

Federal Court



Cour fédérale

**Date: 20220923**

**Docket: IMM-3991-20**

**Citation: 2022 FC 1329**

**Ottawa, Ontario, September 23, 2022**

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

**BETWEEN:**

**SYLVESTER OZIEGBE EHICHOYA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Sylvester Oziegbe Ehichoya, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated August 10, 2020, upholding the decision of the Refugee Protection Division (“RPD”) finding that the Applicant is not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant fears persecution from the Nigerian police due to his sexual orientation and from the Fulani herdsmen who murdered his father and destroyed his property. The RAD upheld the RPD's finding that the central aspects of the Applicant's claim were not credible.

[3] The Applicant submits the RAD's decision is unreasonable because it erred in its credibility assessment.

[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 Applicant*

[5] The Applicant is a 44-year-old citizen of Nigeria. He fears persecution from Nigerian authorities based on his sexual orientation as a bisexual man and from the Fulani herdsman who murdered his father and employees on his family farm.

[6] The Applicant states that on January 23, 2017, his father, who was a farmer, was murdered by Fulani herdsman along with 16 of his father's workers. Following his father's death, the Applicant inherited and took responsibility of his father's farm. The Applicant states that in April 2017, his crops were destroyed. He suspects that Fulani herdsmen are responsible for the damage. The Applicant reported the incident to the police to no avail. Following this

incident, the Applicant's farm was allegedly set on fire, and his house was destroyed on May 19, 2017.

[7] On May 22, 2017, the Applicant states that he travelled to Lagos to stay with a man named Andy ("Andy"), with whom he began a romantic relationship. The Applicant claims that on September 13, 2017, their neighbours learned of their relationship and reported it to the police. On the same day, the Applicant allegedly received a call from Andy to warn him that he should not return home because the police were looking for him.

[8] The Applicant fled to the United States and then travelled to Canada in February 2018. He made a refugee claim on February 9, 2018.

B. *RPD Decision*

[9] In a decision dated May 17, 2019, the RPD refused the Applicant's refugee claim. The determinative issue for the RPD was credibility. In particular, the RPD made the following findings:

- The RPD noted discrepancies between the information contained in the Applicant's Schedule A form and his Basis of Claim ("BOC") narrative. The Applicant's Schedule A form indicates that he resided in Uromi, Edo State until December 2017, yet his BOC narrative indicates that he arrived in Lagos to reside with Andy on May 22, 2017. During the RPD hearing, the Applicant explained that he had

made a mistake because he did not know how to fill out the forms, and he was scared and confused. The RPD rejected this explanation, noting that the Applicant understands English and testified in English with no difficulties.

- The Applicant failed to provide a coherent testimony about his relationship with Andy and his previous relationships. In the Applicant's BOC narrative and written evidence, he only mentioned one same-sex partner in his lifetime: Andy. However, during his testimony, the Applicant indicated he had three romantic or sexual relationships with males. In addition to these inconsistencies, the Applicant was unable to provide the name or any details about his first partner. When discrepancies regarding his relationship with Andy were put to the Applicant during the hearing, he amended his testimony.
- The RPD drew a negative credibility finding from the fact that the Applicant did not know where Andy worked, or anything about Andy's family, despite him and Andy being live-in romantic partners.
- There are discrepancies in the Applicant's evidence regarding the Applicant's claim that the Nigerian Police are interested in him. On his Schedule 12 form, the Applicant did not indicate that he was sought by the Nigerian Police, yet his testimony and written narrative indicated that the Nigerian Police were in fact looking for him.

[10] Based on the numerous negative credibility findings, the RPD did not find on a balance of probabilities that the Applicant was being sought by any groups of people in Nigeria, including the police or the Fulani herdsmen.

C. *Decision Under Review*

[11] In a decision dated August 10, 2020, the RAD dismissed the Applicant's appeal, confirming the RPD's decision. The RAD found the RPD was correct in drawing a negative inference from the discrepancies between the information contained in the Applicant's Schedule A and Schedule 12 forms, and his BOC narrative.

[12] The RAD affirmed the RPD's credibility findings regarding the Applicant's relationship with Andy. In particular, the RAD agreed with the RPD's findings that the Applicant failed to reasonably explain the discrepancies regarding his relationship with Andy and his past relationships; the fact that the Applicant did not know Andy's job or family members was not reflective of someone who had been in a live-in relationship with someone; and the Applicant's explanation for not using his email address does not explain why he would not utilize email to attempt to find out what happened to Andy.

[13] The RAD also found that the RPD was correct to draw a negative inference from the omission of the Nigerian Police's interest in the Applicant in the Schedule 12 form. The RAD noted that while "caution must be exercised in drawing negative credibility inferences from port of entry statements," the Applicant's information regarding the Nigerian Police's interest

appeared to evolve. Given how this was a central aspect of the Applicant's claim, the RAD found that the RPD had not erred in its credibility inference.

### III. **Issue and Standard of Review**

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

[15] In their written submissions, both parties submit that the determinative issue is whether the RAD's credibility findings are reasonable. The parties agree that this issue is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25). I agree.

[16] 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).

IV. Analysis

[17] The Applicant submits that the RAD erred by drawing negative credibility findings based on the inconsistencies between the Schedule A form, the BOC narrative and the Applicant's testimony, as well as inconsistencies regarding the Applicant's relationship with Andy. The Applicant further submits that the RAD failed to adequately consider the Applicant's explanations for the inconsistencies in his evidence.

A. *Inconsistency between Schedule A form and the Applicant's written narrative and testimony*

[18] The Applicant argues that the RAD erred by dismissing his reasonable explanation for the erroneous information contained in his Schedule A form. Specifically, the Applicant explained at the RPD hearing that he made a mistake when filling out the form at the port of entry ("POE") because he was scared and confused, and had no one to guide him. The Applicant further submits that the RAD erred by placing undue emphasis on the information he provided at the POE. The Respondent maintains that it was reasonable of the RAD not to accept these explanations.

[19] In my view, the RAD's conclusions on this point were reasonable. At the RPD hearing, the inconsistency was put to the Applicant and the RPD did not find his explanation reasonable because the Applicant is well-educated, has English capabilities and was answering questions pertaining to events that took place less than two years before the completion of the forms. On appeal, the RAD agreed with the RPD's findings given that they were based on the evidence in

the record and related to a central element of the claim. The RAD also noted that the Applicant did not contest the RPD's findings on appeal.

[20] First, I note that the reasonableness of the RAD's decision must be assessed in light of the submissions made by the parties (*Vavilov* at paras 127-128). In his appeal submissions to the RAD, the Applicant highlighted several errors made by the RPD, yet none of these referenced the RPD's findings on the inconsistencies regarding the Applicant's place of residence. The RAD cannot be faulted for agreeing with a finding made by the RPD when the alleged error was not raised in the Applicant's written submissions to the RAD.

[21] In any case, I find that the RAD conducted a reasonable review of the RPD's findings on this point and explained why it agreed with the RPD's rejection of the Applicant's explanation. The Court's role is not to reweigh and reassess evidence on judicial review. Considering general deference is owed to the RAD's assessment of an applicant's credibility, I do not find the RAD reached an unreasonable conclusion (*Vavilov* at paras 125, 127-128; *Weche v Canada (Citizenship and Immigration)*, 2021 FC 649 at para 22).

[22] Second, I do not find that the RAD excessively relied on the POE statements made by the Applicant. The Applicant submits that this Court has repeatedly found that undue reliance should not be placed on statements made at the POE and that refugees often come from countries where they have good reason to distrust persons in authority (*Hamdar v Canada (Citizenship and Immigration)*, 2011 FC 382 at paras 46-47; *Gabila v Canada (Citizenship and Immigration)*, 2016 FC 574 at paras 23, 28, 34; *Wu v Canada (Citizenship and Immigration)*, 2010 FC 1102 at

paras 14-16; *Pooya v Canada (Citizenship and Immigration)*, 2018 FC 1019 at paras 20-22). I agree with the Applicant that this principle is well-established in the jurisprudence. However, I note the holding from this Court in *Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38 at paragraph 39:

[39] With respect to making credibility findings based on the POE forms and notes, the jurisprudence cautions against relying on inconsistencies in testimony between the POE notes and later testimony and documents, unless those inconsistencies are about “crucial elements” of the applicants claim.

[Emphasis added; see also *Gomez Florez v Canada (Citizenship and Immigration)*, 2016 FC 659 (“*Gomez Florez*”) at paras 28-30 *Drammeh v Canada (Citizenship and Immigration)*, 2022 FC 669 at para 36).]

[23] In the case at hand, the inconsistency at issue had to do with the Applicant’s residence in Lagos during the time he claims to have been in a same-sex relationship with Andy. In my view, this element is not secondary or peripheral to the Applicant’s claim. As stated by the RAD, this relationship was central to the claim because the Applicant allegedly fears that the Nigerian Police is seeking him for being in a same-sex relationship in Lagos during the stated time period. Furthermore, this inconsistency was not only found in question 12 of the Schedule A form, where he was asked to list his addresses, but also in question 8, where he was asked to list his employment. I also note that this case is comparable to the situation in *Vardalia v Canada (Citizenship and Immigration)*, 2022 FC 300 (“*Vardalia*”), in which the RAD considered the explanation given by the applicant and rejected it because the applicant was educated, spoke English and was able to testify at the hearing without assistance from an interpreter (*Vardalia* at para 43; see also *Li v Canada (Citizenship and Immigration)*, 2021 FC 956 at paras 28-29).

[24] As such, I do not find the RAD made an unreasonable finding in drawing a negative credibility inference from the inconsistencies in the Applicant's immigration forms. The RAD engaged with the Applicant's explanation and provided reasons for its rejection that were justifiable, intelligible and transparent (*Vavilov* at para 15). I also find that it was reasonable of the RAD to review the statements made at the POE, since the inconsistencies were related to a central part of the claim.

B. *Relationship with Andy*

[25] In its decision, the RAD drew a negative inference from the inconsistencies between the Applicant's written evidence and his oral testimony regarding his relationship with Andy. The RAD noted that the Applicant's written evidence did not mention a same-sex relationship in secondary school or a relationship with Andy prior to residing with him in Lagos in 2017.

[26] The Applicant submits that this finding is unreasonable and that he was not given the opportunity at the RPD hearing to explain why this information was omitted from his written evidence.

[27] While the Applicant may not have been asked to elaborate on the omissions from his BOC narrative, I find that the issue of credibility was squarely before the RAD and the RPD. In accordance with the jurisprudence of this Court, the RAD is "entitled to make independent findings of credibility where credibility was at issue before the RPD, the RPD's findings are contested on appeal, where the credibility concerns from the RAD are linked to the Applicant's appeal submissions, and the RAD's findings arise from the evidentiary record" (*Gedara v*

*Canada (Citizenship and Immigration)*, 2021 FC 1023 at para 35; *Smith v Canada (Citizenship and Immigration)*, 2019 FC 1472 at para 31; *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 at paras 12-14; *Yimer v Canada (Citizenship and Immigration)*, 2019 FC 1335 at para 17). This is applicable when the RAD does not ignore contradictory evidence on the record (*Emac Sonkoue v Canada (Citizenship and Immigration)*, 2018 FC 1173 at para 18, citing *Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at para 38).

[28] Here, the challenged credibility findings were related to the Applicant's relationship with Andy and the fact that it was not stated in his written evidence that he had a previous relationship in secondary school or a relationship with Andy prior to Lagos in 2017. This is not a novel adverse credibility finding; credibility was an issue before the RPD and the RAD, this finding was specifically contested on appeal, and the RAD's conclusions are linked to the Applicant's submissions and arise from the evidentiary record. In fact, in his written submissions on judicial review, the Applicant acknowledges that this discrepancy was raised in the RPD's reasons. I therefore do not find that the RAD erred in this aspect.

[29] Furthermore, the Applicant maintains that the RAD erred by not providing him with an opportunity to explain why he lacked knowledge about Andy's employment and family members. The RAD found that the Applicant's lack of knowledge was "not reflective of someone who had been in a live-in relationship for four months in addition to having been in a previous relationship." I agree with the Respondent's submission that this is a situation that calls for common sense, and the RAD is entitled to make reasonable findings based on implausibilities, common sense and rationality (*Gomez Florez* at para 31).

[30] I find that the RAD's credibility findings with respect to the Applicant's relationship with Andy were reasonable. There is no question that caution must be exercised when assessing POE statements, but the BOC narrative must include all important facts and details of the claim. Failing to do so can affect all or part of the reliability of a refugee claimant's testimony (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 18). In addition, "the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee protection claimant's account can support a negative conclusion about his credibility" (*Gomez Florez* at para 28). I find that this is what occurred here.

C. *Failure to consider applicant's explanations*

[31] The Applicant maintains that throughout its decision, the RAD made findings without regard for the Applicant's explanations. The Applicant submits, "it is trite law that explanations which are not obviously implausible must be taken into account" (*Owusu-Ansah v Canada (Minister of Employment & Immigration)*, [1989] FCJ No 442 (CA); *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 at para 23). I agree with the Applicant that before making an adverse credibility finding, a decision-maker must engage with the explanations for inconsistencies provided by an applicant (*Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at para 23; *Vavilov* at paras 127-128). However, while the RAD or the RPD must take into account an applicant's explanation, they are not obliged to accept it.

[32] The Applicant emphasizes that the RAD erred in its treatment of the Applicant's decision not to attempt to communicate with Andy via email after the police became interested in them. Particularly, the RAD's decision states:

However, I find the Appellant's explanation as to why he would not try to contact A.O. by email after the incident not reasonable. As noted by the RPD, despite the Appellant's testimony that he does not use email because it is too expensive, the Appellant's refugee claim documents and an envelope he provided indicate that he has an email address. I find the Appellant's submission that indicating an email address does not necessarily mean he uses it fails to explain why he would not utilize email to attempt to find out what happened to A.O. following the phone call in which A.O. advised the Appellant that police were looking for them and that they were to report to police.

[33] I agree with the Applicant's argument that this conclusion lacks rationale. The fact that the Applicant has an email address, which he included on his Schedule A and BOC forms, does not contradict his explanation that email is not the customary mode of communication in Nigeria. While I note that the Applicant having an email address does not automatically mean that Andy has and uses an email address, sending an email would have been an adequate method to reach Andy in the circumstances.

[34] Additionally, the Applicant submits that the RAD erred by drawing an adverse credibility finding from the Applicant's failure to indicate on his Schedule 12 form that he was sought by the Nigerian Police. The Applicant argues that the RAD did not mention or consider the Applicant's explanation and testimony on this issue, and drew a negative credibility finding from the mere existence of the discrepancy.

[35] I disagree with the Applicant on this point. The RAD's decision specifically addresses the Applicant's explanation during the hearing that the omissions on the Schedule 12 form were a result of him feeling confused, scared, and lacking guidance when filling out the form. The RAD agreed with the RPD's finding that this explanation was unsatisfactory, since it was

reasonable to expect the Applicant to recall this element of his claim because it was his principal reason for fleeing Nigeria. The RAD also considered the Applicant's submissions on appeal that the omission was an innocent mistake since his BOC form, which does outline how he was being sought by the Nigerian Police, was likely filled at the same time as the Schedule 12 form.

However, the RAD rejected this justification because the forms actually bear two different dates, and were thus not completed at the same time, as the Applicant had suggested.

[36] The Nigerian Police's interest in the Applicant was a central element of his claim. I therefore find it reasonable of the RAD to draw adverse credibility findings from the Applicant's omission of this fact in the Schedule 12 form and from the evolution of the Applicant's story on this point (*see Jimoh-Atolagbe v Canada (Citizenship and Immigration)*, 2022 FC 500 at para 11).

[37] My colleague Justice Norris discussed a similar situation in *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 ("*Osikoya*"), in which the RAD made adverse credibility findings based on inconsistencies between an applicant's BOC narrative and the answers provided in her Schedule 12 form. Much like the Applicant in this case, the applicant in *Osikoya* indicated on the Schedule 12 form that she was not being sought by police, which contradicted her BOC narrative (*Osikoya* at para 26). When asked about this contradiction, the applicant answered that she did not know what "sought" meant (*Osikoya* at para 27). Justice Norris found that the RAD's adverse credibility finding was unreasonable because, while this "contradictory finding" concerned a central element of her claim for protection, this important event was described in the narrative which was written on the same day as the Schedule 12 form

(*Osikoya* at para 31). The Court noted that it was reasonable for the applicant to misunderstand the question based on how it was written on the form (*Osikoya* at para 32)

[38] However, while I can appreciate that the question on Schedule 12 could indeed lead to confusion, the case at hand is distinguishable from *Osikoya* because the Applicant's forms were signed on different days and, as rightly noted by the RAD, aspects of the Applicant's story continued to evolve with each additional form. I therefore do not find it was unreasonable of the RAD to draw a negative credibility inference from the inconsistencies in the Applicant's evidence regarding whether he was being sought by the Nigerian Police.

[39] While I accept the Applicant's argument that there are minor flaws in the RAD's decision, such as the RAD's treatment of the evidence regarding the use of email communication in Nigeria, I do not believe these shortcomings are sufficient to render the decision as a whole unreasonable. Overall, I find that the RAD responded to the Applicant's written submissions, engaged with the Applicant's explanations, and made reasonable adverse credibility findings based on the inconsistencies that were central to the Applicant's claim. In accordance with the *Vavilov* principles, I find this decision bears the hallmarks of transparency, rationality and justifiability.

## V. **Conclusion**

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

**JUDGMENT in IMM-3991-20**

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

1. This 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-3991-20

**STYLE OF CAUSE:** SYLVESTER OZIEGBE EHICHOYA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 21, 2022

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** SEPTEMBER 23, 2022

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