

Federal Court



Cour fédérale

**Date: 20231214**

**Docket: IMM-8830-22**

**Citation: 2023 FC 1697**

**Ottawa, Ontario, December 14, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**ANTHONY CHUKWU OBIDIMMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Anthony Chukwu Obidimma, applied for refugee protection in Canada because he did not believe the Nigerian police would protect him from the threats and violence of a particular cult group in Nigeria. Mr. Obidimma's refugee claim was dismissed by the Refugee Protection Division [RPD] primarily on the basis of credibility. Mr. Obidimma appealed this determination to the Refugee Appeal Division [RAD]. The RAD overturned a number of the

RPD's negative credibility findings but dismissed the appeal because: i) when Mr. Obidimma visited the United States in June 2017, he returned to Nigeria instead of claiming refugee protection there; and ii) there was insufficient corroborative evidence to establish the elements of his claim.

[2] Mr. Obidimma argues that the RAD was unreasonable in their consideration of his corroborative evidence. I agree. The RAD commented on the credibility and probative value of each corroborative document, but then failed to explain its overall assessment. Despite having found certain documents probative of central aspects of the claim, the RAD did not explain how it reached its ultimate conclusion that there was insufficient credible evidence in support of Mr. Obidimma's allegations. This lack of justification renders the decision unreasonable.

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

## II. Background on Refugee Claim

[4] Mr. Obidimma alleges that after his father's death in July 2016, members of a cult told him that as the eldest son he would have to take his father's place in the cult. Mr. Obidimma refused. Cult members threatened and beat him. He made a complaint to the police. The police refused to intervene because they viewed it as a "cultural matter."

[5] Mr. Obidimma went to the United States in June 2017 for approximately two weeks but decided not to make a refugee claim there because he heard the United States is hostile to refugee claimants. He returned to Nigeria. Cult members attacked Mr. Obidimma's wife, causing

her to require medical attention. Mr. Obidimma experienced further attacks and threats by the cult. He and his family went into hiding and then Mr. Obidimma eventually left in June 2018 to Canada, where he made a refugee claim.

[6] Since arriving in Canada, Mr. Obidimma claims various family members have continued to receive threats from cult members asking about his whereabouts.

[7] The RPD initially rejected Mr. Obidimma's refugee claim on credibility in August 2019. The RAD allowed the appeal of this decision, finding there was a breach of procedural fairness. On redetermination, the RPD again rejected the claim based on credibility. The RAD dismissed the appeal on August 31, 2022. It is this decision of the RAD that is the subject of this judicial review.

### III. Issue and Standard of Review

[8] The only issue raised by Mr. Obidimma on judicial review is the RAD's assessment of his corroborative evidence. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[9] The Supreme Court of Canada 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).

#### IV. Assessment of Corroborative Evidence

[10] The RAD’s reasons explaining its ultimate weighing of the evidence and determination that there is insufficient credible evidence to corroborate the claim is brief. Preceding this, the RAD provides an extensive assessment of each corroborative document. The missing link in the chain of analysis is an explanation of how the RAD reached its conclusions given its findings about the credibility and probative value of the corroborative evidence. This is not a case where the RAD found that none of the documents were probative or credible. A number of the documents were found to be credible and probative of some element of Mr. Obidimma’s allegations.

[11] The RAD assesses each corroborative document and provides its view on the document’s credibility and probative value. These documents include affidavits from family members, friends, neighbours, a police report and a medical report. Only one document is found not credible, which I will discuss below. Most of the RAD’s discussion is centred on the probative value of the documents.

[12] The Respondent argued that the RAD found “the Applicant’s supporting affidavits lacked probative value because they relied solely on the Applicant’s account.” I do not agree with this summary of the RAD’s findings. The RAD finds some of the affidavits lack probative value because the affiants are only retelling events based on having heard about them from Mr.

Obidimma and without having witnessed the events themselves. Eight of the thirteen total affidavits are found to be probative for some aspect that the affiant experienced firsthand: receiving a threat, witnessing a threat, providing a safe haven, witnessing an attack by cult members, witnessing cult members advise Mr. Obidimma he had to take his father's place in the cult at his father's funeral.

[13] The police report is found to only be probative of Mr. Obidimma having made a complaint but not of the allegations contained in the report. The medical report is found to be probative of Mr. Obidimma's wife's medical injuries but not of who caused the injuries.

[14] The only document the RAD found not credible is a letter from Mr. Obidimma's cousin. The RAD based this determination solely on the wording of the letter, noting that the affidavit states that after Mr. Obidimma's father's funeral, a "manhunt" for Mr. Obidimma happened "immediately". This is while all the other evidence, including Mr. Obidimma's own, state that he was attacked seven days after the funeral. Based on this, the RAD finds the letter not credible and extends this negative inference to Mr. Obidimma himself for having provided this evidence to the IRB.

[15] As noted by the Respondent, the RAD's key analysis of the claim is contained in two paragraphs. In these two paragraphs, the RAD finds that Mr. Obidimma is "overall lacking in credibility" and that Mr. Obidimma has "not provided sufficient evidence" to make out a claim under section 96 or 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. On credibility, the RAD's analysis is limited to:

When I consider the Appellant's decision not to seek asylum in the US in June 2017—and to, instead, return to Nigeria where he claimed he faced a serious possibility of persecution by the cultists—alongside his corroborating evidence, as discussed above, I find that he is, overall, lacking in credibility.

[16] There is no explanation for what the RAD means by “alongside his corroborating evidence.” As noted, the RAD's assessment of the corroborative evidence found some of it to be probative and credible of central aspects of Mr. Obidimma's allegations. While it remains open to the RAD to find Mr. Obidimma lacking in credibility in spite of this evidence, the RAD must still explain why. For example, it is unclear to me when the RAD says “alongside his corroborative evidence” whether it is referencing the negative credibility inference it drew against Mr. Obidimma for filing his cousin's affidavit, or if it is explaining that in making this finding about Mr. Obidimma's overall lack of credibility, the RAD had considered the corroborative evidence set out above.

[17] There was also no final conclusion or summary of the RAD's assessment of all of the evidence taking into account its particular findings with respect to the credibility and probative value of each document. The RAD found at least ten of the documents to be both credible and probative on some aspect of the claimant's allegations.

[18] The RAD explained in the paragraphs preceding these two key paragraphs that the jurisprudence supports the view that in weighing credibility in light of corroborative evidence, the analysis can be brief and that corroborative documents, even if credible or probative, do not necessarily override a negative credibility assessment. While none of that is objectionable per se, the reasonableness of this evaluation certainly will depend on the context and facts of a particular

case. Depending on the nature of the credibility findings, more or less explanation may be required to explain this weighing determination. It is of limited value, for example, to compare this case, where the central credibility finding is about delay in claiming, to another case where particular key documents were found to be fraudulent or where there were many inconsistencies or contradictions in the evidence that had not been explained.

[19] While reasons are not required to be lengthy, the reasons must explain how the RAD reached the determination that, in spite of the corroborative evidence, much of which it found credible and probative on some aspect, the claimant's allegations were not believed. Without any explanation for this key determination, the decision lacks transparency.

[20] On sufficiency, the RAD finds:

I find that when I consider his own evidence, alongside his corroborating evidence, he has not provided sufficient evidence to convince me that he faces either a serious possibility of persecution or a likelihood of other harm upon return to Nigeria. As noted, due to the Appellant's failure to claim in the US in June 2017, the presumption that his sworn evidence is true has been rebutted. Once again, while my description of my determination of the sufficiency of this claim is brief, as noted by Justice Grammond, sufficiency does not lend itself to being set out in words. In support of the finding, I refer to my foregoing analysis regarding the Appellant's evidence and his supporting evidence.

[21] Again, the problem is that the RAD does not provide an explanation why, based on its "foregoing analysis regarding the Appellant's evidence and his supporting evidence" that there was not sufficient evidence to make out a claim under sections 96 or 97 of *IRPA*. Certainly, if this was a case where the foregoing analysis set out that none of the documents were credible or probative, then this sort of limited reasoning may have been enough, but that was not the case

here. The RAD appears to be referring to Justice Grammond's comments in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 35 as cited earlier in the RAD's decision. I do not agree that this passage can be interpreted to mean that "sufficiency does not lend itself to being set out in words." In fact, Justice Grammond states that "[b]ut like other factual findings, findings of insufficiency must be explained." In my view, this was not done here. There was a missing link in the RAD's chain of analysis, rendering the RAD's decision unreasonable (*Vavilov* at para 87). The RAD had to explain how it went from its findings on the corroborative pieces of evidence in the record to its ultimate conclusion that there was insufficient evidence to support the claimant's allegations.

[22] The application for judicial review is granted. Neither party raised a question for certification and I agree none arises.



**JUDGMENT in IMM-8830-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted;
2. The August 31, 2022 decision of the RAD is set aside and sent back to a different decision maker to redetermine; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8830-22

**STYLE OF CAUSE:** ANTHONY CHUKWU OBIDIMMA v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 13, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** DECEMBER 14, 2023

**APPEARANCES:**

Chiu Chee Chung FOR THE APPLICANT

Nick Continelli FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Globe Immigration FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario