Federal Court  Cour fédérale

Date: 20220620

Docket: IMM-3221-21

Citation: 2022 FC 922

Ottawa, Ontario, June 20, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

OLOHIJE ATAFO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Olohije Atafo, is a citizen of Nigeria. She seeks judicial review of a decision rendered by a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship of Canada dated June 19, 2020, rejecting the Applicant's pre-removal risk assessment [PRRA] application.

[2] For the reasons that follow, this application for judicial review is dismissed.

I. Background

[3] The Applicant entered Canada on April 24, 2017, with an improperly obtained travel document. She claimed refugee status alleging domestic violence at the hands of a partner in Nigeria, Mr. Musa, and a fear of persecution as a bisexual woman.

[4] On September 8, 2017, the Refugee Protection Division rejected her claim on the basis of credibility, because, among other factors, she had returned to Nigeria on a relatively constant basis over a ten-year period. The Applicant appealed to the Refugee Appeal Division [RAD]. On January 30, 2018, the RAD rejected the Applicant's claim, finding her not credible in her material allegations, including her allegation that she identifies as a bisexual woman.

[5] On June 19, 2020, the Officer rejected the Applicant's PRRA application. The Officer concluded that the Applicant (i) had not demonstrated that there is more than a mere possibility that she had a well-founded fear of persecution as per section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; and (ii) had not established on a balance of probabilities that she is at risk.

[6] The Applicant submits that the Officer (a) erred by seeking corroborative evidence; (b) made veiled credibility findings without providing the Applicant with an opportunity for an oral hearing; and (c) unreasonably assessed the Applicant's evidence.

[7] The Respondent submits that the Officer reasonably assessed the evidence and that there was no obligation in the present case to hold an oral hearing.

II. Issues and Standard of Review

[8] The Applicant raised numerous issues, which I reformulate as follows:

A. Did the Officer err by failing to convoke an oral hearing?

B. Did the Officer err by failing to reasonably assess the evidence?

[9] As to the first issue, the jurisprudence is divided as to the standard of review applicable when assessing whether a PRRA officer erred in not holding a hearing pursuant to paragraph 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Certain decisions have characterized the matter as one of procedural fairness and/or correctness (see *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at paras 10-13; *Nadarajan v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 403 at paras 12-17; *Nur v Canada (Citizenship and Immigration)*, 2019 FC 951 at para 8; *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at paras 16-20; *Mamand v Canada (Citizenship and Immigration)*, 2021 FC 818 at para 19); see also Justice Nicholas McHaffie's thoughtful and detailed discussion of the issue in *Iwekaeze v Canada (Citizenship and Immigration)*, 2022 FC 814 at paras 7-14 [*Iwekaeze*]).

[10] Other decisions of this Court have applied the standard of reasonableness (see *Kioko v Canada (Citizenship and Immigration)*, 2014 FC 717 at paras 17-19; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 12-17; *Hare v Canada (Citizenship and*

Immigration), 2020 FC 763 at paras 11-12 [*Hare*]; *AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at paras 13-17; *Balog v Canada (Citizenship and Immigration)*, 2021 FC 605 at para 24; *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paras 13-25 [*Balogh*]).

[11] With respect for my colleagues who view the matter as one of procedural fairness, I remain of the view that the applicable standard of review for the first issue is one of reasonableness for the reasons set out in *Balogh* at paragraphs 13 to 25. As to the second issue, it is common ground between the parties, and I agree, that the standard of review is reasonableness.

[12] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). It is the Applicant who bears the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). It is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). A reasonableness review also is not a "line-by-line treasure hunt for error," the reviewing court simply must be satisfied that the decision maker's reasoning "adds up" (*Vavilov* at paras 102, 104).

III. Analysis

[13] Despite the able submissions of counsel for the Applicant, I am not persuaded that the Officer erred by failing to hold an oral hearing or in the assessment of the evidence in the record.

A. *Oral Hearing*

[14] Paragraph 113(b) of the IRPA provides the discretion to hold a hearing where the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required. The prescribed three factors to be considered are found in s 167 of the IRPR:

Hearing – prescribed factors	**Facteurs pour la tenue d'une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify	**c)** la question de savoir si ces éléments de preuve, à

allowing the application for protection.	supposer qu'ils soient admis, justifieraient que soit accordée la protection.
[Emphasis added.]	[Soulignement ajouté.]

[15] The language of section 167 of the IRPR restricts the credibility issue to "a serious issue of the applicant's credibility" [emphasis added]. The test for an oral hearing is a conjunctive test. Accordingly, an oral hearing is therefore generally required if the evidence raises a serious issue of the applicant's credibility that is central to the decision and which, if accepted, would justify allowing the application (*Hare* at para 20). Section 167 of the IRPR becomes operative when the Applicant's credibility is at issue such that it could result in a negative decision.

[16] The Officer accepted new evidence in the form of an affidavit from the Applicant's mother and country condition documentation. The Applicant pleads that the Officer disbelieved the affidavit from the Applicant's mother, and thus, an issue of credibility arose necessitating a hearing. The Applicant submits that the credibility of her mother's statement is akin to her own credibility for the purposes of section 167 of the IRPR. The Respondent replies that not only was it not a question of "the Applicant's credibility", the Officer was entitled to give the mother's affidavit little weight, thus there was no obligation to convoke an oral hearing.

[17] The affidavit from the Applicant's mother stated that Mr. Musa had come to her house in Nigeria in December 2017 and July 2018 with "his usual fiery and vicious looking thugs" and threatened her if she did not produce her daughter. The affidavit further stated that in May 2019, Mr. Musa, interrupted a burial ceremony and vowed that the family would not see peace until the Applicant was produced. The Officer found the affidavit to be insufficient evidence and gave it

little weight noting that (i) the mother did not state whether she reported these incidents to the authorities or family and what actions they took; (ii) the mother's evidence is self-serving; and (iii) the evidence is not accompanied by any other witness testimonies, for example family or friends at the funeral.

[18] First, I agree with the Respondent that it was not the Applicant's credibility per se that was in play. The Applicant was not present for these events and did not attest to them.

[19] Second, and in any event, I find it was open to the Officer, on the record, to attribute little weight to the affidavit of the mother without holding a hearing. A court reviewing a PRRA decision, "should not view an officer's decision to diminish the weight placed on evidence described as 'self-serving' when uncorroborated as an incorrect attribution of weight to the evidence or a reviewable ground to overturn the decision" (*Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 25 [*Fadiga*]). This is simply the reality of out of court evidence when the source of the evidence is a family member or another person with an interest in the outcome (*ibid*). Where such evidence is corroborated by some objective evidence, a self-serving statement may be attributed more weight (*Fadiga* at para 26). If it is not corroborated, this Court has found that statements by persons with a personal interest in the outcome tend to have little probative value (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 27 [*Ferguson*]; *Fadiga* at para 26).

[20] Third, I am satisfied that it was not unreasonable for the Officer to find that the Applicant's evidence, including the affidavit from her mother, was insufficient given the absence

of supporting evidence that she had been in a relationship with Mr. Musa, suffered abuse from him, or held the profile of someone at risk because of her bisexuality. This Court has confirmed that the finding by a PRRA officer that the evidence is insufficient may be a justifiable insufficiency finding or a veiled credibility finding (*Iwekaeze* at para 27; *Ferguson* at para 26). The distinction between a finding of insufficient evidence and a finding of credibility is not always clear-cut (*Balogh* at para 36*; Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 at para 30). Nevertheless, in the matter at hand, based on a review of the Officer's decision as a whole and the evidence submitted, I conclude that the Officer reasonably assessed that the evidence was insufficient and did not make a veiled credibility finding. I am therefore not persuaded that the Officer erred by deciding not to hold an oral hearing pursuant to paragraph 113(b) of the IRPA and the requirements in section 167 of the IRPR.

B. *The Officer's Assessment of the Evidence*

[21] The Applicant submits that the Officer erred in the assessment of the evidence, and in particular, impugning the mother's affidavit evidence for being self-serving. The Respondent submits that the Officer did not give the mother's affidavit little weight solely because it was self-serving, but also for other reasons that were explained notably the brevity of the affidavit, the absence of explanations, and the lack of objective evidence to verify the claims in the affidavit.

[22] I have dealt with this issue in detail in section A (*Oral Hearing*) of these reasons. Based on the authorities cited above, I do not find it to be unreasonable for the Officer to have noted the self-serving nature of the affidavit and its lack of corroborating evidence, and thus attributed

little probative value to it. Contrary to the Applicant's submissions, I do not find it unreasonable for the Officer to have noted that there was no evidence from anyone attending the funeral, other than the mother, as to Mr. Musa allegedly disrupting the ceremony in order to demand production of the Applicant by her family.

[23] In addition, I disagree with the Applicant that the Officer made a veiled credibility finding or otherwise erred in relation to the Applicant's statement that she had been abused by Mr. Musa or was at risk on the basis of her sexual orientation. As noted above, it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). The Officer noted the lack of any objective corroborating evidence that the Applicant was in a relationship with Mr. Musa and/or had been injured as she claimed and/or identified as a bisexual female. I am satisfied that the Officer reasonably assessed the evidence in the record and I therefore decline to intervene.

IV. Conclusion

[24] For the foregoing reasons, I am not convinced that the Officer's decision is unreasonable. This application for judicial review is therefore dismissed.

[25] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-3221-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and

2. No question of general importance is certified.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3221-21
STYLE OF CAUSE:	OLOHIJE ATAFO v MCI
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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