

Federal Court



Cour fédérale

**Date: 20220301**

**Docket: IMM-7173-19**

**Citation: 2022 FC 280**

**Ottawa, Ontario, March 1, 2022**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ADEDJI LATEEF AMUDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Amuda seeks to overturn a negative pre-removal risk assessment [PRRA] made on October 8, 2019, by a senior immigration officer. For the reasons that follow, I find that decision to be reasonable based on the evidence before the officer and procedurally fair.

## **Background**

[2] The Applicant is a 43-year-old national of Nigeria. He claims to be bisexual and that he was attacked by a mob who had heard that he was gay. The Applicant went to the police, but, instead of helping him, they detained him for four days and beat him because of his sexuality.

[3] The Applicant came to Canada in June 2015 and made a claim for protection. An oral hearing was held before the Refugee Protection Division [the RPD] of the Immigration and Refugee Board of Canada [the IRB] on September 17, 2015. The Applicant's claim was rejected by the RPD on October 16, 2015. The RPD found that he was not a credible witness. The Refugee Appeal Division [RAD] upheld the decision on January 22, 2016.

[4] The Applicant submitted an application for a PRRA, stating that he would be at risk in Nigeria because he is bisexual and because country conditions in Nigeria would not enable him to store the insulin that he needs to treat his diabetes.

## **The Decision**

[5] The officer found that the risk of harm to the Applicant due to his diabetes could not be assessed in a PRRA, pursuant to subparagraph 97(1)(b)(iv) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicant has not challenged that finding.

[6] As to the claim that the Applicant would be at risk of harm because of his bisexuality, the officer noted that the same statement of risk was before the RPD and RAD, and that he was

found to not be credible with respect to this risk. The officer found that much of the information in the Applicant's affidavit filed with the PRRA was not new. Evidence that was not new and had been before the IRB was given little weight, and there was no consideration whether it was credible.

[7] The officer did consider new information that the Applicant had attended a training session held by The 519, a Toronto community centre, called "Settlement Services Newcomer Orientation Training Program for the LGBTQ Community." The officer noted that there was nothing in the materials to suggest that person who is not LGBTQ could not attend this training and therefore found that the Applicant's attendance did not establish his sexual orientation.

[8] The officer also considered a membership card for The 519 and handouts on 2SLGBTQ-positive services in Toronto published by The 519, which were submitted by the Applicant. The officer noted that the membership card did not have anything on it to indicate that it belonged to the Applicant and there was no evidence from anyone at The 519 to indicate the Applicant was a member. The officer found that even if the Applicant were a member, there was nothing to suggest that one needs to be LGBTQ to be a member of The 519 or to receive copies of the handouts.

[9] The officer considered evidence in the Applicant's affidavit about his life after his claim was denied. This included the fact that he was still attracted to men, despite becoming a born-again Christian and not having engaged in any same-sex activity since that time. The officer

found that the statement that he was attracted to men “on its own, and in the absence of any supporting documentary evidence,” did not establish his sexual orientation.

[10] The officer considered photographs provided by the Applicant of himself with other people at a social event. Two individuals in the photographs were indicated to be people that the Applicant said he met on a website for LGBTQ people. The officer found that the photographs did not establish the sexual orientations of these people nor that of the Applicant.

[11] The Applicant submitted a copy of the Chairperson’s Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression (SOGIE), released on May 1, 2017 [the Guidelines]. The officer considered the Applicant’s submission that the conduct of the RPD panel member at his hearing was inconsistent with the Guidelines and, since the Guidelines were not available at the time of his RPD hearing, he was now entitled to an oral PRRA hearing conducted in accordance with the Guidelines. The officer noted that a PRRA is not meant to be an appeal of an RPD decision and that it was not within the officer’s purview to determine if the RPD member acted in accordance with the Guidelines. The officer noted that the Applicant had not provided anything to support his statement that he was entitled to an oral PRRA hearing.

[12] The officer found that the credibility of the new evidence was not at issue; however it did not establish the Applicant’s sexual orientation. Therefore, there was no need for an oral hearing.

## Issues

[13] The Applicant raises two issues: (1) whether the decision is reasonable and (2) whether there a breach of procedural fairness in not holding an oral hearing where the Guidelines could be applied.

## Analysis

[14] As a preliminary matter, I agree with the Respondent that any of the documents attached to the Applicant's affidavit that were not before the officer are not properly before this Court. They will be disregarded.

[15] The parties agree that the standard of review is reasonableness. However, the proper standard of review for questions of procedural fairness is correctness. Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31 at para 19, aptly described that standard:

Questions of procedural fairness require an approach resembling the correctness standard of review that inquires “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond”, and at paragraph 54, “[a] reviewing court... asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed”.

*Reasonableness of the Decision*

[16] The Applicant submits that the officer erred in restricting the analysis to newness and not assessing credibility, instead relying on the credibility findings of the RPD and RAD. He submits that the officer accepted those findings without question and without appreciating that the Guidelines were not applied in making those findings. The Applicant emphasises that the Guidelines were created to address past issues with credibility findings of the IRB with respect to sexuality.

[17] The Applicant makes extensive submissions on the content of the Guidelines to illustrate how the RPD hearing was not conducted in accordance with them.

[18] The Applicant also makes extensive submissions to illustrate how the officer made findings in violation of the Guidelines, including by: (1) relying on the fact that a non-LGBTQ person could attend the training session by The 519, (2) finding that the Applicant's statement that he was attracted to men did not establish his sexual orientation without supporting documentary evidence, and (3) finding that the photographs did not establish the sexual orientation of the Applicant nor that of his friends, despite it being corroborative of his affidavit.

[19] The Applicant also points to section 3.2 of the Guidelines, which states “[a]n individual's testimony may be the only evidence of their SOGIE where, in a given case, corroborative or additional evidence is not reasonably available.”

[20] I agree with the Respondent that the officer was correct in observing that the purpose of a PRRA is not to appeal the RPD or RAD, and the RPD decision should be considered as final, “subject only to the possibility that new evidence demonstrates that the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision” (*Escalona Perez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1379 at para 5).

[21] I also agree with the Respondent that much of the Applicant’s evidence was not new, either being duplicative of his submissions before the RPD or being evidence that would have been available at the time.

[22] I do not accept the submission that the decision is unreasonable because the officer did not follow the Guidelines in making it.

[23] I agree with the Applicant that while the officer is not a member of the Board, where the Chairperson’s guidelines are raised by an applicant, they should be considered (see *Simon v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1018 at paras 48-49). The Guidelines are aimed at addressing factors that may render an IRB decision unreasonable. In a decision made by a PRRA officer, the same errors cautioned against in the Guidelines could still render a decision unreasonable, especially where, as is the case here, the Guidelines were raised by an applicant.

[24] However, I am not persuaded that the officer's decision failed to properly consider the Guidelines. There was only a small amount of new evidence before the officer. The officer weighed this new evidence and found that it did not establish the Applicant's sexual orientation. The Applicant has not identified how the officer failed to follow the Guidelines in so doing.

[25] While section 3.2 of the Guidelines notes that an individual's testimony may be the only evidence of their sexuality in cases where "corroborative or additional evidence is not reasonably available," it is not obvious that corroborative evidence was not available (although new corroborative evidence may not have been available). Furthermore, since most of the Applicant's affidavit was not new, most of his narrative regarding his sexuality was not before the officer to consider. All that remained was the brief statement about the Applicant's renewed faith and his continued attraction to men. In my opinion, it was reasonable for the officer to find that this did not establish the Applicant's sexuality.

#### *A Breach of Procedural Fairness*

[26] The Applicant submits that the credibility assessments of the RPD and RAD cannot be relied upon because the RPD hearing was not conducted in accordance with the Guidelines. Since these findings cannot be relied upon, credibility was an issue in the PRRA, and an oral hearing is required.

[27] The Respondent submits, and I agree, that the officer was not required to hold an oral hearing. Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 only mandates an oral hearing in cases where there are issues of credibility. The officer only



made a sufficiency finding and so no hearing was required. As in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, the officer did not find that the Applicant was not to be believed, but remained unconvinced of the Applicant's sexuality because the evidence tendered did not have sufficient probative value.

### **Conclusion**

[28] This application must be dismissed. No question was posed for certification.

**JUDGMENT IN IMM-7173-19**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7173-19

**STYLE OF CAUSE:** ADEDJI LATEEF AMUDA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 13, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MARCH 1, 2022

**APPEARANCES:**

Mary Jane Campigotto FOR THE APPLICANT

Asha Gafar FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mary Jane Campigotto FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Department of Justice Canada  
Toronto, Ontario