

Federal Court



Cour fédérale

Date: 20230628

Docket: IMM-9168-21

Citation: 2023 FC 895

St. John's, Newfoundland and Labrador, June 28, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**OLUWABUKONIA BEJIDE OMOSEHIN
OLUWATIMILEHIN OLUWAROMINIYI
OMOSEHIN**

Applicants

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS AND JUDGMENT

[1] Ms. Oluwabukonia Bejide Omosehin (the “Principal Applicant”) and her son Oluwatunukehin Oluwarominiyi Omosehin (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). In that decision, the RPD granted the application of the Minister of Public Safety and

Emergency Preparedness (the “Respondent”), to vacate the Convention refugee status granted to the Applicants by the RPD in April 2019.

[2] The Applicants are citizens of Nigeria. The Principal Applicant arrived in Canada in 2018, together with her son and three minor daughters. The Applicants sought protection on the basis of the fear of forced genital mutilation of the daughters and threats of violence from her husband’s family.

[3] The Principal Applicant filed an amended narrative to her claim, alleging that she is bisexual and at risk from public authorities, due to her fear that she may be forced to undergo female genital mutilation.

[4] In 2019, the Respondent became aware of a possible misrepresentation by the Principal Applicant when similarities were noticed between her amended narrative and narratives filed in two other claims.

[5] Following an application by the Respondent, pursuant to section 109 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), the RPD vacated the Convention refugee status granted to the Applicants. The RPD found that the Principal Applicant had misrepresented facts about her bisexual activity and identity. The RPD also found that the Principal Applicant was not credible.

[6] Section 109 of the Act provides as follows:

Vacation of refugee protection

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Demande d'annulation

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

Rejection of application

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

Rejet de la demande

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

Effet de la décision

(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

[7] The Applicants now argue that the RPD breached their right to procedural fairness by making a credibility finding, arising from crooked headings in her supporting documents without giving them the opportunity to respond.

[8] The Applicants also argue that the misrepresentation finding is unreasonable.

[9] The Respondent submits that there is no reviewable error by the RPD.

[10] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[11] The merits of the decision are reviewable on the standard of reasonableness, following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[12] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra* at paragraph 99.

[13] I am not persuaded that any breach of procedural fairness resulted from the manner in which the RPD addressed the apparent irregularities in the letter of support from the Principal Applicant’s father.

[14] The RPD clearly tied its findings about these documents to its negative findings about the credibility of the Principal Applicant.

[15] Credibility is always an issue in a claim for protection. Rarely will it be necessary for a decision maker to give notice to an applicant that some of the evidence raises credibility concerns.

[16] In my opinion, there was no breach of procedural fairness by the RPD.

[17] As for the substantive finding of misrepresentation, I am satisfied that the evidence in the Certified Tribunal Record, including the original and amended narratives submitted by the Principal Applicant, support the conclusion of the RPD that the Principal Applicant had misrepresented her circumstances and the basis of her claim.

[18] The RPD made a clear finding of misrepresentation by the Principal Applicant arising from her submission of a “substantially similar narrative to two other unrelated applicants”.

[19] The claim of the minor son was based upon that of his mother, the Principal Applicant. She alleged that she and her children were at risk due to the threats of the commission of female genital mutilation upon her and her daughters. The RPD found that the Principal Applicant was not at risk of this procedure.

[20] The RPD also found that the Principal Applicant had failed to submit corroborating evidence to show that either she or her minor son faced a risk of harm in Nigeria.

[21] The RPD concluded that neither the Principal Applicant nor her minor son were at risk, within the limits of section 96 or section 97 of the Act, on the basis of the evidence submitted. In this regard, the RPD considered the contents of the original Basis of Claim that had not been discredited.

[22] I am satisfied that the RPD reasonably considered the “Chairperson’s Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues”, and reasonably assessed the evidence before it. There is no basis for judicial intervention and the application will be dismissed. There is no question for certification.

JUDGMENT in IMM-9168-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9168-21

STYLE OF CAUSE: OLUWABUKONIA BEJIDE OMOSEHIN ET AL. v.
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

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