

Federal Court



Cour fédérale

Date: 20220802

Docket: IMM-4504-21

Citation: 2022 FC 1151

Ottawa, Ontario, August 2, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

IHEANYI VICTOR IHEJIETO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Iheanyi Victor Ihejiето is a citizen of Nigeria who identifies as homosexual. Since arriving in Canada, he has had at least three relationships with women, the last one resulting in two children with his common-law spouse of five years. He asserts also having had relationships with men in Nigeria and secret affairs with men in Canada, being more attracted to men than women. He has come out about his sexual orientation.

[2] The Applicant's immigration/refugee protection history in Canada has not been without incident. Among other things, he has had three pre-removal risk assessments [PRRA], with all of them rejected and the most recent one challenged in this judicial review application. This also is not his first proceeding before the Federal Court.

[3] Contrary to the Applicant's contention that the most recent PRRA Officer made veiled credibility findings, thus triggering a correctness standard of review, in my view the issue for this Court to determine is the reasonableness of the PRRA Officer's decision which turned on insufficiency of probative evidence.

[4] In other words, the presumptive reasonableness standard of review applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], at paras 10, 25. I am not persuaded that any of the situations that call for the application of a correctness or correctness-like standard of review is present here: *Vavilov*, at para 17; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 [Huang] at paras 13-16; *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paras 13-25; *Susal v Canada (Citizenship and Immigration)*, 2022 FC 1104 at paras 12-13.

[5] I find that the Applicant has not met his burden of establishing that the PRRA Officer's decision is unreasonable: *Vavilov*, at para 100. For the more detailed reasons below, this judicial review application is dismissed.

II. Analysis

[6] I am satisfied that the Officer's conclusions about the Applicant's sexual orientation rest on the sufficiency of the Applicant's new evidence since his previous PRRA, further to paragraph 113(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, and do not constitute veiled credibility findings.

[7] In determining whether a PRRA officer's decision was based on credibility, the Court must analyze the decision by looking beyond the words used by the officer: *Matute Andrade v Canada (Citizenship and Immigration)*, 2010 FC 1074 at para 31, citing *Hurtado Prieto v Canada (Minister of Citizenship and Immigration)*, 2010 FC 253, and *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067. A finding of insufficient probative evidence, however, which goes to the nature and quality of the evidence and its probative value, should not be confused with an adverse finding of credibility: *Huang*, above at paras 41-42.

[8] In addition to his written submissions, the Applicant's new evidence consisted of a letter from counsel (explaining assault charges involving the Applicant's common law spouse that resulted in his detention and the current PRRA), two text message conversations, birth certificates of his two children, a support letter from a friend and section 6, Sexual Minorities, of the November 2020 National Documentation Package [NDP] for Nigeria.

[9] I do not agree with the distinction that the Applicant seeks to draw between the matter before the Court and *Parchment v Canada (Citizenship and Immigration)*, 2008 FC 1140

[*Parchment*]. The Applicant emphasizes the fact that the applicant's declaration regarding sexual orientation in *Parchment* was an unsworn statement and thus did not attract a presumption of credibility, contrary to the sworn statement of the Applicant here. In my view, the fact that the Applicant's statement was sworn does not transform any finding as to its sufficiency or probative value into a credibility finding.

[10] The Applicant relies on the decision in *I.I. v Canada (Citizenship and Immigration)*, 2009 FC 892 [*I.I.*] for the proposition that the Court must treat the PRRA Officer's finding as to the Applicant's sworn statement differently from an unsworn statement. While the Court held that a sworn statement gives it more weight, the Court determined that it was reasonable for the officer to attribute low probative value to the sworn statement in question, and that the officer's conclusion was a finding pertaining to the probative value of the statement and not its credibility: *I.I.*, above at paras 21-24.

[11] With the foregoing in mind, I find the PRRA Officer here reasonably determined that the Applicant did not submit new evidence to substantiate his experiences in Nigeria. I also find that PRRA Officer did not err in determining the friend letter is a brief character reference that does not speak to the Applicant's risk upon return to Nigeria.

[12] Regarding the text message conversations, in my view the PRRA Officer reasonably assigned them low weight, given their content, the lack of information about them, their authors, and their relevance.

[13] Although the PRRA Officer's reference to gender identity in connection with the consideration of the NDP evidence is misplaced, and indeed, the parties also confuse (or conflate) the concepts of gender identity and expression with sexual orientation in their judicial review submissions, in my view this confusion does not undermine the overall reasonableness of the PRRA Officer's decision. Not every flaw or misstep will render a decision unreasonable: *Metallo v Canada (Citizenship and Immigration)*, 2021 FC 575 at para 26; *Mebrahtu v Canada (Citizenship and Immigration)*, 2022 FC 279 at para 37.

[14] I do not disagree with the Applicant that the PRRA Officer's conclusion the Applicant did not have same sex relationships on a balance of probabilities is not necessarily conclusive of his homosexual identity. That said, the Applicant himself sought to rely on evidence of alleged same sex relationships to establish his claimed sexual orientation. In light of the previous negative PRRA decisions, and the Applicant's relationships with women, it behooved the Applicant, in my view, to provide sufficient new probative evidence to support his current sexual orientation claim and resultant risk.

[15] In the end, I find that the PRRA Officer's reasons permit the Court to understand the basis on which the PRRA Officer assessed the Applicant's new evidence to be insufficient. In other words, the PRRA Officer's reasoning demonstrates internal coherence and rationality that, when read holistically and contextually, permits the Court to connect the dots: *Vavilov*, above at paras 85, 97 (citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm LR (4th) 267, at para 11).

III. Conclusion

[16] For the above reasons, I conclude that the Applicant has failed to identify any reviewable error committed by the PRRA Officer. The Applicant's judicial review application therefore is dismissed.

[17] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-4504-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review of the Senior Immigration Officer's June 23, 2021 decision rejecting the Applicant's pre-removal risk assessment application is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4504-21

STYLE OF CAUSE: IHEANYI VICTOR IHEJIETO v THE MINISTER OF
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JUDGMENT AND REASONS: FUHRER J.

DATED: AUGUST 2, 2022

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