

Federal Court



Cour fédérale

Date: 20180312

Docket: IMM-2056-17

Citation: 2018 FC 284

Ottawa, Ontario, March 12, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

KAYODE AFEEZ OSINOWO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Kayode Afeez Osinowo seeks judicial review of the April 5, 2017 decision [Decision] of the Refugee Appeal Division [RAD], which confirmed the Refugee Protection Division's [RPD] denial of Mr. Osinowo's refugee claim.

[2] For the reasons that follow, I am dismissing Mr. Osinowo's application.

I. Overview

[3] Mr. Osinowo sought refugee protection in Canada on the basis of the persecution he alleges he would face in Nigeria as a bisexual man. In considering Mr. Osinowo's case, the RAD drew a number of adverse credibility findings against him, which seriously undermined his claim. In particular, the RAD found that the following five issues raised credibility concerns:

- (i) Mr. Osinowo fraudulently represented himself as an engineer in a Canadian visa application at a time when, on his own evidence, he did not have a subjective fear of persecution and wished to come to Canada for business purposes only;
- (ii) Mr. Osinowo left blank, in his original Basis of Claim [BOC] form, the location of the house in which he claims to have hidden from the authorities for two months, and later testified that, at the time his BOC was filled out, he had been inattentive and could not recall the city he was in while hiding;
- (iii) Mr. Osinowo delayed over two months in leaving Nigeria while he waited for his second Canadian visa application to be approved, during the period in which he says he feared persecution, and did not seek refuge in the United Kingdom [UK], despite having a valid multi-entry visa for that country;
- (iv) Mr. Osinowo delayed over two months in making a refugee claim after arriving in Canada; and
- (v) Mr. Osinowo gave confusing, contradictory, and evasive testimony about what transpired after his arrival in Canada.

[4] The RAD also found that the corroborative evidence tendered by Mr. Osinowo did not establish his alleged sexual orientation. The RAD assigned no weight to letters submitted from the Black Coalition for Aids Prevention, the 519 Community Centre, and the Metropolitan Community Church, as they did not attest to Mr. Osinowo's sexual orientation, but only to his self-identification as a bisexual. The RAD further found that two purportedly corroborative affidavits had little probative value, because they lacked certain security features and misspelled the word "commissioner". Finally, the RAD found that a letter submitted by an individual who

indicated that he had met Mr. Osinowo at a gay club in Toronto and was his “boyfriend” was insufficient to establish Mr. Osinowo’s sexual orientation because it contained no details suggesting a romantic relationship.

II. Analysis

[5] The applicable standard of review is reasonableness, meaning that the Decision must be justified, transparent, and intelligible, and must fall within a range of possible, acceptable outcomes, defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[6] Because this is a reasonableness review, the Decision must be considered as an organic whole, in the context of the record (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54 [*Irving Pulp & Paper*]; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). It should be read with a view to understanding — not parsed in a line-by-line treasure hunt for errors (*Irving Pulp & Paper* at para 54; *Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15; *Koky v Canada (Citizenship and Immigration)*, 2017 FC 1035 at para 25). It is not a matter of simply adding the positives and subtracting the negatives, but rather of standing back and looking at the decision as a whole (*Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 21).

[7] Mr. Osinowo takes issue with various aspects of the Decision. I will address each of his arguments in turn.

A. *Credibility*

[8] First, Mr. Osinowo attacks the RAD's negative credibility findings, submitting that the RAD conducted itself in bad faith and was zealous to disbelieve him. Mr. Osinowo offers nothing specific in support of this very serious charge of bad faith, other than his disagreement with the RAD's findings.

[9] Given Mr. Osinowo's allegations of bad faith, Justice Shore's comments in *Borate v Canada (Citizenship and Immigration)*, 2005 FC 679 are worth repeating:

[1] Just as a specialized tribunal must not examine facts out of context, simply eager to point out contradictions with "microscopic zeal"; a party at a judicial review hearing must not dissect each sentence in the reasons of a decision of a specialized tribunal. Both are exercises in futility.

[10] Being mindful of the reasonableness standard, I am satisfied that this is not a case where the RAD zealously searched out contradictions through an over-vigilant and microscopic examination of the evidence before it (see *Attakora v Canada (Minister of Employment & Immigration)*, [1989] FCJ No 444 (Federal Court of Canada – Appeal Division) at para 9). Rather, the RAD considered, but did not accept, Mr. Osinowo's efforts to explain the problems with his evidence.

[11] My analysis of the reasonableness of the RAD's primary credibility findings follows.

- (i) Previous business visa application

[12] Mr. Osinowo argues that the RAD “problematized” the circumstances of his first visa application, relying on *Gulamsakhi v Canada (Citizenship and Immigration)*, 2015 FC 105 [*Gulamsakhi*] and *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 [*Cooper*] for the proposition that the RAD cannot rely on discrepancies in a refugee claimant’s travel documentation to impugn credibility.

[13] *Gulamsakhi* and *Cooper* are distinguishable. In *Gulamsakhi*, this Court held that “it is not uncommon for a person fleeing persecution to follow the instructions of the person(s) organizing their escape” (at para 9), while in *Cooper* a decision was set aside where the decision-maker placed an unreasonable emphasis on an applicant’s travel documents (at paras 3-5).

[14] Here, however, the RAD’s adverse credibility finding was expressly based on Mr. Osinowo’s willingness to use fraudulent documents at the time he admits he had no subjective fear of persecution and no intention of seeking refugee status in Canada. The RAD found that, whether or not Mr. Osinowo used an agent, he was not absolved of his responsibility to ensure the accuracy of his visa application. I agree. This is not a situation where Mr. Osinowo lied or used an agent to facilitate flight from his country in order to escape persecution, in which case his actions might be consistent with those taken by the applicants in, for instance, *Gulamsakhi*. Further, as outlined above, the RAD made several credibility findings, such that I do not agree that it placed “unreasonable emphasis” on Mr. Osinowo’s visa application, in contrast to *Cooper*.

(ii) BOC omission

[15] With respect to the negative credibility finding based on the BOC, Mr. Osinowo argues that the omission of his hiding place was minor and peripheral, and that he provided a reasonable explanation for it — that he was suffering from depression, and was forgetful and inattentive at the time his BOC was filled out. He submits that the RAD should have been more sensitive to his medical report, which he says corroborates his explanation for the omission, relying on *Belahmar v Canada (Citizenship and Immigration)*, 2015 FC 812 (at para 8) for the proposition that the RAD in this case analyzed the psychotherapist’s report “backwards”, by rejecting the report based on the RPD’s credibility conclusions.

[16] That is not what happened here. Rather, the RAD considered the psychotherapist’s report at length but gave it little weight, concluding that its author was not properly credentialed to offer the diagnosis made and ultimately crossed the line into advocacy. I find that the RAD appropriately relied on this Court’s cautions regarding unvalidated “expert reports” in *Molefe v Canada (Citizenship and Immigration)*, 2015 FC 317 (at para 31) and *Czesak v Canada (Citizenship and Immigration)*, 2013 FC 1149 (at paras 37-40). Here, as the RAD reasonably pointed out, the medical opinion was formed on the basis of one 90 minute meeting.

[17] Material omissions from a BOC narrative going to central elements of a claim may ground adverse credibility findings (*Irivbogbe v Canada (Citizenship and Immigration)*, 2016 FC 710 at para 32). Here, in light of Mr. Osinowo’s unsatisfactory explanation, the RAD found the omission to be material. That finding was reasonable, particularly when considered in the context of the other credibility findings.

(iii) Failure to claim in the UK

[18] Mr. Osinowo argues that neither his failure to seek asylum in the UK, nor his delay in claiming refugee protection after arriving in Canada, are determinative of a lack of subjective fear. He submits that he provided reasonable explanations for these delays, including that (a) he feared if he went to the UK, his ex-boyfriend's politically-influential father would orchestrate his deportation, (b) he needed time to raise funds before he could leave Nigeria for Canada, and (c) after he arrived in Canada, he felt safe, did not know how to bring a refugee claim, and experienced difficulty obtaining legal advice and legal aid. All of these explanations, he argues, were validated by his psychological report. Furthermore, he contends that the RAD, in its findings, unfairly judged his conduct by Canadian standards while ignoring his social and cultural background.

[19] The RAD did not accept Mr. Osinowo's various explanations, agreeing with the RPD that it made little sense for him to hide in Nigeria, hoping that a Canadian visa would be issued to him shortly after having been denied one, when he had a valid multiple-entry UK visa and had travelled to the UK previously. The RAD further noted the RPD's concerns that Mr. Osinowo had provided no evidence of his ex-boyfriend's father's alleged political influence in Nigeria, and that no new evidence to address this concern had been tendered on appeal. These findings were, in my view, all open to the RAD, even if other decision-makers might have decided otherwise. Although findings of implausibility are not to be made lightly, and only in the "clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7), here the RAD's findings were made in clear and unmistakable terms and supported by rational reasons (see *Alhaj v Canada (Citizenship and Immigration)*, 2018 FC 98 at paras 14-15).

(iv) Delay in Claim

[20] With respect to Mr. Osinowo's delay in claiming refugee status in Canada, the RAD found that his efforts to locate counsel and funding contradicted his position that he did not know how to make a refugee claim.

[21] A delay in claiming or seeking refugee status can ground a negative inference if the claimant offers no satisfactory explanation for the delay. While delay is not, in and of itself, determinative of a refugee analysis (*Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 at para 28), it can in certain circumstance be fatal to an applicant's claim (*Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at para 6).

[22] Here, the RAD found that Mr. Osinowo's explanations were not reasonable. This conclusion was open to the RAD, particularly in light of Mr. Osinowo's significant travel history (see *Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at paras 59-60). Absent credible corroborative evidence to explain delay, it was reasonable for the RAD to conclude that delay was incompatible with subjective fear (*Mangat v Canada (Citizenship and Immigration)*, 2015 FC 58 at para 11). Mr. Osinowo is correct that negative inferences cannot be drawn solely from a failure to provide corroborating documents in refugee claims (*Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at paras 28 [*Ikeme*]), but that is not what the RAD did: rather, it found that Mr. Osinowo had not established that his ex-boyfriend's father was well-connected, and that his failure to do so undermined his explanation for remaining in Nigeria. Further, the RAD is entitled to rely on common sense and rationality, and reasonably

did so in this case (see *Liu v Canada (Citizenship and Immigration)*, 2017 FC 736 at paras 19-20).

[23] Overall, the RAD found that Mr. Osinowo's explanations for his delays were unconvincing, and in turn weakened his allegation that he was at risk in Nigeria, as well as his subjective fear of persecution. These findings were made in the context of several other findings which, taken together, damaged Mr. Osinowo's credibility. On the whole, I am satisfied that the RAD's findings were rationally supported and based on common sense. Further, I note that the RAD found Mr. Osinowo's delay to be a significant, but not a determinative, factor.

[24] I am not holding that the Decision was beyond reproach. For instance, the RAD incorrectly stated that Lagos (the city in which Mr. Osinowo alleges to have hid) is the capital of Nigeria. However, this was an error without consequence, as the RAD's incorrect observation was neither material to its conclusions, nor a basis for its adverse credibility findings.

B. *New evidence*

[25] Mr. Osinowo also disputes the weight accorded by the RAD to his new documentary evidence, which, as set out above, included letters from Canadian sources as well as purported affidavits from Mr. Osinowo's wife and friend in Nigeria.

[26] Mr. Osinowo relies on *Ogunrinde v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 760 (at para 42) for the proposition that administrative decision-makers

must evaluate claims based on sexual orientation while being mindful of the inherent difficulty of proving one's sexual orientation.

[27] Once again, given the findings of the RAD and RPD, and in light of the whole record, it was open to the RAD to conclude that Mr. Osinowo's new evidence was insufficient to establish his sexual orientation (see *Ikeme* at paras 33-38).

[28] Similarly, it was open to the RAD to find that the affidavits allegedly sworn by Mr. Osinowo's wife and friend had little probative value because they did not bear any official header or logo and contained an obvious typo. On this point, the RAD provided cogent reasons for giving little weight to these affidavits. Again, while another decision-maker may have decided differently, that is not the test on judicial review (*Lin v Canada (Citizenship and Immigration)*, 2017 FC 1175 at para 28).

III. Conclusion

[29] The RAD's numerous adverse credibility findings were made in clear and unmistakable terms. Its treatment of the evidence was, on the whole, reasonable, and the Decision falls into the range of defensible outcomes. The application is dismissed. No questions for certification were argued, and none arise.

JUDGMENT in IMM-2056-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and none arose.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2056-17

STYLE OF CAUSE: KAYODE AFEEZ OSINOWO v THE MINISTER OF
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