

Federal Court



Cour fédérale

Date: 20220407

Docket: IMM-3889-20

Citation: 2022 FC 500

Ottawa, Ontario, April 7, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

TAIYE JIMOH-ATOLAGBE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Taiye Jimoh-Atolagbe seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dismissing her appeal and confirming the Refugee Protection Division's (RPD) determination that she had not credibly established a claim for protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Jimoh-Atolagbe is a citizen of Nigeria who fears persecution due to her sexual orientation as a bisexual woman. The RAD found that the RPD correctly rejected Ms. Jimoh-Atolagbe's claim on the basis that she did not credibly establish the central elements of her claim, or her subjective fear.

[3] Ms. Jimoh-Atolagbe submits the RAD focused on differences between her initial and amended basis of claim (BOC) narratives that were peripheral to the core aspects of her claim, and failed to consider her reasonable explanations—or at least, failed to provide adequate justification for rejecting her explanations. Also, the RAD did not give due consideration to evidence of a medical condition that would have impacted her testimony. Finally, she claims it was unreasonable for the RAD to conclude that she did not have a subjective fear because she failed to seek protection while in the United States on a student visa. Delay in seeking asylum is not determinative of the issue of subjective fear, and she had provided a reasonable explanation.

[4] For the reasons below, I must dismiss this application for judicial review. The RAD's credibility findings are not unreasonable and the RAD did not err in finding that Ms. Jimoh-Atolagbe's behaviour was incompatible with a subjective fear of persecution or harm.

II. **Issue and Standard of Review**

[5] The sole issue on this application for judicial review is whether the RAD decision is unreasonable, based on the errors alleged above.

[6] The parties agree that the applicable standard of review is reasonableness, following the guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (Vavilov at para 99). A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker (Vavilov at para 85). The party challenging the decision bears the onus to demonstrate the decision was unreasonable (Vavilov at para 100).

III. Analysis

A. *Did the RAD err in finding that Ms. Jimoh-Atolagbe did not credibly establish the central elements of her claim?*

[7] Ms. Jimoh-Atolagbe submits the RAD unreasonably relied on inconsistencies between her initial and amended BOC narratives to support the bulk of its negative credibility findings. These included discrepancies in the way she described her sexual orientation (as a lesbian or a bisexual woman) and in the way she had described her father's problems in Nigeria (specifically, whether his problems were due to her sexual orientation). The amended BOC included details that were not in the initial BOC, such as a past relationship with a boy at school, but Ms. Jimoh-Atolagbe argues that the changes did not fundamentally alter her claim: *McKenzie v Canada (Minister of Citizenship and Immigration)*, 2019 FC 555 [McKenzie]. At its core, her claim was always a fear of persecution due to her sexual orientation.

[8] Ms. Jimoh-Atolagbe submits that she provided a reasonable explanation for amending her BOC: her first BOC was a one-page document completed under time pressures, and her lawyer at

the time, who she had met only once, typed the BOC while she was talking, printed it, gave it to her to sign, and she “didn’t check it that much” before signing. She also claims there was a significant language barrier. Ms. Jimoh-Atolagbe points out that she submitted the amended BOC in a timely manner, seven days later, through new counsel. The RPD Rules allow for amendments to BOC forms and she should not be penalized for doing so.

[9] Ms. Jimoh-Atolagbe submits that the RAD had a duty to consider her explanations. Instead, it disregarded them or rejected them without adequate justification. Due to the errors in the initial BOC that arose from miscommunications with her counsel at that time, the RAD ought to have considered the amended BOC independently.

[10] According to Ms. Jimoh-Atolagbe, the RAD focused on peripheral issues to undermine her credibility. The RAD relied on purported inconsistencies in the details about a short-lived relationship with a boy when she was 15 years old, when there was no real disconnect in her evidence. The RAD also focused on minor discrepancies between her testimony and the testimony of her intimate partner (about the movies that they had watched together) which were insufficient to rebut the presumption of truthfulness of their sworn testimony. Moreover, the RAD did not mention their consistent testimony on more important points about their relationship, such as when they met and when their relationship became intimate, among other things.

[11] I am not persuaded that the RAD erred in its credibility findings. The RAD is entitled to make negative credibility findings based on inconsistencies, contradictions, or omissions in the

evidence that are not reasonably explained, including inconsistencies between an original and an amended BOC: *Esteban Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at paras 31-32; *Hoyos Soto v Canada (Minister of Citizenship and Immigration)*, 2019 FC 127 at para 29; *Avrelus v Canada (Minister of Citizenship and Immigration)*, 2019 FC 357 at para 15. In this case, it would not be accurate to characterize the amended BOC as a detailed version of a shorter BOC that was submitted under time constraints. Ms. Jimoh-Atolagbe's amended BOC changed her story in fundamental ways, and her case is distinguishable from *McKenzie* (at paragraph 34) where the amendments did not change the story.

[12] The RAD outlined material differences between the two BOC narratives about the problems Ms. Jimoh-Atolagbe's father experienced. These differences reflected not only a change in the reason for the father's problems (only the amended BOC attributed his problems to the public disclosure of her sexual orientation) but also in the timing of events. The RAD considered Ms. Jimoh-Atolagbe's explanation that blamed the first lawyer, and rejected her argument that the differences were elaborative. Rather, the RAD found that she had changed her story, and that the changes were not minor or peripheral because they related to events that resulted in the public disclosure of her sexual orientation.

[13] I disagree with Ms. Jimoh-Atolagbe's contention that the RAD rejected her explanations without support. The inconsistencies were put to Ms. Jimoh-Atolagbe for explanation. The RAD specifically referred to her explanations and did not accept them. While her testimony at the RPD hearing alluded to a language barrier with her first counsel, the RPD rejected this explanation on the basis that Ms. Jimoh-Atolagbe reads and understands English, and when she

was asked why she did not correct her initial BOC if there was a mistake, she responded “I didn’t check it that much.” In this proceeding, Ms. Jimoh-Atolagbe argues that language difficulties can be gleaned from the transcript, but she does not point to specific examples.

[14] Moreover, the RAD did not rely solely on contradictions between the original and amended BOC. The RAD detailed a number of inconsistencies within the amended BOC narrative, and in the oral testimony.

[15] Ms. Jimoh-Atolagbe states there was no real disconnect in her evidence about a short-lived relationship she had with a boy when she was 15 years old. She argues that the fact this relationship was short-lived corroborates that she is not attracted to boys. However, this argument further confuses the issue. Ms. Jimoh-Atolagbe testified before the RPD that she is bisexual, which she explained to mean “...I am having an affair with a man and I am having an affair with a woman”. Her evidence was that she has always said she is bisexual, and she has never defined herself differently.

[16] Ms. Jimoh-Atolagbe also argues that the RAD focused on the minor point about the movies she had seen with her intimate partner. However, the RAD explained that going to the movies was said to be a main activity Ms. Jimoh-Atolagbe and her partner did as a couple, and these events happened only four months before their testimony. Ms. Jimoh-Atolagbe testified she had seen three films at the movie theatre with her partner, whereas the partner testified they had seen ten films. When asked what films they watched, they named different films. The RAD noted additional inconsistencies in the testimony regarding their relationship. The RAD

reasonably concluded that Ms. Jimoh-Atolagbe and the witness were not credible about their relationship.

[17] I disagree with Ms. Jimoh-Atolagbe that the RAD failed to give due consideration to evidence of a medical condition that would have impacted her testimony. The RAD noted that the psychotherapist's report was a single intake and assessment session, it was unclear whether the psychotherapist was qualified to make the diagnoses in question, and there was no evidence that Ms. Jimoh-Atolagbe was following the therapy. The RAD also noted that Ms. Jimoh-Atolagbe did not point to specific examples where her evidence or testimony was affected by her physical or mental condition, nor did the RAD observe any issues upon review of the transcript. Similarly, in this application, Ms. Jimoh-Atolagbe does not specify how the RAD's treatment of the psychological support would have impacted its findings.

[18] Credibility determinations have been described as "the heartland of the Board's jurisdiction", demanding a high level of judicial deference: *Liang v Canada (Minister of Citizenship and Immigration)*, 2020 FC 720 at para 12 citing *Khan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1330 at para 30. The RAD reasonably relied on the cumulative effect of multiple, material inconsistencies to conclude that Ms. Jimoh-Atolagbe did not credibly establish the core elements of her claim. The RAD justified its findings with transparent and intelligible reasons.

B. *Did the RAD err in finding Ms. Jimoh-Atolagbe did not demonstrate subjective fear of persecution?*

[19] Ms. Jimoh-Atolagbe submits the RAD erred in concluding that she did not have a subjective fear of persecution or harm due to a failure to claim asylum while she was in the U.S. She had explained this was because: she had valid status as a student and therefore no fear of being deported, she did not re-avail herself of the Nigerian government's protection, and she had consulted a lawyer who advised against making a refugee claim. In addition, Ms. Jimoh-Atolagbe argues the RAD did not explain why her delay in seeking refugee protection undermined her credibility.

[20] As the respondent correctly notes, the RAD explained that Ms. Jimoh-Atolagbe had provided inconsistent reasons for not claiming asylum in the U.S., and she gave inconsistent information about the advice she received from a U.S. lawyer. While the RAD agreed with her argument that a delay in claiming refugee status or a failure to claim in another country is not determinative of a refugee claim, delay in making a claim supported a negative credibility finding in this case. In my view, Ms. Jimoh-Atolagbe has not established a reviewable error in the RAD's reasons on this point. Ms. Jimoh-Atolagbe provided a number of reasons why she did not claim refugee protection in the U.S., however, both the RPD and RAD were concerned about inconsistencies in the evidence and they did not find her explanations to be satisfactory.

[21] I am not persuaded that the RAD erred in concluding that Ms. Jimoh-Atolagbe's behaviour was incompatible with that of a person fearing persecution or harm, and that this supported a negative credibility finding.

IV. **Conclusion**

[22] Ms. Jimoh-Atolagbe has not established that the RAD's decision is unreasonable.

Accordingly, this application for judicial review is dismissed.

[23] Neither party proposed a question for certification. In my view, there is no question to certify.

JUDGMENT in IMM-3889-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question of general importance for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3889-20

STYLE OF CAUSE: TAIYE JIMOH-ATOLAGBE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

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JUDGMENT AND REASONS: PALLOTTA J.

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APPEARANCES:

Ugochukwu Udogu FOR THE APPLICANT

Nicholas Dodokin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Ugo Udogu FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario