

Federal Court



Cour fédérale

**Date: 20200424**

**Docket: IMM-331-19**

**Citation: 2020 FC 552**

**Ottawa, Ontario, April 24, 2020**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**JONAH RAPULUMCHUKWU ONOH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Thorough preparation for a hearing, including awareness of the contents of the record and review of material evidence, can be highly beneficial to a refugee claimant. However, reviewing the evidence in advance of a hearing is not a prerequisite to being found credible, and not having done so is not a reasonable basis for an adverse credibility finding. The Refugee Appeal Division (RAD) made this error in its assessment of Jonah Onoh's credibility.

[2] Mr. Onoh is a citizen of Nigeria, and a graduate of Kharkiv National Medical University in Ukraine. He seeks refugee protection stating that he fears persecution in his native Nigeria based on his bisexuality. He sought to establish his bisexuality through his own evidence and through a letter from a former boyfriend who was a medical school classmate. Both Mr. Onoh's testimony and the letter described their relationship and an incident where they had been photographed and blackmailed by the ex-boyfriend's neighbour.

[3] The RAD found that Mr. Onoh was not credible based on two concerns with the blackmail narrative; his limited ability to recall names of his medical school professors; and the fact that he had not read the ex-boyfriend's letter, which had been sent directly to Mr. Onoh's counsel, prior to his hearing before the Refugee Protection Division (RPD). With respect to the letter, the RAD concluded that Mr. Onoh "should have made himself aware of its contents," since it was part of his claim for protection. It also found that not knowing the contents of the letter was inconsistent with Mr. Onoh's statement at his refugee hearing that he hoped the ex-boyfriend was okay, and that this undermined the credibility of both Mr. Onoh and the letter. The RAD rejected the refugee claim based on these credibility concerns.

[4] I find the RAD's reliance on Mr. Onoh's difficulty recalling his professors' names, and its treatment of the ex-boyfriend's letter, to be unreasonable. As the Minister concedes, the professors' names became immaterial once the RAD accepted that Mr. Onoh attended school in Ukraine. It was unreasonable to find that Mr. Onoh's ability to recall those names affected his credibility. It was also unreasonable to find Mr. Onoh not credible because he had not read the ex-boyfriend's letter before his hearing, and to exclude the letter for the same reason. This is so

whether or not Mr. Onoh expressed the hope that his ex-boyfriend was okay, which I cannot see having any bearing on the matter. Given the importance of the letter as corroboration of Mr. Onoh's evidence regarding his sexuality, I find these grounds to be sufficient to render the overall decision unreasonable, and to be determinative of this application.

[5] The application is therefore allowed and the matter sent back to the RAD for redetermination.

## II. Issue and Standard of Review

[6] The issue on this application for judicial review is whether the RAD's credibility findings, and its resulting dismissal of Mr. Onoh's refugee claim, were reasonable.

[7] The parties agree that the standard of review applicable to the RAD's credibility or plausibility findings is reasonableness: *Olguin v Canada (Citizenship and Immigration)*, 2009 FC 193 at paras 4–6. The Supreme Court of Canada's recent decision in *Vavilov* was decided after this matter was argued, but simply confirms the applicability of this standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[8] The reasonableness standard requires deference to the RAD's fact-finding function, and a recognition that the RAD can draw reasonable adverse credibility inferences based on omissions, inconsistencies, rationality and common sense: *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at paras 13–19. The Court should not substitute its own opinion on credibility issues for that of the RAD. Rather, it is limited to verifying whether the RAD's inferences and

conclusions are reasonable: *Olguin* at paras 10–11. At the same time, this Court has stated that “concrete reasons supported by cogent evidence” should exist before the presumption that a claimant is telling the truth is rebutted: *Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783 at paras 10–11; *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) at p 305.

### III. Reasonableness of the RAD’s Credibility Findings

[9] To understand the RAD’s credibility findings, it is necessary to consider them in the context of Mr. Onoh’s refugee claim and the evidence he gave at the hearing. As I find the unreasonableness of two of the credibility findings determinative in this matter, I will focus the following discussion on the facts and evidence most relevant to those findings.

#### A. *Mr. Onoh’s Refugee Claim and Hearing*

[10] Mr. Onoh asserts that he is bisexual, and that this puts him at risk of persecution in Nigeria, where homosexual and bisexual people face criminal sanction, violence and torture. Mr. Onoh’s personal narrative and his testimony before the RPD described the development of his awareness of his sexuality during high school, and his departure for medical school in Ukraine after high school. He also described, among other things, an opposite-sex relationship he had with another medical student in his first year of school in Ukraine, and a subsequent four-year same-sex relationship with another medical school classmate. That relationship was kept secret due to the treatment of homosexuals in Nigeria and the number of Nigerians among their fellow students and friends.

[11] Mr. Onoh described an incident in June 2016, in which his boyfriend's neighbour, also a medical student, walked in through an inadvertently unlocked door during an intimate moment and photographed them. The neighbour blackmailed the couple, saying he would only delete the pictures in exchange for money. Despite paying the requested sum, the neighbour returned in January 2017 to ask for more money. This time, he threatened to send the pictures to the school authority and post them on the internet. Mr. Onoh and his boyfriend once again paid the requested amount. The incident and aftermath ultimately contributed to the breakdown of the couple, as Mr. Onoh's boyfriend blamed him for failing to lock the door. This incident was not presented as the basis for Mr. Onoh's refugee claim, but as being relevant background to his assertion that he is bisexual.

[12] To support his refugee claim, Mr. Onoh asked his former medical school girlfriend and his ex-boyfriend to write letters and send them to his lawyer. The letter from his girlfriend said little more than that they were classmates and had a relationship. The letter from the ex-boyfriend also confirmed they were classmates, provided information regarding members of the LGBT community in Nigeria, and provided a brief description of both their relationship and the blackmail incident.

[13] During the course of his refugee hearing, the RPD asked Mr. Onoh if he knew the name of the neighbour who had blackmailed him. Mr. Onoh said that he had forgotten the name, but appears to have questioned or ventured a guess at the name Yuri. The RPD pointed out that the ex-boyfriend had referred to him as Vlad in the letter, leading to this exchange:

**MEMBER:** ...He does mention his neighbour. He says, third last paragraph, his ... he says his neighbour's name was Vlad.

**CLAIMANT:** Vlad.

**MEMBER:** But you thought it was Juri? Can you explain?

**CLAIMANT:** I don't because a letter was sent to my lawyer. I just told you he sent it to my lawyer. I didn't go through the letter (inaudible).

**MEMBER:** So you haven't looked at the letter before today's date?

**CLAIMANT:** It was sent to my lawyer.

**MEMBER:** Okay, but you haven't seen it before today's date?

**CLAIMANT:** No.

[14] The RPD found that the determinative issue was Mr. Onoh's credibility, and found that he had not credibly established either that he had attended medical school in Ukraine, or that he was bisexual. As to the former, the RPD noted that Mr. Onoh had not filed his passport from the relevant period, and found both his inability to provide the name of the rector of the medical school and his difficulty recalling the names of his professors not to be credible.

[15] As to the latter, the RPD found it not credible that Mr. Onoh did not know the name of the neighbour who allegedly blackmailed him, and noted inconsistencies between Mr. Onoh's written and oral evidence regarding the number of pictures that he took and the amount of time they were given to pay the blackmail demand. The RPD also found that it was not credible that Mr. Onoh "would not take the initiative and interest to learn in preparation for his hearing what his former partner had written in his letter of support," or that he would not be interested to see whether it conveyed information about the ex-boyfriend's circumstances. Finally, the RPD found Mr. Onoh's stated fear of his father if he found out about his bisexuality was also not credible.

These credibility findings led to the RPD rejecting Mr. Onoh's claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

B. *The RAD's Determination*

[16] The RAD admitted as new evidence a copy of Mr. Onoh's old passport, which established that he was in Ukraine during the 2011 to 2017 period. Based on this new evidence, the RAD found that Mr. Onoh was in fact at medical school at the time, contrary to the RPD's finding. The RAD also found that the RPD had erred in its credibility findings about the amount of time to pay the blackmail demand, and about Mr. Onoh's relationship with his father. However, the RAD upheld four of the RPD's credibility findings, namely those arising from (i) Mr. Onoh not remembering the name of the blackmailer; (ii) the inconsistency with respect to the number of pictures; (iii) Mr. Onoh not remembering the names of his professors; and (iv) Mr. Onoh not having read his ex-boyfriend's letter.

[17] Mr. Onoh argues that each of these credibility findings was unreasonable, and that in making them, the RAD failed to adequately take into account the *Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression (SOGIE Guidelines)*. For the reasons below, I agree with Mr. Onoh that the third and fourth credibility findings above were unreasonable, and find that this rendered the decision as a whole unreasonable. Given this conclusion and my reasons for it, I need not address the other credibility findings, nor the allegation that the RAD inadequately considered or applied the *SOGIE Guidelines*.

C. *Reliance on Mr. Onoh's Difficulty Remembering Professors' Names is Unreasonable*

[18] The RAD concluded based on Mr. Onoh's old passport that he had in fact attended medical school in Ukraine. Nonetheless, the RAD found that as Mr. Onoh was in medical school for six years, with individual courses lasting two to three months,

...the Appellant should have been able to at least tell the RPD how he referred to his professors. ... [O]verall, the RPD was correct to be concerned regarding the Appellant's inability to recall professor's names. I find that the inability to easily name his professors negatively affects the credibility of the Appellant.

[19] The Minister concedes that this finding was unreasonable, as the admission of the passport as new evidence and the acceptance that Mr. Onoh attended medical school made the professors' names immaterial. However, the Minister argues that this error does not affect the overall credibility finding and thus the reasonableness of the RAD's decision.

[20] I agree that the RAD's credibility finding based on Mr. Onoh's difficulty naming his teachers was unreasonable, but believe it is worth additional comment. Significantly, it is unclear how the RAD considers the issue to have "negatively affected the credibility of the Appellant." The RPD put the questions regarding his professors to Mr. Onoh as part of a series of questions related to his medical education. I have no difficulty accepting that such questions might be, among others, fair questions to test whether Mr. Onoh did, in fact, attend medical school in Ukraine as he said he did, provided it does not descend into a "trivia quiz": *Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paras 13–14. If he was lying about that important fact in his narrative, then his credibility would have been significantly, perhaps fatally, affected.



[21] However, once it was clear from the new evidence that Mr. Onoh did attend medical school in Ukraine as he said, what can one make of the fact that he had difficulty remembering his professors' names? It can no longer go to the truthfulness of his evidence that he was at medical school in Ukraine, as that is accepted to be true. It might be considered to affect the "credibility" of Mr. Onoh's testimony to the extent that it shows weakness in his memory, and thus the reliability of his recollections: see, e.g., *Suntec Environmental Inc v Trojan Technologies Inc*, 2004 FCA 140 at para 21, quoting *Faryna v Chorny*, [1952] 2 DLR 354, 1951 CanLII 252 (BCCA) at pp 356-357 on the role of "opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly" as elements of the notion of credibility, in addition to truthfulness.

[22] However, Mr. Onoh's refugee claim does not turn on his memory. It is not a question of whether Mr. Onoh reliably remembers being bisexual. Nor is it even whether he reliably remembers being blackmailed; while the details might be a question of recollection, the existence of the blackmail incident is not a matter that Mr. Onoh might have mistakenly remembered. Rather, Mr. Onoh's claim turns on whether he is being truthful about being bisexual, and thus indirectly on whether he is being truthful about the blackmail incident having occurred. Nothing about whether he can remember his professors' names is relevant to his truthfulness on those issues, as the Minister concedes.

[23] Mr. Onoh may, of course, be telling the truth about going to medical school, but not about his bisexuality and/or the supporting story of having been blackmailed. That was the determination that the RAD was called upon to make. However, the RAD's conclusion that his

difficulty remembering his professors' names "negatively affects the credibility" of Mr. Onoh as a general matter either implies that they considered that it raised concerns about his truthfulness, which it clearly does not, or that they considered his memory material to his truthfulness regarding his bisexuality, which is equally unreasonable. This undermines the confidence of the Court that the RAD adopted and applied an appropriate approach to credibility generally.

D. *The RAD's Treatment of the Ex-Boyfriend's Letter was Unreasonable*

[24] The letters from Mr. Onoh's ex-girlfriend and ex-boyfriend were material evidence as they were the only direct corroboration of his bisexuality. I note in passing that I disagree with the RAD's assessment that the ex-girlfriend's letter "makes no mention of the Appellant's sexual orientation." In referring to the fact that they dated for a year, the ex-girlfriend is clearly speaking to Mr. Onoh's attraction to and involvement with members of the opposite sex, which is part of his asserted bisexuality. However, I appreciate that Mr. Onoh's refugee claim is based on the treatment in Nigeria of those attracted to members of the same sex, whether gay or bisexual, making this the determinative aspect of his bisexuality for the purposes of his claim.

[25] In addressing the ex-boyfriend's letter, the RAD summarized the RPD's findings with respect to the letter and Mr. Onoh's argument, then gave the following analysis:

The Appellant submitted this letter as part of his claim for protection and should have made himself aware of its contents. He also testified at his hearing in response to a question regarding [the ex-boyfriend's] circumstances in Nigeria:

"Right now, I don't... I really hope he's okay."

If the Appellant was concerned about [the ex-boyfriend's] circumstances in Nigeria, knowing the contents of [his] letter would have been a logical starting point. The fact that the

Appellant was not aware of the contents seriously undermines his personal credibility and the credibility of the letter in support of the Appellant's claim regarding his sexual identity.

I find that the RPD did not err and the Appellant's argument fails.

[Emphasis added; footnote omitted.]

[26] I find this analysis and conclusion unreasonable for the following four reasons.

[27] First and foremost, I find it unreasonable to draw adverse credibility conclusions on the basis that Mr. Onoh "should have made himself aware of the contents" of the letter in preparation for his hearing since it formed part of his claim. I fully agree that a refugee applicant will typically be well served by thorough preparation for their hearing, including awareness of the contents of their record. This may result in, among other things, their memory being refreshed and their being able to best understand and respond to the RPD's questions. It is also no doubt helpful and efficient for the RPD to have the witnesses who give evidence before it be well prepared. However, preparation to such an extent is not universal and is not a prerequisite to being found credible. A failure to prepare by reviewing all evidence—which might be caused by issues such as counsel's decisions, practice, and availability, and even financial constraints—should not be considered independent grounds for an adverse credibility finding.

[28] On this point, it is perhaps worth noting that members of the RPD's predecessor originally argued against disclosure obligations on the basis that allowing a refugee claimant to review evidence in advance would allow them to tailor their evidence: *Nrecaj v Canada (Minister of Employment and Immigration)*, [1993] 3 FC 630 (TD) at pp 636–637. Thus, one can see concerns expressed about the credibility of claimants' testimony based both on their ability to

review evidence prior to the hearing (in *Nrecaj*) and on their failure to do so (in this case). This underscores the unreasonableness of basing a credibility assessment on whether a claimant has or has not read other evidence in advance of their testimony. Again, however, this is not to detract from the value of thorough preparation for a refugee hearing.

[29] In any case, Mr. Onoh's evidence regarding the letter was not that he was not "aware of its contents," as the RAD found, but simply that he did not "go through" it, and had not seen it before the hearing. He may well have been aware of its general contents, and might have discussed it with either counsel or his ex-boyfriend, but not have discussed the only aspect of it that he was asked about: the name of the neighbour. We do not know the answer to these questions, as the RPD and the RAD drew their conclusions solely on the answer that he had not seen the document itself.

[30] Second, the RAD's conclusion that it would have been logical for Mr. Onoh to review the letter if he were concerned about his ex-boyfriend's circumstances significantly overstates the nature of Mr. Onoh's evidence. The RPD asked whether he knew what the ex-boyfriend's circumstances were. He responded that he did not know, but that he hoped he was okay, a very natural, human and empathetic response. To turn this into a basis for finding Mr. Onoh not credible—"if you hope he is okay, why didn't you read the letter?"—is not reasonable. There is a vast difference between a witness responding to a question about someone's condition with the hope that they are okay, and an assumption that this hope would determine their conduct in respect of evidence prepared for a hearing. I reach this conclusion even before considering the

various emotional reasons that Mr. Onoh's counsel points to as to why he might not want to read a letter from an ex-boyfriend in particular.

[31] Third, as with the finding regarding the professors' names, it is unclear from the RAD's reasons what the credibility finding actually is. Did it not believe that Mr. Onoh actually hopes his ex-boyfriend is okay even though he said he did, because otherwise he would have read the letter? If so, this would be a trivial basis on which to ground a credibility finding. Did it believe that Mr. Onoh actually did read the letter even though he says he did not? This appears to conflict with the RAD's reference to "[t]he fact that the Appellant was not aware of the contents," and the question would then arise as to why Mr. Onoh, having read the letter, still did not remember the name of the neighbour. If the RAD accepted that Mr. Onoh did not read the letter, why does this undermine his truthfulness? The RAD does not explain the nature of its credibility finding, or the basis for it, other than to say that the fact that Mr. Onoh was not aware of its contents "seriously undermines his personal credibility."

[32] Fourth, even if Mr. Onoh was found less credible on the basis that he had not read the letter, the RAD does not explain why Mr. Onoh not having read the letter makes the letter itself less credible. The letter purports to be authored by a third party, who would not know, particularly at the time of writing, whether Mr. Onoh would read it or not. The RAD effectively ignored the letter on the basis of its credibility. This suggests that the RAD concluded that the letter or its contents were fabricated, presumably either by or on behalf of Mr. Onoh. But the RAD does not explain how the fact that Mr. Onoh did not read the letter, or says that he did not

read it, makes it more or less likely that the letter was fabricated, and there is no line of reasoning so apparent to the Court that it can consider it implicit.

[33] I therefore conclude that the RAD's credibility conclusions with respect to the letter do not meet a "concrete reasons supported by cogent evidence" standard or, to put another way, I do not find the conclusions "transparent, intelligible and justified": *Vavilov* at para 99, adopting *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74.

E. *The Unreasonableness of these Credibility Findings Renders the Decision Unreasonable*

[34] In my view, the foregoing credibility issues are sufficient to affect the RAD's decision as a whole and render it unreasonable, regardless of whether the other credibility findings were reasonable. Had the letter from the ex-boyfriend been considered credible and given any weight, the assessment of Mr. Onoh's evidence of his sexuality, and thus the determination of his refugee claim, may well have been different. This conclusion is strengthened given the questions raised about the RAD's approach to credibility by its findings regarding the professors' names. Even though I agree with the Minister that the matter must be looked at globally, I am not satisfied that the decision could stand even if the other credibility findings were upheld, given the potential impact of the unreasonable credibility findings on the decision as a whole.

IV. Conclusion

[35] I therefore conclude that the RAD's decision is unreasonable and must be set aside. Given this determination, I need not address Mr. Onoh's challenges to the RAD's other

credibility findings, or his assertion that the RAD failed to adequately take into account the *SOGIE Guidelines*.

[36] The application for judicial review is granted, and Mr. Onoh's appeal is remitted to the RAD for redetermination by a differently constituted panel. Neither of the parties proposed a question for certification and I agree that none arises.

**JUDGMENT IN IMM-331-19**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted. Mr. Onoh's appeal is remitted to the Refugee Appeal Division for redetermination by a differently constituted panel.

"Nicholas McHaffie"

---

Judge



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

**DOCKET:** IMM-331-19

**STYLE OF CAUSE:** JONAH RAPULUMCHUKWU ONOH v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 21, 2019

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** APRIL 24, 2020

**APPEARANCES:**

Adam Wawrzekiewicz

FOR THE APPLICANT

Nur Muhammed-Ally

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lewis & Associates  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT