

Federal Court



Cour fédérale

Date: 20250522

Docket: IMM-4083-24

Citation: 2025 FC 923

Ottawa, Ontario, May 22, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

**OLASUNKANMI HAMED ADENIYI
AISHAT OMOWUNMI ADENIYI
FATHEEYAT NINIOLA ADENIYI
ABDULMATEEN NIYOOLA ADENIYI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a family from Nigeria who seek judicial review of a decision of the Refugee Protection Division (RPD) of February 13, 2024, dismissing their refugee claims on the

grounds that the claims had no credible basis pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons below, I have concluded that the RPD decision is reasonable and I am dismissing this judicial review.

I. Background

[3] The Applicants claimed refugee protection based on an alleged home invasion and sexual assault in Nigeria in April 2016. They claim that, following this incident, their family members persecuted them and pressured the female Applicant to undergo a public cleansing ritual, accusing her of having sexual relations outside of marriage.

[4] In February 2017, the Applicants fled Nigeria to the United States. In March 2018, the Applicants arrived in Canada and sought refugee protection.

[5] On October 19, 2022, the RPD granted the Applicants' refugee claims. The Minister appealed this finding arguing there was a breach of procedural fairness as the Applicants filed a substantially revised amended narrative that was not disclosed to the Minister prior to the hearing. The Refugee Appeal Division (RAD) allowed the appeal, finding that key evidence was disclosed to the Minister only after the hearing and that the RPD failed to address credibility concerns "apparent on the face" of the amended narrative. The RAD ordered a redetermination by the RPD.

[6] In the redetermination decision dated February 13, 2024, the RPD dismissed the Applicants' refugee claims. The RPD found the claims had "no credible basis" pursuant to subsection 107(2) of the *IRPA*. This is the decision currently under review.

II. Issues

[7] On this judicial review, the Applicants raise the following issues:

- A. Did the RPD demonstrate bias?
- B. Did the RPD err on the test for finding "no credible basis"?

[8] With respect to the bias allegations, the test asks if a reasonable person, who is reasonably informed of the facts, viewing the matter realistically and practically and having thought it through, would think it more likely than not that the tribunal was biased (*Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 (SCC) at 394 [*Committee for Justice and Liberty*]).

[9] The RPD's decision regarding a no credible basis finding pursuant to subsection 107(2) of the *IRPA* is reviewed on the reasonableness standard. The Court asks if 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). A reviewing court must refrain from reweighing evidence before the

decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

III. Analysis

A. *Did the RPD demonstrate bias?*

[10] The Applicants argue that the RPD Member had made up her mind prior to the commencement of the hearing. They point to the RPD Member's statement at the start of the hearing that no oral decision would be given following hearing due to the complexity of the claim. They argue that this demonstrates that the RPD Member had already determined that the claims would be rejected before the Applicants had the opportunity to present their case.

[11] The Applicants have the burden to establish that the RPD was biased and the threshold to establish bias is a high one, requiring "substantial grounds" or a "real probability" of bias be demonstrated (*R v S (RD)*, 1997 CanLII 324 (SCC) at paras 113, 114).

[12] In my view, there is no merit to the Applicants' argument. Subsection 169(c) of the *IRPA* permits the RPD to issue decisions either orally or in writing. The Applicants do not identify any rule that requires the RPD to issue a decision immediately after the hearing. The fact that the Member chose to reserve her decision does not support an inference of bias. If anything, delivering a decision immediately might more reasonably raise an apprehension of bias – where it could be argued that a decision maker did not take sufficient time to consider the matter. In any event, the RPD Member's choice to reserve her decision and provide written reasons after

the hearing reflects a proper exercise of discretion under the *IRPA* and does not, in any manner, suggest any bias.

[13] The Applicants alternatively argue that the way the RPD Member conducted herself during the hearing implies bias, noting that “impatience, annoyance, anger, sarcasm, rudeness or sharp remarks, tone, body language and treatment of participants during a hearing can imply bias.” The Applicants point to a passage in the written decision that they believe demonstrates “an argumentative and unsympathetic approach”:

[102] Counsel made minimal submissions, which appeared to rest in part on the inappropriate implication that I should make a positive determination for vaguely-articulated humanitarian and compassionate reasons, raising the irrelevant matters of the claimants’ three Canadian-born children, the length of time that has passed since the claimants initially filed their claims (“it’s been a roller coaster [for the claimants], they want it to be over”), and the fact that the original RPD panel had made a positive decision (notwithstanding his acknowledgment also that the RAD had determined that decision to be incorrect on several grounds). He argued as well that it would be understandable for the claimants to have found it more difficult over this time to remember some details, despite that they had in fact clearly alleged the opposite – that their memories grew more detailed over time. [Emphasis added.]

[14] They also allege that “it is clear from the member’s remarks that she felt that her job was to reject the Applicants’ claim.”

[15] Based upon my review of the transcript provided in the record, I could not find any evidence to support the Applicants’ arguments that the RPD Member displayed “subtle hostility”

throughout the hearing or that the RPD Member acted in a hostile manner towards the Applicants and their counsel.

[16] These allegations are unsubstantiated. There is no evidence to demonstrate a real probability that the RPD Member was either hostile, impartial, or biased in the circumstances. The Applicants' allegations are speculative at best and fail to meet the objective reasonable person standard set out in *Committee for Justice and Liberty*. In the absence of evidence to the contrary, I am satisfied that a reasonably informed person, viewing the matter realistically and practically and having thought it through, would not conclude that it is more likely than not that the tribunal was biased.

[17] The Applicants have not demonstrated a reasonable apprehension of bias.

B. *Did the RPD err on the test for finding "no credible basis"?*

[18] The Applicants disagree with the RPD's negative credibility findings. They dispute the negative inference drawn from contradictions in their statements about whether they received assistance from legal counsel. They also disagree with the RPD's negative inference drawn from the fact that the Applicants' amended narrative was substantially different from the previous one.

[19] Subsection 107(2) of the *IRPA* states:

No credible basis	Preuve
(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there	(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve

was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[20] It was open to the RPD to doubt the truthfulness of the Applicants' testimony based on several credibility issues identified with the evidence following the Applicants' narrative. As noted by RPD:

Credibility

[34] When a claimant swears that certain facts are true, this creates a presumption that they are true unless there is a valid reason to doubt their truthfulness. However, this presumption of truthfulness does not apply to inferences or conclusions a witness may draw from facts, or to speculation for which there is no evidentiary basis.

[35] To be clear, the *Maldonado* presumption is simply that a sworn witness is telling the truth; it is not a presumption that everything the witness believes (but has no direct knowledge of) is proven, nor that such allegations must be accepted by this division as objectively true. The Federal Court has found this presumption to be rebuttable particularly where the evidence is inconsistent with testimony, or where the panel is unsatisfied with explanations for inconsistencies.

[36] As noted above, I have considered and applied Guideline 4 on Gender Considerations in Proceedings Before the Immigration and Refugee Board, which offers guidance with respect to the application of a trauma-informed approach to proceedings. The guideline notes that an individual who has experienced trauma may have certain difficulties in presenting their case, including recalling specific times, dates, and locations, recounting events in chronological order, and recalling certain events in full. Indeed, it states that "In some cases, due to the deeply personal nature of [gender-based] abuse, and the potential trauma associated with it, the only evidence available may be the individual's own

testimony,” but also makes clear that “An allegation of trauma does not prevent the member from making an adverse credibility finding,” and that negative credibility inferences can be drawn from “material inconsistencies, omissions, or implausibility in the evidence that have no reasonable explanations.”

[37] At the outset of the hearing, I requested the claimants confirm that their BOCs and narratives, as amended, were in fact complete, true and accurate. They did so. Accordingly, discrepancies between these and other evidence must be seriously considered, and per my analysis below, on a balance of probabilities I find that the claimants have in fact provided numerous reasons to doubt the truth of their allegations. [Emphasis added.] [Footnotes omitted.]

[21] The RPD’s finding of no credible basis was justified in light of the record. A finding of “no credible basis” may be made even if there is “some credible or trustworthy evidence,” so long as “that evidence is insufficient in law to sustain a positive determination of the claim” (*Rahaman v Canada (Minister of Citizenship and Immigration)* (CA), 2002 FCA 89 at para 30).

[22] I am satisfied that the RPD referred to and analyzed the evidence, and reasonably concluded there was no credible basis for the Applicants’ claims considering the evidence before them. Absent credible testimony, the Applicants’ documentary materials were neither sufficiently credible nor sufficiently central to the issues to ground a positive determination of their refugee claim.

[23] It is not the role of this Court to reassess and reweigh the evidence that led to the RPD’s findings. This Court owes deference to the RPD’s findings, as the tribunal is better suited to appreciate the factual nuances and contradictions in the evidence and has expertise in the subject

matter at issue that the reviewing Court lacks (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42).

[24] Although the Applicants allege that the RPD failed to consider that the Applicants were fleeing from their agents of persecution and apply Guideline 4 on *Gender Considerations in Proceedings Before the Immigration and Refugee Board*. Those allegations are simply not borne out by the RPD's decision.

[25] The Applicants have not identified any errors by the RPD in the "no credible basis" test or the RPD's consideration of the evidence.

IV. Conclusion

[26] The decision of the RPD is reasonable and was procedurally fair to the Applicants. This judicial review is dismissed.

JUDGMENT IN IMM-4083-24

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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STYLE OF CAUSE: ADENIYI ET AL V MCI

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