

Federal Court



Cour fédérale

Date: 20200617

Docket: IMM-5093-19

Citation: 2020 FC 700

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 17, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

TOMILAYO DUROJAYE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Tomilayo Durojaye, is a citizen of Nigeria. She arrived in Canada from the United States on December 21, 2017, and claimed refugee protection status.

[2] In support of her refugee protection claim, the applicant alleged that she feared members of the Ogboni cult and the Oro secret society. She explained that her refusal to marry a member of the Ogboni cult led to five incidents: (1) in September 2012, members of the Ogboni cult threatened her mother when she was unable to tell them where the applicant was; (2) in June 2013, the applicant's home was vandalized; (3) in December 2014, the applicant received threatening calls from the Ogboni; (4) during the same period, her mother was attacked and threatened with death unless she found the applicant; and (5) when she fled the family home in January 2015, the people who worship Oro, a masked man who cannot be seen by women, threatened to offer the applicant as a sacrifice to their god, because she accidentally saw Oro during a sacred ceremony. In March 2015, the applicant left Nigeria for the United States. Despite her leaving, cult members are still looking for her.

[3] On November 23, 2018, the Refugee Protection Division [RPD] rejected the applicant's refugee protection claim on credibility grounds. It came to that conclusion by pointing out contradictions, omissions and gaps in the applicant's testimony, the documents she filed in evidence and the immigration forms she submitted at the port of entry. In addition, the RPD did not attach any probative value to the documents presented by the applicant.

[4] On July 29, 2019, the Refugee Appeal Division [RAD] dismissed the applicant's appeal. Like the RPD, it concluded that the applicant was not credible. The RAD accepted the contradictions, gaps and omissions identified by the RPD in the main aspects of the applicant's narrative, in particular with regard to (1) her failure to mention the involvement of Ogboni cult members in her report to the police after her house was vandalized in 2013; (2) her failure to

indicate her change of address and employment during the period leading up to her departure from Nigeria on her IMM 5669 Form; and (3) her failure to claim asylum in the United States. While recognizing that caution is required with respect to point-of-entry statements, the RAD also rejected the applicant's argument that her answers to border officials, concerning the reasons for her leaving Nigeria, could not be used against her because they had been given without an interpreter and had not been recorded. As for the documents filed by the applicant, the RAD found that the documents lacked probative value to counter the preliminary lack of credibility findings. Finally, it determined that the applicant failed to establish a connection to the cult or the secret society she fears.

[5] The applicant is seeking judicial review of this decision. She criticizes the RAD for erring in the assessment of her credibility and for unreasonably rejecting the documents filed in support of her refugee protection claim.

II. Analysis

[6] The standard of review applicable to RAD decisions on the credibility and assessment of evidence is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4 (FCA); *Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 16).

[7] Where the standard of reasonableness applies, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (Vavilov at para 100). The Court must focus on “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (Vavilov at para 83) to determine whether the decision is “based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85). Close attention must be paid to the decision maker’s written reasons, which must be read holistically and contextually (Vavilov at para 97). This is not a “line-by-line treasure hunt for error” (Vavilov at para 102). If “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not for this Court to substitute its preferred outcome (Vavilov at para 99).

[8] Contrary to the applicant’s arguments, the Court believes that it was reasonable for the RAD to find that the applicant contradicted herself when explaining why the police report and her affidavit did not expressly mention that she suspected the Ogboni to have vandalized her house in 2013. In her testimony, the applicant stated that she had reported this to the police. However, when asked about her failure to mention it in her complaint to the police, she explained that it was because she did not want it to make things difficult for her, given the police’s ties to the Ogboni. The RAD, like the RPD, found that this contradiction undermined the applicant’s credibility.

[9] Furthermore, it was reasonable for the RAD to conclude that the failure to claim asylum in the United States demonstrated an absence of subjective fear on the part of the applicant. Even

if the applicant is right in pointing out that the failure to claim asylum is not a determinative factor in itself, the failure to make a timely claim can be an important factor in assessing a refugee protection claimant's credibility (*Kayode v Canada (Citizenship and Immigration)*, 2019 FC 495 at para 29; *Dawoud v Canada (Citizenship and Immigration)*, 2015 FC 1110 at para 41). It was open to the RPD and the RAD to find the applicant's explanations to be unsatisfactory.

[10] The applicant also criticizes the RAD for unreasonably rejecting her mother's and her husband's affidavits. According to her, these documents confirmed the main allegations of the refugee protection claim. The RPD and the RAD considered this evidence, but found that the documents did not have enough probative value to counter the adverse findings concerning the credibility of the applicant's allegations. None of the affidavits supports the applicant's testimony that the Ogoni were behind the vandalism in 2013. It is well established that credibility findings can influence the weight given to supporting documentary evidence (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 26; *Moshood v Canada (Citizenship and Immigration)*, 2016 FC 504 at paras 22–23).

[11] Finally, the applicant argues that the RAD erred in criticizing her for some of the answers in her IMM 5669 Form. The applicant submits that it was reasonable not to have provided the address where she sought refuge before leaving Nigeria since it was not a permanent address. In addition, even though she left her position in January 2015, it was nevertheless reasonable to indicate that she worked in a library until March 2015 since the employment relationship had not been severed. She added that the document was completed without an interpreter, lawyer or explanation. Finally, she criticizes the RAD for not taking into consideration the specific context

at the point of entry. She finds it incoherent for the RAD to criticize her for the answers she gave on her form and to subsequently state that the RPD had to treat the statements the applicant made to border officials about her reasons for leaving Nigeria with caution.

[12] The Court cannot agree with the applicant's arguments.

[13] The RAD rejected the applicant's explanations because it believed that the questions on the form were specific enough for the applicant to have provided the information. It also noted that the applicant had declared in her Basis of Claim Form [BOC Form] that she was able to read English. Finally, it found that the RPD had to treat point-of-entry statements with caution because they have a different purpose from those made at a hearing before the RPD. It concluded, however, that there was no reason to attach too much importance to the RPD's conclusion regarding the contradictions between what the applicant told border officials at the port of entry and what she stated in her BOC, being of the opinion that the RPD decision included several other reasons justifying the rejection of the refugee protection claim.

[14] The Court recognizes that the RAD's reasoning may seem somewhat inconsistent given that the IMM 5669 Form was completed on the same day as the applicant's interview with border officers. However, the Court is of the opinion that the RAD took into account the specific context of the point of entry when it examined the answers provided by the applicant. The omissions raised concerned key elements of the applicant's account. The applicant also declared in her BOC Form that she was able to read and understand the content of the form and the attached documents, attesting that all of the information she provided was complete, true and

correct. Her BOC Form also included a three-page, single-spaced account written in English. The Court is not satisfied that the RAD's reasoning on this point is unreasonable. That said, even if the Court was of the opinion that the RAD's reasoning on this point is inconsistent, there is no reason to intervene given that the RAD's decision includes other reasons to justify the rejection of the refugee protection claim.

[15] It is important to remember that findings regarding a refugee protection claimant's credibility call for a high degree of deference from this Court. Although the applicant does not agree with the RAD's findings or those of the RPD, it is not open to a reviewing court to reweigh or reassess the evidence to arrive at an outcome that is favourable to the applicant (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[16] For these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court does not believe that this case gives rise to any.

JUDGMENT in IMM-5093-19

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
This 7th day of July 2020.

Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5093-19

STYLE OF CAUSE: TOMILAYO DUROJAYE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 9, 2020

JUDGMENT AND REASONS ROUSSEL J.

DATED: JUNE 17, 2020

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