

Federal Court



Cour fédérale

**Date: 20220425**

**Docket: IMM-2005-21**

**Citation: 2022 FC 601**

**Ottawa, Ontario, April 25, 2022**

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

**BETWEEN:**

**BABATUNDE OLUSEGUN LAWAL  
OLUWAFERANMI NAOMI LAWAL  
OLUWASEMILORE DORCAS LAWAL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants, Babatunde Olusegun Lawal (the “Principal Applicant”), and his two minor daughters (the “Minor Applicants”), seek judicial review of a decision of the Refugee Appeal Division (“RAD”), dated March 3, 2021, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in

need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”).

[2] The Principal Applicant fears persecution in Nigeria on the basis of his sexual orientation. The RAD dismissed the Applicants’ appeal because it found that the Principal Applicant was not credible and that there was a lack of evidence to support the claim.

[3] The Applicants submit that the RAD’s decision is unreasonable. Specifically, the Applicants argue that the RAD erred in its credibility findings because it did not demonstrate an understanding and appreciation of the *Chairperson’s Guidelines regarding Sexual Orientation and Gender Identity and Expression* (the “*SOGIE Guidelines*”) and its decision was not grounded in the evidence submitted.

[4] For the reasons that follow, I find that the RAD’s decision is reasonable. Accordingly, this application for judicial review is dismissed.

## II. **Facts**

### A. *The Applicants*

[5] The Principal Applicant is a 45-year-old citizen of Nigeria. His wife, from whom he has been separated since 2018, swore an affidavit giving him custody of the Minor Applicants.

[6] The Principal Applicant allegedly fears persecution in Nigeria because of his sexual orientation. He claims that he has been in three same-sex relationships, in addition to paying for sex with male sex workers.

[7] In January 2018, the Principal Applicant applied for a US visa, which was approved in February 2018.

[8] The Principal Applicant states that in February 2018 he was at a gay nightclub in Lagos, Nigeria when it was raided by police. He was allegedly detained for a few hours and was subsequently released upon payment of a bribe.

[9] In May 2018, the Principal Applicant left Nigeria for the US. The following month, he was joined by his wife and the Minor Applicants. While in the US, the Principal Applicant claims that his wife witnessed him kissing a man named Sunday. Following this incident, she returned to Nigeria in January 2019. The Applicants did not make a refugee claim in the US.

[10] In February 2019, the Applicants entered Canada and made a refugee claim.

B. *The RPD Decision*

[11] In a decision dated February 24, 2020, the RPD determined that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *IRPA*. The determinative issue was credibility. The RPD made the following findings:

- Material aspects of the Principal Applicant’s testimony were not credible or trustworthy. There were multiple inconsistencies and omissions between his oral testimony and written evidence.
- On a balance of probabilities, the Principal Applicant was not involved in same-sex relationships with men named Solomon, Adekunle (“Kunle”), and Sunday.
- There were inconsistencies between the Principal Applicant’s written narrative and his testimony with regards to the dates when he allegedly met Solomon. Little weight was given to a photograph of the Principal Applicant and Solomon, as two men standing beside each other does not establish a same-sex relationship.
- The attestation letter allegedly signed by Kunle was not supported with documentation to confirm his identity. Little weight was given to a photograph of the Principal Applicant and Kunle.
- The Principal Applicant did not provide any evidence other than his testimony to support the existence of his relationship with Sunday.
- The Principal Applicant failed to prove that he was arrested during a raid on a gay nightclub in February 2018 and released upon payment of a bribe. His testimony about the raid was vague: he was unable to recall the specific date of the raid, nor whether it occurred at the beginning or the end of February. The Principal Applicant also did not provide a satisfactory explanation for why his Basis of Claim

(“BOC”) form did not address the difficulties he encountered in his community after the raid. The Principal Applicant’s credibility was further undermined by his testimony that he had applied for US visas for himself and his daughters in January 2018, in order to claim asylum in the US.

[12] The RPD found that the Applicants would not face serious harm upon their return to Nigeria. The Applicants appealed the RPD’s decision to the RAD.

C. *Decision Under Review*

[13] In a decision dated March 3, 2021, the RAD dismissed the Applicants’ appeal and confirmed the RPD’s determination that the Applicants are neither Convention refugees nor persons in need of protection.

[14] The RAD affirmed the RPD’s finding that the Principal Applicant did not establish that he faces persecution on the basis of his sexual orientation. While the RAD agreed with the Applicants’ argument that the RPD erred in not considering the *SOGIE Guidelines* in its analysis, the RAD found that “the application of the *SOGIE Guidelines* do not reverse the RPD’s findings of lack of credibility from the Principal Applicant’s testimony about his sexual orientation.” The RAD emphasized that its independent review revealed inconsistencies and omissions in the evidence of the Principal Applicant’s relationships with Solomon, Kunle and Sunday, as well as the evidence of the police raid on the nightclub. The RAD found these inconsistencies to support a general lack of credibility, applicable to the Principal Applicant’s entire testimony.

[15] The RAD agreed with the RPD that, on a balance of probabilities, the police raid on the nightclub did not likely occur. The RAD found that the Principal Applicant's credibility was undermined by his inability to recall the precise or approximate date of the arrest, his omission of important details in the BOC regarding the bullying he experienced when his community became aware of the police raid, and the fact that his US visa application predated the police raid. The RAD also noted inconsistencies in the Principal Applicant's reasons for fleeing Nigeria.

[16] Further, the RAD found that the Principal Applicant failed to prove his relationships with Solomon and Kunle. The RAD noted numerous inconsistencies with respect to the dates when the Principal Applicant attended Kwara State Polytechnic (the "Polytechnic") – where he allegedly met Solomon. Additionally, the Principal Applicant failed to provide documentary evidence of his diploma from the Polytechnic. The RAD also assigned little weight to Kunle's attestation letter due to the Principal Applicant's general credibility concerns.

[17] After considering the *SOGIE Guidelines*, the RAD found that, without corroborating evidence, the Principal Applicant's testimony about his relationship with Sunday was insufficient to establish his sexual orientation. Specifically, the RAD was not satisfied with the Principal Applicant's explanation for why he was unable to provide corroborating evidence of this relationship. Accordingly, the Applicants' *sur place* claim was rejected.

[18] The RAD concluded that given the significant credibility issues that touched on core aspects of the Applicants' claim and the lack of sufficient trustworthy evidence, on a balance of probabilities, the Applicants would not face persecution if they were to return to Nigeria.

III. **Issue and Standard of Review**

[19] The sole issue in this application for judicial review is whether the RAD's decision is reasonable.

[20] Both parties submit that the applicable standard of review in evaluating the RAD's decision is reasonableness. I agree (*Adelani v Canada (Citizenship and Immigration)*, 2021 FC 23 at paras 13-15; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at paras 10, 16-17).

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional

circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

#### IV. Analysis

##### A. *The SOGIE Guidelines*

[23] The Applicants submit that the RAD’s analysis violated the *SOGIE Guidelines* because the RAD’s decision limited its application of the *SOGIE Guidelines* to only corroborating evidence, without considering the psychological effects the Principal Applicant faces as a non-heterosexual man in Nigerian society or how he was uniquely affected when testifying at the RPD. The Respondent maintains that the RAD reasonably applied the *SOGIE Guidelines*.

[24] With respect to establishing credibility and assessing evidence, section 7.1 of the *SOGIE Guidelines* recognizes that in some cases, an individual’s testimony may be the only evidence of their sexual orientation. However, while a decision-maker should consider the personal, cultural, economic and legal context in a given situation, it remains open to them to draw a negative credibility inference from vagueness, omissions, and inconsistencies. Section 7.4 of the *SOGIE Guidelines* expressly states:

Cases involving SOGIESC individuals are no different from other cases before the IRB in that members may draw a negative inference from material inconsistencies, contradictions or omissions that have no reasonable explanation.



[25] In discussing the *SOGIE Guidelines*, the RAD's decision acknowledges this:

[...] individuals may conceal their SOGIE in their country of reference due to a fear of repercussions; and therefore, the claimant's testimony may be the only evidence of their sexual orientation where corroborative or additional evidence is not reasonably available.

[26] Still, the RAD found that the Applicants' evidence did not overcome the credibility concerns arising from omissions in the BOC and inconsistencies between the Principal Applicant's testimony and the BOC. Given these credibility concerns, the RAD did not find that the Principal Applicant was involved in the three same-sex relationships, as he alleges.

[27] I am satisfied that the RAD adequately considered and applied the *SOGIE Guidelines*. I find that the RAD reasonably determined that the omissions and inconsistencies in the evidence, along with the Principal Applicant's vague testimony, were sufficient to rebut the presumption of truth regarding his testimony about his sexual orientation and same-sex relationships. It was thus reasonable for the RAD to conclude that the application of the *SOGIE Guidelines* does not reverse the finding that the Principal Applicant's testimony lacked credibility.

#### B. *Credibility Findings*

[28] The Applicants submit that the RAD's negative credibility findings with respect to the first same-sex relationship affected the analysis of the two subsequent same-sex relationships. The Applicants also submit that the RAD's analysis lacked intelligibility as it was based on a

microscopic examination of the evidence. The Respondent maintains that the decision was based on the testimony and evidence provided, and meets the requirements of a reasonable decision.

[29] I do not find that the RAD made unreasonable credibility findings. While I acknowledge that the RAD's decision states that the credibility concerns raised in relation to the first alleged same-sex relationship affected the Principal Applicant's overall credibility. I find that the RAD conducted an independent assessment of each alleged relationship and provided an adequate explanation for finding that the Principal Applicant failed to prove his same-sex relationships.

[30] It was appropriate of the RAD to note that the evidence was unclear about when the Principal Applicant had attended the Polytechnic, where he claims to have met Solomon, and to note the lack of a diploma from the Polytechnic. This does not consist of a microscopic analysis of the evidence as it directly relates to the Principal Applicant's alleged relationship with Solomon. As noted by my colleague Justice McDonald in *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paragraph 20:

[...] details of the attack are significant as they go to the very core of the Applicant's claim. Therefore this omission from the BOC is not a minor detail or collateral information, but rather, is important to the Applicant's claim. Omissions and contradictions are a reasonable basis for doubting an applicant's credibility (*Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at para 50).

[31] Furthermore, I find that it was reasonable of the RAD to give little weight to the attestation letters from Solomon and Kunle because they were both brief and essentially reiterated what had already been stated by the Principal Applicant, providing no additional

details (*Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at paras 59-60). While a lack of corroborating evidence of one's sexual orientation cannot rebut the presumption of truthfulness in and of itself, I also find that it was reasonable of the RAD to determine that there was no corroborating evidence of the Principal Applicant's alleged third relationship and that he lacked credibility based on an accumulation of inconsistencies and omissions in his testimony and evidence (*Obinna v Canada (Citizenship and Immigration)*, 2018 FC 1152 at para 33).

[32] Finally, it was reasonable of the RAD to find that the Principal Applicant's credibility was further undermined by his accounts of the police raid and its alleged repercussions on his life. For instance, while the Principal Applicant testified that he experienced hostility from the community after the raid, he made no mention of this in his BOC narrative, despite it being part of his reason for leaving Nigeria. The Principal Applicant also testified that he applied for a US visa for himself and his daughters in January 2018 in order to claim refugee protection in the US, yet the police raid and mistreatment from his community allegedly took place in February 2018. I therefore find that the RAD made reasonable credibility findings and its decision reveals an internally coherent and rational chain of analysis (*Vavilov* at paras 102-104).

## V. Conclusion

[33] For the reasons above, I find the RAD's decision is reasonable. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-2005-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question to certify.

"Shirzad A."

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Judge

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

**DOCKET:** IMM-2005-21

**STYLE OF CAUSE:** BABATUNDE OLUSEGUN LAWAL,  
OLUWAFERANMI NAOMI LAWAL AND  
OLUWASEMILORE DORCAS LAWAL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 10, 2022

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** APRIL 25, 2022

**APPEARANCES:**

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