

Federal Court



Cour fédérale

Date: 20210510

Docket: IMM-4238-20

Citation: 2021 FC 423

Toronto, Ontario, May 10, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

**OMOEFE ANDREW OMATE
LIZZY EMUESIRI OMATE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews a decision of the Refugee Appeal Division (“RAD”) dated August 20, 2020, which rejected the Applicants’ claim for refugee protection on the basis of credibility. For the reasons below, I find that the RAD made no reviewable error and will therefore dismiss this application for judicial review.

II. Background

[2] The Applicants, a husband (the “Principal Applicant”) and his wife, fear that they will die at the hands of the Ogboni cult (“Ogboni”) should they return to Nigeria. Their fear is based on the following alleged facts.

[3] The Principal Applicant’s father was the Chief Priest of the Ogboni in his village. According to Ogboni traditions, the eldest male in the family takes the role of the Chief Priest after the priest’s death. After the Principal Applicant’s father died in March 2010, the Ogboni approached his older brother to become the Chief Priest. His brother declined the position. For this refusal, the Ogboni shot him to death in his apartment in October 2011.

[4] The Ogboni then recruited his older cousin to become Chief Priest. The cousin accepted. However, in November 2017, the Applicants allege that he died in his sleep after breaking the rules of the Ogboni. They allege that supernatural powers killed him. At the cousin’s funeral, a man approached the Principal Applicant and told him that it was his turn, as the oldest male in the family, to become the Chief Priest. The man allegedly gave the Principal Applicant two weeks to decide and told him not to forget what happened to his brother after he refused the role.

[5] Instead of responding to the Ogboni, the Applicants arranged to leave Nigeria. A friend talked the Principal Applicant out of going to the police. The Applicants secured the funds they needed for flights, arranged for American visas and the care of their children, and fled Nigeria.

III. Decision under Review

[6] The RAD determined that the Refugee Protection Division (“RPD”) was correct in finding that the Applicants lacked credibility, and that there would be no serious risk of persecution should they return to Nigeria.

[7] First, the RAD found that the Principal Applicant made a material omission in his Basis of Claim form (“BOC”) and in his amended BOC. It was only during questioning by the RPD that the Principal Applicant testified that he had been nominated to the Ogboni by his grandfather. The RAD found this omission to be highly relevant because it went to the heart of the claim. The Principal Applicant had been provided ample opportunity to provide information regarding his manner of nomination, both prior to and at the start of the hearing, and had corrected other portions of his BOC which were comparatively less significant.

[8] The RAD also found that there was a lack of evidence to support a threat to the Applicants. It found no credible evidence that the Ogboni caused the death of the cousin. The Applicants cited a passage in the documentary evidence regarding recruitment in the Ogboni cult, which said that “a person has to agree to join, and generally cannot be forced to do so, while noting, however, that ‘supernatural powers’ may be used to ‘compel’ a person to join.” The RAD stated that the Applicants linked these supernatural powers to the Ogboni’s ability to cause his cousin’s death.

[9] The RAD found this claim to be mere conjecture and upheld the RPD’s finding that the cousin’s death could not be objectively tied to the Ogboni. It therefore gave no weight to both the cousin’s death certificate and an affidavit that the cousin’s sister provided that attested to his

death. The RAD found that only the death had been established, but not that it happened at the hands of the Ogboni.

[10] Similarly, the RAD afforded no weight to (1) the Principal Applicant's affidavit, dated just over a week after his brother's death, attesting to the loss of the initial police report about the brother's shooting and the manner in which he was killed, and (2) a police report stating the same. The RAD found that these documents established only that the Principal Applicant's brother had been shot and died from his wounds, but not that the brother was killed at the hands of the Ogboni.

[11] The RAD also gave no weight to the affidavit of the Applicants' neighbour, which simply stated that two "strange" men, who identified themselves by their names and the cities they came from, came looking for the Principal Applicant in July 2019. Given the clandestine nature of the Ogboni, the RAD found that it was not reasonable to expect that these men would divulge such information so freely.

[12] Finally, the RAD based other negative credibility findings on inconsistencies between the Principal Applicant's testimony and the documentary evidence. This included evidence about the manner and age at which the Principal Applicant was forced to become Chief Priest, particularly given his non-association with the group until over the age of 40, stating that he did not know of his grandfather's involvement with the Ogboni until after his death.

[13] The determinative issues in this judicial review are whether the RAD unreasonably erred in its negative assessment of credibility, or overlooked evidence.

IV. Analysis

[14] The presumptive standard of review for both issues raised is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the circumstances that rebut the presumptive standard is found in this case. Under *Vavilov*, a reviewing Court should only intervene in a decision where “there are sufficiently serious shortcomings [...] such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

A. *The RAD made reasonable credibility findings*

[15] First, the Applicants submit that the RAD erred by discounting the Principal Applicant’s affidavit about his brother’s death and the related police report. The Applicants note that the RAD did not dispute that his brother was shot and had died from his wounds. However, they submit that the RAD erroneously concluded that the evidence does not establish, on a balance of probabilities, that the brother was killed at the hands of the Ogboni.

[16] The Applicants also argue that the evidence could not link the brother’s death to the Ogboni because the Applicants only learned that the brother had been killed by the Ogboni at the cousin’s funeral in December 2017, when a stranger approached the Principal Applicant and told him that he was next in line and warned him to remember what happened to his brother. The Applicants argue that the RAD failed to appreciate this context and, consequently, the evidence. Moreover, they argue that the RAD erred in discounting the cousin’s death certificate and the affidavit of his sister, which attested to the death.

[17] The Applicants argue that the RAD's findings are contrary to long-established jurisprudence that holds that when an applicant speaks to the truth of certain allegations, this creates a presumption that those allegations are true unless there is reason to doubt their truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5 (FCA) [*Maldonado*]). They also argue that, in *Hilo v Canada (Minister of Citizenship and Immigration)*, 26 ACWS (3d) 104, [1991] (FCA) [*Hilo*], the Federal Court of Appeal held that decision-makers have a duty to give reasons for casting doubt upon a party's credibility and to do so in clear and unmistakable terms, but that this did not occur in this case.

[18] Despite the Applicants' best efforts to convince me otherwise, the underlying credibility findings did not run afoul of either *Maldonado* or *Hilo*. The RAD reasonably explained why it gave the Principal Applicant's supporting documents little to no weight. Furthermore, other than the Applicants' testimony, there is nothing linking either death to the Ogboni. It was thus reasonable for the RAD to make a negative credibility finding based on both inconsistencies and contradictions with the documentary evidence.

[19] Apart from the central omission made with respect to the grandfather noted above, the RAD reasonably found, based on the evidence, that positions are not inherited, and children who have a history with the Ogboni through their family and are exposed to the Cult are coerced to join. This was at odds with the Principal Applicant's evidence that he had no knowledge of his grandfather's involvement with the Ogboni until after his grandfather's death.

[20] Similarly, I cannot agree with the Applicants' argument that, contrary to the jurisprudence, the RAD failed to adjudicate the claimants on what they said, rather than on what they failed to say (citing *Yahia v Canada (Citizenship and Immigration)*, 2019 FC 84 at para 41

and *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 (FC) at para 11).

[21] Here, the RAD reasonably concluded that there was a clear lack of evidence to support the Applicants' allegations regarding a threat from the Ogoni. This was an entirely reasonable assessment of the evidence that the Applicants presented to support their allegations. The supporting documentation lacked detail and did not objectively support that the Ogoni were responsible for the deaths and death threats.

B. *The RAD did not ignore or overlook evidence.*

[22] The Applicants also contend that the RAD ignored the affidavit evidence of the Principal Applicant's childhood friend, who deposed that the Principal Applicant told him in a fearful manner that he was told by the Ogoni at his cousin's funeral that he was next in line to be Chief Priest, and that they had been responsible for his brother's death. The Applicants cite *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 1998 CanLII 8667 (FC) for the proposition that the Court may infer from a decision-maker's failure to mention material evidence a failure to give regard to that evidence.

[23] There are two problems with this argument. First, the Applicants' representative, who had also represented him before the RPD (but who was not his counsel for this judicial review), failed to raise any issue with the assessment of this document in the RAD appeal, although she challenged RPD findings with respect to numerous other documents. The RAD is not required to consider potential errors in an RPD decision if the Applicant did not raise them: *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 39; *Canada (Citizenship and Immigration) v*

Chamanpreet Kaur Kaler, 2019 FC 883 at paras 11-13. As Justice Gleeson stated in *Caleb v Canada (Citizenship and Immigration)*, 2018 FC 384 at para 37:

The jurisprudence does not impose a duty on the RAD to independently identify and address issues. It would in turn be inconsistent with the role of a court on judicial review to intervene where the issue was not raised before the RAD. Indeed, there is case law to suggest if the RAD were to determine an issue that was neither addressed by the RPD nor raised on appeal by either party, the RAD would be infringing the applicant's statutory rights (*Ojarikre v Canada (Citizenship and Immigration)*, 2015 FC 896 at para 21).

[24] Second, the Affidavit itself raises insufficient evidence with respect to the alleged harm from the Ogboni, just as the other impugned personal documents did, such as the neighbour's affidavit. She deposed that two "strange" men asked her about the Applicants' whereabouts and gave their names. There was no evidence, either from the affiant or anyone else, that these men were connected with the Ogboni, or the reason why these men were looking for the Applicants. Again, the conclusion of the RAD regarding insufficient evidence was reasonable.

[25] Finally, the Applicants contend that the RAD both confused certain country condition documents and overlooked other objective evidence regarding the agents of persecution. Specifically, they claim that the RAD confused the voluntary, non-violent arm of the Ogboni (the "Fraternity" or "Society") with the sinister Cult. Equally, the Applicants allege that the RAD failed to address evidence on the record that spoke to the dangers of the Cult.

[26] A close reading of the decision, however, reveals that the RAD both acknowledged the distinction between the Ogboni organizations and the key objective evidence presented, as contained in 2019 and 2020 Response to Information Requests. Furthermore, the RAD makes it entirely clear it was referring to the Cult and not the more innocuous of the Ogboni associations.

The particular line in the RAD decision that the Applicants reference – in which the RAD stated that “the evidence of a definitive distinction of the two is not clear” – was referring to certain of the information contained in the RIRs.

V. Conclusion

[27] I find that the RAD’s negative credibility and insufficiency of evidence findings, which together were determinative of its decision, had the “requisite degree of justification, intelligibility and transparency” to make them reasonable. I further find that the RAD did not overlook evidence. Having found that the RAD’s decision to be reasonable, I will dismiss this application.

JUDGMENT in IMM-4238-20

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper respondent.
2. The application is dismissed.
3. There is no question of general importance for certification.

“Alan S. Diner”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4238-20

STYLE OF CAUSE: OMOEFE ANDREW OMATE, LIZZY EMUESIRI
OMATE v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD BY TELECONFERENCE IN OTTAWA,
ONTARIO AND TORONTO, ONTARIO

DATE OF HEARING: MAY 3, 2021

JUDGMENT AND REASONS: DINER J.

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