Federal Court  Cour fédérale

Date: 20231016

Docket: IMM-5748-22

Citation: 2023 FC 1373

Ottawa, Ontario, October 16, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

OLAKUNLE FEMI OLADAPO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Olakunle Femi Oladapo, seeks judicial review of a decision by a Senior Immigration Officer (the "Officer") dated April 28, 2022, denying the Applicant's Pre-Removal Risk Assessment ("PRRA") application, pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer found insufficient evidence that the Applicant would be persecuted or subject to a risk to his life, torture, or cruel and unusual treatment or punishment as a bisexual man if returned to Nigeria.

[3] The Applicant submits that the Officer unreasonably relied on the previous refusal of the Applicant's refugee claim by the Refugee Protection Division ("RPD"), in lieu of a proper consideration of the evidence arising thereafter, and conducted an unreasonably microscopic review of the evidence.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 48-year-old citizen of Nigeria. He is a bisexual man.

[6] The Applicant arrived in Canada on November 24, 2014, and made a claim for refugee protection, alleging a fear of persecution in Nigeria on the basis of his sexual orientation. He claims that he received death threats and retaliation due to his sexuality between about 2010 and 2013.

[7] The Applicant claims to be an active member of the LGBTQ community in Canada. He met his current spouse in October 2016, at a community centre orientation session. They were married on May 12, 2018. The Applicant's spouse acquired Canadian citizenship in 2013.

[8] In a decision dated June 4, 2018, the RPD refused the Applicant's claim. The RPD raised concerns regarding the Applicant's credibility, identity, and the lack of credible basis for the Applicant's claim.

[9] In July 2018, the Applicant's spouse sponsored the Applicant in his application for permanent residence under the Spouse or Common-law Partner in Canada class. This application was refused on June 23, 2020.

[10] Meanwhile, the Applicant applied for a PRRA on December 13, 2019, which was initially rejected in a decision dated November 9, 2020. The Applicant provided additional PRRA submissions on November 19, 2020, with new information that his mother had been attacked due to the Applicant's same-sex activities, including correspondence from his uncle, his mother's medical report, additional proof of his same-sex relationship, sources from the National Documentation Package ("NDP"), and jurisprudence. These submissions were received approximately a week before the initial refusal was rendered.

[11] The Applicant sought leave and judicial review of the November 9, 2020, PRRA refusal, alleging that the officer failed to consider any of the additional submissions. The parties reached

a settlement on February 25, 2022. The PRRA application was reopened for redetermination and the Applicant made new submissions, which were received on March 29, 2022.

[12] The Applicant submitted evidence of new risks facing him in Nigeria, which arose after the RPD decision. He alleged that his friend and former roommate, Olalekan Olayiwolu (Mr. "Olayiwolu"), was removed to Nigeria in October 2019, and began spreading negative sentiments about the Applicant by informing people of the Applicant's same-sex marriage in Canada. The Applicant alleges that as a result, his mother was attacked in their family home in December 2019.

B. *Decision under Review*

[13] In a decision dated April 28, 2022, the Officer refused the Applicant's PRRA application.

[14] The Officer found that the Applicant's evidence did little to address the RPD's finding that the Applicant's claim lacked a credible basis and gave the RPD's findings considerable weight. The Officer also found that the Applicant provided little new, personalized, and probative evidence in support of his PRRA application.

[15] The Officer found insufficient evidence to support the Applicant's allegations regarding Mr. Olayiwolu and, specifically, of Mr. Olayiwolu's identity or removal from Canada, that the Applicant and his spouse lived with Mr. Olayiwolu, or that he had attended their wedding.

[16] The Officer found that his spouse's written statement was very similar to the Applicant's statement and provided little additional information to support the Applicant's claims.

[17] The Officer found that the emails describing Mr. Olayiwolu returning to Nigeria and spreading resentment against the Applicant included insufficient information to establish details about the author's identities and relationships to the Applicant or the details described therein. For instance, the Officer found that the emails referred vaguely to the "community" wishing to harm the Applicant and attacking his family, but provided few details, such as dates or the names of community members.

[18] The Officer considered an email from the Applicant's uncle, Oladimaji Alli, describing his mother's condition after her attack and stating that she required surgery. The Officer also acknowledged a medical report describing his mother's condition and the attack against her by an irate mob who claimed her son had "defiled the land." The Officer found that this evidence was not accompanied by additional evidence establishing the identities of the email's author and the Applicant's mother, and that the medical report was essentially hearsay as it repeated the Applicant's statements with little evidence of the author's firsthand knowledge. The Officer noted that the email and report were not supported by further correspondence from the Applicant's mother or a more recent medical report. The Officer found that while the Applicant's submission held substantial credible value to the statements made throughout this PRRA application, they held little weight in establishing such statements on a balance of probabilities.

[19] The Officer found the photos of, and correspondence between, the Applicant and his spouse shed little light on the Applicant's LGBTQ-oriented activities in Canada for the purpose of a *sur place* claim, and were vague in describing the Applicant's marriage or activities in Canada that allegedly put him at risk.

[20] Overall, the Officer found insufficient evidence to establish that Mr. Olayiwolu lived with the Applicant before returning to Nigeria, that the Applicant would be known or targeted based on LGBTQ-oriented advocacy for the purpose of a *sur place* claim, or that the Applicant's mother was attacked on the basis of the Applicant's sexuality. While the Officer noted that the country condition evidence demonstrated that the LGBTQ community faces harm in Nigeria, the Officer found little evidence to show that anyone in Nigeria was looking to harm the Applicant.

III. Issue and Standard of Review

[21] This application raises the sole issue of whether the Officer's decision is reasonable.

[22] The parties agree the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16–17, 23–25). I agree.

[23] 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, 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).

[24] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

IV. Analysis

[25] The Applicant submits that the Officer relied on the RPD's decision to an unreasonable extent and conducted an unreasonably microscopic review of the evidence. In my view, the Applicant has not raised a reviewable error in the Officer's decision to warrant this Court's intervention.

[26] The Applicant submits that the Officer unreasonably afforded considerable weight to the RPD's findings. The Applicant notes that he provided his marriage certificate, emails detailing the risk he faces in Nigeria, photos and conversations with his spouse, and evidence of volunteer work with the LGBTQ community at the 519 Community Centre in Toronto. The Applicant also

notes the WhatsApp messages with his spouse were not meant to serve as evidence of risk, but to show the Applicant's ongoing communication with his spouse from 2018 to 2020.

[27] The Applicant argues that the Officer conducted a microscopic analysis of his evidence in assessing the potential risk he faces in Nigeria. He submits that the emails clearly demonstrate the hostility the Applicant faces in his community due to resentment spread by Mr. Olayiwolu. They describe the events that occurred when the Applicant's mother was attacked. The letter describing the attack and the risk to the Applicant is clearly indicated as being from his uncle, informing the Applicant of his mother's health.

[28] The Applicant submits that the Officer failed to adequately consider the medical report proffered as evidence, which describes his mother's medical condition. He submits that the absence of a more recent medical report should not diminish the value of the existing report, as the Applicant's mother suffered no further attack beyond the one detailed therein.

[29] The Applicant submits that the Officer unreasonably found insufficient evidence of a risk to the Applicant upon return. While the Applicant had little evidence of his advocacy with the 519 Community Centre, there is evidence indicating the Applicant is in a same-sex marriage and cohabiting with his husband, and that his community in Nigeria knows of his sexuality.

[30] The Respondent maintains that the Officer's decision is reasonable. The Respondent contends that the Officer reasonably found the Applicant's evidence is insufficient, which falls squarely within the Officer's expertise. The Respondent submits that it is open to the Officer to

reject the Applicant's claim on the basis that he provided insufficient evidence, without making any credibility findings. The onus is on the Applicant to provide sufficient evidence to support his allegations, on a balance of probabilities, and the Officer is entitled to find that this onus was not met.

[31] The Respondent submits that the Officer reasonably relied on the RPD's finding that the Applicant's claim lacked a credible basis and, in turn, reasonably found that the Applicant did little to overcome this finding. The evidence and submissions proffered by the Applicant before the Officer were similar to those put before and assessed by the RPD.

[32] The Respondent submits that the Officer reasonably considered and afforded little weight to the evidence the Applicant provided on redetermination, including the emails, medical report, and WhatsApp transcripts. The Applicant provided little explanation for why he could not provide more identifying information regarding Mr. Olayiwolu and little evidence supporting his LGBTQ-related advocacy with the 519 Community Centre.

[33] I agree with the Respondent. I find that a majority of the Applicant's submissions amount to a request that this Court reweigh and reassess the evidence that was before the Officer and, in large part, the RPD. However, this is not a valid ground for judicial review (*Vavilov* at para 125). A reviewing court will not interfere with a decision-maker's exercise of assessing and evaluating the evidence before it, so long as the overall decision is reasonable in light of the evidence (*Vavilov* at para 125).

[34] The Respondent rightly notes that the Officer is entitled to find that the Applicant's evidence is insufficient to substantiate his claims and render a positive decision on his PRRA application. As my colleague Justice Aylen found in *Nikkhoo v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 764, "the determination by PRRA officers of risk on return to a particular country is a 'fact-driven inquiry' and this determination attracts considerable deference" (at para 14, citing *Yousef v Canada (Minister of Citizenship and Immigration*), 2006 FC 864 at para 19).

[35] A finding that certain evidence should be afforded a certain degree of weight does not necessarily equate to a finding that such evidence was not appropriately considered, nor that the Officer's assessment was overly microscopic. Reviewing the decision globally, the Officer's reasons reflect a transparent and justified consideration of the evidence (*Vavilov* at para 126).

[36] I further find that the Officer reasonably relied on the RPD's finding that the Applicant's claim lacked a credible basis, given that the Applicant largely presented the same evidence and submissions before both decision-makers. The Officer reasonably found that the Applicant did little to overcome this finding. For these reasons, I find that the Applicant has not raised a reviewable error in the Officer's decision.

V. Conclusion

[37] This application for judicial review is dismissed. The Officer's decision is justified, transparent, and intelligible (*Vavilov* at para 99). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5748-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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