

Federal Court



Cour fédérale

Date: 20240522

Docket: IMM-2786-23

Citation: 2024 FC 774

Toronto, Ontario, May 22, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

OLUFEMI AYINDE OLUSESI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on May 22, 2024)

[1] The Applicant seeks judicial review of a Refugee Appeal Division [RAD] decision dismissing his appeal of his failed refugee claim, largely based on an alleged conversion to Christianity. I am refusing to grant the application for the following reasons.

[2] On appeal before the RAD, the Applicant sought to admit six new pieces of evidence. The RAD rejected all six of them, as they neither met the statutory requirements for the admission of new evidence, nor the criteria set out in the jurisprudence. The RAD further found that the Applicant failed to credibly establish the core allegations of his refugee claim.

[3] The issues before this Court are whether the RAD reasonably (i) rejected the Applicant's new evidence, and ii) arrived at its refusal. The reasonableness standard is explained in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63 and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]. The Applicant argues that the RAD erred in its unreasonable (i) rejection of the new evidence, and (ii) assessment of credibility and risk of risk of return to Nigeria. I disagree with the Applicant on both issues.

[4] First, the RAD can only accept new evidence if it arose after the RPD decision, was not available at the time of the decision, or could not have been expected to be submitted to the RPD before the decision. If at least one of those requirements is met, then the RAD must satisfy itself that the evidence is new, credible and relevant in order to be admitted (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]). Here, after reviewing each of the pieces of evidence in question, I find that the RAD reasonably assessed their admissibility under *Singh*.

[5] Second, the RAD assessed the Applicant's evidence in support of his refugee claim and the threat he alleges to face in Nigeria due to his religious conversion. The RAD reached multiple negative credibility findings, and reasonably found that the Applicant's testimony was evolving and conflicted with his basis of claim form. The RAD then concluded that, since the

Applicant failed to establish his refugee claim on religious grounds, he has also failed to establish a serious possibility of persecution in Nigeria due to his religious conversion.

[6] At the hearing of this Application before me, the Applicant's counsel largely reiterated what had been argued were reviewable errors before the RAD, namely credibility findings related to the port of entry interview, the alleged conversion to Christianity, the treatment of the psychological assessment report, and the delay in his refugee claim in the United States. However, I note that the RAD member independently reviewed the findings of the RPD on a correctness standard. She did not simply adopt the RPD's assessment, disagreeing with one of their credibility findings.

[7] Given the totality of the inconsistencies and evolving testimony that she pointed to with detailed explanations and references to the record, the RAD member found that Applicant had not provided credible evidence to establish the central elements of the refugee claim, and the Applicant did not demonstrate to this Court that any of the RAD's various and independent credibility findings were reviewable. As noted during the hearing, whether this Court would have assessed this evidence differently is not at issue in an application for judicial review.

[8] Indeed, it is well established that the RAD is entitled to draw negative credibility inferences where there are inconsistencies, contradictions and omissions in a refugee claimant's evidence regarding central elements of their claim (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22 [*Lawani*]). In this instance, the RAD member provided detailed reasons regarding her various negative credibility findings arising from inconsistencies,

contradictions and omissions in the evidentiary record. Quite apart from the deference owed in credibility assessments, the RAD provided a sound basis for these findings (*Vavilov* at paras 125–126; *Lawani* at para 15).

[9] In short, I find the decision to be justified, transparent and intelligible (*Vavilov* at paras 99, 125). The Applicant disagrees with the conclusions, and is asking this Court to reweigh and reassess the evidence. That is not its role. This application for judicial review is accordingly dismissed.

JUDGMENT in file IMM-2786-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2786-23

STYLE OF CAUSE: OLUFEMI AYINDE OLUSESI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 22, 2024

JUDGMENT AND REASONS: DINER J.

DATED: MAY 22, 2024

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