

Federal Court



Cour fédérale

Date: 20200430

Docket: IMM-4217-19

Citation: 2020 FC 569

Ottawa, Ontario, April 30, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

TAOFEEK OLANREWAJU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of the Refugee Appeal Division (“RAD”), dated June 7, 2019, to dismiss the appeal and uphold the decision of the Refugee Protection Division (“RPD”) to deny the Applicant’s claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant is a citizen of Nigeria who alleges a fear of persecution under Nigerian laws that restrict the rights of LGBTQ+ persons and their advocates. The Applicant claims that he is a human rights advocate. On an independent assessment, the RAD found that the Applicant generally lacked credibility due to his submission of fraudulent documents in support of his claim.

[3] On application for judicial review, the Applicant submits that the RAD erred in determining that the submitted documents were fraudulent, and in concluding that the Applicant's testimony carried no evidentiary value due to the "fraudulent documents". The Applicant also submits that the RAD erred by conducting its own investigation on the credentials of the Applicant's lawyer in Nigeria, who provided supporting documentation.

[4] For the reasons that follow, the RAD decision is reasonable. This application for judicial review is dismissed.

II. **Preliminary Issue**

[5] The Respondent was incorrectly named in the notice of application for leave and judicial review as the "Minister of Immigration, Refugees and Citizenship Canada". The appropriate Respondent is the "Minister of Citizenship and Immigration" pursuant to subsection 4(1) of the *IRPA*. As such, the style of cause is hereby amended to reflect the proper name of the Respondent.

III. **Facts**

A. *The Applicant*

[6] Mr. Taofeek Olanrewaju (the “Applicant”) is a 47-year-old citizen of Nigeria. The Applicant alleges a fear of persecution as a human rights advocate under Nigerian laws that restrict the rights of LGBTQ+ individuals.

[7] On April 15, 2017, the Applicant was invited to a gay marriage celebration that was raided by the police. The Applicant and approximately 50 other guests were arrested by the police. The Applicant was allegedly charged with conspiracy, belonging to an unlawful society, and unlawful assembly. Prior to the trial on these charges, the Applicant fled to the U.S. because he realized that he would not be successful at trial and be re-incarcerated. In the U.S., the Applicant chose not to make an asylum claim, as he had been told that the U.S. government was hostile towards the LGBTQ+ community.

[8] The Applicant came to Canada and made a claim for refugee protection. By decision dated September 5, 2018, the RPD rejected the Applicant’s refugee claim, and found that the Applicant was neither a Convention refugee nor a person in need of protection.

[9] The RPD found that the presumption of credibility was rebutted due to the Applicant’s evidentiary submissions of what the RPD had determined to be two pieces of fraudulent documentation—a news article and a blog post—that were intended to corroborate the

Applicant's arrest at the wedding. The RPD also found that a review of the other documents failed to establish that the Applicant was one of the 53 people arrested.

[10] On September 17, 2018, the Applicant filed an appeal with the RAD. By decision dated June 7, 2019, the RAD dismissed the appeal and confirmed the decision of the RPD.

B. *The RAD Decision*

[11] The determinative issue in the RAD appeal was credibility. The RAD noted that the key concern for the RPD was the Applicant's submission of three documents—two news articles and one blog entry—that reported on the central event of the Applicant's claim, i.e. the wedding that the Applicant attended as a guest. All three documents contained essentially the same information with one crucial difference: the Applicant was not identified as one of the 53 people arrested in the news article that was assessed as being a reliable source ("Premium Times of Abuja"), and the Applicant was identified by name in the other two documents ("John Greatman's Blog" and "Daily News Nigeria") that were assessed to be unreliable and fraudulent by the RPD.

[12] The RAD agreed with the RPD's assessment of the Premium Times article to be reliable due to Premium Times' large scale presence in Nigeria, significant online publication presence, and its widely-regarded reputation as a reliable source of news. The RAD also agreed with the RPD's finding that the blog post and the Daily News Nigeria article lacked credibility. The blog contained intermittent entries: the entry prior to the one dated April 20, 2017 was posted on July 10, 2013. The RAD found that the intermittent nature of the blog and the author's indication that

he is “for hire” was indicative that this is not a regularly updated news source, and that the content was not reliable. The Daily News Nigeria article appeared to be a screenshot on a mobile device, had “two likes” on the page, and did not have a link that could assist the RAD in establishing the veracity of the source.

[13] When asked for an explanation regarding the discrepancy at the RPD hearing, the Applicant had testified that it is difficult for reporters to obtain access to the names of everyone in the mass arrest. However, the RAD found this explanation to be inadequate. The RAD further noted that some letters of support for the Applicant indicated that there was wide publicity and publication of the Applicant’s arrest. The RAD then concluded that if the letters were true, there should have been a readily available public source of a credible nature, through which people in the Applicant’s community could have read about the Applicant’s involvement.

[14] As the presumption of credibility was rebutted, the RAD noted that the RPD placed no weight on the Applicant’s testimonial or documentary evidence. The RAD noted that submitting a fraudulent document may have an impact on the overall credibility of the Applicant and on the weight assigned to other documentary evidence, especially when the documents are interrelated. For example, the RAD found that the Nigerian lawyer’s letter and photo lacked credibility—they were assigned minimal probative value. The lawyer’s letter was not dated, a Google search of the address showed that it belonged to a printing company, and there was no website that could help authenticate the letter. Also, the RAD pointed out that official court documentation is available in circumstances where the accused has legal representation, but noted that the Applicant’s Nigerian lawyer did not provide such documents. Furthermore, the RAD found that

the country documentation indicating the widespread availability of fraudulent documents in Nigeria may be relevant in the presence of other credibility issues.

IV. **Issues and Standard of Review**

[15] The issues on this application for judicial review are:

- A. Did the RAD err in finding that the documentary evidence was fraudulent?
- B. Did the RAD breach the duty of procedural fairness?

[16] Prior to the recent decision of the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], it was well-established that the standard of review applicable to the RAD's decision is that of reasonableness: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 (CanLII) at para 29. There is no need to depart from the standard of review followed in previous jurisprudence, as the application of the *Vavilov* framework results in the same standard of review for the first issue: reasonableness.

[17] Pre-*Vavilov*, issues of procedural fairness were reviewable on a correctness standard (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 72). In *Vavilov*, this approach remains the same. In *Vavilov* at paragraph 23, the Supreme Court writes:

Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

[18] The correctness standard continues to apply to the issue of procedural fairness.

V. **Analysis**

A. *Reasonableness of the RAD Decision*

[19] The Applicant submits that the RAD erred in its determination that the Applicant's supporting documentation was fraudulent. The Applicant argues that the RAD made findings based on a perverse and capricious assessment of the facts because the RAD's findings on the fraudulent nature of the news articles were speculative and made without regard to the country conditions, research, or assessment of the nature of the publications in question. The Applicant submits that it was unreasonable for the RAD to conclude that the fraudulent documents completely damaged the Applicant's credibility given that the Applicant's testimony was found to be credible. The Applicant submits that it was unreasonable for the RAD to dismiss the Applicant's testimony altogether because there were many other unnamed individuals who were arrested at the wedding.

[20] The Applicant submits that although the RAD does not have an obligation to have documents reviewed by experts before concluding that they are fraudulent, there must be some evidence before the RAD on which to base a finding that the document is not genuine, unless the problem is apparent on the document's face (*Jacques v Canada (Minister of Citizenship and Immigration)*, 2010 FC 423 at para 14).

[21] The Respondent submits that the RAD's credibility findings were reasonable. Notably, the blog post and Daily News Nigeria article were almost identical to the Premium Times article, which was found to be a reliable news source, except that the former two included the Applicant's name. The Respondent submits that the RAD reasonably considered the Nigerian lawyer's letter, especially in light of the country condition evidence that indicated court documents would have been available to the Applicant, who had legal representation.

[22] In my view, the RAD's determinations on the Applicant's credibility and the veracity of the documentary evidence are reasonable. Based on the record, the issues are apparent on the document's face. First, the blog post did not appear to be an active source of reliable news, and the website's indication that the author provides "writing services" did not lend to the blog's credibility as a legitimate news outlet. Second, the Applicant failed to provide a website link for the Daily News Nigeria article that could have assisted the RPD and the RAD to establish the legitimacy of the news article. Given that the blog post and Daily News Nigeria article contained the Applicant's name while an almost-identical and reliable news article did not, it is reasonable for the RAD to have concluded that these two sources were fraudulent documents.

[23] Furthermore, the RAD reasonably raised questions of credibility on the wide publicity of the Applicant's arrest in the media. In a support letter, the Applicant's wife had indicated that their daughter was mocked by schoolmates who read the story (of the Applicant's involvement in the arrest), and that their son was harassed by the school's football club captain. In another letter, the Applicant's friend had also stated having "heard and read [the Applicant] was arrested". However, given that the Premium Times article did not mention the Applicant's name, and the other two news outlets did not appear to be widely used news sources, it is perplexing how the children's schoolmates may have discovered that the Applicant was implicated in the mass arrest. As such, the RAD reasonably concluded that there were credibility concerns with the Applicant's evidence.

[24] Regarding the lawyer's letter, the RAD reasonably considered the evidence and assigned it no probative value. Given other credibility concerns, it was reasonable for the RAD to question the veracity of the letter and photograph provided by the Nigerian lawyer. In particular, it is questionable why the Applicant's lawyer in Nigeria did not provide court documents to support the truthfulness of the alleged events, given that it would have easily bolstered the veracity of the arrest.

B. *Duty of Procedural Fairness*

[25] The Applicant submits that the RAD breached procedural fairness by relying on extrinsic evidence and failing to provide the Applicant with an opportunity to respond. The Applicant argues that the Google search conducted by the RAD is such extrinsic evidence. The Applicant relies on *Diallo v Canada (Citizenship and Immigration)*, 2016 FC 741 (CanLII) at para 53

(citing *Level v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 227 (CanLII) at para 19) for the proposition that if the Officer relies on extrinsic evidence not brought forward by the applicant, the applicant must be given an opportunity to respond.

[26] The Respondent notes that information obtained independently by a tribunal would only need to be shared if it is novel, significant, or publicly unavailable (*Aladenika v Canada (Citizenship and Immigration)*, 2018 FC 528 (CanLII) [*Aladenika*] at para 16). The Respondent submits that the address information that the RAD searched on Google was neither novel nor significant, and therefore argues that the RAD did not have a duty to share the search results of the Nigerian lawyer's address with the Applicant.

[27] In my view, the RAD decision was procedurally fair. The RAD's Google search of the Nigerian lawyer's address was publicly available information, and it was not novel evidence. As stated in *Aladenika*, publicly available information is not extrinsic evidence so long as it is not novel (*Aladenika* at para 16; *Jiminez v Canada (Citizenship and Immigration)*, 2010 FC 1078 at para 19; *Holder v Canada (Citizenship and Immigration)*, 2012 FC 337 at para 28; *Mancia v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9066 (FCA), [1998] 3 FC 461).

VI. Certified Question

[28] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VII. **Conclusion**

[29] The RAD decision was procedurally fair and reasonable. This application for judicial review is dismissed.

JUDGMENT in IMM-4217-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to reflect the Minister of Citizenship and Immigration as the proper Respondent.
2. The application for judicial review is dismissed.
3. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4217-19

STYLE OF CAUSE: TAOFEEK OLANREWAJU v THE MINISTER OF
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