

Federal Court



Cour fédérale

Date: 20181205

Docket: IMM-114-18

Citation: 2018 FC 1222

Ottawa, Ontario, December 5, 2018

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

ODUNAYO JOY ADEOLA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The respondent, Odunayo Joy Adeola, is a citizen of Nigeria. She entered Canada in 2012 and made a claim for refugee protection on the basis of her fear of her abusive common law spouse. Ms. Adeola's refugee hearing took place on November 24, 2017, before R. Rossi, a member of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of

Canada [IRB]. For reasons delivered orally at the conclusion of the hearing, the member accepted the claim for refugee protection.

[2] The Minister of Citizenship and Immigration [Minister] applies for judicial review of this decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Minister contends that the decision is unreasonable because the member failed to consider evidence that raised serious issues about Ms. Adeola's credibility.

[3] For the reasons that follow, I agree with the Minister. This application for judicial review must, therefore, be allowed and the matter remitted for reconsideration by another member of the RPD.

II. BACKGROUND

[4] To understand the central issue in this application for judicial review, it is necessary to set out the history of Ms. Adeola's claim for refugee protection in some detail.

[5] Ms. Adeola first made her claim at an Inland Office of the IRB in Toronto on June 6, 2012. She completed her Claim for Refugee Protection in Canada form on June 25, 2012. A lawyer assisted her. The form was submitted to the IRB on July 9, 2012. At that time, Ms. Adeola made a solemn declaration that the information she was providing "is truthful, complete and correct."

[6] On the form, Ms. Adeola provided her full name and date of birth. She left blank the box asking for other names previously or currently used.

[7] Ms. Adeola stated on the form that she arrived in Canada at Pearson International Airport on June 5, 2012. She stated that she had left Lagos, Nigeria, on June 4, 2012, and flown to Canada via Amsterdam. She stated that she had used a passport when she entered Canada. She did not know the name on the passport, what country had issued it, the serial number, or the date of expiry. The passport was not genuine. Asked if it was still in her possession, she checked the box for “No.” Asked elsewhere on the form if anyone had assisted her in coming to Canada, Ms. Adeola stated that a Mr. Kunle had “provided the travel documents and brought [her] to Canada.” The employment and address histories she provided were consistent with her claim that she had departed Nigeria for Canada in June 2012.

[8] Ms. Adeola submitted her Personal Information Form [PIF] to the IRB on July 24, 2012. She continued to be assisted by a lawyer. On her PIF, Ms. Adeola declared that “the information provided in this form and all attached documents is complete, true and correct.”

[9] Ms. Adeola provided her full name and date of birth again on her PIF. She left blank the box asking for other names previously or currently used.

[10] Ms. Adeola reiterated in her PIF that she had arrived in Canada at Pearson International Airport on June 5, 2012, and that she had flown to Canada from Nigeria via Amsterdam. The employment and address histories she provided on the PIF were consistent with her claim that

she had departed Nigeria for Canada in June 2012. Asked to list all countries to which she had travelled in the past 10 years, she wrote “None.” Asked to list all passports and travel documents issued to her in the past 10 years, she wrote “None.” Asked to list the passports, travel documents and other identity documents she had used to travel to Canada, Ms. Adeola stated that she had travelled on a passport which was not genuine and that she did not know the name on it, the country of origin, the serial number, the date of issue or the date of expiry. Asked where this passport was, Ms. Adeola wrote that it was “with the agent, Mr. Kunle.” Asked, if she came to Canada through the United States, what travel documents she presented when she entered the United States, Ms. Adeola wrote “No.” Asked if she had applied for a visa to the United States, Ms. Adeola checked “No” and wrote “N/A” for all related questions (e.g. the visa office to which the application was made).

[11] Ms. Adeola attached a Personal Narrative to her PIF. She describes a history of domestic abuse at the hands of her common law spouse, a police officer in Nigeria. She describes being assaulted violently by her spouse after a social event in February 2012. She also describes a pivotal confrontation that happened between the two of them in April 2012, when she discovered that her spouse had been married before. Ms. Adeola states that the next day she fled Ibadan for Lagos, where she took shelter at her aunt’s home. However, on May 20, 2012, her spouse, in the company of some “thugs,” arrived at her aunt’s home looking for her. Ms. Adeola happened to be in church at the time. After being told what happened, Ms. Adeola remained in hiding at the church until arrangements could be made for her to leave for Canada. With the assistance of an agent, she departed Nigeria for Canada on June 4, 2012.

[12] By letter dated October 1, 2012, the Canada Border Services Agency [CBSA] advised the IRB that the United States Department of Homeland Security had provided them with a Five Country Conference Report [FCC Report]. The report stated that Ms. Adeola's fingerprints matched those of an individual in United States Department of State records. The latter individual, known to United States authorities as Odunayo Akinnibosun, was born in Nigeria and had the same date of birth as Ms. Adeola. According to the FCC Report, this individual had applied for a non-immigrant visa to the United States in Abu Dhabi on September 1, 2011. She had entered the United States at John F. Kennedy International Airport on March 24, 2012, using a passport. The FCC Report included the passport number but not the issuing country.

[13] The IRB disclosed this information to Ms. Adeola on or about October 31, 2012.

[14] On November 14, 2012, Ms. Adeola met with a psychologist for an assessment in support of her claim for refugee protection. According to the report of this assessment dated November 21, 2012, Ms. Adeola told the psychologist that she fled Nigeria for Canada in March 2012. The agent who had arranged her departure had her travel through the United States. Ms. Adeola waited there for over two months before arrangements were made for her to enter Canada. Ms. Adeola's lawyer submitted this report to the IRB prior to the refugee hearing.

[15] On December 3, 2012, Ms. Adeola's lawyer provided the IRB with amendments to her PIF as well as an amended Personal Narrative. The amendments to the PIF were done by providing several discrete pages of the form on which were entered additional or different information than had been entered on the original PIF. Ms. Adeola initialed the various entries

on the pages. The pages were otherwise left blank. In the box on page 2 for other names which she had used or was known by, Ms. Adeola wrote “Akinnibosun.” On page 6, she added that she had travelled to New York in March 2012 and had lived there until June 2012. She stated that a passport in the name of Odunayo Akinnibosun had been issued to her in the past 10 years. She stated that it had been issued by Nigeria but she did not know its serial number, date of issue or date of expiry. On page 7, she stated that she had used a passport to enter Canada from the United States. She stated that this passport was not genuine, she did not know the name on the document, the country of origin, the serial number, the date of issue or the date of expiry. She stated that she had applied for a visa to the United States but did not know when or at which office. She stated that the application was accepted. On page 8, she wrote that she had flown from Lagos, Nigeria, to New York on March 23, 2012 and then from New York to Toronto on June 5, 2012.

[16] In her amended Personal Narrative, Ms. Adeola changed the dates of some of the events she described in her original Personal Narrative. She stated that she discovered that her spouse had been married before in February 2012, not April. She also stated that her husband and the others had come looking for her at her aunt’s home in Lagos on March 15, 2012, not on May 20, 2012. She stated that she remained in hiding until March 23, 2012, not June 4, 2012, when she left for Canada via the United States.

[17] By Notice dated January 10, 2013, the Minister provided notice of his intention to intervene in Ms. Adeola’s refugee hearing under section 170(e) of the *IRPA*. The Notice stated that the Minister intended to intervene on a credibility issue. The Notice also stated: “Please

consider the following observations which may undermine the claimant's credibility." A number of alleged discrepancies between Ms. Adeola's PIF and information contained in the FCC Report were then listed. Under the heading "Submissions", the Notice stated: "The Minister is of the opinion that the claimant's false declarations about their [*sic*] immigration history in the USA have seriously affected the merit of her claim and undermined irrevocably her credibility." The Minister thus urged the RPD to reject the claim. The Notice stated that the Minister's representative would not be present at the hearing. The FCC Report was attached as an exhibit to the Notice. A copy of the Notice was served on Ms. Adeola's lawyer on January 10, 2013.

[18] As previously noted, Ms. Adeola's hearing before the RPD took place on November 24, 2017. It lasted approximately one hour and 15 minutes. The member began by noting the exhibit numbers of certain documents for the record. The member stated that "the package of information from the Minister, the standard package is Exhibit 1." (The consolidated list of documents identifies Exhibit 1 as "Package of information from the referring CBSA/CIC.") Ms. Adeola's original PIF was Exhibit 2. The National Documentation Package for Nigeria dated March 2017 was Exhibit 3. The National Documentation Package for Nigeria dated June 2012 (i.e. the timeframe of the claim) was Exhibit 4. A "portion" of Ms. Adeola's PIF submitted by counsel (i.e. the amendments to the PIF and Personal Narrative) was Exhibit 5. Ms. Adeola's identity documents were Exhibit 6. Several other documents submitted by Ms. Adeola's lawyer (an employment letter, tax records, and the psychological report) were marked collectively as Exhibit 7.

[19] In her testimony at the hearing, Ms. Adeola presented the basis of her claim for refugee protection in terms that were generally consistent with what she had stated in her PIF and Personal Narrative, including the dates reflected in the PIF amendments. However, in describing her arrival in Canada, she testified that she entered Canada by road, not air, and that she left the passport she used to enter the United States behind with the agent who had assisted her in getting to the Canada/United States border. She did not show any identification when she crossed into Canada. The agent simply dropped her off “on the street and told [her] to go to the immigration office.” The member did not question Ms. Adeola about the discrepancies between this testimony and what she had stated both in her original PIF and in her amended PIF about how she had arrived in Canada.

[20] The member questioned Ms. Adeola extensively during the hearing. None of the member’s questions referred to the FCC Report or the information it contained. Nor did the member question Ms. Adeola about any of the changes she had made to her original PIF and Personal Narrative or about why she had given different information before. Ms. Adeola’s lawyer did not ask her any questions. As had been indicated in the Notice of Intention to Intervene, no one appeared for the Minister at the hearing.

III. DECISION UNDER REVIEW

[21] Immediately after the completion of Ms. Adeola’s testimony and a brief off the record discussion with her lawyer, the member stated that he was accepting the claim. He then retired to prepare his reasons, which were delivered orally the same day.

[22] The member stated that he had “considered the evidence before him.” He found that Ms. Adeola is a Convention refugee because she has a well-founded fear of persecution on a Convention ground in Nigeria – namely, as a person at risk of domestic abuse by her former common law partner, who is a police officer. The member found that adequate state protection would not be available to Ms. Adeola and that there was no viable internal flight alternative.

[23] The member found that Ms. Adeola had established her identity as a national of Nigeria with the various identity documents she had presented at the hearing. He does not address the information in the FCC Report and the revised PIF that Ms. Adeola had been issued a Nigerian passport in a different name and, under that name, had obtained a visa to the United States.

[24] The member sets out a narrative of events which tracks the one found in Ms. Adeola’s revised PIF and Personal Narrative, including that Ms. Adeola had fled from Nigeria to the United States in March, 2012, where she remained until she came to Canada on June 5, 2012. The member does not address any of the discrepancies between this account and the account in Ms. Adeola’s original PIF and Personal Narrative. Nor does the member address any of the discrepancies between the information in the FCC Report and the original PIF and Personal Narrative. The member did not make any finding about how Ms. Adeola arrived in Canada (whether by air or by road) and does not address the discrepancies on this point in Ms. Adeola’s various accounts of her arrival (directly from Nigeria by air via Amsterdam in her original PIF; directly from Nigeria by air via New York in her amended PIF; by road from the United States after a two month stay there in her testimony before the RPD).

[25] The member's only concern with respect to Ms. Adeola's credibility related to her account of her spouse's ongoing pursuit of her. The member stated:

The panel finds that the claimant is generally credible. The panel said at the outset that it finds implausible much of the stories of ongoing pursuit by James, of her, and the panel finds that the claimant was not credible in respect of some of the incidents she reported and alleged. Nevertheless, the panel does accept on a balance of probabilities that James is a police officer and James was able to track her down and that James was interested in her.

Further:

The claimant testified forthrightly, and she was absolutely consistent with all of the information that she has presented, notwithstanding the fact the Board has credibility concerns with the extent of James' behavior. The panel finds that the basic elements of her claim are sound, intact and believable; specifically, that he is a police officer and that she faced a long period of domestic abuse with this man.

[26] On the basis of these findings, and considering the general conditions in Nigeria, the member found that Ms. Adeola is a Convention refugee.

IV. ANALYSIS

[27] The Minister contends that the RPD's decision cannot stand because the member found Ms. Adeola to be credible generally but did not take into account evidence that could raise serious issues about her credibility.

[28] As set out above, the member provided reasons for finding Ms. Adeola to be credible (despite reservations on some points) and for finding her to be a Convention refugee. Other

things being equal, the member's reasoning and conclusions might well have withstood judicial review. The member's reasons, however, are silent about the information contained in the FCC Report, about the changes Ms. Adeola made to her PIF and Personal Narrative after this information was disclosed to her, and about the potential implications of these things for her credibility. This application for judicial review turns on the significance of that silence.

[29] On judicial review of an administrative decision, the reviewing court must consider not only whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" but also "the existence of justification, transparency and intelligibility within the decision-making process" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). This deferential approach "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (*Dunsmuir* at para 49, quoting Professor David J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p 93).

[30] The deferential posture to which the reasonableness standard of review gives effect is also reflected in section 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7. This provision authorizes a court to grant relief on judicial review if it is satisfied that the decision maker based its decision "on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it." It "provides legislative precision to the reasonableness standard of review of factual issues in cases falling under the *Federal Courts Act*" (*Canada*

(Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 46 [*Khosa*]). Both reflect the principle that administrative fact finding commands a high degree of deference (*ibid.*).

[31] Further, as Justice Rothstein explained for a majority of the Court in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, “deference under the reasonableness standard is best given effect when administrative decision makers provide intelligible and transparent justification for their decisions, and when courts ground their review of the decision in the reasons provided” (at para 54).

[32] The RPD must give reasons for its final decisions (*IRPA*, section 169(b)) and these reasons must be adequate (*Canada (Citizenship and Immigration) v Mokono*, 2005 FC 1331 at paras 13-15; *Canada (Citizenship and Immigration) v Shwaba*, 2007 FC 80 at paras 10-16). The inadequacy of the reasons is not a stand-alone ground of judicial review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [*Newfoundland Nurses*]). This is not to say, however, that reasons are not important. On the contrary, when they are required (cf. *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 43 [*Baker*]), reasons are “the primary form of accountability of the decision-maker to the applicant, to the public and to a reviewing court” (*Khosa* at para 63). They serve several beneficial purposes including focusing the decision maker on the relevant factors and evidence, providing the parties with the assurance that their representations have been considered, permitting the parties to frame potential grounds for judicial review, and permitting the reviewing court to determine whether the decision maker

erred (*Baker* at para 39; *VIA Rail Canada Inc. v National Transportation Agency*, [2001] 2 FC 25 at paras 17-19 (FCA)).

[33] In summary, giving reasons is an essential part of the decision-making process. On review, they are a key consideration when determining whether the result is justified and intelligible. They enhance the transparency of the decision-making process by explaining how the result was reached. This benefits the parties, the public and the reviewing court. As well, read against the backdrop of the record, reasons can reveal underlying reviewable errors. One such error is the decision maker's failure to consider the material before it.

[34] Whether there has been such a failure is not always easy to demonstrate. This is because an administrative decision maker is not required to address "all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (*Newfoundland Nurses* at para 16). The simple fact that a piece of evidence is not addressed in the reasons does not necessarily entail that the decision was made without regard to that evidence. Decision makers are presumed to have considered all the material in the record before them unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1 (FCA); *Hernandez Montoya v Canada (Citizenship and Immigration)*, 2014 FC 808 at para 32 [*Hernandez Montoya*]). The more important the item of evidence that was not addressed, the less likely the reasons will pass the test of allowing "the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland Nurses* at

para 16), and the more likely it will be that the decision was, indeed, made without regard to the evidence in question (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35 at paras 16 and 17; *Hernandez Montoya* at paras 33-34).

[35] The member found Ms. Adeola and her claim for refugee protection to be credible. The RPD's credibility assessments are reviewed on a reasonableness standard (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 at para 4 (FCA); *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 22; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at para 26). This standard also applies to allegations that the RPD ignored relevant evidence (*Abd v Canada (Citizenship and Immigration)*, 2017 FC 374 at para 13).

[36] Applying this standard, from my review of the record and the member's reasons, I can only conclude that the member decided this matter without regard for the information in the FCC Report or the material discrepancies between, on the one hand, the information Ms. Adeola provided in her original PIF and Personal Narrative and, on the other hand, the information in her amended PIF and Personal Narrative. The information in the FCC Report did not contradict the core of Ms. Adeola's refugee claim but it was inconsistent with her original chronology. As well, the omission of material information in her original application for refugee protection and in her original PIF, and the changes Ms. Adeola made to her PIF and to her Personal Narrative after learning of the FCC Report, raised serious issues about her credibility. These issues should have been explored at the hearing. The fact that they were not strongly suggests that, inexplicably, the member was simply unaware of them. The RPD is not required to refer to

every piece of evidence before it in its reasons but, “where the evidence contradicts the RPD’s findings, more than a blanket statement will be required to demonstrate that the RPD considered the evidence, otherwise it may be open to the Court to infer that the decision was made without regard to the evidence” (*Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 22).

I draw that inference here.

[37] This conclusion is reinforced by the member’s finding that Ms. Adeola had been “absolutely consistent with all of the information that she had presented,” the member’s failure to mention the Minister’s intervention at any time during the hearing or anywhere in the reasons, and the member’s puzzling reference to the CBSA and the Minister having provided “the standard package.” No one who had read the Minister’s Notice of Intervention and the FCC Report could consider it a “standard package.”

[38] As a result of the decision on this application for judicial review, Ms. Adeola will lose the refugee status that had been recognized by the RPD, at least for the time being. This is a step that cannot be taken lightly. However, the flaws in the member’s decision are such that there can be no other outcome.

V. CONCLUSION

[39] For these reasons, the Minister’s application for judicial review must be allowed, the decision of the RPD granting refugee protection to Ms. Adeola must be set aside, and Ms. Adeola’s claim for refugee protection must be remitted for reconsideration by a different member of the RPD.

[40] The parties did not suggest any questions of general importance for certification. I agree that none arise.

JUDGMENT IN IMM-114-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division rendered on November 24, 2017
(written reasons provided on December 18, 2017) is set aside.
3. The matter is remitted for reconsideration by a different member of the Refugee
Protection Division.

"John Norris"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-114-18

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 23, 2018

JUDGMENT AND REASONS: NORRIS J.

DATED: DECEMBER 5, 2018

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