Court has frequently ruled is inappropriate on judicial review: *Bath v. Canada (Citizenship and Immigration)*, 2024 FC 1185 at para 22.

B. ***The Medical Evidence***

[23] Much the same can be said for the PRRA Officer's consideration of the medical evidence submitted by the Applicant. As noted above, the PRRA Officer found that there was nothing in the medical evidence to indicate that people in Nigeria would perceive the Applicant as having a mental illness. Having reviewed the medical documentation that was before the Officer, I find this to be a reasonable conclusion. A claimed fear of mistreatment based on a perceived mental illness depends on the perception of that illness. In the circumstances of this case, I find it was reasonable for the Officer to have found that the medical documentation did not establish that the Applicant would be identified in Nigeria as a person living with mental illness, and mistreated on this basis.

[24] I also note that the Officer considered the medical evidence with a view to considering the impact of removal on the Applicant's mental health. Once again, I see no reviewable error in the Officer's analysis.

VI. CONCLUSION

[25] For the above reasons, this application for judicial review is dismissed. Neither party proposed a question of general importance, and I agree that none arises.

JUDGMENT in IMM-9999-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9999-23
STYLE OF CAUSE:	OLAMIDE TOSIN OLUSOLA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 21, 2024
JUDGMENT AND REASONS:	GRANT J.
DATED:	AUGUST 29, 2024

APPEARANCES:

Matthew Tubie	FOR THE APPLICANT
Eli Lo Re	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matthew Nicholas LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT