

Federal Court



Cour fédérale

Date: 20230504

Docket: IMM-3161-21

Citation: 2023 FC 639

Ottawa, Ontario, May 4, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

CHIGBO JOHNCROSS EGENTI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Chigbo Johncross Egenti (“Mr. Egenti”), sought refugee protection in Canada because of his fear of his father and the cult group in which his father is involved. The Refugee Protection Division [RPD] dismissed Mr. Egenti’s claim, finding that he had an internal flight alternative [IFA] in Nigeria. The Applicant appealed to the Refugee Appeal Division [RAD] and sought to introduce new evidence that was not before the RPD relating to a series of threats and attacks that occurred after the RPD’s decision. The RAD did not admit this new

evidence because it found it not credible. The RAD dismissed the appeal, affirming the RPD's finding that Mr. Egenti had an IFA in Port Harcourt and Abuja.

[2] Mr. Egenti challenges the RAD's dismissal in this application for judicial review. He argues that the RAD breached his right to procedural fairness by declining to: admit new evidence, conduct an oral hearing, or provide him with an opportunity to make submissions on the RAD's credibility concerns about his new evidence. Mr. Egenti also argues that the RAD unreasonably found that he has an IFA in Nigeria.

[3] The determinative issue is the RAD's treatment of the new evidence filed by Mr. Egenti. The RAD finds all of Mr. Egenti's personal documents not credible or fraudulent by association, even when the documents are related to different events. The RAD's finding about the credibility of the new evidence is not transparent, justified, or intelligible and therefore does not meet the requirements set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] for a reasonable decision. It is unnecessary for me to consider Mr. Egenti's procedural fairness arguments relating to the new evidence.

[4] Based on the reasons below, I grant the application for judicial review.

II. Issue and Standard of Review

[5] The determinative issue is the RAD's finding that the new personal evidence filed by Mr. Egenti is not credible and therefore inadmissible as part of the evidentiary record before the RAD. Though Mr. Egenti raised a number of arguments about the procedural fairness of the

RAD's process in not admitting the evidence, including whether a hearing should have been held or notice provided to him about the RAD's credibility concerns, I have focused my decision solely on the RAD's substantive credibility assessment. I have reviewed the RAD's analysis and determination on this issue on a reasonableness standard (*Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 at paras 29, 74; *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1145 at para 9).

[6] The Supreme Court of Canada in *Vavilov* described a reasonable decision as “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). Administrative decision-makers must ensure that their exercise of public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

III. Background

[7] Mr. Egenti was 18 years old when he arrived in Canada in December 2017. Mr. Egenti is the eldest son in his family. His parents are divorced and he lived with his father in Nigeria. Mr. Egenti's refugee claim set out that his father was physically abusive to him and his mother for years. A month prior to coming to Canada, Mr. Egenti's father introduced him to a cult to which his father belonged and insisted that he take his father's position in the cult when his father dies. Mr. Egenti refused and his father threatened to shoot him. Mr. Egenti fled to his mother, who helped him leave Nigeria for Canada.

[8] The RPD heard Mr. Egenti's refugee claim on January 10, 2020. At the hearing, Mr. Egenti testified that following a complaint by his mother, his father was brought into the police

for questioning and later released. He also testified that his father continued to search for him since he arrived in Canada. On January 31, 2020, the RPD dismissed the claim.

[9] The RPD found Mr. Egenti's testimony about the allegations to be credible. The RPD found Mr. Egenti's testimony about his father and members of the cult being able to find him throughout Nigeria to be speculative and not credible. The RPD based its dismissal of the claim on the availability of IFAs in Abuja and Port Harcourt.

[10] Mr. Egenti appealed to the RAD. The RAD dismissed the appeal. The RAD did not accept any of the personal evidence filed by Mr. Egenti relating to threats and attacks, after the RPD's decision, made by his father against his mother, his sister, and himself. The RAD confirmed the RPD's findings on IFA and dismissed the appeal.

IV. Analysis

[11] The legal test for the admission of new evidence at the RAD is set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]:

110(4). On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[12] The RAD correctly noted this statutory requirement and explained that in addition to these constraints, it also had to consider whether the evidence is new, relevant, material, and

credible as set out by the Federal Court of Appeal in *Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 96 at paragraphs 38-49. Credibility is the only criteria at issue in this judicial review.

[13] The RAD found none of Mr. Egenti's new personal evidence sufficiently credible to be admitted into the record. There were six pieces of personal evidence relating to three specific events: threats and attacks against Mr. Egenti's mother on March 1, 2020; threats to Mr. Egenti's sister on March 5, 2020, and June 5, 2020; and a threat to Mr. Egenti himself on March 24, 2020.

The new personal evidence consisted of:

- Mr. Egenti's affidavit describing recent attacks on his family members and a threatening phone call he received from his father;
- A copy of a threatening text message Mr. Egenti received from his father;
- Mr. Egenti's mother's affidavit describing how Mr. Egenti's father and his associates attacked her;
- A police diary extract related to the attack on Mr. Egenti's mother;
- A medical report from the hospital where Mr. Egenti's mother was treated following the March 2020 attack; and
- Mr. Egenti's sister's affidavit documenting a threat she received from her father in March 2020.

[14] The RAD makes an overarching statement that the temporal coincidence of these alleged events undermined their credibility. The RAD found that there had been no evidence before the RPD of a search for Mr. Egenti in Nigeria in the two years between when he made his claim and

the RPD rendered its decision. Based on this, the RAD found the allegations “too fortuitous to be believed” and “simply lacking in plausibility.” The RAD grounded this finding on a misapprehension of the evidence. Mr. Egenti had in fact testified before the RPD that his father and others continued to search for him since he arrived in Canada. The RAD makes no mention of this evidence in its decision. The RAD’s misapprehension of the facts on which its plausibility finding is based renders its analysis unreasonable. Accordingly, I need not address Mr. Egenti’s arguments regarding the reasonableness of the RAD’s finding that the fortuitous timing of events undermines the credibility of Mr. Egenti’s and his family’s allegations.

[15] The RAD does not solely rely on fortuitous timing, however, to find the new personal evidence not credible. The RAD also reviewed the documents themselves and made a series of interrelated findings. The Respondent argued that these findings have to be considered cumulatively and while one negative credibility finding may not stand up to scrutiny on its own, when considered together the RAD’s credibility assessment is reasonable. In particular, the Respondent argued that the RAD’s credibility determination about the police diary extract would have been insufficient to render the documents inadmissible. The RAD began its analysis of the documents with the police diary extract and found it fraudulent primarily because it does not conform to the samples in the objective country conditions documents, noting a number of typographical differences. The RAD’s analysis of the document is brief and the lack of conformity with the samples being highlighted by the RAD is certainly far from clear. Yet it is on this basis, and the timing of the events, that the RAD determined that the police diary extract is fraudulent. This is a significant finding that the RAD used as a basis to undermine the credibility of the remaining new evidence.

[16] Next, the RAD considered Mr. Egenti's mother's affidavit and medical documentation. The medical report notes that Mr. Egenti's mother was admitted to hospital on March 1, 2020, and remained unconscious in a coma until she regained consciousness on the sixth day. Both Mr. Egenti's mother's affidavit and the police diary extract state that Mr. Egenti's mother was hospitalized for six days and that she received threatening calls when she regained consciousness while she was recovering in the hospital. The RAD concluded that these pieces of evidence are inconsistent with one another because they indicate that Mr. Egenti's mother received the threatening calls while she was in a coma. However, the inconsistency identified by the RAD is not readily apparent. Instead it raises questions. Accordingly, there was back and forth at the judicial review hearing about whether this was an inconsistency. The RAD's findings leave many questions as to why it found the evidence inconsistent, without giving Mr. Egenti any opportunity to provide a further explanation. I am left with the impression that the alleged inconsistency may not be an inconsistency at all. The RAD relies on this alleged inconsistency and its previous finding that the police extract is fraudulent to find the medical report also fraudulent.

[17] The RAD then entirely dismisses Mr. Egenti's sister's affidavit as not credible because of its previous findings about other pieces of evidence, the police diary extract, the medical report, and Mr. Egenti's mother's affidavit. There is no analysis of Mr. Egenti's sister's allegations themselves. The Respondent argued that this was reasonable given that the sister's affidavit is primarily a retelling of the events that happened to Mr. Egenti's mother, which the RAD had already found not credible. Primarily is the key word. The sister's affidavit also addressed two separate incidents that happened to her: one in March 2020 when Mr. Egenti's father approached

her and demanded to know Mr. Egenti's whereabouts, and another in June 2020 when Mr. Egenti's father found her in Port Harcourt, demanded to know Mr. Egenti's whereabouts, and searched the house in which she was staying hoping to find Mr. Egenti. There is no specific analysis in the RAD's reasons of the credibility of this evidence. This is unreasonable.

[18] Similarly, the RAD makes no mention of the paragraphs in Mr. Egenti's own affidavit where he sets out the threatening phone call he had received from his father. The RAD discusses the other parts of his affidavit, saying that a portion consists of complaints about the RPD process which is not new evidence, and that the other parts retell the events that happened to his mother and sister. But, nowhere does the RAD address the credibility of Mr. Egenti's evidence about his own recent threat. This too is unreasonable.

[19] Overall, the RAD's review of the evidence and its credibility findings are cursory, leaving many unanswered questions. This Court and the Federal Court of Appeal have consistently held over the last three decades that credibility findings in refugee matters must be made in clear and unmistakable terms (*Hilo v Canada (Minister of Employment and Immigration)*), [1991] FCJ No 228 (FCA) at para 6; . This requirement certainly does not disappear when making determinations about the admissibility of new evidence at the RAD. Determining that a document tendered by a refugee claimant is fraudulent or not credible is a serious finding with consequences for the evidence in the asylum claim as well as possibly for future applications.

[20] In the context of a claim for refugee protection, where the impact of the decision on the individual is severe, “the reasons provided to that individual must reflect the stakes” (*Vavilov* at para 133). The RAD did not make its credibility determinations with respect to the new personal evidence filed by Mr. Egenti with care and attention, running afoul of the requirements set out in *Vavilov* that a decision be transparent, intelligible, and justified.

[21] As noted above, Mr. Egenti also raised concerns regarding the fairness of the process: specifically, not being given notice of the RAD’s credibility concerns about his documents and whether an oral hearing was required given the nature of the RAD’s credibility findings. It is unnecessary for me to address Mr. Egenti’s fairness concerns because the credibility findings themselves are unreasonable. This should not be taken as an endorsement of the procedure followed by the RAD in this case.

[22] The application for judicial review is allowed and sent back to be redetermined by a different decision maker. Neither party raised a question for certification and I agree none arises.

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The RAD decision dated April 20, 2021, is set aside and sent back to be redetermined by a different RAD member; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3161-21

STYLE OF CAUSE: CHIGBO JOHNCROSS EGENTI v THE MINISTER OF
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