

Federal Court



Cour fédérale

Date: 20211020

Docket: IMM-256-18

Citation: 2021 FC 1108

Vancouver, British Columbia, October 20, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

PETER AKHIGBEMEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Peter Akhigbemen (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) which denied his claim for refugee protection, pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Nigeria. He sought protection in Canada on the basis of his sexual orientation as a bisexual man.

[3] The RPD made negative credibility findings due to omission, inconsistencies and implausibilities in the Applicant's evidence. It found that he failed to establish his identity as a bisexual man and did not discharge his burden to show that he is at risk of persecution.

[4] The Applicant now argues that the RPD unreasonably made negative credibility findings and erroneously ignored the Sexual Orientation and Gender Identity and Expression Guidelines (the "Guidelines").

[5] The Minister of Citizenship and Immigration (the "Respondent") submits that the RPD made no reviewable errors.

[6] The decision is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[8] The negative credibility findings of the RPD are reasonable, in my opinion, in light of the evidence contained in the Certified Tribunal Record (the “CTR”). The CTR supports the findings that the Applicant omitted important information from his Basis of Claim form.

[9] Similarly, the CTR shows a basis for the implausibility findings made by the RPD.

[10] The RPD, not the Court, is mandated to make findings of credibility and implausibility. The Applicant’s submissions about unreasonable findings are not persuasive.

[11] The Guidelines do not operate as to overcome shortcomings in the evidence. Although the RPD did not directly mention the Guidelines in the decision, the Applicant has not overcome the presumption that the RPD considered all relevant factors, including the Guidelines, in making its decision.

[12] In the result, the application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT in IMM-256-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
there is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-256-18

STYLE OF CAUSE: PETER AKHIGBEMEN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN ST. JOHN'S, NEWFOUNDLAND AND
LABRADOR AND TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 20, 2021

JUDGMENT AND REASONS: HENEGHAN J.

DATED: OCTOBER 20, 2021

APPEARANCES:

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Rachel Hepburn Craig FOR THE RESPONDENT

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