

Federal Court



Cour fédérale

Date: 20231020

Docket: IMM-9439-21

Citation: 2023 FC 1393

Ottawa, October 20, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

DAVID OLUSANYA MATTHEW

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, the applicant challenged a decision by the Refugee Protection Division (“RPD”), which dismissed his claim for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). The RPD concluded that his claim was manifestly unfounded under section 107.1 of the *IRPA* because it was clearly fraudulent.

[2] The applicant submitted that the officer's decision should be set aside as unreasonable under the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the reasons below, the application is dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Nigeria. In late June 2018, he left Nigeria and travelled to the United States to attend a conference. After receiving information from his family about certain events in Nigeria, he feared returning to his home and remained in the United States. Four months later, due to depleted financial resources and the then "intolerant" policy on immigration and refugees of the United States, the applicant crossed into Canada.

[5] On November 13, 2018, the applicant made a claim for protection under the *IRPA*. The applicant alleged a fear of persecution because he was involved in a land dispute in Nigeria. In March 2020, the applicant amended his claim for protection to add a claim based on his bisexual identity.

A. *The Land Dispute*

[6] The applicant claimed that he inherited a property in Nigeria from his father, which he wanted to develop by building a new house. He claimed that in September 2016, emissaries sent by his Royal Highness, Enogie III, instructed him to stop the development. The applicant alleged that six people stormed the construction site and attempted to stop the workers, beating some and

seizing tools and materials. The applicant attempted to lodge a police complaint but was told that the matter was a civil problem and should be resolved amicably because of the calibre of the person involved. The applicant later learned the Enogie's son was an Assistant Police Commissioner in the Nigerian police force who had a vested interest in the land due to its strategic location. The applicant claimed there were additional threats by telephone and open harassment but he continued with construction.

[7] On November 17, 2017, work was completed on the house on the disputed property. In January 2018, the applicant and his family moved into the new house.

[8] The applicant left Nigeria on June 27, 2018 for a conference in the United States. Three days later, his cousin telephoned to advise that the house had been attacked by unknown assailants and the applicant's son had been shot twice. His wife later called to corroborate the events and advised him that the royal family, particularly the Assistant Police Commissioner, was responsible.

[9] The applicant's immediate family in Nigeria relocated to Port Harcourt, but the assailants located them there and left a threatening message with a neighbour.

[10] After speaking with family members in Nigeria, the applicant believed he was the prime target and would have been killed if he were at home when the assailants arrived. He decided not to return to Nigeria.

B. *Bisexual Identity*

[11] In an Addendum to his claim for *IRPA* protection dated March 4, 2020, the applicant claimed that he was bisexual and had hidden this identity from his wife and everyone around him in Nigeria. He alleged that sometime in 2016, he had been arrested and detained on charges of same sex activities with a man who was then his partner. He was made to confess under duress to the crime and “made to pay a huge bribe” of about C\$1000. He was released shortly after paying the bribe. The police told him and his partner, after receiving the money, that the case was closed.

[12] The applicant’s Addendum also claimed that after the applicant was arrested in connection with the parcel of land he had inherited, a police officer at the police station disclosed his bisexual activities to his superior, the Assistant Commissioner of Police (i.e., the royal family member). The applicant claimed that the Assistant Commissioner used his powers to order his men to arrest the applicant and prosecute him under Nigerian law. Police came to his father-in-law’s house with an invitation letter to arrest him. In addition, the king accused him of desecrating the land with his bisexual activities and placed a bounty on him.

[13] The applicant advised that his life was in grave danger if he returned to Nigeria.

C. *The RPD Decision*

[14] The RPD heard the claim on June 21, 2021. By decision dated November 12, 2021, the RPD rejected the applicant’s claim for protection under *IRPA* section 96 and subsection 97(1).

[15] *Claim based on the Land Dispute:* The RPD concluded that the basis of the claim relating to the land dispute was not credible or trustworthy. It found on a balance of probabilities that there was no land dispute. It made several key findings related to that dispute:

- a) Address of the Disputed Land: The applicant provided materially inconsistent testimony about the address at which his house on the disputed land was located. Specifically, the applicant's testimony about where he was residing before he left Nigeria did not refer to the house on the disputed property where he had lived since January 2018; his testimony about the address of the house changed from 20 Isibor Street to 20 Ekilado Street; and the applicant's explanation for the error was not credible. In addition, an affidavit filed by the applicant from a man who had worked on the house from 2016 to 2018 gave a different address, and the applicant's explanation for this error was not credible. Further, when the hearing turned to a police report filed by the applicant that contained an address for the home, the applicant volunteered that the address was 12 Ekilado Street (not 20 Ekilado Street). Again the RPD found that the applicant's explanation for this change was not credible. None of the other affidavits from family members contained an address for the home or disputed property. Finally, the applicant had not listed the address of the disputed property where required in the Schedule A Form in his Canadian immigration filings. His explanation for the omission was not credible to the RPD.
- b) Fabricated Police Documents: Three documents, which purported to be a letter and two extracts from the Nigeria Police diary, were fabricated. The letterhead of the letter and two reports, as well as a stamp on the letter, referred to the

“Intelligent” Department of the police, rather than the “Intelligence” Department. The RPD compared the documents to others in the National Documentation Package (“NDP”) for Nigeria and found their providence to be materially undermined. The RPD noted that the documents were all sent by the same source, the applicant’s cousin, and that the cousin was also the complainant to the police in one of the diary entries, made the same day as the attack on the applicant’s house and son. However, the cousin did not mention making the police complaint in his affidavit (nor the location or address of the disputed property).

- c) Fabricated Hospital Report and Staged Photographs: A report from a hospital in Nigeria, relating to the injuries sustained by the applicant’s son, was fabricated. The document incorrectly stated that the applicant’s son was 15 years old (when he was in fact 16) and was dated in April 2020, nearly two years after the son was admitted to hospital on July 1, 2018. The RPD found the applicant’s explanation for the delay in obtaining the report was not credible, because the report referred to follow-up visits soon after the 2018 incident when the family could have obtained hospital records. Like the purported police documents, the applicant’s cousin sent him the hospital report. The RPD found that photographs of the son’s injuries were staged.

[16] The RPD concluded that the applicant had not credibly shown that the attacks on the applicant’s house and his son occurred.

[17] Overall, the RPD concluded that there was no land dispute.

[18] *Claim based on Sexual Identity:* The RPD concluded that the claimant had not demonstrated on a balance of probabilities that he was bisexual. The basis of the claim relating to his sexual orientation was not credible or trustworthy. The RPD found that the applicant had not credibly demonstrated that the 2016 arrest and detention occurred, which fundamentally undermined the credibility of his account of his sexual orientation.

[19] The RPD made the following findings related to this claim:

- a) The RPD found a material inconsistency in the applicant's accounts about his 2016 arrest and detention in Nigeria. In the Addendum, he claimed that he and his partner were released shortly after paying a huge bribe and that upon that payment, "the case was closed". However, the applicant testified orally that bribe payments continued, with one payment in March 2018 and another due in June 2018. He also testified that he did not flee Nigeria in 2016 or 2017 because he was keeping the police "at bay" with the payments. The RPD found his explanation of the differences related to the bribes was not credible and was a material contradiction. The RPD further found that the applicant did not credibly explain why he testified that he was arrested only once, but his Addendum claimed he was arrested twice.
- b) The purported police document about his arrest with his partner was fabricated, for the same reasons stated above ("Intelligence" Department). This undermined the applicant's claim that he was targeted in 2016 by the police due to his sexual orientation.

- c) The applicant did not mention his 2016 arrest in his Canadian immigration documents (Schedule A and Schedule 12).
- d) The applicant did not mention his sexual orientation in his original Basis of Claim, without credible explanation. It was not credible that he omitted it, given his alleged arrest and the ongoing bribe payments to keep the police at bay, one of which was due and not paid in June 2018 just before he left Nigeria for the conference in the United States.
- e) Email messages with his spouse in Nigeria carried no weight.
- f) Evidence of a same-sex relationship in Canada from December 2018 to March 2019 carried no weight. It was not mentioned in the Addendum made on March 4, 2020. A letter from the former partner was not attested by way of affidavit nor did the partner testify.
- g) Letters from two Canadian LGBTQ+ organizations did not show a genuine account of his sexual orientation.

[20] *Clearly Fraudulent Claim:* The RPD was of the opinion that the material credibility concerns regarding the bases of the applicant's claim cumulatively demonstrated that the claim was clearly fraudulent. By operation of *IRPA* section 107.1, the RPD concluded that the claim was manifestly unfounded.

[21] The RPD concluded that the character of the two bases of his claim (the land dispute and his sexual identity) were not as alleged. They were based on dishonest representations and

accounts, including the fabricated police documents – two of which related to the land dispute and the other to his sexual orientation. The fabricated documents fundamentally undermined the credibility of both bases of his claim for *IRPA* protection, because the agent of persecution (the Assistant Commissioner of Police and member of the royal family) was common to both claims.

[22] The RPD held that the three fabricated police documents went to the core of the applicant's claims: that the applicant had been "targeted by a royal family, which include[d] a high-ranking police officer, who want[ed] his land, and, that the claimant is a bisexual man who ha[d] been targeted by the same high-ranking police officer". The RPD listed additional dishonest representations, with respect to both the land dispute and his sexual identity.

[23] In this judicial review application, the applicant challenged the RPD's decision.

II. Analysis

[24] The parties agreed that the standard of review is reasonableness, and I agree: *Rejuyan v Canada (Citizenship and Immigration)*, 2023 FC 642, at para 19.

[25] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194;

Canada Post Corp v Canadian Union of Postal Workers, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61; *Mason*, at paras 8, 59-61, 66.

[26] A reviewing court does not consider whether the decision maker's decision was correct, or what the court would do if it were deciding the matter itself: *Mason*, at para 62; *Vavilov*, at para 83; *Canada (Justice) v D.V.*, 2022 FCA 181, at paras 15, 23.

[27] The essence of the applicant's position was that the RPD erred in concluding that his claim was manifestly unfounded, because the negative credibility findings were unsupported, excessive and did not justify that conclusion. He argued that while his testimony concerning the address of the disputed land was inconsistent, the inconsistency did not go to "the heart of the claim, i.e. the conflict over a disputed land coveted for its strategic location". He challenged the RPD's findings that the police documents and hospital record were fabricated, arguing that the issues identified by the RPD were minor and not serious enough to support a finding that the basis of his claims related to the land dispute were "clearly fraudulent" under *IRPA* section 107.1. The applicant argued that there were no dishonest representations, which is the gravamen of fraud. He submitted that there was additional evidence related to his claim based on sexual orientation that the RPD did not consider.

[28] I am unable to agree. In my view, the RPD's decision displayed the required intelligibility, transparency and justification required of a reasonable decision under the *Vavilov* standard.

[29] The applicant did not allege that the RPD made a legal error in its decision under section 107.1. The RPD referred to the requirements set out by the Court in *Warsame v Canada*

(*Citizenship and Immigration*), 2016 FC 596 and the applicant did not challenge the legal standard it applied.

[30] I agree with the applicant that a mere finding of negative credibility is not enough to give rise to a claim being manifestly unfounded. It is the claim itself that must be fraudulent: *Vargas Hernandez v Canada (Citizenship and Immigration)*, 2021 FC 1291, at para 16; *Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755, at paras 33, 44; *Warsame*, at para 27.

[31] However, I do not agree that the RPD made a reviewable error in its application of the legal standard to the facts and evidence in this case.

[32] The applicant submitted that the inconsistencies in the evidence related to the address of the house on the disputed land did not go to the character of his claim, which was a conflict related to that disputed land over its strategic location. However, the discrepancies about the house address and the applicant's non-credible explanations for them were not isolated, as the applicant's argument assumed. The RPD's analysis did not only address the inconsistencies in the applicant's evidence and come to a negative credibility finding. Instead, the RPD's analysis linked the inconsistencies in the testimony and in the written claims to the three fabricated police documents and the fabricated hospital record, which the RPD also related to the land dispute because of the assailants' attack on the house and the applicant's son that was reported to police and resulted in the son's hospital visit. As the RPD noted, the land, the attack and the police were also connected through the Assistant Commissioner of Police who was the royal family member and who had the "vested interest" in the disputed land and purportedly used his position to target

the applicant. I note that the applicant did not argue that the RPD's reasons did not accurately recount his testimony at the hearing.

[33] The applicant sought to challenge the RPD's conclusion on the fabricated police documents, arguing that the differences with the NDP samples were minor and characterizing the documents as containing a single alleged error in the letterhead, an isolated mistake, or a typo. The applicant also argued that the contents of the police documents contained no trace of fraud or internal inconsistency, leading to his submission that the documents did not support a finding that they were clearly fraudulent.

[34] To some extent, the applicant's submissions sought to re-argue the merits of whether the police documents were fabricated, something outside of the Court's purview on judicial review. In any event, the RPD's conclusion on the police document was clearly open to it on the record; the applicant did not materially challenge the RPD's reasoning concerning the NDP comparison documents. It was open to the RPD to find that the error in the letterhead of all three documents, and the stamp on the letter, was sufficient to lead to a conclusion of fabrication. In the context of the other concerns explained by the RPD in relation to the applicant's testimony and non-credible explanations for discrepancies in his testimony and documents, it was equally open to the RPD to conclude that the filing of the false documents was a dishonest representation made by the applicant to support his claim before the RPD.

[35] I accept that the RPD could have concluded that the error in the hospital record about the applicant's son's age was an inadvertent error or typo. However, that was not the RPD's only

concern about the hospital document. It also queried why the document was requested and prepared in 2020, nearly two years after the son was admitted to the hospital in mid-2018. The RPD did not accept the applicant's explanation for the delay. It further considered that the source of this document (the applicant's cousin) was the same as the source of the false police records. In this context, the RPD's finding that the document was fabricated was reasonably open to it on the record. The Court cannot revisit whether the RPD should have accepted the applicant's explanation for the delay in obtaining the hospital record, as the applicant's submissions invited it to do.

[36] Turning to the applicant's submissions concerning the RPD's assessment of the second basis of the claim for protection, the RPD did not accept the applicant's explanation that he thought that the "same sex issue was closed" and therefore did not raise it until he filed the Addendum. The RPD did not overlook the applicant's testimony that he thought the ongoing bribe payments were keeping the police at bay; contrary to the applicant's submission, the RPD expressly considered that evidence.

[37] The applicant challenged the RPD's failure to give weight to emails from his cousin and his wife, and from two LGBTQ+ groups in Canada. I see no basis to intervene. In particular, the weight of any evidence from the cousin was intimately bound up with that individual providing fabricated evidence to the applicant that was then filed with the RPD.

[38] Lastly, the applicant argues that the evidence as a whole did not warrant a finding that his claim was clearly fraudulent, which would support a conclusion that his claim was manifestly unfounded under *IRPA* section 107.1.

[39] In addition to its findings noted already, the RPD found that the applicant made dishonest misrepresentations, stating at paragraph 99 of its reasons:

The use of and reliance upon fabricated documents also reflects dishonest representations on the part of the claimant. The claimant represented the four documents and the photographs as being genuine information, to influence a positive decision on one or both bases of the claim.

[40] The RPD held that the fabricated documents and staged photographs undermined the credibility of the applicant's claim for *IRPA* protection. The RPD also reasonably found that the police documents had been presented as going to the core of the applicant's claim for protection – as noted above, that the claimant has been targeted by a royal family, which included a high-ranking police officer, who wanted his land, and that the claimant is a bisexual man who has been targeted by the same high-ranking police officer. The RPD found the hospital report and photographs were core to the claim relating to the land dispute, as they were presented to show that the applicant and his family had been targeted for not ceding the land to the royal family. They also affected the core of the applicant's sexual orientation claim because the same agent of persecution was involved.

[41] These factors, together with a series of "other dishonest misrepresentations" listed by the RPD, led the RPD to find the applicant's claim was clearly fraudulent and therefore manifestly unfounded under section 107.1 of the *IRPA*.

[42] I have already concluded that none of the constituent elements underlying the RPD's negative credibility conclusions was unreasonable. The applicant did not challenge the RPD's characterization of why he submitted the police documents, hospital report and photographs to support his claim, nor (as noted above) did he allege that the RPD's reasons inaccurately recounted his testimony.

[43] Overall, I find no grounds to interfere with the RPD's conclusion that the applicant's claim was clearly fraudulent. It based its conclusion on its factually-suffused findings concerning whether the land dispute actually occurred, the inconsistencies and discrepancies in the applicant's testimony and written accounts of his claims, the fabricated police documents, the fabricated hospital record, and whether the applicant was in fact arrested, detained and charged with his partner in 2016. It was reasonable on the record to link the two bases for the applicant's claim through the Assistant Commissioner of Police and the royal family's interest in the disputed land. The applicant filed the fabricated documents, which the RPD found were dishonest misrepresentations (among others).

[44] The RPD's conclusion under section 107.1 was intelligible, grounded in the record and its reasonable factual findings, and respected the legal and evidentiary constraints bearing on it. Applying *Vavilov* principles, there is no basis for the Court to interfere with the RPD's decision.

III. Conclusion

[45] The applicant has not shown that the RPD made a reviewable error in its decision. The application is therefore dismissed.

[46] Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-9439-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9439-21

STYLE OF CAUSE: DAVID OLUSANYA MATTHEW v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 28, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: OCTOBER 20, 2023

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