

Federal Court



Cour fédérale

**Date: 20200213**

**Docket: IMM-2483-19**

**Citation: 2020 FC 245**

**Ottawa, Ontario, February 13, 2020**

**PRESENT: The Honourable Madam Justice Fuhrer**

**BETWEEN:**

**ABDULGAFAR ADESEYE TOWOLAWI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Mr. Towolawi is a citizen of Nigeria who identifies as bisexual and makes a claim for protection on this basis. On July 25, 2018, the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] found he was not credible and dismissed his claim. The Refugee Appeal Division [RAD] affirmed the RPD's decision on March 25, 2019. This is an

application for judicial review of the RAD's dismissal of his claim, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons below, I dismiss this judicial review application. The RAD reasonably assessed Mr. Towolawi's credibility and additional evidence and determined on a balance of probabilities that he was not a Convention refugee or person in need of protection for being bisexual, pursuant to IRPA ss 96 and 97.

## II. Background

[3] Mr. Towolawi alleges he is bisexual and has had three relationships with men, two of which preceded his arrival in Canada. He explains his first same sex relationship began in 2006 with an older family friend while he was in university, and ended when his partner graduated, confessed his sexual orientation to his parents, and left Nigeria. Living in fear of what his former partner had disclosed and wanting to cover his own acts, Mr. Towolawi returned to dating women. He eventually fell in love and married his former wife in 2012, but the marriage did not last long as they were unhappy. They separated two years after marrying and divorced in 2016.

[4] Mr. Towolawi's next same sex relationship began in May 2015 with a man whom he called "Tunde". They met at a gay night club which Mr. Towolawi found online. The two formed a relationship which remained active until Mr. Towolawi arrived in Canada on vacation and stayed.

[5] Mr. Towolawi travelled to Canada in September 2016 on a visitor visa for a two-week vacation. He claims to have enjoyed the experience so much he decided to extend his stay to see more including snowfall, resolving to return to Nigeria for Christmas. At the end of November 2016, however, Mr. Towolawi's "sister" [cousin with whom he allegedly grew up but called sister] allegedly called and informed him the police were looking for him because they had discovered he was in a same sex relationship with Tunde. He explains a friend subsequently told him Tunde had been caught with another man. Tunde's family took his belongings and discovered pictures of Tunde and Mr. Towolawi on Tunde's laptop, which they surrendered to the police. His cousin allegedly told him news of his sexual orientation now was known in his community and he would be lynched if he returned home.

A. *RPD Decision*

[6] The RPD held a hearing on June 19, 2018. The Minister was permitted to intervene on the issue of credibility and to introduce new last-minute evidence of US Biometrics, pursuant to section 70 of the *Refugee Protection Division Rules*, SOR/2012-256. The RPD also accepted post-hearing submissions from both parties, despite Mr. Towolawi's submissions being filed late and without an explanation or an application to extend the time for filing.

[7] Noting the sworn testimony of a claimant is presumed true unless there are valid reasons to doubt it, the RPD found the presumption was rebutted in this case because of discrepancies and inconsistencies regarding Mr. Towolawi's history in Nigeria and Canada, which in turn cast doubt on the remainder of his claim. Because of numerous negative credibility findings, the RPD concluded Mr. Towolawi was not a Convention refugee or a person in need or protection and rejected his claim. The RPD's credibility concerns stemmed from the following:

- significant inconsistencies between his visa application, prepared at a time when Mr. Towolawi was free from any duress and prior to any issues he experienced in Nigeria [hence the information contained in his visa application – regarding education, job and marital status - was preferred], and his immigration forms and testimony, resulting in a finding he was not credible;
- no reasonable explanation for his failure to disclose previous attempts to obtain visas from the US and the UK [he further admitted not reviewing any of the refugee forms in their entirety though he declared them all as accurate and complete], resulting in a finding his immigration forms completed in Canada were not reliable nor corroborative of his history and testimony;
- confusing and evasive testimony regarding why he acquired a new passport in November 2014 on which he came to Canada even though his old passport [which he used to apply for his prior US and UK visas] did not expire until May 2016 [he said it was expired or possibly damaged, and could not recall whether the old passport was stamped with anything when the visas were denied], resulting in a finding of intentionally hiding immigration attempts in other countries; further, his counsel mentioned a “rebuttal document” that Mr. Towolawi could not locate in time for the hearing which neither Mr. Towolawi or his counsel offered or requested to provide post-hearing;
- evasive and misleading testimony regarding his intentions of coming to Canada and his stay in Canada, including no supporting evidence of his alleged stay at a hotel [the name and location of which he could not recall nor the length of his stay] before moving to the shelter mentioned in his *Schedule A* form [allegedly for lack

of money instead of returning to Nigeria], and changes to his return flight to Nigeria, resulting in a finding that he did not come to Canada with the intention of only vacationing;

- discrepancies between the timeframes when he allegedly was in school and in his first same sex relationship, resulting in a finding the relationship was fabricated to bolster his refugee claim;
- no reasonable explanation for his failure to provide sufficient corroborative evidence, such as emails, phone messages, video-call logs, or text messaging history with Tunde [which allegedly were lost when his phone went blank in January 2017, although he was able to provide photographs of Tunde put on a flash drive from the same phone on his lawyer's advice before it went blank], resulting in a finding that his testimony was not credible and that he had not established his alleged same sex relationship with Tunde nor that his sexual orientation was discovered in Nigeria; and
- no reasonable explanation for Mr. Towolawi's omission from his amended Basis of Claim [BOC] form signed in May 2018 of his allegation that his cousin had told him someone had seen him [or someone who looked like him] carrying a flag and parading at a Gay Pride parade [in Canada] in 2017, nor for this being omitted from his cousin's supporting affidavit, which discredited his claim he allegedly feared for his life were he to return to Nigeria because of his sexual orientation being revealed, and resulted in the RPD finding it more likely he embellished this detail at the hearing to bolster his claim.

[8] Because of the above credibility concerns, the RPD gave no weight to: affidavits from Mr. Towolawi's mother and cousin [who could not be cross-examined as they were not presented as witnesses at the hearing but whose evidence was tantamount to reporting his sexual orientation to the law in Nigeria]; a text message from his cousin [indicating the police and Tunde's brothers had come to his home in Nigeria searching for him]; and pictures of himself with Tunde in Nigeria [which were insufficient to establish the alleged same sex relationship].

[9] Given the credibility concerns outlined above, the RPD found that the following evidence provided by Mr. Towolawi was of little probative value, did not establish his sexual orientation on a balance of probabilities, and was offered to bolster his claim:

- a. A support letter from Africans in Partnerships Against Aids indicating he was an outreach volunteer and had taken part in the Afri-Queer program and participated in other community events [but not providing confirmation of his alleged sexual orientation as bisexual];
- b. A Certificate of Accomplishment from Black Coalition for AIDS Prevention's Volunteer Core Skills training;
- c. A support letter from the 519 Community Centre Among Friends LGBTQ Refugee Support Group indicating he consistently attended and participated in "A Place to Talk Group" [but not providing confirmation of his alleged sexual orientation as bisexual];
- d. A letter from Access Alliance indicating he engages in workshop group discussions and a few counselling sessions [his sexual orientation, however, was based on self-reporting];

- e. A letter from Toronto Unity Mosque indicating he volunteers and participates in group discussions [but not identifying Mr. Towolawi as bisexual];
- f. Pictures of his participation with the various organizations as well as him attending the Gay Pride parade [the RPD found there are many reasons individuals participate in such events]; and
- g. Last minute testimony at his hearing by an alleged in-Canada partner, whom he met at 519, confirming he is bisexual [with no explanation why a support letter from the witness was not offered earlier at a time when he believed the witness would not be available for the hearing]; though the RPD found the two men were friends, it was not persuaded they were in a same sex relationship.

B. *Submissions on Appeal to the RAD*

[10] On appeal to the RAD, Mr. Towolawi asserted the RPD erred in rejecting his support letters from local LGBTQ organizations. He noted the Access Alliance author specifically indicated he had “no doubts” about Mr. Towolawi’s struggles and basis of his refugee claim, and that the 519 letter explicitly indicated he is part of a group for LGBTQ refugee claimants only. Failure to recognize that such a letter speaks to sexual orientation is a reviewable error: *Ojje v Canada (Citizenship and Immigration)*, 2018 FC 342 at paras 45-46. Similarly, given that the alleged in-Canada partner provided consistent testimony overall, Mr. Towolawi asserted the RPD erred in rejecting the partner’s critical testimony on the basis he previously did not provide a support letter or sworn affidavit. He emphasized the RPD is not bound by legal or technical rules of evidence; rather the rules are made flexible to permit refugee claimants to present otherwise inadmissible evidence: *Ossé v Canada (Minister of Citizenship and Immigration)*,

2004 FC 1552 at para 15; *Fajardo v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 915 at para 4.

[11] Finally, Mr. Towolawi submitted the RPD failed to consider his *sur place* claim. He asserts the RPD's finding that he was not credible about his sexual orientation in Nigeria does not mean necessarily that he was not credible about being bisexual in Canada, and that there was still a duty to conduct a *sur place* analysis in such circumstances: *Hannoon v Canada (Citizenship and Immigration)*, 2012 FC 448 [*Hannoon*] at para 42; *Chen v Canada (Citizenship and Immigration)*, 2014 FC 749 at paras 55-57.

### III. Impugned Decision

[12] On March 25, 2019, the RAD confirmed the RPD's conclusion that Mr. Towolawi is neither a Convention refugee nor person in need of protection, pursuant to IRPA s 111(1)(a). The RAD noted its obligation to assess independently whether the RPD was correct regarding each alleged error of fact, law and mixed fact and law: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*].

[13] The RAD began by noting Mr. Towolawi did not challenge the RPD's negative credibility findings pertaining to his alleged involvement in same sex relationships in Nigeria nor the exposure of his involvement in LGBTQ activities in Canada, and that these credibility concerns demonstrated a pattern of deception in immigration proceedings. In particular, the RAD noted Mr. Towolawi did not challenge:



- Inconsistencies in his evidence about his alleged first same sex relationship [*i.e.* that the relationship lasted while he was in school from 2006 until 2007 according to his visa application, or until 2009/2010 according to his *Schedule A* form] undermined the existence of the relationship leading the RPD to find the relationship was fabricated to bolster his claim;
- A lack of documentation corroborating evidence of his relationship with Tunde suggested he was not credible about the relationship, finding it implausible that someone who had nearly four years of schooling in engineering was unable to save video-call logs or text messages; the RPD rejected his explanation of why he did not have this evidence;
- His alleged involvement with LGBTQ pride in Canada has been exposed in Nigeria was not credible because he omitted the information from his amended BOC, and because it was not included in his cousin's supporting affidavit [who allegedly had informed him this had occurred];
- Mr. Towolawi was untruthful about previous immigration processes, putting false information on his Canadian visa application and deliberately attempting to hide that he had applied for UK and US visas, and giving evasive, inconsistent and obfuscating evidence regarding his time in Canada prior to his claim [*i.e.* such as his alleged stay at a hotel and for how long he allegedly stayed there].

[14] The RAD held these unchallenged findings went both to the core of his claim that he is bisexual to his overall credibility as a witness, and found the RPD's decision stands on the basis

of these findings alone. Though these issues were determinative, the RAD nonetheless proceeded to consider Mr. Towolawi's arguments.

[15] First, rejecting Mr. Towolawi's assertion that the RPD had not conducted a *sur place* claim, the RAD found there was no allegation before the RPD nor evidence that Mr. Towolawi had become bisexual during his time in Canada; rather, the RPD had considered – and rejected – Mr. Towolawi's evidence of his involvement with LGBTQ organizations while in Canada and his alleged in Canada same sex relationship. Given the RPD's overall credibility concerns, that the support letters and photographs were dated around the same time, and that there was no evidence of continued involvement in these organizations, the RAD found the RPD reasonably concluded, on a balance of probabilities, his involvement was for the purpose of the claim.

[16] Second, the RAD found the RPD committed no error in holding evidence of Mr. Towolawi's involvement in LGBTQ organizations was insufficient to establish his sexual orientation. For example, the RAD pointed to the 519 letter and found there was no evidence that membership in this group was based on anything other than self-identification and therefore was insufficient to overcome credibility problems with his evidence. The RAD also reviewed both Mr. Towolawi and the purported partner's testimony and, like the RPD, found them generally consistent. In concurring with the RPD, however, that on a balance of probabilities the partner was proffered as a witness to bolster Mr. Towolawi's claim, the RAD noted the following three factors:

- A. The partner did not provide a statement prior to the hearing, which was problematic given the importance of their relationship to establishing the claim and given the partner's unavailability until just before the hearing;
- B. Mr. Towolawi and his purported partner had little knowledge of each other's history, including knowledge of past relationships and family members; and
- C. The credibility of the partner's statements must be evaluated in light of the other issues discussed above, including Mr. Towolawi's willingness to put forward false information in immigration proceedings and other serious credibility problems.

[17] Finally, the RAD reviewed the affidavits submitted from Mr. Towolawi's family members in Nigeria. It found the RPD placed no weight on them, not only because of the unavailability of the affiants for cross-examination [which would be an error], but also for other reasons. For example, the cousin's affidavit omitted the significant fact that Mr. Towolawi's LGBTQ activities in Canada had become known in Nigeria. As well, the family's affidavit evidence about his sexual orientation would be unusual and would amount to reporting Mr. Towolawi to the law, which generally would not be done in Nigeria. The RAD therefore found that the RPD did not err in rejecting these affidavits.

#### IV. Issue

[18] The only issue before this Court is whether the RAD's decision to confirm the RPD's conclusion that Mr. Towolawi was neither a Convention refugee nor a person in need of protection, was reasonable.

## V. Relevant Provisions

[19] The relevant provisions are reproduced in Annex A.

## VI. Analysis

[20] This matter was heard the day before the Supreme Court of Canada [SCC] adopted a rearticulated approach for determining and applying the standard of review for reviewing the merits of administrative decisions. The starting point is that a rebuttable presumption of reasonableness is applicable in all cases: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10-11. I find none of the situations in which the presumption of reasonableness is rebutted [summarized in *Vavilov*, above at paras 17 and 69] is present in the instant proceeding. Accordingly, “[i]n conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified”: *Vavilov*, above at para 15. The SCC defined a reasonable decision owed deference as “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”: *Vavilov*, above at para 85. The SCC found “it is not enough for the outcome of a decision to be *justifiable* ... [,] ... the decision must also be *justified* ...”: *Vavilov*, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: *Vavilov*, above at para 100. Both parties advocated for the applicability of the

reasonableness standard, albeit based on antecedent case law; as the rearticulated approach does not impact the outcome of this proceeding, I found it unnecessary to request submissions from the parties, as per *Vavilov*, above at para 144.

[21] Mr. Towolawi submits the RPD and RAD unreasonably rejected his alleged partner's testimony as not credible because his availability was not made known at an earlier time. He submits the partner's failure to provide a support letter earlier is completely immaterial to his credibility because: (i) the partner gave testimony in person, (ii) was cross-examined, and (iii) his testimony was found to be consistent with that of Mr. Towolawi. Further, as the provision of a support letter from this witness was not in Mr. Towolawi's control, it was unreasonable for an adverse finding to be drawn from such omission. Moreover, finding the partner lied because Mr. Towolawi was shown to lack general credibility on other aspects of his claim was arbitrary and unintelligible.

[22] Mr. Towolawi also asserts the RAD unreasonably used adverse credibility findings with respect to his claim of bisexuality in Nigeria to reject his claim of bisexuality in Canada. This error was significant given that the latter claim was supported by independent, third party evidence whose value and credibility did not depend on Mr. Towolawi's personal credibility. Just because he was found to have lied in the past, and that some aspects of his claim were found not credible, does not mean the RPD or RAD should dismiss his whole testimony or remaining aspects of his claim: *Mernacaj v Canada (Citizenship and Immigration)*, 2012 FC 762 at paras 57-58, 73. Mr. Towolawi accepts the RAD does not adjudicate facts in a vacuum, and what is required is a global assessment based on the entirety of the evidence adduced. He argues,

however, "...the task ... is to assess each piece of evidence objectively, on its own merits, before weighing the positive against the negative. The fact finders should not assess some evidence under the colours and shadings of others."

[23] Admitting it was not articulated explicitly in his BOC, Mr. Towolawi nonetheless challenges the RAD's finding that he did not advance a claim of bisexuality in Canada. He points to the third party support letters and his alleged partner's testimony that spoke to his actions while in Canada as evidence of such. He asserts his credibility should not affect the RAD's treatment of this evidence, as this evidence turns on the credibility of the witnesses themselves rather than his own.

[24] In response, the Minister argues Mr. Towolawi cannot divorce his claim from its context, including his own lack of credibility and its relation to his evidence. The Minister asserts Mr. Towolawi's claim in Canada has everything to do with his alleged claim before the RPD and RAD of bisexuality in Nigeria. His claim is based on being at risk in Nigeria because his alleged sexual activities were discovered there; it is not based on him becoming bisexual in Canada. The Minister argues that, by proposing his activities in Nigeria are irrelevant to his claim for status in Canada, Mr. Towolawi is attempting to put forward a new narrative and divorce himself from what was found lacking in credibility – his activities in Nigeria. As judicial review is not to be used to remake the administrative application, Mr. Towolawi's alteration of his claim should warrant dismissal: *Toussaint v Canada (Labour Relations Board)*, [1993] FCJ 616 (FCA) at para 5; *Zsoldos v Canada*, 2003 FCA 305; *Gitxsan Treaty Society v Hospital Employees' Union*, [2000] 1 FC 135 (FCA); *Abbott Laboratories Ltd v Canada (Attorney General)*, 2008 FCA 354

at para 37; *Singh v Canada (Citizenship and Immigration)*, 2011 FC 1370 at para 12; *Canada (Attorney General) v Herrera-Morales*, 2017 FCA 163 at para 65.

[25] The Minister emphasizes the alleged same sex partner's testimony was proffered as a witness for assessing Mr. Towolawi's claim, along with other evidence that included his own testimony. As such, the partner's evidence was not an end unto itself, but rather was to be weighed in the context and for the purpose of assessing Mr. Towolawi's claim. The RPD and RAD found it was unreasonable he had not provided a prior statement from a witness central to his claim because, up until the day before the hearing, the witness was unavailable to testify; in that context, it made no sense that a prior statement was not provided: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at paras 25, 33. Given credibility concerns and Mr. Towolawi's willingness to put forward misleading information in immigration proceedings, the RAD properly found the want of a prior statement from a purported central witness and that the witness had little knowledge of Mr. Towolawi's history or past relationships made it was more likely the witness was produced to bolster his claim for status in Canada.

[26] The Minister argues both panels correctly considered Mr. Towolawi's *sur place* evidence in the context of his credibility concerns. The RPD and RAD highlighted concerns with his "objective" evidence, including: (i) his cousin's affidavit omitted the claim, allegedly conveyed to him by the cousin, that his association with the LGBTQ community in Canada had been found out in Nigeria; and (ii) the third party support letters were obtained within a two-week span in March 2017, showed membership based on self-identification, and Mr. Towolawi provided no

updated information, including confirmation of continued involvement with the organizations, since that time.

[27] The Minister also emphasizes the RAD noted Mr. Towolawi's claim was that he was bisexual before he came to Canada, not that he "became" bisexual in Canada and as such, his lack of credibility on matters in Nigeria were relevant to his claim for status in Canada. The Minister maintains that where a claimant's assertion of risk of persecution abroad is found not credible, it is reasonable to require a higher degree of proof to support a *sur place* claim to avoid fraud. As such, even where some of Mr. Towolawi's evidence may in isolation support a *sur place* claim, it nonetheless remains reasonable for the RAD to have rejected such a claim given his supporting evidence was weak and there remained overall credibility concerns: *Ding v Canada (Citizenship and Immigration)*, 2014 FC 820 at para 23; *Sanaei v Canada (Citizenship and Immigration)*, 2014 FC 402 [*Sanaei*] at paras 55-56, 63-64; *Liu v Canada (Citizenship and Immigration)*, 2013 FC 1123 at para 26; *Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 17; *Li v Canada (Citizenship and Immigration)*, 2012 FC 998 [*Li*] at paras 27-31; *Jing v Canada (Citizenship and Immigration)*, 2012 FC 609 at paras 22-23.

[28] I note a lack of overall credibility is determinative of a claim for refugee protection under IRPA s 96 because without credible testimony, a claimant will not be able to establish subjective fear: *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 [*Quintero Cienfuegos*] at paras 25-26; *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at para 34; *Borubae v Canada (Citizenship and Immigration)*, 2018 FC 125 at paras 16-17. Claims based on sexual orientation can be challenging from an evidentiary perspective because



“[a]n individual's testimony may be the only evidence of their SOGIE where, in a given case, corroborative or additional evidence is not reasonably available”: Chairperson’s Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression [“SOGIE Guidelines”] at 3.2; *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 [*Osikoya*] at paras 60-61. Accordingly, credibility is extremely important in these types of claims. It therefore is incumbent in such matters for decision makers to assess carefully a claimant’s credibility, having regard to the evidence before them and the guidance provided in the SOGIE Guidelines.

[29] This Court has held consistently that credibility determinations cannot be made on concerns that are peripheral to the central aspect of the claim: *Lawani*, above at para 23. Where a *sur place* claim is premised upon the same alleged activities which were found not credible when allegedly conducted abroad, this Court has allowed the decision maker to “import” these negative credibility findings, thereby raising the evidentiary burden to demonstrate the *sur place* claim truly exists: *Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 [*Jiang*] at paras 27-28; *Li*, above at para 32; *Sanaei*, above at para 64; *Gong v Canada (Citizenship and Immigration)*, 2020 FC 163 [*Gong*] at para 52.

[30] I therefore next consider whether the RAD, in upholding the RPD’s decision, reasonably impugned Mr. Towolawi’s credibility and treated his objective evidence reasonably, which in my view it did on both counts. In *Lawani*, above at paras 21-25, Justice Gascon summarized well the main principles applicable to a decision maker’s credibility assessment [whether RPD or RAD,

in light of the latter's obligation, per *Huruglica* above, to assess independently whether the RPD was correct regarding each alleged error of fact, law and mixed fact and law]:

[21] First, when they swear to the truth of certain allegations, refugee applicants are presumed to tell the truth ... . However, this presumption of truthfulness is not unchallengeable, and an applicant's lack of credibility may suffice to rebut it. For example, the presumption is rebuttable where the evidence is inconsistent with the applicant's sworn testimony ..., or where the RPD is unsatisfied with the applicant's explanation for those inconsistencies ...

[22] Second, even though they may be insufficient when taken individually or in isolation, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant's credibility ... . the RPD is best positioned to assess an applicant's credibility, as it has the benefit of hearing his or her testimony ...

[23] Third, the RPD cannot base a negative credibility finding on minor contradictions that are secondary or peripheral to the refugee protection claim. The decision-maker must not conduct a too granular or overzealous analysis of the evidence. ... such findings should not be based on a "microscopic" examination of issues irrelevant to the case or peripheral to the claim ...

[24] Fourth, a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim ..., and be generalized to all of the documentary evidence presented to corroborate a version of the facts. ...

[25] Fifth, ... [w]here corroborative evidence should reasonably be available to establish essential elements of a claim and there is no reasonable explanation for its absence, a decision-maker can draw a negative inference of credibility based on the claimant's lack of effort to obtain such corroborative evidence ...

[26] Finally, the RPD is also entitled to draw conclusions concerning an applicant's credibility based on implausibilities, common sense and rationality. It can reject evidence if it is inconsistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence ... . The RPD's conclusions and inferences on a claimant's credibility must always

remain reasonable and the analysis must be formulated in “clear and unmistakable terms” ...

[Citations and some text omitted for brevity.]

[31] Bearing in mind these principles, in my view the RAD’s credibility assessment relating to Mr. Towolawi’s experiences in Nigeria is based on an internally coherent and rational chain of analysis justified in respect of the applicable facts and law of this matter and hence is reasonable. As emphasized above in *Lawani* and in other cases, “the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant’s credibility”; at the same time, the evidentiary review must not be microscopic nor overly zealous: *Lawani*, above at paras 22-23; *Quintero Cienfuegos*, above at para 1; *Camara v Canada (Citizenship and Immigration)*, 2008 FC 362 at paras 19, 26; *Tejuoso v Canada (Citizenship and Immigration)*, 2019 FC 903 at paras 37-38, 40; *Osinowo v Canada (Citizenship and Immigration)*, 2018 FC 284 at paras 10, 14, 17. In concurring with the RPD that Mr. Towolawi’s testimony was not credible as it related to his same sex relationships while in Nigeria, the RAD provided detailed reasons, as outlined in paragraph 13 of my Reasons. Though Mr. Towolawi’s original visitor visa application was not included in the record, Mr. Towolawi bore the onus of demonstrating the RAD’s assessment, based on unchallenged findings of the RPD, was unreasonable. Having failed to do so, I cannot say the RAD’s conclusions on inconsistencies was unreasonable.

[32] While Mr. Towolawi provided explanations for the inconsistencies outlined above in paragraph 13, the Minister asserted, correctly in my view, the RAD and the RPD only were obligated to consider reasonably his explanations, but were not obligated to accept them. In its

decision, the RAD, like the RPD, clearly set out the inconsistencies and explained how they related to central aspects of Mr. Towolawi's claim and why it rejected his explanations. For example, the RAD found inconsistencies regarding his time in school were relevant to whether and when his first same sex relationship began and ended; it rejected explicitly that these inconsistencies emanated from Mr. Towolawi's alleged use of an agent to fill out the forms, as he had an obligation to ensure their accuracy and he provided enough information to suggest he was intimately involved in the process. There was nothing unreasonable in this approach, nor the finding that Mr. Towolawi generally lacked credibility with respect to his activities in Nigeria.

[33] Mr. Towolawi further asserts the RAD, like the RPD, erroneously relied on its negative credibility findings in relation to his same sex relationships in Nigeria to dismiss his evidence demonstrating his relationship with his alleged in-Canada partner, rather than to consider whether it supported his claim. I do not agree. The RAD indicated explicitly that it reviewed Mr. Towolawi and the alleged partner's testimony and found it consistent. The RAD concurred with the RPD, however, that on a balance of probabilities, the partner was nothing more than a friend, and offered as a witness only to bolster Mr. Towolawi's claim based on the following three factors it described in detail: (i) timing of the witness statement and lack of supporting documents, given the witness was produced only the day before the hearing and, up to that point was thought to be unavailable to give testimony at the hearing; (ii) notwithstanding the generally consistent testimony, they had little knowledge of each other's history; (iii) Mr. Towolawi already had demonstrated a willingness to put forward false information in the immigration process. In my view, this conclusion is justified, transparent and intelligible.

[34] Despite Mr. Towolawi's submission to the contrary, I find that the RAD conducted a *sur place* claim assessment and did so reasonably. As the Minister noted, the basis for Mr. Towolawi's claim, as argued before the RPD and the RAD, is not that he became bisexual once arriving in Canada, but rather that he has been bisexual since before his arrival. Having found his allegations not credible with respect to his time in Nigeria, the RPD and the RAD were required to consider whether he had a *sur place* claim on the same basis, given he also provided evidence of an alleged same sex relationship in Canada. In assessing whether Mr. Towolawi established the *sur place* claim on a balance of probabilities, the RPD and the RAD were entitled to import negative credibility determination from the risk alleged abroad, so long as they did not create an irrebuttable presumption against the possibility that the *sur place* claim nonetheless could be established: *Jarrah v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 180 at paras 17-18; *Ding*, above at para 23; *Sanaei*, above at paras 51-64; *Liu v Canada (Citizenship and Immigration)*, 2013 FC 1123 [*Liu*] at paras 26-27; *Jiang*, above at paras 27-28. In this case, importing the negative credibility determination provided the RPD and the RAD with context for the additional evidence relating to Canada.

[35] Given Mr. Towolawi was found previously to have misrepresented being in same sex relationships [as distinct from having insufficient evidence of such] in order to mislead immigration officials, in my view it was reasonable for the RPD and the RAD to impose a higher evidentiary standard than just relying on his and his alleged partner's testimony when assessing his subsequent claims of engaging in same sex relationships. This made it reasonable for the RPD and the RAD to expect additional corroborative evidence, such as a letter from his alleged current partner, to substantiate his claim. The weaknesses in Mr. Towolawi's testimony

concerning his relationship with his alleged in-Canada partner meant he did not meet this burden. Despite Mr. Towolawi's assertion that the partner's in person evidence was stronger than a letter [and therefore it is unreasonable to require him to have provided a letter ahead of time], I nonetheless agree that the RPD and the RAD were entitled to draw a negative inference against Mr. Towolawi for failing to secure one when it was not known, until just before the hearing, whether the partner would be available to testify, or to explain why he wouldn't be able to testify earlier: *Lawani*, above at paras 33, 35; *Osikoya*, above at para 38.

[36] Given the above, in my view the Board reasonably assessed Mr. Towolawi's credibility with respect to both his original and *sur place* allegations and, in clear terms, found him generally not credible. As such, it is reasonable that his IRPA s 96 claim fails. The only question remaining is whether the Board fairly treated his objective evidence, such that it could not save his claim: *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3.

[37] In my view, the RAD reasonably assessed Mr. Towolawi's objective evidence on the whole holistically and contextually. His objective evidence included the following in addition to the in-Canada partner's testimony discussed above:

– **Third party support letters attesting to his membership in various LGBTQ groups:**

As the RAD correctly noted, membership in these LGBTQ organizations in itself cannot establish Mr. Towolawi's sexual orientation. This is a reasonable finding. Nor was there any evidence that his membership [for example, in the 519's Community Centre Among Friends LGBTQ Refugee Support Group] was based on anything other than self-identification. In addition, the RAD noted the RPD's findings that these letters were

dated around the same time [*i.e.* shortly after Mr. Towolawi's sightseeing visit was to have ended], and that Mr. Towolawi did not provide updated evidence of continued involvement with these organizations nor relationships with the authors. Taken together with the RAD's conclusion that Mr. Towolawi's allegations with respect to his sexual orientation were not credible, in my view the RAD provided a coherent and rational chain of analysis and hence, it reasonably discounted these letters: *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (FCA).

- **Affidavits submitted from Mr. Towolawi's mother and cousin:** Generally evidence should be considered for what it does say, rather than for what it does not [e.g. *Chowdhury v Canada (Citizenship and Immigration)*, 2012 FC 1216 at para 16]. In this case, however, the affidavits were given no weight because of credibility concerns regarding the Appellant's evidence about his sexual orientation [eg. *Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 at para 17] and because they were viewed as amounting to reporting Mr. Towolawi to the law, something that would be unusual to do and generally would not be done in Nigeria. This rationale also extends to the cousin's text. As noted in *Lawani*, above at paras 24-25: "...a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim ..., and be generalized to all of the documentary evidence presented to corroborate a version of the facts"; and "... [w]here corroborative evidence should reasonably be available to establish essential elements of a claim and there is no reasonable explanation for its absence [*i.e.* the omission from his cousin's affidavit that Mr. Towolawi association with the LGBTQ community in Canada had become known in

Nigeria], a decision-maker can draw a negative inference of credibility based on the claimant's lack of effort to obtain such corroborative evidence ...”.

[38] On the whole, I believe the RAD reasonably found there was a lack of objective documentary evidence to justify his *sur place* claim, as it remained unproven on a balance of probabilities that Mr. Towolawi was bisexual and as such would be at risk.

## VII. Conclusion

[39] This application for judicial review therefore is dismissed. No serious question of general importance was raised by the parties and none arises.



**JUDGMENT in IMM-2483-19**

**THIS COURT'S JUDGMENT is that** the judicial review application is dismissed;  
there is no serious question of general importance for certification.

“Janet M. Fuhrer”

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Judge

**Annex A: Relevant Provisions**

(1) Part 2 of the IRPA governs Canada's refugee regime. Canada confers refugee protection upon individuals who are found to be Convention refugees or persons in need of protection:

IRPA ss 95-97.

<i><b>Immigration and Refugee Protection Act (S.C. 2001, c. 27)</b></i>	<i><b>Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)</b></i>
<b>95 (1)</b> Refugee protection is conferred on a person when	<b>95 (1)</b> L'asile est la protection conférée à toute personne dès lors que, selon le cas :
<b>(a)</b> the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;	<b>a)</b> sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;
<b>(b)</b> the Board determines the person to be a Convention refugee or a person in need of protection; or	<b>b)</b> la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;
<b>(c)</b> except in the case of a person described in subsection 112(3), the Minister allows an application for protection.	<b>c)</b> le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).
<b>(2)</b> A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).	<b>(2)</b> Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).
<b>96</b> A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality,	<b>96</b> A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de

membership in a particular social group or political opinion,	sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
<b>(a)</b> is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or	<b>a)</b> soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
<b>(b)</b> not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	<b>b)</b> soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
<b>97 (1)</b> A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	<b>97 (1)</b> A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
<b>(a)</b> to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	<b>a)</b> soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
<b>(b)</b> to a risk to their life or to a risk of cruel and unusual treatment or punishment if	<b>b)</b> soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
<b>(i)</b> the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	<b>(i)</b> elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
<b>(ii)</b> the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	<b>(ii)</b> elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
<b>(iii)</b> the risk is not inherent or incidental to lawful sanctions,	<b>(iii)</b> la menace ou le risque ne résulte pas de sanctions

unless imposed in disregard of accepted international standards, and	légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

(2) At first instance, the RPD is the authorized decision maker in respect of a refugee claim:

IRPA s 107(1).

<b>107 (1)</b> The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.	<b>107 (1)</b> La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.
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(3) Applicants who are not otherwise precluded from doing so may appeal their negative

RPD decisions to the RAD: IRPA s 110(1).

<b>110 (1)</b> Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.	<b>110 (1)</b> Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.
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(4) The RAD and may confirm or substitute the RPD decision, or refer the matter back for re-determination: IRPA s 111(1).

<p><b>111 (1)</b> After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:</p>	<p><b>111 (1)</b> La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.</p>
<p>(a) confirm the determination of the Refugee Protection Division;</p>	
<p>(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or</p>	
<p>(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.</p>	

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2483-19

**STYLE OF CAUSE:** ABDULGAFAR ADESEYE TOWOLAWI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** DECEMBER 18, 2019

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** FEBRUARY 13, 2020

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