

Federal Court



Cour fédérale

Date: 20201223

Docket: IMM-6782-19

Citation: 2020 FC 1187

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 23, 2020

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JIMBA HENRY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dated October 10, 2019, which confirmed the rejection of the applicant's claim for refugee protection as he is neither a Convention refugee nor a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27, sections 96 to 97(1).

[2] The applicant is a citizen of Nigeria and is claiming refugee protection status for fear of persecution by reason of his conversion to Christianity. The applicant left Nigeria for the United States in January 2012 and arrived in Canada in November 2017.

[3] The Refugee Protection Division [RPD] rejected the applicant's claim for refugee protection, concluding that the applicant was not credible. While the RAD found that the RPD made a number of errors in its assessment, it confirmed that the applicant lacked credibility and did not meet his burden of proof of establishing that he subjectively feared persecution and that this fear was well-founded in an objective sense.

[4] This judicial review concerns the RAD's compliance with procedural fairness with reference to all of the circumstances (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77).

[5] Procedural fairness requires parties to be given an opportunity to make submissions to an appeal tribunal when that tribunal is required to make new substantive findings (*Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10).

[6] The applicant argues that he ought to have been forewarned and given an opportunity to make submissions on two determinative grounds accepted by the RAD and that were not addressed by the RPD. First, the RAD apparently found that the subjective fear of persecution concerned the applicant's ancestral village and not his city of residence, Lagos. Second, the RAD allegedly concluded that there was no objective fear of persecution in Lagos as, according to the

documentary evidence, the authorities had strengthened security for those who practise different religions.

[7] With respect to the first ground, it appears that the RAD relied on the record before it, notably the Basis of Claim Form and the RPD's decision. The applicant was aware that on appeal, the determinative issue was his credibility and, in the alternative, his claim for refugee protection—that is, the existence of a subjective fear of persecution.

[8] With respect to the second ground, the situation is different. It involves the lack of an objective fear of persecution, considering the evidence on the specific country conditions. The RPD did not rely on this point at all, expressly stating that it was disregarding it because the applicant had failed to establish that he was a Christian. It is obvious that the applicant's submissions to the RAD would not have addressed this issue, especially in light of the many errors raised—and subsequently established—with respect to the assessment of the applicant's credibility.

[9] The RAD, recognizing the applicant's Christian religion, undertook an analysis of the existence of an objective fear of persecution based on its own review of the record by relying heavily on the national documentary evidence. The RAD therefore made a new determination on the merits of the case, without notifying the applicant and without giving him an opportunity to present his position, contrary to what is required by procedural fairness (see *He v Canada (Citizenship and Immigration)*, 2019 FC 1316 at paras 62, 67, 70, 78–80).

[10] For these reasons, the decision is procedurally unfair, and the application for judicial review is therefore allowed.

JUDGMENT in IMM-6782-19

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and that the matter be referred back for redetermination by a differently constituted panel of the RAD. There is no general question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6782-19

STYLE OF CAUSE: JIMBA HENRY v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN
MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 16, 2020

JUDGMENT AND REASONS: SHORE J.

DATED: DECEMBER 23, 2020

APPEARANCES:

Luciano Mascaro FOR THE APPLICANT

Margarita Tzavelakos FOR THE RESPONDENT

APPEARANCES:

Arpin, Mascaro and Associates FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec