

Federal Court



Cour fédérale

Date: 20230314

Docket: IMM-9407-21

Citation: 2023 FC 340

Ottawa, Ontario, March 14, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

ABDULQUDUS ADEWALE SALMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Abdulqudus Adewale Salman is a young Nigerian citizen who claimed refugee protection in Canada based on his fear of his maternal uncle, who had threatened to kill him after Mr. Salman inherited his mother's house upon her death.

[2] The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] both found Mr. Salman's claim not credible and rejected it. It is the RAD's decision – including its refusal to admit new evidence and to hold an oral hearing – that is now under review.

I. Facts

[3] The Applicant alleges he is at risk in Nigeria because he informally inherited and occupied his mother's house after she died, upsetting the uncle who himself wanted the house. Sometime around December 2017, the Applicant's maternal uncle threatened to kill him if he did not leave the house. The Applicant fled Nigeria for the United States. He did not report the threat to the Nigerian police because, according to him, they are corrupt and could easily be bribed by his uncle.

[4] From June 2018 to November 2019, the Applicant lived in the United States. He entered Canada in mid-November 2019 and made his asylum claim. He indicates that he never attempted to claim asylum in the United States because of the government's anti-immigrant rhetoric at that time.

[5] Before the RAD, the Applicant sought to introduce new evidence. This evidence – the admissibility of which is a contested issue between the parties – relates to the consequences of a head injury the Applicant suffered in 2001, when he was nine years old. In an affidavit sworn on August 20, 2021 the Applicant states that he had hit his head falling on the playground and that since then he has suffered occasional epileptic seizures, concentration issues and memory loss.

The Applicant sought to have this evidence admitted because he argued these issues affected his testimony and led to the RPD's negative credibility findings against him.

II. Decision under review

[6] The RAD's decision initially addresses the inadmissibility of the new evidence the Applicant sought to have tendered, before considering the merits of the Applicant's appeal.

[7] Having in mind that the RPD hearing was held on May 5, 2021 and its decision issued on May 28, 2021, the RAD found inadmissible three items of evidence for not meeting the admissibility criteria set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. These items were:

A Medical report from Nigeria dated April 9, 2002;

An Affidavit and proof of identification from the Applicant's cousin — explaining the source and circumstances in which the medical report had been obtained — dated July 19, 2021;

A medical referral for a CT scan in Canada dated July 5, 2021;

[8] The RAD held that the admissibility criteria were not met because the evidence would have been available before the RPD rendered its decision, as all three items relate to a medical condition existing since 2001. The RAD noted the onus was on the Applicant to show inability to obtain the evidence prior to the RPD's decision, and that the Applicant had made insufficient submissions on how the requirements of subsection 110(4) were met. The RAD also notes that the Applicant never made any mention of this medical condition at the RPD hearing.

[9] The RAD also rejected the Applicant's argument that he only realized the importance of the evidence upon retaining a new lawyer. Absent a formal allegation of incompetence against former counsel, no argument regarding their failings would be considered. Finally, the RAD considered the Applicant's argument that the evidence is credible and trustworthy and thus should be admitted, but concluded that it had no discretion to admit evidence that failed to meet the criteria in subsection 110(4) of the *IRPA*. Because it found the Applicant's new evidence inadmissible, the RAD rejected the Applicant's request for an oral hearing.

[10] Turning to the merits of the Applicant's claim, the RAD found on a balance of probabilities that the Applicant was not credible on the material elements at the heart of his claim.

[11] First, the RAD found — based on inconsistencies in testimony and lack of reliability of supporting documents — that the death of neither parent had been established.

[12] With regard to the mother's death, the RAD noted that the Applicant had given several differing dates as to when she died and inconsistent and shifting answers as to his involvement in the post-mortem process (specifically whether a post-mortem examination took place and whether the Applicant was involved in sending medical samples to a lab for testing/where the samples were sent). The RAD did not accept the Applicant's explanations of these inconsistencies.

[13] Regarding the father's death, the RAD agreed with the RPD that the Applicant's explanation of an inconsistency regarding the cause of his father's death was insufficient. The Applicant had testified that his father died from natural causes, while his death certificate stated cardiac arrest. The RAD found the Applicant's subsequent explanation of this inconsistency lacking, characterizing it as vague, evasive and difficult to follow (I will return to this alleged inconsistency later).

[14] The RAD further found that the Applicant's related supporting documents, namely death certificates for each parent, lacked reliability and trustworthiness. The RAD concurred with the RPD that the fact the death certificates for both parents bore the same time of death raises additional doubts and noted the fact that the two certificates had close serial numbers despite purportedly being issued five years apart (in 2012 and 2017). The sum of these facts led the RAD to give zero weight to the death certificates for both parents.

[15] Because the Applicant's claim relies on the fact that it was the death of both his parents that led him to inherit his mother's property and face threats from his uncle, the RAD took the fact that neither death had been credibly established to raise general concerns about the overall credibility of the Applicant's claim.

[16] Second, regarding the uncle's profile, the RAD concurred with the RPD in drawing a negative inference against the Applicant for the fact that he mentioned for the first time at the hearing that his uncle was an influential person who knew the police and could be very

aggressive. It further found inconsistencies between the Applicant's explanations regarding his uncle's wealth and influence and his testimony that the uncle lived in a small rented house.

[17] Lastly, regarding the nature of threats from his uncle, the RAD agreed with the RPD that inconsistencies between the Applicant's testimony and an affidavit from his cousin tendered in support of his claim meant that these threats were not credibly established. The Applicant's basis of claim referred to a single threat, whereas the cousin's affidavit referred to a series of attacks (understood to refer to threats). The RAD further noted that in any case the cousin's knowledge consisted only of information relayed by the Applicant and that the cousin did not have independent or direct knowledge of the events.

III. Issues and Standards of Review

[18] This Application for judicial review raises two issues, which are reviewable under the standard of reasonableness:

- A. *Was the RAD's finding that the Applicant's new evidence was inadmissible reasonable?*
- B. *Was the RAD's finding that the Applicant was not credible reasonable?*

IV. Analysis

- A. *Was the RAD's finding that the Applicant's new evidence was inadmissible reasonable?*

[19] The Applicant submits that his new evidence met the requirements of subsection 110(4) of the *IRPA* and should have been admitted. He argues he could not have reasonably been

expected to have presented the documents at the time of the rejection because it took him two months to obtain the necessary medical evidence from Nigeria, which is longer than the three weeks between the RPD hearing and the negative RPD decision.

[20] The Applicant also argues that the RAD applied an elevated threshold of showing unavailability of new evidence; he characterizes the RAD decision as suggesting that new evidence could only be admitted if there was a formal allegation of counsel incompetence.

[21] With respect, I disagree with the Applicant. In my view, the RAD reasonably found that the new evidence was not admissible.

[22] According to the affidavit sworn by the Applicant's cousin, the key medical report from 2002 was already in the possession of the cousin at the time of the RPD hearing. The Applicant's only submission as to why the document was not submitted to the RPD was that the Applicant only realized at the hearing the impact of his condition on his testimony. The RAD rightfully notes that the Applicant would still have had several weeks after the hearing to obtain and relay the document to the RPD. He did not.

[23] Finally, the Applicant's characterization of the RAD's reasons on allegations against former counsel are unfair to the actual written reasons, which rather show that the RAD did not fetter its discretion and applied the appropriate test under subsection 110(4) of the *IRPA*.

[24] As the RAD provided clear and reasonable reasons for why it refused to admit the evidence, there is no reason for the Court to intervene in its decision.

B. *Was the RAD's finding that the Applicant was not credible reasonable?*

[25] The Applicant submits that both the RPD and the RAD engaged in an overly microscopic assessment of his evidence, focusing on perceived inconsistencies.

[26] The Applicant argues his medical issues and stress explain the inconsistent dates he gave for his mother's death. He adds that details of the post-mortem process went beyond his basic knowledge and that he should not have reasonably been expected to know them.

[27] Regarding his father's death, the Applicant argues that the RAD failed to engage with the Applicant's submission that cardiac arrest is a natural cause of death and that there was no inconsistency in the Applicant's testimony.

[28] In addition, the RAD made its findings regarding the serial numbers and the identical times of death on the death certificates without providing the Applicant an opportunity to respond. The Applicant submits that this amounts to a breach of procedural fairness.

[29] First, I fully agree with the Applicant that a cardiac arrest is a natural cause of death, as opposed to a self-inflicted or violent death. There was no inconsistency there and no explanation should have been requested by the RAD from the Applicant.

[30] However, I do not think this has an impact on the overall reasonableness of the RAD's credibility findings.

[31] I do not think the RAD engaged in a microscopic analysis when it found that a combination of inconsistencies rendered the Applicant not credible on the material elements at the heart of his claim, most importantly the death of his mother.

[32] The RAD's primary conclusion was based both on inconsistencies in the Applicant's testimony as well as issues with the documentary evidence (i.e. the death certificates), and the Applicant has established no error with the RAD's assessment on this point.

[33] I am also of the view that no procedural fairness issues arose before the RPD or the RAD.

[34] The RAD is entitled to make independent findings of credibility where a) credibility was at issue before the RPD; b) the RPD's findings are contested on appeal; c) the credibility concerns from the RAD are linked to the Applicant's appeal submissions; and d) the RAD's findings arise from the evidentiary record. (See *Han v Canada (Citizenship and Immigration)*, 2021 FC 1390 at paras 31-32, *Farah v Canada (Citizenship and Immigration)*, 2021 FC 116 at para 16, *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093 at paras 44-48, and *Bebri v Canada (Citizenship and Immigration)*, 2018 FC 726 at para 16).

[35] Before the RAD, the Applicant specifically challenged the RPD's findings that the death certificates were fraudulent, along with its related credibility findings; having specifically asked

the RAD to assess his credibility, he cannot now challenge the RAD's having ruled on this issue. Similarly, the Applicant cannot ask to be given notice of the issue he himself asked the RAD to review on appeal (*Gedara v Canada (Citizenship and Immigration)*, 2021 FC 1023 at para 32).

V. Conclusion

[36] In my view, the RAD's decision to refuse to admit new evidence on appeal is reasonable, and so is its assessment of the credibility of the Applicant's claim. The Court's intervention is therefore not warranted and the Application for judicial review is dismissed.

[37] The parties have proposed no question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-9407-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;
2. No question of general importance is dismissed;
3. No costs are granted.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9407-21

STYLE OF CAUSE: ABDULQUDUS ADEWALE SALMAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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APPEARANCES:

Cemone Morlese FOR THE APPLICANT

Leila Jawando FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell
LLP
Toronto, ON FOR THE APPLICANT

Attorney General of Canada
Toronto, ON FOR THE RESPONDENT