

Federal Court



Cour fédérale

Date: 20250508

Docket: IMM-3930-24

Citation: 2025 FC 844

Ottawa, Ontario, May 8, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

GABISIU OLAKUNLE OLARIBIGBE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gabisiu Olakunle Olaribigbe, seeks judicial review of a decision of the Refugee Appeal Division (RAD) dated February 16, 2024 dismissing his appeal and confirming the Refugee Protection Division's (RPD) decision that he is neither a convention refugee nor a

person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant is a citizen of Nigeria. He claims he fled Nigeria in 2016 after being threatened for refusing to assume the role of family chief. He first travelled to the United States and got married, but did not obtain status there. In 2019, he entered Canada and made a claim for refugee protection.

[3] The RPD rejected his claim on December 21, 2021, finding he was not credible as there were inconsistencies regarding (i) if the Applicant's family held the chieftaincy role, and, (ii) if the Applicant's father and brother were previously nominated as the chief, acting as the chief, or installed as the chief.

[4] The Applicant had two considerations before the RAD. In the reconsideration of the RAD decision dated February 16, 2024, which is the decision under review, the RAD dismissed the Applicant's appeal. The RAD refused to admit the Applicant's new evidence because it was found not to be credible; it found that the Applicant's credibility was undermined by his failure to claim for refugee status in the United States after fleeing from Nigeria; that the Applicant's supporting evidence submitted to the RPD was inauthentic; and that the Applicant did not face an objective risk of harm in Nigeria.

[5] For the reasons below, I have found that the RAD's treatment of this evidence was reasonable and the process was fair to the Applicant.

I. Issues and standard of review

[6] The Applicant raises the following issues:

- A. Refusal to admit new evidence;
- B. Failure to claim in the United States;
- C. Refusal to admit Citizen article; and
- D. The impact of the Basis of Claim [BOC] omission.

[7] On a reasonableness review, this Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 15 [Vavilov]). 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).

[8] Regarding procedural fairness, the Court looks to whether the procedure allowed the applicant to know the case to meet, and whether the applicant had a full and fair opportunity to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56).

II. Analysis

A. *Refusal to admit new evidence*

[9] The Applicant argues that the RAD unreasonably refused to admit new evidence concerning an alleged abduction attempt involving a machete on his sister-in-law. The new evidence included:

- a) the medical report of the Obafemi Owode Local Government Health Center dated November 10, 2023;
- b) the letter of Mr. Ibrahim Fatai, dated September 13, 2023; and
- c) the letter of Ms. Deborah Oluwaseyi Olaribigbe, dated October 20, 2023.

[10] With regard to the medical report, the RAD notes as follows:

[16] The medical report, dated November 10, 2023, is written on the same type of paper and in the same font as the letters contained at paragraph 12(b)-(d). The report states that on December 23, 2022, the victim suffered a laceration on the front and back of her hand and had general body weakness. It further claims her injuries were sutured on both “sides of the palm,” she received one unit of blood, and was subsequently prescribed “recovery medications and essential treatment.”

[17] I do not find this report to be credible for several reasons. The first being it reports injuries (to a single hand) that are different from those reported by the victim (both hands) in her letter at paragraph 12 (b). The second reason is it silent to the length of time the victim had to remain in the hospital. According to the letter written by the victim’s husband and found at paragraph 12 (d), the victim remained in the hospital until December 27, at the very least. I find, on a balance of probabilities, that in making a medical report, a hospital would refer to the length of hospitalization. Further, the treatment regime described as “recovery medications and essential treatment” is generalized,

vague and uninformative. I find on a balance of probabilities, that a medical report derived from historical hospital records would be more specific in regard to the treatment administered particularly because of the ghastly nature of the injuries. Lastly, and in light of the report being written several years after the incident, I draw a negative credibility finding from the fact that the first sentence of the second paragraph is written in the present tense: “Clinical examination reveals a [middle-aged] lady writhing in severe pains as a result of trauma and beating.” For these reasons, I do not find the medical report to be credible and it may not be accepted as new evidence. [Emphasis added.]

[11] In my view, it was reasonable for the RAD to interpret the medical report was referring to injuries to one hand only. The medical report does not explicitly mention that injuries are to both hands. Given the ambiguity, it was reasonable for the RAD to conclude that the description of the injury was inconsistent with other evidence. I also do not agree with the Applicant that the RAD engaged in a veiled plausibility finding. It was within the RAD’s discretion to note what was lacking in the medical report and to draw negative inferences in combination with the other issues raised.

[12] On the letter of Mr. Ibrahim Fatai, the RAD found as follows:

[19] In the letter written by the Appellant’s brother-in-law (victim’s husband) he claims that he rushed to the hospital and was shocked to see his wife’s injuries, including *a* (my emphasis) *machete wound* (my emphasis). The husband clearly writes that his wife was injured on one hand, which is inconsistent with the injuries described by the victim. I find on a balance of probabilities that someone would know whether their spouse was badly injured on both hands or a single hand. For this reason, I do not find the letter written by the Appellant’s brother-in-law to be credible and it may not be accepted as new evidence. [Emphasis added.]

[13] The Applicant argues this is an erroneous finding, as Ibrahim Fatai did not state that Ms. Olabomi Ibrahim was only injured on one hand. Like the medical report, this letter is unclear. It was open for the RAD to conclude the injuries were to one hand only. Although the Applicant argues that the language in the letter does not preclude the possibility of multiple wounds to multiple hands, that is a matter of interpretation, warranting deference to the decision maker.

[14] Finally, on the letter of Ms. Deborah Oluwaseyi Olaribigbe, the RAD found as follows:

[20] In her letter, the Appellant's former wife claims to have returned to the home of her sister (the victim) late in the evening of December 23, 2022, and when she approached the house she saw noticed several neighbours outside shouting and raising alarms and learned her sister had swiftly been taken to the local health centre. That the neighbours were outside shouting and raising alarms late in the evening is inconsistent with the victim's claims that the assault happened in the morning. The victim's description of the event is simply "on the morning of" which I take to minimally mean before 12:00 p.m., on December 23rd. The Appellant's ex-wife claimed she saw the neighbours shouting outside the victim's house in late evening which I take to minimally mean after 6:00 p.m. While not implausible that the neighbours would be still shouting outside the victim's home six hours after the incident, it is, on a balance of probabilities, unlikely and I draw a negative credibility inference from the same. In addition, in her letter the ex-wife claims the assailants shouted an entirely different and much longer message than the message described by the only eyewitness. Lastly, in her letter the ex-wife gives inconsistent information about her sister's injuries. The 3rd and 4th paragraphs of her letter reiterate almost the same information save and except the 3rd paragraph details the message given by the assailants. Otherwise, these paragraphs state three men/three individuals met with her sister, an argument ensued and her sister "was attacked with a machete, cutting her hand" or "she managed to block the strikes with her hands, which unfortunately resulted in severe cuts to her hands." There is no reason to have two paragraphs of the same letter give the same information with two different versions of the injuries and I draw a negative credibility inference from the

same. Accordingly, I find this letter not to be credible and it cannot be admitted. [Emphasis added.]

[15] The Applicant argues that it was unreasonable for the RAD to reject the letter as not credible because the events it described were unusual or “unlikely”. The Applicant repeats the argument that the RAD unreasonably inferred that Ms. Olabomi Ibrahim was injured only on one hand.

[16] In my view, it was open to the RAD to note the differences in the description of the injuries and to find that these inconsistencies undermined the reliability of these documents. The Applicant’s submissions amount to a disagreement with how the RAD weighed the evidence which is not the Court’s role. Multiple interpretations of the documents were possible, so it was not unreasonable for the RAD to note what was lacking in the medical report and to draw negative inferences in light of other issues raised. The RAD did not assess these documents in isolation, but rather, the RAD considered them in the context of all the evidence before it.

B. *Failure to claim in the United States*

[17] The Applicant argues that the RAD unreasonably drew an adverse credibility inference from his failure to claim refugee protection while in the United States. The Applicant argues that, because he held a visa in the United States he had no reason to make an application.

[18] The relevant portion of the RAD decision is as follows:

[42] The RPD correctly found that the Appellant's failure to make a claim for protection when he first arrived in the USA undermined the credibility of his claim to be at risk of harm in Nigeria. In his BOC narrative, the Appellant claimed that when he arrived in the USA he had no knowledge of the refugee process. He also claimed that he had only recently come to learn of the Trump administration's anti-immigration tendencies. In testimony, the Appellant claimed that shortly after he arrived in the USA, he learned from a lawyer that making a claim for protection would cost up to \$4,000 and by the time he had the funds it was too late as he had been in the country for more than one year plus he had married which provided another pathway to permanency. The Appellant argues that he provided adequate reasons for not claiming protection before arriving in Canada, including a lack of funds and a pathway to status through his sponsorship application.

[43] Of note, the Appellant arrived in the USA shortly after Trump had been elected on a platform that promised a total and complete Muslim ban. He did not explain how he, as an educated Muslim man, only heard of the Trump Administration's anti-immigration stance in 2019. In addition, his claim to have been unaware of the refugee protection system is at odds with his claim to have spoken to a lawyer during his first year in the USA and learned of the costs related to making a claim.

[44] The Appellant claims that his second wife withdrew her sponsorship application after their relationship dissolved and he provided a letter which indicated that she did indeed withdraw her application to sponsor the Appellant in October 2018. However, the letter provided seems to indicate that the sponsorship application was permitted to be withdrawn as the Appellant did not qualify to be sponsored.

[45] It is unclear when the Appellant lost his status in the USA. However, a letter dated November 6, 2018, from U.S. Citizenship and Immigration Services rejecting his Application to Register Permanent Residence or Adjust Status, states that the Appellant's status was expired when he made his application in August 2017. Accordingly, he was in the USA without status from August 2017, at the very least, until January 2019.

[46] I find [h]is failure to claim protection in the USA shortly after his arrival in 2016 undermines the credibility of his claim to face a

risk of harm in Nigeria and to undermine his credibility in general.
[Emphasis added.]

[19] In my view, the RAD's decision demonstrates that it engaged with the Applicant's submissions. After considering the evidence, the RAD concluded that the Applicant's failure to claim refugee protection in the United States after his arrival in 2016 undermined the credibility of his claim that he faces a risk of harm in Nigeria. In my view, this finding is reasonable.

C. *Refusal to admit The Citizen article*

[20] The Applicant argues that the RAD breached procedural fairness in its treatment of the new evidence, namely an article published by *The Citizen*.

[21] In the first RAD decision, it agreed with the Applicant that the RPD breached procedural fairness by finding that *The Citizen* article was inauthentic. As a result, the first RAD decision did not rely on the RPD's findings regarding the article's authenticity.

[22] In its redetermination decision however, the new RAD panel reversed that finding and confirmed the RPD's negative credibility finding by relying on the omission of the Applicant's brother from *The Citizen* article.

[23] In the circumstances, I do not agree with the Applicant that he was denied an opportunity to address this issue on redetermination. The Applicant submitted new evidence for the redetermination and could also have addressed the issues with this document, which had been

highlighted by the RPD. This is not a situation where the document was unknown to the Applicant. In his submissions for the redetermination, the Applicant had the opportunity to respond to all credibility concerns.

[24] No procedural fairness issues arise on this issue.

D. *The impact of the BOC omission*

[25] The Applicant argues that the RAD unreasonably found that he omitted information from his BOC narrative, as he provided evidence in the form of a police report regarding an attempted abduction on March 20, 2016. However, he did not mention in his BOC narrative that he reported the incident to the police.

[26] The Applicant relies on cases where an omission of facts from a BOC were found not to be “material” where a claimant provides the information through other means (*Abakumova v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 218 at para 31 [*Abakumova*] and *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 at paras 42-43 [*Osikoya*]).

[27] I accept that it would be unreasonable for the RAD to impugn credibility for a BOC omission if the material information was advanced by other means. However, the other means relied upon by the Applicant—the police report—was fully considered by the RAD, but was found to be fabricated and, therefore, given low weight. In other words, here the RAD was aware of the material information omitted from the BOC, which distinguishes this case from *Abakumova* and *Osikoya*. Here the police report did not ‘fill in the gaps’ left by the BOC

omission. The RAD reviewed the police report and found it wanting, affording it low weight and undermining the Applicant's credibility.

[28] It was reasonable for the RAD to draw a negative credibility inference from the Applicant's failure to include this information in his BOC.

III. Conclusion

[29] This judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-3930-24

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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