Date: 20240108

Docket: IMM-2019-22

Citation: 2024 FC 27

Toronto, Ontario, January 8, 2024

PRESENT: Madam Justice Go

Docket:

 BETWEEN:

Mosunmola Victoria AWONUGA
Oluwapelumi Samuel AWONUGA
Oluwadarasimi Esther AWONUGA
Oluwafimidararere Deborah AWONUGA

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I.   Overview

[1]   The Applicants, Ms. Mosunmola Victoria Awonuga [Principal Applicant or PA] and her

three minor children [minor applicants] are citizens of Nigeria. The Applicants filed a refugee

claim based on two allegations: first, that the PA and her ex-husband were active participants in

the opposition party, the Peoples Democratic Party [PDP] and they fear the ruling All Peoples Congress Party, and second, that the ex-husband's family would subject the female minor applicants to female genital mutilation [FGM].

[2] The Refugee Protection Division [RPD] found the Applicants put forward fraudulent documents to support their allegations and made false allegations of a material and substantive nature in an attempt to deceive the authorities determining refugee status. The RPD further found that the Applicants' claims are "clearly fraudulent" and concluded that their claims are "manifestly unfounded" under section 107.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] [Decision].

[3] The Applicants seek a judicial review of the Decision. For the reasons set out below, I dismiss the application.

II.   Issues and Standard of Review

[4] The Applicants argue the RPD erred in finding their claim for protection was "manifestly unfounded" and that their claim does not amount to the "clearly fraudulent" threshold set out in section 107.1 of the *IRPA*. The Applicants also argue the RPD erred by extending its negative credibility finding onto the rest of their documentary evidence.

[5] The parties agree the standard of review is reasonableness, as set out in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[6]   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, is 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 and 133-135.

[7]   For a decision to be unreasonable, the Applicants 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.

III.   <u>Analysis</u>

[8]   Since the RPD made the finding of "manifestly unfounded" after it found the Applicants

submitted fraudulent documents, and after it decided to give the remaining documents no weight,

I will address the issues raised by the Applicants in the following order:

   a. Did the RPD err in finding the Applicants submitted fraudulent documents?

   b. Did the RPD err in giving no weight to the remaining documents?

   c. Did the RPD err in finding the Applicants' claim was "manifestly unfounded?"

A.   *Did the RPD err in finding the Applicants submitted fraudulent documents?*

[9]   The Applicants submit that the RPD's determination of manifestly unfounded was based on three pieces of evidence they provided: the PDP membership card, a letter from PDP, and a Police Report [Police Report] made in Lagos by the PA. The Applicants challenge the RPD's determination with respect to the documents.

[10]   The PDP membership card in question was allegedly issued in 2012 when the PA joined the PDP and later became a youth leader. The Applicants also submitted a Letter of Support from the PDP allegedly issued in 2021 to the PA. The Applicants argue that the RPD found the stamp inside the membership card was not the same as the stamp in the support letter without considering that those documents were not written or produced at the same time.

[11]   The Applicants submit it was unreasonable of the RPD to fault them for spelling mistakes in the PDP documents and find them fraudulent, citing *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 [*Oranye*]. The Applicants further submit that the RPD ironically stated it was not applying Canadian standards to non-Canadian documents when it did exactly that.

[12]   I find the Applicants' arguments unpersuasive.

[13]   First, I find the RPD was not only concerned with "spelling mistakes" but also the lack of what the RPD considered to be "adequate explanations" on the part of the PA regarding several discrepancies in the PDP documents, which it noted were issued by a major party in Nigeria.

[14]   Specifically, the RPD was concerned about the different ways PDP's name was spelled in these documents. On the front of the membership card, the party name reads as the "Peoples Democratic Party," which is consistent with the objective evidence about the party's name. However, the stamp on the inside of the card lists the party name as "People Democratic Party," missing the pluralization of the word "People." The RPD also noted the party name was spelled "Peoples' Democratic Party" (with an apostrophe) in both the Letter of Support's header and contents. The RPD put these discrepancies to the PA and asked for her comment. With respect to the stamp, the PA stated she did not previously take note of the spelling differences "but she was seeing it now," and the PA pointed out that the PDP name was spelled correctly on the front of the card. As to the Letter of Support, the PA answered she did not realize or see the spelling differences and asserted the letter was genuine. The PA added "maybe it was the way they made the stamp, that they just took it as a graphic, that they and didn't take it seriously."

[15]   The RPD found none of the PA's explanations adequately addressed the issues of both the membership card and the Letter of Support. The RPD acknowledged it should not apply Canadian standards to non-Canadian documents, but found it would be reasonable to expect that a major political party be able to spell its own name correctly and consistently in their own documents. Based on these concerns the RPD found, on a balance of probabilities, that these documents were fraudulent.

[16]   I find the RPD's reasons transparent and intelligible, and its conclusion justified in light of the legal and factual constraints.

[17]   I find the case cited by the Applicants distinguishable on the facts. In *Oranye*, the documents in question were the applicants' personal affidavits, not official documents. Furthermore, in *Oranye*, Justice Ahmed found that the Refugee Appeal Division [RAD] came to its conclusion on the affidavits by solely relying on objective evidence that suggests fraudulent documents are prevalent in Nigeria, without actually conducting a factual finding. It was on that basis that Justice Ahmed cautioned against "masking authenticity findings by simply deeming evidence to be of 'little probative value':" *Oranye* at paras 26-28. Here, the RPD member conducted their own examination of the documents and put their concerns to the PA for her comments.

[18]   I find the facts of this case are more similar to those in the case cited by the Respondent, *Mohamed v Canada*, 2022 FC 55 [*Mohamed*] in which Justice Bell found the use of "Somali Democratic Republic" in the applicant's evidence of government documents, long after Somalia changed its name to the "Federal Republic of Somalia," "impossible to overlook." Justice Bell also distinguished *Oranye*, noting that misspells in government stamps or pre-printed portions of letterheads are not the same as spelling mistakes in personal affidavits: *Mohamed* at paras 24-25. Justice Bell cited *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 [*Azenabor*], where Justice McHaffie similarly made the distinction between spelling mistakes in the body of a document and those in officially printed portions of an identity card or letterhead. The latter,

Justice McHaffie noted, would more likely raise alarm as to a document's genuineness:

Azenabor at para 31.

[19]   At the hearing, Applicant's counsel made new arguments and submitted that it was unreasonable to expect a political party in Nigeria, a "third world country," to not have printing errors in their document, to be able to spell its name correctly on its documents, and for its people to notice such errors. Counsel further argued that it was reasonable to expect regional variation in these documents. I reject these new arguments as they were not grounded on any evidence.

[20]   Further, just as decision-makers should be cautious not to apply Canadian standards when assessing non-Canadian documents, caution should be exercised by parties and decision-makers alike to avoid casting a broad, disparaging light on countries in the global south by suggesting that their peoples and institutions somehow lack the competence to produce documents in a professional manner.

[21]   In the context of this case, given the mistakes that were found in the spelling of the name of a major political party, I find the Court's analysis in *Mohamed* and *Azenabor* applicable, and confirm as reasonable the RPD's determination of the fraudulent documents.

[22]   As to the Police Report, the Applicants submitted that the RPD found it to be fraudulent for two reasons. First, the Police Report was issued at Lagos and not at Akura where the Applicants resided at the time and the Applicants have not explained this inconsistency, which

negatively impacts their overall credibility. Second, the Applicants submit that the RPD took

issue with the similarity between the Police Report and the personal narrative of the PA in the

Basis of Claim [BOC]. The Applicants argue the errors in the Police Report are not such to be

termed a fraudulent document.

[23]   Once again, I find the Applicants mischaracterize the RPD's findings.

[24]   The RPD was concerned about the Police Report being issued in Lagos because the PA

did not mention in her BOC narrative that she went to Lagos to make the report, and has not

explained this inconsistency. The RPD noted that the PA testified that she only received the

Police Report once she was in Canada, after she had written out her allegations. The PA also

testified that no one other than counsel had helped her draft her BOC and that she did not use any

documents to help her draft her narrative. It was in that context that the RPD found it not

plausible that the precision and similarities between the two documents would "naturally occur."

[25]   An example of the striking similarities between the two documents was the identical

statement in both that the PA "heard [the agent of persecution] was planning to use diabolical

powers (voodoo powers) to hypnotize them and take the children for circumcision."

[26]   In addition to the striking similarities in multiple sections of the Police Report and the

Applicants' BOC narrative, the RPD also noted that the ages of the children in the Police Report,

allegedly filed in 2017, match up with their ages when the BOC narrative was drafted in 2020.

While the PA explained the similarities were because "that was what happened" and that she had

narrated what happened to her to the police, the explanation, as noted by the RPD, did not address the similarities in the ages of the minor applicants between the two documents. Nor did the PA reasonably explain the "overwhelming number of striking similarities and near word-for-word copies" between the BOC and the Police Report.

[27]   Other than asserting their disagreement with the Decision, the Applicants do not point to any errors arising from the RPD's reasoning, nor could I find any.

B.   *Did the RPD err in giving no weight to the remaining documents?*

[28]   The Applicants argue the RPD erred by unreasonably extending its finding of fraud to their other evidence, which was not given the benefit of the doubt. This evidence includes affidavits from the PA's brother and from her friend, which attested to the PA's and her ex-husband's participation in the PDP.

[29]   The Applicants concede that while the remaining documents do not speak to their central allegations, they should still count toward their credibility as they showcase the Applicants' were honest in their allegations of threats in Nigeria and seeking status in the US before turning to Canada.

[30]   I reject the Applicants' submissions.

[31]   To start, contrary to the Applicants' assertion, the RPD had not "extended its fraudulent determination to all other documentary evidence," rather the RPD decided to give these documents no weight.

[32]   As the Respondent submits, when there are credibility concerns that go to the veracity of a claim, the RPD may reject the remaining documents based on a lack of credibility, citing *Sun v Canada (Citizenship and Immigration)*, 2017 FC 425 [*Sun*] at para 17. *Sun* followed a long line of cases that relied on a similar principle: *Wang v Canada (Citizenship and Immigration)*, 2015 FC 972 at para 13; *Huang v Canada (Citizenship and Immigration)*, 2015 FC 1250 [*Huang*] at paras 14-15; and *Diaz v Canada (Citizenship and Immigration)*, 2016 FC 1343 at para 15. In these cases, the Court rejected arguments that a credibility finding could not extend to accompanying documentary evidence where reasons are provided, and where cumulative inconsistencies and contradictions, as a whole, may seriously undermine the overall credibility of a claimant: *Huang* at para 16.

[33]   Here, the RPD provided ample reasons for rejecting the remaining documents. The RPD acknowledged that the Applicants submitted the American immigration documents, an email from the PA's ex-husband, and detailed affidavits from the PA's brother and friend, among others. The RPD also noted that the American immigration documents and other documents about the PA's health and employment history are silent as to the Applicants' central allegations and thus are entitled to no weight in determining those allegations. The RPD's reasoning disclosed no reviewable error.

[34]   Finally, the RPD noted that the "substantial credibility issues" it identified meant it was limited in the amount of weight it could place on the remaining documents. The RPD's reasoning displayed a chain of analysis that was logical and coherent; it was further supported by the evidence and the case law it relied on: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 24.

C.   *Did the RPD err in finding the Applicants' claim was "manifestly unfounded?"*

[35]   The Applicants refute the RPD's finding that their claim was "clearly fraudulent" and argue that by applying section 107.1 of the *IRPA*, instead of a lesser lack of credibility finding, they were prevented from appealing to the RAD. The Applicants argue that their claim was not fraudulent as it does not meet the threshold contemplated in *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 [*Warsame*], one of the leading decisions on section 107.1.

[36]   The Applicants also reference *Balyokwabwe v Canada (Citizenship and Immigration)*, 2020 FC 623 [*Balyokwabwe*] where the Court echoed the definition of a fraudulent claim in *Warsame*. I pause to note the Applicants did not make particular argument based on *Balyokwabwe*. In any event, *Balyokwabwe* is distinguishable on the facts as the Court observed in that case the RPD's reasons were based on exaggerations and a misapprehension of the evidence: *Balyokwabwe* at para 42. I make no such findings in the case at hand.

[37]   The threshold for section 107.1 is high and must be grounded in evidence: *Ahmad v Canada (Citizenship and Immigration)*, 2019 FC 11 at para 30, citing *Yuan v Canada*

(Citizenship and Immigration), 2018 FC 755 at para 45 and *Bushati v Canada (Citizenship and Immigration)*, 2018 FC 803 at para 45.

[38]   According to *Warsame*, the finding of a "clearly fraudulent" claim means it is the claim itself that is assessed as being fraudulent, and not the fact that the applicant would have used, for instance, fraudulent documents to get out of the country of origin or to gain access to Canada: *Warsame* at para 27.

[39]   Justice Roy explained that a "clearly fraudulent" claim is one based on dishonest representations, deceit, and falsehoods that materially impact the claim: *Warsame* at para 30. Justice Roy further warned that a claim cannot be fraudulent if the dishonesty is not material concerning the determination of the claim: *Warsame* at para 30. In other words, to be clearly fraud, there must be a "firm conviction that refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection should be granted:" *Warsame* at para 31.

[40]   Applying *Warsame* to the case at hand, and noting the high threshold for section 107.1, I find the RPD's finding of the Applicant's claim as being "manifestly unfounded" reasonable.

[41]   The RPD explained why it found the PDP documents and Police Report inauthentic and explained the PA provided inconsistent and changing testimony about the Applicants' move to Lagos. The RPD further explained that these credibility concerns were central to the core of the claim stemming from the PA's political activities and the risks of FGM, which led the RPD to

doubt the veracity of all the PA's allegations about her political activity, and corresponding persecution that allegedly caused the Applicants to leave Nigeria. The RPD then went on to conclude that the "central allegations" of the Applicants to be not true.

[42]   The Applicants do not contest the RPD's conclusion that the credibility concerns it identified went to the core of their claim. In fact, at the hearing, counsel for the Applicants conceded that if the Court were to accept the RPD's determination of the documents as fraudulent, then the Applicants have no basis to challenge the RPD's finding that claim was fraudulent.

[43]   Having found that RPD was reasonable in concluding that the PDP documents and the Police Report were fraudulent, I also agree with the RPD that these credibility concerns went to the core of the Applicants' claim. As such, I find it reasonable for the RPD to conclude the Applicants' central allegations to be fraudulent in light of its cumulative credibility findings.

IV.   <u>Conclusion</u>

[44]   The application for judicial review is dismissed.

[45]   There is no question for certification.

JUDGMENT in IMM-2019-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

DOCKET: IMM-2019-22

STYLE OF CAUSE: MOSUNNOLA VICTORIA AWONUGA,
                          OLUWAPELUMI SAMUEL AWONUGA,
                          OLUWADARASIMI ESTHER AWONUGA, O
                          DEBORAH AWONUGA v THE MINISTER OF
                          CITIZENSHIP AND IMMIGRATION

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