

Federal Court



Cour fédérale

Date: 20240212

Docket: IMM-5778-23

Citation: 2024 FC 233

Ottawa, Ontario, February 12, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

RASAKI ADENIYI AMINU

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS AND THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision affirmed the Refugee Protection Division’s (the “RPD”) 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 (the “Act”).

[2] For the reasons that follow, I dismiss the application.

II. Background

A. *The Applicant’s Allegations*

[3] Mr. Rasaki Adeniyi Aminu (the “Applicant”) is a 65-year-old citizen of Nigeria.

[4] The Applicant was born to a Muslim family. He converted to Christianity shortly after his father’s death. As a result, the Applicant’s extended family, specifically his father’s siblings, demanded that the Applicant relinquish his inheritance. The Applicant states that his extended family now owns all property that was part of his father’s estate and that he did not inherit any.

[5] The Applicant identifies his father’s siblings as the agents of harm. He alleges they are responsible for a number of attacks against him and his family. In 2012, a verbal confrontation escalated into physical assault against him. In 2013, his spouse was abducted and held until her family secured her release. In 2015, the agents of harm damaged the Applicant’s property, and did so again in early 2016.

[6] The Applicant says that the police collected evidence of property destruction in early 2016, but no further action was taken. He subsequently relocated to a different city, but certain

individuals continued to look for him in the new city. In August 2016, he was robbed, threatened, and told to leave Nigeria.

[7] The Applicant states that he retained a lawyer in Nigeria to take action against the agents of harm, but the lawyer later informed him that he would not be able to act on the Applicant's behalf. The lawyer explained the reasons behind this decision in an affidavit dated from 2016 (the "Counsel Affidavit"). The affidavit was purportedly seized by the Canada Border Services Agency (the "CBSA") several months after the Applicant entered Canada. The Applicant says the affidavit was never returned or disclosed to him.

[8] The Applicant alleges that his former lawyer began working for the agents of harm after terminating his representation. He further notes that the lawyer is currently affiliated with the All Progressives Party in Nigeria (the "APC") and that the agents of harm have significant influence over the APC. He claims the agents of harm are therefore able to wield influence across Nigeria.

[9] The Applicant left Nigeria for the United States in October 2016. His wife and children remained in Nigeria. He entered Canada in October 2017.

[10] The Applicant claims that, after his arrival to Canada, the agents of harm killed his sister in April 2019 because she too converted to Christianity and then attacked his wife in August 2021.

B. *The Decision and the Redetermination*

[11] The Applicant claimed refugee protection a few days after arriving in Canada in October 2017.

[12] The Applicant's claim was denied by the RPD. The Applicant appealed to the RAD, citing the alleged failure to disclose the Counsel Affidavit, which he claimed was still in the CBSA's possession. The RAD agreed and remitted the matter to the RPD for redetermination. The RAD directed the RPD to seek particulars and to disclose all documents received.

[13] The RPD complied with the RAD's directions, but did not receive a response from the CBSA regarding the Counsel Affidavit. The Applicant states that he was only informed of the RPD's failure to acquire the alleged affidavit on the first day of his redetermination hearing.

[14] The RPD again denied the Applicant's claim. It found that (1) the Applicant failed to seek protection in the United States, (2) the Applicant had an internal flight alternative in the city of Abuja (the "IFA"), and (3) the Applicant's allegations lacked credibility, including his allegation that his former lawyer started working for the agents of harm.

[15] The determinative issue was the RPD's assessment of the IFA. On that question, the RPD found in part that there is no evidence supporting the Applicant's claim that the agents of harm had the means to locate and persecute the Applicant in Abuja. Specifically, the RPD found that the

Applicant “provided no objective evidence that his father's siblings are powerful people with large resources and political influence such as to mount searches to find him in Abuja”.

[16] The Counsel Affidavit is relevant to the RPD’s finding regarding the means and capabilities of the agents of harm. The RPD accepted that the Applicant’s former lawyer belongs to and is influential within the APC, but found no evidence that the agents of harm were also influential within that party. The Applicant argued that the Counsel Affidavit would essentially prove that his former lawyer worked for the agents of harm, thereby demonstrating their influence over his former lawyer and, by extension, the APC.

[17] The RPD acknowledged the Applicant’s position that the Counsel Affidavit could corroborate the Applicant’s story, but concluded that this cannot be substantiated without reviewing its content.

[18] The Applicant appealed the RPD’s decision to the RAD. He argued in part that the Counsel Affidavit could corroborate his story, and that it was unfair for the RPD not to provide that document to him.

C. *The Decision*

[19] On appeal, the RAD held that the Applicant’s allegations regarding the events that took place prior to his arrival in Canada were credible. That said, the RAD made this finding without reviewing the Counsel Affidavit. It agreed with the Applicant that the Counsel Affidavit could

potentially corroborate his allegations prior to his arrival, but found that this was no longer needed in light of its findings.

[20] Nonetheless, the RAD found that, despite its conclusions as to the events that arose prior to the Applicant's arrival in Canada, the RPD did not err in concluding that the Applicant had an IFA in Abuja. The RAD therefore held that the RPD was correct to deny the Applicant's claim, notwithstanding the errors the RAD identified in its analysis.

[21] The RAD found that the Counsel Affidavit would not be determinative of the IFA assessment. Although the affidavit may corroborate the Applicant's claim that his former lawyer worked for the agents of harm in 2016, it could not corroborate that the former lawyer continues to work for them until the present day. The RAD noted that, in fact, the record supported the contrary finding. The Applicant's evidence included an affidavit from 2018 that was witnessed by his former lawyer, which suggests that the lawyer was no longer affiliated with the agents of harm.

[22] On this application for judicial review, the Applicant says that the RPD breached its duty of procedural fairness by failing to disclose the Counsel Affidavit. He argues that the standard of review is correctness.

[23] The Respondent replies that what is under review is not the RPD's alleged failure to disclose the Counsel Affidavit, but rather the RAD's findings in relation to that failure. The Respondent says that the standard of review is therefore reasonableness and that the RAD's findings meet that standard.

III. Issues

[24] What is the standard of review?

[25] Did the RAD err in finding that the RPD did not breach its duty of procedural fairness for failure to disclose the Counsel Affidavit?

IV. Analysis

A. *The Standard of Review*

[26] The Applicant does not challenge or identify any issues with the RAD's procedures in the course of the appeal. He claims that the RPD breached its duty of procedural fairness by failing to disclose the Counsel Affidavit, and repeats those allegations on judicial review. I agree with the Respondent that the Applicant is essentially challenging the RAD's review of the RPD's procedures.

[27] This Court has held that such a challenge is reviewable on a reasonableness standard (*Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at paras 12-18).

[28] The standard of review is reasonableness.

B. *The Alleged Error*

[29] The Applicant alleges that the RPD denied him his right to a fair process by failing to provide him with the Counsel Affidavit as part of disclosure.

[30] In its review of the RPD's procedure, the RAD agreed with the Applicant that the Counsel Affidavit could potentially corroborate his story regarding the events that took place prior to his arrival to Canada. However, because the RAD accepted the Applicant's allegations for that period for separate reasons, the Counsel Affidavit was no longer central to its assessment of credibility. Its disclosure would have no impact on that conclusion.

[31] Nor could disclosing the document impact the outcome of the appeal more generally. The determinative issue was, ultimately, whether the Applicant had an IFA in Abuja. The RAD assessed the RPD's analysis and concluded that it was correct to find that the Applicant had an IFA. The RAD further concluded that the Counsel Affidavit would not have affected the result of this analysis, since the affidavit's content could not establish facts regarding the agents of harm or the former lawyer's relationship to them in the present day. And even if it could, the RAD noted that more recent evidence indicated that the former lawyer no longer has a relationship with the agents of harm.

[32] Failure to disclose information can only be fatal to the fairness of a proceeding if that information is material to the decision-maker's findings (*Garvey v Meyers Transport Ltd*, 2004 FC 1712 at para 13). Since the Counsel Affidavit would not affect the outcome of the Applicant's claim, it was reasonable of the RAD to conclude that the RPD's failure to disclose it did not fatally taint the process.

[33] The RAD did not err in its review of the RPD's procedure and disclosure.

V. Conclusion

[34] The application is dismissed.

JUDGMENT in IMM-5778-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5778-23

STYLE OF CAUSE: RASAKI ADENIYI AMINU v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS AND THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 30, 2024

JUDGMENT AND REASONS: MANSON J.

DATED: FEBRUARY 12, 2024

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