Federal Court  Cour fédérale

Date: 20230208

Docket: IMM-415-22

Citation: 2023 FC 186

Ottawa, Ontario, February 8, 2023

PRESENT: The Hon. Mr. Justice Henry S. Brown

BETWEEN:

OMONIYI ABDULFATAI YUSUF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated December 17, 2021, which affirmed a decision by the Refugee Protection Division [RPD] to deny the Applicant's claim based on a negative credibility findings and the Applicant's failure to meet his burden of proof on the record before either tribunal.

II. Facts

[2] The Applicant is a 34-year-old man of Nigerian citizenship who alleges a fear of persecution or harm in his home country due to his sexual orientation as a bisexual male. His narrative is as follows.

[3] The Applicant was born in Kwara State, and raised under the care of his grandparents in Ilorin. Upon speaking to his grandfather about his sexual orientation, he was relocated to live with his mother. He ceased any discussion about the topic from that point on.

[4] The Applicant engaged in his first same-sex relationship with a man named “C”, whom he met when they both played on the University of Jos’ basketball team. The two then dated from 2008 to 2011, and later lost touch. The Applicant met his next partner “D” at an art exhibit, who he began dating in 2013.

[5] After receiving some pressure from his family, the Applicant entered into an arranged marriage in 2016. The Applicant subsequently had two children with his spouse. In 2019, he attempted to visit Vancouver with “D” for an art exhibit he was attending, but later learned that “D” had been arrested and detained for selling gay artwork to an undercover police officer. Following this, the police reportedly attended the Applicant’s home while he was away and questioned his maid.

[6] As a result, the Applicant decided to relocate his family elsewhere in Nigeria. Despite this, the Applicant reportedly began receiving calls from friends and family as rumour of his sexual orientation began to spread. According to a neighbour, the police had also returned to search the Applicant's home. The Applicant then departed Nigeria for Canada in May 2019 and made a refugee protection claim. Following this departure, the Applicant learned of his father's death, which he fears was caused by his father finding out about his sexual orientation.

[7] His refugee claim was dismissed by the RPD. He appealed to the RAD where he was successful in admitting limited new evidence.

III. Decision under review

[8] The RAD dismissed the Applicant's appeal and found that the RPD was correct in finding that the Applicant is neither a *Convention* refugee nor a person in need of protection. Specifically, the RAD found that the RPD did not err in assessing credibility. The following sets out the RAD findings.

A. *The RPD did not err in assessing the death certificates*

[9] To begin, the RAD assessed the RPD's finding that the death certificates of the Applicant's father and "D" were fraudulent. The RAD noted multiple typographical and grammatical errors found on the certificates in comparison with a sample death certificate found in the National Documentation Package [NDP], which was obtained from the United Nations Children's Fund. The Applicant had submitted letters written by the Assistant Director of Vital

Registration of the National Population Commission to account for the discrepancies. The letters indicated that the discrepancies were the result of changes made to registration laws in the transition from the military era to civilian rule. The RAD found that this explanation did not account for the discrepancies given that the sample death certificate contained up-to-date information. Similar findings were made with the regards to the omission of certain words in the certificates.

[10] The RAD also drew negative credibility findings from supposed errors in the registration date and serial and entry numbers on the certificates. Specifically, the RAD noted that the death certificates indicated that D's death and the death of the Applicant's father were registered on the same day with sequential serial and entry numbers. The RAD rejected the Applicant's suggestion that the death certificates were simply produced close together, but both individuals died on separate occasions. The RAD found it "more likely than not" that the death certificates of two individuals who passed-away months apart would not be registered on the same day, over a year later, leading to sequential serial and entry numbers on the death certificates.

[11] Assessing these issues as a whole, the RAD did not find that the RPD erred in finding the submitted death certificates to be unauthentic.

B. *The RPD did not ask the Applicant to speculate*

[12] The RAD also rejected the Applicant's argument that the RPD erred in asking him to speculate about "points" that he would not reasonably be expected to know concerning the irregularities identified in the death certificates. In the RAD's view, the RPD did not ask the

Applicant to speculate. Neither did the RPD draw negative credibility findings based on the Applicant's responses. Rather, the RAD points out, the RPD drew negative credibility findings in relation to identified irregularities in the certificates. The RAD noted that this Court stated in *Matharu v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 19 [*Matharu*]:

> … In this case, I am satisfied that the CRDD's conclusions on two major elements of the applicant's claim were made without regard to the material before it. In the case of the PCO-STD office, the CRDD rejected a theory which was speculation on counsel's part and had not been advanced by the applicant. In the case of the applicant's father's involvement with the police, the CRDD could not invite the applicant to speculate as to why the police acted as they did, and then dismiss his answer as speculative. The applicant told the CRDD what he and his father were suspected of doing. In the absence of some communication from the police, why they were suspected of doing it can only be a matter of speculation (para 30).

[13] The RAD found *Matharu* to be dissimilar from the Applicant's appeal since the death certificates were submitted as evidence rather than as a speculative theory, and the RPD panel did not ask the Appellant to speculate following his explanations regarding the irregularities. The RAD noted that when asked about the irregularities between the certificates, the Applicant provided a response, but the RPD did not ask him to speculate following these answers. Nor did the RPD draw a negative credibility inference from the Applicants' responses. In the RAD's view, the RPD correctly found that the Applicant's responses were not reasonable and concluded, on a balance of probabilities, that the death certificates were fraudulent.

[14] Moreover, the RAD rejected the Applicant's argument that the RPD conducted a microscopic assessment of the certificates and failed to provide cogent and justifiable reasons in its decision. The RAD found that the RPD's decision was not microscopic since the irregularities

on the death certificates were evident “on its face”, and the RPD had in fact stated in its decision that it found the certificates fraudulent.

C. *The RPD did not err in assessing the Applicant’s relationship with “C” and “D”*

[15] The RAD rejected the Applicant’s argument that the RPD erred by being over-vigilant in examining the Applicant’s testimony regarding his relationship with “C”. Given the Applicant having known “C” for three years including the year they were involved in a relationship, the RPD had found that it was reasonable to expect the Applicant “to provide some information about what he liked about C other than his skills at playing basketball.” The RAD disagreed with the Applicant’s argument because his testimony regarding “C” lacked the specificity one would expect, on a balance of probabilities, from a friendship of two years that developed thereafter into a one-year relationship. Ultimately, the RAD agreed with the RPD and found that on a balance of probabilities that the Applicant’s testimony was indicative of a friendship rather than a relationship. The RAD also discounted evidence respecting another alleged same sex partner, “D”.

D. *The RPD did not err in assessing the Applicant’s involvement with the LGBTQ community*

[16] The RAD found that the RPD did not err in assessing the Applicant’s involvement with the LGBTQ community. The RAD found that the letters and Pride photo were generic and rejected the Applicant’s assertion that the RPD discounted the evidence because it found the Applicant untrustworthy. Per *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, the

RAD found it open to the RPD panel not to give weight to certain pieces of evidence based on underlying elements found not to be credible.

E. *The RPD did not err in applying the Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* [the *SOGIE Guidelines*] *Guideline*

[17] The RAD also found that the RPD did not err in applying the SOGIESC Guidelines. While the RPD did not specifically mention the SOGIESC Guidelines in the body of its decision, the RAD did not equate this to a fatal error. The SOGIESC Guidelines are not mandatory, although decision-makers are expected to apply them or provide a reasoned justification for not doing so. The RAD, after listening to the RPD hearing, found that the RPD's questioning was appropriate and the RPD handled omissions/consistencies in the evidence respectfully. The RAD determined that the RPD provided the Applicant with two opportunities to explain inconsistencies. Therefore, the RAD found that the RPD did not disregard the SOGIESC Guidelines.

F. *The RPD did not err in relation to the Maldonado principle*

[18] The RAD found that the RPD did not err in their interpretation of *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) [*Maldonado*]. Per *Maldonado*, where an applicant swears to the truth of certain allegations, this creates a presumption that these allegations are true. However, this presumption is rebuttable. The RAD agreed with the RPD that there was reason to doubt the Applicant's truthfulness, and therefore

the RPD successfully rebutted the presumption. The RAD ultimately agreed with the RPD that the Applicant's allegations are, on a balance of probabilities, not credible.

IV. Issues

[19] The only issue is whether the RAD's decision is reasonable.

V. Standard of Review

[20] The parties agree, as do I, that the applicable standard of review is reasonableness. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at

> para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[21] That said, the Supreme Court of Canada in *Vavilov* makes it clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". No such circumstances exist in the case at bar. The Supreme Court of Canada instructs as follows:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[22] In addition, the Federal Court of Appeal recently held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be

> drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.
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> [Emphasis added]

VI. Analysis

A. *Legal background*

[23] Because credibility is the central issue in both the decisions of the RPD and the RAD, it is worth recalling the law in this respect, as summarized in *Khakimov v Canada*, 2017 FC 18:

> [23] […] To begin with, the RPD has broad discretion to prefer certain evidence over other evidence and to determine the weight to be assigned to the evidence it accepts: *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 68. The Federal Court of Appeal has stated that findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 (FCA) [*Giron*]. The RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10. And see *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at para 24 (FCA), where the Federal Court of Appeal said that the RPD:
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> > … is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon

> judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.
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> [24] The RPD may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings "should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case": *Haramichael v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1197 at para 15, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11 [*Lubana*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444. The RPD may reject uncontradicted evidence if it "is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence": Lubana, above at para 10. The RPD is also entitled to conclude that an applicant is not credible "because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in 'clear and unmistakable terms'": *Lubana*, above at para 9.

[24] The central role of the RPD in credibility determinations is also recognized and reinforced by the Federal Court of Appeal's decision in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, which addresses the roles of the RAD and the RPD:

> [70] This also recognizes that there may be cases where the RPD enjoys a meaningful advantage over the RAD in making findings of fact or mixed fact and law, because they require an assessment of the credibility or weight to be given to the oral evidence it hears. It further indicates that although the RAD should sometimes exercise a degree of restraint before substituting its own determination, the issue of whether the circumstances warrant such restraint ought to be addressed on a case-by-case basis. In each case, the RAD ought to determine whether the RPD truly benefited from an advantageous position, and if so, whether the RAD can nevertheless make a final decision in respect of the refugee claim.
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> [71] One can imagine many possible scenarios. For example, when the RPD finds a witness straightforward and credible, there is no issue of credibility *per se*. This will also be the case when the RAD is able to reach a conclusion on the claim, relying on the RPD's findings of fact regarding the relative weight of testimonies and their credibility or lack thereof.

VII. Analysis

A. *Death certificates, previous same sex relationship and SOGIE Guidelines*

[25] The Applicant argues the RAD erred by not considering the presumption of truth when assessing the documentary evidence. The Applicant submits that there is a presumption of truth when documents from a foreign authority are involved, unless there is a valid reason for objection. The Applicant cites *Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10 (TD) [*Ramalingam*] for the proposition that:

> [5] Counsel for the respondent objected to the admissibility of such a document on the ground that it was not produced at the hearing. In my view, since the issue regarding the validity of the applicant's birth certificate was only raised by the refugee claims officer after the close of the proceedings it is fair and proper that the applicant be allowed to respond by filing additional evidence in his own reply submission. Moreover, identity documents issued by a foreign government are presumed to be valid unless evidence is produced to prove otherwise: see Gur, Jorge P. (1971), 1 I.A.C. 384 (I.A.B.)1. In that Immigration Appeal Board decision, the Chairman asked the following question at page 391:
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> > "The question here is, who can question the validity of an act of state and who, having questioned it, has the burden of proof as to its validity, and what proof is required?"
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> He provided the right answer at page 392, as follows:
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> > "Although there is almost no jurisprudence to be found bearing directly on the point, it must be held that an act of state - a passport or a certificate of identity - is prima facie valid. The recognition of the sovereignty of a foreign state over its citizens or nationals and the comity of nations make any other finding untenable. The maxim *omnia praesumuntur rite et solemniter esse acta* applies with particular force here, establishing a rebuttable presumption of validity."

> [6] In this instance, the Board challenged the validity of the birth certificate without adducing any evidence in support of its contention and, clearly, the matter of foreign documents it is not an area where the Board can claim particular knowledge. That, in my view, constitutes a reviewable error on the part of the Board.

[26] Although the RAD found the Vital Registration letters were from a credible source, the RAD did not accept the explanation contained within the letters given the inconsistencies identified. The Applicant noted that the letters appeared on an official letterhead, provided contact information, and were signed. The Applicant then cited a portion of the NDP evidence, which indicates that multiple versions of death certificates are issued in Nigeria. In light of this, and in conjunction with the letters, the Applicant suggests the RAD erred in drawing a negative credibility finding on this front.

[27] The Applicant submits the RAD also made vague implausibility findings regarding the printing error alleged by the Vital Registration letters, per *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776:

> [7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, Immigration Law and Practice (Markham, ON: Butterworths, 1992) at 8.22]

[28] The Applicant submits that the explanation outlined in the letters—that the discrepancy was due to a printer error—is "not so far outside the realm of possibility that the RAD could justify making an implausibility finding".

[29] The Applicant also argues that the RAD erred in its negative credibility finding based on the registration date, serial, and entry numbers of the death certificates. According to the Applicant, the NDP evidence demonstrates that death certificate registration is not as straight forward as the RAD decision asserts. The Applicant argues that his family likely did not register the father's death until required to do so, and then registered both deaths on that latter date. The Applicant submits that the RAD applied "North American logic" to the registration of death certificates—that the RAD falsely assumed that two deaths could not be registered 18+ months later on the same date, as per *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116. With respect, counsel essentially asks the Court to reweigh and reconsider the evidence in this respect. This issue is purely a matter of reliability of documentary evidence. Such review and reconsideration is not permitted on judicial review given *Vavilov* at para 125 and *Doyle*. With respect, the RAD provided "clear, cogent, and intelligible reasons why it found that the death certificates were not genuine" noting among other things that the certificates used the word "Act" whereas the sample NDP certificate used the word "Decree"; the certificates omitted the word "details", which was included in the NDP sample; the serial and entry numbers were sequential, despite the gap between the former partner and Applicant's father's deaths; and the letters suggested the sample was wrong, although the sample was up to date.

[30] The Respondent also notes and I agree that, “[d]espite the Applicant’s objections, the presumption of truth does not function as a panacea to cure valid credibility concerns…” In my respectful view, the RAD reasonably found the presumption of truth was rebutted. No fundamental or fatal error was made by the RAD.

[31] The Applicant also submits that the RAD erred in assessing his relationship with “C”, a same sex relationship in Nigeria relied on. The Applicant also argues the RAD failed to consider the SOGIE Guidelines - the RAD failed to “properly examine whether there are cultural, psychological or other barriers that may explain why the testimony is vague.” In the Applicant’s view, the RAD failed to consider the Applicant’s cultural background; namely, that the Applicant grew up in an inherently homophobic culture/country where he was forced to hide his sexuality. Therefore, the Applicant suggests, it is unsurprising that the Applicant “would be afraid of disclosing details about his sexuality to a person in a position of authority”, such as an RPD.

[32] Furthermore, per the SOGIESC Guidelines, the Applicant notes the RAD must provide specific reasons to support a finding that the testimony is insufficient—but submits it did not do this. The Applicant also submits the RAD failed to consider the Applicant’s testimony at the hearing: what the Applicant liked about “C”, the activities they did together, that the Applicant taught “C” how to paint and how “C” would watch him paint, and the many facts the Applicant could riddle off regarding “C”. If the RAD had further questions, the Applicant argues, they should have put them to the Applicant, allowing him to provide further information. Ultimately, the Applicant submits that “what the RPD Member believes a couple should talk about and know

about one another is not necessarily what two men, from a different culture, would do." On this point, the Applicant argues that the Applicant did more than enough to establish his relationship with "C", and that his answers are more than one would expect from a mere friendship.

[33] Once again, the Applicant invites the Court to reweigh and reassess the evidence concerning the Applicant's relationship with "C". That is not the role of the Court. In any event, I am not satisfied the RAD's determination is unreasonable given the fulsome and detailed reasons the RAD provides in this respect. These comments apply to the relationship between the Applicant and "C", and equally in my view to the relationship the Applicant alleged with another man in Nigeria, namely "D".

B. *Involvement with the LGBTQ community*

[34] The Applicant submits the RAD erred in assessing the Applicant's involvement with the LGBTQ community. In the Applicant's view, the RAD failed to conduct its own analysis of the supporting documents provided by the Applicant, namely the letters in support, and instead relied on previous credibility findings to "colour its analysis of the evidence." The Applicant notes that, as he is not required to provide sexual contact to prove his claim, the letters of support he filed should be sufficient to demonstrate his involvement with the LGBTQ community in Toronto.

[35] The Respondent submits the RAD's assessment of the Applicant's involvement with the LGBTQ community was reasonable. Per the organization letters of support (e.g. BCAP, 519, etc.), the RAD found that membership/participation in these groups was typically open and

voluntary, and that the Applicant self-declared his sexual orientation. I am not persuaded the RAD's assessment of the evidence in this respect was unreasonable. I certainly appreciate the evidence that the Applicant comes from a country where being LGBTQ is a serious crime and an arrest on such grounds can lead to life-threatening ramifications. However, the issue in this case is not regarding LGBTQ persons in Nigeria generally but personalized risk to the Applicant in Nigeria.

[36] Notably, counsel for the Applicant conceded it was "easy" to get a letter from one of the organizations the Applicant relied upon. The RAD in my view fulsomely considered and rejected the Applicant's submissions, which he repeats before this Court. The following are part of the RAD's reasons which fully answer the Applicant's submissions and which, again with respect, I find reasonable:

> [40] Counsel argues the RPD discounted "extensive evidence to support" the Appellant's "involvement in the LGBTQ community in Canada" because the RPD had "already concluded that the Appellant is untrustworthy." I disagree with Counsel's arguments regarding the RPD's assessment of the membership letters for The 519 and Black Cap as well as photographs of the Appellant attending Pride, for the reasons that follow.
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> [41] The RPD noted the Appellant provided a generic membership letter from The 519 indicating he joined and completed a needs assessment in September 2019. The RPD stated the letter does not contain information related to the Appellant or his sexual orientation and that anyone can join the 519, including those who do not identify as LGBTQI+. The RPD found the following,
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> > Given the credibility concerns mentioned above, the generic nature of the letter which does not contain information about the claimant's sexual orientation, the panel finds that this letter does not establish the claimant's allegations about his sexual orientation on a balance of probabilities.48.

> [42] The RPD made a similar finding related to the letter from Black CAP,
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> > Although the claimant has joined Black CAP and presented himself as bisexual man to his Refugee Settlement Coordinator, the panel has already determined that the claimant has not been able to establish the existence of the relationships he had in Nigeria on a balance of probabilities. As such, reliance on those relationships to present himself as a bisexual man at Black CAP does not establish his allegations on a balance of probabilities.
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> [43] The RPD conclude the photographs at Pride also did not establish, on a balance of probabilities, that the Appellant is bisexual,
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> > The claimant submitted some photographs of himself at Pride. Pride is an open event that celebrates LGBTQI+ persons. Pride is an event that is open and inclusive to anyone. An individual does not have to be LGBTQI+ to attend Pride. As such, attending Pride does not establish that the claimant is bisexual on a balance of probabilities.
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> [44] I do not find the RPD erred. Letters indicating membership in an organization that is open to LGBTQI+ and supporters and a self-declaration to a Coordinator, as well as photographs at an event, do not establish the allegations that the Appellant is a bisexual male, on a balance of probabilities. I find vexatious the argument that the RPD discounted the evidence because it had concluded that the Appellant was untrustworthy. The RPD did not find the Appellant was untrustworthy but that the central allegations of his claim lacked credibility. I find no evidence of bias or do I find the RPD discounted the evidence, as alleged.

[37] These findings were open to the RAD to make on the record before it and reveal no fundamental error or flaw. It seems to me the Applicant's objection is merely displeasure with the result. Having reviewed the matter, I decline the Applicant's request to reweigh this and reassess the record, this time more favourably to the Applicant.

C. *SOGIE Guidelines*

[38] In a similar vein, the Applicant argues the RAD erred in applying and assessing the SOGIE Guidelines. According to the Applicant, the RAD first erred by finding that the RPD's blanket statement at the beginning of the decision was sufficient to find that the SOGIE Guidelines were followed. I fully agree that such statements are insufficient, whether made at the beginning or the end of the Decision, or bracketing it at each end.

[39] However, there is far more than that on the record before the Court on this judicial review.

[40] The RAD set out and considered the Applicant's submissions in considerable detail. The RAD found they lacked merit. With respect, I am not persuaded the RAD committed a reviewable error in this respect. In its relatively lengthy consideration, the RAD reasonably (in my view) concluded:

> [46] The RPD was mindful of the relevance of the SOGIE Guideline and mentioned specifically at the outset of its decision that the SOGIE Guideline would be followed in the hearing and would be a consideration in the final decision. Moreover, I listened to the hearing before the RPD and reviewed the transcript and I do not agree that the RPD Member breached the SOGIE Guideline. I find that the RPD's questioning to be appropriate and omissions and inconsistencies in the evidence were addressed respectfully. I find that that the RPD Member appropriately questioned the Appellant in a manner which was necessary to solicit information, and in avoiding common errors that the SOGIE Guideline seeks to prevent and assessed the evidence in a manner consistent with the Guideline.

[41] It is also trite to observe, as the Respondent submits, that the proper application of the SOGIE Guidelines does not bar a tribunal from drawing negative inferences. There is no merit in the Applicant's submissions otherwise.

D. *Independent analysis of RPD decision*

[42] The Applicant also argues that the RAD erred by effectively "rubber-stamping the RPD decision while failing to conduct their own independent analysis." The Applicant cites *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 and *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928).

[43] With respect, there is no merit in these arguments on this record in this case. It seems to me, and to the contrary, that the RAD having reviewed the record made its own independent findings of fact, agreeing with the RPD that the Applicant's testimony was not credible and that his evidence deficient. He failed to meet the burden on him both before the RPD as decision maker in first instance, and before the RAD on his appeal. Disagreement with the result does not constitute reviewable error.

VIII. Conclusion

[44] Stepping back, the RAD applied constraining law and reviewed the RPD's findings on a correctness standard, as required by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2015 FCA 93. I am not persuaded the RAD committed any reviewable error. Therefore, this application must be dismissed.

IX. Certified Question

[45] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-415-22

THIS COURT'S JUDGMENT is that judicial review is dismissed, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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