

Federal Court



Cour fédérale

**Date: 20211101**

**Docket: IMM-4017-20**

**Citation: 2021 FC 1162**

**Ottawa, Ontario, November 1, 2021**

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

**BETWEEN:**

**OLANREWAJU ABIODUN HASSAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Olanrewaju Abiodun Hassan, is a Nigerian citizen. He entered Canada from the United States in September 2017 and initiated a claim for refugee protection, reporting that he fears former business associates in Nigeria.

[2] The Applicant reported that, as the managing director of an established oil and gas company, he had removed three individuals from the company's board for fraudulent activities and had successfully pursued civil proceedings against those individuals between 2012 and 2016. He believes these individuals were behind two attempts to assassinate him in 2016.

[3] In refusing the claim for protection, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada identified "serious credibility concerns" but found the determinative issue was the availability of a viable Internal Flight Alternative [IFA] in Nigeria.

[4] The Refugee Appeal Division [RAD] confirmed the RPD refusal, but on different grounds. The RAD found the Applicant's reported fear had no nexus to a Convention refugee ground under section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA] and concluded there was insufficient credible evidence to demonstrate on a balance of probabilities that the Applicant faces a risk of harm under section 97 of the IRPA.

[5] The Applicant applies under section 72 of the IRPA for review of the RAD's August 11, 2020, decision. He submits the RAD's decision should be set aside for two reasons: (1) a breach of procedural fairness; and (2) the RAD unreasonably assessed the Applicant's credibility and the evidence. The Respondent argues the RAD's decision was procedurally fair and the RAD's credibility determination and treatment of the evidence was reasonable.

[6] For the reasons that follow, I am not persuaded that the Court's intervention is warranted. The Application is dismissed.

## II. Standard of Review

[7] Procedural fairness issues are reviewed by asking whether a fair and just process was followed, having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). This review is “best reflected in the correctness standard,” although no standard of review is actually being applied (*CPR* at para 54; see also *Grewal v Canada (Citizenship and Immigration)*, 2020 FC 1186 at para 5; *Sun v Canada (Citizenship and Immigration)*, 2020 FC 477 at para 27; *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 319 at para 49; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Procedural fairness is “inherently flexible and context-specific” and the requirements imposed by the duty are determined with regard to all of the circumstances in any given matter (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 77 and 127 [*Vavilov*]).

[8] Issues relating to the RAD's assessment of the evidence and credibility are to be reviewed on a reasonableness standard (*Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 14). A reasonable decision is one that is justified, transparent and intelligible, and is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law” (*Vavilov* at paras 15 and 85).

III. Analysis

A. *There was no breach of procedural fairness*

[9] The RAD, having concluded that the presumption of truthfulness in respect of the Applicant's evidence had been rebutted, found that the Applicant's failure to provide a reasonable explanation for the absence of corroborating documentation impugned his credibility.

[10] In considering the lack of corroborating documentation and relying on the Applicant's Basis of Claim form indicating a delay in his departure from Nigeria, the RAD found that the Applicant had an opportunity to collect documents prior to his departure. The Applicant argues that this finding was based on assumptions of fact that were never put to the Applicant by the RPD or the RAD. The failure to do so rendered the process unfair as the lack of documentation was central to the negative credibility finding.

[11] I am not convinced that there was any unfairness arising from the RAD's finding.

[12] The absence of corroborating documentation was clearly in issue before the RPD, where the Applicant was provided an opportunity to explain the absence of documents relating to the lengthy court proceeding and his role in the corporation. The RPD did not ask the Applicant about his specific efforts to obtain corroborating documentation prior to departing Nigeria however, the broader concern was identified and addressed. The issue was not new or unknown to the Applicant, who was represented before the RPD and had an opportunity to address the RPD's concerns.

[13] In these circumstances, I am of the view that the Applicant did have an opportunity to address his failure to obtain documents prior to leaving Nigeria. However, even if I were in agreement with the Applicant on this matter, I would nonetheless find that the circumstances do not demonstrate a breach of fairness.

[14] The RAD's analysis of the Applicant's conduct prior to departing Nigeria was neither the sole nor even the primary reason for the RAD's negative credibility finding. The RAD found that even if the Applicant had not thought to gather documents prior to departing Nigeria, there had been significant time to do so since his arrival in Canada. The RAD acknowledged the Applicant's explanation for not having done so – that contact had been lost with his lawyer in Nigeria in 2017 and he did not pursue documents through other means because he did not want to be discovered in Canada – but found this explanation to be unreasonable.

[15] The RAD's finding that the Applicant had an opportunity to gather documentation before he left Nigeria is only one aspect of the RAD's analysis in support of its conclusion that the Applicant had the opportunity to collect documentary evidence before his hearing. Having regard to all of the circumstances, I am therefore satisfied that the process was fair.

B. *The decision is also reasonable*

[16] In finding that the Applicant had significant time and opportunity to gather documents after his arrival in Canada, the RAD relies on a report in the National Documentation Package stating that, where a matter has gone to court, an individual may obtain court-controlled documents from abroad by sending a request directly to the particular court registrar. The

Applicant argues the RAD unreasonably misapprehended the evidence by relying on this report. The Applicant argues that because the report refers specifically to documents used in criminal proceedings, the information was of marginal relevance in respect of the civil judicial proceedings the Applicant reported he had pursued in Nigeria.

[17] I am not persuaded by this argument. The RAD expressly acknowledged that the report in issue related to court documentation in criminal proceedings. Having done so, the RAD then states: “[b]ased on the NDP evidence regarding court documents in criminal matters, I find, on a balance of probabilities, that court documents for Mr. Hassan’s case, which allegedly carried on for four years with numerous sitting dates, adjournments and a final judgment, should have reasonably been available to Mr. Hassan through the court registrar in Nigeria.” This conclusion is firmly based in the record and is supported by intelligible and transparent reasons.

[18] It was reasonably open to the RAD to conclude, as it did, that the presumption of truthfulness had been rebutted and that the Applicant had failed to provide a reasonable explanation for the absence of corroborating documents. Having reached these conclusions, the RAD did not err in ultimately finding that the Applicant failed to provide sufficient evidence to establish the facts underlying his claim.

#### IV. Conclusion

[19] The Application is dismissed. The parties have not identified a serious question for certification and I am satisfied none arises.

**JUDGMENT IN IMM-4017-20**

**THIS COURT'S JUDGMENT is that:**

1. The Application for judicial review is dismissed; and
2. No question is certified.

**"Patrick Gleeson"**

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Judge

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

**DOCKET:** IMM-4017-20

**STYLE OF CAUSE:** OLANREWAJU ABIODUN HASSAN v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 13, 2021

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** NOVEMBER 1, 2021

**APPEARANCES:**

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