

Federal Court



Cour fédérale

Date: 20230622

Docket: IMM-8321-22

Citation: 2023 FC 882

Ottawa, Ontario, June 22, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

ADARAMOLA ADEOLA ADEKUNLE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Adaramola Adeola Adekunle, is a citizen of Nigeria. She arrived in Canada in 2016 on a study permit in order to attend university. She began a relationship with a Nigerian man in Canada in 2017. They married in April 2018 and her husband filed a sponsorship application. The marriage, however, ended in November 2018. The Applicant ceased attending university in 2018.

[2] The Applicant filed a claim for refugee protection in November 2019. She claims she will face persecution in Nigeria on the basis that she is a bisexual woman.

[3] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated August 2, 2022, dismissing the Applicant's appeal and confirming the decision of the Refugee Protection Division [RPD] to reject her claim for refugee protection, finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] The determinative issue for both the RPD and the RAD was credibility. The RAD concluded that based on a number of credibility concerns, the Applicant had not been in a relationship with a woman in Nigeria nor was their relationship discovered by a member of her family in 2019. The RAD further concluded that the Applicant was not in a genuine same-sex relationship with a woman she alleged was her same-sex partner in Canada. Finally, the RAD found the Applicant's general credibility significantly undermined and that she had not credibly established that she is a bisexual woman or perceived to be a bisexual woman on a balance of probabilities.

[5] The Applicant submits that the RAD erred in refusing to admit her parents' divorce certificate into evidence as new evidence. The Applicant further submits that the RAD erred in its assessment of the Applicant's credibility, and in particular with respect to her sexual orientation and the events alleged to have taken place in Nigeria. Finally, the Applicant pleads that the RAD erred by failing to conduct its own independent analysis of the record.

[6] The Respondent submits that the RAD's assessment of the evidence and the conclusions derived therefrom were reasonable given the inconsistencies contained in the testimonies by the Applicant and her alleged same-sex partner.

[7] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Analysis

[8] It is common ground between the parties that the applicable standard of review is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85).

[9] I turn first to the Applicant's submission that the RAD erred by refusing to admit the Applicant's parents' divorce certificate. The divorce certificate was signed on February 6, 2018, which is approximately 2 years and 10 months prior to the RPD's decision. The RAD concluded that it did not meet the criteria of subsection 110(4) of the IRPA and rejected it as new evidence. Before the RAD, the Applicant had pled that the new evidence corroborated her alleged relationship and the divorce papers showed she was under stress when she took a break from school in 2018. She pled that it was not submitted previously because she did not know it would be an issue before the RPD and she thought it would help her case.

[10] Before this Court, the Applicant pleads that she submitted the certificate to show her state of mind and that she could not have foreseen that her parents' divorce would become an issue. She submits that the RAD erred by not admitting the evidence.

[11] The Respondent submits that the Applicant is seeking to offer a new explanation for the inconsistency in her testimony that she stopped school in 2018 after her father found out about her sexual orientation but later testified it was in July 2019 when she was allegedly caught in her father's home being intimate with a woman. The RAD noted that the explanation that she stopped attending school in 2018 due to her parents' divorce, further undermined her initial testimony as to the reasons she stopped attending school.

[12] I am not persuaded the RAD erred in refusing to admit the Applicant's parents' divorce certificate. It was not unreasonable for the RAD to conclude that it did not meet the criteria of subsection 110(4) of the IRPA given the date of the certificate. Furthermore, and contrary to the submissions of the Applicant, the issue was not the veracity of whether her parents were divorcing or not, or whether the divorce affected her. The difficulty for the RAD was that the Applicant testified that she left school in 2018 because her father found out about her sexual orientation and then later testified he found out about her sexual orientation in 2019 when she visited Nigeria. The RAD found it consistent that she left school in 2018, but did not find it credible that she did so because her father found out about an alleged same-sex relationship. Nor did the RAD find it credible that she was discovered being intimate with a woman in her father's home in 2019.

[13] I now turn to the Applicant's submission that the RAD erred with respect to its credibility findings as to her sexual orientation.

[14] As noted above, the determinative issue for both the RPD and the RAD was credibility. Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned "in the clearest of cases" (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12 [*Liang*]). Credibility determinations have been described as lying within "the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207 at para 26; *Fageir* at para 29; *Tran* at para 35; *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[15] The Applicant submits that the RAD erred in finding that the testimony of the Applicant and her alleged same-sex partner was inconsistent and vague in a number of respects. In particular, the submissions relate to the inconsistencies the RAD found in the evidence about the Applicant's relationship with her alleged same-sex partner's family, her alleged same-sex partner's previous relationship, the suspicions of the Applicant's husband, the Applicant's alleged relationship with a woman in Nigeria, and how that relationship was allegedly discovered.

[16] The Respondent submits that the RAD reasonably had credibility concerns about the foregoing points and highlights the inconsistencies in the testimonial evidence for each point.

[17] Having considered the transcript of the hearing, along with the record, the parties' submissions, and the RAD's decision, I find that the RAD's analysis of the Applicant's credibility bears the required hallmarks of transparency, reasonableness and intelligibility (*Vavilov* at para 100). Based on the record, the RAD was entitled to weigh the testimonial evidence before it and consider the inconsistencies therein. Ultimately, I find that the Applicant's credibility arguments are an impermissible request to re-assess the evidence considered by the RAD (*Vavilov* at para 125). I am also mindful that as the Applicant's submissions pertain to credibility determinations made by the RAD, these determinations are owed a high level of judicial deference (*Liang* at para 12).

[18] The Applicant submits that the RAD also erred by referring to the Applicant's new affidavit which it had not accepted as new evidence. The Applicant submits that if it opted to refer to the affidavit, the RAD ought to have at least considered the explanation therein about why she took a break from school in 2018.

[19] The RAD did not accept the affidavit as new evidence because it reiterated the allegations in the Basis of Claim [BOC] narrative, and as such concluded that it will "treat [the affidavit] as submissions". In her BOC, the Applicant referred to her parent's separation in 2018 and described how her sexual orientation was allegedly discovered in July 2019. The RAD later referred to the affidavit and found that the Applicant's explanation therein for why she stopped

attending school in 2018 (her parents' divorce), when paired with her other testimony that confirmed she stopped school in 2018, further undermined the Applicant's initial testimony that she stopped attending school because her father found out about her sexual orientation.

[20] The Respondent submits that the RAD was entitled to treat the affidavit as submissions and/or a statement, and it was not precluded from doing so under the *Refugee Appeal Division Rules*, SOR/2012-257, once it had concluded that the affidavit was not new evidence pursuant to subsection 110(4) of the IRPA.

[21] I am not persuaded that the RAD erred by referring to the material in the Applicant's affidavit as another example of an inconsistency in the statements provided by the Applicant as to when her father found out about her sexual orientation.

[22] Finally, the Applicant submits that she was taken by surprise when the Respondent based certain submissions on the letter from the Applicant's alleged former partner in Nigeria. I agree with the Applicant that this point was not raised in the Respondent's memorandum, and as such it shall be disregarded.

III. Conclusion

[23] For the reasons set out above, I am of the view that the Applicant has failed to meet her burden of demonstrating that the RAD's decision is unreasonable. I therefore dismiss this application for judicial review.

[24] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-8321-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and
2. There is no question for certification.

"Vanessa Rochester"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8321-22

STYLE OF CAUSE: ADARAMOLA ADEOLA ADEKUNLE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 19, 2023

JUDGMENT AND REASONS: ROCHESTER J.

DATED: JUNE 22, 2023

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