

Federal Court



Cour fédérale

Date: 20200608

Docket: IMM-4182-19

Citation: 2020 FC 674

Ottawa, Ontario, June 8, 2020

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**VIVIAN OMOUAFULO ORUKPE
BENEDICTA OSEREFEMEN ORUKPE (MINOR)
BLESSING-JOEL EHIJIE ORUKPE (MINOR)
LOUISA EHREME ORUKPE (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Vivian Omouafolo Orukpe [Principal Applicant] and her three minor children [together, the Applicants] claim to be citizens of Nigeria. They seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD upheld

a determination by the Refugee Protection Division [RPD] of the IRB that the Applicants are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The determinative issues before both the RAD and the RPD were the Applicants' inability to establish their identities and the Principal Applicant's lack of credibility.

[2] For the reasons that follow, the RAD's conclusion that the Applicants were unable to establish their identities was justified, intelligible and transparent. The application for judicial review is therefore dismissed.

II. Background

[3] According to the Principal Applicant, her former husband left Nigeria in February 2016 and the Applicants moved in with his aunt. Shortly thereafter, her former husband's family began pressuring her to have female genital mutilation performed on one of her daughters (the Principal Applicant did not specify which one). The Principal Applicant claims that she was beaten, locked in a room and given nothing to eat. She escaped with her children to her father's house.

[4] The Applicants then moved into a one bedroom apartment. The Principal Applicant became emotionally involved with another man, but his family rejected her because she was a divorced woman with three children. The man's family allegedly beat her and threatened to kill her if she did not end the relationship.

[5] The Principal Applicant says that she considered relocating to Ibadan, Abuja or Port Harcourt. However, she was concerned that members of her former husband's family lived in Ibadan and Port Harcourt, and she considered Abuja to be unsafe. The Principal Applicant saw a YouTube video about people fleeing from the United States to Canada due to the two countries' contrasting immigration policies, and she decided to seek refuge in Canada with her children.

[6] The Principal Applicant says that the Applicants fled Nigeria for the US in October 2017, arriving at John F. Kennedy Airport in New York City. They then travelled by bus to Plattsburgh, NY and walked across the border into Quebec. They were detained by Canadian authorities and taken to a shelter in Montreal, where they stayed for three days before travelling to Toronto. They submitted their refugee claims on October 17, 2017.

[7] The RPD heard the Applicants' refugee claims on September 17, 2018 and denied them on September 27, 2018. The RPD held that the Applicants could not establish their identities and that the Principal Applicant lacked credibility. The Applicants appealed to the RAD.

III. Decision under Review

[8] Before the RAD, the Applicants continued to rely on the same documents they presented to the RPD to establish their identities, including the following:

- photocopies of the "biodata" pages of the Applicants' passports;

- a Statutory Declaration of Age pertaining to the Principal Applicant, signed by her father;
- an Attestation of Birth pertaining to the Principal Applicant, issued on the basis of the aforementioned Statutory Declaration;
- the minor Applicants' birth certificates;
- the Principal Applicant's Nigerian driver's licence;
- documents pertaining to the Principal Applicant's divorce from her former husband;
- a copy of the Principal Applicant's university degree; and
- a copy of the Principal Applicant's Certificate of National Service.

[9] The Applicants also sought to adduce new evidence before the RAD pursuant to s 110(4) of IRPA, specifically:

- (a) a US High Value Data Sharing [HVDS] Biometric Match Report pertaining to the Principal Applicant;

- (b) a copy of a report made by the Principal Applicant to the Toronto Police about the Applicants' loss of their passports; and
- (c) an excerpt from the *Constitution of the Federal Republic of Nigeria* (Nigeria), Act No 24, 5 May 1999 [Nigerian Constitution]—specifically Chapter III, s 25.

[10] The RAD noted that items (a) and (c) were contained in the RPD's record and did not constitute new evidence. The RAD found that the police report could reasonably have been presented to the RPD. The Applicants knew from the outset of the hearing before the RPD that their identities were in issue, and this was also raised in the Minister's Notice of Intent to Intervene dated November 30, 2017. Furthermore, it was unclear to the RAD why the Principal Applicant would report the missing passports to the Toronto Police, when she allegedly lost them in New York City. Having rejected the new evidence, the RAD denied the Applicants' request for an oral hearing.

[11] The RAD agreed with the RPD that the documents presented by the Applicants to establish their identities contained numerous anomalies, and the Principal Applicant's testimony regarding how and why she obtained certain documents lacked credibility. Some documents were also inconsistent with objective evidence regarding Nigerian forms of personal identification.

[12] The RAD placed significant emphasis on the Applicants' failure to produce their original Nigerian passports. The RAD was unconvinced by the Principal Applicant's explanations for

how she lost the passports in New York City, her failure to replace them or report their loss to the Nigerian High Commission in Canada, and how she obtained the passports in the first place.

[13] The RAD also found that the HVDS Biometric Match Report did not resolve its concerns regarding the Applicants' identities or the Principal Applicant's credibility. The report was obtained from US authorities by the Canadian Department of Immigration, Refugees and Citizenship after the Applicants made their refugee claims. It confirmed that the same Principal Applicant had applied for a US travel visa in Lagos, Nigeria, using the same name and date of birth. However, the Biometric Match Report did not indicate that the visa was granted, or that the Principal Applicant ever travelled to the US with a valid Nigerian passport.

[14] The Applicants challenged the RPD's statement at paragraph 44 of its decision that "[e]ven if verified as being legitimately issued by the proper issuing authority, the value placed on [Nigerian birth certificates would be] minimal." The RAD dealt with this issue as follows:

[26] I find this statement by the RPD was taken out of context by the Appellants. The RPD addressed numerous credibility problems with many of the Appellants' documents and the PA's testimony. As will be analysed *[sic]* in the appeal, this is the crux of the RPD decision. While I agree that the RPD erred in making such a statement as it did in paragraph 44, when I consider the RPD decision as a whole and the analysis conducted by the RPD on many identity related documents, I do not agree with the Appellants that the RPD breached procedural fairness.

[15] The RAD upheld the RPD's reliance on a Response to Information Request [RIR] regarding the prevalence of fraudulent documents in Nigeria. The RAD noted that the RPD had questioned the Principal Applicant extensively about the manner in which she had obtained

certain documents, and identified several anomalies on the face of those documents. The RAD found that the RPD had not relied solely on the RIR to reject the Applicant's documents as inauthentic.

[16] Finally, the RAD dismissed the Applicants' argument that the Nigerian citizenship of the Principal Applicant's father or former husband was sufficient to establish the Applicants' nationalities under the Nigerian Constitution. The RAD found that evidence relating to the Principal Applicant's former husband and father was peripheral, and could not establish the Applicants' personal and national identities. Any evidence about these two men could not overcome the lack of credible documents and testimony provided by the Applicants.

IV. Issue

[17] The sole issue raised by this application for judicial review is whether the RAD's decision was reasonable.

V. Analysis

[18] The RAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The Court will intervene only if it is satisfied "there are 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). These criteria are met if the reasons allow the Court to understand why the decision was made and determine whether the decision falls within the range

of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[19] The Applicants also maintain that they were denied procedural fairness, citing the RPD's statement regarding the low evidentiary value of birth certificates legitimately issued by Nigerian authorities. In my view, this argument falls into the same category as the other arguments advanced by the Applicants: the Applicants complain that the RPD and RAD unreasonably found that the evidence they presented was insufficient to establish their identities.

[20] The Applicants have challenged only some of the many adverse findings regarding the documents they presented to establish their identities. The Applicants point to specific aspects of the Principal Applicant's testimony and argue that the RAD should have accepted her explanations. However, they say nothing about the remainder of the Principal Applicant's testimony and evidence, much of which was also found by the RPD and RAD to lack credibility.

[21] The Applicants say it was unreasonable for the RAD to reject the undated report made to the Toronto Police regarding the lost passports. I see no error in the RAD's analysis. The Applicants could have reported their passports missing long before the RPD issued its decision. Furthermore, the undated police report did nothing to substantiate the Applicants' claims. The passports were allegedly lost in New York City, not Toronto.

[22] According to counsel for the Applicants, the Principal Applicant decided to file a report with the Toronto Police in response to the RPD's criticism of her failure to report the passports

missing or take any steps to replace them. He says that she could not have been expected to seek the assistance of the Nigerian High Commission in Canada, because the Applicants' refugee claims were made against Nigeria. However, this is not the explanation that the Principal Applicant provided. The RAD reproduced the following excerpt from the Principal Applicant's testimony before the RPD:

RPD: Did you report them missing to the Nigerian embassy?

PA: No.

RPD: Why not?

PA: I do not know ... I did not know that I should report to there.

RPD: Did you go to the Nigerian Embassy to get new passports?

PA: No.

RPD: Why not?

PA: (Inaudible) in Canada. I do not know, just (inaudible) to Nigeria for ... I do not know if it is right to go back there to ask for the passports.

RPD: But you have not made any allegations that the Nigerian State has harmed you, so why would you not go there to get your passport?

PA: I did not ... first of all I did not realize that I should go back ... I should go to Nigerian, nobody ... there was no way that I can go back ... that I can go there for passports.

RPD: I am not suggesting that you go home to Nigeria to get a passport, I am suggesting that you go to the Embassy in Ottawa.

[23] The Applicants argue that documents purporting to be affidavits sworn by the Principal Applicant's father, coupled with the provisions of the Nigerian Constitution respecting citizenship, should have been sufficient to prove their identities and their Nigerian citizenship.

There were two documents allegedly sworn by the Principal Applicant's father, but the RPD found their credibility to be undermined by differences in the father's signature. The RAD examined both documents, and observed that:

[...] the signatures for the PA's father are vastly different from each other. One signature is printed and the other is in cursive, and none of the letters in each signature are the same between the two documents. I agree with the findings of the RPD that the signatures are different and this undermines the credibility of the documents.

[24] The RAD's decision to reject the documents purporting to be affidavits sworn by the Principal Applicant's father was reasonable, as was its conclusion that the Applicants had adduced insufficient evidence to prove their citizenship under the Nigerian Constitution.

[25] The Applicants also maintain that the US HVDS Biometric Match Report should have been sufficient to prove the Principal Applicant's identity. However, this document only added to the confusion. It confirmed that someone with the same fingerprints and name as the Principal Applicant had applied for a US travel visa in Lagos, Nigeria, but nothing indicated that the visa was granted. There was also no record of this person ever entering the US. The RAD was unable to reconcile the US HVDS Biometric Match Report with the fact that the Principal Applicant had clearly entered the US, because all of the Applicants had crossed the border into Quebec from New York State. The RAD's reasoning is justified, intelligible and transparent.

[26] These are the only points that the Applicants' counsel raised in his oral submissions. The written submissions filed on the Applicants' behalf invite the Court to reweigh the remaining evidence, and substitute the Court's view for that of the RAD. However, that is not the role of

this Court in an application for judicial review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61; *Vavilov* at para 125).

[27] The Applicants' failure to produce their original passports, the Principal Applicant's unsatisfactory explanations for the manner in which the passports were obtained and then lost in New York, and her lack of efforts to replace them, provided ample grounds for the RPD and RAD to seriously doubt the Applicants' identities. The RAD reasonably found that it could not reconcile the US HVDS Biometric Match Report, which contained no record of anyone with the Principal Applicant's name and fingerprints ever entering the US, with the fact that the Applicants all crossed into Canada from New York State. The RAD considered all of the evidence presented by the Applicants, and reasonably found deficiencies in the documents or inconsistencies between the Applicants' testimony and objective country documentation.

[28] Finally, the Applicants assert that the RAD and RPD did not properly analyze whether they were persons in need of protection under s 97 of the IRPA. However, where an applicant's allegations in support of a claim under s 97 are the same as those advanced in support of a claim under s 96, the IRB is under no obligation to undertake a second analysis (*Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at paras 50-51). The inability to prove one's identity is fatal to both claims.

VI. Conclusion

[29] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4182-19

STYLE OF CAUSE: VIVIAN OMOUAFOLO ORUKPE, BENEDICTA OSEREFEMEN ORUKPE (MINOR), BLESSING-JOEL EHIJIE ORUKPE (MINOR) AND LOUISA EHREME ORUKPE (MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY TELECONFERENCE BETWEEN OTTAWA AND TORONTO, ONTARIO

DATE OF HEARING: MAY 28, 2020

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JUNE 8, 2020

APPEARANCES:

Jerome Olorunpomi FOR THE APPLICANTS

Judy Michaely FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor FOR THE APPLICANTS
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario