

CANADA / JUDGMENT

Alade v. Canada (Citizenship and Immigration)

2025 FC 468

COURT

Federal Court

DECIDED

13 March 2025

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Decision Content

Date: 20250313

Docket: IMM-5824-24

Citation: 2025 FC 468

Toronto, Ontario, March 13, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

ABRAHAM OLAJUWON ALADE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, Abraham Olajuwon Alade [Applicant], is a citizen of Nigeria who seeks refugee protection in Canada based on his fear of persecution in Nigeria as a bisexual man. By decision dated March 15, 2024 [RAD Decision], the Refugee Appeal Division [RAD] confirmed a decision of the Refugee Protection Division [RPD] rejecting the Applicant's claim to be a Convention refugee or a person in need of protection under sections 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 [Act]. The RAD considered that the Applicant had failed to establish that he is bisexual, with the central issue being the Applicant's credibility given the material discrepancies in the Applicant's testimony and inconsistencies between the Applicant's Basis of Claim [BOC], testimony and supporting documentation which the Applicant failed to adequately explain.

[2] The Applicant seeks judicial review of the RAD Decision on the basis that it was unreasonable for the RAD not to have held an oral hearing to allow him to address the RAD's concerns regarding his credibility in light of new evidence he submitted to address those concerns. However, for the reasons that follow, I find that the Applicant has not shown that the RAD's exercise of its discretion under subsection 110(6) of the Act was unreasonable and accordingly, this application is dismissed.

II. Facts A. The Applicant's Fear of Persecution Based on His Sexuality [3] The Applicant claims that when he was 14 years old, he discovered that he was bisexual when he had a sexual experience with an older male student, who he calls his "school father." The relationship was non-consensual and lasted 2-3 years.

[4] The Applicant claims that his next relationship was with a man named Yomi, who showed interest in him while he was still in Nigeria. The Applicant explained in his BOC that he rejected Yomi's advances and tried to establish a friendship with him because he did not want anyone suspecting their relationship was something more; however, when Yomi once again tried to pursue the Applicant, the Applicant stopped talking to him and blocked him. While the Applicant stated in his BOC that "[he] was just cool with Yomi as a normal guy friend because [he] didn't want anyone suspecting anything about [him]," at the RPD hearing, the Applicant testified that his relationship with Yomi was sexual and lasted two months.

[5] Given that Nigeria criminalizes same-sex sexual activity, the Applicant explains that being secretive about his sexual orientation "became a lifestyle" for him. He claims that it was "very difficult" for him to truly express himself in Nigeria given the country's hostility towards same-sex relationships and that he suffered from depression and suicidal thoughts.

B. The Applicant's Studies in Canada [6] The Applicant came to Canada on a study permit in September 2022. Shortly after, the Applicant claims that he met his current same-sex partner in Canada and started to date him in October 2022. The Applicant also claims that he first disclosed his sexuality to his mother while he was residing in Canada.

C. The RPD Decision [7] On November 18, 2023, the RPD rejected the Applicant's refugee claim. The determinative issue was the Applicant's credibility as the RPD concluded that there is insufficient credible evidence to establish the Applicant's core allegation that he is a bisexual man.

[8] The RPD held that the presumption of truthfulness was rebutted due to discrepancies, inconsistencies and omissions in the Applicant's evidence that were not reasonably explained. The RPD noted that:

(i) the Applicant's testimony that he had a sexual relationship with Yomi contradicted his BOC, which did not describe their relationship as a sexual one;

(ii) the Applicant indicated in his BOC that his mother knew Yomi only as a good friend and no one ever suspected he was bisexual, yet in his testimony before the RPD, he stated that his mother suspected their relationship was something more;

(iii) the Applicant's best friend provided a supporting statement in which she claimed that the Applicant confided in her about his sexual identity, which contradicted the Applicant's claim that he never told anyone about his sexual identity in Nigeria; and

(iv) the Applicant did not know his "school father's" name, which was inconsistent with the Applicant's claim that it was this 2-3 year sexual experience that was so significant that it led to the Applicant's discovery of his sexual identity.

[9] The material inconsistencies were put to the Applicant at the RPD hearing; however, the RPD considered the Applicant's explanations to be either non-responsive, evolving or unsatisfactory.

D. The RAD Decision [10] The Applicant appealed the RPD's decision and submitted new evidence in the form of:

(i) A letter from Yomi dated February 2, 2024, in which Yomi confirms the sexual relationship between him and the Applicant and expresses a concern with the Applicant's mental health, given the "psychological effect and mental stress" that the Applicant must have experienced since opening up to his family [Yomi Letter]; and

(ii) A letter dated February 5, 2024 from a physician, which states that the Applicant exhibits "symptoms strongly indicative of health concerns," leading the physician to refer the Applicant to a mental health team [Referral Letter][collectively, the New Evidence].

[11] The RAD admitted the New Evidence but declined the Applicant's request for an oral hearing, finding that it does not trigger the conditions set out in subsection 110(6) of the Act, as the New Evidence failed to raise either new issues or issues that are central to the decision that would justify allowing or rejecting the claim if accepted.

[12] The RAD upheld the RPD's decision, finding that the RPD correctly determined that the Applicant had failed to establish that he is bisexual as he "failed to provide satisfactory explanations for the accumulation of contradictions, inconsistencies and omissions concerning crucial elements of his refugee claim, which adversely affects his credibility."

III. Legislative Framework [13] Subsection 110(3) of the Act directs that the RAD must proceed without a hearing on the basis of the record of the proceedings of the RPD and may accept documentary evidence and written submissions.

[14] However, pursuant to subsection 110(6) of the Act, the RAD has discretion to hold an oral hearing if new documentary evidence presented to the RAD meets the following criteria:

Hearing

Audience

- (6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)
- (6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
 - (a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
 - a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
 - (b) that is central to the decision with respect to the refugee protection claim; and
 - b) sont essentiels pour la prise de la décision relative à la demande d'asile;
 - (c) that, if accepted, would justify allowing or rejecting the refugee protection claim.
 - c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

IV. Issues and Standard of Review [15] The Applicant raises the following issues:

Was the RAD's refusal to order an oral hearing with respect to the New Evidence reasonable?

Was the RAD Decision unreasonable on the basis that the RPD and RAD failed to adequately address the Applicant's mental health issues in assessing his credibility?

[16] The applicable standard of review is reasonableness as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision “bears the hallmarks of reasonableness – justification, transparency and intelligibility,” and the burden is on the challenging party to show that the decision is unreasonable. (Vavilov at paras 99-100). Reasonableness review seeks to ensure that a decision contains “an internally coherent and rational chain of analysis ... that is justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85).

V. Analysis A. The RAD’s exercise of its discretion not to hold an oral hearing was not unreasonable [17] The Applicant claims that the RAD was unreasonable in refusing his requests for an oral hearing in the face of the New Evidence, which he argues meets the criteria referred to in subsection 110(6) of the Act. The Applicant notes that the Federal Court has held that an oral hearing is generally required where the statutory criteria have been satisfied and that the RAD is expected to exercise its discretion reasonably in the circumstances (*Hundal v Canada (Citizenship and Immigration)*, 2021 FC 72 at para 21, citing *Zhuo v Canada (Citizenship and Immigration)*, 2015 FC 911 at paras 9, 11).

[18] The Applicant submits that the RAD erred in its analysis of each of the factors listed at subsection 110(6) of the Act.

(1) Did the RAD err in its application of paragraph 110(6)(a) of the Act? [19] The Applicant argues that the RAD erred in suggesting that the issue of credibility under paragraph 110(6)(a) of the Act must be new or reveal contradictions or discrepancies in the evidence. The Applicant points to the following reasons in the RAD’s Decision:

The new evidence does not raise a new issue or new contradictions/discrepancies that would necessitate an oral hearing. The [Applicant] already gave evidence that he has been affected mentally and psychologically. He also gave evidence and made allegations that he was in a relationship with Yomi.

[20] The Respondent submits that just because the new evidence directly conflicts with the RPD’s finding on whether the Applicant had met his onus of proving his sexual identity as a bisexual man does not mean it amounts to a serious issue with respect to the Applicant’s credibility warranting an oral hearing (*Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 881 at para 59). I agree.

[21] The credibility issues arose from the record before the RPD and not from the New Evidence (*Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207 at para 21). As the RAD noted, the New Evidence merely enhances the credibility of the Applicant’s previous testimony before the RPD that his relationship with Yomi was indeed sexual and that he suffers from mental health issues.

[22] Nor does the New Evidence address the critical basis of the RAD’s negative credibility finding which related to the inconsistencies and omissions in the Applicant’s evidence. As the RAD noted later in its reasons, the Referral Letter does not make the link between the

Applicant's mental health issues and a memory problem that could explain those inconsistencies and omissions. The Applicant's suggestion that this is precisely why an oral hearing was necessary ignores the clear wording of subsection 110(6) of the Act which requires that the evidence (not future evidence) be critical to the RAD's decision and justify allowing the Applicant's claim.

- (2) Was the RAD's finding under paragraphs 110(6)(b) and (c) unreasonable? [23] The Applicant is of the view that the Yomi Letter was sufficient to answer the critical issue of whether the Applicant had proven that he is a bisexual man, and that the Referral Letter explains the inconsistencies in the Applicant's evidence that led to the RAD's negative credibility finding.

[24] With respect to the second and third criteria, the RAD held:

I find that the two documents do not raise issues that are central to the decision or that would justify allowing or rejecting the claim. The documents would not lead me to a different conclusion with respect to the [Applicant's] credibility. The Referral Letter does not provide any diagnosis and does not make any mention of any memory problems that could have affected the [Applicant's] testimony. The Referral Letter simply states that the [Applicant] is "... exhibiting symptoms strongly indicative of mental health concerns." There is no indication what the "mental health concerns" are, and no indication whether any such mental health concerns could have resulted in memory problems sufficient to account for the [Applicant's] deficient testimony.

The letter from Yomi states that, "We had a very short sexual relationship in Kano and Lagos." There is insufficient evidence about what a "short sexual relationship" is. The [Applicant] has already provided his testimony and evidence concerning his allegations of his relationship with Yomi, so having an oral hearing to repeat his evidence is unnecessary. Yomi's reference to the "psychological effect and mental stress [the Applicant] must have been going through since opening up to his family" is insufficient evidence of a medical diagnosis to account for the [Applicant's] memory problems that may have affected his testimony, as alleged.

- [25] The RAD was entitled to draw a negative inference based on the disclosure of important details at the hearing that were absent from the story in the BOC (*Weche v Canada* (Citizenship and Immigration), 2021 FC 649 at para 22) and the fact that the New Evidence does not explain these inconsistencies and omissions. The Applicant's suggestion that the Referral Letter sufficiently addresses the inconsistencies amounts to a call for this Court to reweigh and reassess the evidence, which it is not entitled to do in the face of a reasoned and intelligible justification for deciding contrary to the Applicant's argument (*Vavilov* at para 127).

- [26] I pause to note that while there was a sufficient number of material inconsistencies and omissions upon which the RAD was entitled to make the negative credibility finding that it did, the inability of the Applicant to recall the name of the "school father" was not one of them, given the non-consensual nature of the relationship. The RPD and RAD failed to engage with the principles of trauma-informed adjudication referred to in Article 5.2.3 of the "Chairperson's Guideline 4: Gender Considerations in Proceedings Before the

Immigration and Refugee Board,” which calls for decision makers to consider the possibility that trauma may impact a person's memory.

[27] Finally, I note that at the hearing, counsel for the Applicant questioned whether the RAD erred in finding inconsistencies in the Applicant's evidence which the Applicant now contends can be reconciled. This constitutes a new argument that was not made in the Applicant's Memorandum of Fact and Law, which this Court cannot entertain as a matter of procedural fairness (*Huong v Canada (Minister of Citizenship and Immigration)*, 2004 FC 73 at para 10).

[28] I am therefore unable to find that the RAD's decision not to grant an oral hearing with respect to the New Evidence was unreasonable.

B. The RAD Decision is otherwise reasonable [29] The Applicant argues that the RAD's decision as a whole was ultimately unreasonable not only by reason of the RAD's refusal to have an oral hearing, but because of the RPD's failure to consider the Applicant's numerous references to his mental health challenges in the RPD's decision. According to the Applicant, this silence shows that the RPD failed to consider this important aspect of the Applicant's claim, which the RAD also did not address.

[30] Even if it was the case that both the RPD and RAD ignored the Applicant's original evidence of his mental health struggles, the RAD's failure to mention it cannot be criticized given the vague nature of the evidence, which, like the Referral Letter, does not assist the Applicant in explaining the inconsistencies and omissions in his evidence (*Vavilov* at para 128).

[31] The Applicant further submits that the RAD's treatment of the Referral Letter constituted impermissible buttressing of the RPD's reasons, citing *Vavilov* for the proposition that “it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome” (citing *Vavilov* at para 96).

[32] The Applicant's argument is without merit. The RAD conducted a *de novo* analysis; it is not a reviewing court nor was it engaged in a reasonableness review.

[33] The Applicant has not shown that the RAD's treatment of the Applicant's mental health evidence renders the RAD Decision unreasonable.

VI. Conclusion [34] As the Applicant has not met his burden on this application for judicial review, it must be dismissed.

JUDGMENT in IMM-5824-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed; and

There is no question of general importance for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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