

Federal Court



Cour fédérale

Date: 20240327

Docket: IMM-4397-23

Citation: 2024 FC 470

Ottawa, Ontario, March 27, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

IBIWUNMI RAHMAN OLADELE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Ibiwunmi Rahman Oladele, the Applicant, is a citizen of Nigeria. He seeks judicial review of the decision of the Refugee Appeal Division [RAD] that confirmed the Refugee Protection Division [RPD] was correct in finding he is neither a Convention refugee nor a person in need of protection.

[2] Mr. Oladele sought refugee protection claiming that he would be persecuted (1) by his maternal family, persons associated with the royal palace, traditionalists, the community, and the police in his hometown of Ayedun in Nigeria because he is perceived as being homosexual; (2) by his family and the Muslim community because he had converted to Christianity; and (3) by the chieftaincy community for having refused a chieftaincy position associated with his parental lineage.

[3] The RPD held two days of hearing, found the determinative issues were credibility and viable internal flight alternatives, and rejected Mr. Odadele's claim. Mr. Oladele appealed the RPD decision before the RAD, and received an incomplete recording of the RPD hearings. Missing from the recording were the questions his own counsel asked him as well as his counsel's submissions to the RPD.

[4] In his submissions to the RAD, Mr. Oladele argued, *inter alia*, that the partial recording of the RPD hearing accounted for a breach of procedural fairness.

[5] The RAD disagreed with Mr. Oladele that the partial recording of the RPD hearing constituted a breach of procedural fairness. The RAD noted there was no statutory right to a recording or transcript of the RPD proceedings and outlined, in essence, that it had to determine whether it was able to properly dispose of the appeal in the absence of a complete record (*Canada (Citizenship and Immigration) v Liang*, 2009 FC 955).

[6] Based on a review of the record and of Mr. Oladele's arguments on appeal, the RAD concluded that the absence of the third audio recording for the March 3, 2022 sitting did not prevent it from adequately assessing the evidence and the correctness of the RPD decision.

[7] At paragraph 11 of its reasons, the RAD acknowledged Mr. Oladele's submissions that the incomplete recording of the RPD hearing made it impossible for counsel to properly establish what transpired at the RPD hearing and prevented counsel from offering proper and complete submissions in an ethical manner on his behalf. Contrary to the Applicant's suggestion, I am satisfied that the use of the term "acknowledge" in this context does not indicate that the RAD agreed with the Applicant's submissions. On the contrary, it is evident from the reading of the entire paragraph that the RAD disagreed with the Applicant's submissions.

[8] Hence, the RAD found that the incomplete recording did not prevent Mr. Oladele from meaningfully exercising his right of appeal, and that Mr. Oladele had not submitted or demonstrated that there was any serious possibility of an error on the record. As a result, the RAD found that the incomplete recording of the RPD hearing did not constitute a breach of procedural fairness.

[9] The RAD went on to assess the appeal, and noted that the determinative issue was credibility.

[10] Before the Court, Mr. Oladele argues solely that the RAD breached his right to procedural fairness by rejecting his appeal on the basis of negative credibility findings without having had the benefit of a complete recording of the RPD hearing.

[11] In essence, Mr. Oladele submits that the RAD was unable to properly assess his credibility without a complete recording of the RDP hearing. He adds that credibility is central in the current matter, and that it is undeniable that the RAD could not conduct its own independent analysis of the record without the totality of the recording of the RDP hearing.

[12] I note that questions of procedural fairness are to be reviewed by asking whether the process leading to the decision was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6).

[13] The principles relevant to Mr. Oladele's argument are settled. As Madam Justice Elizabeth Walker stated in *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1535, at paragraph 13 [*Singh*], the RPD is not required to record refugee claim hearings, although its practice is to do so. Justice Walker cited Justice John Norris' words in *Patel v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 804 [*Patel*] outlining the principle that:

[31] ... In cases where there is no statutory right to a recording, "courts must determine whether the record before it allows it to properly dispose of the application for appeal or review. If so, the absence of a transcript will not violate the rules of natural justice" (*Canadian Union of Public Employees, Local 301 v Montréal (City)*, [1997] 1 SCR 793 at para 81). On the other hand, if the

court cannot dispose of an application before it because of the absence of a transcript, this will violate the rules of natural justice.

[14] In addition, the Court has confirmed the onus rests on an applicant to raise an issue that “affects the outcome of the case that can only be determined on the basis of a record of what was said at the hearing such that the absence of a transcript prevents the Court from addressing the issue properly” (*Singh* at para 11; *Patel* at para 32, citing *Nweke v Canada (Citizenship and Immigration)*, 2017 FC 242 at para 34). The lack of a complete recording is of particular concern in cases where, as here, credibility is a central issue (*Patel* at para 33).

[15] Mr. Justice Sébastien Grammond particularly indicated that the applicant must identify the information missing from the recording and explain how it is determinative in resolving an issue central to the claim. He added that where an applicant relied on gaps in the recording of the hearing, the applicant must show a “serious possibility” that the gaps have denied the applicant a means of appeal (*Ait Alhocine c Canada (Citizenship and Immigration)* 2020 FC 1068 at paras 29-30, relying on *Canadian Union of Public Employees, Local 301 v Montreal (City)*, [1997] 1 SCR 793 at para 81). The case law clearly shows these principles equally apply when the applicant’s credibility is a determinative issue.

[16] Unfortunately, before the Court, Mr. Oladele has not identified what is missing from the recording, nor has he explained how the missing information is determinative. This is fatal.

[17] In support of his application for judicial review, Mr. Oladele submitted only one affidavit, his own, sworn on May 2, 2023, affirming that (1) he has read the Applicant’s Record;

and (2) he declares that all the pretensions are true and to the best of his knowledge. In response to questions from the Court, counsel for the Applicant confirmed no other evidence was sought in order to identify what was missing from the recording. Consequently, Mr. Oladele has not met his burden, as set out by the decisions of the Court, to establish what is missing from the recording and to explain how the missing information is determinative.

[18] Mr. Oladele has therefore not established that the RAD erred in concluding that deciding on his appeal without a complete recording of the RPD hearing did not breach procedural fairness. I will consequently dismiss the application for judicial review.

JUDGMENT in IMM-4397-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4397-23

STYLE OF CAUSE: IBIWUNMI RAHMAN OLADELE

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 21, 2024

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 27, 2024

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