

Federal Court



Cour fédérale

Date: 20230914

Docket: IMM-6472-22

Citation: 2023 FC 1242

Ottawa, Ontario, September 14, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

omolara abosedo odunukan
boluwatife john awoderu

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated June 16, 2022 [the Decision], in which the RAD upheld the decision of the Refugee Protection Division [RPD] finding that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is allowed, because the RAD's assessment of the Applicants' corroborative documentary evidence was unreasonable.

II. Background

[3] The Applicants, Omolara Abosede Odunukan [Principal Applicant] and her minor son [Minor Applicant] are citizens of Nigeria. The Principal Applicant fears persecution at the hands of her paternal uncle, who allegedly wants to subject her to a ritual cleansing because her brothers are gay and bisexual and because her sister is perceived to be lesbian.

[4] In 2016, the Principal Applicant's brothers were outed and, as a result, were sent to Canada where they both made refugee claims. After they were outed, a rumour started that all of the children of the family, including the Principal Applicant, were gay, lesbian, or bisexual. As a result, the Principal Applicant's uncle allegedly demanded that the Principal Applicant's sister be ritually cleansed.

[5] At the time this happened, the Principal Applicant was in Canada with her father visiting her brothers. It was not until her mother and sister joined them in Canada that the Principal Applicant was told of the situation and that all of her siblings were in jeopardy. While the Principal Applicant and her parents returned to Nigeria, her sister stayed behind and made a refugee claim.

[6] After finding out that the Principal Applicant's sister was no longer in Nigeria, the uncle allegedly turned his attention to the Principal Applicant and demanded that her parents produce her for a ritual cleansing. At the time, the Principal Applicant attended a private university that was gated, fully secured, and had a policy of not allowing unauthorized persons to enter the

school premises. After graduating in 2018, the Principal Applicant moved to Lagos with her boyfriend, who is also the Minor Applicant's father.

[7] The Principal Applicant claims that, in March 2019, her uncle found her in Lagos and created an altercation at her workplace. She claims that he spoke to her supervisor at her office and that, after that conversation, she was questioned by her supervisor about her sexuality. She further claims that a few days later she was let go from her work on the suspicion that she was bisexual.

[8] The Principal Applicant claims that she was removed from her workplace by her uncles and police officers and that the police told her she was being arrested for committing several atrocities, including homosexuality. She claims that, during a struggle while being arrested, she hit her head and was knocked unconscious. After being treated in hospital, she was released directly into the custody of her uncle and police officers, and she was taken to a police station where she was held for three days. She further alleges that she was eventually released on the condition that she appear for a cleansing ritual, in lieu of which her son would be abducted.

[9] The Principal Applicant was able to delay the ritual and was subsequently able to flee to Canada using visas that she had previously applied for. She and her son landed in Canada in May 2019 and made refugee claims. The RPD subsequently rejected their claims, and the Applicants appealed to the RAD.

III. Decision under Review

[10] The determinative issue before the RAD was credibility. The RAD ultimately found that the RPD was correct in concluding that the Principal Applicant lacked credibility.

[11] Before reviewing the RPD's negative credibility findings, the RAD addressed an allegation that the Principal Applicant was denied a fair hearing before the RPD. In its reasons, the RPD stated that the Principal Applicant "conveniently" had visas to travel to Canada in April 2019. The Applicants argued that the RPD's use of the word "conveniently" suggested a disbelief and negative bias towards the Applicants.

[12] The RAD agreed that the RPD's phrasing might lead a reasonable person to believe that the RPD was biased but, after reviewing the hearing recording, it found that the RPD's questions demonstrated that it was not biased and that the hearing was not unfair. It found that the RPD provided the Principal Applicant with a fair opportunity to present her case. The RAD also found that the timing of the visas to Canada was significant, as explained further below.

[13] The first credibility finding considered by the RAD related to the Principal Applicant's decision to return to Nigeria after finding out that her sister was at risk. The Principal Applicant explained that, because she identifies as straight and had a boyfriend and a child, she believed she would not be perceived as lesbian or bisexual. The RAD found the RPD erred by not considering this explanation for returning to Nigeria despite the risk to her sister. The RAD therefore overturned that negative credibility finding.

[14] However, the RAD agreed with the RPD that the Principal Applicant's credibility was undermined based on her return to university, instead of going into hiding, after her uncle's demand that she be presented for spiritual cleansing. The RAD noted that the Principal Applicant had been attending that school since 2012, as a result of which it would presumably have taken her uncle little effort to find her there. The RAD found that it made little sense that the Principal Applicant's parents would have found the risk presented by the uncle so serious that her sister

had to immediately go into hiding and leave Nigeria within weeks to seek refugee protection in Canada, while the Principal Applicant, under exactly the same circumstances, was considered safe enough to continue attending the same school and commuting to stay with her boyfriend. This indicated to the RAD that the Principal Applicant's parents, and the Principal Applicant herself, did not believe her uncle posed as serious a risk as he did to her sister.

[15] Next, the RAD took issue with the Principal Applicant's characterization of her situation as being in hiding, while at school and while living at her boyfriend's residence during her National Youth Service. It therefore drew a negative inference about the credibility of her claim.

[16] The RAD also drew a negative credibility inference due to the delay in the Principal Applicant leaving Nigeria. After returning to Nigeria and being aware of her uncle's demands to cleanse her in lieu of her sister, the Principal Applicant nevertheless stayed in Nigeria for nearly two years until May 2019.

[17] Next, the RAD analysed whether the RPD erred in finding that the police were not interested in the Principal Applicant. The RPD drew a negative credibility inference based on the Principal Applicant's claim that she was held in jail for three days because the police had started a formal process against her. The RAD noted the Principal Applicant's mother's statement that she was unable to bail out her daughter from jail due to the fact that it was the weekend. In the RAD's view, it was clear that the reason for the delay in her release was not because formal charges were being filed, but rather because it was the weekend and bail would not be processed until a weekday. Further, the RAD found that, while the Principal Applicant claimed that the sole bail condition was that she report for ritual/spiritual cleansing, no formal bail documents were in

evidence and the evidence did not indicate that any documents were ever signed. The RAD concluded that the police had no independent interest in pursuing the Principal Applicant.

[18] Finally, the RAD considered whether the Principal Applicant's uncle had an ongoing interest in pursuing the Principal Applicant. The RAD considered whether the uncle had the possibility of corrupting police and using them to force the Principal Applicant to be spiritually cleansed. The RAD ultimately found that the evidence did not establish a serious possibility of persecution by the uncle, whether assisted or not by the police. The RAD drew on the fact that, after the Principal Applicant left Nigeria, it took weeks for the police and the uncle to question the Principal Applicant's parents regarding her whereabouts, and it took them months to locate her then ex-boyfriend.

[19] For all these reasons, the RAD found the Principal Applicant to be lacking in credibility about all of the elements of her claim.

[20] Having found the Principal Applicant to be lacking in credibility, the RAD next examined whether supporting letters could establish the Applicants' claim. These letters were from the Principal Applicant's parents, her siblings, and her ex-boyfriend. The RAD gave all of these letters little weight in establishing the risks to the Principal Applicant and her son for several reasons.

[21] First, the RAD found that their authors' credibility was undermined by their decision to encourage the Principal Applicant to remain in Nigeria when she could have left for Canada on a valid visa. Second, the RAD found their credibility undermined by their characterization of the Principal Applicant's behaviour as living a life in hiding. Third, the RAD found that their statements of disbelief and surprise that the Principal Applicant's boyfriend was located by the

police lacked credibility. The RAD found it to be foreseeable that the boyfriend would be found, given that the Principal Applicant disclosed his address as her own in many settings. Finally, the RAD gave little weight to the letters, because they were based on events that the authors did not witness, such as the incidents at the Principal Applicant's workplace. Where they were based on shared experiences with the Principal Applicant, they were inconsistent.

[22] The remaining corroborative evidence included photos that showed the Principal Applicant on a hospital bed, with a drip connected to her arm and police officers standing and/or sitting by her bedside. The RAD noted that there were no other documents from the hospital and that the Principal Applicant could not name the hospital. Further, the RAD noted that the Principal Applicant's parents and ex-boyfriend provided no details about the name or location of the hospital. In light of the vagueness of the letters and the Principal Applicant's unreliability and lack of knowledge, the RAD found the photos to be of little assistance. It also noted that the photos were not date or timestamped, such that it was impossible to corroborate when they were taken. As such, the RAD gave little weight to the photos in establishing the Applicants' claim.

[23] Next, the RAD considered the Principal Applicant's termination letter. It noted that the letter was unsigned and that, in place of the signature from the Human Resources General Manager, there was an address stamp for the company. The RAD found the complete absence of any signature on a document as formal and important as an early termination letter to be significant. Therefore, the RAD found that the document lacked credibility.

[24] The remaining corroborative evidence was a letter from the Principal Applicant's friend and former colleague. In light of the RAD's finding about the credibility and genuineness of the termination letter, the RAD found that the credibility of the colleague was also undermined. The

RAD further noted that there was no evidence in the form of an employment identity card or similar documentation that would establish that the colleague was, in fact, employed at the same place as the Principal Applicant.

[25] In light of the foregoing, the RAD dismissed the appeal and confirmed the decision of the RPD that the Applicants are neither Convention refugees nor persons in need of protection.

IV. Issue and Standard of Review

[26] The Applicants have articulated the following three issues for the Court's consideration in this application for judicial review:

- A. Whether there was a violation of the principles of natural justice and procedural fairness because the RPD member displayed a reasonable apprehension of bias;
- B. Whether the RAD erred in assessing the credibility of the Principal Applicant; and
- C. Whether the Applicant erred in assessing the Principal Applicant's corroborative documentary evidence.

[27] The standard of reasonableness clearly applies to the second and third issues, which relate to the RAD's substantive analysis of the evidence (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). The first issue, although concerning a matter of procedural fairness, is also governed by the reasonableness standard, as it relates to an aspect of the merits of the Decision by the RAD in considering the fairness of the process before the RPD (see, e.g., *Onukuba v. Canada (Citizenship and Immigration)*, 2023 FC 877 at paragraph 17).

V. Analysis

[28] My decision to allow this application for judicial review turns on the third issue raised by the Applicants, related to the RAD's assessment of the corroborative evidence. That evidence included a letter purportedly written by the Principal Applicant's former employer, which conveyed to her that her employment was terminated due to her sexual orientation, as well as a letter purportedly written by another employee, corroborating the Principal Applicant's termination and the incident involving her uncle and the police that allegedly resulted in the termination.

[29] As explained earlier in these Reasons, the RAD gave little weight to the termination letter, because it was unsigned, employing an address stamp for the company rather than the signature of the Human Resources General Manager. The RAD found the absence of a signature on a document as formal and important as an early termination letter to be significant and found, on a balance of probabilities, that the letter was not a genuine document. Based in part on these findings, the RAD found that the credibility of the letter from the other employee was also undermined.

[30] I find compelling the Applicants' argument that the RAD's reasoning surrounding the termination letter is unreasonable, because the RAD cites no objective evidence in support of its analysis that such a letter would bear a signature rather than a stamp. In response, the Respondent submits that the RAD is entitled to rely on its specialized knowledge in assessing

documents from a particular country. In the absence of any objective support for such specialized knowledge, I am not persuaded by that response.

[31] As the RAD's conclusion that the employee's letter was not credible turned significantly on its analysis of the termination letter, the RAD's treatment of the employee's letter is also unreasonable.

[32] These particular pieces of documentary evidence are significant because, if they were to be accepted, together they provide at least some corroboration of the circumstances surrounding the incident involving both the Principal Applicant's uncle and the police, which allegedly precipitated the Applicants' departure from Nigeria. As I have found the RAD's assessment of this evidence unreasonable, I conclude that the Decision must be set aside and the matter returned to a differently constituted panel of the RAD for redetermination. It is therefore unnecessary for the Court to consider the other arguments raised by the Applicants.

[33] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-6472-22

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the RAD for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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