

Federal Court



Cour fédérale

Date: 20240501

Docket: IMM-4649-23

Citation: 2024 FC 665

Ottawa, Ontario, May 1, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

GLORIA OSAZELE COLLINS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, which upheld the finding of the Refugee Protection Division [RPD] that the Applicant, Gloria Osazele Collins, was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant is a citizen of Nigeria. She alleges that she is at risk of harm from her ex-husband, who lives in the United States [US]. The Applicant claims that her ex-husband is directing members of the Black Axe cult, in Nigeria, to kill her as retribution for foiling his attempts to perpetrate acts of fraud against her. The Applicant claims that she owns a company in Nigeria, Jet Leasing Support Services Ltd. [Jet Leasing], which was involved with fleet management, flight management, servicing, and the acquisition of jets for private buyers. A client of the company, Mr. Dauda Lawal, who is a director at a Nigerian bank, purchased a jet through Jet Leasing which entity managed and held title to the aircraft for him. The value of the aircraft was USD\$6.3 million and the transaction was done through the Bank of Utah, which, according to the Applicant, acted as “Trustor” on Jet Leasing’s behalf. In 2024, Jet Leasing was registered in the US [Jet Leasing US]. The Applicant claims that in 2014, she was paid a \$250,000 broker fee for the purchase of the jet and was then served with a demand letter sent on behalf of her ex-husband with respect to the commission. Further, that her ex-husband caused title to the jet to be transferred to him and that she did not learn of this until 2015. The Applicant claims that in 2018 she was able to have title to the jet returned to Jet Leasing and then to Mr. Lawal. In 2020, four armed men came to her office looking for her; three men went to her home and took pictures of it; the windshield of her car was smashed; she received an anonymous call telling her that her ex-husband was after her; and, when she fled to her sister’s home, people went there and asked about her. She then fled to Canada.

[3] The RPD denied the Applicant's claim in a decision dated September 27, 2022. The RPD found that the determinative issue was the availability of state protection. The Applicant appealed to the RAD.

RAD Decision

[4] The RAD noted that the RPD did not address the Applicant's credibility but found that it was necessary for the RAD to do so. By letter dated February 3, 2020, the RAD provided notice to the Applicant that two new issues would be considered on appeal—credibility and an internal flight alternative. On March 1, 2023, the Applicant provided written submissions in response.

[5] On March 21, 2023, the RAD dismissed the Applicant's appeal. The determinative issue for the RAD was credibility. The RAD found that the RPD did not enjoy a meaningful advantage in assessing the Applicant's credibility, and provided its reasons for this conclusion.

[6] The RAD made multiple negative credibility findings. It found that the Applicant was not truthful about the circumstances surrounding her travel to Canada. Specifically, her accounts given during two interviews with the Canada Border Services Agency [CBSA], where she claimed that she used her own passport to board flights in Nigeria and in Egypt and how she was able to board those flights without showing her passport, were inconsistent with the account in her Basis of Claim [BOC] form, where she acknowledged that she had used the Canadian passport of Ms. Eniye Ero to travel to Canada. The Applicant claimed that she relied on and followed the instructions of her aunt, Yvonne Eweka, who allegedly gave the Applicant the Canadian passport, when she denied using the Canadian passport on both occasions when she

was interviewed by CBSA. With respect to the second CBSA interview, the RAD rejected this explanation given the Applicant's high level of education and sophistication, including hiring of lawyers in connection with her business operations.

[7] The RAD also found that the Applicant was not truthful at the RPD hearing about how she obtained the Canadian passport. The RAD found that her testimony in this regard was inconsistent and implausible. Notably, although she claimed that she did not know Eniye Ero, in a March 2019 visa application, the Applicant had submitted a copy of Ms. Ero's passport and had written a letter indicating that Ms. Ero was her aunt whom she wished to visit in Canada. Ms. Ero swore an affidavit that she was inviting the Applicant to do so. The RAD found the Applicant's explanation that she had no knowledge of the content of the visa application, which was prepared by an agent she regularly used, to be implausible.

[8] The RAD found that the Applicant provided inconsistent testimony regarding armed men attending her office. In her BOC narrative, she claimed she was in the office when the armed men went there to threaten her life and that she exited through a back door. However, her testimony before the RPD was that she was not in the office that day. The RAD found that the Applicant had not provided a reasonable explanation for the inconsistency.

[9] The RAD noted additional inconsistencies regarding whether the armed men identified themselves as members of the Black Axe. At the hearing, the Applicant first testified that the men did not identify themselves, but later testified that they stated they were Black Axe members. In her narrative, she stated that her ex-husband told her that his brother is a Black Axe

member, and thus she believed that he used this group to threaten her. Given the centrality of the identity of the agents of harm to her narrative, the RAD found that the Applicant did not explain the inconsistency sufficiently. The RAD concluded, on a balance of probabilities, that this incident did not occur.

[10] Significantly, the RAD found that the Applicant provided vague and inconsistent testimony about how the aircraft that her ex-husband allegedly fraudulently acquired was returned to her control. This undermined the credibility of her central allegation that her ex-husband is retaliating against her.

[11] The RAD concluded, based on these numerous and significant negative credibility findings, that the Applicant is generally not credible. It also found that the documentary evidence provided by the Applicant, which the RAD identified and discussed item by item, did not alone or cumulatively establish the central allegations of her claim.

Issues and Standard of Review

[12] Although the Applicant identifies the issue as whether the RAD erred in its assessment of credibility and the evidence before it, her submissions raise questions of procedural fairness, such as notice. Accordingly, the issues can be framed as follows:

- a. Was the RAD's decision procedurally fair?
- b. Was the RAD's decision reasonable?

[13] Questions of procedural fairness are reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). The court, owing no deference to the decision-maker, must ask “whether the procedure was fair having regard to all of the circumstances” (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[14] In assessing the merits of the RAD’s decision, there is a presumption that the reviewing court will apply the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25). Here, none of the circumstances warrant a departure from that presumption.

Procedural Fairness

Applicant’s Position

[15] The Applicant submits that, with respect to her testimony regarding whether she was present when armed men came to her office, the RPD had a meaningful advantage in assessing her credibility but did not question her regarding these statements. Thus, while the RAD put the Applicant on notice that credibility was an issue, given that the RPD did not raise this issue, she had no way of knowing that the RAD would refer to this specific discrepancy. She asserts that the RAD should have provided her with a letter outlining the specific concern.

[16] Similarly, the Applicant submits that the inconsistency regarding whether the armed men identified themselves as members of the Black Axe should have been put to her by the RAD. The Applicant submits that a person's credibility cannot be undermined without questioning them on a document or issue that is on the record (citing *Browne v Dunn*, 1893 CanLII 65 (FOREP); *Maniero v Canada (Citizenship and Immigration)*, 2012 FC 776 at para 4).

Analysis

[17] The RAD, in its reasons, found that the Applicant's testimony about the incident in which she alleged that armed men came to her office was materially inconsistent with her description of the incident in her BOC. The RAD acknowledged that this inconsistency was not raised by the RPD but found that it was an obvious inconsistency. In her testimony, the Applicant claimed that not being in her office when the armed men arrived was what saved her life, while in her BOC narrative she claimed to have escaped out the back door when they arrived. The RAD found that the jurisprudence (which it did not identify) indicates that procedural fairness did not require the Applicant to be confronted with conflicting information that she was aware of and that she herself provided. Nor did procedural fairness preclude referring to inconsistencies between a claimant's BOC narrative and their testimony, without confronting them with the inconsistencies. The RAD also noted that the Applicant was represented by counsel when appearing before the RPD and the inconsistency was in answer to a direct question to recount the subject incident.

[18] It is significant to note that in this matter, while the RPD did raise various credibility concerns during the hearing and also put the concerns raised in the Minister's Intervention letter

to the Applicant, ultimately, the RPD did not make any credibility findings. The determinative issue was state protection. Thus, credibility was assessed, essentially for the first time, by the RAD. The fact that the RAD gave the Applicant notice that credibility was at issue is not in dispute. However, the notice was general and provided no specifics of the RAD's credibility concerns. Nor did the Applicant request the RAD to provide details of its concerns.

[19] Neither party provided the Court with jurisprudence arising from a situation such as this, where the RPD made no credibility findings and the RAD conducted its own credibility analysis and raised a new credibility concern.

[20] However, this Court has held that there is a breach of the duty of procedural fairness where new credibility issues, not raised in the RPD decision, are raised by the RAD and the applicant is not provided an opportunity to make submissions (*Nooristani v Canada (Citizenship and Immigration)*, 2024 FC 99 at para 17; *Dalirani v Canada (Citizenship and Immigration)*, 2020 FC 258 [*Dalirani*] at para 28).

[21] This Court has also held that the RAD is entitled to make independent findings of credibility or plausibility against an applicant, without putting it before the applicant and giving them the opportunity to make submissions, but this is only true in situations where the RAD does not ignore contradictory evidence or does not "make additional findings or analyses on issues unknown to the applicant" (*Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at para 24 [*Kwakwa*]; *Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at para 38).

[22] In *Kwakwa*, the Court held:

[25] In *Ching v Canada (Minister of Citizenship and Immigration)*, 2015 FC 725, the Court concluded that, when a new question and a new argument have been raised by the RAD in support of its decision, the opportunity must be given to the applicant to respond to them. In that case, the RAD had considered credibility conclusions which had not been raised by the applicant on appeal of the RPD decision. This amounted to a “new question” on which the RAD had the obligation to advise the parties and offer them the opportunity to make observations and provide submissions. Similarly, in *Ojarikre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 896 at para 20 and *Jianzhu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 551 at para 12, the RAD had raised in its decision questions which had not been reviewed or relied on by the RPD or advanced by the applicant. These situations can be distinguished from *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 31, in which I found that the RAD did not examine any “new questions” but rather referred to evidence in the record which supported the conclusions reached by the RPD. A “new question” is a question which constitutes a new ground or reasoning on which a decision-maker relies, other than the grounds of appeal raised by the applicant, to support the valid or erroneous nature of the decision appealed from.

[23] In *Dalirani*, the Court noted that in *He v Canada (Citizenship and Immigration)*, 2019 FC 1316, this Court had summarized the analysis conducted in *Kwakwa* as follows:

[79] I find that given the extraordinary difference between the analysis conducted by the RAD and, in light of the lack of analysis conducted by the RPD, this case fits comfortably with the analysis conducted by Mr. Justice Gascon in *Kwakwa* that produced the following principles:

- the RAD cannot give further reasons based on its own review of the record, if the refugee claimant has not had the chance to address them: para 22;
- credibility conclusions not raised by the applicant on appeal of the RPD decision amounted to a “new question” on which the RAD had the obligation to advise the parties and offer them the opportunity to make observations and provide submissions: para 25;

- when additional comments regarding the documents submitted by an applicant in support of [a critical element of their claim], were not raised or addressed specifically by the RPD, the applicant should at least have been given an opportunity to respond to those arguments and statements made by the RAD before the decision was issued: para 26;

[24] Here, the RAD gave the Applicant notice that credibility, generally, would be at issue and the Applicant did make submissions in response. The Applicant also noted that while the RPD did not make credibility findings, at the time of the hearing, the RPD did question the Applicant about the statements made at the port of entry which raised concerns about her credibility and she addressed these in her response to the RAD. The Applicant also acknowledged that there was a Minister's Intervention, which raised issues with respect to the Applicant's credibility, and she also addressed some of these in her response.

[25] However, as acknowledged by the RAD, the Applicant's inconsistent evidence about where she was when four armed men allegedly went to her business to threaten her was not raised by the RPD. I note that nor is it found in the Minister's Intervention letter.

[26] This does not necessarily mean that the RAD breached procedural fairness by not specifically identifying the issue (*Oyiborhoro v Canada (Citizenship and Immigration)*, 2022 FC 675, at para 43; see also *Omirigbe v Canada (Minister of Citizenship and Immigration)*, 2021 FC 787 at paras 40-41). Here the Applicant did have the RPD record and transcript as well as the Minister's Intervention letter. However, the RPD in its decision did not make any credibility findings. Therefore, without at least some basic description of the RAD's areas of concern with respect to credibility, the Applicant was required to try to identify what these credibility concerns

might be and to make anticipatory submissions, rather than providing submissions in response to specific credibility concerns.

[27] Thus, with respect to the RAD's credibility concern as to the Applicant's inconsistent evidence about where she was when armed men allegedly entered her office looking for her, this was a new credibility issue for which the Applicant was not afforded an opportunity to respond. This was a breach of procedural fairness.

[28] This same concern does not arise with respect to the Applicant's inconsistent testimony about whether the armed men identified themselves as Black Axe members given that the RPD raised this inconsistency with the Applicant at the hearing. The Applicant was therefore aware of this concern and could and did address it. The RAD simply did not accept her explanation for same.

[29] In these particular circumstances, in my view, the RAD did breach the duty of procedural fairness with respect to its credibility finding concerning the Applicant's inconsistent evidence about where she was when armed men allegedly entered her place of business. This is because she was not informed of, and provided with an opportunity to respond to, this credibility concern raised for the first time by the RAD.

[30] For that reason, and even though many of the RAD's other negative credibility findings may have been well-founded, the matter must be returned for consideration by a different RAD member.

JUDGMENT IN IMM-4649-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to a different RAD member for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4649-23

STYLE OF CAUSE: GLORIA OSAZELE COLLINS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: APRIL 4, 2024

JUDGMENT AND REASONS: STRICKLAND J.

DATED: MAY 1, 2024

APPEARANCES:

Aby Diagne FOR THE APPLICANT

Pavel Filatov FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario