Federal Court  Cour fédérale

Date: 20181219

Docket: IMM-2301-18

Citation: 2018 FC 1289

Ottawa, Ontario, December 19, 2018

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

OLAOTI OLUWABUNMI REIS

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEE AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review by the Applicant, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision made by the Refugee Protection Division [RPD] rendered April 6, 2018, which rejected the Applicant's refugee claim [Decision].

II. Facts

[2] The Applicant is a citizen of Nigeria. She deposed she fears persecution in Nigeria as the daughter of a murdered politician and due to gender-based persecution. Her father allegedly died as a political member of the Social Democratic Party [SDP]. As a result, she and her mother continued to move from place to place in Nigeria, and the Applicant was allegedly once kidnapped from school, in relation to her father's death.

[3] The Applicant deposed a male relative sexually assaulted her on numerous occasions, beginning when she was 12 years of age. He threatened to kill her if she spoke to anyone about it. The Applicant entered Canada on a student permit in 2010. She deposed: "[M]y intention at the time was to complete my studies in Canada, apply for a work permit, secure employment in my field, and later apply for permanent residence in Canada on the basis of my education and employment. In this way, I hoped to never have to return to Nigeria." The Applicant deposed she began feeling safer and more secure in herself while in Canada, and found the courage to tell her mother about the assaults suffered from her male relative. The Applicant deposed her mother told her she confronted the male relative, who threatened to kill the Applicant upon her return; and subsequently attacked her mother and sister, forcing them to flee.

[4] The Applicant deposed another male relative helped pay her tuition, but stopped sending funds in her second-year. The Applicant's mother revealed this individual would only continue paying if the Applicant married an older man of his choosing, and that this older man would require the Applicant to undergo female genital mutilation. This other male relative also

threatened the Applicant that, if she did not do these things, he would kill her on her return to Nigeria.

[5] The Applicant deposed she was eventually forced to leave school in November 2011 due to the lack of financial resources for tuition, and moved into a Toronto shelter. Having no means to support herself, fearing to return to Nigeria, and knowing she would no longer be able to apply for permanent residence without completion of her studies, she filed her refugee claim in 2012.

III. Decision under review

[6] The RPD heard the Applicant's claim and rendered an oral negative Decision and reasons on April 6, 2018. The RPD issued the Notice of Decision on May 2, 2018. Decision excerpts are quoted within the relevant factor discussions below.

IV. Issues

[7] The Applicant raises the following two issues:

i. key negative inference drawn by the RPD regarding the Applicant's credibility were unreasonable, warranting intervention.

ii. the RPD's findings regarding the lack of trustworthiness of some of the central documents before the panel were unreasonable, warranting intervention.

V. Standard of review

[8] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." It is well-established that the reasonableness standard of review is a deferential one, such that deference is owed to the RPD: *Ahmed v Canada (Citizenship and Immigration)*, 2016 FC 828, per Boswell J at para 9 and *Li v Canada (Citizenship and Immigration)*, 2015 FC 1273, per LeBlanc J at paras 13, 21–22, as but two recent examples.

[9] In *Dunsmuir*, above at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> [47] A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision is to be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see

also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*].

VI. Analysis

A. *Issue 1–Unreasonable credibility assessment*

[11] As noted, the Applicant submits the negative credibility assessments are unreasonable. Therefore this analysis considers that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness: *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA), per Heald JA [*Maldonado*] at para 5. Courts have also found the RPD may make adverse findings of credibility based on the implausibility of an applicant's story, provided inferences drawn can be reasonably said to exist: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, per Muldoon J at para 7. And as is also well known, the Applicant has the onus of establishing her claim.

[12] In this case, the Panel rejected the claim on the basis of negative credibility inferences. The Applicant addresses six of the credibility concerns raised in the Decision. I will therefore look at each.

[13] First, the RPD was concerned with the Applicant's knowledge of her father's political party:

> ... when it was noted that the claimant's father was a member of a political party that no longer exists, the claimant stated that the

> names of political parties change and they continue to be affiliated with new parties, but provided no evidence of such affiliation ...

[14] The Applicant submits she was expressing while the SDP no longer exists as an entity, constituting members and ideologies likely moved on to other groups that continue to be active. In my view, the RPD was asking too much of the Applicant to criticize her knowledge of her father's politics; at the time of his death she was only five years old. It is unreasonable to expect an adult to remember such details occurring as a child of five. Anything she could say in this connection would of necessity have been told to her by others or read by her in history books. In addition it should be added that the Applicant was not a participant in the alleged events surrounding her father's politics and alleged political murder.

[15] Second, the RPD was concerned with the Applicant's mother's circumstances:

> ... the claimant was consistently vague as to how she communicated with her mother, where her mother lived and how she supported herself, despite having provided several documents supposedly from her mother. According to the evidence, the claimant's mother resided in and studied computer science in the United Kingdom prior to the claimant's birth. The claimant was also university educated, yet was unable to relay elementary information about her mother's current circumstance. One would expect a greater degree of sophistication from both women given their education and first world knowledge.

[16] In this matter, the RPD is testing a collateral matter, which it is entitled to do when assessing credibility. Thus I am unable to fault the RPD for doing so. However, the reasonableness of this criticism of the Applicant is weakened due to the fact that by the time of her hearing, she had been waiting in Canada for six years. Moreover, the Applicant testified their communication throughout the years had been "on and off".

[17] Third, the RPD was concerned with the Applicant's alleged abduction:

> The claimant described an incident where she was reportedly taken by strangers while at school in Nigeria. In the Personal Information Form, it was written that she was eight years old at the time of the abduction [footnote omitted]. Her oral testimony was that she was eleven years of age. In addition, she described being taken by three men, but in the Personal Information Form, it is indicated that only one man abducted her [footnote omitted]. When confronted with the inconsistencies in the evidence, the claimant was unable to reasonably explain the discrepancies.

[18] In my respectful view, this criticism of the Applicant is unreasonable. With respect, the RPD seems to have failed to consider her young age at the time of abduction, which likely would have affected her testimony. Once again, the RPD was asking too much of the Applicant given her young age. She was only eight or eleven at the time of this incident. Moreover, many years passed between when the refugee claim was filed and the hearing date-adding more than five years to the passage of time since the abduction.

[19] Fourth, the RPD was concerned with evidence regarding the Applicant moving schools:

> In the Personal Information Form, the claimant wrote that shortly after her father died she was moved to many schools because she, her mother and siblings were being sought by the same people that murdered her father [footnote omitted]. When it was pointed out to her that the documentary evidence indicated that she spend four years in one school immediately after the death of her father, she then testified that she was, taken "in and out" of the school, which directly contradicted her Personal Information Form evidence and the letter form the school [footnote omitted]. The panel did not find the claimant's evidence that she was forced to attend various schools due to a risk of harm to be credible.

[20] The Applicant, and rightly so, once again submits the RPD unreasonably ignores her young age, here, being five years old. The Applicant was only conveying information provided

to her by her mother. Again, the RPD asked too much of the Applicant. It is unreasonable to expect an adult to remember such details with any degree of precision. The record demonstrates the Applicant did change schools, and that there was a period of time after her father's death from September 1995 to July 1999 when she was registered at various schools. Furthermore, there are no school records for the school period during which the Applicant's father was allegedly murdered.

[21] Fifth, the RPD was concerned with the alleged forced marriage:

> According to the claimant, her [other male relative] will force her to marry an older man should she return to Nigeria. The evidence with respect to this issue was vague or non-existent. The claimant's mother addressed this matter in her affidavit but failed to set out particulars of whom the claimant was to marry. Nor was updated evidence provided to show that her [other male relative], if this issue is credible, continues to want her married to a man of his choosing given her current age and circumstance. In addition, the panel notes that the claimant is not similarly situated to any immediate family members as none of the claimant's sisters were forced into marriage. The claimant has failed to provide sufficient reliable evidence to support her claim that she will be forcibly married should she return to Nigeria.

[22] It seems unreasonable to me that the Applicant is criticized because her mother's affidavit does not refer to the name of the selected groom such that the affidavit was discounted as insufficient reliable evidence to support the claim. Given the passage of time since the Applicant's refugee claim filed in 2012, it is also unreasonable for the RPD to expect the Applicant to have updated evidence of risk posed by the other male relative; she had not returned to Nigeria for more than five years and had no contact with him.

[23] Sixth, the RPD found the sexual assault allegation credible, but not the continued threat:

> The panel does not find the allegation that the [male relative] is a continuing threat to be believable. The police and doctors reports, as noted above, in support of the mother's alleged assault were vague and not trustworthy [footnote omitted]. In addition, the claimant failed to testify that her sister was also threatened by the [male relative] with assault until pointed out by the panel that this was part of the written evidence. The panel is not satisfied that the [male relative] is continuing to target the claimant or that she faces a risk of harm from this individual should she return to Nigeria.

[24] I also question this assessment because the Applicant was not present at the time of the attacks against her sister. Therefore her evidence was indirect; she obviously heard about them after they took place. The events were mentioned in the PIF, as the Applicant was informed about them shortly after she filed her claim.

B. *Issue 2–Unreasonable findings regarding the trustworthiness of the evidence*

[25] The Applicant submits the RPD made unreasonable findings about the trustworthiness of her documentary evidence. Foreign documents purporting to be issued by a foreign government should be accepted as genuine unless the RPD has valid reasons to doubt their authenticity. In *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587, Martineau J held at paras 19–20:

> [19] Despite the fact that the applicant lied in failing to give his real name to the Canadian authorities at the port of entry, it remains that the applicant subsequently provided numerous documents in order to establish his identity. In this regard, I am ready to accept that the basic rule in Canadian law is that foreign documents (whether they establish the identity or not of a claimant) purporting to be issued by a competent foreign public officer should be accepted as evidence of their content unless the Board has some valid reason to doubt of their authenticity.

> [20] In *Ramalingam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No.10 (T.D.) (QL), Dubé J. notes at paragraphs 5 and 6:
>
> > (...) Moreover, identity documents issued by a foreign government are presumed to be valid unless evidence is produced to prove otherwise: see Gur, Jorge P. (1971), 1 I.A.C. 384 (I.A.B.)1. In that Immigration Appeal Board decision, the Chairman asked the following question at page 391:
> >
> > The question here is, who can question the validity of an act of state and who, having questioned it, has the burden of proof as to its validity, and what proof is required?
> >
> > He provided the right answer at page 392, as follows:
> >
> > Although there is almost no jurisprudence to be found bearing directly on the point, it must be held that an act of state - a passport or a certificate of identity - is prima facie valid. The recognition of the sovereignty of a foreign state over its citizens or nationals and the comity of nations make any other finding untenable. The maxim omnia praesumuntur rite et solemniter esse acta applies with particular force here, establishing a rebuttable presumption of validity.
> >
> > [6] In this instance, the Board challenged the validity of the birth certificate without adducing any evidence in support of its contention and, clearly, the matter of foreign documents it is not an area where the Board can claim particular knowledge. That, in my view, constitutes a reviewable error on the part of the Board.

[26] The Applicant submits, and I generally agree, that the mere fact fraudulent documents are widely available in a country (as indicated in the NDP) is not enough to rebut the presumption of validity of documents issued by foreign authorities. The decision-maker must provide reasons to rebut the presumption: *Chen v Canada (Minister of Citizenship and Immigration)*, 2015 FC

1133, per Zinn J at paras 10–13; *Kebedom v Canada (Minister of Citizenship and Immigration)*, 2016 FC 781, per Heneghan J at para 26; *Adesida v Canada (Minister of Citizenship and Immigration)*, 2016 FC 256, per Strickland J at paras 20–22.

[27] A number of documents were in issue. I will consider some but need not consider all of them.

[28] The RPD found the Applicant failed to provide trustworthy documentation to establish her father's death because his death certificate misspelled the word "village" and the requiem mass listed his age of death as "40" instead of "39". English is an official language in Nigeria. I agree therefore that the misspelling is problematic and may rebut the presumption of its genuineness. However, it is unclear whether this is a spelling mistake or a by-product of when the form was printed by the National Population Commission, with the pre-printed word readable as "Village" or "Vlllage".

[29] Second, in the handout from the requiem mass held for her father's funeral, his age is stated to be 40 when in fact he was two months shy of his fortieth birthday when he died. While it is a matter of speculation, it is certainly the case that her father could have been said to be 40 because his age was closer to his 40th birthday. I will defer to the RPD in this respect.

[30] The Applicant further submits the RPD failed to mention the article and letter from Vanguard newspaper that included a "1st Year Remembrance" article commemorating the father's death and his burial-consistent with the dates on the other documents, the Applicant's

testimony, and her PIF. These documents, in my respectful view, count in the Applicant's favour notwithstanding it is well-established the RPD is under no obligation to review every piece of evidence before it.

[31] The Applicant filed a letter from her father's political party dated 1992, which had both grammatical and spelling mistakes. I defer to the RPD's criticism of this letter.

[32] However, I find it unreasonable that the RPD failed to consider the father's membership card. The membership card confirmed the father's affiliation with the SDP. It seems to me that very good evidence of membership in a political party is the issuance and holding of a genuine membership card. Such a card was offered in evidence, bearing his name and, on the reverse, noting the many payments he had made to sustain his membership from January 1992 until April 1993. It had his picture on it. The Respondent faulted this card because it did not show payments, i.e., did not prove membership, in the month the father died, which is the case. However, that argument presupposes the card is genuine. I note that in the hearing, the RPD asked the Applicant how her mother obtained the card and why her father stopped payments. I am not satisfied that the answers to either question would entitle the RPD to discount the card entirely as it appears to have; nor am I satisfied that her inability to answer could have that result. In my view, the failure to assess this potentially pivotal piece of documentary evidence in support of the Applicant's claim was not reasonable. Notwithstanding the RPD is not required to mention every document, it should have paid closer attention to this one.

[33] There were other documents that the RPD also rejected. These included a police report, medical report, affidavit, and photographs tendered to establish the attacks against the Applicant's mother and sister by male relatives. I need not consider them because, on the basis of the foregoing, I have come to the conclusion that the assessment of the Applicant's credibility and documentary evidence cannot be defended on the facts of this case. There will be a new hearing into this claim.

VII. Conclusion

[34] On the basis of the foregoing, and not seeing this as a treasure hunt for errors, I have concluded that the Decision of the RPD is not defensible on the facts, and is therefore unreasonable under *Dunsmuir's* definition of unreasonableness. Therefore judicial review must be granted and the decision set aside.

VIII. Certified question

[35] Neither party proposed a question of general importance to certify, and none arises.

JUDGMENT in IMM-2301-18

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside and remitted for redetermination by a different decision-maker, no question is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2301-18
STYLE OF CAUSE:	OLAOTI OLUWABUNMI REIS v THE MINISTER OF IMMIGRATION, REFUGEE AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 5, 2018
JUDGMENT AND REASONS:	BROWN J.
DATED:	DECEMBER 19, 2018

APPEARANCES:

Pablo A Irribarra	FOR THE APPLICANT
Amina Riaz	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Battista Smith Migration Law Group, Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT