

Federal Court



Cour fédérale

Date: 20230227

Docket: IMM-811-22

Citation: 2023 FC 274

Ottawa, Ontario, February 27, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

EMMANUEL CHUKWUEMEKA NSOFOR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision (the “Decision”) of the Refugee Appeal Division (“RAD”) dated December 22, 2021. The RAD dismissed the Applicant’s appeal and confirmed the decision of the Refugee Protection Division (“RPD”).

[2] Specifically, the RAD found that the RPD was correct in determining that the Applicant was neither a Convention refugee nor a person in need of protection, in accordance with sections 96 and 97 of the *IRPA*.

[3] For the reasons that follow, I find the Decision to be reasonable. Therefore, this application will be dismissed.

II. **Background**

[4] The Applicant is a citizen of Nigeria and a physician by profession. He alleges a risk to his life as a freelance Christian evangelical preacher by vocation, as well as a risk from his brother over a land dispute (the “Nnewi land”). He also claims a risk of persecution based on his Igbo ethnicity.

[5] The Applicant alleged that his fear of persecution and risk to his life caused him to flee to the United States of America on June 12, 2018 using a previously issued visa.

[6] On June 18, 2018, the Applicant entered Canada through a port of entry, and initiated a claim for refugee protection.

[7] The Applicant’s hearing before the RPD took place on April 23, 2021. The RPD had a number of credibility concerns that the Applicant was unable to reasonably explain. The RPD found the Applicant failed to establish that he faced persecution because of his Christian faith and that the evidence provided did not support his allegation that he faced persecution based on

Igbo ethnicity. Similarly, with respect to the land dispute, the RPD found that the Applicant failed to establish a serious risk of harm or that his life is in danger.

[8] On appeal to the RAD, the Applicant filed new evidence and requested an oral hearing that was considered, but refused.

III. **Decision under Review**

[9] The RAD conducted an independent assessment of the RPD's findings.

[10] The RAD found the RPD did not err in its credibility assessment of the Applicant and that it was correct in concluding he had not established on a balance of probabilities that:

- a) he faced a risk of harm to his life from his brother over the Nnewi land dispute; and
- b) he had a well-founded fear of persecution in Nigeria due to his Christian faith, his vocation as a preacher, or his Igbo ethnicity.

[11] The RAD also found two new pieces of evidence to be inadmissible: a police statement and a lawyer's letter. The police statement, titled "Nigerian Police Statement Paper of Suspect" was attached to the Applicant's affidavit. The second document was a letter from Mr. Samuel Onyia, the Applicant's solicitor in a real estate dispute with the Applicant's brother.

[12] After rejecting the new evidence, the RAD reviewed the RPD's decision based on the evidence that was before the RPD.

IV. **Issues and Standard of Review**

[13] There are two issues in this application:

1. Did the RAD err in its assessment and refusal to admit new evidence, pursuant to subsection 110(4) of the *IRPA*?
2. Were the RAD's credibility findings reasonable?

[14] The parties agree, as do I, that the appropriate standard of review is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[15] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

[16] To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

V. **Analysis**

A. *New Evidence*

[17] Pursuant to subsection 110(4) of the *IRPA*, the RAD may only accept new evidence that: (1) arose after the RPD decision; or (2) was not reasonably available at the time of the decision;

or (3) the applicant could not reasonably have been expected to bring before the RAD in the circumstances. If the evidence meets one or more of these criteria, the RAD then must apply the

Raza/Singh framework to determine if the proposed evidence is new, credible, and relevant:

Canada (Citizenship and Immigration) v Singh, 2016 FCA 96, [2016] 4 FCR 230 [*Singh*]; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385.

[18] As noted above, the Applicant sought to enter two documents as new evidence on appeal.

[19] The first document was the Applicant's affidavit attaching a police statement dated May 25, 2018. The RAD found the evidence was inadmissible because it pre-dated the RPD's rejection of the claim. The RAD rejected the Applicant's explanation, that he tried to obtain the document earlier but was unable to do so because the police station burned down and that he only appreciated its significance after the RPD rejection. The RAD concluded that the evidence did not meet the criteria of subsection 110(4) because the Appellant could reasonably have been expected in the circumstances to submit the document to the RPD or at the very least, indicate prior to the rejection, that such evidence existed.

[20] The RAD considered that even if the evidence had been admissible under subsection 110(4), it did not pass muster under the *Raza* framework, as there was no corroborating evidence regarding the alleged fire nor any explanation given as to how and why this handwritten paper document was saved from the fire. Furthermore, all that was provided was a WhatsApp screen shot of the document – not the document itself. Given the foregoing, the RAD reasonably found the document to be “not sufficiently credible as to source and circumstances and thus does not meet the requirements of *Singh/Raza*”.

[21] The second document the Applicant sought to admit was a letter from Mr. Onyia, the Nigerian lawyer representing him in legal proceedings regarding the land dispute. The Applicant now submits that the letter from his solicitor did not exist prior to the hearing and qualifies as new evidence "...that helps to explain an existing fact about the contents of the Statement of Defence and the lack of a specific reference to the word 'vigilante'". He also contends that the letter corroborates his evidence and contradicts a finding of fact by the RPD. As such, it ought to have been accepted by the RAD.

[22] I disagree.

[23] The RAD reasonably found that the Applicant provided no explanation as to why the information contained in Mr. Onyia's letter was not provided prior to the rejection of his claim, given that providing such information could reasonably have been expected in the circumstances. Consequently, the letter was rejected in accordance with subsection 110(4) of the *IRPA*.

[24] I find the RAD's decision to reject the new evidence was reasonable and in line with the Court's jurisprudence. Contrary to the Applicant's assertions, the RAD did not find that the documents were irrelevant or had little probative value. Indeed, it was because of the importance of the documents – in particular the Nigerian Police statement – that the RAD determined that they could have been produced or at the very least, should have been brought to the RPD's attention by the Applicant.

[25] Given that the statutory requirements for the admission of new evidence were not met, I find it was reasonable for the RAD to reject these new documents.

B. *Reasonableness of the RAD's decision regarding the RPD's credibility findings*

[26] The Applicant submits the RAD simply adopted the RPD's credibility findings.

[27] In his appeal to the RAD, the Applicant alleged "...that the RPD erred in its credibility assessment in that it relied on microscopic and peripheral findings, failed to consider the testimony from the [Applicant]'s brother and sister, and improperly relied on omissions in the [Applicant]'s first Basis of Claim [BOC] narrative even though the amended narrative corrected the original BOC narrative by including the omitted information."

[28] The RPD identified some concerns with the Applicant's credibility regarding the alleged threat to his daughter in the month prior to the hearing, and the allegation that vigilantes and police attended at the Nnewi land in May 2018. There were also discrepancies in the Applicant's testimony and the documentary evidence.

[29] In conducting an independent assessment of the RPD's credibility findings, the RAD reviewed the Applicant's evidence, the audio recording of the RPD hearing including the testimony of the Applicant, his wife, sister and brother, his submissions on appeal and the relevant objective evidence.

[30] Contrary to the Applicant's submissions, I conclude that the RAD's assessment was done independently. The RAD clearly explains why it placed little weight on the testimonies of the Applicant's sister and brother, given that both of them had no first-hand knowledge of the matters to which they testified.

[31] The RAD also considered National Documentation Package (“NDP”) evidence for Nigeria as it relates to fear of persecution for religious beliefs, in addition to documentary evidence filed by the Applicant. The RAD noted that Christians do not experience as much violence in the southwest of Nigeria where Lagos is located, than in other areas. It drew the same conclusion as it pertains to violence against Christian preachers. Except for the one incident in 2018 that the Applicant reported, it also deemed that there was insufficient evidence to find that the Applicant would be a target. Based on the totality of the evidence, the RAD determined that if the Applicant were to return to Lagos, he did not face a serious possibility of persecution because of his faith or his vocation as a freelance preacher.

[32] Concerning ethnicity, while the Applicant made an allegation of generalized discrimination against Igbos, the RAD determined that there was neither any specific or generalized evidence “...of cumulative acts of harassment or discrimination that cumulatively constitute persecution against Igbos”.

C. *Risk from the Applicant’s brother*

[33] The RAD stated that it did not accept the Applicant’s explanation that the discrepancies in his testimony and with the documentary evidence, in particular the amended BOC narrative, were the result of him trying to summarize two events that occurred at the Nnewi land. The RAD determined that the RPD was correct in its assessment that there were credibility issues regarding vigilante and police presence at the Nnewi land. It also found that the RPD did not rely solely on the discrepancies in the narratives to impugn the Applicant’s credibility.

[34] Like the RPD, the RAD did not find the Applicant's explanation for the discrepancies between the BOC narratives and the legal documents submitted as evidence, to be reasonable. As such, the RAD also drew a negative inference regarding the credibility of the Applicant's allegations regarding these claims, including that he was threatened or intimidated by a vigilante group hired by his brother. The RAD also noted that the evidence demonstrated the dispute was solely about the land dispute in Nnewi and there was no evidence of any other motive for the brother to pursue the Applicant outside of Nnewi.

[35] The RAD then concluded that the Applicant had failed to establish, on a balance of probabilities, that he would face a risk of harm to his life, if he were to return to Lagos. The RAD also noted that the risk of harm could also be avoided if the Applicant were to "not pursue or if necessary, completely relinquish his interest in the land". Citing jurisprudence from this Court, the RAD remarked "the jurisprudence establishes that those who are able to make reasonable choices to free themselves of a risk of harm must be expected to pursue those options, unless the choice would involve a deprivation of fundamental human rights".

[36] Given that the Applicant is a physician who is a medical doctor who owns a pharmacy and sells pharmaceuticals, the RAD found no evidence that he was reliant on the Nnewi land in order to earn a basic income. He could therefore choose to leave Nnewi and return to Lagos, since the RAD concluded that the Applicant did not face a serious possibility of persecution in Lagos due to his faith or ethnicity. Such a choice (to leave Nnewi) would not deprive him of a fundamental human right and would be a feasible option.

[37] Given these findings, it was therefore reasonable for the RAD to confirm the RPD decision. The Applicant had not established, on a balance of probabilities, that he faced a risk of harm to life from his brother Prosper.

D. *Persecution arising from the Applicant's Evangelical Preaching and Religious Beliefs*

[38] The Applicant alleged he is a well-known freelance evangelical preacher by calling and that his preaching in marketplaces and churches made him a target by Muslim extremists. He testified to only two incidents to support his alleged fear of persecution, one in 2013 and the other in 2018. After reviewing the documentary evidence provided, the RAD was not persuaded that either of these incidents placed the Applicant at risk of persecution. The RAD agreed with the RPD's findings that the 2013 incident was more likely than not, a random act of violence. As for the 2018 incident, which allegedly prompted the Applicant to leave Lagos and go on his own to Nnewi, the RAD noted that there were again inconsistencies between the Applicant's testimony and that of his wife. It concluded that the incident was isolated, that the Applicant had not established that the three, suspected Muslim extremists were monitoring or pursuing him, nor that they were interested in harming or persecuting him.

[39] The RAD also made negative credibility findings regarding alleged threats to the Applicant's daughter, which occurred a month prior to the RPD hearing and that were not included in the Applicant's BOC. It concluded that the incident involving the daughter most likely did not occur or if it did, was exaggerated in asserting that it constituted a threat of persecution of the Applicant or his family due to his faith or preaching activities.

[40] The RAD also assessed the Applicant's risk of persecution from his religion from documentary evidence in the NDP for Nigeria and that filed by the Applicant. It found that the vast majority of the violence against Christians occurs in the northeastern, northwestern and central states of Nigeria, and that Christians living in the south and particularly the southwest where Lagos is located, do not face the same risk of violence. Based on the totality of the evidence, the RAD determined that the Applicant did not face a serious possibility of persecution because of his faith or his vocation as a freelance preacher if he were to return to Lagos.

E. *Persecution from his Igbo ethnicity*

[41] The RAD concluded that the Applicant made an allegation of generalized discrimination against Igbos, but that there was no evidence produced – either specific to the Applicant or generalized in accordance with NDP data – of acts of harassment or discrimination that cumulatively constituted persecution against Igbos. The RAD determined that the Applicant's allegations were speculative at best and that he failed to produce evidence to establish that he faced a serious possibility of persecution in Nigeria due to his Igbo ethnicity.

[42] In sum, the RAD's decision as it pertained to the RPD's credibility findings, was reasonable. The RAD's independent assessment concluded that the Applicant had failed to prove that his life was at risk from his brother over their land dispute. It also deemed that he had not established a well-founded fear of persecution in Nigeria because of his Christian faith, his vocation as a preacher, or his Igbo ethnicity.

VI. **Conclusion**

[43] As the Supreme Court of Canada held in *Vavilov*, the “burden is on the party challenging the decision to show that it is unreasonable”: *Vavilov* at para 100. The Applicant failed to do so before the RAD and again before this Court. Furthermore, the reasons provided by the RAD were robust and bore the “hallmarks of reasonableness” in that they were intelligible, transparent and justifiable: *Vavilov* at para 99.

[44] For the reasons set out above I am satisfied the RAD’s decision to dismiss the Applicant’s appeal was reasonable. The application for judicial review is therefore dismissed.

[45] As the present matter raises no serious question of general importance, and none was proposed by either party, there is no question for certification.

JUDGMENT in IMM-811-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-811-22

STYLE OF CAUSE: EMMANUEL CHUKWUEMEKA NSOFOR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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