

Federal Court



Cour fédérale

Date: 20211109

Docket: IMM-7374-19

Citation: 2021 FC 1215

Ottawa, Ontario, November 9, 2021

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

INNOCENT EBERECHUKWU UDEMBA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Innocent Eberechukwu Udemba, is a citizen of Nigeria. He challenges the November 19, 2019 decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, rejecting his claim, made pursuant to s 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for refugee protection, and the RPD's further finding that his claim was manifestly unfounded pursuant to s 107.1 of the IRPA.

Background

[2] In his Basis of Claim [BOC] narrative, dated December 20, 2018, and amended on July 31, 2019, the Applicant claims that a secret corrupt political clique exists in his home town of Isuikwuato, Nigeria. In response, in 2017 he started an organization entitled the Initiative for Social Justice and Anti-Corruption of which he is the Executive Director. According to the Applicant, this led to death threats and an attempt on his life by the cabal. He claims that this continued despite his relocating to Abuja and then Lagos. He then decided to go to Barbados, obtaining a visitor's visa allowing him to pass through Canada en route. He flew to Barbados on October 5, 2018, was denied entry and flew back to Canada the following day. He made a claim for refugee protection in Canada on December 20, 2018. He claims that his life is in danger from the cabal.

[3] In his amended BOC, the Applicant adds that because the cabal had not been able to locate him, on July 6, 2019 they told the police that he is a member of the Indigenous People of Biafra [IPOB]. He claims that he is a member of IPOB and secretly sponsored activities in his community. In Canada, he has been making month contributions of \$30 to the IPOB. He claims that Nigerian government soldiers and police are hunting down IPOB members and that he would be arrested, tortured and killed if returned to Nigeria.

Decision under review

[4] The RPD found that the determinative issue was credibility.

[5] The RPD reviewed the Applicant's narrative and testimony surrounding his claim. It noted that when asked why he did not include the IPOB in his immigration forms the Applicant responded that because the IPOB is a proscribed group in Nigeria he kept his membership underground, secretly making donations. And, when filling out his immigration forms, he had not yet learned that his IPOB membership had been exposed. He was thinking only about his problems related to the cabal. The RPD found that this explanation for the omission would have been reasonable but for a significant contradiction in the Applicant's evidence which led it to conclude that this part of his story was fabricated.

[6] Specifically, that the Applicant's testimony was that he worked full time in his hometown of Isuikwuato as president of an organization called the World Christian Unity Crusaders where he promoted the unity of Christians. He described this as his full-time, major work. He also traveled to Lagos about once a month to do some trading of wares. He testified that he founded his anti-corruption NGO – the Initiative for Social Justice and Anti-Corruption – in his hometown but had not had time to formally register it before leaving Nigeria.

[7] However, in his application for a visitor's visa, the Applicant wrote that he worked as the president of World Christian United Crusaders in Lagos from April 2008 to June 2018 and also worked as the CEO of "Fast CashBack" in Lagos from July 2018.

[8] The RPD did not accept the Applicant's explanation for the contradiction between his testimony and the visa forms regarding the location of his work. This explanation being that the Applicant physically operated World Christian United Crusaders from his hometown but because

he wanted it to have a national face and a global presence, he registered it in Lagos. Further, that the organization has a legal identity in Lagos and for official purposes, the Applicant uses Lagos. The RPD found that it was unreasonable to believe that the Applicant would indicate he was the President of this company for 10 years in Lagos if in fact, and as he insisted repeatedly in his testimony, that he spent the majority of his time in his hometown, 500 km away. Further, that in his testimony the Applicant repeatedly emphasized that the only purpose for his travel to Lagos was for his trading business, which was his secondary source of income having nothing to do with his full-time work as President of World Christian Unity Crusaders. Because the Applicant was unable to reasonably explain the contradiction, the RPD drew a negative inference which it found affected his overall credibility.

[9] And, because the Applicant had not been truthful regarding his employment and residence, the RPD found that he was not truthful in his narrative or testimony regarding his anti-corruption work and the threats he faced as a consequence of his work in Isuikwuato. Therefore, the contradiction called into question the entirety of the Applicant's claim. This was because the Applicant alleged that he was targeted for his work in his hometown in connection with the Initiative for Social Justice and Anti-Corruption. However, if he was in fact running World Christian Unity Crusaders in Lagos from 2008-2018 as he indicated in his visa forms, he would not have been targeted by the cabal in his hometown because he was not living there. The RPD did not believe that the Initiative for Social Justice and Anti-Corruption exists. As the RPD found that the allegations of a threat posed by the cabal were fabricated, it also found that the related allegations concerning the threat posed by the authorities due to the Applicant's IPOB membership were false.

[10] The RPD found that its negative credibility findings were central to the Applicant's claim that he was the target of a political cabal in Isuikwuato which claim the RPD found, on a balance of probabilities, to be untrue and that the Applicant had fabricated the story in order to deceive the RPD. His story concerning the IPOB was also fabricated in order to deceive the RPD.

[11] As to the documentary evidence submitted by the Applicant, the RPD found that the Applicant's identity card as Executive Director of the Initiative for Social Justice and Anti-Corruption was not sufficient to overcome the RPD's significant adverse credibility findings. As to a copy of an article allegedly appearing in a Nigerian publication, *Access News Magazine*, the RPD noted that this repeats the Applicant's allegations contained in his BOC, which were found not to be credible. Further, the National Documentation Package [NDP] indicates that brown envelope journalism – the act of bribing a journalist with money to produce reports in a person's favour – is part of the routine exercise of journalism in many countries, including Nigeria. Given the Applicant's fabricated narrative and the NDP information on brown envelope journalism, the RPD found that the magazine article was produced for the purpose of the claim. It assigned no weight to either the identity card or the magazine article. The RPD also assigned little weight to a photo of a room with overturned furniture that the Applicant claims is a photo of his apartment following an assassination attempt, or to a letter allegedly written by the Coordinator of the IPOB in Isuikwuato stating that the Applicant had been a secret member and contributor since 2015. The RPD found that these documents were not sufficient to overcome its significant negative credibility findings.

[12] The RPD referenced s 107.1 of the IRPA and set out its findings in support of its conclusion that the Applicant's claim is manifestly unfounded.

Issue and standard of review

[13] In my view, the sole issue arising in this matter is whether the RPD's decision is reasonable.

[14] The Applicant's submissions on the applicable standard of review are generic, referencing *Dunsmuir v New Brunswick*, 2018 SCC 9; *Kumar v. Canada (Citizenship and Immigration)*, 2010 FC 306; *Canada (MCI) v Huruglica*, 2016 FCA 93 and other case law, and stating that the Court should be guided by this jurisprudence.

[15] I agree with the Respondent the standard of review is the presumptive standard of reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23-32, 48). The Applicant does not suggest that this presumption has been rebutted in this matter, nor in my view has it been.

Analysis

[16] The Applicant makes many, often disjointed submissions. However, his primary position boils down to the view that the RPD erred by making credibility findings based on the difference between his statements in his visa application and his BOC narrative and oral testimony. The Applicant submits that he did not intend to mislead the immigration authorities, he merely

misinterpreted the question on his visa application. Further, that even if he had intentionally misstated his place of work on the visa application, he had done so in a bid to escape persecution and this should not have resulted in a negative credibility finding, citing *Rasheed v Canada (Citizenship and Immigration)*, 2004 FC 587 [*Rasheed*]. He also submits that a single negative credibility finding is not synonymous with the submission of a fraudulent claim and it cannot support a finding that the claim is manifestly unfounded, referencing, among other cases, *Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755 [*Yuan*]. The Applicant asserts that the RPD ignored or improperly assessed all of the evidence that would otherwise have established the Applicant's case, instead relying on an error in judgment by the Applicant when completing his visa application.

Credibility Finding

[17] I will first address the Applicant's submissions that the RPD failed to recognize that he was not knowledgeable about visa application forms and may not have understood the context of the question about where he worked, and that his evidence revealed the psychological impact the trauma of alleged attacks had on him. He submits that, taken together, this is a clear indication that the Applicant's state of mind could make him prone to errors.

[18] As pointed out by the Respondent, while the Applicant now argues that he misunderstood the question about the location of his work in his visa application, he did not advance that as an explanation for the inconsistency between his testimony and his visa application when appearing before the RPD. Similarly, while the Applicant now argues that his psychological state made him prone to errors, he did not adduce any psychological evidence before the RPD and did not submit

that psychological trauma as an explanation for the inconsistency in his evidence. I agree with the Respondent that the RPD cannot be faulted for failure to address explanations that were never presented to it.

[19] The Applicant also asserts that the RPD failed to give him the benefit of the doubt as required by *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) at para 5 [*Maldonado*], and that the RPD's "irrevocable conviction" was that the Applicant must have deliberately misled the Canadian immigration authorities demonstrates an unreasonable zeal to find the Applicant unbelievable and a "premeditated desire" to deny his claim.

[20] In my view, the Applicant overlooks that in *Maldonado* this Court held that when an applicant swears to the truth of an allegation they are presumed to be telling the truth, unless there is reason to doubt their truthfulness (*Maldonado* at para 5). This Court has subsequently and similarly held that the presumption may be rebutted by inconsistencies between the evidence and their testimony (*Su v Canada (Citizenship and Immigration)*, 2015 FC 666 at para 11), or where the RPD is unsatisfied with the applicant's explanation for an inconsistency (*Lin v Canada (Citizenship and Immigration)* [*Lin*], 2010 FC 183 at para 19; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 21 [*Lawani*]). Here the presumption of truthfulness was rebutted by the RPD's finding that the Applicant unsatisfactorily explained the contradiction in his evidence as to where he worked during the relevant time period. This led to a negative credibility finding that affected the Applicant's overall credibility.

[21] The Applicant also asserts that if a refugee claimant presents false information when escaping persecution, this should not be taken as a negative credibility finding. The Applicant refers to *Rasheed* where this court held:

[18] Where a claimant travels on false documents, destroys travel documents or lies about them upon arrival following an agent's instructions, it has been held to be peripheral and of very limited value as a determination of general credibility. First, it is not uncommon for those who are fleeing from persecution not to have regular travel documents and, as a result of their fears and vulnerability, simply to act in accordance with the instructions of the agent who organized their escape. Second, whether a person has told the truth about his or her travel documents has little direct bearing on whether the person is indeed a refugee (*Attakora v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 444 (C.A) (QL); and *Takhar v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 240 at para. 14 (T.D.) (QL).

[22] I agree with this finding, however, this is not the Applicant's circumstance. The Applicant did not rely on false identification or travel documents to flee Nigeria. Nor has the Applicant demonstrated how providing false information in his visa application about where he worked in Nigeria would have assisted him to flee persecution. Further, the inconsistency between the Applicant's stated work location in his visa application and in his refugee claim is not a detail that is peripheral to his refugee protection claim (see *Lawani* at para 23). As the RPD found, it is central to the Applicant's claim. If the Applicant was working in Lagos as indicated in his visa application, then this brought into question his claim that he founded an anti-corruption organization in Isuikwuato in 2017 and, as a result, was persecuted by a cabal there. If this aspect of his claim was false, then so too was his further assertion that when the cabal could not find him they reported to the Nigerian authorities that the Applicant was a member of IPOB. This reasoning led the RPD to make its adverse credibility finding against the Applicant.

[23] In my view, the real question is whether the RPD reasonably extended this credibility finding to its assessment of the other documentary evidence presented by the Applicant. In that regard, this Court has held in *Lawani* that:

[24] Fourth, a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 604 (FCA) (QL) at paras 7-8), and be generalized to all of the documentary evidence presented to corroborate a version of the facts. Similarly, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying elements found not to be credible (*Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 [*Brahim*] at para 17).

[24] In this matter, because the RPD found, based on a significant contradiction in the Applicant's evidence, that he had fabricated his story as to being targeted by the cabal and therefore the IPOB, it was open to the RPD to also find that the documents provided by the Applicant in support of his claim as lacked credibility.

[25] The Applicant, however, takes issue with the RPD's treatment of the *Access News Magazine* article. The RPD noted that the article allegedly appeared in that Nigerian publication and that it identifies the Applicant as the Executive Director of the Initiative for Social Justice and Anti-Corruption. It includes an interview with the Applicant and recounts an incident he refers to in his claim, being that his home was attacked by hired assassins resulting in his brother being hospitalized. The RPD found that the article repeats the allegations that it found not to be credible. Given that the RPD had found that the Applicant fabricated his narrative to deceive the RPD, together with the NDP information on brown envelope journalism in Nigeria, the RPD found that the article was produced for the purpose of the Applicant's claim.

[26] The Applicant argues that the article was published before he fled Nigeria and before his claim was heard. The Applicant states that the RPD did not point to anything which would even hint that the article is false and that it was “imputing the power of clairvoyance” to the Applicant. Of course, the RPD did explain why it afforded no weight to the article. Moreover, if the article is the product of brown envelope journalism, the date on which it is asserted to have been published – if it was ever published – is also at issue. Further, the article itself does not contain any independent corroboration of the Applicant’s allegations; it is based on an interview with him and an anonymous local police source.

[27] As noted by the Respondent, this Court has held that it is reasonable for the RPD to find a document to be fraudulent and to afford it no weight based on an applicant’s lack of credibility and the prevalence of fraudulent documents in the country of origin (*Nanyongo v Canada (Citizenship and Immigration)*, 2018 FC 105 at para 16; *Cao v Canada (Citizenship and Immigration)*, 2015 FC 315 at para 20; *Huang v Canada (Citizenship and Immigration)*, 2015 FC 1250 at para 15). The Applicant’s lack of credibility, together with the prevalence of fraudulent news media in Nigeria, led the RPD to conclude that the magazine article was produced for the purpose of the claim. For these reasons, I am not persuaded that a reviewable error arises with respect to the RPD’s credibility findings or its treatment of the *Access News Magazine* article.

Manifestly Unfounded

[28] The main crux of all of the Applicant’s arguments is that if the RPD had just “classified” his misstatement in his visa application as a negative credibility finding rather than finding his claim to be manifestly unfounded, then he would have had a right of recourse to the Refugee

Appeal Division: “This would have afforded the Applicant a chance for his actual claim to be heard, rather than getting thrown out by the panel member”.

[29] It is true that a finding that a claim is manifestly unfounded has serious consequences for an applicant. This is because, pursuant to s 110(2)(c) of the IRPA, no appeal may be made to the Refugee Appeal Division when that finding has been made. Nor does the Applicant benefit from a stay of removal by operation of law if a challenge to the RPD’s decision is made (*Immigration and Refugee Protection Regulations*, SOR/202-227, s 231(1); IRPA s 49(2)(c)).

[30] And, as stated in *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 [*Warsame*], not any misstatement or falsehood would make a refugee claim fraudulent. “It must be that the dishonest representations, the deceit, the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way” (at para 30).

[31] The RPD, when considering whether the Applicant’s claim was manifestly unfounded, states that the Applicant had attempted to deceive and mislead the RPD by creating a false profile for himself as an anti-corruption activist who has been targeted in his hometown for speaking out about the corrupt political cabals. The RPD restates its findings as to the significant inconsistency in the Applicant’s evidence as to the location of his work during the relevant period. The RPD states its belief that the Applicant was truthful about his employment history and where he was residing for the previous 10 years in Nigeria when he was applying for a Canadian visa in order to stop in Toronto on his way to Barbados. However, having decided at a

later date to claim asylum in Canada, the Applicant invented the story concerning the political cabal in Isuikwuato in order to deceive the RPD and gain refugee protection. Given this deliberate attempt to deceive and mislead, and having found the allegations that the Applicant is being targeted by members of the political cabal in his hometown of Isuikwuato to be not true on a balance of probabilities, the RPD found that the claim is manifestly unfounded.

[32] Contrary to the Applicant's submissions, this case is not on all fours with *Yuan*. There the applicant's fraud of obtaining a student visa was tangential, not central, to her claim of persecution. And while little weight was afforded to her other supporting documentation, it was not found to be fraudulent (*Yuan* at para 44).

[33] In light of the Applicant's failure to provide the RPD with a satisfactory explanation for the material and fundamental inconsistency in his evidence as to where he lived and worked during the relevant period, in my view in these circumstances, the RPD reasonably determined that his claim was manifestly unfounded.

JUDGMENT IN IMM-7374-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7374-19

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