

Federal Court



Cour fédérale

Date: 20240327

Docket: IMM-1758-22

Citation: 2024 FC 488

Ottawa, Ontario, March 27, 2024

PRESENT: Madam Justice Sadrehashemi

Docket: IMM-1758-22

BETWEEN:

**OLUBUKOLA OMOWONUOLA
MORONFOLU
DAVID OLUSEGUN MORONFOLU
DANIEL OLUWASANUMI DARASIMI
MORONFOLU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are Olubukola Omowonuola Moronfolu, and two of her three children.

Ms. Moronfolu came to Canada with her three children, where they all made claims for refugee

protection. The Refugee Protection Division [RPD] denied the refugee claim of Ms. Moronfolu and two of her three children. The RPD granted the refugee claim of Ms. Moronfolu's eldest daughter, now 18, finding that she would face persecution in Nigeria because she is bisexual.

[2] The Applicants appealed the refusal of their refugee claims to the Refugee Appeal Division [RAD]. At the RAD, the Applicants argued that they were facing new risk because their family members in Nigeria learned about Ms. Moronfolu's daughter's sexual orientation. The threats from family were now a key basis on which the Applicants were seeking refugee protection.

[3] The Applicants raise a number of arguments challenging the RAD's dismissal. In my view the determinative issue, as raised by the Applicants, is the RAD's refusal to admit a letter from Ms. Moronfolu's mother as new evidence. The parties agree, as do I, that this issue ought to be reviewed on a reasonableness standard.

[4] The letter is centrally relevant to the new risk being alleged by the Applicants. The RAD's analysis of the credibility of the letter is cursory. The only grounds on which it is found not credible was i) the failure of the Applicants to explain how they received the letter given the speed with which the letter was able to be presented to the RAD; and ii) the illegibility of the identity documents of the letter writer. The RAD's cursory evaluation of the credibility of new evidence runs afoul of the requirements set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] that a decision be transparent, intelligible, and justified, and therefore requires redetermination.

[5] Based on the reasons below, I grant the judicial review.

II. Background Facts and Procedural History

[6] Ms. Moronfolu left Nigeria with her three children out of fear of the Eiye Confraternity. The claim put forward to the RPD was on this basis. In evaluating their claim, the RPD carried out a separate analysis of Ms. Moronfolu's daughter's fear of returning to Nigeria due to her sexual orientation. The RPD found the daughter to be credible, and granted her refugee status. The RPD rejected the Applicants' claim relating to their fear of the Eiye Confraternity, finding the Applicants not credible.

[7] On appeal to the RAD, the Applicants continued to allege a fear of persecution due to threats from the Eiye Confraternity, and now also claimed risk from Ms. Moronfolu's in-laws and the community because they had learned of Ms. Moronfolu's daughter's sexual orientation.

[8] The RAD notified the Applicants that they could provide further evidence and submissions on an internal flight alternative [IFA] in Port Harcourt or Ibadan, a new issue not considered by the RPD. The Applicants filed further evidence, including a letter from Ms. Moronfolu's mother describing a recent visit from the police authorities in Ibadan in relation to a complaint about Ms. Moronfolu and her daughter's sexual orientation. The RAD did not admit this evidence, finding it not credible.

[9] On February 1, 2022, the RAD dismissed the appeal. The RAD set aside the RPD's credibility assessment, but rejected the appeal on the grounds that there is a viable IFA available to the Applicants in Ibadan or Port Harcourt.

III. Analysis

[10] The legal test for the admission of new evidence at the RAD is set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]:

110(4). On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[11] The RAD correctly noted this statutory requirement and explained that in addition to these constraints, it also had to consider whether the evidence is relevant, material, and credible as set out by the Federal Court of Appeal in *Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 at paragraphs 38-49. The RAD accepted that the letter met the statutory requirements. Credibility is the only criteria at issue in this judicial review.

[12] The RAD notified the Applicants that they had two weeks to provide any new evidence or submissions on the new issue of IFA in Port Harcourt or Ibadan. The Applicants filed their submissions and evidence on the final day permitted.

[13] This new evidence included a letter from Ms. Moronfolu's mother and the mother's identity documents. The letter sets out that the police in Ibadan, where Ms. Moronfolu's mother lives, had come to her home looking for the Applicants because Ms. Moronfolu's in-laws had advised the police that Ms. Moronfolu had a bisexual daughter. The letter also indicated that Ms. Moronfolu's mother was now required to present herself monthly to the police until the Applicants presented themselves.

[14] The RAD found the letter not credible because the Applicants had not explained how "the mother's letter from Ibadan, Nigeria arrived to them in Canada in the short period of time provided for submissions and new evidence." The RAD also noted that the identity documents of Ms. Moronfolu's mother were "blurry" and "mostly illegible." On this basis, the RAD found that it could not verify how the "letter was able to arrive in Canada in the very short period of time provided" and therefore determined the letter to not be credible.

[15] The RAD's unstated assumption appears to be that a copy of a letter from Nigeria would not be likely or easily able to reach Canada in a matter of days. This is the central concern the RAD has with the letter – that the letter managed to get to Canada within the timelines the RAD provided. There is no explanation by the RAD as to why it would be unusual for a copy of a letter to arrive quickly to Canada given the wide use of screenshots, text messages, email and even fast courier services. The RAD's ultimate conclusion that the letter is not sufficiently credible to be admitted as new evidence on the appeal does not follow from its analysis (*Vavilov* at para 103). It is based on an "absurd premise" that it would be difficult for a copy of a letter to be received in Canada in a matter of days; the reasoning does not "add up" (*Vavilov* para 104).

[16] As I noted previously in *Egenti v Canada (Citizenship and Immigration)*, 2023 FC 639 at para 19, the requirement that credibility findings in refugee matters be made in clear and unmistakable terms (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA) at para 6) does not disappear when making determination about the admissibility of new evidence at the RAD. Making a determination that a document tendered by a refugee claimant is not credible is a serious one with consequences for the evaluation of their immediate asylum claim as well as possible future applications.

[17] I would also add that it was certainly open to the RAD to ask for further written representations about the mode of the delivery of the letter or the legibility of the identity documents (*Marquez Obando v. Canada (Citizenship and Immigration)*, 2022 FC 441 at para 27).

[18] The application for judicial review is allowed. No party raised a question for certification and I agree none arises.

JUDGMENT in IMM-1758-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The RAD decision dated February 1, 2022 is set aside and sent back to be redetermined by a different member; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1758-22

STYLE OF CAUSE: OLUBUKOLA OMOWONUOLA MORONFOLU,
DAVID OLUSEGUN MORONFOLU, DANIEL
OLUWASANUMI DARASIMI MORONFOLU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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