

Federal Court



Cour fédérale

**Date: 20190313**

**Docket: IMM-2598-18**

**Citation: 2019 FC 312**

**Ottawa, Ontario, March 13, 2019**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**DOUGLAS ELUOMUNO CHINWUBA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a citizen of Nigeria who seeks review of the decision of the Refugee Appeal Division (RAD) upholding the Refugee Protection Division (RPD) decision rejecting his claim for refugee protection. For the reasons that follow, this judicial review is dismissed as the decision of the RAD is reasonable.

## **I. Background**

[2] The Applicant was a CEO of a company in Nigeria. In July 2015, he was granted a visitor's visa to Canada. Between June and September 2016, the Applicant traveled to Canada to help his son who was enrolled at Ryerson University. In January 2017, the Applicant again traveled to Canada and in February 2017 was himself accepted into Humber College. In May 2017, his application for a study permit was denied.

[3] In June 2017, the Applicant filed an inland claim for refugee protection alleging fear of persecution by the Directorate of State Security (DSS) and other security agents in Nigeria due to his political opinions and for being a suspected supporter of the Indigenous People of Biafra (IPOB) organization. He claims to have been arrested, beaten, and detained by the DSS in October 2016 for a week until his lawyer provided proof that he had no connection with the IPOB.

[4] The DSS agents in Nigeria allegedly continue to search for the Applicant and ask his wife about his whereabouts.

[5] The RPD rejected the Applicant's claim on October 24, 2017, on the basis of credibility.

## **II. RAD Decision Under Review**

[6] The RAD found that the RPD did not err when it concluded that the Applicant failed to credibly establish his claim.

[7] The RPD had four main concerns with the Applicant's claim. The first was regarding the Applicant's involvement with the IPOB and how the Nigerian lawyer proved to authorities that the Applicant had no involvement with the IPOB. The second concern was why the Applicant did not leave Nigeria sooner given his multiple travels to Canada. The third concern was over some of the Applicant's claims and statements not being included in his original Basis of Claim (BOC). Lastly, there were concerns regarding the supporting documentary evidence.

[8] The central basis of the Applicant's claim for refugee protection was that he is wanted by the DSS and other security agents as a perceived supporter and financier of the IPOB. However, he denies any involvement with the IPOB. The RAD found that the Applicant's responses to the RPD's questions asking him to elaborate on his allegations were vague. The RAD agreed that the RPD's findings that the Applicant's allegations based upon his perceived involvement with the IPOB were inconsistent, and the RAD found no error in the RPD's negative credibility findings in this regard.

[9] The RPD found the Applicant's delay in leaving Nigeria and seeking protection once he was in Canada demonstrated a lack of subjective fear. This added to the RAD's overall concern with the Applicant's credibility and his allegations of persecution. The RAD found no error in the RPD's adverse credibility findings.

[10] The RAD also found no error on the part of the RPD for impugning the Applicant's credibility as a result of BOC omissions. The RAD noted that the Applicant was represented by experienced counsel both in the preparation of his BOC and his proceedings before the RPD, so the fact that he did not amend his BOC and had no reasonable explanation for the omissions were factors that properly weighed against his credibility.

[11] The RPD also had credibility concerns with the Applicant's supporting documentary evidence, including the fact that there were no receipts for the affidavits that were filed in Court. The RPD ultimately gave these documents no weight. Having reviewed these documents independently, the RAD agreed in part. While the lack of accompanying receipts with the affidavits was a valid factor to consider, the RAD held that the RPD erred in finding that the documents were fraudulent based on this concern alone. Nevertheless, the RAD found that there were other credibility concerns with these documents that warranted giving them minimal weight.

[12] Regarding the other documentary evidence that was considered by the RPD, the RAD agreed that there were clear irregularities and inconsistencies with these documents that raised concerns about the Applicant's overall truthfulness and concerns about the reliability of his documentation. The RAD relied on the decision in *Gebetis v Canada (Citizenship and Immigration)*, 2013 FC 1241 [*Gebetis*] that general findings of lack of credibility can impact all evidence submitted by an applicant, including documentary evidence, and this can ultimately support the rejection of a claim (at para 29).

### **III. Issue and Standard of Review**

[13] The Applicant raises four main issues with the RAD decision as follows:

- a) Was the RAD's finding of delay on the part of the Applicant reasonable?
- b) Did the RAD err in its credibility findings?
- c) Did the RAD properly consider material evidence?
- d) Did the RAD err by not conducting a section 97 analysis?

[14] Reasonableness is the standard of review this Court uses on review of the RAD decision (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at para 35).

### **IV. Analysis**

#### **A. Was the RAD's finding of delay on the part of the Applicant reasonable?**

[15] The Applicant argues that the decision of the RAD is unreasonable for failing to consider his explanation for the delay in leaving Nigeria. He explained that he was arrested in October 2016 and when he learned that he was about to be re-arrested he went into hiding until he was advised to leave Nigeria for his own safety, which he did in January 2017. He argues that his narrative is consistent and that it was unreasonable for the RAD to have concluded that this amounted to delay. He also argues that, even if he did delay in bringing forward his claim, this is not relevant to the issue of a subjective fear of persecution.

[16] He relies on the Federal Court of Appeal decision in *Huerta v Canada (Minister of Employment and Immigration)*, [1993] 40 ACWS (3d) 487 (FCA) where the Court stated, “The delay in making a claim to refugee status is not a decisive factor in itself. It is, however, a relevant element which the tribunal may take into account in assessing both the statements and the actions and deeds of a claimant.”

[17] However, there were two delays which concerned the RAD. First was the delay in leaving Nigeria and second was the delay in claiming protection once he was in Canada. Further, the RAD noted that the Applicant was able to leave Nigeria on his own passport despite his claim that he is wanted by the DSS. Despite the explanations offered by the Applicant in response to these issues, the RAD did not consider the explanations credible.

[18] The RAD is entitled to consider an applicant’s delay in bringing forth a claim, and while delays need not be determinative, they can fatally impugn an applicant’s credibility such that the claim is rejected (*Hartono v Canada (Citizenship and Immigration)*, 2017 FC 601 at para 21 and *Espinosa v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324 at para 17).

B. *Did the RAD err in its credibility findings?*

[19] The RAD agreed with the RPD’s credibility findings. The Applicant argues that, in accordance with *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA), he has the benefit of the presumption of the truth, which the Court states at paragraph

5, “When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.”

[20] However, this is only a presumption and does not apply when there is reason to doubt the truthfulness of an applicant’s statements. Here the RAD had concerns with the credibility of the claim, and the Applicant was not able to provide evidence or arguments rebutting both the RAD’s and the RPD’s significant credibility concerns.

[21] Omissions from the BOC were also identified as an area of concern. The Applicant cites *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101 at paragraph 18 to contend that, “This Court has frequently held that the Board should not be concerned about minor or collateral omissions.... It is well understood that these documents are often prepared by representatives or on the advice of representatives with different views of materiality.”

[22] However, the BOC omissions here were not found to be minor or collateral but instead were important to the Applicant’s claim. Omissions and contradictions are a reasonable basis for doubting an applicant’s credibility (*Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at para 50).

[23] On issues of credibility, as the RPD may have a meaningful advantage over the RAD in making such assessments, the RAD should give the RPD’s findings an appropriate amount of deference (*Huruglica* at para 70). The RAD reasonably considered the RPD decision and deferred to the RPD where appropriate.

C. Did the RAD properly consider material evidence?

[24] The Applicant argues that the RAD erred in failing to consider his documentary evidence. In particular, he argues that the RAD erred in according no weight to the affidavits filed in support of his claim. He argues that the RAD was bound to consider the totality of the evidence before it, including any explanations provided.

[25] In the circumstances, it was reasonable for the RAD to rely upon *Gebet* at paragraph 29 that, “As stated by this Court numerous times, general findings of lack of credibility can affect all relevant evidence submitted by an applicant, including documentary evidence, and ultimately cause the rejection of a claim” [emphasis in original].

[26] Evidence is not assessed in isolation from the overall claim, and when the Applicant’s personal evidence is not credible, it is reasonable for the RAD to have credibility concerns with the supporting documentary evidence. Here the RAD considered the affidavits but accorded them minimal weight. As well, the medical note relied upon by the Applicant was not found to be reliable because there were discrepancies on the face of the document. Similar issues were identified by the RAD with respect to the letter from the Applicant’s lawyer.

[27] This is not a case where the RAD failed to assess the evidence. Here the evidence was assessed but when the concerns with the documentary evidence were considered in the context of the Applicant’s overall claim, the credibility concerns could not be overcome.



[28] In essence, the Applicant is asking the Court to reweigh the evidence or apply a different interpretation to the evidence. That is not the role of the Court on judicial review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

D. *Did the RAD err by not conducting a section 97 analysis?*

[29] The Applicant argues that the RAD failed to properly consider his documentary evidence in the context of considering his claim under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He argues that the failure to assess his evidence led to a failure to assess his section 97 claim for protection.

[30] Section 97 of the IRPA provides as follows:

<b>Person in need of protection</b>	<b>Personne à protéger</b>
<p><b>97. (1)</b> A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p>	<p><b>97. (1)</b> A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée</p> <p>a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas</p>

suisant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[31] As noted above, in this case the RAD did consider and assess the evidence. In any event, the RAD and the RPD are not obligated to undertake a section 97 analysis when faced with a

case where the claimant lacks credibility. As stated in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at paragraphs 2 and 3:

[2] The Judge also certified a question, namely: where there is relevant objective evidence that may support a claim for protection, but where the Refugee Protection Division does not find the claimant's subjective evidence credible except as to identity, is the Refugee Protection Division required to assess that objective evidence under s. 97 of the *Immigration and Refugee Protection Act*?

[3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[32] In this case, where the applicant lacked credibility and in the absence of independent and credible documentary evidence, there was no obligation on the RAD to consider the section 97 claim.

[33] For these reasons this judicial review is dismissed.

**JUDGMENT in IMM-2598-18**

**THIS COURT'S JUDGMENT is that** this judicial review is dismissed and there is no question for certification.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-2598-18  
**STYLE OF CAUSE:** DOUGLAS ELUOMUNO CHINWUBA v MCI  
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