

Federal Court



Cour fédérale

Date: 20220712

Docket: IMM-5558-21

Citation: 2022 FC 1020

Ottawa, Ontario, July 12, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

CHRISTIANAH OLUFUNKE OLANIKE ADESIDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Christianah Olufunke Olanike Adesida (“Ms. Adesida”), made a claim for refugee protection because she feared the police in Nigeria could not protect her from the abuse of her family members following a land dispute in Nigeria. The Refugee Protection Division [RPD] dismissed her claim, finding her allegations not to be credible. She appealed this refusal

to the Refugee Appeal Division [RAD]. The RAD did not accept all of the RPD's negative credibility determinations, but still found that the claim lacked credibility and dismissed the appeal.

[2] Ms. Adesida argues that the RAD's credibility determinations were unreasonable. I find there were a number of serious shortcomings in the RAD's credibility findings. Based on the reasons set out below, the application for judicial review is granted.

II. Background Facts

[3] Ms. Adesida is a Nigerian citizen of Yoruba ethnicity who is approximately 67 years old. She is married and has four children who remain in Nigeria. She fears persecution by her half-brothers, who threatened her due to an inheritance dispute.

[4] Ms. Adesida's father owned a farm that was the main source of the family's income. He passed away in 1975. Prior to his death, he had informed the elderly members of the family that he wanted 60% of the land to be inherited by Ms. Adesida and her sister, and the remaining 40% to be shared between his other children.

[5] At the time of her father's death, the land was not conveyed; instead Ms. Adesida and her siblings operated the farm over decades, sharing in the profits. This situation changed in 2017 when Ms. Adesida's half-brothers wanted to sell the farm but refused to acknowledge her 60% share. They threatened Ms. Adesida and other family members who were supportive of complying with her father's wishes and tried to force her into consenting to a different division

of the inheritance where she would be left with only 10%. She initially refused. Eventually, after threats of death and physical abuse by her half-brothers, she consented to the arrangement. Ms. Adesida stated that she reported these threats to the police, but they did not do anything to assist because they viewed it as a family matter.

[6] Two weeks after Ms. Adesida gave up her share of the land, her half-brothers demanded she swear a “heathen oath” to ensure she would not make a future claim on the land. Ms. Adesida refused on account of her Christian faith and her half-brothers made new threats against her.

[7] Following these renewed threats, Ms. Adesida fled to Kaduna State where she stayed with her uncle for approximately five days. She returned home but remained in hiding and continued to receive threats from her half-brothers. After obtaining a visitor visa, Ms. Adesida left for the United States. After approximately one year in the United States, Ms. Adesida came to Canada on April 9, 2019 and made a claim for refugee protection.

[8] The RPD heard the claim on November 18, 2020. In a decision dated December 15, 2020, the RPD rejected Ms. Adesida’s refugee claim on the basis that she had failed to establish her claim with credible testimony and evidence. In particular, the RPD took issue with the lack of documentation of the land in dispute and the lack of effort to obtain such documents, omissions in her Basis of Claim form (“BOC”) about her uncle’s involvement, inconsistencies in her testimony about the police, and her allegations that she was in hiding between July 2017 to April 2018. The RPD found that Ms. Adesida’s other evidence, including the affidavits from her

children and other family members corroborating her allegations, were not sufficient to overcome these serious credibility concerns.

[9] Ms. Adesida appealed the refusal to the RAD.

[10] In a decision dated July 13, 2021, the RAD dismissed Ms. Adesida's appeal on the basis that she was not credible. The RAD did not accept all of the RPD's credibility determinations. It found the RPD was incorrect in drawing negative credibility inferences based on peripheral issues, such as Ms. Adesida's alleged inconsistent testimony about the police asking for a bribe, and the lack of detail in her BOC about her uncle's role. However, the RAD still found that the other remaining negative credibility findings should result in a dismissal of the appeal.

III. Issue and Standard of Review

[11] The sole issue on judicial review is with respect to the RAD's credibility determination. Both parties agree that the reasonableness standard applies. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[12] The RAD's credibility determination was based on three findings. First, the RAD found that Ms. Adesida was inconsistent about the length of time she spent in Kaduna State in 2017 and her time spent "in hiding" between July 2017 to April 2018. Second, the RAD found that Ms. Adesida failed to explain her lack of documentation in support of her entitlement to the land, specifically referencing the failure to provide documents from the Land Dispute Office. Third, the RAD found it implausible that Ms. Adesida's half-brothers would have been able to assert their disapproval of the inheritance at the time of her father's death as they were children. I find there to be sufficiently serious shortcomings with each of these findings that the decision cannot stand.

[13] On the first issue, the RAD found that a negative inference should be drawn based on inconsistencies in Ms. Adesida's testimony and her previous statements. The RAD found that Ms. Adesida's statement that she had been living in hiding for ten months was undermined based on its finding that on at least two occasions—once to meet her lawyer and another to have her fingerprints taken for her US visa application — Ms. Adesida had, in fact, left her home. When this issue was raised at the RPD, Ms. Adesida testified that she had forgotten about the trip to have her fingerprints taken, and she had her face covered when she travelled to her lawyer's office.

[14] The RAD accepted Ms. Adesida's explanations for the omissions and did not draw a negative inference on this basis, particularly given the medical evidence on file about her

memory issues. The RAD, nonetheless, drew a negative inference because her ability to leave the home on those two occasions “undermine[d] her credibility with respect to her allegation that she needed to remain in hiding to preserve her safety during the period of July 2017 to April 2018.”

[15] The RAD’s finding on this point is incoherent. The RAD seems to have found that Ms. Adesida’s credibility was undermined because despite saying that she could not leave her home for fear of her safety, she was in fact able to leave her home in safety two times in the ten-month period. In other words, since no harm befell her on those two occasions, she need not have bothered to live in hiding. This is not a logical basis on which to draw an adverse credibility finding.

[16] The RAD also found that Ms. Adesida’s statement in her BOC narrative that she had “moved” to her uncle’s home in Kaduna State was inconsistent with her testimony at the hearing that she only stayed at her uncle’s home in Kaduna State for five days before returning surreptitiously to her home. This is an example of a “too granular” review of the evidence. Accompanying Ms. Adesida’s BOC narrative were her responses to a Schedule A form where she recorded her address history. Ms. Adesida did not include her uncle’s home because, as she testified, she had only stayed there for approximately five days. The RAD’s reliance on the word “moved” in the BOC narrative to mean a more permanent move is not a basis to draw a negative credibility determination against Ms. Adesida.

[17] The Respondent argued that while the Court may not agree with the RAD’s interpretation of the word “move”, it was a reasonable one for the RAD to make. The problem with this

submission is that though the Court is reviewing the reasonableness of the RAD's decision, and is not reweighing the evidence, the Court must also ensure that the credibility findings are not based on a microscopic examination of the evidence. The RAD's insistence that the word "move" in the BOC narrative could only have been referring to a "permanent move" despite the address not being recorded in an accompanying form, is an example of this sort of microscopic review, which is also not supported by the evidence in the record. In other words, it is not a reasonable finding to make based on the factual constraints in the record.

[18] The second issue was with respect to the lack of corroboration of the land dispute. I accept, as the Respondent argued, that the land dispute was the crux of the claim and therefore it was reasonable for the RAD to expect that there be some attempt to corroborate the existence of the land and the division of the property. I do not, however, find that the RAD dealt with Ms. Adesida's explanation for the lack of this documentation in a reasonable way.

[19] Ms. Adesida testified that she asked her husband to obtain documents relating to the land transfer from her uncle, who was in possession of them. She further testified that her uncle refused to produce a copy to her because he feared that her half-brothers would learn that he shared it with her. The RAD did not accept this explanation, finding that it would be illogical for her uncle to behave in this way because it would make no difference to her half-brother's interests if her uncle released the documents to her in Canada.

[20] The RAD's reasoning relied on a number of unstated assumptions. First, the RAD's analysis assumed that Ms. Adesida's half-brothers would behave rationally. This Court has

repeatedly cautioned that decision-makers cannot assume that the agent of persecution will act rationally (*Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at para 8; *Senadheerage v Canada (Minister of Citizenship and Immigration)*, 2020 FC 968 at para 19 [*Senadheerage*]; *Reyad Gad v Canada (Minister of Citizenship and Immigration)*, 2011 FC 303 at para 11).

[21] There were also assumptions about how Ms. Adesida's uncle would behave. It may be that Ms. Adesida's uncle was not behaving rationally in refusing to provide her the documents or it could be that Ms. Adesida's uncle did not tell her his real motivation in not providing the documents to her. There are many unknowns. His refusal to provide the documents cannot be used as a basis to draw a negative credibility inference against Ms. Adesida. It certainly could not be said that it was "outside the realm of what could reasonably be expected" that Ms. Adesida's uncle would refuse to provide her the documents (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7; *Al Dya v Canada (Minister of Citizenship and Immigration)*, 2020 FC 901 at paras 27-29).

[22] The second rationale the RAD provided was that "even if her uncle did refuse to release the documents, the Appellant could have tried to obtain documentation through a central land registry system." In response to this point, Ms. Adesida's counsel argued that she could not have obtained it through a central land registry system because the land was not officially conveyed to the beneficiaries and therefore it is unlikely that a proper record exists for the property. The Respondent countered that this argument was not before the RAD. The problem with this submission is that neither the RPD or the RAD gave Ms. Adesida an opportunity to explain why

she did not obtain the documents from the land registry system. It did not come up at the RPD and the RAD raised the possibility of obtaining the documents from the land registry system for the first time in its decision. Whether the land registry system applied to the type of land transfer in Ms. Adesida's case was an issue to which she should have had an opportunity to respond before a negative inference was drawn (*Senadheerage* at paras 35-36, 40; *Kwakwa v Canada (Minister of Citizenship and Immigration)*, 2016 FC 600 at paras 25-26).

[23] The last basis on which the RAD drew a negative credibility inference was based on its view that it was implausible that at the time of her father's death, when her half-brothers were young children, they could have been able to stop the land transfer, which was supported by the elders in the family. This finding is a fundamental misapprehension of the evidence before the RAD. Ms. Adesida testified before the RPD that the land had not been transferred at the time of her father's death because her half-brothers were still children. Instead, the dispute only arose much later, in 2017, when her half-brothers wanted to sell the land. The RAD failed to reference Ms. Adesida's testimony on this point. This was key evidence that contradicted the RAD's implausibility finding that the dispute occurred when Ms. Adesida's half-brothers were children. Yet, the RAD makes no mention of this evidence. This was unreasonable (*Vavilov* at para 126; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at paras 15, 17).

[24] In addition to these flaws in the credibility findings, I find that the RAD did not do an independent assessment of all of the evidence in the claim, failing to address the corroborative evidence of Ms. Adesida's family members that supported her allegations. The RAD determined

that despite the errors it had found with the RPD's credibility determination, its findings on credibility were sufficiently serious to dismiss the claim. The RAD concluded, "[a]lthough, I have found that the RPD erred in making some credibility findings these errors are not enough to overcome the other negative credibility findings that were correctly made." Unlike the RPD, the RAD did not assess all of the remaining corroborative documents in light of its credibility findings. This too makes the decision unreasonable; it leaves Ms. Adesida without an understanding of how the decision-maker evaluated key evidence in light of its credibility findings.

[25] As set out above, there were a number of serious shortcomings in the RAD's credibility determinations, rendering the decision as a whole unreasonable. The application for judicial review is granted. Neither party raised a question for certification and I agree that none arises.

JUDGMENT IN IMM-5558-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The RAD decision is set aside and sent back to be redetermined by a different member;
3. No question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5558-21

STYLE OF CAUSE: CHRISTIANAH OLUFUNKE OLANIKE ADESIDA V
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 1, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JULY 18, 2022

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