

Federal Court



Cour fédérale

Date: 20210407

Docket: IMM-7028-19

Citation: 2021 FC 283

Ottawa, Ontario, April 7, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

PETER ADEGOKE ADEKANMI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Peter Adegoke Adekanmi [Mr. Adekanmi] is a citizen of Nigeria. He claims to fear persecution in Nigeria due to rumours that he is gay, and brings the present application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated October 24, 2019, confirming the Refugee Protection

Division's [RPD] decision dated July 22, 2019 which concluded that he was neither a Convention refugee nor a person in need of protection.

[2] Before me, Mr. Adekanmi submits that the RAD erred in its assessment of his credibility and the new evidence that he was looking to introduce. For the reasons that follow, I would dismiss the application.

II. Facts

[3] Mr. Adekanmi having graduated in 2012 with a Bachelor of Science in Accounting from Ekiti State University. He was married in August 2008 and has three children. He had been working as a station manager at the Conoil gas station in Lagos, Nigeria, since January 2014. Mr. Adekanmi insists that he is heterosexual but that owing to an incident that took place at the Conoil gas station, he is widely believed to be gay, causing him to fear persecution should he return to Nigeria.

[4] On December 5, 2017, while in the washroom at the gas station where he was working, another employee – a man named Raphael – began to caress Mr. Adekanmi's neck and backside while laughing and flirting with him. Mr. Adekanmi also laughed while trying to escape his co-worker's unwanted advances.

[5] However, the two men were unaware that there was another co-worker in the washroom who witnessed what had transpired and who began to curse at them. Mr. Adekanmi and Raphael exited the washroom, however, by then others had gathered in front of the washroom as they

listened to the other co-worker's accusations. The crowd grew larger and although Mr. Adekanmi attempted to explain himself, the crowd was already gathering material to set Mr. Adekanmi, Raphael and the gas station on fire.

[6] Two religious elders happened to come by and began to question Mr. Adekanmi and Raphael. Mr. Adekanmi explained what had happened. He was kept inside the gas station until matters had calmed down. That evening, however, as Mr. Adekanmi was on his way home, other individuals began chasing him, threatening to stab and kill him; Mr. Adekanmi escaped inside his home.

[7] Mr. Adekanmi's family members advised him not to report the incident to the police as he would be arrested and put in jail; he took a few days off work.

[8] When Mr. Adekanmi returned to work on December 11, 2017, he was again beaten by co-workers and other thugs, and thus was forced to stop going to work. The assaults continued the next day at the bus stop by others in the neighbourhood who had heard of the incident of December 5, 2017. In addition, Mr. Adekanmi's wife also faced harassment on December 15, 2017.

[9] As a result, the family was forced to relocate about 16 kilometres south from their home in the Egbeda neighbourhood in Lagos to his brother's home in the village of Ijegun. However, some weeks later, the rumours of Mr. Adekanmi's supposed sexual orientation had reached the village of Ijegun. Mr. Adekanmi became fearful for himself and his family, and again relocated

his family, this time about 215 kilometres northwest to the town of Ile-Ife in Osun State where Mr. Adekanmi grew up.

[10] However, the rumours of his supposed sexual orientation continued to follow him to the town of Ile-Ife. Mr. Adekanmi again began to receive death threats; as he stated: “jungle justice was rampant then in Nigeria”.

[11] Mr. Adekanmi had previously applied for a U.S. visa, which he received on December 28, 2017. With his wife and children remaining in Nigeria, Mr. Adekanmi flew to the U.S. where he arrived on March 17, 2018 and remained until he crossed the border into Canada on March 23, 2018 and initiated a claim for refugee protection. His Schedule A Form prepared at the port-of-entry indicated that Mr. Adekanmi terminated his employment with Conoil in March 2018, just before he left for the United States.

[12] Mr. Adekanmi’s Basis of Claim along with his initial narrative were prepared and submitted on April 9, 2018. In his initial narrative, Mr. Adekanmi stated that he terminated his employment with Conoil when he did not return to work on December 11, 2017, however, his Schedule A Form was not amended accordingly.

[13] On June 17, 2019, 18 days prior to his RPD hearing on July 5, 2019, Mr. Adekanmi sought to file an Amended Schedule A Form to correct the discrepancy in the termination date of his employment, and also amended his narrative to add that police had gone to his brother’s home in Ijegun on October 20, 2018, over 10 months following the incident at the gas station,

looking for him. The police were accompanied by a man in handcuffs who fit the description of Raphael. Mr. Adekanmi's brother denied he knew of his brother's whereabouts, but gave the police the address, I assume in Ile-Ife, of his sister-in-law, Mr. Adekanmi's wife. Why Mr. Adekanmi's brother would do that is unclear.

[14] Mr. Adekanmi's amended narrative also specified that on November 2, 2018, the police arrived at his wife's home seeking Mr. Adekanmi. When his wife denied knowing where he was, the police threatened her. Mr. Adekanmi states that as of the date of his revised narrative, he was "not sure how safe [his] wife and children are now because of the threats and harassment might continue against them."

[15] The RPD rejected Mr. Adekanmi's claim on July 22, 2019 on the basis that Mr. Adekanmi was found not to be a credible witness and because his fear of persecution in Nigeria had no objective basis. The RPD found that the two affidavits filed in support of Mr. Adekanmi's claim were fraudulent.

[16] In particular, the RPD noted that during the hearing, Mr. Adekanmi testified that after the altercation upon his return to work on December 11, 2017 (the RPD's reference to July 11, 2017 is clearly a typographical error), he no longer attended work, and when asked to explain why his Schedule A Form indicated that he had worked at Conoil until March 2018, just before leaving for the U.S., Mr. Adekanmi stated that the date on his Schedule A Form was a mistake.

[17] The RPD did not believe Mr. Adekanmi, and did not accept his then counsel's explanation that Mr. Adekanmi was undergoing psychological issues. The RPD failed to address Mr. Adekanmi's amended Schedule A Form.

[18] Before the RAD, Mr. Adekanmi attempted to file fresh affidavits from the individuals whose affidavits were found to be fraudulent by the RPD, but this time with additional evidence in an attempt to remedy the initial deficiencies. The RAD saw this simply as an attempt by Mr. Adekanmi to supplement a deficient record. In the end, the RAD concluded that the new evidence, including the medical reports, although emerged after the rejection of the claim by the RPD, related to events that took place prior to the RPD hearing, and that no explanation was given as to why the evidence was not reasonably available to Mr. Adekanmi prior to the rejection of his claim by the RPD. As a result, Mr. Adekanmi's request for an oral hearing was also denied.

[19] The RAD did find that the RPD had erred in certain aspects of its decision, including in insisting upon corroboration of the identities of Raphael and the co-worker who witnessed the incident on December 5, 2017, ignoring evidence including a medical report filed by Mr. Adekanmi, and wrongly drawing negative inferences regarding one of the affidavits filed in support of Mr. Adekanmi's claim. However, on an independent assessment, the RAD concluded that the RPD's errors did not change the outcome of the claim on account of several negative credibility findings that were properly made by the RPD and which the RAD confirmed, and because any alleged breach of procedural fairness was corrected on appeal to the RAD.

[20] The RAD found that Mr. Adekanmi’s credibility was undermined because he gave inconsistent evidence regarding the termination of his employment at Conoil – a central element in his story – and because the affidavits filed in support of his claim were likely fraudulent; the RAD attributed little weight to them.

III. Issues

- a) Did the RAD unreasonably refuse to admit the new evidence?
- b) Was the RAD’s determination as to Mr. Adekanmi’s credibility unreasonable?
- c) Did the RAD reasonably determine that the failure on the part of the RPD to respect procedural fairness was corrected on appeal to the RAD?

IV. Standard of Review

[21] The standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Arana Del Angel v Canada (Citizenship and Immigration)*, 2020 FC 253 at paras 18-20; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]).

V. Discussion

A. *Did the RAD unreasonably refuse to admit the new evidence?*

[22] Subsection 110(4) of the IRPA permits a claimant to present evidence to the RAD in limited circumstances:

Evidence that may be presented

Éléments de preuve admissibles

(4) On appeal, the person who is the subject of the appeal may present only evidence that rose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[23] The applicable factors in assessing admissibility of new evidence are set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385.

[24] Mr. Adekanmi sought to introduce the following new documents before the RAD:

- a) An affidavit from Opabisi Rafiu Tunde;
- b) An affidavit from Oshin Yetunde Adenike;
- c) A copy of Applicant's work ID card from Conoil;
- d) A support letter from Applicant's family physician;
- e) A confirmation note from inner City Health Associates, and
- f) Photos of the Applicant and his co-workers at his former work place.

[25] Mr. Adekanmi says that the RAD correctly determined that the new evidence emerged after the rejection of his claim by the RPD, however, he states that the RAD did not properly assess (1) whether the evidence was reasonably available prior to the rejection of his claim, or (2) whether he could not reasonably have been expected in the circumstances to have presented such evidence at the time of the rejection (*Olowolaiyemo v Canada (Citizenship and Immigration)*, 2015 FC 895).

[26] In support of his arguments, Mr. Adekanmi submits that the new evidence consists of third party documents which, he says, he could not have obtained prior to the RPD's rejection of his claim. However, there was no evidence before the RAD to show what efforts were made to obtain such evidence in time. As to the ID cards and the photographs, Mr. Adekanmi said he did not reasonably expect that they would be needed as he had already provided sufficient credible evidence. However, it is clear that Mr. Adekanmi had to put his best foot forward before the RPD. If this was not done, I cannot see how I could rectify it now.

[27] In any event, Mr. Adekanmi did not strenuously argue the issue before me. On the whole, I conclude that the RAD provided sufficient reasons for rejecting the new evidence, in line with the case law. Mr. Adekanmi attempted for the most part to file the same evidence as had been rejected by the RPD, this time with additional elements in an attempt to fill in the gaps which had caused their rejection in the first place. Supplementing a deficient record is generally impermissible on appeal (*Singh* at para 54).

B. *Was the RAD's determination as to the Applicant's credibility unreasonable?*

[28] As to the RAD's assessment of his credibility, Mr. Adekanmi submits that the RAD unreasonably drew a negative credibility inference from an alleged mistake in his Schedule A Form, and that the RAD also erred in its assessment of the affidavit evidence, which, according to the RAD, was "likely fraudulent".

(1) The RAD's assessment of the applicant's period of employment

[29] Mr. Adekanmi indicated in his initial narrative of April 9, 2018 that following the incident of December 5, 2017, he returned to work on December 11, 2017 but on account of the violence which he confronted, left work that same day and went into hiding in at least two different places, Egbeda and Ile-Ife before departing for the U.S. in March 2018; he stated unambiguously that he stopped working on December 11, 2017.

[30] However, in his Schedule A Form completed upon arriving at the port-of-entry to Canada two weeks earlier, Mr. Adekanmi indicated that he had actually worked at the Conoil gas station until March 2018, just before leaving for the U.S.

[31] The RAD agreed with Mr. Adekanmi that the RPD erred in overlooking the Schedule A amendment which Mr. Adekanmi filed at the hearing to correct what, he said, was a simple error in the preparation of the forms, however determined that the amendment itself was insufficient to overcome significant credibility concerns relating to the first stated date of the termination of his employment – a central element of Mr. Adekanmi's claimed risk.

[32] Mr. Adekanmi argues before me that this is a "major contradiction" on the part of the RAD given that one cannot reconcile, on the one hand, the RAD agreeing that the RPD erred in not taking the Schedule A Form amendment into account with, on the other hand, confirming the RPD finding on the same erroneous premise; clear and unmistakable reasons, according to the doctrine propounded by the Federal Court of Appeal in *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 were not provided.

[33] Mr. Adekanmi adds that when a reasonable explanation, such as his psychological state, is given for the amendment, it is unreasonable to make a negative credibility finding in relation to the amendment (*Ali v Canada (Citizenship and Immigration)*, 2007 FC 1350 at para 8 [*Ali*]; *Ameir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 876 at para 21 [*Ameir*]; *Mico v Canada (Citizenship and Immigration)*, 2011 FC 964 at para 49 [*Mico*]).

[34] I disagree with Mr. Adekanmi. The issue here is not whether the RAD made the same mistake as the RPD in not accepting the time line suggested by the amended Schedule A Form, i.e., that Mr. Adekanmi's employment termination date was in fact December 11, 2017. Rather, the issue is the inference the RAD was to draw from a discrepancy in the documents to begin with. That said, I would think that it was open to the RAD to prefer one date over the other as the true employment termination date.

[35] We should also keep in mind that the discrepancy in the two employment termination dates that the RPD was addressing was that between the initial Schedule A Form and Mr. Adekanmi's testimony at the hearing. The concern of the RAD, on the other hand, was not the discrepancy between the initial Schedule A Form and his testimony before the RPD or his amended narrative filed just before the RPD hearing over a year later, but rather the discrepancy in such dates as between the initial Schedule A Form – March 2018 – as originally prepared on March 23, 2018 and Mr. Adekanmi's initial narrative – December 11, 2017 – filed two weeks later along with his Basis of Claim.

[36] The RAD found that it was reasonable to expect that Mr. Adekanmi would recall the date he stopped working when it coincided with the date of the alleged incident, especially where his claim is based on those incidents. Furthermore, the events of December 5, 2017 occurred shortly prior to his coming to Canada, and even with the claimed symptoms of forgetfulness, insomnia, emotional difficulties, and challenges with concentration, I do not think it unreasonable for the RAD to find that it was unlikely Mr. Adekanmi would forget that he supposedly stopped working on December 11, 2017. The RAD put it this way at paragraph 27 of its decision:

Although I acknowledge the diagnoses in the documents and the symptoms described, I am not satisfied that these sufficiently reconcile the inconsistency in the evidence. The Applicant's claim is based on the events that occurred at his workplace in December 2017. I find it reasonable to expect that he would be capable of recalling the fact that he had stopped working for Conoil as of December 2017 and that he had fled his home to go into hiding afterwards. When the Applicant completed his forms, these events had occurred very recently and were supposedly the very reason for his coming to Canada. The Applicant is university-educated, holding of Bachelor of Science degree in accounting. He reads and writes in English. He claims that he was attacked at work on December 11, 2017, that he never returned to work again, and that he and his family had to relocate. Even with the symptoms reported, such as difficulties with concentration and forgetfulness, I do not imagine that these months would have been forgotten. I do not believe that this was simply a mistake resulting from a lapse in memory, concentration, or otherwise. The Applicant signed his form on March 23, 2018, declaring it to be complete, true, and correct. He did not correct the record until late June 2019, more than a year later. In my assessment, the Applicant's original Schedule A Form depicts an individual who was working, living at his usual residence until March 2018 when he left Nigeria. It is not consistent with the allegations he described weeks later in his BOC Form, which was completed once he retained counsel and had to tell his story. I find that this inconsistent evidence undermines the Applicant's allegations about the persecution he faced at his workplace in December 2017.

[Emphasis added.]

[37] There is nothing unreasonable with the finding of the RAD on this issue. Unlike the situation in *Mico*, the RAD did grasp the significance of the psychological evidence regarding Mr. Adekanmi; however, it found that the symptoms of forgetfulness were not sufficient to explain the discrepancy.

[38] In *Ameir*, the discrepancy between the original form and the amendment was caused by a typographical error, an explanation that the Court found plausible. The error in this case is significantly more important and certainly central to Mr. Adekanmi's claim.

[39] In *Ali*, the last-minute amendment to the form was explained by the fact that Mr. Ali's father did not want to inform his son earlier that Mr. Ali was being sought by the police because he did not want him to be alarmed (*Ali* at para 8). This Court found the RPD's rejection of this explanation unreasonable based on the facts of that case (*Ali* at paras 9-13). Here, Mr. Adekanmi cannot blame the tardiness of the amendment on a third party.

[40] As to the late filing of the amendment of the Schedule A Form, Mr. Adekanmi was looking to amend a factual element which directly concerned the very basis of a claim for refugee protection just prior to the RPD hearing. In the circumstances, it certainly was open to the RAD to question that amendment (*Gonzalez Hernandez v Canada (Citizenship and Immigration)*, 2012 FC 1097 at paras 35-36; *Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585 at para 51; *Sibanda v Canada (Minister of Citizenship and Immigration)*, 2003 CF 1400 at para 19).

(2) The RAD's assessment of the affidavit evidence

[41] The RAD agreed with the RPD as to the validity of the affidavits filed in support of Mr. Adekanmi's claim, and found that the affidavits were "likely fraudulent", primarily because Response to Information Request [RIR] country condition evidence suggests it is unlikely that affidavits which speak to someone's sexual orientation would be sworn to before a lawyer, a commissioner of oath or a notary public in Nigeria, considering the risk exposure to both the individual in question as well as to those swearing the affidavit who, even if not homosexual themselves, have knowledge of someone's supposed homosexuality in Nigeria's strong homophobic culture. Additionally, the RAD found that there were less riskier ways for the affiants to support Mr. Adekanmi's claim, such as with a simple letter or a videoconference.

[42] Mr. Adekanmi submits that the RAD relied too heavily on the RIR documentation in coming to that conclusion, and that, in any event, the affidavits were not used in the courts in Nigeria and were sworn before notaries who would guarantee their confidentiality (*Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451).

[43] However, in *Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at paragraphs 38-50, our Court held that the RAD's reliance on the RIR was reasonable under similar circumstances:

[47] I am also of the view that *Gbemudu*, relied upon by the Applicant, does not assist him. While in that case, in analysing the RIR 105653.E, Justice Russell stated his view that the information contained in the RIR seemed hypothetical and skeptical that such an affidavit would be necessary, and that he could not find any instances where individuals had been punished for swearing an affidavit (*Gbemudu* at para 81), Justice Russell ultimately found

that the RIR was not relevant to the application before him. This was because the affiant in that instance was promised confidentiality, the affidavit was only for use in the proceedings in Canada, and the affiant did not actually swear knowledge of the applicant's sexuality (*Gbemudu* at para 81). Thus, *Gbemudu* is distinguishable on its facts. Here, the facts are more similar to *Ikheloa* given that the affiants, the Applicant's wife and friend, deposited actual knowledge of the Applicant's sexuality and there is no evidence that they sought or were guaranteed confidentiality. Like in *Ikheloa*, the RAD weighed the available evidence and concluded that it was more likely than not for an affidavit to be unusual. In my view, the RAD's analysis based on the RIRs was reasonable.

[44] In the case before me, although the affiants did not specifically depose on the basis of actual knowledge of Mr. Adekanmi's sexuality, other than representations of Mr. Adekanmi's counsel, there is no evidence that the affiants were guaranteed confidentiality at the time of swearing their affidavits. In fact, the RAD specifically addressed this issue in its decision and stated that although lawyers and notaries in Nigeria generally have a duty of confidentiality, the documentary evidence is to the effect that those ethical duties are at risk of being ignored due to the strong climate of homophobia in Nigeria, and that it would be highly unusual for individuals to approach notaries in order to swear affidavits regarding a person's sexual orientation as there is a great deal of risk for both the affiant and the notary in such cases.

[45] In addition, Mr. Adekanmi argues that the concerns expressed in the RIR deal with affidavits where the individual confirms that he is gay. On the other hand, Mr. Adekanmi is actually claiming the opposite, that he is not gay. However, as confirmed by the RAD, one affidavit stated that Mr. Adekanmi was targeted due to the belief that he was gay, while the other stated simply that Mr. Adekanmi is being accused of "gay behavior". As underscored by the RAD, none of the affiants ever deny in their affidavits the truth of the accusations made against

Mr. Adekanmi. In addition, his brother's affidavit actually states that he was hiding his brother, Mr. Adekanmi, from the police who were looking for him on account of the allegation that he was gay. I do not read the affidavits so as to take them out of the application of the RIR.

[46] Mr. Adekanmi also argues that RIR's general comments as to the unlikelihood that a person would swear an affidavit regarding one's sexual orientation only applied to affidavits for use in Nigeria. I do not read the passage of the RIR that I was taken to in that way. The passage simply confirms that affidavits dealing with a person's sexual orientation are not used in Nigeria because of the stigma attached to the subject, and in any event, there is no benefit to using affidavits within Nigeria. I do not read the passage as saying that the stigma and deterrence to swearing affidavits on this issue only exist in respect of affidavits used in Nigeria; the deterrence seems to relate to the fact that the affidavits are signed before lawyers or notaries in Nigeria who run the risks associated with being involved in such affidavits.

[47] Mr. Adekanmi also argues that the presumption of truthfulness propounded in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at paragraph 5 [*Maldonado*], applies to the affidavits in question. However, the principles laid out in *Maldonado* do not apply to statements from third parties, i.e., evidence on behalf of the applicant, rather than the applicant's own evidence (*Chhetri v Canada (Citizenship and Immigration)*, 2017 FC 735 at para 30).

[48] Finally, Mr. Adekanmi submits that, by its determination that the affidavits were "likely fraudulent" and "likely not genuine", the RAD erred by failing to make a clear determination as

to the genuineness of the affidavits, which is a reviewable error (*Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 [*Sitnikova*]).

[49] Citing *Marshall v Canada (Citizenship and Immigration)*, 2009 FC 622 at paragraphs 1-3, [*Marshall*] and *Warsame v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1202 at paragraph 10 [*Warsame*], Justice Mactavish in *Sitnikova* correctly stated that “decision-makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document “little weight””. However, she continued by making it clear that “it is, of course open to a decision maker to explain why he or she is not satisfied that a document that has been accepted as genuine should be given much weight: *Marshall*, above at para. 3” (*Sitnikova* at paras 20-21).

[50] The RAD’s assessment was on a balance of probabilities basis. Here, the RAD clearly gave no credence to the affidavits. We must keep in mind that the RAD attributed little weight to the affidavits, not because they were likely fraudulent in view of their form, but because it was not plausible that the stories they contained were affirmed before a notary public considering the climate of homophobia in Nigeria. It is not a question of form, but rather a question of the substance of the affidavits that made the RAD question their authenticity. In both *Marshall* and *Warsame*, the issues which raised concerns over the documents pertained to form; the substance of the documents were not addressed.

[51] Here, the RAD actually did go on to examine and deliver a lengthy analysis of the substance of the affidavits. In the end, the RAD concluded that:

None of the affiants even deny the truth of the accusations made against the Applicant. Clearly, these affidavits are being sworn in support of a man who is wanted by police, and who is widely believed by the community and police of being gay. The affidavit from the Applicant's brother is especially troublesome, as he admits to having hid the Applicant at his home. The various affiants could have given their evidence in a number of far less risky ways, such as in the form of a support letter with accompanying photocopies of identity documents, or as witnesses by teleconference, or both. There was no apparent need for them to give evidence in the form of an affidavit. By giving sworn statements in support of an individual that is wanted by police and believed to be gay, the affiants were taking unnecessary risks. The RPD did not err in doubting the authenticity of the affidavits. I too determine that they are likely fraudulent, and draw a negative inference against the Applicant's general credibility.

[52] In my view, the RAD properly assessed the substance of the affidavits and has drawn reasonable conclusions in this regard.

[53] Overall, I have not been convinced that the RAD's finding on this issue is unreasonable.

C. *Did the RAD unreasonably conclude that the RPD did not breach Mr. Adekanmi's right to procedural fairness?*

[54] On appeal before the RAD, Mr. Adekanmi argued that the RPD breached procedural fairness principles when it failed to notify or confront him with its concerns about the plausibility of obtaining the affidavits prior to the RPD concluding that the documents were fraudulent.

[55] As to whether the RPD breached procedural fairness in not confronting Mr. Adekanmi with its concerns regarding the affidavits filed before the RPD, the RAD stated at paragraph 31 that:

Even if it could be said that the RPD ought to have notified the Appellant of its concerns about the plausibility of obtaining such affidavits, I consider that the RPD decision itself gives notice to the Applicant of this issue. Given the RAD's mandate to conduct an independent assessment, the Applicant has notice of the issue and has an opportunity to address the issue on appeal. In this case, the Appellant has responded to the issue, arguing that the RPD erred in its interpretation of the contents of the affidavits and the country condition evidence.

[56] In short, any breach of procedural fairness under these circumstances was cured by way of the appeal (*Karim v Canada (Citizenship and Immigration)*, 2020 FC 566 at paras 3, 10, 11 and 19 to 21 [*Karim*]).

[57] Before me, Mr. Adekanmi submits that this was an error, mainly because the RAD and the RPD were overly vigilant, selective and microscopic in the examination of the affidavit evidence and that such a credibility finding cannot be addressed properly in writing on appeal. He says that an oral hearing on this issue was necessary.

[58] I disagree with Mr. Adekanmi. He simply has not identified how his arguments before the RPD would be any different to the manner in which he addressed the issue in writing before the RAD. Saying that a hearing is necessary does not make it so; Mr. Adekanmi must explain in what way such an oral hearing was necessary. The question is different from, say, inappropriate translation before the RPD. In that case, a rehearing may be necessary to reassess an applicant's testimony.

[59] Here, the problem is not with Mr. Adekanmi's testimony, but rather with the legitimacy of documentary evidence that he presented in support of his application. Although

Mr. Adekanmi may have preferred having addressed the issue orally, nothing before me suggests that he was denied the opportunity to fully present his case to the RAD simply because he was not allowed to explain orally, rather than in writing, why the affidavits were in his view genuine (*Karim* at para 22).

[60] In any event, Mr. Adekanmi argues that I should send the matter back to the RPD for an oral hearing. I cannot see how I have the authority to do so under these circumstances.

[61] In the end, I see nothing unreasonable in the RAD's conclusion on this issue. To paraphrase Mr. Justice McHaffie in *Karim* at paragraph 3, it may have been unfair for the RPD not to raise its concerns about the authenticity of the affidavits so that Mr. Adekanmi could respond, any such unfairness was remedied by Mr. Adekanmi's ability to file submissions and evidence on his appeal to the RAD.

VI. Conclusion

[62] Consequently, I would dismiss the present application.

JUDGMENT in IMM-7028-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7028-19

STYLE OF CAUSE: PETER ADEGOKE ADEKANMI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
MONTREAL, QUEBEC AND TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 14, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: APRIL 7, 2021

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