Federal Court  Cour fédérale

Date: 20210924

Docket: IMM-449-20

Citation: 2021 FC 994

Ottawa, Ontario, September 24, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

EGHOSA DARLINGTON OGBEBOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Eghosa Darlington Ogbebor, seeks judicial review of a decision by a Senior Immigration Officer [the "Officer"] rejecting his Pre-Removal Risk Assessment ["PRRA"] application.

[2] Mr. Ogbebor [“the Applicant”] is a Nigerian citizen who made a refugee claim in Canada due to persecution because of his wife’s bi-sexuality. The Applicant’s refugee claim was rejected by the Refugee Protection Division [“RPD”] on March 12, 2018. He submitted new evidence for his PRRA application, a document from the Nigerian Government, and the application was subsequently refused despite the new evidence. He argues that the refusal was unreasonable.

II. Background

[3] The Applicant came to Canada on April 7, 2017, with his wife and three children. They left Nigeria for the United States, and then snuck into Canada by hiding in a car. The family made an asylum claim based on his wife’s sexual orientation, alleging that her bisexuality put the family in danger in Nigeria.

[4] The family’s claim was severed because his wife was uncomfortable testifying about her sexuality in front of her husband. His claim was heard independently of the rest of the family.

[5] The Applicant, relying on his wife’s Basis of Claim [“BOC”] form, claimed that his wife had a long-term same-sex relationship in Nigeria with a woman named “Happy.” Her husband found out about the relationship, and there was fear that it would be exposed. In his affidavit, the Applicant claims that photos indicating that his wife was in a same-sex relationship were “spreading like wild fire.” The family left Nigeria for the United States.

[6] Both claims were rejected by the RPD because of credibility issues. The RPD found that the wife’s story did not stand up to scrutiny, and that there were inconsistencies that arose during

oral testimony. The Applicant's claim relied on the BOC of his wife, and the Minister intervened arguing that the Applicant's claim would have been refused along with his wife's claim if there had been no severance. Since the claim was based on the same submissions, they argued, his should be too.

[7] At the time of the Applicant's RPD hearing, his wife was appealing her decision at the Refugee Appeal Division ["RAD"]. There is nothing in the record to indicate the status of her appeal.

[8] The Applicant submitted an application for a PRRA on March 29, 2019, which was refused.

[9] The PRRA reiterated the credibility issues of the RPD, including long quotes from the decision. Specifically, the quoted passage noted that the Applicant made a number of allegations that were not included in the BOC. The quoted passage goes on to explain why they found the Applicant not credible, and what would be required to accept the claim. The decision goes on to identify further inconsistencies between the evidence and the testimony of the Applicant. The reasons included evaluating a wanted poster for his wife by the Nigerian police as well as a newspaper article that stated that Happy was killed by a mob and names the Applicant's wife as her romantic partner. In both cases, the RPD determined that the documents were fraudulent, and drew negative credibility findings because of the submissions of these as evidence.

[10] The Officer considered a police report dated April 12, 2019, which was submitted after the initial application for a PRRA. The report showed that his brother was arrested for aiding and abetting the escape of the Applicant and his wife. The Officer quotes an article from the Research Directorate of the Immigration and Refugee Board that highlights the level of corruption in Nigerian government agencies and departments, the fact that it is difficult to determine the authenticity of specific documents, the prevalence of documentary fraud, and the fact that "all forms of genuine documents can be obtained using false information…" The Officer, when combining the corruption with the significant credibility concerns, assigned low weight to the police report, as well as the previous one that was presented before the RPD.

[11] The Officer concludes that there is not "sufficient new and personalized evidence to show that the applicant would personally face more than a mere possibility of persecution."

[12] For the reasons set out below, I am granting the judicial review.

III. Issue

[13] The issue is whether the decision of the PRRA Officer was reasonable.

IV. Standard of Review

[14] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

V. Analysis

[15] The Federal Court of Appeal sums up the purpose of a PRRA, and the result of a positive decision as follows:

> Assuming there are no issues of criminality or national security, an application under subsection 112(1) is allowed if, at the time of the application, the applicant meets the definition of "Convention refugee" in section 96 of the IRPA or the definition of "person in need of protection" in section 97 of the IRPA (paragraph 113(c) of the IRPA). The result of a successful PRRA application is to confer refugee protection on the applicant (subsection 114(1) of the IRPA).
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> (*Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at para 11 [*Raza*])

[16] The Court, in *Raza*, makes it clear that the PRRA is not a reconsideration of a failed refugee claim, but that it may require consideration of "some or all of the same factual and legal issues…" (*Raza* at para 12).

[17] The Officer, in the reasons, does exactly what it is instructed not to do by this Court in *Sitnikova* and *Oranye*. (*Sitnikova v Canada (Minister of Citizenship and Immigration*, 2017 FC 1082; *Oranye v Canada (Minister of Citizenship and Immigration)*, 2018 FC 390). In the reasons, the Officer assigns low weight to the new evidence, not no weight. The Officer did this the reasons say because of the prevalence of fraudulent documents from Nigeria, and credibility concerns about the Applicant. However, there was no explicit finding or discussion that the new evidence itself was fraudulent.

[18] In a rather long, but very relevant passage in *Oranye*, Justice Ahmed says:

> 27 Fact finders must have the courage to find facts. They cannot mask authenticity findings by simply deeming evidence to be of "little probative value." As Justice Mactavish so rightly put it in, *Sitnikova v. Canada (Citizenship and Immigration)*, 2017 FC 1082 (F.C.) at para. 20, which I will reproduce in its entirety:
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> > This Court has, moreover, previously commented on the practice of decision-makers giving "little weight" to documents without making an explicit finding as to their authenticity: see, for example, *Marshall v. Canada (Citizenship and Immigration)*, 2009 FC 622 (CanLII) at paras. 1-3, [2009] F.C.J. No. 799 and *Warsame v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1202, at para. 10. If a decision-maker is not convinced of the authenticity of a document, then they should say so and give the document no weight whatsoever. Decision-makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document "little weight". As Justice Nadon observed in *Warsame*, "[i]t is all or nothing": at para. 10.
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> This improper approach is precisely the one employed by the RAD in the case before me. While the RAD has tried to mix the issue of fraudulent documents with "cumulative credibility concerns and [an] overall lack of credibility" on the part of the Applicant, the credibility of the Applicant's oral testimony has nothing to do with the authenticity of the affidavits in question. It is either the affidavits are authentic or fraudulent, but the RAD makes no finding on the point and instead opts to "hedge" by according them little probative value. This is an error of law.
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> 28 Unfortunately, the problems with the RAD's independent analysis do not end there. While the RAD Decision casts doubt on the authenticity of the four affidavits through a simple reference to information contained in the NDP, it provides no analysis as to how the "easy availability" of fraudulent documents in Nigeria connects to the question as to whether these affidavits are fraudulent. There is good reason for that. The NDP discusses the laws in Nigeria governing fraudulent documents, instances of their use domestically and internationally, and efforts taken to crack down on their use. It does not, however, say anything about how one might identify a fraudulent document (e.g. stamps, seals,

> spelling/grammatical/typographical errors) that could be used to evaluate the affidavits provided by the Applicant. In other words, the NDP contains no information to lead to the conclusion that these affidavits are fraudulent; the only link between the NDP and the affidavits tendered by the Applicant is the fact that she is Nigerian and her documents originate from Nigeria. In my view, such an approach is prejudicial and should not be tolerated in our jurisprudence.
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> 29 It is unfortunate that generalizations about the "easy availability of fraudulent documents" are frequently relied upon as though they constitute incontrovertible evidence of fraud. Where they appear in country condition documents, these generalizations can only properly serve to alert the decision-maker to the issue. The finding about the authenticity of a document cannot depend or even be influenced by mere suspicion from the reputation of a given country. Each document must be analyzed individually and its authenticity decided on its own merits. If there is evidence of fraud, it speaks for itself and the decision-maker should accord it no probative value. The alternative — that is, relying on the prevalence of fraud in a given country to impugn the authenticity of a document — amounts to finding guilt by association.
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> (*Oranye* at paras 27-29)

[19] *Oranye* is in the context of a RAD appeal review, whereas *Sitnikova* is a PRRA review, as is the instant case. I see no reason why the principles expanded on from *Sitnikova* to *Oranye* would not also be applicable to the present case.

[20] While it is true that administrative decision-makers are not to be held to the same standards as judicial decision-makers (*Vavilov* at para 92), their reasons must still allow the reviewing court to understand how they came to their decision, and their reasoning process (*Vavilov* at para 99).

[21] If there were specific reasons, why the document should have been rejected—based on the document itself—then the decision-maker was required to explain it in the reasons. The reasons do not indicate anything at all about the document which renders it suspect other than that it comes from Nigeria and the Applicant has credibility issues. In my view, it is completely on point with the above jurisprudence to find this to be unreasonable.

[22] It is true that there were other reasons such as the RPD finding that could explain why the Officer came to the conclusion they did. Nevertheless, in the reasons, the Officer did not make their findings as two distinct determinative issues—fraudulent new evidence as well as the credibility issues found at the RPD—but rather both as a whole. This means that this Court cannot tell whether the Officer would have come to the same conclusion if the new evidence were not found to be at issue, making this decision unreasonable.

[23] I am granting this application and having it sent back to be re-determined by a different officer.

[24] No certified questions were presented and none arose from the hearing.

JUDGMENT IN IMM-449-20

THIS COURT'S JUDGMENT is that:

1. The application is granted;

2. The decision is quashed and returned to be re-determined by a different officer;

3. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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