

Federal Court



Cour fédérale

Date: 20230901

Docket: IMM-5279-22

Citation: 2023 FC 1191

Ottawa, Ontario, September 1 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN :

AFOLABI SULAIMON OLUSOLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Olusola, a citizen of Nigeria, sought a pre-removal risk assessment [PRRA], alleging that he would be at risk upon returning to his country because he is a bisexual man. The PRRA officer disagreed, finding Mr. Olusola's evidence insufficient, and refusing his PRRA. Mr. Olusola now seeks judicial review of this decision. I am granting his application, as the PRRA officer made veiled credibility findings.

[2] Mr. Olusola's evidence consisted essentially of his own affidavit. He states that a friend called AW introduced him to homosexuality when they were teenagers. His father eventually discovered the relationship and beat him, which led to conflict between his parents. When Mr. Olusola was in university, he had girlfriends, but he eventually reconnected with AW. He then came to Canada on a study permit. However, shortly after arriving, his father called and told him that AW had been arrested and that the police found pictures of him and AW sharing intimate moments. His father ceased to support him financially. His mother later told him that both her and his father's businesses had been attacked.

[3] Without conducting a hearing, the PRRA officer found that Mr. Olusola's affidavit did not constitute "sufficient evidence in establishing the various factors in the applicant's narrative which are particularly germane to assessing the personalized or ongoing risk he faces in Nigeria." The PRRA officer discussed various aspects of Mr. Olusola's narrative and noted the absence of documentary evidence supporting them. For example, the PRRA officer stated that relatives or friends could have written letters to corroborate the relationship with AW and that there is no explanation why this would not have been possible. Overall, the PRRA officer concluded that Mr. Olusola's narrative is "insufficient in determining the applicant's past activities and relationships in Nigeria or his real/perceived profile as a LGBTQ+ man in Nigeria" and noted that "there is very little supporting evidence on file."

[4] PRRA officers are prohibited from making negative credibility findings, unless the applicant is given an oral hearing. It may be difficult to distinguish negative credibility findings

from findings of insufficiency of evidence. The manner in which PRRA officers describe their findings is not determinative. In *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 at paragraph 31, my colleague Justice John Norris suggested the following method to differentiate between a credibility finding and insufficiency of evidence:

One useful test in the present context is for the reviewing court to ask whether the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of any sort of credibility finding, but simply because of the insufficiency of the evidence. On the other hand, if the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application and, despite this, the application was rejected, this suggests that the decision maker had doubts about the veracity of the evidence.

[5] In the present case, if the facts alleged by Mr. Olusola are true, they establish: that he was involved in a homosexual relationship over a significant period of time; that this became known to his father, to the police and to other persons in the community; and that his parents have been attacked as a result. Together with the objective evidence of persecution of LGBTQ+ community members in Nigeria, this would likely justify granting his application. Mr. Olusola's five-page affidavit is not a bare statement of fear of persecution, unlike the one found to be insufficient in *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549. Therefore, by finding the evidence insufficient and requiring corroboration, the PRRA officer made veiled credibility findings.

[6] This becomes even clearer when we consider that in many cases, the PRRA officer is seeking additional evidence of the facts Mr. Olusola alleges. For example, the PRRA officer states:

. . . the applicant makes numerous references to his friend [AW], with whom he reports to have initiated an on-and-off homosexual relationship around the age of 12. Despite this, there is very limited evidence on file that could speak to or illustrate details of the applicant's relationship with [AW].

[7] Yet, Mr. Olusola has direct knowledge of his relationship with AW. If his evidence is insufficient, it must be because the PRRA officer did not believe it—a veiled credibility finding. This is not a case where the PRRA officer sought evidence of additional facts to solidify an inference regarding the ultimate issue, e.g. the risk of persecution, which would more properly be characterized as a finding regarding the sufficiency of the evidence.

[8] This case is similar to *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 737, in which a PRRA officer found insufficient evidence that the applicant was gay, in spite of the latter's sworn affidavit. My colleague Justice Cecily Y. Strickland found, at paragraphs 62–63:

The Officer also does not give any reasons for doubting the truthfulness of the Applicant's evidence as to his sexual orientation. As argued by the Applicant, the Officer cites no inconsistencies, contradictions or implausibilities in the sworn evidence. He simply refuses to accept or disbelieves the Applicant, on the basis that there is no corroborating documentation, that he is homosexual.

In my view, this approach is in error.

[9] This, in my view, is sufficient to render the decision unreasonable.

[10] I also note that the PRRA officer highlighted Mr. Olusola's failure to obtain corroborative evidence from various persons in Nigeria, and his lack of explanation thereof. To the extent that the PRRA officer used this alleged lack of explanation as a trigger requiring corroboration, this runs counter to the approach put forward in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968. The expectation that corroborative evidence is available must take into consideration the criminalization of homosexuality in Nigeria, which means that potential witnesses may be reluctant to incriminate themselves or others.

[11] For these reasons, the application for judicial review will be granted.

JUDGMENT in IMM-5279-22

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The pre-removal risk assessment made on May 10, 2022 is quashed and the matter is remitted to a different PRRA officer for reconsideration.
3. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET : IMM-5279-22

STYLE OF CAUSE : AFOLABI SULAIMON OLUSOLA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

LOCATION OF HEARING: OTTAWA (ONTARIO)

DATE OF HEARING : AUGUST 30, 2023

JUDGMENT AND REASONS: GRAMMOND J

DATED: SEPTEMBER 1, 2023

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