

Federal Court



Cour fédérale

Date: 20220615

Docket: IMM-1708-21

Citation: 2022 FC 903

Ottawa, Ontario, June 15, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

**IFEOLUWA OLAYEMI AJIBUA
IREMIDE PRAISE JOHNSON THROUGH
HIS LITIGATION GUARDIAN
IFEOLUWA OLAYEMI AJIBUA
IYANUOLUWA CHAMPION JOHNSON
THROUGH HIS LITIGATION GUARDIAN
IFEOLUWA OLAYEMI AJIBUA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ifeoluwa Olayemi Ajibua is a citizen of Nigeria. She travelled to the United States in May 2015 to attend a geological conference. In September 2015, she became pregnant with her

first child, Iremide Praise Johnson, born in June 2016. Her second child, Iyanuoluwa Champion Johnson, was born in March 2018. Her two minor children are United States citizens, and have the right to Nigerian citizenship. The Applicants crossed into Canada to claim asylum on November 28, 2018.

[2] Ms. Ajibua claims that because she became pregnant out of wedlock in 2015, she fears persecution and harm in Nigeria at the hands of her father and members of a secret occultist society, Iyale Age Society, whose members have “connections everywhere” and included “lawyers, police officers, judges, and businessmen.”

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada found, and the Refugee Appeal Division [RAD] confirmed on appeal, that the Applicants are neither Convention refugees nor persons in need of protection. The determinative issue for both the RPD and the RAD was credibility. The Applicants seek judicial review of the RAD’s decision dated February 17, 2021.

[4] The Applicants plead that the RAD erred in its assessment of Ms. Ajibua’s credibility. The Respondent disagrees. The parties agree that the applicable standard of review is one of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85).

[5] It is the Applicants who bear the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[6] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have failed to persuade me that the RAD's decision is unreasonable. For the reasons below, this application for judicial review is dismissed.

II. Analysis

[7] The Applicants submit that the RAD erred in its assessment of Ms. Ajibua's credibility by unreasonably focusing on her motivation to stay in the United States and her failure to update her Basis of Claim form [BOC]. The Applicants further submit that the RAD erred by permitting its assessment of the documentary evidence to be tainted by its assessment of Ms. Ajibua's credibility.

[8] Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such

determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned “in the clearest of cases” (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12). Credibility determinations have been described as lying within “the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[9] Contrary to the submissions of the Applicants, I do not find that the RAD unduly focused on the inconsistencies regarding Ms. Ajibua’s plans when she came to the United States and on her motivation for remaining there. I agree with the Respondent that, based on the record, it was open to the RAD to find that Ms. Ajibua’s plans regarding the trip are significant in assessing the central allegation that unexpected events lead to the unplanned decision not to return to Nigeria. Ms. Ajibua’s allegation is that she only learned of the secret occultist society after she informed her parents of her pregnancy, several months after her arrival in the United States. This event allegedly led her to change her plans to return home on the basis that she would be harmed, killed and/or forced to undergo a spiritual cleansing.

[10] The RAD is entitled to a high level of deference. Bearing that in mind, I find that the RAD reasonably concluded that significant inconsistencies concerning Ms. Ajibua’s plans and motivations undermined her credibility both generally and in relation to allegations that are central to the claim. The RAD justified its findings with transparent and intelligible reasons. I see no reason to intervene.

[11] Prior to the hearing before the RPD in March 2020, there was no evidence that there was any contact between Ms. Ajibua and her father after October 2015. At the beginning of the RPD hearing, the RPD asked whether the information provided in Ms. Ajibua's BOC was complete, true and correct, to which Ms. Ajibua answered yes. Later during the hearing, when asked why she believed that anyone would still be interested in harming her five years later, Ms. Ajibua testified that her father was still interested in harming her because he called her in September 2019. Both the RPD and the RAD found that (i) the omission of the phone call was an omission of a significant event which was central to the claim of a forward-looking fear; (ii) the omission from the BOC was not reasonably explained; and (iii) the omission significantly undermined Ms. Ajibua's testimony that the phone call occurred, and supported negative inferences regarding her general credibility. The RAD noted that the Applicants were represented by counsel, both in connection with the preparation of her BOC and throughout the RPD proceedings.

[12] The Applicants plead that, contrary to the findings of the RAD, the BOC does not impose an obligation upon the Applicants to update it and that in any event Ms. Ajibua's explanation for failing to amend the BOC was reasonable. The Respondent submits that, based on the facts of this case, the RAD was entitled to draw a negative credibility inference based on Ms. Ajibua's failure to update her BOC to include the call.

[13] There are circumstances where an adverse inference may be drawn from an omission from a BOC or an amendment to it or from a failure to declare such an omission or amendment at the outset of the hearing. The alleged phone call took place approximately six months prior to the RPD hearing. It was significant in that the alleged phone call is the only evidence that

Ms. Ajibua's father is still motivated to find and harm her. I am not persuaded, in the present case, that the RAD erred by finding that the omission of the phone call impacted Ms. Ajibua's credibility regarding the existence of such phone call and the alleged forward-looking risk.

[14] Finally, the Applicants submit that the RAD's assessment of the documentary evidence was unreasonable because the RAD allowed its credibility assessment of Ms. Ajibua's testimony to influence its assessment of the documentary evidence. The Respondent submits that the RAD reasonably found that the supporting documentation had a number of issues and that it was not sufficient to overcome the credibility concerns that the RAD had.

[15] I agree with the Respondent. The RAD conducted a detailed and independent assessment of the supporting documentation, and ultimately concluded that it did not overcome the credibility concerns with Ms. Ajibua's testimony. This finding was reasonably open to the RAD on the record and is explained in its reasons. There is no basis, in my view, to interfere with it.

III. Conclusion

[16] For the foregoing reasons, I am not convinced that the RAD's decision is unreasonable. This application for judicial review is therefore dismissed.

[17] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-1708-21

THIS COURT'S JUDGMENT is that:

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

“Vanessa Rochester”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1708-21

STYLE OF CAUSE: IFEOLUWA OLAYEMI AJIBUA ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 9, 2022

JUDGMENT AND REASONS: ROCHESTER J.

DATED: JUNE 15, 2022

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