

Federal Court



Cour fédérale

**Date: 20170428**

**Docket: IMM-3957-16**

**Citation: 2017 FC 424**

**Ottawa, Ontario, April 28, 2017**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**VICTOR HAPPY FESTUS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] In this judicial review, the Applicant challenges the Refugee Appeal Division's [RAD or the Board] September 1, 2016 decision [the Decision or Reasons], which confirmed the Refugee Protection Division's [RPD] decision, finding that the Applicant was neither a Convention refugee nor a person in need of protection based on identity and credibility grounds. I find no grounds upon which to send the Decision back for redetermination.

[2] In brief, the Applicant claims that he is homosexual and would face arrest, imprisonment and/or death if returned to his native Nigeria, where in 2015 his same-sex partner was captured and beaten by vigilantes who then threatened him. The Applicant fled to Canada and on April 6, 2016, and he married his same-sex partner in Toronto, Ontario.

[3] On May 27, 2016, the RPD rejected the Applicant's claim on identity grounds. The RAD upheld the RPD's findings with respect to three central identity documents (an Affidavit of Age, Driver's License and Birth Attestation); both tribunals gave little or no weight to these documents. The RAD also admitted and considered two new pieces of evidence submitted by the Applicant to corroborate his identity, namely letters from a government office and official [Letters]. It found these two new documents to be untrustworthy "in light of the problems with the [Applicant's] initial identity documents".

[4] In addition to credibility concerns arising both from testimony and documentary evidence relating to the key identity documentation presented, the RAD also specifically noted (a) high degrees of forgery in the region where these documents had been obtained (Delta State), and (b) inconsistent statements regarding the Applicant's passport and National Identity Card, which further undermined his credibility. Moreover, the RAD found that the Applicant's story of his entry into Canada through customs and exiting the airport not to be credible.

II. Analysis

[5] The Applicant attacks the RAD Decision on four grounds, arguing generally that the RAD rendered its Decision arbitrarily and unreasonably given the evidence on record.

Specifically, the Applicant says that the RAD:

- i. unreasonably allotted little weight to the two new documents;
- ii. failed to consider documentary evidence that spoke to the validity of the identity-related documents;
- iii. had sufficient evidence to establish the Applicant's identity; and
- iv. applied the wrong legal test in assessing the Applicant's identity.

Lastly, the Applicant argued in oral submissions that the Decision is flawed on independency of analysis and new evidence grounds per *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*], respectively.

[6] The standard of reasonableness applies to the issues raised (*Brodrick v Canada (Citizenship and Immigration)*, 2010 FC 1118 at paras 9-10 [*Brodrick*]).

[7] First, while it is not this Court's role to re-weigh evidence that was before the Board, the RAD's finding in this case that the two newly admitted Letters were untrustworthy (and therefore given no weight) may at first glance be problematic. The RAD's analysis in this regard appears to stand for the proposition that because the RPD had issues with the Applicant's identity-based documents before receiving and admitting this new evidence, it follows that the

new documents were untrustworthy. Indeed, Applicant's counsel spent the bulk of her oral presentation addressing the fact that the RAD did not acquit itself of its role to independently review new evidence, citing the recent Federal Court of Appeal cases in *Huruglica* and *Singh*.

[8] However, given the broader credibility findings made against the Applicant (discussed below), while it may have been preferable for the Board to address the Letters with a more substantial analytical approach, the Decision, viewed as a whole, is reasonable (*Li v Canada (Citizenship and Immigration)*, 2007 FC 1030 at paras 18 and 22 [*Li*]).

[9] Second, the Applicant asserts that certain documentary evidence was ignored by the RAD. However, it is unclear how this documentary evidence contradicts the RAD findings.

[10] I note, however, that the bulk of the Decision is founded not on the documentary evidence, but rather on the negative credibility findings made against the Applicant due to his failure to explain how the Affidavit of Age and Birth Attestation issued in March 2012 could have been used to obtain the driver's license issued in February of that same year, since the former were required to obtain the latter.

[11] The RAD then supplemented these credibility findings (arising out of the Applicant's testimony) by relying on documentary evidence which further impugned credibility, in pointing out that (i) both the Affidavit of Age and Birth Attestation are easily obtained; and (ii) the affiant's photograph, usually apposed on Affidavits of Age, was missing from the Applicant's.

[12] Finally, while the RAD noted a high rate of forgery, it made no findings as to whether the Applicant's documents were forged; rather using this information, based on the objective documents before it, to supplement the various credibility findings it independently reviewed and analysed.

[13] Finally, as stated above, the Board disbelieved the Applicant's account of his arrival in Canada. The Board noted the implausibility in moving through the customs line without a passport, then finding himself in front of the airport, and from there phoning his mother to obtain a contact to pick him up.

[14] In sum, I find nothing unreasonable about the negative credibility findings, many of which went unchallenged in this judicial review. And unlike in *Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 [*Zheng*] and *Jiang v Canada (Citizenship and Immigration)*, 2007 FC 1292 [*Jiang*], two cases the Applicant cites, no similar credibility findings were made.

[15] Finally, the Applicant cited *Huruglica* for the proposition that the RAD exceeded its jurisdiction. However, when questioned on this point, counsel could not point to how it diverged from the role of conducting a hybrid appeal in conformity with *Huruglica*. There are certainly cases where the RAD has been found not to have acted in accordance with *Huruglica* by failing to display independence in the appeal (see, for instance, *Jeyaseelan v Canada (Minister of Citizenship and Immigration)*, 2017 FC 278). However, this Decision falls far short of the weaknesses displayed in the analysis of such cases.

[16] The Applicant pointed to *Singh* and raised for the first time at the hearing the fact that the RAD also failed to follow its dictates. However, the Applicant was not able to point to how the RAD had fallen short, other than to say that it failed to undertake its statutory duty pursuant to subs. 29(3) of the *Refugee Appeal Division Rules*, SOR/2012-257 and s. 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[17] Again, for the reasons explained above, having analysed why it was giving little weight to the documents newly admitted – which it did in accordance with *Singh* – the Board effectively found that they did not overcome the deficiencies it found in the credibility relating to the totality of the identity documentation provided. Contrary to the assertions of the Applicant, it did not hide behind the cover of objective evidence that spoke to the prevalence of fraudulent documents coming from the Applicant's region of Nigeria, but rather addressed specific issues with the trustworthiness of the Applicant's identity documentation and testimony in relation thereto. In short, here the unchallenged negative credibility findings continue to stand and weigh against the Applicant (see also *Brodrick* at para 16).

[18] Likewise, the Applicant's final two arguments are not persuasive. Regarding the alleged error vis-à-vis the sufficiency of evidence to establish identity, it is well-known that this Court is not to re-weigh evidence in judicial review (*Brodrick* at para 20). And regarding the alleged incorrect test for the assessment of identity, the Applicant relies on *Zheng* and *Jiang*, but as noted above, those two cases are entirely distinguishable, since neither is underpinned by unchallenged and reasonable credibility findings.

III. Conclusion

[19] This application for judicial review is accordingly dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.
2. No question was posed for certification, and none is certified.
3. No costs are ordered.

"Alan S. Diner"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3957-16

**STYLE OF CAUSE:** VICTOR HAPPY FESTUS v THE MINISTER OF  
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