

Federal Court



Cour fédérale

**Date: 20180706**

**Docket: IMM-4794-17**

**Citation: 2018 FC 685**

**Vancouver, British Columbia, July 6, 2018**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**ABIMBOLA ADEJOKE IBRAHIM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of the decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated October 13, 2017 [the Decision], which upheld the February 9, 2017 decision of the Refugee Protection Division [RPD] finding that the Applicant is neither a refugee nor a person in need of protection.

[2] As explained in greater detail below, this application is dismissed because, having considered the Applicant's arguments surrounding procedural fairness and the reasonableness of the Decision, I have identified no reviewable error on the part of the RAD.

## II. **Background**

[3] The Applicant, Abimbola Adejoke Ibrahim, is a citizen of Nigeria. She made a refugee claim alleging domestic violence committed by her husband.

[4] Ms. Ibrahim was born in Nigeria in 1968 and married in 1995. Her allegations are as follows. Approximately 14 years after they married, Ms. Ibrahim's husband became unhappy that the couple had only been able to conceive one child. He began to engage in extramarital relationships in 2009 and beat Ms. Ibrahim when she objected to his infidelity. He threatened to kill her if she did not let him take a second wife.

[5] Ms. Ibrahim states that the conflict escalated on June 11, 2016, when Mr. Ibrahim brought a woman home and Ms. Ibrahim refused to let them into the house. Mr. Ibrahim became violent, broke into the house, and attacked Ms. Ibrahim. In describing this incident in her Basis of Claim [BOC], Ms. Ibrahim says that Mr. Ibrahim "got a raw acid" and threatened to kill her with it, as a result of which she fled the house. Ms. Ibrahim then sought police assistance at two police stations but was told at both that her problem was a family matter and nothing could be done. She went into hiding, first at her brother's house and then with a friend, but subsequently fled the country for Canada.

[6] As supporting evidence for her refugee claim, Ms. Ibrahim submitted affidavits from her brother and her friend, a police report, and letters from a psychotherapist and a social worker.

[7] The RPD rejected the Ms. Ibrahim's claims on the basis of credibility. She appealed this decision to the RAD.

### III. **The RAD Decision**

[8] The RAD reviewed the RPD's decision on the correctness standard. While it agreed with Ms. Ibrahim that some of the RPD's findings were not sustainable, the RAD nevertheless held that she had not established her allegations with credible and trustworthy evidence on a balance of probabilities.

[9] The RAD found that Ms. Ibrahim had not provided a reasonable explanation for the discrepancy between her BOC and her testimony regarding whether her husband actually had acid in his possession or whether she simply believed that he did. The RAD described Ms. Ibrahim's testimony as evolving and found that she had embellished her allegation.

[10] The RAD also found that the Applicant's corroborative evidence was not credible. The police report was from the Ikeja Division of the Nigeria Police Force, rather than either of the police stations which Ms. Ibrahim alleged she had visited following the attack (the Adekunle Police Station and the Denton Police Station). It also did not indicate an address or any contact information in its letterhead, which the RAD reasoned from the documentary evidence could reasonably be expected to be present unless the report was from a small police station. The report

was also inconsistent with how Ms. Ibrahim had characterized the police's response to her inquiry. She had testified that the police told her there was nothing they could do, while the report said an investigation was in progress.

[11] Further, the RAD identified an inconsistency between Ms. Ibrahim's BOC, which stated that she ran to two police stations before going to her brother's house, and her testimony before the RPD, where she said that her brother attended the second police station with her. The RAD also noted that her brother's affidavit did not refer to attending the police station. Because of these discrepancies surrounding Ms. Ibrahim's efforts to obtain police assistance, and the fact that the RAD considered her explanations for the discrepancies to be both changing and unreasonable, the RAD found that the police report was not a genuine document and drew an adverse inference as to Ms. Ibrahim's credibility.

[12] The RAD also discounted Ms. Ibrahim's supporting affidavits. The affidavit from her friend referred to the assault happening in September, rather than June, and contained an error in its description of the law pursuant to which the affidavit was sworn. Given these issues and the documentary evidence as to the general availability of fraudulent affidavits in Nigeria, the RAD did not find the affidavit from Ms. Ibrahim's friend to be reliable evidence and gave it no weight.

[13] With respect to affidavits of Ms. Ibrahim's brother, the RAD noted that they were sworn at the High Court in Ikeja, which the country documentation indicated to be a source of fraudulent evidence, and found the affidavits to be insufficient to outweigh the credibility problems with the rest of the evidence.

[14] The RAD ultimately arrived at the same determination as the RPD and confirmed its finding that Ms. Ibrahim is not a Convention refugee or a person in need of protection.

IV. **Issues and Standard of Review**

[15] The Applicant submits the following issues for the Court's determination:

A. Did the RAD breach the Applicant's right to procedural fairness?

B. Did the RAD ignore or misinterpret relevant evidence?

[16] Issues of procedural fairness are governed by the standard of correctness and issues surrounding an administrative decision-maker ignoring or misinterpreting evidence are governed by the standard of reasonableness.

V. **Analysis**

[17] Ms. Ibrahim raises issues of procedural fairness surrounding a number of the RAD's findings. However, there is overlap between these arguments and her arguments surrounding the reasonableness of the Decision, as she submits that some of the same findings result from the RAD ignoring or misinterpreting relevant evidence. I have therefore structured my analysis of her arguments around the individual findings that she challenges and, in relation to each finding, will address both her arguments surrounding the RAD's treatment of the evidence and her procedural fairness arguments where applicable.

[18] In challenging the reasonableness of the Decision, Ms. Ibrahim submits that the RAD's analysis is unintelligible because it arrived at inconsistent findings as to her credibility. She notes that the RAD found that some of the RPD's credibility findings were not sustainable and argues that it was therefore inconsistent for the RAD to have also made an adverse determination as to her credibility.

[19] I find little merit to this argument. The RAD agreed with Ms. Ibrahim's submission that the RPD erred in finding implausible her allegation that she suffered only black eyes from the alleged attack by her husband in June 2016. The RAD also agreed with her position that, as the RPD had accepted her explanation that she was too embarrassed to seek medical assistance following the alleged attack, it was unreasonable for the RPD to also fault her for not providing medical documentation corroborating the attack.

[20] However, there is nothing in this analysis by the RAD that suggests it accepted the credibility of Ms. Ibrahim's allegations of the June 2016 attack. Rather, the RAD clearly states that, while it agreed that some of the RPD's credibility findings were not sustainable, it had unresolved concerns with respect to credibility. The RAD sought submissions from Ms. Ibrahim on those concerns, and it did not receive from her submissions which it considered to be reasonable explanations for the discrepancies in her evidence. These discrepancies include the inconsistency as to whether she actually witnessed her husband retrieve acid and threaten her with it. Although relying on reasons to some extent different from those of the RPD, the RAD confirmed the RPD's determination that Ms. Ibrahim had not established her allegations with credible or trustworthy evidence.

[21] Ms. Ibrahim raises a similar argument surrounding her brother's affidavit evidence, as the RAD found that the RPD erred in rejecting the two identical affidavits by the brother based on them having been printed on paper that appeared to be older than the date the affidavits were sworn. However, as explained in more detail later in these Reasons, the RAD had other concerns with the brother's affidavit evidence and concluded that it was insufficient to outweigh other credibility concerns in the evidence. I find no inconsistency in the RAD finding an error in the RPD's analysis but then proceeding to afford little weight to the brother's affidavits for other reasons.

[22] Ms. Ibrahim argues that the RAD erred in its treatment of psychological evidence which she provided as an explanation for the discrepancies in her evidence, submitting that her psychological state affected her recollection. This evidence consisted of a letter from a social worker and a report from a psychotherapist, offering opinions that Ms. Ibrahim suffers from posttraumatic stress disorder and anxiety and that she has trouble remembering the attack. She submits that the RAD failed to properly engage with this evidence and erred in dismissing it because the authors of these documents based their understanding of the incident on what Ms. Ibrahim had told them.

[23] I find no error in the RAD's treatment of this evidence. The RAD observed that the authors were not medical doctors. It described the evidence of the social worker as a lay opinion and noted that the psychotherapist had met with Ms. Ibrahim only once. The RAD also concluded that the psychological evidence did not account for the discrepancies in her evidence. When asked about the discrepancy surrounding the acid, she testified that her BOC said that her

husband “got” acid because she was sure he had some. The RAD regarded this as an acknowledgement by Ms. Ibrahim that she was embellishing her allegation and therefore concluded that the discrepancy was not a consequence of difficulty remembering the event. It similarly found that she had given changeable testimony surrounding the discrepancy as to whether her brother had accompanied her to the police station, and again found that psychological evidence could not account for this. These analyses demonstrate the RAD engaging with the psychological evidence and reasonably concluding that it did not explain the discrepancies.

[24] With respect to the evidence of Ms. Ibrahim’s brother, she raises both reasonableness and procedural fairness arguments. Under the former ground, she submits that the RAD erred in failing to analyse the evidence for what it said and in rejecting it simply because it was brief. However, the Decision demonstrates that the RAD did consider the substance of the brother’s affidavits. It noted that, inconsistent with Ms. Ibrahim’s testimony, the brother’s affidavits did not indicate that he attended the police station with her. The RAD also identified from the documentary evidence that the High Court in Ikeja, where the brother’s two identical affidavits were sworn, is a source of fraudulent documentation. It concluded that, even without finding the affidavit to be fraudulent, its brevity and the fact that it did not mention accompanying Ms. Ibrahim to the police station made it insufficient to outweigh the credibility problems present in the rest of the evidence. I find nothing unreasonable in this analysis.

[25] Turning to procedural fairness, Ms. Ibrahim submits that the RAD erred by failing to give her notice of its concerns with her brother’s evidence. In advancing her procedural fairness



arguments in relation to this and other findings, she takes the position that the RAD breached its obligations of procedural fairness by arriving at its Decision based on findings different than those of the RPD, without giving her an opportunity to address these new points. She does not submit that the RAD was required to afford her an oral hearing, only that it was unfair for the RAD to arrive at the findings it did without giving her notice of the points about which it was concerned.

[26] However, prior to arriving at the Decision, the RAD wrote to Ms. Ibrahim's counsel on September 8, 2017, requesting submissions on a number of issues. This letter described the first of these issues as follows:

The Appellant testified that she called her brother, who accompanied her to the second police station with her on June 11, 2016. She did not mention in her Basis of Claim (BOC) form that she called her brother and that he attended the police station with her, and testified that she did not remember this when completing her BOC.

[27] I find that this correspondence sufficiently placed Ms. Ibrahim on notice of the principal concern which resulted in the RAD giving her brother's evidence little weight. She also argues that it was a breach of procedural fairness for the RAD to rely on documentary evidence as to the availability of fraudulent documentation from the High Court in Ikeja without giving her specific notice of this concern. In my view, this argument also does not support a conclusion that Ms. Ibrahim was deprived of procedural fairness. Previously, the RPD had referred to its own observations about the prevalence of false documents in Nigeria in support of its decision to give no weight to the brother's affidavit. Moreover, the RAD's treatment of the brother's evidence did not turn on the availability of fraudulent documentation. It expressly stated that, even without

finding that the brother's affidavit was fraudulent, it was insufficient to outweigh the credibility problems with other evidence.

[28] Ms. Ibrahim also raises both reasonableness and procedural fairness concerns surrounding the RAD's treatment of the police report. The RAD found that the police report was not a genuine document and drew an adverse inference as to Ms. Ibrahim's credibility due to her submission of it. The RAD arrived at this finding for several reasons. The report was from a station different from the two at which Ms. Ibrahim said she had sought assistance. The RAD also found that the report did not conform with the documentary evidence which indicated that, other than for smaller stations, such reports would contain an address and telephone number. The report was also inconsistent with Ms. Ibrahim's own evidence, in that it indicated that further investigation was still in progress, while she testified that the police told her there was nothing they could do.

[29] Ms. Ibrahim submits in particular that the RAD arrived at its conclusion, that the Ikeja Division of the Nigeria Police Force was a large station, without any supporting evidence. She submits that this conclusion was therefore unreasonable and that it was a breach of procedural fairness to make this finding without giving her an opportunity to address the point. However, the police report was the subject of several of the issues raised by the RAD in its September 8, 2017 letter to Ms. Ibrahim's counsel, including the following:

The police report does not indicate any address or contact information for the station on its letterhead.

[30] The RAD's Decision expressly notes that her counsel submitted that the report conformed to the description of police reports issued by smaller police stations and that the appearance of the report can be attributed to the size of the station. However, the RAD notes that Ikeja is the state capital of Lagos and that there was no information before it that the Ikeja Division was a small station. In my view, Ms. Ibrahim was on notice of the RAD's concerns with respect to the police report and it was reasonable for the RAD to arrive at the conclusion it did in the absence of information provided by Ms. Ibrahim in support of her submission that the relevant station was a small one.

[31] Finally, Ms. Ibrahim also raises both reasonableness and procedural fairness concerns surrounding the RAD's treatment of the evidence from the friend with whom she says she stayed following the alleged attack by her husband. She argues that it was unreasonable to impugn the friend's affidavit based on a typographical error in the reference to the legislation under which it was sworn, and that she was denied procedural fairness because she was not given notice of the RAD's concerns about the availability of fraudulent documents in Nigeria.

[32] Again, the procedural fairness argument cannot succeed, because the RAD's September 8, 2017 letter referred to the following issue upon which the RAD was seeking submissions:

The affidavit of Mrs. Junaid indicates that it was sworn in accordance with the provisions of the "Oaths Law of 2004," while the affidavit of Mr. Adewumi is sworn in accordance with the "Oaths Law of Lagos State, 2003."

[33] While this description of the issue does not expressly reference concern about the authenticity of the affidavit, in my view the description was sufficient to put Ms. Ibrahim on notice of this concern.

[34] With respect to the reasonableness of the RAD's treatment of this evidence, Ms. Ibrahim notes that, in response to the RAD's identification of this issue, she submitted an explanation from the notary public who commissioned the affidavit, indicating that this was a typographical error. She argues that, with the benefit of this explanation, it was unreasonable for the RAD to reject the affidavit.

[35] However, the RAD specifically noted this explanation and concluded that, at best, the error indicated careless preparation of the document. This conclusion is within the range of reasonable outcomes and does not represent a basis for the Court to interfere with the Decision, particularly as the RAD's decision to afford the friend's affidavit no weight was also based on discrepancies in the friend's evidence as to when Ms. Ibrahim was allegedly assaulted.

[36] Having considered the Applicant's arguments surrounding procedural fairness and the reasonableness of the Decision, and having concluded that none of these arguments supports a finding that the RAD has committed a reviewable error, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-4794-17**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4794-17

**STYLE OF CAUSE:** ABIMBOLA ADEJOKE IBRAHIM v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 7, 2018

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