

Federal Court



Cour fédérale

Date: 20241115

Docket: IMM-7427-23

Citation: 2024 FC 1815

Toronto, Ontario, November 15, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

ADAMS OMOZAKARI AYONOTE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Nigeria who is a supporter of the Peoples Democratic Party [PCP]. He alleges that he has been persecuted by a member of the opposing party, the All Progressive Congress [APC], and that based on past incidents of persecution that he endured at the hands of the APC, his life will be at risk if he is forced to return to his country of origin.

Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] denied the

Applicant's refugee claim, finding that the Applicant lacked credibility in the events described by the Applicant and that he failed to establish a forward-facing risk stemming from these incidents.

[2] For the reasons that follow, I find that the Applicant has failed to discharge his burden of showing that the RAD's decision [RAD Decision] is unreasonable. Accordingly, this application for judicial review is dismissed.

II. Facts

[3] The Applicant's claim of persecution by the APC is based on three incidents. The first incident is alleged to have occurred in 2005 when the Applicant was shot several times and nearly died.

[4] The second incident occurred in 2014 when the Applicant testified in a corruption trial against a senior APC official. He claims that after giving his testimony, he received death threats over the phone from members of the APC. The Applicant feared for his family, and they fled to Canada while he stayed in Nigeria because he said that he could not afford to go with them and had to settle his business in Nigeria.

[5] Finally, the Applicant alleges that in 2018, he and a PCP Senator were attacked by members of the APC at the airport, after which he fled to Canada.

A. *The RPD Decision*

[6] The RPD restricted its consideration of the Applicant's refugee claim to subsection 97(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*, as it considered the Applicant's claim under section 96 of the *IRPA* to be unconnected to an enumerated Convention refugee ground.

[7] The RPD denied the Applicant's claim on the basis that he had failed to credibly establish the core of his claim. It found insufficient evidence to connect the events of 2005 to the APC, and it considered the Applicant to have embellished the events of 2014. The RPD found the Applicant's vacations to the United States in 2014 and 2015 and his return to Nigeria after each trip to be inconsistent with the Applicant's stated fear of persecution in Nigeria.

B. *The RAD Decision*

[8] The RAD considered the Applicant's fear of persecution stemming from the public expression of his political opinions to be a basis for considering the Applicant's claim under section 96 of the *IRPA*. However, the RAD rejected the Applicant's claim under both sections 96 and 97 of the *IRPA* on the basis of his failure to: (i) provide sufficient credible evidence to establish the incidents of persecution upon which his claim was based; and (ii) to establish a forward-facing risk if he were to return to Nigeria.

[9] On the Applicant's credibility, the RAD considered the presumption of truthfulness was rebutted as: (i) the Applicant failed to connect the 2005 shooting and the 2018 airport attack to

the 2014 trial; and (ii) there were significant inconsistencies and omissions in the Applicant's evidence, which led the RAD to doubt that the three critical events upon which his claim was based had occurred as alleged.

[10] The RAD held that the Applicant had not established a forward-facing fear, based on his failure to claim refugee protection at the first opportunity considering his vacations in the United States in 2014 and 2015 and his return to Nigeria after both trips despite claiming that he feared for his life.

III. Legislative Framework

[11] A refugee claimant is considered a Convention refugee under section 96 of the *IRPA* where they face "more than a mere possibility" of persecution if they return to their country of nationality. A claimant must demonstrate on a balance of probabilities that they have both a subjective fear and that there is an objective basis for that fear (*Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (FCA) at 682-683).

[12] A claimant is considered "a person in need of protection" under subsection 97(1) of the *IRPA* where they establish on an objective basis that there are "substantial grounds to believe" that they face a personalized danger of torture, risk of cruel and unusual treatment or punishment, or a threat of death should they return to their country of nationality (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at paras 29, 33).

IV. Issues and Standard of Review

[13] The only issue raised by the Applicant is whether the RAD Decision is unreasonable.

[14] The role of a reviewing court on a reasonableness review is limited to determining whether the decision is based on “an internally coherent and rational chain of analysis” and is transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85 [*Vavilov*]).

[15] The role of the Court is not to engage in a reweighing or *de novo* assessment of the evidence nor to substitute its opinion for the RAD’s credibility findings. The RPD and RAD are owed a high degree of deference in this regard (*Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 16). However, credibility findings are not immune from review and can be overturned if they are “perverse, capricious or made without regard to the evidence” (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 and *N’kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 24).

V. Analysis

[16] The Applicant submits that the RAD Decision is unreasonable for three reasons, which I address in turn.

A. *Did the RAD improperly focus on minor inconsistencies and omissions in the Applicant's testimony?*

[17] First, the Applicant submits that the RAD erred in drawing a negative inference about the Applicant's credibility based on what he considers to be minor inconsistencies and omissions.

[18] One of those inconsistencies is the Applicant's testimony related to a 2014 car chase. In his Basis of Claim [BOC], the Applicant described this event as an "assassination attempt." The Applicant then dropped any reference to this event in his Amended BOC. When the RPD asked the Applicant to explain this inconsistency, the Applicant testified that a car chased him. Upon further questioning, the Applicant said that a car followed him and shot at him. The Applicant had no explanation for not including this event in his Amended BOC.

[19] The Applicant denies that there is any inconsistency between the central events as described in his BOC narrative and his testimony. Additionally, he submits that it was an error for the RAD to draw a negative inference about the Applicant's credibility from what he calls "minor omissions" about an event that was originally disclosed. The Applicant relies on the authority of *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) [*Sheikh*], which holds that discrepancies relied on by an administrative tribunal must be: (i) real and not exaggerated; (ii) rationally related to the applicant's credibility; (iii) significant and central to the applicant's claim; and (iv) take into account any plausible explanations offered by the applicant (*Sheikh* at paras 23-24).

[20] I agree with the Respondent that it was open to the RAD to consider the omission of what the Applicant himself referred to as “an assassination attempt” to be both material and central to the core of the Applicant’s claim to have a continuing fear of the APC should he return to Nigeria. Not only was it a sufficient basis to make a negative credibility finding, but it was also not the only such finding. The RAD found other problems with the Applicant’s testimony that rebutted the presumption of truthfulness: (i) he offered only speculation as to the APC’s involvement in the 2005 shooting; (ii) he could not reasonably explain why he would appear at a public gathering in 2018 despite claiming to have been living in hiding for fear of his life; (iii) he failed to explain why he did not claim refugee status at the first opportunity in the United States in 2014; and (iv) there was an inconsistency between his claim that he did not flee with his family in 2014 because he could not afford to do so and his apparent ability to afford his trip to the United States for a vacation in that same year.

B. *Did the RAD err in requiring the Applicant to provide corroborating evidence?*

[21] The Applicant submits that the RAD also erred in requiring the Applicant to provide corroborating evidence. At the hearing, counsel was asked where in the RAD Decision the Applicant considers the RAD to have done so. Counsel acknowledged that there was no particular part of the RAD Decision that the Applicant was relying on.

[22] I do not find any basis in the RAD Decision to support the Applicant’s argument. The RAD’s negative credibility findings were based on inconsistencies and omissions in the Applicant’s own evidence and nowhere in the RAD Decision does the RAD refer to the need for the Applicant to corroborate his evidence.

C. *Did the RAD consider the Applicant's explanations for his delay in leaving Nigeria?*

[23] The third error alleged by the Applicant relates to the RAD's finding that the Applicant had failed to credibly establish a forward-facing fear in light of his travel to the United States in 2014 and 2015 and his return to Nigeria after each trip.

[24] The Applicant explained that he realized how serious the threats were to his life only after the escalation of the situation following the airport attack in 2018. He suggests that this explains why he returned to Nigeria after each of his trips to the United States in 2014 and 2015. The Applicant points to the fact that he sought police protection in 2014 and lived in hiding.

[25] I find that it was open to the RAD to find that the Applicant's travels and reavilment were inconsistent with a forward-facing fear of the APC and I see no error in the RAD's lack of mention of the Applicant's explanation for these events. While an officer's reasons must demonstrate that they have "meaningfully grappled" with key issues or central arguments raised by the Applicant (*Vavilov* at para 128), this does not extend to explanations such as those offered by the Applicant here which are wholly inconsistent with the basis of the Applicant's claim, which was based on three key incidents – the earliest of which dating back to 2005 – and his statement in his affidavit mentioning that "[t]he problems which [he is] fearful of going back to Nigeria started in 2014."

VI. Conclusion

[26] Having reviewed the record and considered the parties' written and oral submissions and having taken into account the applicable law, I find that the Applicant has failed to show that the RAD Decision is unreasonable. Accordingly, this application for judicial review is dismissed.

JUDGMENT in IMM-7427-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7427-23

STYLE OF CAUSE: ADAMS OMOZAKARI AYONOTE v THE MINISTER
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