Federal Court Cour fédérale

Date: 20240306

Docket: IMM-10962-22

Citation: 2024 FC 378

Ottawa, Ontario, March 6, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ESTHER ABOSEDE ABODUNRIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Background

[1] The Applicant, Esther Abosede Abodunrin, is a citizen of Nigeria. She seeks judicial review of a decision dated September 20, 2022 refusing her Pre-Removal Risk Assessment [PRRA] application [PRRA Decision].

Decision Under Review

[2] The PRRA Officer described the procedural history and background to the PRRA decision, being that the Applicant arrived in Canada on January 24, 2018 and sought refugee protection based on her claim that, because she had refused to assume the position of Chief Priestess of Olu Ofin following the death of the former priestess, she feared for her life at the hands of community elders and her cousin who coveted the position but could not assume it while the Applicant lived. The Refugee Protection Division [RPD] denied her claim by decision dated November 2, 2018. The PRRA Officer noted that the RPD had found, on the totality of the evidence, that the Applicant was not a credible witness and lacked subjective fear at the hands of those she claimed to fear in Nigeria. The Applicant appealed the RPD's determination to the Refugee Appeal Division [RAD], which dismissed her appeal by decision dated June 20, 2019. On February 24, 2020, the Applicant filed an application for humanitarian and compassionate [H&C] relief, which application was refused on October 16, 2020.

[3] On October 6, 2021, the Applicant filed her PRRA application, which is the subject of the Officer's decision. That application alleged a risk based on circumstances that were not before the RPD. Specifically, that a new risk arose on September 1, 2021 when the Applicant was informed by her ex-husband, Joseph Abiodun Abodunrin, that a couple whom they were family friends with and who were Indigenous People of Biafra [IPOB] activists in Nigeria had been arrested there by the Department of State Services [DSS]. The Applicant claimed that her ex-husband was then arrested on September 23, 2021, but escaped a few days later. He informed her that DSS officers had records of the Applicant's communications with her friend Chioma, the

female member of the arrested couple, and that the police were seeking the Applicant's whereabouts. The Applicant also claimed that the police had visited her sister seeking information about the Applicant and her ex-husband. The PRRA Officer found that because this risk was not before the RPD, all of the new evidence submitted by the Applicant in support of this new risk would be considered.

[4] The PRRA Officer described the Applicant's original supporting PRRA submissions, being: an October 8, 2021 letter from Joseph Abiodun Abodunrin who described himself as the Applicant's ex-husband; copies of text messages between the Applicant and Chioma as well as the Applicant and her son; a report from a psychotherapist dated January 6, 2022; and, an Immigration and Refugee Board [IRB] report from 2014-2016 concerning the IPOB movement in Nigeria. The PRRA Officer then described the Applicant's most recent submissions made in support of her PRRA, comprising her statutory declaration dated August 31, 2022 and a letter from a person who was described as the Applicant's niece (the sister of the Applicant's ex-husband) dated August 29, 2022, as well as text messages between the Applicant and the niece.

[5] The PRRA Officer, having reviewed the evidence, found that the Applicant had not demonstrated that she faced any risk on the grounds set out s 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This was because: her evidence established only a minimal level of support of her friends involved with the IPOB (the Applicant's evidence was that she hosted social and not political events, she was not an IPOB member and, provided only moral support); there was no independent police or other record specific to her allegation that there was a warrant for her arrest; the RPD had found the Applicant not to be a credible witness

and that the affidavits she had submitted were fraudulent, including an affidavit from Joseph Abiodun Abodunrin (the Applicant had not been able to establish that Mr. Abodunrin was her ex-husband); in support of her PRRA the Applicant had provided statements from Joseph Abiodun Abodunrin, and her niece, but failed to establish with sufficient evidence that these persons were in fact her ex-husband and niece; and, the report from the psychotherapist was afforded little weight as evidence of the Applicant's alleged IPOB involvement.

[6] In light of the RPD's credibility findings and the lack of independent, objective documentary support for the Applicant's claim that she was being sought by the Nigerian authorities because of her IPOB involvement, the PRRA Officer found that it was reasonable to expect sufficient corroborative, probative documentary evidence in support of the Applicant's allegations of risk of persecution by the Nigerian authorities for suspected involvement in IPOB. The PRRA Officer concluded that, overall, the Applicant had adduced insufficient evidence establishing that she would likely to be viewed as a supporter of that group.

Issues and Standard of Review

[7] Although the Applicant asserts that this matter gives rise to issues of procedural fairness as well as the reasonableness of the PRRA Officer's decision, for the reasons below I find that the sole issue arising is whether the PRRA Officer's decision was reasonable. In assessing the merits of the PRRA Officer's decision, the reasonableness standard of review applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25).

Preliminary Issues

[8] The written representations submitted by counsel for the Applicant engage with matters that are not relevant to the PRRA decision, which is the matter under review before me.

[9] These include that the Applicant appears to allege a breach of procedural fairness in connection with her H&C claim. However, the H&C decision is not the subject of this review. Moreover, the Court's record indicates that this portion of the Applicant's judicial review application was struck by Order of Associate Judge Trent Horne issued on February 13, 2023:

> As it relates to a decision refusing the applicant's application for permanent residence made on humanitarian and compassionate grounds, the application for leave and for judicial review is struck, without leave to amend. The only decision being challenged in this proceeding is the September 20, 2022 decision relating to a pre-removal risk assessment.

[10] The Applicant in her written submissions also submits that a breach of procedural fairness arises on the basis that this Court remitted the original PRRA decision back for redetermination and that this redetermination should have been conducted by a different officer from the one who made the original PRRA determination. At the hearing of this matter, her counsel did not address his issue. When asked by the Court if the issue was being abandoned, counsel eventually appeared to agree that it was.

[11] Regardless, I note that the Respondent in its written representations submits that the Applicant was issued a PRRA decision on February 23, 2002 [First PRRA Decision]. On May 5, 2022, the Applicant filed an application for judicial review of the First PRRA Decision (IMM-

4459-22), and on September 8, 2022 Justice Go granted leave in that application. The Respondent submits that there was no settlement agreement or agreement between the parties that the First PRRA Decision would be re-determined. Rather, due to an internal IRCC issue, all PRRA applicants within a certain period were provided with the opportunity to provide updated submissions to their applications. The Applicant utilized this opportunity and made new submissions on August 31, 2022. The PRRA Decision now under review was made on September 20, 2022 and this application for judicial review of that decision (IMM-10962-22) was filed on November 11, 2022. The Applicant filed a Notice of Discontinuance of the First PRRA Decision on December 7, 2022.

[12] The Respondent has not filed affidavit evidence to support this explanation but submits that the Court can take judicial notice of the differing court file numbers to confirm the Respondent's explanation of these events. I agree that the Court may take judicial notice of its own records (*Araya v Canada (Attorney General)*, 2023 FC 1688 at para 58; *Petrelli v Lindell Beach Holiday Resort Ltd*, 2011 BCCA 367 at para 36, citing *R v Jones* (1839), 8 Dowl 80 and *Craven v Smith* (1869), LR 4 Exch 146). The file entries in IMM-4458-22 demonstrate that Madam Justice Go's order granting leave includes the requirement that if a settlement were reached then the parties were to take necessary steps to discontinue the application *or* request a judgment on consent. The Court's record does not contain a consent judgment remitting the First PRRA Decision back for redetermination, but the Notice of Discontinuance filed by the Applicant states that she wholly discontinued her application for judicial review because her H&C and PRRA applications "had been re-opened" by the Canada Border Services Agency and a new decision made.

[13] Accordingly, and in the absence of any evidence from the Applicant that a redetermination by a different officer was agreed on or ordered, I accept that what occurred in this matter was not a redetermination but a reopening of the Applicant's PRRA application. Accordingly, in these specific and unusual circumstances, a breach of procedural fairness does not arise because the same PRRA Officer issued a new decision having taken into account the new submissions made by the Applicant.

[14] I will not further address the Applicant's submissions concerning her H&C application, the redetermination issue and other less significant but irrelevant matters raised in her written submissions.

Was the Decision Reasonable?

[15] The Applicant argues that the Officer extrapolated from the RPD's credibility findings and applied the result to the matters that were in dispute in the PRRA application. She submits that the PRRA Officer should have held an oral hearing and erred in failing to do so, relying on *Ahmed v Canada*, 2018 FC 1207 at paras 30-31, 36, 38, [*Ahmed*].

[16] According to the Applicant, affidavits of her ex-husband and sister were provided to the RPD but, due to a lack of identification, the RPD "caused the panel to insinuate that the affidavit might be fraudulent". She disputes this finding and what she describes as the RAD's decision not to accept new identification documents on appeal. She asserts that the treatment by the RPD of this evidence "should not have led to a decision that the applicant was never married to Mr. Abiodun Abodunrin" and, given this, that in her PRRA application she should have benefitted

from a presumption of truthfulness (*Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 at 305).

[17] I first note that the Applicant cannot, in this judicial review of the PRRA Decision, re-litigate or challenge the findings and decisions of the RPD and the RAD. Moreover, the Applicant has not included the RPD and RAD decisions in her application record filed in this matter. Accordingly, I am unable to ascertain what the findings of those entities were with respect to the affidavit of Mr. Abodunrin or the status of the marriage. That said, the Applicant's submissions clearly assert that the RPD made a determination that she was never married to Mr. Abodunrin. Further, the PRRA Officer's reasons state that the RPD determined that the Applicant was not a credible witness. Additionally, that the RPD found that the affidavits she submitted were fraudulent, including the affidavit of Mr. Abodunrin. The PRRA Officer stated that before the RPD the Applicant had been unable to establish that Joseph Abiodun Abodunrin was her ex-husband. The PRRA Officer found that in her PRRA application the Applicant again submitted statements from Mr. Abodunrin, but had not established with sufficient evidence that he was her ex-husband or that the niece was in fact her niece.

[18] Faced with the absence of the RPD and RAD decisions and considering the Applicant's submissions on this issue and the PRRA Officer's reasons, I am not persuaded that the PRRA Officer erred in this finding. The Applicant's written submissions to this Court make it clear that the Applicant was aware from the RPD and RAD decisions that the status of her marriage was at issue – yet she failed to provide any independent documentary evidence in an effort to overcome

that concern. Her failure to provide sufficient evidence to establish the existence of that relationship undermined virtually the entire story underlying her claimed new risk.

[19] For example, the Applicant's statements submitted to support her PRRA application assert that it was her ex-husband who told her that her friends had been arrested for IPOB involvement and that her friend had confessed to the DSS and told them that the Applicant and her ex-husband were IPOB members (although they were not). It was also her ex-husband who informed her that he had been arrested and that he had learned that the DSS officers had records of the Applicant's text communications with Chioma and were looking for the Applicant.

[20] If Mr. Abodunrin was not the Applicant's ex-husband then all of this evidence had little probative value. And, if he was not her ex-husband, then her alleged niece was also not her niece given that this person is described as the sister of the Applicant's ex-husband. Accordingly, their statements filed in support of the PRRA would not be corroborative of the Applicant's claim that she is likely viewed as an IPOB supporter in Nigeria and therefore at risk. The PRRA Officer could therefore reasonably find that that evidence was insufficient to establish the risk alleged.

[21] The Applicant does not challenge the PRRA Officer's treatment of the psychotherapist report so I will not address it other than to say that I agree with the Respondent that the PRRA Officer's determination that the report could not corroborate the objective basis of her alleged fear, and affording it little weight in that regard, was reasonable. That is to say, although the Applicant repeated her narrative to the psychotherapist who recorded it in his report, the PRRA

reasonably placed little weight on the report as it was not independent support of the risk the Applicant claimed.

[22] The PRRA Officer also found that the Applicant had alleged that there "was a nationwide warrant for her arrest in Nigeria" but there was no independent police or other documentation from a state authority specific to that allegation. On this point, the Applicant's counsel in their written representations asserted that, in light of human rights abuse recorded in Nigeria, it was unreasonable for the Officer to expect the Nigerian government to provide an arrest warrant or any sort of documentation to prove that the Applicant is sought for arrest and that the Officer erred by assessing Nigerian law enforcement on a North American standard. In that regard, I note, the portion of the US Department of State Report 2021 quoted by the Applicant in support of this premise does not discuss whether the police in Nigeria issue arrest warrants, only that human rights abuses include arbitrary arrest and detention.

[23] However, at the hearing I raised with counsel for the Respondent that I had been unable to locate within the record a statement by the Applicant that there was a nationwide warrant for her arrest in Nigeria. Rather, the Applicant's statement says, "I am scared that the government may have out a warrant on me because on October 1st 2021 police officers went to my sister['s]… house to interrogate her about me and my ex". Counsel could not point me to any statement by the Applicant in the record asserting that there was a nationwide warrant for her arrest. Accordingly, I find that the PRRA Officer misapprehended this evidence and erred in finding that there should have been, but was not, corroborating evidence of a warrant when the Applicant did not allege that a warrant had been issued. However, in my view, this does not

overcome the Officer's finding that the Applicant had not provided evidence to displace the RPD's finding that she had not established that Mr. Abodrunrin is her ex-husband.

[24] The Applicant also submits that the Officer extrapolated from the RPD's credibility findings "and applied the result to the matters that were in dispute on the PRRA application. The issue of credibility finding at the RPD hearing was not that the affidavit provided were fraudulent but that the affidavits were fraudulent because the deponents did not enclose their notarized IDs" and that the RAD failed to admit the documents on appeal. As discussed above, the Applicant has not provided the RPD decision and I am unable to verify her version of the RPD's findings. In any event, her argument is clear that she takes issue with the RPD credibility finding itself as to whether the affidavit of Mr. Abodunrin was fraudulent, which finding cannot be re-litigated in her PRRA hearing. Further, the new risk raised in her PRRA was distinct from her claim asserted before the RPD. The Applicant does not explain what credibility findings were extrapolated or how they are relevant to the new risk. Finally, while the Applicant refers to *Ahmed*, there the RPD's credibility findings that were at issue in the PRRA were in relation to the applicant's claims regarding his identity, a matter which was no longer in issue before the PRRA officer. Here, the issue of the status of Mr. Abodunrin as the Applicant's former husband was at issue before the RPD and it was unresolved at the PRRA as the Applicant failed to provide any independent documentary evidence addressing the issue.

[25] While the wording of the PRRA Officer's decision could certainly have been clearer, at the end of the day the decision turned on the sufficiency of the evidence, and not the Applicant's credibility. The Officer identified and described all of the Applicant's evidence submitted in

support of her PRRA and, contrary to the Applicant's submissions, did not ignore it. The Applicant submitted little independent documentary evidence and what she did submit did not support that those who provide only limited social (buying refreshments for meetings) and moral support are likely to be perceived as IPOB members or supporters and at risk as such. All of the other evidence was provided by the Applicant herself, or her family or friends (or purported family in the case of Mr. Abodunrin and the niece). In these circumstances, as she did not provide documentary evidence to overcome the RPD's finding that she had not established that Mr. Abodunrin was her former spouse, his evidence (and that of the niece), upon which the Applicant relied, had little probative value. It was reasonable for the PRRA Officer to expect independent corroborating evidence and, in its absence, to conclude that the Applicant had not established the risk she asserted.

[26] Because the decision turned on the probative value and sufficiency of the documentary evidence, and not the Applicant's credibility, the PRRA Officer was not required to hold an oral hearing (IRPA s 167; *Immigration and Refugee Protection Regulations*, SOR/2002-227,IRP Regulations s 167). Here the PRRA Officer did not make a credibility finding, rather, the Applicant failed to provide documentary evidence to overcome the prior credibility finding of the RPD. The PRRA Officer did not err in failing to hold an oral hearing.

[27] Accordingly, this application is dismissed.

JUDGMENT IN IMM-10962-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10962-22
STYLE OF CAUSE:	ESTHER ABOSEDE ABODUNRIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 27, 2024
REASONS AND JUDGMENT:	STRICKLAND J.
DATED:	MARCH 6, 2024

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