

Federal Court



Cour fédérale

Date: 20170721

Docket: IMM-361-17

Citation: 2017 FC 709

Toronto, Ontario, July 21, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

AFEEZ AKOREDE ALIMI

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Afeez Akorede Alimi [the Applicant] seeks judicial review of a decision made by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, which dismissed the Applicant's appeal of a decision of the Refugee Protection Division [RPD]. The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection under ss. 96-97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application is dismissed. There were numerous substantial negative credibility findings made by the RPD which the RAD independently reviewed and concurred with. The Applicant essentially seeks to have the Court re-weigh the evidence, but that is not the role of the Court.

II. **Background**

[3] The Applicant's claim is on the basis of being a bisexual who would face persecution in Nigeria. He alleges that as a child he was abused at a summer camp. As a teenager, he became friends with another teenager, Charles Afolabi, who had also been subject to abuse. They became close friends and began a sexual relationship on March 29, 2014. At that time the Applicant was 17 years old.

[4] In August 2015, the Applicant told the pastor at his church about having a same-sex attraction. The pastor went to the Applicant's house and told his parents. The Applicant admitted the abuse and the same-sex attraction. He did not admit to being in a same-sex relationship. The pastor subsequently told his regional supervisor, after which the entire congregation knew the Applicant had homosexual feelings.

[5] With the help of his parents, the Applicant applied for a student visa to Canada in October 2015 and obtained it in December 2015, for an academic program commencing in May 2016. The Applicant was originally waiting to depart Nigeria in May, but on April 9, 2016, the regional supervisor for the church told the Applicant's mother that he had heard a report and wished to meet with the Applicant. The Applicant's parents bought him a ticket to Canada leaving April 11, 2016, and deferred his program to September. The Applicant made an inland refugee claim in May 2016.

III. The RPD Decision

[6] The RPD found that there were a number of inconsistencies and omissions in the Applicant's evidence that rebutted the presumption of truthfulness. With the presumption rebutted, the RPD found insufficient documentary evidence to support the Applicant's refugee claim.

[7] The RPD found the following unresolved discrepancies and inconsistencies in the evidence: the allegation that his parents wanted to "push him out" of Nigeria because of the shame of his sexuality was inconsistent with the fact that after his student visa was issued, his parents let him stay with them for another four months. The Applicant's claim that his parents refused to speak with him after he came to Canada was inconsistent with the fact that they provided letters of support for his claim.

[8] In addition, the Applicant failed to mention in his Basis of Claim form [BOC] that his parents were bribing the local pastor not to disclose his sexuality. His explanation that he found out about the bribes after arriving in Canada was inconsistent with his later story that once his mother stopped paying bribes to the pastor he had to leave early to come to Canada.

[9] The RPD also found that documentary evidence submitted by the Applicant to support his claim was fraudulent. For example, his father, brother and alleged same-sex partner all provided letters and driver's licences. All the licences were issued by the same office, on the same day; all three men were recorded as being the same height, although they were not, and his father's birthday was recorded as being in 1964 rather than 1960. The address on the licences differed from those on the BOC. The Applicant's explanation that the family moved after he came to Canada was not accepted: the licences were issued in 2015, before he came to Canada in

2016. The RPD concluded that although the Applicant was not the person who originally procured the documents, he wilfully submitted multiple fraudulent documents, thereby losing the presumption of credibility for them.

[10] The Applicant testified that support letters were prepared by each of his father, brother and same-sex partner and then were printed out by his brother. The RPD noted that the letters all had very similar wording, and found that each letter was drafted by the same person. In combination with the submission of the fraudulent identity documents, the RPD decided to assign no weight to these family letters.

[11] The Applicant also submitted letters of support from various local LGBT organizations confirming his attendance at various meetings and events. While the RPD found the letters attested to his membership, it noted that none of the authors had any first-hand knowledge of his sexuality. The RPD found the Applicant's motivation for joining the groups had been undercut by his overall lack of credibility. Similarly, photographs he produced were found by the RPD to simply demonstrate two males posing for photos together and no weight was placed upon them.

IV. The Appeal to the RAD

[12] On appeal to the RAD, the Applicant submitted that the RPD failed to recognize the presumption of truthfulness when analysing the Applicant's credibility.

[13] With respect to the driver's licenses, the Applicant argued that as there are no deficits on the face of the documents, the findings by the RPD that they were fraudulent were based on the Applicant's testimony. Since he did not obtain the documents he could not testify to how they were acquired.

[14] With respect to his departure from Nigeria, the Applicant argued that if he had left early it could have raised issues with Canadian officials and in any event, until his sexuality was leaked to the congregation there was no urgency, as he believed the pastor would maintain confidentiality. The Applicant said that his parents were disappointed with him but did not want to see him destitute and did not want him to be forced to return to Nigeria where he would shame them, so they wanted his refugee claim to succeed.

[15] Regarding the bribes, the Applicant submitted to the RAD that the RPD failed to consider the possibility that his parents started bribing the pastor, stopped (which led to the regional overseer discovering his sexuality), started bribing again, and then stopped again (which caused the entire community to find out about his sexuality). Even if this explanation is not accepted, he argued that an inconsistency with respect to one element of a claim does not mean that the individual is not LGBT.

[16] The Applicant submitted that the documents from the LGBT organizations were prepared by impartial organizations, and were inappropriately discounted because the RPD made a global credibility finding and then discounted the supporting documents rather than using supporting documents to corroborate the Applicant's claim.

[17] While a psychological report had been placed before the RPD it did not mention the report at all in the decision. Before the RAD, the Applicant urged the RAD to find that the report provided corroborative evidence as to his credibility.

V. **The RAD Decision**

[18] Relying on *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, the RAD properly identified the standard of review of the RPD as being correctness except on areas where the RPD was better positioned to make credibility findings. The RAD therefore would carry out its own analysis to determine whether the RPD erred.

[19] The RAD briefly recapped the decision of the RPD then proceeded to give its own findings on each issue.

[20] With respect to the Applicant's delay in departing Nigeria, the RAD agreed with the RPD. The RAD found that the information about the Applicant's sexuality was already known outside the family, and if the parents were concerned about further leaks, it would be reasonable to expect they would have wanted the Applicant to leave Nigeria earlier than he did. The RAD did not believe an earlier departure would have created issues with Canadian visa officials, since students often arrive before the start of their program.

[21] With respect to the treatment of the Applicant by his parents, the RAD found that their refusal to take calls from the Applicant was inconsistent with their assisting him to depart Nigeria. The RAD agreed with the RPD finding that it was not consistent for the parents to have helped the Applicant get his documents to leave Nigeria, pay for his ticket to Canada, make arrangements for him to defer his schooling, arrange for one of their friends to host him in Canada and to provide documents supporting his claim, yet not be willing to even take his calls.

[22] The RAD found that the Applicant's omission from his BOC of the bribes paid by his parents was significant, as it was the reason he had to leave Nigeria when he did. It was also the

reason that the congregation knew about his sexual orientation. The RAD found it would have been reasonable for the Applicant to include that information in his BOC. It agreed with the RPD with respect to the treatment of the bribes.

[23] The RAD reviewed the findings made by the RPD with respect to the supporting documents provided by the family and the driver's licenses. It noted the Applicant's arguments that the documents were valid on their face and there was a presumption of validity as result. The RAD found there were irregularities such as the father's year of birth, the recorded height of the individuals and the addresses not matching those provided in the BOC. It concurred with the finding by the RPD that the documents were fraudulent and undermined the Applicant's credibility. When examining the supporting letters from the family members and partner, the RAD agreed with the RPD that they were probably all written by the Applicant's brother. As they were accompanied by the fraudulent identification documents, the RAD gave those letters no weight.

[24] The RAD addressed the supporting letters from the LGBT organizations. Relying on *El Bouni v Canada (Citizenship and Immigration)*, 2015 FC 700, it found that none of the authors of the letters could confirm a material fact in the Applicant's claim for refugee protection and the letters did not meet the criteria of being highly probative evidence.

[25] Although the RPD failed to address the report of the psychotherapist, the RAD noted that the RPD was presumed to have considered all of the evidence before it and was not required to refer to each document in the record. Nonetheless, the RPD had made a finding that the Applicant was not a credible witness because of the number of anomalies in his story and in his documents. The RAD noted that the report might have explained the reason for the Applicant's

evidentiary problems. It agreed with the Applicant that in this instance the RPD should have considered the Applicant's psychological condition as described in the report.

[26] In reviewing the psychotherapist's report, the RAD acknowledged that the report found that the Applicant exhibited symptoms of post-traumatic stress disorder, generalized anxiety disorder and major depressive disorder. The RAD found it was unclear concerning what to expect from the Applicant in his testimony. The RAD listened to the recording of the hearing and noted that the Applicant could recall a considerable amount of information from his past including some that was not previously presented. The RAD found that the report simply stated in general terms that he had a potential incapacity but it did not account for the omissions in his BOC or his presentation of fraudulent documents and his unreasonable explanations. The RAD concluded that the psychotherapist's report did not affect the credibility conclusions.

[27] The RAD concluded that, based on its own assessment of the record, the RPD did not err in its credibility assessment or in its assessment of the documentary evidence. On the same evidence, the RAD came to the same conclusion as the RPD. The RAD specifically found that it did not accept, on a balance of probabilities, that the material events described by the Applicant in his BOC and at his hearing with the RPD had occurred as he described.

[28] The RAD concluded that the Applicant had not established that he is bisexual. It found that he had not established that it was revealed to anyone in Nigeria that he is bisexual or that he was harmed or threatened with harm by individuals in Nigeria because of his sexual orientation.

VI. **Issue and Standard of review**

[29] The sole issue is whether the decision by the RAD should be set aside. The parties agree that the appropriate standard of review by this Court of the decision of the RAD is reasonableness.

[30] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

[31] In conducting this reasonableness review, in which credibility findings are challenged, I am mindful that "...[the RPD] is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence": *Siad v Canada (Secretary of State)*, [1997] 1 FCR 608 at para 24 (CA). The same logic applies to findings made by the RAD.

VII. **Submissions**

[32] The Applicant claims that the RAD relied exclusively on the RPD findings without making an independent analysis. In terms of why the RAD decision should be set aside, the Applicant makes essentially the same submissions to the Court as he made to the RAD about the RPD decision. He also claims that the RAD decision was based on facts not in evidence and conjecture by it.

[33] With respect to the delay in departing Nigeria, the Applicant's argument is that the RAD agreed with the RPD rather than accepting the Applicant's explanation. One specific objection made by the Applicant is that if he had come to Canada five months before the start of his student program, as the RAD suggested was possible, it would be very unusual and would have raised suspicion with visa officials. The Applicant alleges that such an observation by the RAD was conjecture and not a reasonable inference.

[34] As the evidence is to be assessed by the RAD on the balance of probabilities, the Applicant urged the Court to find that not all negative credibility findings should receive the same weight. In terms of the support letters from the family and his partner, the Applicant argues that unless the inconsistency goes to the root of the claim, the discrepancies were not important. He argues that the RAD made a global credibility finding and did not even consider the Applicant's sexual orientation. The RAD should have considered the preponderance of evidence with respect to his sexuality.

[35] The Respondent argues that the Applicant is simply taking issue with the manner in which the RAD assessed and weighed the evidence. The Applicant offers alternative interpretations and inferences that could have been drawn from the evidence, but the inferences drawn by the RAD are not unreasonable. For example, given the Applicant's lack of credibility, it was reasonable for the RAD to consider that as the letters of support from LGBT organizations contained no first-hand knowledge and could not confirm any material facts, they did not corroborate the Applicant's risk of persecution.

[36] The Respondent also relied on *Anel v Canada (Citizenship and Immigration)*, 2016 FC 759 at paragraphs 24-26 to argue that just because the RAD agrees with the RPD, that does not mean it did not conduct its own independent assessment of the record.

VIII. Analysis

[37] While the Applicant urges the Court to find that the RAD relied exclusively on the RPD decision and did not perform an independent assessment, especially with respect to credibility, I am satisfied that the RAD made independent findings on each issue including addressing the psychotherapist's report.

[38] The Applicant's arguments take issue with the weight given by the RAD and, before it, by the RPD, to the evidence presented by the Applicant and to his testimony. The analysis by the RAD points to various inconsistencies between the Applicant's testimony and the documentary evidence, such as the BOC and the identity documents. For example, given the numerous issues (birthdate, heights, addresses, date of issue) with the identity documents, the conclusion drawn by the RAD that the Applicant submitted fraudulent documents and the resulting findings that were made are imminently reasonable.

[39] The RAD may have stretched a point by indicating that the Applicant could have left for Canada five months before the start date of his course. However, the RAD knew that the course started in May and the Applicant only left in April. The RAD discussed the fact that the pastor knew of the Applicant's sexual orientation as early as August 2015, and given the Applicant's statement that the threat of it leaking out caused him to leave Nigeria, it was reasonable for the RAD to expect him to leave as soon as he obtained the student visa, or at the very least to find it suspicious that he did not leave Nigeria earlier than he did. The conclusion that his later

departure was inconsistent with his stated shunning by his family and is contrary to a belief that he faced a risk of persecution is, in context, similarly reasonable.

[40] The Applicant's allegation that the RAD did not perform an independent assessment of the record has no merit. The RAD generally agreed with the findings of the RPD but did so after reviewing and discussing the evidence. The evidence clearly led to the RAD's conclusions. The RAD noted that the RPD did not address the psychotherapist's report and found that the RPD was in error, as the report might have explained some of the inconsistencies in the Applicant's evidence. The RAD then went on to find, for a variety of reasons, that the report did not serve to corroborate the Applicant's story. In this respect, the analysis conducted by the RAD and the conclusion it drew were both reasonable. It also indicates that the RAD did not act as a mere rubber stamp but conducted an independent review of the RPD's decision. Where the RAD came to the same conclusion as the RPD, it was the result of agreement, not improper deference.

[41] There were a number of significant inconsistencies and anomalies in the testimony given by the Applicant in support of his claim and in the documents he submitted. The failure to mention in his BOC the fact that his family was bribing the pastor to keep his sexual orientation quiet was a significant omission. When his parents stopped paying the bribe it gave rise to the reason for the Applicant's departure from Nigeria. Similarly, the glaring discrepancies in the identity documents proffered by the Applicant were clearly sufficient to rebut any presumption of validity which would otherwise be attributed to the documents.

[42] The RAD reviewed the record and listened to the audio recording of the hearing before the RPD. It explained why it agreed with the RPD and, with respect to the psychological report; it did the analysis that the RPD did not. The RAD certainly did more than pay mere lip service to

the RPD decision. I agree with the Respondent that, having failed to persuade the RAD to set aside the findings of the RPD, the Applicant is trying to have the court reweigh the evidence.

[43] The application is dismissed. Neither party posed a question for certification nor does one arise on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question arises for certification.

“E. Susan Elliott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-361-17

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