Federal Court  Cour fédérale

Date: 20230316

Docket: IMM-4261-22

Citation: 2023 FC 361

Ottawa, Ontario, March 16, 2023

PRESENT: Madam Justice Walker

BETWEEN:

UCHENNA MELVIN EBIGBO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Ebigbo, is a citizen of Nigeria. He seeks the Court's review of a decision of a senior immigration officer dated March 30, 2022, refusing his request for a Pre-Removal Risk Assessment (PRRA). Based on the information in the file, the officer found that the Applicant had not demonstrated his stated risk of persecution, torture or serious harm in Nigeria pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[2] For the reasons that follow, the application will be dismissed.

I. Background and decision under review

[3] The Applicant alleges a fear of persecution, discrimination, serious harm and death in Nigeria on the basis of his bisexuality and chosen religion.

[4] In his narrative, the Applicant states that he refused to be initiated into a traditional religion in January 2015 because of his fear that any individual who has previously engaged in a same-sex act suffers instant death during the initiation. As a result of his refusal, the Applicant was arrested, beaten, abused and mocked. He was then jailed until a guard helped him escape.

[5] The Applicant's father subsequently disowned him and the Applicant fled to Lagos. He states that everyone in his and neighbouring communities is aware of his sexuality and that he continued to receive threats after his move to Lagos. The Applicant also states that he lived in constant fear in Nigeria.

[6] The Applicant left Nigeria to live in the United States (US) in September 2015. On September 19, 2017, he was arrested and charged in the US for child molestation and sexual battery of a child under 16. The Applicant was released in October 2017, subject to posting a bond in the amount of $200,000. On October 21, 2017, the Applicant was indicted for the offences by a grand jury in Georgia.

[7] The Applicant entered Canada on September 14, 2018 without identity documents and applied for asylum. On October 10, 2018, a felony bench warrant for his arrest was issued in Georgia for failure to appear.

[8] The Applicant's claim for refugee protection was heard by the Refugee Protection Division (RPD) on February 18, 2020 and rejected on March 17, 2020. The RPD concluded there are serious reasons for considering that the Applicant committed a serious non-political crime in the US prior to claiming refugee protection in Canada. The panel found that the Applicant is excluded from protection under section 98 of the *IRPA* because he is a person referred to in Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 (*Convention*).

[9] On August 23, 2021, the Applicant submitted a PRRA application. The only evidence he provided with his application was a two-page narrative.

[10] In the decision under review, the officer reviewed the incidents recounted in the Applicant's narrative, his immigration background in the US and Canada, the outstanding criminal charges against him in the US, and the RPD decision. The officer noted that the Applicant had not submitted new evidence to support the risks in Nigeria described in his narrative. The officer also considered and accepted the objective country condition documentation that speaks to significant human rights issues in Nigeria, including and in particular, the pervasive persecution, abuse and discrimination facing lesbian, gay, bisexual, transgender and intersex persons.

[11] The officer concluded that the Applicant had not demonstrated with sufficient evidence a direct or personal connection to his stated risks in Nigeria due to his political beliefs or sexual orientation, and refused the PRRA application.

II. Analysis

[12] The Applicant submits that (1) his right to be heard was breached by the officer's failure to conduct an interview to permit him to dispel any concerns regarding his credibility and (2) the officer's decision is unreasonable.

[13] Although the Applicant suggests that the officer's failure to hold an interview should be reviewed for correctness, I find that both issues raised in this application must be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23; *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paras 20-21).

[14] The Applicant submits that the officer should have allowed him to explain his circumstances and to provide additional information during an interview. He states that he had provided substantive, corroborating evidence to the RPD and believed that evidence would be available to the officer, particularly as the RPD's refusal of his refugee claim was based on Article 1F(b) of the *Convention* and not his exposure to persecution and serious harm in Nigeria.

[15] I am not persuaded by the Applicant's argument. The officer committed no reviewable error in proceeding on the written record without convening either a hearing or an interview pursuant to section 113(b) of the *IRPA*. I note first that, in the context of a PRRA application, the

determination of whether a hearing is required is governed by the factors listed in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The section sets out three factors, each of which must be met in order for a PRRA officer to convene a hearing. In general terms, an officer will convene a hearing if there is a serious issue regarding an applicant's credibility that is central to the PRRA application and which, if accepted, would justify allowing the application.

[16] Although I agree with the Applicant that his sexuality is central to his application, there is no issue in play in the decision regarding his credibility. The officer concluded that the Applicant had submitted insufficient evidence in support of his application and made no adverse credibility finding. The officer "neither believed or disbelieved the Applicant, but was simply not satisfied that he provided sufficient probative evidence of the critical facts" (*Ibrahim v Canada (Citizenship and Immigration)*, 2014 FC 837 at para 24). This is not a case in which an officer attempted to finesse their findings by disguising credibility concerns with the language of sufficiency (*cf. Uddin v Canada (Citizenship and Immigration)*, 2011 FC 1289 at para 3). In my view, the Applicant conflates issues of credibility with findings of sufficiency of evidence. His statement that the officer meant credibility rather than sufficiency in the decision reflects his own sincere belief but is not a reasonable interpretation of the decision.

[17] Accordingly, I find that the PRRA officer was not required to provide the Applicant with an oral interview because the officer made no credibility finding and, therefore, section 167 was not engaged. I also find that the officer was not required to bring any evidentiary deficiencies in his PRRA application to the Applicant's attention.

[18] The Applicant submits that the officer's refusal decision is unreasonable because the events he described in his narrative happened to him personally and he believed that the evidence he had produced to the RPD would be considered by the PRRA officer. The Applicant emphasizes that he was not represented by counsel when he submitted his PRRA application, although he accepts he is ultimately responsible for its content.

[19] An applicant bears the burden of proof in a PRRA application (*Joe-Edebe v Canada (Citizenship and Immigration)*, 2019 FC 684 at para 14, citing *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 21). In the present case, the Applicant relied solely on his two-page narrative to establish the risks he alleges in Nigeria. Despite his arguments to the contrary, the Applicant's narrative is vague. It lacks details of incidents, dates and persons involved. Rather, the Applicant speaks of the shame and ostracism suffered by his family and the sorrow and possible harm they will face should he be returned to Nigeria. He describes one incident in Calabar, Nigeria during which he was chased by people carrying sticks but narrowly escaped by hiding in a gutter after someone from his village saw him and shouted "gay man". He provides no date or explanation of the other circumstances of the incident. Otherwise, the narrative recounts the Applicant's fear of living in Nigeria and his certainty that he will be killed there due to his sexuality.

[20] The Applicant knew that his assertions of fear of persecution and harm in Nigeria based on his sexuality had not been addressed by the RPD. All the evidence to which he now makes reference, including letters corroborating his narrative, were within his control but he failed to provide them to the officer (*Forbes v Canada (Immigration, Refugees and Citizenship)*, 2021 FC

1306 at para 39). The Applicant had ample time to do so and has experience with the Canadian and US immigration systems. He has not identified in this proceeding any impediment to his ability to understand what was required of him in the PRRA process.

[21] I find that it was open to the officer to conclude that there was insufficient evidence before them to establish more than a mere possibility that the Applicant has a well-founded fear of persecution in Nigeria on the basis of his religion or bisexuality, or, on a balance of probabilities, that he would be personally subjected to a danger of torture or to a risk to his life or to serious harm in Nigeria (ss. 96 and 97(1), *IRPA*). Credibility and sufficiency of evidence are separate issues. An officer may believe an applicant's narrative and still conclude that "there is not enough evidence to shift the balance of probabilities in favour of a finding of personalized risk" (*Zafiri v Canada (Citizenship and Immigration)*, 2019 FC 1207 at para 20).

[22] The Applicant has identified no reviewable error in the PRRA decision and I find that the decision is justified in light of the evidence and submissions before the officer. It follows that I will dismiss this application for judicial review.

[23] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4261-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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