Federal Court  Cour fédérale

Date: 20210514

Docket: IMM-4909-20

Citation: 2021 FC 453

Ottawa, Ontario, May 14, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PATRICK OKWUDILI UDE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision from the Refugee Appeal Division (RAD) dated September 15, 2020, which confirmed the refusal of the Applicant's refugee claim 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, s 96-97(1) [IRPA].

[2] The Applicant is a citizen of Nigeria and is claiming refugee protection for fear of risk to life or of serious harm from Fulani herdsmen who believe he is responsible for the deliberate loss of farm stock in December 2016. He also alleges that village chiefs want to harm him for previously publicly denouncing them as corrupt for not taking action towards the herdsmen. The Applicant left Nigeria for the United States in September 2017, later arrived in Canada in March 2018 and sought asylum in November of that year.

[3] The Refugee Protection Division (RPD) rejected the claim and found that the Applicant was not credible. Though there were errors in the decision, its conclusion was confirmed by the RAD.

[4] This judicial review relates to the reasonability of the RAD's decision in regard to admissibility of new evidence, and to credibility assessment and findings. As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*], a "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation of the facts and law that constrain the decision maker". It is for the decision maker to assess and evaluate the evidence before it, and, absent exceptional circumstances, this Court will not interfere with its factual findings, including findings of fact regarding credibility (*Vavilov*, above, at para 125).

[5] The Applicant submits in large part arguments analogous to those made on appeal. It is first argued that the new evidence should have been admitted. The Applicant also advances that the RAD would have improperly weighed the corroborative documentary evidence in the

assessment of the Applicant's credibility, as well as erroneously focused on microscopic details of the claim.

[6] *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 34-35 [*Singh*] is clear that subsection 110(4) allows for the presentation of new evidence only in limited circumstances and without discretion on the part of the RAD: either the evidence arose after the rejection of the claim for refugee protection, the evidence was not reasonably available, or it was but the person could not reasonably have been expected in the circumstances to have presented the evidence at the time of the rejection. The criteria for admissibility set out in case law also apply (*Singh*, above, at para 49).

[7] A number of pieces of evidence were produced on appeal and found inadmissible. Amongst those raised on judicial review include the death certificates for village members who were allegedly killed during the Fulani attacks – registered and issued on May 2017, with one missing an issuance date – a letter from the Nigeria Police listing those that were allegedly killed and further stating the Applicant's attempt to file a report but was left uncompleted as villagers arrived at the station in protest, and a letter from the Chairman of the Amokwe Progressive Union confirming that four villagers were killed in the attack and stating that the Applicant remains a target by the alleged agents of persecution.

[8] The evidence was found inadmissible as it refers to events that occurred before the RPD issued its decision; it was reasonably available and could have been expected to have been presented then in support of the claim as the RPD sought such evidence at the hearing or an

explanation for the lack thereof, as it related to credibility issues in the claim. Furthermore, claimants are expected to perfect their claim. Thus, the new evidence sought to corroborate the Applicant's narrative and compensate for deficient evidence before the RPD.

[9] The RAD's analysis of the admissibility of new evidence is intelligible and reasonable. Subsection 110(4) of the IRPA is not intended to provide an opportunity to complete a deficient record but rather to rectify errors of fact, law or mixed fact and law (*Singh*, above, at para 54). The evidence at issue does not appear on their face, nor is it argued, to rectify an error. Irrespective of the foregoing, the evidence is not determinative on the claim.

[10] With respect to the appreciation of the corroborative evidence within the analysis, it is not sufficient – where credibility is at issue and sufficient to affect the claim as in the present case – to point to different outcomes based on the evidence to intervene; rather the onus requires proof that the finding was made in a perverse or capricious manner or without regard for the evidence (*Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at paras 47, 49).

[11] The RAD is entitled to weigh the evidence and is not required to retain a particular narrative by a claimant on the evidence (*Karakaya v Canada (Citizenship and Immigration)*, 2014 FC 777 at para 18). The Applicant's argument on appreciation of the evidence and retention of ancillary details does not appear to amount to the bar required by case law to intervene on the credibility finding itself.

[12] The RAD had notably, previously, considered these same arguments, to the lower tribunal's reasons; and, reasonably, called into question the Applicant's credibility based on the record. There were a number of material inconsistencies and omissions and the testimony shifted under questioning. Based on the overall assessment of the evidence, the Applicant had not credibly established his fear of persecution, nor the agents of persecution.

[13] Though the substantial part of the RAD's analysis on credibility is understood, that which pertains to the considerations, motivating the Applicant's refuge in a church and subsequent departure from same to leave the country, corroborated by admitted and uncontested new evidence from the church pastor, were inadequately canvased and may have significant bearing on the claim – even where the claim may have been embellished.

[14] The disregard of the content of the evidence on the refuge in the church and the events that pursued therein leading to the Applicant's departure raises notable concerns as to the reasonability of the relevant assessment, determination and finding, bearing on the claim. As such, in the present specific circumstances, the matter should be returned to the RAD for assessment anew, as trier of fact and indeed specialized appellant tribunal, in a position to analyze this element in a measured manner and, where required, adequately canvass related issues (see *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at paras 54-55).

[15] For the aforementioned reasons, the Applicant's application for judicial review is granted.

JUDGMENT in IMM-4909-20

THIS COURT'S JUDGMENT is that the application for judicial review be granted. That the matter be returned to the RAD for determination anew by a differently constituted panel. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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