Federal Court  Cour fédérale

Date: 20231117

Docket: IMM-10795-22

Citation: 2023 FC 1524

Ottawa, Ontario, November 17, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

ALFRED EFOSA ODIGIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated October 10, 2022, dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD], finding that the Applicant had failed to establish his identity and that his general credibility had been seriously undermined by significant discrepancies in his testimony and documentary evidence [Decision].

[2] The Applicant alleges that his name is Alfred Efosa Odigie and that he is a citizen of Nigeria born in 1973. He submits that the RAD breached procedural fairness by raising a new issue and failing to put it to the Applicant so that he had an opportunity to address it. The Applicant further submits that the RAD erred in its assessment of his identity documents and in particular was unreasonably dismissive of them.

[3] 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 Decision is unreasonable. For the reasons below, this application for judicial review is dismissed.

II. Analysis

[4] The first issue raised by the Applicant is an alleged breach of procedural fairness by the RAD. In the context of a judicial review, one addresses questions of procedural fairness by asking "whether a fair and just procedure was followed" (*Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47). This standard offers no deference to the decision maker.

[5] The Applicant's alleged breach of procedural fairness is that the RAD raised a new issue and failed to put its concern to the Applicant. Specifically, that the RAD noted that the Applicant had stated that he attended Ambrose Alli University whereas the documentation he provided indicated that it was from Edo State University.

[6] When a new issue is raised by the RAD, it must generally give notice to the parties so that they may make submissions on the issue (*Herrera Salas v Canada (Citizenship and Immigration)*, 2021 FC 1363 at para 18; *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at paras 66-71 [*Ching*]). In *R v Mian*, 2014 SCC 54, the Supreme Court of Canada defined what constitutes a new issue:

> [30] An issue is new when it raises a new basis for potentially finding error in the decision under appeal beyond the grounds of appeal as framed by the parties. Genuinely new issues are legally and factually distinct from the grounds of appeal raised by the parties (see *Quan v. Cusson*, 2009 SCC 62, [2009] 3 S.C.R. 712, at para. 39) and cannot reasonably be said to stem from the issues as framed by the parties. It follows from this definition that a new issue will require notifying the parties in advance so that they are able to address it adequately.

[7] In *Ching*, Justice Catherine M. Kane concluded that the above principles apply, with necessary modifications, in the context of appeals before the RAD (at para 71). In *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 [*Kwakwa*], Justice Denis Gascon described a "new question" as follows:

> [25] . . . A "new question" is a question which constitutes a new ground or reasoning on which a decision-maker relies, other than the grounds of appeal raised by the applicant, to support the valid or erroneous nature of the decision appealed from.

[8] The Applicant submits that the RAD breached its duty of procedural fairness by failing to put its concerns about the Edo State University documentation to the Applicant. The Applicant pleads that by never raising the issue, the RAD prevented the Applicant from addressing the inconsistency. The Applicant submits that the university changed its name around the time the

Applicant was studying there, and the RAD ought to have verified this by checking on the internet.

[9] The Respondent submits that there were concerns about these documents before the RPD, and the RAD is entitled to comment on glaring inconsistencies on the face of the documents before it. The Respondent highlights that in any event, after noting the inconsistency about the name of the university, the RAD acknowledges that this inconsistency was not put to the Applicant and thus stated, "I am not placing any weight on the different name of the institution he allegedly attended."

[10] I have not been persuaded that the RAD breached procedural fairness. First, I agree with the Respondent that the RAD is entitled to comment on obvious inconsistencies in documentation where such documents have already been at issue before the RPD. Before the RAD, the Applicant argued that the RPD did not properly assess the university documents and erred by giving them no weight. I therefore do not find that the present issue is a new one, as it is not "legally and factually distinct from the grounds of appeal advanced" (*Onkoba v Canada (Citizenship and Immigration)*, 2023 FC 1184 at para 48 [*Onkoba*]; *(Canada (Citizenship and Immigration) v Alazar*, 2021 FC 637 at para 77). Moreover, the RAD is entitled, and indeed obliged, to independently assess the documentary evidence (*Onkoba* at para 49).

[11] Second, and in any event, the RAD attached no weight to the inconsistency regarding the name of the university. As noted by Justice Gascon, above, "a new question is a new ground or reasoning on which a decision-maker relies" (*Kwakwa* at para 25). The RAD did not rely on the

inconsistency in the university's name in order to support its conclusion on the Applicant's identity.

[12] The second issue raised by the Applicant is the RAD's treatment of the Applicant's identity documentation. In particular, the Applicant submits that the RAD was unreasonably dismissive of the documents he submitted.

[13] The applicable standard of review of this issue 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). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

[14] I am mindful of the comments of my colleague Justice John Norris on the issue of identity in *Yusuf Adan v Canada (Citizenship and Immigration)*, 2022 FC 1383:

> [51] Identity is at the "very core of every refugee claim" (*Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 at 27). Proof of identity is therefore an essential requirement for a person claiming refugee protection. Without this, there can "be no sound basis for testing or verifying the claims of persecution or, indeed for determining the Applicant's true nationality" (*Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at para 26; see also *Liu v Canada*

> *(Citizenship and Immigration)*, 2007 FC 831 at para 18 and *Behary v Canada (Citizenship and Immigration)*, 2015 FC 794 at para 61). A failure to prove identity will be fatal to a claim; absent proof of identity, there is no need to examine the evidence or the claim any further: see *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 4; *Diallo v Canada (Citizenship and Immigration)*, 2014 FC 878 at para 3; *Liu* at para 18; *Ibnmogdad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 321 at para 24; and *Behary* at para 61. In short, a refugee claimant must establish that they are who they say they are. At a minimum, this encompasses their personal identity and their nationality (or lack of nationality, as the case may be). Should they fail to establish these things, their claim for protection must also fail. …
>
> [55] Together, section 11 of the Rules and section 106 of the IRPA place the onus on a claimant to provide acceptable documentation establishing their identity. Obviously, to be able to provide such documentation, the claimant must be in possession of it. If a claimant does not possess acceptable documentation establishing identity, they must provide a reasonable explanation for why this is the case or demonstrate that reasonable steps were taken to obtain such documentation. This is a heavy burden: see *Su* at para 4; *Malambu v Canada (Citizenship and Immigration)*, 2015 FC 763 at para 41; and *Tesfagaber v Canada (Citizenship and Immigration)*, 2018 FC 988 at para 28.

[15] I am equally mindful of the comments of my colleague Justice Roger R. Lafrenière on questions of identity and the RAD's expertise: "Questions of identity of a claimant are within the RAD's expertise and the Court should give it significant deference. The Court will only interfere if the decision under review lacks justification, transparency or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law" (*Kagere v Canada (Citizenship and Immigration)*, 2019 FC 910, at paragraph 11).

[16] The RAD had concluded that (i) there was no probative documentary evidence before the RAD to support that the Applicant is who he says he is and born in the year he says he was; and

(ii) there was no credible evidence from Nigeria to support the Applicant's identity as a Nigerian citizen.

[17] The Applicant submits that the RAD's treatment of his identity documentation was unreasonable. The documentation for which the RAD, in the Applicant's view, was unreasonably dismissive was his Nigerian passport (issued under a false name), Certificate of Registration of Birth, Statutory Declaration of Age, Nigerian National Identity Card, Nigerian Driver's Licence, University Documentation, Crime Diary and High Court of Justice Affidavit. The Applicant pleads that he submitted extensive documentary evidence and the RAD failed to properly analyze the totality of it.

[18] The Respondent highlights that the Nigerian passport was issued under a false name, the RAD and the Canada Border Services Agency [CBSA] concluded that the National Identity Card was fraudulent and counterfeit, and that the Driver's Licence was determined by both the RAD and the CBSA to also be fraudulent. Moreover, the CBSA analysis concluded that the University ID was inauthentic. The Respondent pleads that it was reasonable for the RAD to conclude that there was no credible evidence to establish the Applicant's alleged identity.

[19] Having considered the Applicant's arguments, and the record before the RAD, I have not been persuaded that the RAD committed a reviewable error in its analysis of the Applicant's identity documents. As stated above, the RAD is owed significant deference on this issue. Given the evidence in the present matter, in particular the numerous fraudulent documents, and the RAD's detailed consideration of each document, I do not find there are grounds to intervene.

Ultimately, I find the arguments submitted by the Applicant to be impermissible requests to reweigh the evidence considered by the RAD (*Vavilov* at para 125).

III. Conclusion

[20] For the foregoing reasons, I conclude that there was no breach of procedural fairness and the Decision meets the standard of reasonableness set out in *Vavilov*. This application for judicial review is therefore dismissed. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-10795-22

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

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