

Federal Court



Cour fédérale

Date: 20160504

Docket: IMM-4368-15

Citation: 2016 FC 504

Ottawa, Ontario, May 4, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

YUSUF OLAWALE MOSHOOD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (“RPD”), dated August 13, 2015, finding that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to s 96 or s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) and that the Applicant’s claim had no credible basis within the meaning of s 107(2) of the IRPA.

Background

[2] The Applicant is a 21 year old Nigerian citizen. He claims that his father was assassinated as was his cousin who had been designated to assist in the management of his father's transportation business. Two weeks later, the Applicant was attacked by two unknown assailants and was stabbed in the hand. The Applicant claims that his uncles have sold some of his father's properties and kept the sale proceeds and that they are also attempting to access funds held in his father's bank account. One of these uncles hired an agent to assist the Applicant in applying to Canadian schools and for a Canadian student visa, which was granted. He arrived in Canada in May 2014 and soon discovered that only the school application deposit had been paid. While waiting for his uncle to pay his tuition, the Applicant resided in Calgary for seven months. The agent then told him that he had been accepted at several other colleges and, in January 2015, he moved to Lethbridge to begin a program there. However, his uncle again failed to pay his fees.

[3] The Applicant applied for refugee status on June 3, 2015. He claimed that he could not return to Nigeria as his father's family was seeking to harm him to gain access to the funds remaining in his father's bank account. He also claimed that, in addition to his father and cousin, there had been an assassination attempt against his older brother. Although he does not know who is acting against his family, he claimed that they are still looking for him to prevent him from avenging his father's death or to prevent him from taking possession of his father's wealth.

Decision Under Review

[4] In denying the Applicant's claim the RPD found that credibility was the determinative issue and that his claim had no credible basis.

[5] The RPD noted that the Applicant had unreasonably delayed in making his claim for over a year after entering Canada. It did not accept the Applicant's explanation that he did not know how to make a claim or how to consult a lawyer or do any research. Nor did the Applicant provide a credible explanation as to why his uncle would continue to pay an agent to make applications to colleges and then fail to pay the tuition. The RPD noted that the Applicant claimed that his paternal family members who had seized his father's property were trying to harm him but found that the Applicant had failed to provide a reasonable explanation for his claim that the same uncle who assisted him in coming to Canada wanted to harm or kill him if he were returned to Nigeria. Further, the Applicant's student visa application contained discrepancies, including his father's name and date of death. While the Applicant claimed that the agent had completed the application, the RPD noted that it also contained accurate information which must have come from the Applicant. The RPD concluded that the inconsistent information indicated a lack of credibility and that it was unable to ascertain what was credible and what was not. Finally, the RPD found that the Applicant provided little reasonable and credible evidence to indicate that he is at risk of harm from the same people who killed his father, based on a belief that he will avenge his father's death. The Applicant formed his belief based on his father and cousin's deaths and the fact that he was stabbed in an attack but

did not know if those events were linked and, although his mother's affidavit referred to people enquiring about the Applicant, it was not clear who was seeking the Applicant or why.

[6] The RPD also assessed the documents submitted by the Applicant in support of his claim. It found that while the Applicant submitted a newspaper article referring to Rabiou Moshood's death, because of the discrepancies in the visa application regarding his father's name and date of death, and the lack of a birth certificate, it was unable to ascertain whether Rabiou Moshood was in fact the Applicant's father. While the affidavit from the Applicant's mother attested to the relationship, the RPD placed no weight on it due to the credibility problems with the Applicant's claim and similarly dealt with a death certificate, noting the prevalence of document fraud in Nigeria.

[7] The RPD concluded that the delay in applying for protection was unreasonable, the Applicant's reasons for fleeing were not objectively supported and his fears were not well substantiated in light of his evidence as to who had helped him leave the country and why. Therefore, his claim failed and, further, it had no credible basis.

Issues and Standard of Review

[8] The sole issue in this matter is whether the RPD's decision was reasonable.

[9] As this Court has previously determined, credibility findings of the RPD, sometimes described as the "the heartland of the Board's jurisdiction", are essentially pure findings of fact that are entitled to deference and are reviewable on a reasonableness standard (*Dunsmuir v New*

Brunswick, 2008 SCC 9 at para 62 [*Dunsmuir*]; *Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at para 5 [*Pournaminivas*]; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at para 26 [*Zhou*]). The determination of whether a claim has no credible basis is a question of mixed fact and law which has also been found to attract the reasonableness standard (*Hernandez v Canada (Citizenship and Immigration)*, 2016 FC 144 at para 3 [*Hernandez*]). Reasonableness is concerned with the existence of justification, transparency and intelligibility, and whether the decision falls within a range of possible, acceptable outcomes (*Dunsmuir* at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

Analysis

Credibility

[10] The Applicant submits, in essence, that the RPD engaged in a process of substituting its own speculative views as to what was plausible over and above the Applicant's uncontradicted evidence. Further, that its decision was not based on the totality of the evidence but on its own speculation and unwarranted inferences. As noted above, credibility findings are at the core of the RPD's jurisdiction and are entitled to significant deference (*Pournaminivas* at para 5; *Zhou* at para 26). For the reasons that follow, I find the RPD's conclusion that the Applicant was not credible to be reasonable based on the record before it.

[11] The Applicant claimed in his Basis of Claim Form that he feared his father's business partners, some of his uncles and his step mother. At the hearing before the RPD the Applicant

was asked why his father had been killed. He testified that his father had been the chairman of the Nigerian Association of Road Transport Owners (“NARTO”) at a trailer park and that the people who killed his father had been hired by those who work to get out of the trailer park. When asked why the people who had killed his father because he was the leader of the transport union workers would also want to kill the Applicant, he testified that this was because those people thought that he might seek revenge for his father’s death. No explanation was given as to why those people might think this. The RPD noted that when asked if he had ever made such statements or given an indication that he would avenge his father’s death, the Applicant indicated that he had not. Further, that the Applicant could not explain why those people would be motivated to seek him out if he returned to Nigeria and settled in another city. In my view, based on this, the RPD reasonably concluded that the threats asserted by the Applicant by unknown persons, assumed to be connected to the death of this father, lacked credibility.

[12] The Applicant also asserted that he was at risk from his uncles because they want to take control of his late father’s assets. However, one of the same uncles that he claimed wished to harm him also paid an agent to make applications to Canadian schools and apply for a Canadian student visa. And, according to the Applicant, his uncle continued to pay the agent to seek admissions to other schools after refusing to pay the tuition in the first, and then again refused to pay tuition when he was subsequently accepted at another school. In my view, in the absence of an explanation as to why his uncle would spend money to assist the Applicant but would harm him if he were to return to Nigeria, the RPD reasonably found that the Applicant’s fear of harm by his uncle was not explained and was contradicted by the assistance afforded to him by his uncle.

[13] Further, other than the Applicant's testimony, the record contained no support for his claim that he was at risk from his family members. His mother's affidavit states that her husband was killed by unknown persons. After this, his cousin was assassinated, the Applicant was stabbed in the hand and his brother's car was attacked. She further states that strange people had been coming to ask after the Applicant since he left Nigeria, claiming to know him. The affidavit makes no mention of a threat to the Applicant from his own family nor does it suggest any motivation for the assassinations or alleged attacks on her sons.

[14] As noted by the RPD, the Applicant testified that he suspected the people who shot at his brother's car were either related to his uncle or were the same people who killed his father, but that he did not know who was responsible for the attack. He also testified that after his cousin's assassination he suspected his uncle and speculated that perhaps his uncle had just wanted to take possession of everything. In my view, given the vague and unsupported evidence as to the agent of persecution, the RPD reasonably concluded that the Applicant's claims as to the threats of harm he would face if returned to Nigeria lacked credibility.

[15] With respect to the issue of delay in making his claim for refugee protection, the RPD did not accept the Applicant's explanation for the thirteen month delay in claiming refugee status, being that he did not know how to claim and did not consult a lawyer or conduct any research, despite the fact that people had recommended he claim refugee status. The RPD also found his testimony as to why he would continue to try to obtain admission to other schools when his uncle would not pay his tuition to be confusing and nonsensical. The Applicant submits that the RPD's conclusion was implausible, based on speculation and unwarranted inferences. Further,

he possessed a valid student visa and therefore did not need to make an immediate claim for refugee protection.

[16] In my view, it was not unreasonable in these circumstances for the RPD to reject the Applicant's explanation and to make adverse credibility findings based on the Applicant's delay in claiming refugee status (*Kostrzewa v Canada (Citizenship and Immigration)*, 2012 FC 1449 at para 27; *Gutierrez v Canada (Citizenship and Immigration)*, 2015 FC 266 at paras 44-46; *Licao v Canada (Citizenship and Immigration)*, 2014 FC 89 at paras 53-60). A review of the transcript of the hearing confirms that the RPD raised this issue a number of times and that the Applicant's answers provided little clarity. There was also no evidence before the RPD that he considered it to be unnecessary to make a claim because of his valid student visa. Delay is a relevant consideration when assessing a claim for refugee status on the basis that a person who is truly fearful would claim protection at the first opportunity, although it may not be sufficient to dispose of the claim in all cases (*Bhandal v Canada (Citizenship and Immigration)*, 2006 FC 426 at para 29; *Garcia v Canada (Citizenship and Immigration)*, 2012 FC 412 at paras 19-20). In this case, the RPD's findings regarding delay were not determinative, they were just one of the reasons it provided for impugning the Applicant's credibility. These are noted above and also include the RPD's finding that there were discrepancies in the application for a study permit which precluded it from ascertaining what was credible and what was not. Further, just because an applicant gives an explanation does not mean that the explanation must be accepted by the RPD, it is open to it to consider the response or explanation and determine if it is sufficient (*Sinan v Canada (Minister of Citizenship and Immigration)* 2004 FC 87 at para 10), which is what it did in this case.

[17] The RPD also assessed the supporting documentation provided by the Applicant. This was limited and included his mother's affidavit and two other affidavits apparently provided for purposes of obtaining copies of the death certificates of the Applicant's father and cousin. The death certificates do not mention the cause of death and the news reports do not mention the death of the Applicant's father, but speak generally to assassinations in Nigeria and the crisis between factions of the NARTO.

[18] The RPD noted the lack of a birth certificate to confirm that Rabiou Moshood was the Applicant's father, who died on April 13, 2013, as claimed by the Applicant. Further, that the information in the death certificate and given by the Applicant in his testimony was inconsistent with his visa application, which identifies his father as Ola Moshood who died on May 19, 2008. The RPD concluded that it was unable to ascertain whether Rabiou Moshood was in fact the Applicant's father. And, given its numerous credibility concerns and because the objective evidence indicates that document fraud is prevalent in Nigeria, it placed no weight on the provided death certificate. It concluded that the documents submitted to corroborate the Applicant's claim, including his mother's affidavit, did not outweigh the credibility problems it had identified.

[19] The Applicant asserts that the RPD misunderstood the evidence as his own sworn affidavit stated that Rabiou Moshood was his father and that this is uncontradicted, further that the RPD failed to consider the totality of the evidence.

[20] I am not convinced that the RPD misunderstood the evidence or failed to consider it. It is true that when an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there are reasons to doubt their truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) at para 5). In this case the RPD found the Applicant not to be credible and gave reasons for this finding. Once the RPD came to the conclusion that the Applicant was not credible, it was not sufficient for him to file an affidavit and affirm the truth of its content, some form of corroboration or independent proof was required to offset the RPD's negative conclusion on credibility (*Hamid v Canada (Minister of Employment and Immigration)* [1995] FCJ No 1293 at para 20). The RPD referred to the documents submitted by the Applicant in support of his claim and specifically referenced his mother's affidavit, the death certificates, a captioned photograph referring to the death of Rabiou Moshood and news articles. There is also a presumption that the RPD considered all of the evidence that was before it (*Hassan v Canada (Employment and Immigration)*, [1992] FCJ No 946 (FCA) at para 3) and a failure to mention a particular piece of evidence does not mean that it was ignored or that the RPD committed a reviewable error, unless it contradicts the RPD's finding (*Li v Canada (Citizenship and Immigration)*, 2008 FC 266 at para 19 [*Li*]). While the Applicant asserts that, given his other evidence, there was no need to produce a birth certificate to establish his paternity, I would note that where a claimant's story is found to lack credibility, the absence of documentary corroboration is a valid consideration (*Matsko v Canada (Citizenship and Immigration)*, 2008 FC 691 at para 14).

[21] As to the RPD's reference to the availability of fraudulent documents in Nigeria, in my view, a more thorough assessment was required if the RPD sought to impugn the validity of

purportedly government-issued documents. Such documents are presumed to be valid (see *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at para 10). However, while the death certificates and the photographs may confirm that Rabiou Moshood died in 2013, they do not speak to the cause of his death or to the Applicant's paternity. The newspaper articles are of little assistance as they report unrelated assassinations in Nigeria and ongoing conflict within the NARTO organization. Therefore, it was reasonable for the RPD to assign little weight to these documents as they do little to support the basis of the Applicant's claim.

[22] As to the Applicant's mother's affidavit, as noted above, this states that Rabiou Moshood was the Applicant's father and that he was assassinated on April 13, 2013. One of the uncle's affidavits also states that Rabiou Moshood was assassinated on April 13, 2013. However, despite the RPD's reference to the availability of fraudulent documents, in my view, the RPD did not impugn the validity of the Applicant's mother's affidavit, rather it found that the contents of the affidavit did not serve to sufficiently corroborate his claim and, together with the other documentary evidence, it did not outweigh the RPD's credibility concerns.

[23] This is a reasonable conclusion. As the Court stated in *Li* at paragraph 19, "A general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from the applicant's testimony". The affidavits from the Applicant's mother and uncle reiterate the same claims the RPD found not credible in the Applicant's evidence. They provide no other details about the alleged assassins. His mother's affidavit states that her husband was killed by unknown assassins. She does not make any link between his death and alleged attacks on the Applicant or his brother. Nor does she indicate why her husband was

assassinated or why there were alleged attacks on her sons. These were all concerns with the Applicant's claim and testimony as raised by the RPD. The only additional evidence relating directly to the Applicant is his mother's statement that "strange people have been coming to ask after [him] since he left Nigeria..." which provides little support for his claim. In my view, it was open to the RPD to give no weight to this affidavit evidence in the face of its negative credibility findings regarding the Applicant's claim.

[24] In conclusion, I am satisfied that the RPD reasonably assessed and considered the totality of the evidence before it and that its decision falls within the range of possible, acceptable outcomes.

No credible basis

[25] The RPD also found that there was no credible basis for the Applicant's claim. The Federal Court of Appeal in *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 19 [*Rahaman*] found that when the only evidence linking an applicant to the harm that he alleges is found in their own testimony and the claimant has been found to be not credible, the RPD may, after examining the documentary evidence, make a general finding that there is no credible basis for the claim. This is only the case where there is no independent and credible documentary evidence that is capable of supporting a positive determination of the refugee claim (also see *Ouedraogo v Canada (Minister of Citizenship and Immigration)*, 2005 FC 21 at para 19; *Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at paras 18-19; *Rahaman* at para 51).

[26] In this case, even if it were accepted that Rabiou Moshood was the Applicant's father and that he was assassinated, the only evidence that could potentially corroborate the Applicant's claim were the affidavits from his mother and his uncle. As I have already found, given the RPD's credibility findings and the lack of specificity in the affidavits, it was not unreasonable for the RPD to accord them little weight and to find that they were insufficient alone to support a positive determination of the Applicant's claim (see *Hernandez* at para 11). There is also no supporting evidence of the Applicant's claim that family members seek to harm him in Nigeria. Accordingly, and while noting the high threshold for a no credible basis finding and its serious implications (*Hernandez* at para 10; *Rahaman* at paras 51-52), in my view the finding was open to the RPD based on its credibility findings and the record.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There shall be no order as to costs.
3. No question of general importance for certification was proposed or arises.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4368-15

STYLE OF CAUSE: YUSUF OLAWALE MOSHOOD v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 27, 2016

JUDGMENT AND REASONS: STRICKLAND J.

DATED: MAY 4, 2016

APPEARANCES:

Simeon A. Oyelade

FOR THE APPLICANT

Ladan Shahrooz

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Simeon A. Oyelade
Barrister and Solicitor
North York, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT