

Federal Court



Cour fédérale

Date: 20220506

Docket: IMM-448-20

Citation: 2022 FC 670

Ottawa, Ontario, May 6, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**ABIEMWENSE JOY OGBEBOR
IKPONMWOSA OGBEBOR
OSASENAGA PRISCA OGBEBOR
KENNETH IWINOSA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal Applicant (PA), and her three minor children, (collectively “the Applicants”) seek judicial review of a negative PRRA decision made on December 9, 2019 (the Decision).

[2] Before filing their PRRA application, the Applicants, who are from Nigeria, had unsuccessfully claimed refugee protection on the basis that the PA was a member of a particular social group as a bisexual woman. Based on inconsistencies in the basis of claim form (BOC), the testimony of the PA, omissions from the BOC, and a finding that the events surrounding the death of the PA's partner lacked plausibility, the Refugee Protection Division, (RPD) determined the PA was not a credible witness. On January 10, 2018 the RPD determined the Applicants were not Convention refugees nor were they persons in need of protection. The Applicants were subsequently denied leave for judicial review.

[3] For the reasons that follow, this application is granted.

II. Issue and Standard of Review

[4] The only issue is whether the Decision is reasonable.

[5] Subject to certain exceptions that are not present, the standard of review is presumptively reasonableness as described by the Supreme Court of Canada in *Canada (Minister of Citizenship & Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[6] A reasonable decision is 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. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov*, at paragraph 85.

[7] The reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Vavilov* at paragraph 102.

[8] The Respondent has urged the Court to use the "palpable and overriding error" standard when reviewing the Officer's findings of fact or factual inferences and to give deference to those findings.

[9] I find it unnecessary to resile from the reasonableness standard that is so firmly and thoroughly established in *Vavilov* where deference to a Tribunal is required absent any of the errors set out above and throughout *Vavilov*.

III. The PRRA

[10] The Applicants submitted a PRRA application on January 30, 2019. It contained thorough submissions pointing to inconsistencies in the RPD hearing and four new pieces of evidence were submitted.

[11] Applying the criteria set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA at paragraph 13, the new evidence was accepted by the Officer. After considering it, the application was rejected largely for the failure of the Applicants to overcome the numerous credibility concerns of the RPD.

[12] In determining that the Decision is unreasonable, I find it is sufficient to discuss only two of the pieces of new evidence.

A. *Photograph of the PA and Happy*

[13] The first piece of new evidence considered by the Officer was a photograph of the PA and Happy. The Officer noted that counsel pointed out that the photo shows the PA's arm wrapped around Happy's stomach with their two faces touching. Submissions to the Officer included the comment that it would be a highly unusual way for two women to pose in the absence of an intimate relationship and it would not be normal for two women in a platonic relationship to be posed in that manner.

[14] The Applicants submit that, when considering the weight of the photo, the Officer erred in their treatment of the photo by failing to undertake a global assessment of the PA's credibility. The Applicants are objecting to the process by which the Officer determined the photo, weighed on its own, was not persuasive enough to overcome the RPD findings.

[15] They state the appropriate analysis would have been for the Officer to determine whether the photo with Happy, when considered in conjunction with the other evidence, was capable of overcoming the RPD findings.

[16] The Respondent notes the Applicant fails to provide any case law to support the idea that every piece of evidence must be globally assessed against every other piece of evidence. They identify this terminology to be appropriate in the context of H&Cs, not PRRAs.

[17] I find the Officer's assessment of the photographs, in light of the RPD's factual findings, to be reasonable. The Officer was not required to consider all of the corroborative evidence anew. A PRRA application is not to become a second refugee claim: *Kaybaki v Canada (Minister of Citizenship and Immigration)*, 2004 FC 32 at paragraph 11.

B. *Nigerian Observer article*

[18] The second key piece of new evidence was a Nigerian Observer article detailing the murder of the PA's former partner, Happy, by an angry mob. The article indicated the police were looking for Happy's lover. The article named the PA as the lover. As a result, the PA says she is afraid that if she is returned to Nigeria, Happy's husband or others will kill her.

[19] In addressing this evidence, the Officer referred to an article from the National Documentation Package which cites mixed comments about the prevalence of "brown envelope journalism" among everyday citizens where a person can pay a journalist to create a certain story or modify a news story:

When asked how common it is for ordinary citizens to bribe journalists to create or modify news stories, the Deputy Editor of Investigations stated that it was "very common"... In contrast, the Journalist indicated that it is not common for ordinary citizens to bribe journalists to create or modify news stories... The same source explained that while it is uncommon, it is possible if they are able to "pay the price tag".

[20] The Officer acknowledged that the evidence concerning brown envelope journalism was mixed but decided to assign low probative value to the article and did so without making a determination on the authenticity of the article. No comprehensible reasons were given for

arriving at the conclusion. The stated reason was: “[f]or the above reasons and combined with the credibility concerns expressed by the RPD, I attach low probative value to the article.”

[21] As argued by the Applicants, this line of reasoning is concerning. Authenticity is a strict yes or no question. There is no partially authentic document. If low weight is to be assigned to a document on the basis of its authenticity, an explicit authenticity finding must be made before any attribution of weight (*Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at paragraph 20):

[20] This Court has, moreover, previously commented on the practice of decision-makers giving “little weight” to documents without making an explicit finding as to their authenticity: see, for example, *Marshall v. Canada (Citizenship and Immigration)*, 2009 FC 622 at paras. 1-3, [2009] F.C.J. No. 799 and *Warsame v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1202, at para. 10. If a decision-maker is not convinced of the authenticity of a document, then they should say so and give the document no weight whatsoever. 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”. As Justice Nadon observed in *Warsame*, “[i]t is all or nothing”: at para. 10.

[22] Further, the frequency of brown envelope journalism in Nigeria, cannot on its own impugn the authenticity of a document. This would, as Justice Ahmed put it, “amount to guilt by association”: *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paragraphs 27-29 (*Oranye*).

[23] The Respondent relies on *Obinna v Canada (Citizenship and Immigration)*, 2018 FC 1152 (*Obinna*) to submit that giving an article little weight is valid if the article flies in the face of non-credibility findings.

[24] However, in *Obinna*, the RPD found the information in the articles conflicted with the Applicant's testimony, and it could not determine the origin of the articles, many of which used identical language: *Obinna* at paragraph 31.

[25] That is not the case here. In the present matter, the low probative weight was assigned on the basis of inconclusive country condition information that cast doubt on the genuineness of the document. No finding was made on its authenticity, nor was it assessed for its content and consistency with other corroborating evidence before the Officer. Such an error fails to meet the standard of transparency required.

IV. Conclusion

[26] The article, on its face, establishes the relationship between the Applicant and Happy and the serious risk to the Applicant. Based on my review of the jurisprudence, and for the reasons set out above, I find the Officer's treatment of the Nigerian Observer article was unreasonable. Given the importance of the article to the outcome, the Decision must be set aside and returned for redetermination by a different Officer.

[27] No serious question of general importance exists on these facts.

JUDGMENT IN IMM-448-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination by a different officer.

2. No question of general importance is certified

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-448-20

STYLE OF CAUSE: ABIEMWENSE JOY OGBEBOR, IKPONMWOSA
OGBEBOR, OSASENAGA PRISCA OGBEBOR,
KENNETH IWINOSA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 18, 2021

JUDGMENT AND REASONS: ELLIOTT J.

DATED: MAY 6, 2022

APPEARANCES:

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