

Federal Court



Cour fédérale

Date: 20240729

Docket: IMM-3490-23

Citation: 2024 FC 1200

Ottawa, Ontario, July 29, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

SEGUN ADEWALE BABALOLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Nigeria who seeks review of the Refugee Appeal Division (RAD) decision stating that he is excluded from refugee protection under Article 1E of the United Nations Refugee Convention (Refugee Convention) and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The RAD and the Refugee Protection

Division (RPD) both found that the Applicant had status in the United States of America (US) substantially similar to the status of US nationals, which excluded him from being found a Convention refugee or a person in need of protection under IRPA.

I. Background

[2] The Applicant alleges fear of persecution on the grounds of his sexual orientation and religious persecution because he refused to join the Ogboni cult.

[3] In 2015, he visited the US and met a woman, Ms. Jane, who he remains friends with upon his return to Nigeria. He returned back to the US in March 2017 and got married to Ms. Jane in September 2017 in Virginia. In November 2018, Ms. Jane discovered the Applicant's sexual orientation and threatened a divorce.

[4] In February 2019, the Applicant arrived in Canada and sought refugee protection.

[5] At the RPD hearing, the Minister submitted that the Applicant is excluded from refugee protection on the basis of Article 1E of the Refugee Convention due to his pending application for permanent residence (PR) in the US. The Refugee Convention at Article 1E says:

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[6] The RPD found the Applicant to be excluded from protection based on Article 1E on the basis that he had “status substantially similar to that of US nationals” since he was married to a US citizen and had an Application to Remove the Conditions of Permanent Residency in process.

[7] The RAD concluded that the Applicant was excluded from refugee protection under Article 1E of the Refugee Convention and section 98 of the IRPA.

II. Issues and standard of review

[8] The following issues arise on this Application:

- A. Was the RAD unreasonable in refusing to accept the Applicant’s evidence?
- B. Was the decision unreasonable in its assessment of Article 1E factors?

[9] In reviewing the RAD’s decision, the Court applies the reasonableness standard of review. The Court will assess if the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility—and if the decision is justified in relation to the relevant factual and legal constraints that bear on it (*Vavilov v Canada (Citizenship and Immigration)*, 2019 SCC 65 at para 99 [*Vavilov*]).

III. Analysis

A. *Was the RAD unreasonable in refusing to accept the Applicant's new evidence?*

[10] The Applicant argues that he did not know that the issue before the RPD would be his status in the US, therefore, the RAD erred by not accepting his new evidence. The new evidence was in relation to his loss of status in the US and his risk in returning to his home country.

[11] His claim that he was not aware that his status in the US would be in issue before the RPD is without merit. Prior to the RPD hearing, the Applicant, who had legal counsel, was advised that his potential exclusion because of his status in the US would be considered. As well, the RPD hearing took place over two days (November 29, 2021 and March 2, 2022) which, as noted by the RAD, gave the Applicant sufficient time to file evidence relating to the exclusion issue.

[12] Additionally, at the RAD hearing, the Applicant's legal counsel acknowledged that the Applicant had been advised that exclusion pursuant to article 1E of the Refugee Convention was going to be considered at the hearing. The RAD noted that the Applicant did not argue that there was a breach of natural justice or procedural fairness, or that he did not have the opportunity to present his case on this issue.

[13] In assessing the request to file new evidence, the RAD applied subsection 110(4) of the IRPA and referred to jurisprudence of the Federal Court of Appeal regarding the admission of

new evidence. The RAD reasonably found that the Applicant's purported new evidence did not meet the test for admission.

[14] The Applicant has not established any error by the RAD on this issue; therefore, the RAD decision to not admit new evidence was reasonable.

B. *Was the decision unreasonable in its assessment of Article 1E factors?*

[15] The Applicant argues that the RAD erred in concluding that the Applicant had status substantially similar to US nationals and was, therefore, excluded under Article 1E.

[16] The Federal Court of Appeal outlined the following test for determining Article 1E exclusions:

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

(Canada (Citizenship and Immigration) v Zeng, 2010 FCA 118 at para 28 [Zeng])

[17] *Zeng* also notes the “purpose of Article 1E is to exclude persons who do not need protection,” and “asylum shopping is incompatible with the surrogate dimension of international refugee protection” (at para 19).

[18] Here, the RAD concluded that the Applicant failed to establish on a balance of probabilities that he did not have a status similar to that of US nationals at the time of the RPD hearing. The RAD noted there was insufficient evidence from the Applicant to make any other finding. Considering the lack of evidence, it was reasonable for the RAD to find that the Applicant did not meet his burden of proof.

[19] Finally, the Applicant’s submissions that the RAD had an obligation to assess his risk claim is without merit. Having found that the Applicant has the equivalent status of US nationals, as noted in *Zeng*, the Applicant is excluded and no further consideration by the RAD was required.

IV. Conclusion

[20] This judicial review is dismissed and there is no question for certification.

JUDGMENT IN IMM-3490-23

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

: IMM-3490-23

STYLE OF CAUSE: BABALOLA V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

**HEARING HELD BY
VIDEOCONFERENCE AT:** OTTAWA, ONTARIO

DATE OF HEARING: JUNE 6, 2024

JUDGMENT AND REASONS: MCDONALD J.

DATED: JULY 29, 2024

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