

Federal Court



Cour fédérale

Date: 20220601

Docket: IMM-2020-21

Citation: 2022 FC 786

Ottawa, Ontario, June 1, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ABAYOMI OLAYINKA ODEKUNLE
ISIOMA CYNTHIA ODEKUNLE
ENIOLA CLARE ODEKUNLE
EBUNOLUWA JEMIMAH ODEKUNLE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek to set aside a February 26, 2021, decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada upholding a decision of the Refugee Protection Division [RPD] finding that they are not refugees or persons in need of protection.

[2] While one of the RAD's findings is unreasonable, the RAD's remaining credibility concerns are justified. In light of the large number of adverse credibility findings against the Applicants, the overall conclusion of the RAD that the Applicants' claim is not credible is reasonable and will not be set aside.

Background

[3] The Applicants, Abayomi Olayinka Odekunle [the Principal Applicant], his wife [the Associate Applicant], and their two minor daughters are citizens of Nigeria. The youngest Applicant is also a citizen of the United States, having been born there in 2017. The following is their claimed narrative.

[4] The Applicants claim that they fear persecution and harm in Nigeria at the hands of the Black Axe Confraternity, a Nigerian cult gang, and its leader, Oladapo Adisa. Oladapo Adisa made romantic advances on the Associate Applicant in January 2012, at a university social event. The Principal Applicant was assaulted at this event by Oladapo Adisa and members of his gang.

[5] Shortly afterwards, in February 2012, the Principal Applicant received two threatening letters signed by the Black Axe Confraternity saying that he must leave his wife or die. The Principal Applicant reported this to the police.

[6] The Applicants relocated from Ibadan to Delta State for their safety, but in March 2012, the Principal Applicant was kidnapped and assaulted by a group of unknown men. He was

released and told to leave his wife or the head of their gang would kill him. The Principal Applicant also reported this incident to the police.

[7] The Applicants then relocated to Kaduna, and the Associate Applicant became pregnant and gave birth to a daughter. However, Oladapo Adisa and his gang found the Applicants. He threatened the Associate Applicant, saying that, if she did not marry him, he would kill her husband and her infant daughter.

[8] The Applicants decided that Nigeria was not safe and travelled to South Africa, where they made an asylum claim. They were granted asylum for one year and eventually received work permits.

[9] On December 24, 2016, the Applicants saw Oladapo Adisa at a hotel in South Africa. They left as Oladapo Adisa approached them. Two days later, Oladapo Adisa and his gang were outside their building.

[10] The Applicants went to the United States on a previously planned trip to Disneyland. While in the United States, they were told by a friend that Oladapo Adisa was still looking for them in South Africa. The Applicants decided to remain in the United States. The Applicants were unable to afford a lawyer to make an asylum claim but were able to obtain employment authorization with the assistance of a church congregation. During this time, the Principal and Associate Applicants' younger daughter was born.

[11] The Principal Applicant applied for permanent residence in the United States, but his application was rejected. Having been told that Canada was more favourable to immigrants, the Applicants came to Canada on May 15, 2019, and made a refugee claim. During their claim process, the Respondent, the Minister of Citizenship and Immigration, made submissions before the RPD that, pursuant to section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], the Applicants were ineligible for refugee protection, as they had rights in the United States akin to nationals of that country.

The RPD Decision

[12] The RPD refused the Applicants' refugee claim. While this is not the decision under review, the RAD accepted a number of the RPD's findings for the same reasons, so it is necessary to provide a full summary of the RPD's reasons.

[13] The RPD found that the youngest daughter was a citizen of the United States. As no claim for protection was made against the United States, the RPD found her not to be a refugee. However, the RPD rejected the Respondent's submissions that the remaining Applicants had status in the United States and were therefore not ineligible for protection by virtue of section 98 of the *IRPA*. The RPD also found that the Applicants did not have any status in South Africa that would render them ineligible for protection.

[14] However, the RPD found that the Applicants had not presented sufficient credible evidence to establish that they were refugees or persons in need of protection. The RPD raised a number of concerns with the Applicants' claim.

[15] The RPD found that the Applicants had made material omissions in their Basis of Claim form. The RPD noted that the Applicants' claim was vague with respect to the "several attempts" the Principal Applicant says were made "on [his] life and [his] wife" in 2012. At the hearing, the Principal Applicant testified that there were two incidents. In the first, he received a threatening call from persons who were standing next to his car. In the second, he was approached by someone who said that "the boss" wanted to see him, after which the Principal Applicant fled.

[16] The RPD rejected the Applicants' explanation that they gave few details in their Basis of Claim form because they were told to summarize their claims and that they would have an opportunity to provide more detail at the hearings. The RPD also found that the more detailed facts provided by the Applicants at the hearing were inconsistent with their written narrative as there were only two incidents, rather than "several", and the Associate Applicant was not involved in either.

[17] The RPD also found that it was implausible that the Associate Applicant continued to study at the same university, given the severity of Oladapo Adisa's threats and actions. When asked why she would continue studying, the Associate Applicant said that she was in her final year of study, and transferring would have been difficult, and she took precautions to avoid

Oladapo Adisa, including mostly taking courses online. The RPD found that the Applicants had made a material omission by not mentioning these precautions in their Basis of Claim form.

[18] The Associate Applicant claimed in her testimony that once Oladapo Adisa came to her home in Kaduna, she stopped attending university. The RPD found this explanation not credible because she claimed that Oladapo Adisa had threatened her in March 2013, yet she stopped attending university in January 2013. The RPD found that it was likely that the reason the Associate Applicant stopped attending school was the birth of her daughter in January 2013.

[19] The RPD did not believe the Principal Applicant's claim that he was kidnapped and beaten in March 2012. The RPD considered a Crime Diary Extract from the Delta State police dated January 6, 2020. The RPD found that there were material omissions from this report. While it mentioned the kidnapping, it made no reference to the Principal Applicant being assaulted and did not name the alleged perpetrators. The RPD found that a document relating to an investigation would at least identify the alleged perpetrators. The RPD found that this document was likely fabricated because of these omissions and because, based on country conditions evidence, the RPD did not accept that Nigerian police reports could be obtained *in absentia*.

[20] The RPD also took issue with the Applicants' inability to provide details about Oladapo Adisa. The RPD found that the Applicants would have at least known if he was a student at the Associate Applicant's university and whether he is still the leader of the Black Axe Confraternity.

[21] The RPD found it highly unlikely that Oladapo Adisa would have encountered the Applicants in South Africa, either by chance or intentionally. The RPD found that if he had been able to locate the Applicants in South Africa, he would have easily been able to locate the Associate Applicant while she attended university, even if most of her classes were online. The RPD also noted that the Applicants failed to mention in their Basis of Claim form that they reported the incident in South Africa to the police.

[22] The RPD found that the Applicants' extended stay in the United States was conduct that was incompatible with a subjective fear of persecution. The RPD noted that the Applicants remained in the United States for over a year after the Principal Applicant's application for permanent residence was rejected. The RPD also rejected the Applicants' claim that they did not come to Canada due to a lack of money, as the Applicants were employed and their testimony indicated that for much of this time they were unaware that they were able to come to Canada. The RPD rejected an explanation that they were being financially extorted as this was not mentioned in their Basis of Claim form.

[23] The RPD also took issue with the Applicants' documentary evidence. The RPD questioned the provenance of the two threatening letters received by the Principal Applicant, noting that they were not referenced in the January 6, 2020, police report relating to the kidnapping. The RPD also gave no weight to a March 2, 2012, police report, made after the Principal Applicant received these letters. While this report does mention the threatening letters, according to the RPD it does not accord with the narrative account. The RPD noted in particular that it refers to the Associate Applicant as the Principal Applicant's girlfriend, despite the two of

them being married at the time. This report also does not mention Oladapo Adisa by name or mention any interaction between the Principal Applicant and the Black Axe Confraternity. The RPD found affidavits from the Principal and Associate Applicants' mothers to be vague and noted that these affidavits do not explain how the affiants came to have knowledge of the information to which they deposed. The RPD also noted that the affidavits have very similar formats and texts, despite allegedly being sworn in different states on different dates.

The RAD Decision

[24] On appeal to the RAD, the RAD noted that the Applicants were only challenging the RPD's credibility findings and had raised three specific issues: the adverse credibility inference due to omissions in the Basis of Claim form, the lack of weight given to the January 6, 2020, police report, and the finding that the extended stay in the United States undermined the allegation of objective fear.

[25] The RAD found that the RPD had not erred by drawing a negative credibility finding due to the omissions in the Basis of Claim narrative with respect to the claimed threats to the Principal Applicant's life and wife. The RAD agreed with the RPD that claimants are required to provide a detailed narrative, which the Applicants did not do. The RAD noted that the Applicants' narrative contained detailed information about other incidents but not these threats. The RAD agreed with the RPD that the description of the incidents given at the hearing was inconsistent with the narrative as the threats were only against the Principal Applicant and did not involve the Associate Applicant.

[26] The RAD accepted the Applicants' submissions that the RPD erred in finding that Nigerian police reports could not be obtained *in absentia*. However, the RAD agreed with the RPD's other concerns with the January 6, 2020, police report and its finding that it was likely fabricated. The RAD agreed that it was reasonable to expect that the report would mention that the Applicant had been assaulted and would name the alleged perpetrators. The RAD did not accept that these omissions were justified because they were in the other police report as this report was from a different police station in a different state. The RAD further noted that the January 6, 2020, police report, like the other report, also contained the inaccurate statement that the Associate Applicant was the Principal Applicant's girlfriend.

[27] The RAD agreed with the RPD that their extended stay in the United States was not reasonably explained and undermined their alleged fear of returning to Nigeria. The RAD agreed that the Applicants' testimony was evolving and inconsistent and that remaining in the United States for over a year after the Principal Applicant's application for permanent residence was rejected demonstrated that they had failed to establish that they had made reasonable efforts to seek asylum at the earliest opportunity.

[28] Despite not being raised by the Applicants, the RAD briefly reviewed the RPD's other credibility findings. The RAD agreed with the RPD's finding that the fact that the Associate Applicant continued to attend university until 2013 undermined the credibility of the alleged threats against her. The RAD expressly adopted the RPD's analysis on this point. The RAD also agreed with the RPD's analysis of the Applicants' other corroborative evidence, such as the affidavits from the Principal and Associate Applicants' mothers.

[29] The RAD did not agree with the RPD's finding that the Applicants' lack of knowledge about Oladapo Adisa gave rise to a negative credibility inference. However, the RAD did not find this error to be determinative, given that "the preponderance of the evidence and the cumulative adverse findings weigh against the credibility of the Appellants' allegations." The RAD dismissed the appeal.

Issues

[30] In my view, there is only a single issue raised by the Applicants: Is the RAD's credibility assessment reasonable?

[31] The Applicants attempted to raise issues on this application they did not raise before the RAD. I agree with the Respondent that they may not do so. In *Dahal v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1102 [*Dahal*], the Chief Justice writes:

[34] If the RAD conducts an assessment of whether the RPD may have committed additional errors not identified by an appellant, that aspect of the RAD's decision may be properly challenged before this Court where the RAD identifies an error on the part of the RPD and then takes one of the actions set forth in paragraphs 111(1)(a) – (c).

[35] However, where the RAD simply provides a brief summary of the RPD's findings regarding matters that were not raised on appeal, and then makes a general statement that it concurs with those findings, the situation is entirely different. In such circumstances, the errors alleged to have been made by the RAD are in essence errors that were allegedly made by the RPD. Where an applicant fails to raise an issue on appeal before the RAD in respect of those aspects of the RPD's decision, it should not be able to do so before this Court. To conclude otherwise would be to permit an applicant to, in effect, do an "end run" around the RAD....

[...]

[37] By simply satisfying itself that no such additional errors were made, the RAD's decision should not become vulnerable to being set aside on judicial review, based solely on its general concurrence with findings made by the RPD in respect of matters that were not raised on appeal by the Applicants. In my view, this would largely vitiate the purpose of Rule 3(3)(g) of the Rules, which requires an appellant to identify (i) the errors that are the grounds of the appeal, and (ii) where those errors are located in the RPD's decision, or in the transcript recording of its hearing.

[32] A decision maker's reasons must be read in light of the context of the proceedings, including the submissions of the parties (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 94). It is reasonable for the RAD not to consider concerns that were not raised before it. Concerns with the RPD's decision that were not raised before the RAD cannot be used to challenge the RAD's findings in this Court.

[33] In the Applicants submissions to the RAD, under the heading "Unreasonable Credibility Findings", they specifically list three paragraphs of the RPD's reasons as the unreasonable findings. These paragraphs relate to the three points specifically addressed by the RAD: the omissions regarding the threats to the Principal Applicant, the January 6, 2020, police report, and the Applicants' extended stay in the United States. The Applicants made no submissions beyond these and, in particular, no submissions regarding the RPD's assessment of various supporting documents or the plausibility of the Associate Applicant's continued enrollment at her university.

[34] The Applicants submissions to the Court regarding these points will not be entertained. While RAD was not required to engage in a fresh assessment of these aspects of the RPD's

assessment, as in *Dahal*, the RAD chose to satisfy itself that no additional errors were made (and did in fact identify an additional error not raised by the Applicants). However, the RAD's general statement that it agrees with the RPD and adopts its reasons on points not challenged by the Applicants cannot expose those aspects of the RPD's decision to review by this Court.

Omissions Regarding the Threats to the Principal Applicant

[35] It was reasonable for the RAD to find that the Applicants made material omissions in the Basis of Claim forms. As submitted by the Respondent, the RAD clearly explained why these omissions were material and why the Principal Applicant's submissions regarding these omissions were not credible.

[36] The two threats to the Applicants were allegedly serious enough to cause the Applicants to move from Ibadan to Delta State. Despite this, the Applicants' narrative provides no detail about these threats except that they were against the Principal Applicant's life and his wife.

[37] The RAD reasonably found that the events as described at the hearing were not consistent with the limited information that was in the narrative as there were no threats made against the Associate Applicant. The Principal Applicant was allegedly told that he could run but not hide and that "the boss" wanted to see him. It was reasonable for the RAD to find that this was inconsistent with alleged attempts on the Applicant's life and his wife.

[38] It was also reasonable for the RAD not to accept the explanation for why more detail was not given. The Applicants' narrative sets out a number of incidents, including the initial incident at the university, the threatening letters, the Principal Applicant's kidnapping, the threats to the Associate Applicant in Kaduna, and the encounter with Oladapo Adisa in South Africa. The Applicants provided detailed accounts of each of these incidents, yet no details were provided regarding the threats in Ibadan.

The Applicants' Extended Stay in the United States

[39] The Applicants note that while they came to Canada 11 months after the Principal Applicant's permanent residence application was rejected, his work authorization in the United States did not expire until April 2020. The Applicants submit that there was no threat of removal from the United States until April 2020, and therefore their subjective fear was not invoked.

[40] This is a new explanation. I agree with the Respondent that the Applicants cannot now provide a fresh explanation for their extended stay in the United States that was not before the RPD or the RAD. While this new explanation may be reasonable, the Applicants gave an entirely different explanation in their submission to the RAD.

[41] The RPD and the RAD found the Applicants' explanation for remaining in the United States to be evolving and inconsistent. This new explanation is an example of the Applicants' evolving explanation.

The January 6, 2020, Police Report

[42] I agree with the Applicants that the RAD unreasonably found that the January 6, 2020, police report was fabricated.

[43] As submitted by the Applicants, there is a presumption that foreign documents, including police reports, are authentic, unless the RAD has a valid reason to doubt their authenticity (see *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at paras 19–20). In my view, while the RPD may have had reason to question the validity of the January 6, 2020, police report, the RAD did not.

[44] The RPD raised a number of concerns with the January 6, 2020, police report. The RPD said that it considered the report “for what it does say” but noted its failure to mention the Black Axe Confraternity, Oladapo Adisa, and that the Applicant had been attacked and required medical attention. The RPD found it was reasonable to expect a report that would be transferred to an inspector for investigation would have at least mentioned the alleged perpetrators. The RPD also found that the report was likely fraudulent “considering not only the material omissions, but also, the claimant’s lack knowledge of how his mother obtained the report”, finding that the evidence was the Nigerian police reports could not be obtain *in absentia*.

[45] The RAD agreed with the RPD’s findings regarding the omissions and noted that the report referred to the Associate Applicant as the Principal Applicant’s girlfriend. However, the RAD did not accept that Nigerian police reports could not be obtained *in absentia*. Overall, the

RAD found that “the submission of fabricated evidence undermines the Appellants’ credibility overall.”

[46] I do not accept the Applicants’ submission that the RAD and RPD both erred by relying on what the police report did not say. The Applicants rely on *Belek v Canada (Minister of Citizenship and Immigration)*, 2016 FC 205 [*Belek*], where I found that it was unreasonable for the RAD to assign little weight to a letter that only corroborated part of the applicant’s story. In *Belek*, at paragraph 21 I wrote:

[D]ocuments that corroborate some aspects of an applicant’s story cannot be discounted merely because they do not corroborate other aspects of his story: *Mahmud v Canada (Minister of Citizenship & Immigration)*, 167 FTR 309 at paras 8-12 [*Mahmud*]. Here the RAD assigns little weight to a letter that corroborates some of the applicant’s story simply because it fails to provide details that would further corroborate his story. The RAD fails to explain why it would be reasonable to expect these further details to have been provided, such that a negative inference can be drawn from their absence: See *Taha v Canada (Minister of Citizenship & Immigration)*, 2004 FC 1675 at para 9. Absent such justification, the RAD’s treatment of this document is unreasonable.

[47] In the present case, unlike in *Belek*, the RAD did provide reasons why it expected the police report to contain information regarding the alleged perpetrators and the assault of the Principal Applicant. The RAD’s concerns regarding these omissions were reasonable.

[48] However, the RAD did not accept the RPD’s finding that police reports could not be obtained *in absentia*. Absent this finding, the RAD’s only reasons for finding the police report was fraudulent were one incorrect reference to the Associate Applicant and the report’s failure to name the alleged perpetrators and mention that the Principal Applicant had been assaulted. It

was unreasonable for the RAD to rebut the presumption of authenticity based on these two relatively minor concerns alone. The RAD did not consider other indicia of authenticity, including whether it conformed to the sample Crime Diary Extract, which was available as an attachment to one of the country condition documents.

[49] That being said, this was but one erroneous credibility finding among a large number of credibility concerns. As noted by Justice Bell in *Meniuk v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1374 at paragraph 42, “[o]ne unreasonable finding, presuming one exists, does not render a decision unreasonable. Reasons must be read as a whole.” Given the cumulative weight of the remaining credibility concerns, I find that it remained reasonable for the RAD to find that the Applicants’ claim is not credible. The RAD’s decision cannot be quashed on the basis of its treatment of the January 6, 2020, police report alone.

Conclusion

[50] For these reasons, this application must be dismissed. No question was posed for certification.

JUDGMENT in IMM-2020-21

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2020-21

STYLE OF CAUSE: ABAYOMI OLAYINKA ODEKUNLE, ISIOMA
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v THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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