

Federal Court



Cour fédérale

Date: 20170214

Docket: IMM-3258-16

Citation: 2017 FC 188

Ottawa, Ontario, February 14, 2017

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

**AJOKE MOSUNMOLA DOSUNMU
OLAJUWON OLAYINKA DOSUNMU
FOLASHADE DOSUMU, MINOR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by Ajoke Mosunmola Dosunmu [the Principal Applicant] and her two children [the Secondary Applicant and the Minor Applicant], pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], of a decision made by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated

June 28, 2016, in which the RAD determined the Applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *IRPA* [the Decision]. Leave was granted November 8, 2016.

II. Facts

[2] The Principal Applicant is a citizen Nigeria, as are the Secondary Applicant, the Minor Applicant and the Principal Applicant`s husband [Husband]. The Applicants came to Canada and made refugee claims on the ground of political opinion, fearing that they would be arrested, detained and possibly killed if they returned to Nigeria. The Husband is not part of this refugee claim.

[3] The Principal Applicant alleges that her Husband is a retired naval officer who became fed up with the corruption in the Nigerian oil industry and wrote a petition to the authorities in which he claimed to have incriminating documents against several high placed individuals involved in this corrupt oil industry.

[4] The Principal Applicant claims the family travelled to Canada for two weeks in November 2015, allegedly to visit family. The Husband allegedly returned to Nigeria ahead of the Applicants. Two days after his return, the Husband was allegedly arrested by authorities as a result of the petition he wrote. The Principal Applicant alleges that when her Husband was taken by the authorities, their house was upended, several of their documents and personal items were taken away and their bank accounts were frozen. She alleges that no one was able to make contact with the Husband for approximately a week, at which time his lawyer in Nigeria was

finally allowed to contact him. She alleges that, before the Husband left Canada, he gave her an envelope which contained a copy of the petition and several of the allegedly incriminating documents. She further alleges that, under interrogation, the Husband confessed that she was in possession of the documents sought by his interrogators. She and her children thereafter applied for refugee protection in Canada instead of returning to Nigeria, where they allege the authorities are awaiting them.

III. Decision

A. *Refugee Protection Division [RPD] Decision*

[5] On March 21, 2016, the RPD found the Applicants were neither Convention refugees nor persons in need of protection. The determinative issues were credibility and objective basis.

[6] The RPD found the Principal Applicant had “not provided sufficient credible and trustworthy evidence to support her fear of returning to Nigeria” and that it had credibility concerns resulting from inconsistencies between the Principal Applicant’s Basis of Claim [BOC] and her testimony. The RPD also found there were other anomalies identified which were not adequately explained.

[7] The RPD found the Principal Applicant failed to corroborate a central aspect of her claim, in that she did not provide any documentary proof to show that the Husband had accompanied the family to Canada. The RPD found the Global Case Management System [GCMS] notes did not evidence that the Husband had actually been issued a visa and without one, he would have

been unable to travel to Canada. The RPD drew a negative credibility inference which “completely undermine[d] the factual underpinning of [the] refugee claim”, finding the Principal Applicant’s testimony to be “generally not credible”. In light of this “general finding of no credibility”, the RPD rejected and gave no weight to the Principal Applicant’s supporting documents. The RPD also found the supporting documents to be either fraudulent or fraudulently obtained “in order to advance a bogus refugee claim”.

[8] The RPD found the alleged interest in the Husband by the authorities was not credible in light of the objective documentary evidence provided in the National Documentation Package [NDP]. The RPD also found the alleged interest in the Principal Applicant to be implausible considering that she lacked direct knowledge of any of the allegations that had been made by the Husband and considering that the documents he gave her, which it is claimed substantiate these allegations of corruption, were all matters of public record. In coming to this conclusion, the RPD made note of the objective documentary evidence contained in the NDP. The RPD did not accept the Principal Applicant’s allegation that she was in possession of documents that posed a serious threat to the continuing profitability of illegal operations carried out by corrupt officials and other higher-ups. Finally, the RPD found:

Given the previous adverse credibility findings and in light of the preponderance of the documentary evidence...the principal claimant’s subjective fear of persecution is not objectively well-founded. The principal claimant and her children do not face a serious possibility of persecution should they return to Nigeria today.

[9] The RPD therefore concluded that the Principal Applicant's story was generally not credible, the Principal Applicant was not a credible witness and the Principal Applicant had failed to satisfy her burden. The RPD rejected her claim.

[10] The Applicants appealed this Decision to the RAD.

B. *RAD Decision*

[11] On June 28, 2016, the RAD found the Applicants were neither Convention refugees nor persons in need of protection. The RAD ultimately concluded, as a cumulative result of its findings, that the Applicants lacked credibility and did not accept that the events described by the Applicants occurred as described.

[12] The RAD refused to accept new evidence filed in support of the Applicants' appeal, namely, a copy of what was said to be their original flight ticket (which included the name of the Husband), as well as several photographs allegedly taken of the Husband while the Applicants were in Canada on their alleged vacation of November 2015. The RAD held these did not meet the statutory requirements set out in subsection 110(4) of *IRPA*, in that there was no explanation as to why these documents were unavailable prior to the RPD's Decision. The RAD also found that the alleged flight ticket submitted was actually a flight reservation and that the photographs submitted were undated and provided little context. The RAD further determined that, as there was no new evidence submitted pursuant to subsection 110(4) of the *IRPA*, it would be unable to proceed with an oral hearing as requested by the Applicants under subsection 110(6).

[13] The RAD noted and summarized the four major negative credibility and objective basis findings made by the RPD. It found the Applicants' submission that the RPD had applied a higher standard of proof than the balance of probabilities to be without merit. The RAD also found that, although the RPD's Decision could have been better organized, there was no error committed in requiring documentary evidence to corroborate the Principal Applicant's main allegation. The RAD concurred with the negative inference drawn by the RPD from the lack of documentary evidence corroborating the Husband's alleged travel. The RAD also found the Applicants' argument that the RPD had not provided clear and specific statements as to the inconsistencies it found with the Principal Applicant's testimony to be without merit. The RAD found the RPD had made clear credibility findings; it noted this Court's prior holdings that the Board "is under no obligation to alert the refugee claimant of its concerns about weaknesses of testimony giving rise to implausibilities".

[14] The RAD concurred with the RPD's assessment of the evidence, noting the lacklustre proof of corruption the Principal Applicant allegedly had in her possession, the lack of information regarding whistleblowers in Nigeria being pursued by the authorities and the human rights documentation provided by the Principal Applicant which dealt with criminal suspects and not with persons in the Principal Applicant's situation. The RAD concurred with the RPD's assessment of the corroborating evidence (namely, the petition, the oil shipment receipts, the letters from the husband's lawyer in Nigeria and from the husband's employer and the affidavit from the husband's older brother), noting they were all submitted to confirm aspects of a story that was not credible; the RAD also found the documents did not make the Applicants' story credible. It noted that the widespread availability of fraudulent documents was not, by itself,

sufficient to reject foreign documents as forgeries but assigned no weight to the corroborating documents.

[15] The RAD found the Applicants' submission that the RPD had interpreted political opinion too narrowly to be without merit. It also found the Applicants' submission that the RPD erred in failing to consider facts particular to the claims of the Secondary and Minor Applicants to be without merit; their circumstances were not significantly different and the younger Applicants relied on the family BOC, as told by the Principal Applicant. The RAD therefore confirmed the RPD Decision and dismissed the Applicants' appeal.

[16] The Applicants seek judicial review of the RAD Decision.

IV. Issues

[17] The main issues on this application are whether the RAD acted reasonably in rejecting the proffered new evidence and whether the RAD's credibility and plausibility findings were reasonable.

V. Standard of Review

[18] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." A decision by the RAD reviewing a finding by the

RPD is to be reviewed by this Court on the standard of reasonableness. The Federal Court of Appeal has stated in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, that the RAD is to review the RPD's findings on the standard of correctness, but may defer to the RPD on credibility findings "where the RPD enjoys a meaningful advantage".

[19] In *Dunsmuir*, above at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[20] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole:

Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[21] Credibility is the central issue in both the decisions of the RPD and the RAD. It is therefore worthwhile to set out the law in this respect, which was recently summarized in *Khakimov v Canada*, 2017 FC 18:

... To begin with, the RPD has broad discretion to prefer certain evidence over other evidence and to determine the weight to be assigned to the evidence it accepts: *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 68. The Federal Court of Appeal has stated that findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 (FCA) [Giron]. The RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10. And see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at para 24 (FCA), where the Federal Court of Appeal said that the RPD:

... is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within “the heartland of the discretion of triers of fact”, are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.

[24] The RPD may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings “should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case”: *Haramichael v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1197 at para 15, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11 [*Lubana*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444. The RPD may reject uncontradicted evidence if it “is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence”: *Lubana*, above at para 10. The RPD is also entitled to conclude that an applicant is not credible “because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in ‘clear and unmistakable terms’”: *Lubana*, above at para 9.

VI. Analysis

A. *New evidence admissibility issue*

[22] I am not persuaded that the RAD acted unreasonably in declining to admit the proposed new evidence. The RAD reasonably noted the obligation lying on applicants such as these to meet the statutory requirements set out in subsection 110(4) of the *IRPA*, which includes providing an explanation as to why these documents were unavailable prior to the RPD's Decision, reasonably soon thereafter or before the RPD concluded its decision. I note that the Applicants were able to file birth certificates after the hearing but before the decision was completed; so too could have been the case with respect to the new evidence they sought to introduce before the RAD. Nothing in the evidence explains the delay. It was obvious from the questioning at the RPD hearing that further proof was needed. I note the Applicants had counsel at the RPD, albeit different counsel from that engaged in the RAD hearing and in this Court.

[23] In my view, the alleged flight ticket submitted was actually a flight reservation, as indicated by the RAD. It would appear from this document that the Husband had the right to come to Canada, but that was not the issue before the RAD; while it had e-ticket receipt numbers on it, the undated flight reservation does not prove the Husband actually flew to Canada with his family, or at any other time for that matter. As noted by the RAD, the flight reservation also had no date of issuance on it, which in my view further points to the reasonableness of the RAD's decision.

[24] As for the photos, the RAD reasonably found they were undated and provided little context; in my view, that finding was charitable because, in fact, the photos were filed without any evidentiary context at all. The issue was whether the Husband had, in fact, come to Canada at the time alleged, which the photos do not establish. While it appears from the photos that the

Husband had been in Canada at some time in the past, there is nothing in the record to show when that was. The RAD's decision to reject the new evidence was therefore reasonable. With respect, there is no merit in the Applicants' suggestion that the new evidence was rejected in large or in significant part because of the country condition evidence regarding the prevalence of fraudulent documents in Nigeria; that, in my view, was simply one of several relevant considerations considered by the RAD.

B. *Whether RAD's credibility and plausibility findings were reasonable*

[25] In my view, the answer to this question is yes. While the RAD is to review decisions by the RPD on the standard of correctness, the RAD may defer to the RPD's credibility findings; in my view, the RAD reasonably did so in this case. The entirety of the RPD and RAD decisions in this case are based on general findings of no credibility and on plausibility findings. The deference owed by this Court on review in such circumstances is, in my view, extremely high.

[26] The RAD acted reasonably in accepting the RPD's implausibility findings. The RAD's analysis and finding on the implausibility of both the Principal Applicant and her Husband's allegations of fear, while not the only available option, were options open to it on the record and facts of this case. The RAD reasonably concluded the RPD was entitled to draw negative credibility findings on the basis of implausibility: *Arubi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 36, Scott J. The RAD also reasonably rejected the Applicants' central allegation that families (such as the Applicants) of whistleblowers (such as the Husband) are of interest to corrupt officials in Nigeria, particularly given the lack of objective support for this allegation and the lack of any explanation for why this would be the case. The onus to establish

their case was on the Applicants. The RAD reasonably found the “evidence of alleged corruption insignificant and easily accessible by others”. The implausibility findings flowed directly from the Applicants’ own evidence of being wanted by higher ups and authorities in Nigeria and the Principal Applicant’s failure to support that allegation. I am not persuaded this conclusion is unreasonable, because it was based on the evidence, common sense and rationality.

[27] With respect to the allegation that the RAD failed to assess the claim of the two children, again I am not persuaded the RAD acted either unreasonably or incorrectly. It reasonably held that there was no indication that the circumstances of the children were “significantly different than those of the Principal Applicant”. This finding was reasonable given that the children’s allegations were tied to that of the Principal Applicant. In this case, the allegations of the children were weakened by the RAD’s credibility concerns regarding the allegations of the Principal Applicant and reasonably so; all three relied on the underlying facts in the Principal Applicant’s BOC Narrative.

[28] Judicial review entails review of the reasons and the record as an organic whole. As noted above, it is not a treasure hunt for errors. In my respectful view, the RAD’s decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, per *Dunsmuir*. Therefore, judicial review must be dismissed.

VII. Question to Certify

[29] Neither party proposed a question to certify and, in my view, none arises.

VIII. Conclusions

[30] Judicial review is dismissed and no question is certified.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed, no question is certified and there is no order as to costs.

“Henry S. Brown”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3258-16

STYLE OF CAUSE: AJOKE MOSUNMOLA DOSUNMU, OLAJUWON
OLAYINKA DOSUNMU, FOLASHADE DOSUNMU,
MINOR v THE MINISTER OF CITIZENSHIP AND
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