Date: 20250929

Docket: IMM-22870-24

Citation: 2025 FC 1609

Toronto, Ontario, September 29, 2025

PRESENT: Madam Justice Go

  BETWEEN:

KAZEEM ADEBISI LAWAL

Applicant

and

The Minister of Citizenship and Immigration

Respondent

JUDGMENT AND REASONS

I.   Overview

[1]   Kazeem Adebisi Lawal [Applicant], a citizen of Nigeria, alleges that due to his support

for the Labour Party and their presidential candidate Peter Obi during the 2023 general election

on social media, specifically Twitter [now known as "X"], his political activities attracted

cyberbullying and harassment from supporters of the All Progressive Congress.

[2]   The Applicant made a refugee claim in August 2023. The Refugee Protection Division [RPD] found the determinative issue was the Applicant's failure to establish a forward-looking risk of harm.

[3]   In a decision dated November 5, 2024 [Decision], the Refugee Appeal Division [RAD] dismissed the Applicant's appeal and confirmed the RPD's finding that the Applicant is not a person in need of protection pursuant to sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27.

[4]   The Applicant seeks judicial review of the Decision on the ground that the RAD erred in its assessment of evidence and failed to conduct a section 97 analysis. For reasons set out below, I dismiss the application.

II.   Issues and Standard of Review

[5]   The Applicant raises many issues, some of which directed at the decision of the RPD even though that is not the subject of this judicial review, and I will therefore not address them. With respect to the Decision, the Applicant raises the following issues:

   A. Did the RAD fail to properly consider the Applicant's evidence?

   B. Did the RAD err in finding that the Applicant has no forward-looking risk of harm or persecution if returned to Nigeria?

   C. Did the RAD err in finding that the Applicant has insufficient supporting documents?

   D. Did the RAD fail to conduct a proper section 97 analysis?

[6]   With respect to the standard of review, while the Applicant relies heavily on now-dated *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII) [2008] I S.C.R.190, I agree with the Respondent that the Court should look to *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] in determining whether the Decision bears the requisite hallmarks of justification, transparency and intelligibility: *Vavilov* at para 99.

[7]   Regarding the RAD's alleged failure to conduct a section 97 analysis, the Applicant argues this is a procedural fairness issue. However, as I held in *Pham v. Canada (Citizenship and Immigration)*, 2025 FC 307 at para 13, this argument does not warrant a departure from the reasonableness standard of review as the Applicant is seeking a review of the merits of the RAD's reasons for rejecting his section 97 claim.

III.   <u>Analysis</u>

A.   *Did the RAD fail to properly consider the Applicant's evidence?*

[8]   The Applicant argues the RAD commits reviewable error in two respects. First, the RAD unreasonably made negative credibility findings based on the Applicant's failure to provide evidence of his tweets and inability to retrieve his old tweets in favour of the Labour Party. Second, the RAD did not address the YouTube videos submitted by the Applicant to corroborate his claim of being beaten at the polling station during the election.

[9]   Dealing first with the RAD's finding concerning the missing tweets, the Applicant argues that the RAD should have corrected the RPD's error, citing *MalDonado v. Minister of*

Employment and Immigration, [1980] 2 FC 302 (CA) [*MalDonado*]. The Applicant argues while the RAD may reasonably disagree with the Applicant concerning his tweets in support of the Labour Party, the RAD could not disagree with the Applicant that he had a twitter profile/account and that he was likely tweeting in support of the Labour Party given that the account had a photo of Peter Obie in the profile.

[10]   The Applicant further submits that the RAD erroneously made negative credibility findings based on his inability to produce evidence of his tweets in view of his testimony explaining how he lost his twitter account and that he was scared for his life.

[11]   I reject the Applicant's arguments. While the reasons were brief, the RAD reasonably addressed the Applicant's explanation for his inability to retrieve his tweets and the RPD's decision for rejecting the Applicant's explanation. More importantly, the RAD went on to note: "The RPD was correct to conclude that even if [the Applicant] had a Twitter account and was tweeting in support of the Labour Party, there was no evidence of anything further that would support a forward-looking risk of persecution or harm. The RPD's conclusion refers to and clearly references [the Applicant's] evidence as well as being justified by reasons that are well explained and logical."

[12]   In other words, the RAD's main concern regarding the tweets did not arise from the fact that the Applicant had a twitter account in support of Peter Obi, or that it rejected the Applicant's explanation for not providing the tweets. Rather, the RAD agreed with the RPD in finding that the Applicant failed to provide evidence that would support a forward-looking risk of

persecution or harm, even if accepting the Applicant was tweeting in support of the opposition party. The Applicant's arguments simply fail to address this core aspect of the RAD's reasoning and thus fail to undermine the reasonableness of the RAD's finding.

[13]   At the hearing, counsel for the Applicant added that the RAD's finding about the tweets was unreasonable because the Applicant is on the "wanted list" and as such the RAD unreasonably determined he has no subjective fear. I note, however, the RAD never found the Applicant has no subjective fear. As to the Applicant being on a "list of targets," the RAD noted the RPD's finding that the information about the list is unreliable and that the list does not exist. The RAD found it to be reasonable because the information was described as a rumour and that neither the Applicant nor his friend ever saw the list. The Applicant raises no reviewable errors to counter the RAD's findings, nor can I find any.

[14]   With respect to the YouTube videos, the Applicant submitted the said videos as proof of him being personally beaten and shot on election day. Though the RPD acknowledged the videos as representation of violence during elections in general, it did not find the videos support the Applicant's claim of being personally targeted due to the tweets he posted. In his submissions to the RAD, he argued that the RPD failed to appreciate the fact that he was beaten at the polling unit and considered it very trivial as one of the incidents that happens during the election. The RAD disagreed and found the RPD justifiably concluded that the Applicant has not established a prospective risk.

[15]   Before the Court, the Applicant argues that the RAD did not address whether the videos he submitted corroborated the Applicant's claim that he was personally beaten and shot at by hoodlums at a polling station in February. The Applicant cites *Sheikh v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) where the Court overturned a RAD decision that exaggerated the contradictions between documentary evidence and the claimant's testimony. He also cites para 21 of *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 where the Court noted that documents that only corroborate some aspects of the claimant's story cannot be discounted merely because it fails to provide other details.

[16]   Once again, the Applicant's submission mischaracterizes the RAD's findings. Instead of ignoring the Applicant's allegations, the RAD considered but disagreed with the Applicant's argument that the RPD "trivialized the incident at the polling station." The RAD noted the RPD's consideration of the Applicant's evidence on this point, as well as objective country conditions, and found that the Applicant's experience was representative of such incidents that happened in Nigeria during the election, rather than him being personally targeted due to any tweets he posted.

[17]   While the Applicant may disagree with the RAD's assessment of the videos, his disagreement cannot form the basis for a judicial review. I also find the cases cited by the Applicant do not assist him as they deal with issues that are not relevant to the case at hand.

B.   *Did the RAD err in finding that the Applicant has no forward-looking risk of harm or persecution if returned to Nigeria?*

[18]   Citing *Chichmanov v. Canada (Minister of Employment & Immigration)*, (1992), 1992 CarswellNat 1161 (Fed. C.A.) [*Chichmanov*], the Applicant submits that the RAD applied too high a standard of proof in finding that he has failed to establish a forward-looking risk.

[19]   The Applicant reiterates that he has suffered cyberbullying and harassment, as well as physical violence on election day, and the police is unable to provide meaningful protection. He submits that in light of his previous victimization and the ongoing threats posed by political actors, the Applicant faces a well-founded fear of persecution if he is returned.

[20]   I find much of the Applicant's arguments amount to seeking the Court's reassessment of his refugee claim, which is not the Court's role. The only issue the Court may consider is whether the RAD applied too high a standard of proof, as the Applicant asserts, when it found that the Applicant failed to establish a forward-looking risk. Having reviewed the Decision, I find the RAD committed no such error.

[21]   As the Federal Court of Appeal confirmed in *Adjei v Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 (FCA), [1989] 2 FC 680 [*Adjei*], a case cited in *Chichmanov* and in cases that follow, the test for persecution is whether, on a balance of probabilities, there is a "serious possibility" for persecution. As Justice McHaffie explained in *Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 at para 28:

> ... there is a distinction between the evidentiary standard on which facts are established, and the requisite legal standard for a finding of persecution. The former standard is that of the balance of probabilities, while the latter is that of a serious possibility of persecution.

[22]   The Applicant carries the burden to establish the factual allegations, on the balance of probabilities, that he faces a serious possibility of persecution. In this case, the RAD rejected much of the Applicant's allegations in light of the evidence, or lack thereof, submitted by the Applicant. The Applicant does not point to, nor can I find any, indication in the Decision to suggest the RAD applied an evidentiary threshold higher than the "balance of probabilities" when it came to assessing the Applicant's factual allegations.

[23]   Further, consistent with the case law, the RAD went on to note that the Applicant carried the burden of establishing "a serious possibility of persecution if he were to return to Nigeria:" Decision at para 29. Beyond his bald assertion, the Applicant does not point to anywhere in the Decision that would suggest that the RAD applied a standard of persecution higher than that set out in *Adjei*.

C.   *Did the RAD err in finding that the Applicant has insufficient supporting documents?*

[24]   Citing *Maldonado*, the Applicant submits that the RAD should have given more weight to his testimony under oath that he was told by neighbour that strangers came looking for him but could not get a support letter because he did not want to tell his neighbour about his refugee claim. The Applicant argues that the generality of the support letters he submitted should not have undermined their relevance to the Applicant's case. The Applicant also contends that the

support letters should have been assessed separately and with the presumption of truthfulness:

N'kuly v Canada (Citizenship and Immigration), 2016 FC 112 at para 41; *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 18; *Dirieh v Canada (Citizenship and Immigration)*, 2018 FC 939 at para 28. Finally, the Applicant argues it was unreasonable for the RAD to make negative credibility findings with respect to the Applicant's testimony.

[25]   I find the Applicant's arguments unpersuasive.

[26]   As the Respondent submits, while there is a presumption of truth with respect to a claimant's testimony, there is no expectation that the RAD must believe everything that is said under oath.

[27]   The Respondent cites *Ni v Canada (Citizenship and Immigration)*, 2022 FC 460 [*Ni*] at para 22, where Justice McHaffie said: "…it is reasonable for the RPD or the RAD to draw adverse credibility inferences based on a lack of corroboration where it would be reasonably expected that corroborative evidence would be available and filed, and there is no reasonable or acceptable explanation for its absence." I note however that Justice McHaffie also stated in the same paragraph that: "…the decision maker is expected to set out their conclusions to this effect with reasonable precision, an expectation that accords with the general principles of transparency and justification in administrative decision making:" *Ni* at para 22.

[28]   In the case at hand, I find that the RAD provided its conclusions, with reasonable precision, for confirming the RPD's review of the support letters. As the RAD noted, the letters

were similarly worded and too general to support the Applicant's claim of being personally

targeted, being on a wanted list, being trailed, or still being sought after. The RAD found the

letters "carry no weight to support a forward-looking risk of harm or persecution as they do not

even refer to what political party [the Applicant] was supporting, and only generally refer to the

consequences of his political activities." The RAD further noted that the supporting documents

"lack compelling details about what happened to [the Applicant]" and "contain general

statements that are unconvincing."

[29]   The RAD's reasons were sufficiently transparent and intelligent: *Ni* at para 22. It was

also justifiable in light of the evidence before it: *Vavilov* at para 99.

D.   *Did the RAD fail to conduct a proper section 97 analysis?*

[30]   The Applicant submits that the RAD erred by failing to conduct a separate section 97

analysis. He relies on *Anthonimuthu v Canada (Citizenship and Immigration)*, 2005 FC

141 [*Anthonimuthu*] at paras 51-52 which differentiates section 97 analysis from section 96

analysis and states that a negative credibility determination under section 96 does not necessarily

determine the claim under section 97. The Applicant submits the appropriate standard for

examining "well-founded fear" is a reasonable chance standard, citing *Sivaraththinam v Canada*

(Citizenship and Immigration), 2014 FC 162 at para 46.

[31]   The Applicant notes that the section 97 test is an objective one based on the Applicant's

profile and documentary evidence. Even if virtually all of the Applicant's testimony is

disbelieved, the Applicant contends that the RAD is still under an obligation to consider whether

the Applicant's is at risk, taking into account whatever aspects of the Applicant's profiles have

been accepted by the RAD.

[32]   Finally, the Applicant argues that the RAD should have taken the two-step analysis as per

Pineda Cabrera v Canada (Citizenship and Immigration), 2017 FC 239 at para 24:

> Jurisprudence has identified a two-step analysis when considering s 97. In *Portillo* Justice Gleason stated that the RPD must first appropriately determine the nature of the risk faced by the claimant which requires an assessment of whether the claimant faces an ongoing or future risk, what that risk is, whether it is one of cruel and unusual treatment or punishment and the basis for the risk. Second, the correctly described risk faced by the claimant must then be compared to that faced by a significant group in the country at issue to determine whether the risks are of the same nature and degree (*Portillo* at paras 40-41; *Flores* at para 13; *Mejia* at para 37).

[33]   I find the Applicant's arguments lack merits.

[34]   As the Court noted in *Anthonimuthu* at para 52, the RPD "may dispense with a separate

section 97 analysis is when there is absolutely no evidence that could support a claim that a

person is in need of protection (citation omitted)."

[35]   Unlike *Anthonimuthu* where the Court concluded that the RPD did not deal adequately

with the applicant's allegations with respect to the threat of extortion, here, the Applicant fails to

point out which aspect of his claim has not been dealt with by the RAD. More importantly, the

RAD found that having credibly established that he was supporting the Labour Party in Nigeria

does not mean that the Applicant will be personally subjected to a section 97 harm should he

return to Nigeria, as he failed to establish this forward-looking risk based on the evidence in his

claim, including the Applicant's testimony that he had stopped all political activities since coming to Canada. The RAD also confirmed the RPD's finding of a lack of prospective risk, and as such, there is no independent or credible documentary evidence in the record capable of supporting a positive deposition of the Applicant's claim.

[36]   As I find no reviewable errors arising from the RAD's conclusion that the Applicant does not face a forward-looking risk in light of the insufficient evidence submitted by the Applicant, I therefore find the RAD's conclusion that a distinct section 97 analysis is unnecessarily due to the lack of prospective risk was also reasonable.
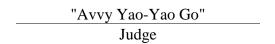
IV.   Conclusion

[37]   The application for judicial review is dismissed.

[38]   There is no question for certification.

JUDGMENT in IMM-22870-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

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"Avvy Yao-Yao Go"
Judge

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