

Federal Court



Cour fédérale

Date: 20230117

Docket: IMM-9768-21

Citation: 2023 FC 70

Ottawa, Ontario, January 17, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**JOY OLUCHI ABRAHAM
VICTORY ONYEJI ABRAHAM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Joy and Victory Abraham (Principal and Associate Applicant respectively) are citizens of Nigeria. They seek judicial review of a December 13, 2021 decision of the Refugee Appeal Division (RAD) confirming the refusal of their claim for refugee protection by the Refugee Protection Division (RPD). The determinative issue in the Applicants' appeal to the RAD was credibility.

[2] For the reasons that follow, the application is dismissed. The RAD conducted a comprehensive review of the RPD decision, the Applicants' arguments, the facts of the case and the evidence adduced. The panel's conclusions respond to the arguments raised on appeal and are each explained logically with reference to the relevant testimony and evidence. The RAD's analysis of the significant omissions and inconsistencies that undermine the credibility of the Applicants' central narrative is internally coherent and presents a clear chain of reasoning that is responsive to the framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

I. Background

[3] The Applicants are sisters who allege fear of gender-based persecution or harm based on forced marriage and female genital mutilation (FGM). The Associate Applicant also alleges fear of persecution based on her membership in a particular social group as a bisexual woman.

[4] The Applicants lived in the family home in Lagos where they attended university. They state that their father has arranged their marriage to two men of his age, each of whom hold chieftaincy titles in Nigeria (the Chiefs). The Applicants believe that their father has accepted money from the Chiefs in return for his daughters' promise to marry.

[5] The Associate Applicant states that she began spending more time with women while at school in Nigeria due to a fear of men. While on a break from classes, the Associate Applicant returned home where she was seriously beaten by her father. The father indicated that the Chief whom she was to marry had installed spies at her school and had learned she was having

relations with girls. The father also beat the Principal Applicant as a warning. He threatened the sisters with FGM prior to their marriages to avoid promiscuity. The Applicants state that they reported the beatings to the local police who refused to take action because it was a family matter. The police admonished them for reporting their father.

[6] When the Associate Applicant returned to school following the beating, she states that she was the subject of derogatory comments regarding her sexual orientation. As a result, she left school in April 2015 to stay with her mother's friend in Abuja. Several weeks later, her father found her, beat her and returned the Associate Applicant to Lagos.

[7] In December 2019, the Applicants vacationed with their father to the United States to buy wedding-related items. On December 11, 2019, they secretly left their father and travelled to Canada where they made refugee protection claims.

[8] The RPD rejected the Applicants' refugee claims on June 8, 2021. The panel found that the Applicants failed to reasonably explain the omissions and inconsistencies in their evidence regarding their allegations of forced marriage, FGM and, in the case of the Associate Applicant, her bisexuality.

[9] The Applicants appealed the RPD's decision to the RAD.

II. Decision under review

[10] The RAD made the following findings that, cumulatively, gave rise to serious credibility issues regarding the central events and allegations set out in the Applicants' narratives:

- (a) The Applicants omitted from their Basis of Claim (BOC) forms the names of the Chiefs they were to marry. The Applicants' explanation that they did not know the names were important is undermined by the BOC instructions, which require the inclusion of names if possible, and the fact the sisters were assisted throughout the refugee claim process by counsel.
- (b) The Applicants did not substantiate their claim that the Chiefs had reach and influence throughout Nigeria. The Applicants were unable to explain how the Chiefs are well-connected, wealthy and able to have people spy on them at school, and provided no supporting evidence in this regard.
- (c) The RPD did not err in assessing the Applicants' evidence. The presumption of truthfulness of a refugee claimant's evidence (*Maldonado v Canada (Minister of Employment and Immigration)*, 1980 2 F.C. 302 (C.A.)) is rebuttable where the evidence on the record is inconsistent with the claimant's sworn testimony. In this case, the RPD impugned the Applicants' allegations because they had not adduced credible and trustworthy evidence.
- (d) The RAD assigned no weight to the affidavit of the Applicants' brother for two reasons. First, the Applicants were unable to substantiate his identity against the name used on the affidavit. Second, the brother's description of numerous beatings is inconsistent with the Applicants' narrative of enduring a single beating at their father's hands.
- (e) The Applicants did not reasonably explain the inconsistencies between their evidence and their mother's affidavit. The mother's affidavit did not mention the Abuja incident, despite the fact that her friend was stated to have called the mother after the incident. The omission is material to the Applicants' alleged fear of their father and the Chiefs' prominence and influence.
- (f) The Associate Applicant did not establish her profile as a bisexual. The Associate Applicant failed to include in her narrative that she had a three-year, same-sex relationship with another woman. Further, the affidavits of the Applicants' mother and brother contain only vague wording that does not indicate a same-sex relationship or same-sex behaviour.
- (g) The RPD did not err in assessing a report from a Violence Against Women (VAW) counsellor because the report was based on self-reporting by the

Associate Applicant and the counsellor did not assess the veracity of her sexual orientation allegation.

[11] The RAD concluded that the Applicants' allegations are, on a balance of probabilities, not credible and found no error in the RPD's rejection of their refugee claims on this basis.

III. Analysis

[12] The RAD's assessment of the evidence and findings on credibility are reviewed on a standard of reasonableness (*Vavilov* at paragraphs 10, 23; *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 672 at para 6). Where the standard of reasonableness applies, the Court must review "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" to determine whether the decision 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 paras 83, 85). I agree with the Applicants that reasonableness is a deferential but robust standard of review and that they, as the challenging party, must satisfy the Court that there are sufficiently serious shortcomings in the RAD's decision such that it is not justified, intelligible and transparent (*Popoola v Canada (Citizenship and Immigration)*, 2022 FC 6 at para 27).

[13] The Applicants challenge each of the RAD's adverse credibility findings, arguing the panel reviewed their evidence microscopically and hinged its decision on minor omissions and inconsistencies. They argue more generally that both the RPD and RAD failed to take into account their young ages and the patriarchal life they led in Nigeria under their father's control.

[14] The Applicants' first submissions centre on the RAD's review of the evidence regarding the identities of the Chiefs and their prominence and reach within Nigeria. The Applicants argue that their failure to include the names of the Chiefs in their BOC forms does not go to the root of their refugee claim because the names were later confirmed by their mother's affidavit and by their spontaneous oral testimony. I agree with the Applicants that this omission alone, without further explanation from the RAD, may not be a significant omission on their part but this section of the RAD's analysis must be read as a whole.

[15] The RAD stated that the status of the Chiefs is material to the Applicants' refugee claims because one of the central allegations is that the sisters are being forced to marry these older, influential men whom they have known since they were young and who are able to track them anywhere in Nigeria. The identity and wealth of the Chiefs are also important elements of the Applicants' alleged fear of their father's machinations to force them to marry.

[16] The RAD did not accept the Applicant's explanation for their failure to identify the Chiefs from the outset of their claims. Their statement that they did not think they were required to do so is contradicted by the BOC requirement for the Chiefs' names and the fact that the Applicants were assisted throughout their claims process by counsel. In addition, the family is said to have known the Chiefs for an extended period such that the Applicants had been familiar with the men through their teen years and into their early twenties. The relationship was sufficiently close to result in their father becoming indebted to the two men.

[17] The RAD considered the omission of the Chiefs' names in the context of the absence of evidence of their wealth, status and connections. Other than the Applicants' belief that the Chiefs were paying for their education, spying on them at school and funding their travel, there is little evidence in the record regarding the men. The Applicants' narratives contain no details as to the Chiefs' homes, properties, businesses or professions. Their mother's affidavit does not corroborate the Applicants' statements regarding the prominence of the Chiefs. Indeed, the affidavit refers to the mother's surprise that the Chiefs were, according to the father, able to track the Associate Applicant to Abuja. The RAD also found that the affidavit from the mother's friend does not substantiate the influence of the Chiefs or their ability to find the Applicants in Nigeria because the friend had no first-hand knowledge. She stated only that the Applicants' father indicated that it was the Associate Applicant's fiancé who located her in Abuja.

[18] The Applicants respond by stating that, if the men were not wealthy and well-connected, they would not have been able to employ spies and fund their schooling and travel. This, however, is a circular argument that provides no factual information or evidence regarding the Chiefs themselves. Accordingly, I find that it was open to the RAD to conclude that the lack of evidence regarding the Chiefs' identity and wealth undermined the Applicants' allegations that the men are well known to the family, prominent and wealthy, and their subjective fear of the men as agents of persecution.

[19] The RAD then assessed the affidavits provided by the Applicants' brother, mother and the mother's friend. The panel assigned little weight to the brother's affidavit for two reasons. First, the RAD found that the identity of the brother had not been established. The Applicants'

argument that the brother has multiple names did not resolve the issue as there was simply no evidence in the record reconciling the identity of the affiant as their brother. The RPD did not err in seeking clarification of the names used in the BOC form and in the affidavit. The Applicants' argument before me that it was unreasonable for the RAD to doubt the identity of the brother because they would not involve anyone else and, further, that the contents of the affidavit demonstrate his relationship with them does not remedy the lack of evidence in the record. Second, the statement in the brother's affidavit that he witnessed the father inflicting numerous beatings on the Applicants is inconsistent with their evidence of one beating when the sisters returned home during a break in their studies.

[20] The RAD considered the mother's affidavit and found that it undermined the Applicants' narrative regarding the incident in Abuja. The RAD noted that there is no mention in the affidavit of the event and that no explanation was given for the omission. In the panel's view, it was reasonable to expect the mother to describe the Abuja incident. The RAD concluded that the absence of any mention of the alleged event from the mother's affidavit was a significant omission because it precipitated the father locating and beating the Associate Applicant. The incident was material to the allegations (1) that the Chiefs and the father together have the means necessary to locate the Applicants in Nigeria, and (2) that the father's ability to force the marriages and inflict FGM is to be feared.

[21] The RAD's analysis of the affidavit from the mother's friend in Abuja circles back to the question of the identity and status of the Chiefs. The RAD found that the affidavit did not substantiate the influence or reach of the Chiefs because she had no first-hand knowledge. As

stated above, her information of their role in locating the Associate Applicant was derived from the father.

[22] I find no reviewable error in the RAD's assessment of the affidavits of the Applicants' brother and mother, and their mother's friend in Abuja.

[23] Finally, the Applicants contest the RAD's findings regarding the Associate Applicant's sexual orientation. The Applicants argue that the RAD erred in faulting the language used by their mother and brother in their respective affidavits which does not make direct reference to the Associate Applicant's bisexuality. Their mother indicated that the Associate Applicant was in an "unconventional relationship" and the brother refers to "abnormal sexual behaviour". The Applicants argue that this type of language was necessary because homosexuality is illegal in Nigeria.

[24] The RAD assessed the language used in the two affidavits in response to the Applicants' submission on appeal that the affidavits established that the Associate Applicant is bisexual. The RAD disagreed with the Applicants and concluded that the affidavits did not establish her sexual orientation. This conclusion, however, was not determinative. The remainder of the RAD's analysis centres on the omissions and inconsistencies in the evidence of the Associate Applicant herself.

[25] In her narrative, the Associate Applicant stated that people at school noticed she was spending her time with girls and that they made assumptions about her sexuality. She omitted

any reference to an alleged three-year relationship with a woman. The RAD drew a negative credibility inference from this omission because her sexual identity was central to her refugee claim. In addition, the spies of the Associate Applicant's alleged fiancé would more likely have discovered a three-year, same-sex relationship rather than merely evidence that she was spending time with other girls. Adding to the RAD's concerns regarding her evidence were the inconsistencies in the Associate Applicant's testimony as to whether she had attempted to contact her partner since coming to Canada. The letter from the VAW counsellor did not rectify the gaps in the Associate Applicant's evidence as the counsellor repeated the information given to them.

[26] The Applicants have not persuaded me that there is any shortcoming in the panel's analysis that would prompt the Court's intervention. The RAD's analysis of the Associate Applicant's alleged fear of persecution based on sexual orientation is consistent with a notable lack of evidence. The RAD reasonably found that the Associate Applicant had not met her obligation to produce credible evidence to establish her profile as a bisexual or perceived bisexual.

[27] In summary, I find that the RAD painstakingly reviewed the testimonial and documentary evidence before it and set out in the decision under review its reasoning and resulting conclusions. The panel focussed on omissions and inconsistencies in the Applicants' evidence that impacted the allegations regarding their father's determination and ability to force them to marry and the Chiefs' wealth and prominence in assisting the father's efforts to do so. The Applicants take issue with the RAD's evaluation of the evidence and the emphasis it placed on

deficiencies in the evidence but it is not the role of the Court to reweigh the evidence (*Ullah v Canada (Citizenship and Immigration)*, 2022 FC 1777 at para 28). The RAD specifically considered the presumption of truthfulness of a claimant's allegations (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA)) but determined that the presumption had been rebutted in this case by the material omissions and inconsistencies in the Applicants' evidence. The RAD's conclusions are justified on the evidence. Accordingly, this application for judicial review is dismissed.

[28] The parties have not proposed any questions for certification, and I agree that there are none.

JUDGMENT IN IMM-6888-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6888-21

STYLE OF CAUSE: JOY OLUCHI ABRAHAM, VICTORY ONYEJI
ABRAHAM v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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