Date: 20230119

Docket: IMM-1092-22

Citation: 2023 FC 91

Ottawa, Ontario, January 19, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

NURUDEEN KANISURU APENA

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I.   Overview

[1]   The Applicant, Nurudeen Kanisuru Apena, seeks judicial review of a decision of the

Refugee Appeal Division ("RAD") dated January 14, 2022, confirming the determination of the

Refugee Protection Division ("RPD") that the Applicant is neither a Convention refugee nor a

person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 ("*IRPA*").

[2]   The RAD found the determinative issue to be the Applicant's credibility. The Applicant submits that the RAD engaged in an unreasonable credibility assessment with respect to several aspects of the Applicant's claim.

[3]   For the reasons that follow, I find that the RAD's decision is unreasonable. The RAD based its credibility assessments on microscopic findings that are immaterial to core aspects of the Applicant's claim. This application for judicial review is therefore granted.

II.   Facts

A.   *The Applicant*

[4]   The Applicant is a 43-year-old citizen of Nigeria. He is married to Nofisat Yewande Apena (Ms. "Apena") and has four children. He studied accounting in Nigeria and became a designated chartered accountant in 2018.

[5]   The Applicant claims that since September 2013, he and Ms. Apena have faced mounting pressure from Ms. Apena's family to participate in their familial traditions and rituals, which include paying 250,000 Naira to the family and participating in the female genital mutilation ("FGM") of any female child from the age of seven. Both the Applicant and Ms. Apena refused to participate, which the Applicant claims angered Ms. Apena's family members.

[6]   According to the Applicant's Basis of Claim ("BOC") form, the issues between the families further escalated following the death of his father-in-law on September 9, 2018. On

October 10, 2018, two of Ms. Apena's cousins ("the Cousins", as referred to in the RAD's decision) threatened the Applicant and Ms. Apena.

[7]   On August 15, 2019, the Cousins went to the Applicant's home and threatened Ms. Apena, stating that they would kill their children if the couple did not agree to their demands.

[8]   On October 2, 2019, the Cousins returned to the Applicant's home with other affiliates in an attempt to kidnap Ms. Apena, but did not succeed because the neighbours intervened and alerted the police. The Applicant claims he was physically attacked, sustained a knee injury, and was taken to the hospital. After being discharged, the Applicant reported the attack to the police on October 3, 2019.

[9]   On November 15, 2019, another member of Ms. Apena's family warned the Applicant that the family planned to hire assassins to kill him. The Applicant immediately informed the police, who advised him to flee for his safety and avoid public events.

[10]   On November 20, 2019, the Applicant claims he narrowly escaped an attempt on his life while on his way to drop his cousin off at Lagos Airport, when assailants shot at his vehicle.

[11]   The Applicant fled to Aco Estate, Abuja, to stay with his cousin, and told Ms. Apena to take their children to his older sister's house in Lagos. The Applicant later learned that the Cousins had learned of his new location in Abuja and on December 10, 2019, they visited the Applicant's cousin's home.

[12]   The Applicant left Abuja for Port Harcourt, to stay with a family friend. The Cousins once again learned of his new location in Port Harcourt, and arrived at his family friend's house, demanding to see the Applicant. The Applicant claims that his family friend informed him that the Cousins had ransacked the house and threatened her.

[13]   The Applicant left Port Harcourt the same day, arriving in Lagos on December 24, 2019. He traveled to Canada on December 25, 2019. The Applicant made a refugee claim on the basis that he faces a risk to his life in Nigeria.

B.   *RPD Decision*

[14]   In a decision dated June 17, 2021, the RPD refused the Applicant's refugee claim. The RPD determined that the Applicant lacked credibility and he therefore did not have a well-founded fear of persecution, nor would he be subject to a risk to his life upon return to Nigeria.

[15]   The RPD based its credibility assessment on several omissions and inconsistencies in the Applicant's claim. First, the RPD found that the Applicant's narrative surrounding the alleged assassination attempt on November 20, 2020, while on the way to drop his cousin off at Lagos Airport, lacked credibility. The Applicant testified that he was in his friend's car, and his friend was also in the car when the attack took place, but the Applicant's BOC form stated that he was in his own car and failed to mention a third person. He could not explain this omission and the RPD noted that the affidavit of his wife and cousin were insufficient to cure this deficiency because they make no mention of a third individual in the car. The RPD found this omission to relate to a central aspect of the Applicant's claim and found it to undermine his credibility.

[16]   The RPD then found that the Applicant's inconsistent narrative regarding the assailants'

attempt to kidnap his wife on October 2, 2019 lacked credibility. The Applicant initially testified

before the RPD that he, his wife, his daughter, and his neighbour were present during this attack.

When asked to clarify who was in the house during the attack, the Applicant stated that there was

no neighbour present. The RPD found it reasonable to expect the Applicant to provide a

straightforward testimony regarding the attack at his home on October 2, 2019. The RPD drew a

negative credibility inference from the Applicant's evolving narrative surrounding the attack.

[17]   The RPD further found that the Applicant was vague and inconsistent regarding the

attempted assassination against him in Port Harcourt. The RPD noted the Applicant's testimony

that the assailants looked for him at his friend's house in Port Harcourt, and that the assailants

mentioned their "boss", but did not mention the boss's name. However, the Applicant's BOC

form stated that the assailants mentioned their boss by name. When asked about this

inconsistency, the Applicant's response was "convoluted and vague," and the affidavit of his

friend also did not resolve the discrepancy. The RPD determined that the Applicant's

inconsistency undermines his credibility.

[18]   The RPD found that the Applicant was also vague and inconsistent in his narrative

surrounding the assailants' further attempt to contact him. He could not remember when this

attempt took place and the RPD did not find the Applicant's explanation to be reasonable,

finding that his vague responses to this line of questioning undermines his credibility.

[19]   Despite the documentary evidence to substantiate the Applicant's claim, the RPD found

that this evidence also contained many of the same inconsistencies and was therefore insufficient

to overcome the multiple credibility concerns. The RPD further noted that the Applicant

proffered a psychotherapy assessment report describing his diagnosis of Anxiety Disorder and

Depression Disorder, but found that the Applicant had not applied to be accommodated or to be

designated as a vulnerable person, and the symptoms described in the report did not explain the

inconsistencies and omissions in the Applicant's evidence.

[20]   The RPD ultimately refused the Applicant's refugee claim on the basis that his claim

lacks credibility. The Applicant appealed this refusal to the RAD.

C.   *Decision Under Review*

[21]   In a decision dated January 14, 2022, the RAD dismissed the appeal and upheld the

RPD's determination that the Applicant is neither a Convention refugee nor a person in need of

protection under sections 96 and 97 of *IRPA*, on the basis that the Applicant lacks credibility.

[22]   The RAD accepted new evidence proffered by the Applicant on appeal. These included

photographs of his residence in Ogun State, to substantiate his claim that on the date of the

October 2, 2019 attack, his neighbour was within the compound, but not within the Applicant's

own home, thereby explaining the inconsistency in his testimony. Considering these

photographs and the Applicant's submissions on appeal, the RAD found that the RPD erred in its

assessment regarding the Applicant's reference to his neighbour being "at his house," which the

RAD found could equally apply to the neighbour being at home in the compound, rather than in the Applicant's apartment.

[23]   However, the RAD ultimately agreed with the RPD that omissions in the Applicant's BOC form undermined his overall account of the alleged attack on October 2, 2019, including his allegation that he accompanied the police to the Cousins' house on October 3, 2019. The RAD found this to be a material omission and undermined the Applicant's credibility.

[24]   The RAD further found that the Applicant's inconsistent narrative regarding the alleged assassination attempt, while he was on his way to Lagos Airport, undermined his credibility. On appeal, the Applicant submitted that the reference to "my vehicle" at the RPD hearing did not necessarily mean the vehicle belonged to him, but that it was the vehicle he was travelling in at the time that the attack took place. Given the extensive detail in his BOC form, the RAD did not accept that the Applicant's inconsistency could be attributed to the misuse of pronouns. The RAD also failed to accept that the psychotherapy assessment explained this inconsistency, noting that memory failure is not one of the symptoms listed for Anxiety Disorder.

[25]   The RAD also determined that the Applicant's inconsistent narrative regarding the attempted attack against him in Port Harcourt further undermined his credibility. The RAD noted that in the Applicant's BOC form, he stated that the assailants identified their boss to his family friend by name, while he testified at the RPD hearing that they did not mention their boss. The RAD found that the Applicant's testimony was also incongruous with his family friend's affidavit, which does not mention the assailants telling her the name of their boss.

[26]   The RAD found that the RPD did not err in interpreting the Applicant's remaining documentary evidence. On appeal, the Applicant submitted that the RPD erroneously ignored screenshots of WhatsApp messages exchanged between the Applicant and "AJ", a relative of the Applicant's wife. The screenshots show AJ's confession that she told the Cousins about the Applicant's whereabouts in Port Harcourt, and she was kidnapped and beaten until she did so. The RAD noted that AJ's affidavit, which was written the week prior to the WhatsApp exchange, recounted a different story. The Applicant's counsel's response for this discrepancy, received on December 14, 2021, stated that AJ's affidavit was based on what she had told the Applicant up to the point the affidavit was drafted and signed, as she had not wanted to confess that she had informed the Cousins of the Applicant's whereabouts. The RAD found that counsel sought to "provide information as to AJ's state of mind and motivation for providing a false, inaccurate, and misleading sworn statement." The RAD therefore found that the Applicant's counsel's response to the inconsistency was without merit, leaving behind an unexplained inconsistency that undermined the credibility of this evidence and of the Applicant's claim.

[27]   The RAD ultimately dismissed the Applicant's appeal and upheld the RPD's determination that the Applicant lacked credibility.

III.   Issue and Standard of Review

[28]   This application for judicial review raises the sole issue of whether the RAD's decision is reasonable.

[29]   The standard of review is not disputed. The parties agree that the applicable standard of

review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019

SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[30]   Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13).

The reviewing court must determine whether the decision under review, including both its

rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable

decision is one that is based on an internally coherent and rational chain of analysis and that is

justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences

(*Vavilov* at paras 88-90, 94, 133-135).

IV.   Analysis

[31]   The Applicant submits that the RAD erroneously engaged in an overly microscopic

analysis of the Applicant's credibility. The RAD found that the Applicant's BOC form failed to

mention that he accompanied the police to the attackers' house on October 3, 2019, the day after

the attack at his home, and this omission is sufficient to undermine the Applicant's account of

the attack. The Applicant submits that the BOC form clearly states that the police searched for

the assailants following the Applicant's report, substantiated by a letter from the Divisional

Police Officer. The record also contained a report from the hospital where the Applicant sought

treatment following the attack, and evidence of ongoing treatment for the same injury. Noting

the evidence showing that the police searched for the assailants following the attack and that the

Applicant was injured in this attack, the RAD erred in undermining the credibility of this narrative solely on the basis that the Applicant's BOC form did not mention that he accompanied the police the day after the attack. The Applicant submits that this is an overly microscopic credibility assessment and therefore unreasonable, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116.

[32]   The Applicant further submits that the RAD's credibility assessment regarding the assassination attempt against the Applicant in the car is also overly microscopic. The central issue was whether the Applicant was driving his own car, or whether he was simply referring to "my" car as being the car he was in when the attack took place, and the RAD found that this inconsistency undermined the credibility of the Applicant's narrative surrounding this occurrence. The Applicant relies on this Court's decision in *Alex-Alake v Canada (Citizenship and Immigration)*, 2021 FC 208 ("*Alex-Aleke*"), which found that "a negative credibility finding cannot be founded on minor contradictions that are secondary or peripheral to the refugee protection claim" (at para 13, citing *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 ("*Lawani*") at para 23).

[33]   The Applicant also submits that the RAD unreasonably dismissed the Applicant's psychotherapy assessment as failing to explain the inconsistencies, because "memory failure is not one of the list of symptoms reflecting his Anxiety Disorder." The report explicitly states that he suffers from "difficulty concentrating," which he submits reasonably leads to the failure to mention a peripheral detail, such as a third person in the car during the assassination attempt.

[34]   The Applicant submits that the RAD's overly microscopic credibility assessment also extended to its analysis of the attempted attack on the Applicant in Port Harcourt. The RAD drew a negative credibility inference from the discrepancy between the Applicant's testimony that the assailants had not named their boss to his family friend, and the Applicant's BOC form, which stated the assailants had, in fact, identified their boss by name. The Applicant testified before the RPD that he included the assailants' boss in the BOC form in an attempt to clarify whom the assailants were referring to when they spoke to his family friend in Port Harcourt. The Applicant submits that the family friend's failure to mention certain minute details about the conversation she had with the assailants in her affidavit is a microscopic basis upon which to draw a negative credibility inference.

[35]   The Applicant submits that the RAD unreasonably drew a negative credibility finding from the WhatsApp messages between him and AJ proffered as evidence on appeal. The RAD drew a negative inference from AJ's failure to mention these circumstances in her affidavit, which she provided in support of the Applicant's refugee claim, and dismissed the response provided by the Applicant's counsel to explain the omission. The Applicant first notes that the notice provided to the Applicant only sought information regarding "the correlation" between AJ's affidavit and the WhatsApp screenshots. The Applicant further submits that it is clear from the WhatsApp exchange that AJ had not yet disclosed this information to the Applicant, and her affidavit was submitted prior to the text exchange taking place, which explains why it did not appear in the affidavit. The text conversation shows that AJ was afraid to reveal this information to the Applicant, but did so because of her conscience. The Applicant submits that the RAD's finding is not rationally connected to the evidence, rendering the decision unreasonable.

[36]   The Respondent maintains that the RAD's credibility analysis and ultimate refusal of the Applicant's claim is reasonable. The Respondent submits that the various material inconsistencies in the Applicant's narrative reasonably undermine his credibility. The Respondent submits that the Applicant's inconsistent testimony about whether he accompanied the police on their search following the alleged attack on October 2, 2019 was a material contradiction and reasonably grounded a negative credibility finding. The Respondent submits that the RAD reasonably assessed the Applicant's contradictory information regarding whose car he was in during the alleged assassination attempt, and the Applicant's failure to mention a third person in the car at the time. The Respondent contends that it is open to the RAD to find that these inconsistencies result in a negative credibility inference. The Respondent further submits that the RAD made reasonable credibility findings on the basis of the Applicant's inconsistent narrative regarding the assailants' mention of their boss during the alleged attack in Port Harcourt, and the inconsistent information provided by AJ, and that the RAD reasonably found that the Applicant failed to provide reasonable explanations for these discrepancies.

[37]   The Respondent submits that the RAD did not conduct a microscopic assessment because the various inconsistencies are not minor, as the Applicant submits, and are material to the Applicant's claim. The Respondent relies on this Court's jurisprudence to submit that the accumulation of contradictions and inconsistencies regarding core elements of a refugee claim reasonably lead to a negative credibility finding (*Chapeton Rodriguez v Canada (Citizenship and Immigration)*, 2021 FC 1320 at para 22; *Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 at para 22, citing *Lawani* at para 21). The Respondent further submits that there is no merit to the Applicant's submission that his Anxiety Disorder is responsible for the multiple

omissions in his BOC form, noting that a psychological condition is not a "cure-all" for deficiencies in a claim (*Toma v Canada (Citizenship and Immigration)*, 2020 FC 359 at para 20). The Respondent submits that the Applicant requests this Court to reweigh the evidence.

[38]   I agree with the Applicant that the RAD engaged in an overly microscopic credibility analysis, rendering the decision unreasonable. The RAD found that the Applicant lacked credibility due to several inconsistencies in his narrative, pertaining to the October 2, 2019 attack at his home; the assassination attempt when he was on his way to Lagos Airport; the attempted attack at Port Harcourt involving his family friend; and the information provided by AJ. In my view, each of these consistencies is peripheral to central aspects of the claim, which are, contrary to the RAD's finding, sufficiently corroborated by the Applicant's testimony and evidence.

[39]   In *Abou Loh v Canada (Citizenship and Immigration),* 2019 FC 1084, this Court stated that "as a general matter, the role of the decision maker is not to zealously undermine the applicant's story," citing *Attakora v Canaada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA) at para 9. In *Kanagarasa v Canada (Citizenship and Immigration)*, 2015 FC 145, this Court stated that "credibility assessments based on trivial inconsistencies are unreasonable" and to undermine the credibility of the entire assertion on the basis of a minor discrepancy would be an "overly microscopic view of the facts" (at para 13). Similarly, in *Lawani,* this Court reiterated that "the decision-maker must not conduct a too granular or overzealous analysis of the evidence" and "not all inconsistencies or implausibilities will support a negative finding of credibility" (at para 23). In the recent decision in *Alex-Alake*, this Court reviewed the RAD's refusal of the applicants' refugee claims on the grounds that they lacked

credibility. The Court found that the RAD's reasons "pick[ed] apart the Applicants' evidence with microscopic zeal as had the RPD in the decision under appeal," and "displayed zeal to find instances of contradiction in the Applicants' testimony, for which they had provided reasonable explanations, and was over-vigilant in its microscopic examination of the evidence" (*Alex-Alake* at paras 12, 14).

[40]   I find that the RAD conducted the same unreasonably overzealous and microscopic analysis in the Applicant's case. On the Applicant's claim that he was attacked at his home on October 2, 2019, the RAD found that the entirety of this assertion lacked credibility due to the inconsistency regarding whether he accompanied the police the following day. This detail is immaterial to the core elements of this assertion, such as whether the attack occurred, whether the Applicant reported the attack to the police, whether the police searched for the assailants, or whether the attack resulted in an injury as he claimed. These elements are supported by the evidentiary record.

[41]   Similarly, the RAD found that the credibility of the Applicant's claim that he was the subject of an assassination attempt was undermined by the inconsistent information regarding whose car he was in at the time. The essence of the RAD's negative credibility finding in this aspect of the claim is the Applicant's reference to the car as being "my" car, rather than his cousin's car. This is too granular a basis upon which to undermine the Applicant's claim that he was attacked by assailants, and reveals the RAD's zeal in finding inconsistencies upon which to base a negative credibility finding (*Lawani* at para 23; *Alex-Alake* at para 14). It is reasonable to believe, as the Applicant submitted on appeal, that this inconsistency was the result of the

Applicant referring to "my" car as the one he was in at the time of the attack, not signalling

ownership of the car. It is also reasonable to believe that, had the RAD adequately viewed the

Applicant's evidence pertaining to his psychological condition, the Applicant's difficulty

concentrating as a result of his Anxiety Disorder could result in the failure to include minor

details that are peripheral to the core aspects of the claim, such as whether there was a third

person in the car at a time of the attack. The RAD's overly microscopic analysis on this point

appears to eclipse the requirement to view the Applicant's evidence in totality.

[42]   I agree with the Applicant that the RAD's microscopic analysis extended to other aspects

of the Applicant's claim, namely regarding the attempted attack against him in Port Harcourt and

the information provided by AJ. The Applicant provided cogent and reasonable explanations for

the inconsistencies concerning both of these occurrences. I find it reasonable that the Applicant

would include the boss's name in the BOC form for clarity and that his family friend would not

mention the name in her affidavit because it is not central to the purpose of her affidavit, to

corroborate the Applicant's claim that assailants came looking for him in Port Harcourt.

[43]   The Applicant's counsel's response to the RAD, explaining the connection between AJ's

affidavit and the WhatsApp screenshots proffered as evidence on appeal, provides a cogent and

reasonable explanation for the discrepancy between this evidence. This is clear from the

evidence alone, even without the aid of the response provided by counsel. The RAD's negative

credibility finding from this alleged discrepancy, despite the clear explanation for the

inconsistency, reveals its zeal for finding inconsistencies upon which to base a negative

credibility finding over adequately assessing the evidence and, in turn, ensuring that a rational

line of reasoning connects the decision to the evidentiary record (*Vavilov* at para 102).

V.   <u>**Conclusion**</u>

[44]   This application for judicial review is granted. The RAD's decision to uphold the RPD's

determination that the Applicant lacks credibility is based on a microscopic assessment of the

evidence and is therefore unreasonable. No questions for certification were raised, and I agree

that none arise.

JUDGMENT in IMM-1092-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a differently constituted panel.

2. There is no question to certify.

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"Shirzad A."

Judge

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DOCKET: IMM-1092-22

STYLE OF CAUSE: NURUDEEN KANISURU APENA v THE MINISTER
                                             OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 7, 2022

JUDGMENT AND REASONS: AHMED J.

DATED: JANUARY 19, 2023

APPEARANCES:

Hart Kaminker   FOR THE APPLICANT

Simarroop Dhillon   FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kaminker & Associates   FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada   FOR THE RESPONDENT
Toronto, Ontario