

Federal Court



Cour fédérale

Date: 20190114

Docket: IMM-1797-18

Citation: 2019 FC 46

Toronto, Ontario, January 14, 2019

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

**EKUNDAYO ADIJAT OLUSOLA
EKUNDAYO TEMITOPE
OLUWADAMILOLA
EKUNDAYO OLUWATOMISIN ENIOLA
EKUNDAYO SHALOM OLUWADAMILARE**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of Nigeria. They ask the Court to set aside a decision of the Refugee Appeal Division [the RAD] confirming the denial of their refugee claim by the Refugee Protection Division [the RPD] under sections 96 and 97 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27. The basis of the denial at both tribunals, for independent reasons, was credibility. For the reasons that follow, this application for judicial review is dismissed.

II. Background

[2] This case concerns a family consisting of the Principal Applicant and her three children [collectively, the Applicants]. The Principal Applicant's husband is still in Nigeria. I will briefly summarize their narrative, before addressing the RAD's negative credibility findings, which the Applicants challenge in this judicial review.

[3] The Principal Applicant states that she has been accused of witchcraft by her husband's family. As a result, her husband's family demanded that she submit to cleansing rituals, her two daughters undergo female circumcision, and her son undergo cutting rituals. The Principal Applicant refused to allow herself or her children to be subject to these rituals. She claims that after seeking police protection to no avail, she went into hiding, where after her husband's family searched for her and spread the news throughout the community that she was a witch.

[4] The Applicants fled Nigeria, arriving in Canada in August 2016 on visitor visas, and subsequently made refugee claims. In July 2017, the RPD determined that they were neither Convention refugees nor persons in need of protection. They appealed to the RAD.

[5] The RAD concluded that the Principal Applicant was not credible. While it attributed more evidentiary weight to certain documentary evidence than did the RPD, and as a result made contrary findings on some of the credibility issues than the lower tribunal had held against the

Applicants, the RAD nonetheless found that those reversed findings were insufficient to offset the Principal Applicant's lack of credibility.

III. Issues and Standard of Review

[6] The Applicant challenges various factual findings of the RAD, to which the reasonableness standard of review applies (*Onyeawuna v Canada (Citizenship and Immigration)*, 2018 FC 1214 at para 21).

IV. Analysis

A. *Is the RAD's decision reasonable?*

[7] The Applicants argue that the RAD's credibility findings are unreasonable. Specifically, the Principal Applicant argues that the RAD erred in its treatment of several key items of documentary evidence upon which it relied to make its negative credibility finding, namely that of (i) female circumcision predating 2016, (ii) participation in an April 2016 family meeting, (iii) her neighbour's affidavit, and (iv) the failure to update her Basis of Claim [BOC] narrative and husband's affidavit. Each will be reviewed respectively.

(1) *Threats regarding female circumcision predating-2016*

[8] The RAD drew a negative inference regarding the Principal Applicant's credibility for including in her oral testimony – but omitting from her BOC narrative – that her husband's family told her that they intended to circumcise her daughters after they were born in 2003 and

2011, respectively. The RAD found that while it was true that the Principal Applicant's BOC narrative spoke of female circumcision as something that was threatened after her husband's family decided that she was a witch, those threats were different from the threats elaborated by the Principal Applicant in her testimony and that their absence from the BOC narrative was important.

[9] The Principal Applicant argues that the RAD should not have impugned her credibility based on her failure to mention earlier circumcision threats because she alluded to them in a general manner in her BOC narrative and should have been permitted to add details at the hearing. She relies on *Sibanda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1187 at para 14 for the proposition that the RAD misrepresented her evidence on this point and then relied on it to impugn their credibility.

[10] In *Sibanda*, however, the board drew a negative credibility inference because s/he found the applicant was unable to describe his alleged political opinion with any clarity and coherence. On judicial review, the Court found that the applicant's testimony demonstrated a degree of knowledge about the political situation in the applicant's country that was consistent with what one might reasonably expect of a 25 year old person, and the board both ignored and misconstrued evidence regarding the political situation.

[11] This is not what happened here. There was no misapprehension or overlooking of evidence. I agree with the Applicants that oral testimony provides the opportunity to expand on BOC statements. However, as was raised by the Respondent at the hearing, the issue here was

one of omitted evidence: while the threats of female circumcision predating 2016 were presented in her testimony, they were absent from her BOC narrative. While the RAD noted the Principal Applicant's argument that she referenced her in-laws desire to see her daughters circumcised in her BOC narrative, it reasonably found that the omitted details of these threats were central to her claim. In my view, it was open for the RAD to find that the omissions were not minor or elaborative details, but rather were related to facts critical to their refugee claim, and could serve as the basis for a negative credibility finding (*Guzun v Canada (Citizenship and Immigration)*, 2011 FC 1324 at para 18).

(2) *Family meeting in April 2016*

[12] Again, the RAD found that an inconsistency undermined credibility: the Principal Applicant testified that she did not speak at a family meeting in April 2016, while in her BOC narrative she stated that she spoke to the uncle at the meeting. When confronted with this inconsistency by the RPD, she revised her testimony, providing a different explanation.

[13] The Applicants argue that while this event was central to their claim, the RAD's credibility finding imposes too high a standard regarding the Principal Applicant's memory, especially because it relates to a very traumatic period, and that a refugee claim should not be determined on the basis of a memory test (*Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200).

[14] Again, *Sheikh* is distinguishable. There, the discrepancies included the applicant's failure to recall details that appeared to resemble a trivia quiz, including properly recounting all five

mottoes of a political party, the number of people distributing leaflets on a specific day, or the number of a political party's district office.

[15] The facts here were far more central to the core narrative regarding the agents of persecution. Again, it was reasonable for the RAD to expect consistency between the Principal Applicant's oral testimony and her BOC narrative to support key aspects of their claim, rather than peripheral ones, as was the case in *Sheikh*.

(3) *Neighbour's affidavit*

[16] The RAD found the Principal Applicant's neighbour's affidavit to be of limited value because the story it told was incomplete and provided little detail on the circumstances of the Applicants' hiding. The RAD further found that much of its content appeared to have been reported to the neighbour by the Principal Applicant.

[17] The Applicants rely on *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 at para 11 for the proposition that documents should be analyzed on the basis of the information contained therein, and not on the basis of information that is absent. They submit that the RAD rejected the document because certain pieces were missing, which is contrary to the existing jurisprudence (*Teganya v Canada (Citizenship and Immigration)*, 2012 FC 42 at paragraph 25).

[18] The RAD found that *Mahmud* was distinguishable because it deals with a situation where the credibility of the applicant was undermined because part of the narrative was not mentioned

in the documentation provided by others. Here, the affidavit was assigned little weight because it provided scant detail. In other words, the affidavit had a sufficiency deficit rather than a gap in consistency. These are different issues which can properly lead to different outcomes. Here, the RAD reasonably explained why the situation differed from that in *Mahumud*. A further weakness in this case was the RAD's finding that the affidavit's content appeared to have been informed by the Principal Applicant.

[19] Finally, I would note that the RAD assigned the affidavit some weight, rather than none at all. Contrary to the Applicants' argument, the RAD did not ignore the affidavit. Weight assigned to evidence is the domain of the administrative tribunal, and not the Court's on judicial review.

(4) *Failure to update BOC narrative and husband's affidavit*

[20] The RAD found that the Principal Applicant's failure to update her BOC narrative undermined her credibility in that it failed to reflect two key threats made by the uncle to her husband in September 2016 to (1) report her to the police for being a witch if he was unable to locate her by the end of that month; and (2) pick them up and perform the rituals upon their return to Nigeria. The RAD noted that the Applicants were represented by experienced counsel in the RPD proceedings and could have updated the BOC given the importance of these incidents.

[21] The Principal Applicant argues that the RAD's analysis was microscopic as the omissions from the BOC did not add a new dimension to their claim – they had already submitted that the uncle had frequented their home and threatened them.

[22] I do not agree. The RAD reasonably concluded that the uncle's threat to take the children upon their return to Nigeria was extremely relevant to the Applicants' claim, as it indicated that the threat was a continuing one, especially because the uncle's earlier visit in June 2016 did not include a threat to take the children and have them submit to female circumcision or cutting rituals upon their return to Nigeria. As was noted by the Respondent at the hearing, this event raised the "threat level" for the Applicants, and the RAD reasonably found that the Principal Applicant's failure to update her BOC and report the new threat to the police, undermined her credibility. In my view, it was reasonable for the RAD to determine that the Principal Applicant's failure to amend her BOC to reflect these important events undermined her credibility.

[23] Finally, the RAD disagreed with the low weight assigned to the Principal Applicant's husband's affidavit by the RPD, and as a result, attributed it substantial evidentiary weight. Due to this change in weighing, the Principal Applicant asserts that the RAD failed to explain how it could place substantial weight on the affidavit which corroborated important aspects of the Applicants' claim, yet state that the same points attested to by the Principal Applicant were not credible.

[24] In my view, it was open for the RAD to conclude that the substantial weight given to the Principal Applicant's husband's affidavit, added to the limited weight given to the pastor's letter and the neighbour's letter, was insufficient to offset the Principal Applicant's lack of credibility, given the various other negative credibility findings.

V. Conclusion

[25] There were several reasonable credibility findings which led the RAD to conclude that overall, the claim was not credible. Looking at the decision as an organic whole (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54), it is clear that the RAD independently assessed the evidence, and provided intelligible and transparent explanations in reaching a justifiable conclusion. As a result, the application for judicial review is dismissed.

JUDGMENT in IMM-1797-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1797-18

STYLE OF CAUSE: EKUNDAYO ADIJAT OLUSOLA, EKUNDAYO
TEMITOPE OLUWADAMILOLA, EKUNDAYO
OLUWATOMISIN ENIOLA, EKUNDAYO SHALOM
OLUWADAMILARE v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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