Federal Court Cour fédérale

Date: 20240704

Docket: IMM-2729-23

Citation: 2024 FC 1049

Toronto, Ontario, July 4, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ERINAH NTEGE NANSOBYA

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 39-year-old citizen of Uganda, seeks judicial review of a negative Pre-Removal Risk Assessment [PRRA] dated January 31, 2023. In the decision under review, the PRRA Officer determined that the Applicant had not met her burden of demonstrating that, as a result of her bisexuality, she would face more than a mere possibility of persecution based on any of the Convention grounds, and be more likely than not to face risk to life or cruel and unusual treatment or punishment or a danger of torture in Uganda. The Applicant was found to be neither

a Convention refugee nor a person in need of protection as defined by either section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] By way of background, the Applicant claims that her family forced her into a marriage with her first husband because they had discovered that she was a lesbian. After enduring two years of sexual abuse at the hands of her first husband, she decided to lodge a complaint against him to the Ugandan police. She states that when the police brought him in for questioning, he was acquainted with the officers and told them that he had caught her in a lesbian act and wanted to punish her for it. She claims that the police began to threaten her and coerced her to drop her allegations against him. In the aftermath of her police complaint, the Applicant claims that her first husband and his brother (who was a high-ranking police officer) threatened her with death and that people began to follow her wherever she went. She also claims that she and her romantic partner, Maureen, were picked up by police officers and raped, and that she was then told by her first husband to return home to her parents.

[3] Once the Applicant went home to her parents, she claims that her parents forced her to marry her second husband. Following their wedding, the Applicant and her second husband came to Canada for their honeymoon in 2012. The Applicant claims that it was during the honeymoon that she told her second husband she was only attracted to women and that sex with a man appalled her. The Applicant's husband advised her that he was immediately leaving Canada and she decided that she could not return to Uganda.

[4] The Applicant initiated a Convention refugee claim in November of 2012. She based her claim on her sexual orientation as a lesbian and alleged that the agents of persecution were members of her family and the local police. She claimed that her family had made death threats against her and that the police had done the same and had raped her.

[5] On December 12, 2018, the RPD declared the claim abandoned when the Applicant did not appear for two hearings. She attempted to re-open her claim, but the RPD refused to do so as she had not provided a reasonable explanation for not appearing at her hearings.

[6] On September 20, 2022, the Applicant was provided an opportunity to apply for a PRRA and she submitted an application on October 4, 2022. On her PRRA application, she stated that, since being resident in Canada, she had married her third husband and they have three children. She acknowledged that although she had based her RPD claim on being a lesbian, she declared to the PRRA Officer that she now identifies as bisexual. The Applicant claims that she continues to fear for her physical safety in Uganda due to her sexual orientation.

[7] In support of her PRRA application, the Applicant relied on her statutory declaration, the narrative from her refugee claim, a statutory declaration from her third husband, an email from May of 2013 from an organization called “The 519 Church Street Community Centre” in Toronto, attesting to her membership in the organization, and country conditions documentation with respect to Uganda that concerned, among other things, the treatment of persons who are not exclusively heterosexual.

[8] The sole issue for determination is whether the PRRA Officer's decision was reasonable.

[9] Reasonableness is the presumptive standard of review of the merits of an administrative decision. None of the circumstances warranting a departure from this presumption arise in this case [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25]. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. 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 [see *Vavilov, supra* at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[10] On a PRRA application, the onus is on an applicant to provide sufficient evidence to demonstrate that they should be granted refugee status. This requires an applicant to present sufficient evidence to establish the factual basis for their refugee status on a balance of probabilities. Put differently, an applicant must demonstrate, based on the evidence provided to the PRRA Officer, that the facts they are asserting are more likely true than not true [see *Traoré v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1647 at para 14; *FH v McDougall*, 2008 SCC 53 at para 44]. Having reviewed the PRRA Officer's reasons for decision, it is apparent that the PRRA Officer was not satisfied that the Applicant had provided sufficient evidence to

establish that she is a member of the 2SLGBTQI+ community. The question therefore is whether that was a reasonable determination.

[11] Contrary to the Applicant's assertions, I find that the PRRA Officer carefully reviewed the relevant, but limited, documentary evidence that was before them in relation to the Applicant's purported sexual orientation and the alleged persecutory treatment that she claimed to have experienced (and would experience) if she returned to Uganda. Based on that limited evidence, I find that the PRRA Officer reasonably concluded that the Applicant had not provided sufficient objective evidence to establish that she is a member of the 2SLGBTQI+ community. Specifically, she did not provide corroborative evidence concerning: (a) her purported lesbian relationship with Maureen; (b) her family finding out about her relationship with Maureen and making death threats to her; (c) the sexual assault by her first husband; and (d) the sexual assault by the police in Uganda. While corroborative evidence may not have been readily available in relation to all of these allegations, it was certainly open to the Applicant to provide additional details or explanations about the allegations themselves and her unsuccessful efforts to obtain corroborative evidence, neither of which she did.

[12] The Applicant submits that the PRRA Officer erred by finding the statutory declaration signed by her third husband was vague and insufficient to demonstrate that the Applicant faces a well-founded fear of persecution in Uganda. However, as the PRRA Officer observed, the third husband's statutory declaration simply repeated the Applicant's assertions that she is now bisexual, and that she would be at risk of prison and torture if she returned to Uganda, but provided no further details or explanation to substantiate these allegations nor any details about their

relationship (including proof of their marital status). As such, I see no error in the PRRA Officer's determination that the statutory declaration should be afforded little weight.

[13] The Applicant further asserts that the PRRA Officer erred in finding that the email from The 519 Church Street Community Centre carried low probative value in demonstrating a well-founded fear of persecution, that the email was vague and that it did not (in and of itself) establish the risks alleged by the Applicant. I find that the Officer's findings in relation to this email was entirely reasonable. The email merely confirms that as of May 2013 — nine and a half years before the PRRA application — the Applicant had enrolled and become a member of the organization. The email provided no details about the organization or the Applicant's involvement in the organization. Moreover, the Applicant herself provided no details in her evidence as to the nature of the organization and the extent of her involvement in the organization over the prior decade.

[14] The Applicant also asserts that the PRRA Officer erred in not giving sufficient weight to the country condition documentation with respect to the treatment of people who are members of the 2SLGBTQI+ community in Uganda. However, the PRRA Officer was not satisfied that the Applicant had established that she was a member of that community and thus, I see no error in the PRRA Officer's consideration of this evidence.

[15] It is apparent from the Applicant's submissions that the Applicant is simply asking this Court to reweigh the evidence. However, this Court has repeatedly held that considerable deference is owed to the factual determinations made by PRRA Officers, including conclusions with respect to the proper weight to be accorded to the evidence before them [see *Yousef v Canada*

(Minister of Citizenship and Immigration), 2006 FC 864 at para 19]. As I have found that the PRRA Officer's weighing of the evidence was reasonable, there is no basis for the Court to intervene in this matter. Accordingly, the application for judicial review shall be dismissed.

[16] The parties have not raised a question for certification and I agree that none arises.

JUDGMENT in IMM-2729-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2729-23
STYLE OF CAUSE:	ERINAH NTEGE NANSOBYA v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	ST. JOHN'S, NEWFOUNDLAND
DATE OF HEARING:	MARCH 5, 2024
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APPEARANCES:

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