

Federal Court



Cour fédérale

Date: 20260323

Docket: IMM-8597-25

Citation: 2026 FC 393

Ottawa, Ontario, March 23, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JUDE MUKOLU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jude Mukolu, is a citizen of Nigeria who reports a risk of persecution in that country based on his sexual orientation as a bisexual man.

[2] The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] both refused the Applicant's refugee claim, finding credibility to be the determinative issue. The

Applicant seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of the RAD's March 27, 2025 decision, arguing that the RAD did not properly assess his evidence, including his testimony.

[3] The Respondent submits the RAD reasonably drew negative credibility inferences based on material inconsistencies in the Applicant's evidence and the Applicant's failure to reasonably explain identified contradictions.

[4] For the reasons that follow, the application for judicial review will be dismissed.

II. Background

[5] In his Basis of Claim [BOC] dated November 15, 2023, the Applicant reported the following narrative.

[6] In or around 2010, the Applicant had a same-sex relationship with a friend in high school [DO], which ended when he and DO went on to attend different post-secondary institutions. He and DO reconnected in October 2022 and subsequently resumed their relationship. On March 1, 2023, the Applicant received a call from police requesting that he report to the police station because he had been implicated in an ongoing investigation. He later learned that police had arrested DO and had discovered intimate photographs and videos of himself with DO on DO's phone.

[7] On March 4, 2023, police attended his home while he was with his eight-month pregnant wife. The Applicant was able to escape, but the police detained his wife who went into labour.

His wife died on March 5, 2023, a day after the premature delivery of his son. Police later attended his wife's burial looking for him. Fearing arrest, and his wife's family who blamed him for her death and had threatened to kill him, the Applicant relocated to a different state in Nigeria before entering Canada on October 29, 2023.

[8] In support of his refugee claim, the Applicant placed evidence before the RPD which included his son's birth certificate, dated March 4, 2023 [Birth Certificate] and his wife's March 5, 2023 death certificate [Death Certificate].

[9] However, at the outset of the hearing before the RPD on August 20, 2024, the Applicant sought to correct his BOC narrative to indicate that the month of his son's birth and his wife's death was in fact September, not March of 2023 as initially reported, and that the call from police also occurred in September 2023. The Applicant also testified that following his arrival in Canada he had entered into a same-sex relationship with CSM in December 2023.

[10] The RPD rejected the Applicant's claim, finding he had not credibly established his sexual orientation, his same-sex relationships, or his risk of persecution should he return to Nigeria. The RPD found that the Applicant's testimony was materially inconsistent or vague regarding: (1) his relationship with DO; (2) key dates, including the death of his wife, the police call and visit; (3) his personal life ("dating activities") from 2010 to 2022; and (4) his relationship with CSM. The RPD held that the Applicant's documentary evidence was not sufficient to overcome the RPD's serious credibility concerns and his claim was therefore rejected.

III. Decision Under Review

[11] The Applicant sought to place new evidence before the RAD that consisted of (1) an affidavit sworn by the Applicant, explaining he had “mis-written” the dates of his wife’s death and son’s birth in his BOC because, grieving the loss of his wife, he had confused his nephew’s and his son’s dates of birth, (2) a letter from the Applicant’s sister in Nigeria dated February 2, 2025, and an associated identification document [Letter], explaining that she had obtained both the Birth Certificate and the Death Certificate and that she had provided the hospital the incorrect date of birth when obtaining the Birth Certificate.

[12] In considering the admissibility of the new evidence, the RAD treated the affidavit as a supplementary submission which was entered and considered. The RAD refused to admit the Letter, finding the contents not to be credible because (1) the explanation provided for the incorrect dates was not offered by the Applicant when he corrected his BOC at the hearing, (2) the RAD did not accept that a Nigerian hospital would simply rely on a verbal statement in issuing a birth certificate, (3) the National Documentation Package on Nigeria conflicts with the explanation as it indicates certain documentation or objective data is needed to have a birth certificate issued, (4) how or why an allegedly incorrect date was included on the Death Certificate is not explained, (5) the Letter did not address the condolence messages placed before the RPD by the Applicant that were dated March and April 2023, and (6) the Letter did not explain how or why the Applicant made the same significant errors as his sister in his BOC.

[13] The RAD agreed with the RPD in finding serious credibility concerns regarding the Applicant’s testimony. Specifically, the RAD noted: (1) despite the alleged closeness and length

of his relationship with DO, when questioned by the RPD, the Applicant could not recall specific details about the relationship that he had indicated in his BOC or contradicted his BOC narrative; (2) the reason given by the Applicant for not pursuing same-sex relationships from 2010 to 2022 was inconsistent and evolved depending on the RPD's questions; and (3) his testimony and supporting evidence regarding his relationship with CSM were superficial, repetitive, and vague and therefore insufficient to establish his current same-sex relationship. The RAD held that the Applicant had not provided sufficient credible evidence to establish the core allegations of his claim.

[14] The RAD also found the Applicant had not reasonably explained the inconsistencies with respect to the dates of his son's birth, his wife's death, and the police call and visit, noting that the Applicant's BOC consistently states that these key events occurred in March 2023, not September 2023. Finding that the Applicant's evidence – namely his BOC, his testimony, and the documents presented in support of his claim – was directly conflicting, the RAD stated it preferred the evidence submitted by the Applicant corroborating the March 2023 dates – including the Birth Certificate, the Death Certificate, and the condolence messages – because they were consistent with one another and with the initial dates in the Applicant's BOC, and were from independent sources. As for the police invitation letter, the RAD found the RPD correctly noted several typographical errors contained in the document and correctly concluded these errors were concerning. The RAD held that the police letter was of no probative value in establishing that the police were interested in the Applicant due to his sexual orientation.

[15] In considering the Applicant's additional supporting evidence – letters of support from two LGBTQ+ organizations in Canada, photographs of the Applicant at Toronto Pride events,

photographs of individuals arrested at an August 2023 LGBTQ+ party or wedding in Nigeria, a psychotherapy assessment report – the RAD found the evidence did not overcome the identified credibility concerns.

[16] The RAD concluded the Applicant was neither a Convention refugee, nor a person in need of protection because he had not credibly established the allegations of his claim, including his alleged risk of persecution and his sexual orientation as a bisexual man.

IV. Issues and Standard of Review

[17] The Parties submit, and I agree that the Application raises a single issue which I have framed as follows:

- A. Was the RAD’s assessment of the Applicant’s evidence and testimony unreasonable?

[18] The standard of review is not in dispute. The RAD’s assessment of the evidence is reviewable on the presumptive standard of reasonableness. A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8). The party challenging a decision has the burden of demonstrating to a reviewing court “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

V. Analysis

[19] The Applicant broadly submits that both the RPD and the RAD failed to properly assess his evidence, including his BOC narrative and testimony. More specifically, he submits:

- A. The RAD's findings to the effect that his testimony was vague and lacking in detail reflect the RAD's failure to consider: (1) his stress and nervousness during the hearing, (2) the passage of time between the events and his testimony, (3) the traumatic nature of his allegations, and (4) his social and cultural background contributing to his repressed sexuality.
- B. The RAD failed to meaningfully consider and apply the Immigration and Refugee Board of Canada Chairperson's *Guideline 9: Proceedings before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* [SOGIESC Guidelines], but instead simply paid lip service to them.
- C. The RAD erred by failing to properly examine the psychological assessment report which identified medical circumstances including memory issues, as opposed to an absence of credibility, as an explanation for inconsistencies or omissions in his testimony (*Joseph v Canada (Citizenship and Immigration)*, 2015 FC 393 at paras 33, 45, 47 [*Joseph*]).
- D. The RAD did not properly consider and failed to assess his *sur place* claims, the RAD unreasonably finding his evidence must overcome the negative credibility findings and dismissing that evidence because it had concluded he was not

credible (*Tshibola Kabongo v Canada (Citizenship and Immigration)*, 2012 FC 313 at para 11).

- E. In the course of the hearing, the Applicant also argued that the RAD erred because it failed to undertake an independent credibility analysis, and instead simply adopted the RPD's findings.

[20] These submissions reflect nothing more than disagreement with the RAD's conclusions and findings. The RAD's findings to the effect that the Applicant's testimony was vague or inconsistent regarding his relationship with DO in Nigeria and CSM in Canada and that the Applicant's evidence regarding the death of his wife, the birth of his son, and the police phone call and visit was inconsistent and contradictory are all findings that are consistent with the evidence, supported by an intelligible analysis, and therefore were reasonably available to the RAD.

[21] With respect to the Applicant's argument that the RAD failed to consider his circumstances or that the RAD merely paid lip service to the SOGIESC Guidelines, I first note that this issue does not appear to have been before the RAD despite the RPD also stating it had considered and applied the SOGIESC Guidelines. Having been raised for the first time on this Application, the argument is not properly before the Court. I have nonetheless considered the issue and am not persuaded by the argument.

[22] At the outset of the decision, the RAD notes that the Applicant's "personal profile, along with the detailed content, symptoms, mental health information and diagnosis in the

psychotherapist's assessment submitted in evidence alongside the guidance provided in Guidelines 8 and 9" have been carefully considered. The RAD then provides a comprehensive summary of the guidance contained in the SOGIESC Guidelines prior to undertaking its credibility assessment. Finally, the RAD expressly considers the SOGIESC Guidelines, the legal and cultural context in Nigeria, and the Applicant's trauma, mental health and nervousness in assessing his evidence, and whether any of these factors explain the material inconsistencies identified.

[23] Upon reviewing the decision, it is clear that the RAD was alert to, and considered, the Applicant's social and cultural profile and the SOGIESC Guidelines in concluding the Applicant had not provided a reasonable explanation for the inconsistencies in his testimony and evidence. As noted by the Respondent, cases involving the SOGIESC Guidelines do not differ from other cases and it remains open to decision-makers to draw negative inferences as the result of material inconsistencies (*Onwuamaizu v Canada (Citizenship and Immigration)*, 2021 FC 1481 at paras 26-27).

[24] In so concluding, I acknowledge the need for decision-makers to exercise caution in circumstances where there is a connection between inconsistencies or omissions and cognitive issues referred to in a medical or psychological report (*Joseph* at para 33), but this caution is of no assistance to the Applicant in this case. The RAD expressly considered the Applicant's mental health issues and, in respect to those inconsistencies relating to the dates of key events, noted the documentary evidence produced by the Applicant, which conflicted with testimony,

and explained why that evidence was preferred. The RAD did not ignore or overlook the psychological report, but rather considered the contradictions in light of all of the circumstances.

[25] With respect to the RAD's assessment of the Applicant's evidence of engagement in LGBTQ+ activities in Canada, the RAD did not err in finding that this evidence was not sufficient to overcome its credibility concerns (*Gueye v Canada (Citizenship and Immigration)*, 2024 FC 269 at para 18). Contrary to the Applicant's argument, the RAD did consider whether the Applicant's sexuality and/or engagement in LGBTQ+ organizations in Canada could place him at risk in Nigeria and reasonably concluded the evidence of engagement did not establish his identity as a bisexual man or a risk of persecution should he return to Nigeria.

[26] Finally, in considering the argument that the RAD erred by failing to undertake an independent assessment of the claim, I first note that the RAD conducts a hybrid appeal and may "recognize and respect the conclusion of the RPD on such issues as credibility and/or where the RPD enjoys a particular advantage in reaching such a conclusion" (*Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at paras 54–55). In this instance, the RAD does not expressly state whether or not it was of the view the RPD enjoyed a particular advantage on the issues of credibility. However, a review of the decision demonstrates that the RAD grappled with the evidence in reaching the conclusion that it agreed with RPD and that its credibility findings were correct. I see no error in the RAD doing so.

[27] I also note the Applicant's argument that the RPD erred by not specifically raising the Birth Certificate and Death Certificate inconsistencies during the RPD hearing was addressed by the RAD, and again the RAD reasonably concluded any alleged unfairness was cured on appeal.

[28] In summary, the Applicant acknowledges that “there was conflicting information in [his] narrative and evidence.” This being so, and in the absence of any identified reviewable error, it was open to the RAD to find the material inconsistencies raised concerns that undermined the credibility of the Applicant’s allegations of risk. The Applicant’s invitation that the Court conclude otherwise amounts to nothing more than an impermissible request to reweigh evidence.

VI. Conclusion

[29] The application for judicial review is dismissed.

[30] Neither Party has proposed a question of general importance for certification, and I agree that none arise.

JUDGMENT IN IMM-8597-25

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8597-25

STYLE OF CAUSE: JUDE MUKOLU v THE MINISTER OF CITIZENSHIP
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