

CANADA / JUDGMENT

Alio v. Canada (Citizenship and Immigration)

2025 FC 340

COURT

Federal Court

DECIDED

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Alio v. Canada (Citizenship and Immigration)

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Decision Content

Date: 20250220

Docket: IMM-3696-24

Citation: 2025 FC 340

Ottawa, Ontario, February 20, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

HASSAN MOHAMED ALIO

Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hassan Mohamed Alio, is a citizen of Kenya. On November 25, 2022, he entered Canada and claimed refugee protection on the basis that he feared returning to Kenya because of his sexual orientation as a gay man. The Refugee Protection Division [RPD] determined that the Applicant is neither a Convention refugee nor a person in need of protection, pursuant to ss. 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The determinative issue was credibility. On appeal, the Refugee Appeal Division [RAD] upheld the RPD's decision. This is the judicial review of the RAD decision.

RAD's Decision [2] The RAD rejected the Applicant's proposed new evidence under s. 110(4) of the IRPA, concluding that the Applicant could have reasonably been expected to bring this evidence before the RPD. Accordingly, under s. 110(6) of the IRPA, the RAD also denied the Applicant's request for an oral hearing.

[3] The RAD then addressed the Applicant's submissions pertaining to the RPD's adverse credibility findings. It found that the RPD had not erred in declining to accept as reasonable the Applicant's explanation as to why he had not included any information in his basis of claim [BOC] narrative about his new same-sex relationship in Canada. Nor had the RPD erred when it drew a negative inference from the inconsistency between the Applicant's testimony and the content of the letter of support submitted by Hussein Hassan, who the Applicant claimed to have had a same-sex relationship with in Canada, describing that relationship. Or, in declining to accept the Applicant's offered explanation about the inconsistency with respect to the timeline of the relationship. The RAD also pointed out that the RPD had identified other credibility-related concerns which, when considered together, supported the RPD's conclusion that the Applicant was not credible about his having engaged in a same-sex relationship in Canada. Specifically, the evolving and inconsistent testimony about the nature of the relationship he allegedly had with Hussein.

[4] The RAD also rejected the Applicant's argument that the RPD erred when it drew a negative inference from inconsistencies between his testimony and information contained in a letter of support from his cousin in Kenya. Inconsistencies existed with respect to when the Applicant told his cousin that the reason the Applicant was leaving Kenya was because of his sexual orientation. Nor did the RPD err in not accepting the Applicant's explanation for the inconsistency or in affording the letter little weight. The RAD also identified a new contradiction in the Applicant's evidence about who gave him the number of the agent who facilitated the Applicant's exit from Kenya.

- [5] The RAD addressed the Applicant's remaining evidence, including a letter from the 519, a letter of support from his friend Mohamed, and photographs of the Applicant and Hussein. It found that the RPD did not err in its treatment of each of these, finding that on their own they were not sufficient to establish the Applicant's sexual orientation or that he was in a same-sex relationship with Hussein.

Issue and Standard of Review [6] The sole issue in this matter is whether the RAD's decision was reasonable.

- [7] The parties submit and I agree that the standard of review is reasonableness. Reasonableness review asks this court to: "develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 99 [Vavilov]).

Analysis Rejection of the Proposed New Evidence was Reasonable [8] The Applicant submits that the RAD erred when it failed to admit his new evidence, being an affidavit of the Applicant dated December 15, 2023, and a letter of the same date from Hussein, attached as an exhibit to the Applicant's affidavit. He asserts that his affidavit is evidence that arose after the Applicant's refugee claim and explains a series of events which occurred after the rejection of his claim. Further, that the letter from Hussein should have been admitted as there were only six days between the date of the RPD hearing and the RPD decision. It was therefore unreasonable for the RAD to expect the Applicant to acquire this letter before a decision was made. The Applicant submits that, because the RAD did not submit this evidence, the entire decision is unreasonable because this evidence would have "drastically altered" the decision.

- [9] There is no merit to this submission.

- [10] Section 110(4) of the IRPA states that, "[o]n 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."

- [11] The Applicant's affidavit purports to provide information about the relationship with Hussein and to address the inconsistencies identified by the RPD with respect to when the relationship ended, why, and on what terms. As the RAD noted, the affidavit explains that the Applicant's communications with Hussein were not always the best and that after August 2023, they did not stay in touch; however, that the Applicant had reached out to Hussein, who agreed to provide the second letter of support. The affidavit also provides the Applicant's explanations as to why he sought a second letter from Hussein after the RPD rendered its decision. Hussein's second letter of support also purports to explain the inconsistencies between when the relationship ended as set out in his first letter, being May 2023, and the Applicant's testimony that it ended in August 2023. Further, and contrary to

what Hussein stated in his first support letter, that Hussein and the Applicant did not keep in touch after August 2023.

- [12] The RAD found that the new evidence did not meet the requirements of s. 110(4) of the IRPA. It rejected the Applicant's argument that he could not have been expected to put forward this evidence before the RPD rendered its decision six days after the hearing. It noted that the Applicant himself had submitted the original letter from Hussein (and thus knew its content), he was represented by able counsel, and ought to have known that he was obliged to put his best foot forward at the RPD hearing. Further, if the initial support letter contained information that the Applicant considered to be inaccurate, including how long the relationship lasted and when it ended, this should have been raised before the RPD before it issued its decision. The RAD also noted that its role is not to provide an opportunity to complete a deficient record submitted to the RPD (citing *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 35 and 54).
- [13] In my view, the RAD reasonably found that the proposed new evidence did not meet the requirements of s. 110(4) of the IRPA. It was not new evidence of events that arose after the rejection of the claim and the information it contained was reasonably available prior to the RPD hearing. Or, at the very least, the issue of any need for further evidence could have been identified at the RPD hearing, but was not.
- [14] The Applicant was aware of the content of Hussein's initial support letter, which he submitted to the RPD. If he had concerns with its accuracy, then this should have been raised before or at the hearing. That is, what he attempted to submit via his new affidavit could have been submitted to the RPD and he could have advised the RPD – prior to it rendering its decision – that he intended to attempt to obtain a new support letter from Hussein. It was only after the RPD identified its credibility concerns with the conflicting evidence of the Applicant and Hussein that the Applicant attempted to tender the new evidence – which was intended to address those findings. As the Respondent submits, the RPD hearing “is not intended to be a tune-up procedure for the RAD that upon learning in deficiencies in the Applicant's case, additional evidence that could have been presented to the RPD may be presented as new evidence before the RAD”, citing *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 at para 14, which went on to find:
- [15] In other words, responding to an inadequacy identified by the RPD in a party's case cannot be a legitimate foundation for the party to claim that had she known about the deficiency she could have presented better evidence that was always in existence from persons that could have been called, in this case from her cousin. This would make the RPD process a monumental waste of time, which is surely not Parliament's intention in providing appeal rights.
- [15] That is precisely what the Applicant attempted to do in this case. The RAD reasonably refused to admit the proposed new evidence.

The RAD's Credibility Determinations were Reasonable [16] Factual findings, assessing credibility, and drawing reasonable inferences all lie at the heart of the RAD's and RPD's specific expertise and knowledge under the IRPA. They are to be afforded deference and restraint by a reviewing court applying the reasonableness standard (see, for example, *Hamid v Canada (Citizenship and Immigration)*, 2021 FC 100 at para 17, citing *Tsighana v Canada (Citizenship and Immigration)*, 2020 FC 426 at para 34 [Tsighana]).

[17] Further, a judicial review is not a “line-by-line treasure hunt for error” and a reviewing court must instead approach the reasons and outcome of a tribunal's decision as an “organic whole” (Tsighana, at para 35, citing *Vavilov* at para 102; see also *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53).

[18] That said, I will assess the individual issues raised by the Applicant.

Failure to amend the Applicant's BOC [19] Before the RAD, the Applicant argued that the RPD erred when it drew a negative inference from his failure to amend his BOC to include information about his new relationship in Canada with Hussein. He explained that he had already submitted his BOC narrative before entering into this relationship and, because he provided a letter of support from Hussein as part of his personal disclosure, it was unnecessary to amend his BOC (citing *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 [Osikoya]). The RAD disagreed. It found that this situation was unlike *Osikoya*. Further, that the Applicant was represented by able counsel and had the opportunity to amend his BOC narrative in advance of the RPD hearing to at least mention the same-sex relationship in Canada. And, while before the RAD the Applicant submitted that he did not mention the relationship in his BOC as it would have caused him undue stress as the relationship was full of ups and downs and could change at any time, potentially requiring him to amend his BOC again in the future, the RAD noted that this had not been his explanation at the RPD hearing. There, he testified that he omitted the relationship because it commenced after he had submitted his BOC. The RAD also noted that, even if the RPD did err by impugning the Applicant's credibility in this respect, it still found other reasons that the RPD was correct that the Applicant had not established with sufficient evidence that he was engaged in a same-sex relationship in Canada or that he identifies as a gay man.

[20] Before this Court, the Applicant again argues that the RAD erred in drawing a negative inference from his failure to amend his BOC narrative to include his same-sex relationship in Canada and asserts that there is conflicting jurisprudence on this point. At the hearing before me, the Applicant also argued that the RAD's reasons were ambiguous.

[21] However, in my view, the RAD clearly explained why it did not accept as reasonable the Applicant's explanations for the omission. It also explained that, unlike *Osikoya*, where that refugee claimant failed to mention the names of her sexual partners but testified that she had same-sex relations, the Applicant's BOC narrative made no mention of having had any same-sex relationships in Canada.

- [22] As to the Applicant's submission that two decisions of this Court reflect different approaches to how BOC narratives which have not been updated to reflect important information ought to be treated, citing *Olusola v Canada* (Immigration, Refugees and Citizenship), 2019 FC 46 at para 22 [Olusola] and *Weng v Canada* (Citizenship and Immigration), 2022 FC 482 at para 8, I tend to think that the existence of the Applicant's only same-sex relationship in Canada (and which his counsel describes as his only serious relationship) goes to the core of his claim that he is a gay man and, therefore, that he would be at risk in Kenya because of his sexual orientation. Thus, that this information ought to have been included, in some capacity, in the Applicant's BOC narrative.
- [23] However, in these circumstances, it is not necessary to delve into a comparative analysis of *Olusola* and *Weng*. This is because the RAD underscored the RPD's finding that the omission was not serious because the Applicant had provided a letter from Hussein in advance of the hearing and, therefore, there was some limited information about the existence of the relationship in that letter of support. And, further, because the RAD found that, even if it agreed with the Applicant that the RPD erred by impugning his credibility on this point, the RPD was still correct with respect to its other findings that the Applicant had not sufficiently established that he was engaged in a same-sex relationship, or that he identifies as a gay man.

Timeline of the relationship with Hussein [24] The Applicant submits that the RAD erred in finding an inconsistency in his testimony as to the timeline of his relationship with Hussein. He refers to various parts of his oral testimony at the RPD hearing to support his submission that the RAD misinterpreted his testimony. The Applicant asserts that he consistently maintained that, from his perspective, his relationship with Hussein ended in August 2023. He submits that his reference to "the last time" they had a relationship is "clearly separate" from his references to the "end" of his relationship. On this point, the Applicant submits that the RAD failed to adequately consider the Sexual Orientation, Gender Identity and Expression, and Sex Characteristics [SOGIESC] Guidelines relating to the language used to explain the relationship timeline.

- [25] It is significant to note here that the RAD was considering the Applicant's submission that the RPD erred when it drew a negative inference from the inconsistency between his testimony and Hussein's letter of support. The letter of support states that the relationship lasted until May 2023 when the Applicant and Hussein's schedules started to collide, they could not spend as much time together, and they both needed to save money. The letter states that they "decided to remain as friends and support each other emotionally which has been a blessing since". When he was asked when the relationship ended, the Applicant testified: "Last time we met was May but we finished our relationship August. Ended." Asked why the relationship ended, the Applicant testified "We – last time we had a relationship was May. We ended in August. He told me he found someone else". Further:

MEMBER: If the relationship ended in August can you help me understand why his letter says it ended in May?

CLAIMANT: So in May is the last time we had a relationship and I requested to meet with him and he told me a different story. He said someone was sick. He said he always wants sex and then he said he found someone else.

MEMBER: And in his letter he says the relationship ended because you had different schedules and you both needed to save money. Do you know why he would say that if it ended because he found someone else?

.....

CLAIMANT: We met. We were busy. He's right. I called him several times and he told me he was busy. He said he was in class and at that time he said his father wasn't feeling well. Then when he gave me the run around I said what do you want. He said you always want to do something and I found someone else. And that's how we ended our relationship.

[26] When questioned by his counsel, the Applicant testified that the relationship ended when Hussein told the Applicant that he had met someone else. When asked when this happened, he testified that "Our relationship – the last time we met was May but August was when we ended." August was when Hussein told him that he had met someone else.

[27] Before me the Applicant appears to argue that the RAD erroneously viewed his testimony that "May is the last time we had a relationship" as contradictory to his prior and consistent statements that his relationship with Hussein ended in August.

[28] In my view, the RAD could have reasonably understood the Applicant's initial testimony to be that Hussein had told him in May that he had met someone else, although he later testified that it was August when Hussein told him this. In any event, the RAD noted that the differing timelines for the end of the relationship (i.e., Hussein saying it ended in May and the Applicant saying it ended in August) were not resolved. Before the RAD, the Applicant had submitted that he and Hussein were answering the question as to when their relationship ended using different timelines. The Applicant alleged that he considered the communication that he maintained with Hussein between May and August 2023 to indicate that they continued to be in a relationship, while Hussein believed that they had effectively broken up in May 2023. He also claimed on appeal to the RAD that since he was abused in the past, he had no clear personal experience to draw on when it comes to the timeline of relations, that this should have been assessed by the RPD when evaluating his response, and that the trauma surrounding romantic and sexual relations suggests that he could reasonably have understood this continued friendship as a continuation of their relationship.

- [29] Ultimately, regardless of whether the Applicant changed his evidence about when the relationship ended, it was reasonable for the RAD not to accept the Applicant's explanation for the discrepancy between his testimony that the relationship ended in August and Hussein's evidence that it ended in May. Further, it was reasonable for the RAD to agree with the RPD that the two versions, which concerned not only when the relationship ended but why it ended, were fundamentally different.
- [30] The Applicant also submits that the RAD failed to adequately consider the SOGIESC Guidelines in relation to the language used to explain the relationship's timeline and in relation to the differences in perspectives between the Applicant's testimony and Hussein's original support letter. He asserts that the RAD simply explained that there is insufficient evidence that the sexual abuse the Applicant suffered affected his ability to establish a timeline because he never alleged during the RPD hearing that there was a difference in understanding. However, that this is incorrect as the Applicant testified that he did not understand what Hussein was feeling about the relationship and that he can only speak to his perspective of the timeline.
- [31] There is no merit to this submission. First, when asked by his counsel, "during you[r] relationship with Hussein do you know how he was, you know, you know how you were conceiving of the relationship and you've described that to us, but do you know what Hussein's thoughts were about, you know, what was going on during your relationship and what the dynamic was of your relationship?", the Applicant's response was: "That's how I was feeling about the relationship. Maybe the other person will feel the same about the relationship. I don't know what was in his mind and how he was feeling." I fail to see how this demonstrates that the RAD failed to adequately consider the SOGIESC Guidelines – none of us know what is in the mind of another.
- [32] Further, the RAD also found:
- [23] On appeal, Mr. Alio submits that the RPD disregarded the IRB SOGIESC Chairperson's guideline, which underscores that when assessing the reasonableness of any explanation, the IRB decision maker must consider the claimant's personal, cultural, social, economic and legal realities, as well as their mental well-being, language barriers, and the impacts of trauma. He also alleges on appeal that the RPD disregarded the guideline, which cautions the decision maker against adopting stereotypes and incorrect assumptions when making a finding of fact. Furthermore, Mr. Alio submits that the RPD should have considered his poor communication skills due to "years of repressing himself for his safety," his inexperience with relationships and that there is evidence that he and Hussein did not clearly communicate the reasoning for why their relationship ended when it did, which included multiple events that happened one after the other.
- [24] I disagree with Mr. Alio that the RPD adopted stereotypes and incorrect assumptions when it drew a negative inference from his explanation. I find that the RPD demonstrated that it considered several intersectional factors and barriers that may affect Mr. Alio's testimony,

including cultural and gendered factors, his traumatic experience with sexual assault as a minor and language/education levels. Moreover, after listening to the recording of the RPD hearing, I find no evidence that Mr. Alio did not understand the questions, that he struggled to provide answers or that he encountered significant challenges in expressing himself in the hearing. Nor do I find from listening to the recording that Mr. Alio may have felt intimidated or psychologically challenged to respond to the questions posed. In addition, the RPD asked questions in a sensitive manner and did not pressure Mr. Alio to testify about any events that he was uncomfortable testifying about.

- [25] Nor did Counsel before the RPD raise any specific elements beyond the fact that Mr. Alio does not really adequately communicate in English and that sometimes he did not understand the question. Mr. Alio had access to an interpreter during the hearing and he did not allege inadequate interpretation. It is also normal for a refugee claimant to seek clarifications regarding questions that they do not understand. The RPD advised Mr. Alio at the beginning of the hearing to let the panel know if a question is unclear or confusing so that it can be repeated and/or rephrased.
- [33] It is also of note that the RAD pointed out that the RPD identified other credibility concerns. As the RAD noted, and significantly in my view, the Applicant testified during the RPD hearing that he and Hussein were “sexual partners” but not big friends, that he did not like him that much, that they only contacted each other a few times, and that he was a hard person to deal with. However, he later testified that they had a good relationship, before reiterating again that they only had a physical relationship but that “we didn’t have [a] good relationship in the sense of relationship”. The RPD had pointed out that the Applicant’s statements that he and Hussein “didn’t have a good relationship” contradicted Hussein’s statement that the Applicant was a “dear friend and former lover”, and that the two “remain as friends and support each other emotionally, which has been a blessing since”.
- [34] In short, in addition to unresolved inconsistencies as to when and why the relationship ended, the Applicant also described a relationship that was primarily sexual in nature while Hussein’s description of the relationship was fundamentally different.
- [35] Given this, it was also reasonable for the RAD to find that the RPD was correct to draw a negative inference from the inconsistency between the Applicant’s testimony and Hussein’s letter as to the nature of the relationship.

Disclosure to cousin [36] The RAD agreed with the RPD’s decision to draw a negative inference from inconsistencies between the Applicant’s testimony and information contained in his cousin’s letter of support as to when the Applicant disclosed, to his cousin, that his reason for leaving the country was his sexual orientation as a gay man. In his BOC narrative, he indicated that he did not tell his cousin why he wanted to leave Kenya. However, before the RPD, he testified that he told his cousin about his sexual orientation when he was about to leave, which was around November 2022. Further, his cousin’s letter of support indicated that the Applicant shared this information with him in November 2021.

- [37] The RAD noted that, on appeal, the Applicant argued that his explanation for the discrepancy was reasonable and that the RPD erred in not accepting it. He submitted that it was unreasonable for the RPD to have expected him to remember whether he disclosed his sexual orientation while planning his departure from Kenya or whether he told his cousin about this right before he left. The RAD disagreed. It reasoned that, given that the Applicant's evidence that his cousin was the only person he confided in, the RPD was correct to expect him to remember when that happened and to draw a negative inference from the fact that he did not and from his evolving answers. And, the Kenya National Document Package [NDP] underscores that SOGIESC individuals fear assault from family members if they disclose their sexual orientation. Given the serious implications of disclosure, the RAD found this supported the RPD's decision to expect the Applicant to remember when he disclosed his sexual orientation to his cousin. The RAD agreed with the RPD's decision to afford the cousin's letter little weight. Further, the RAD noted an additional inconsistency as to who gave the Applicant the travel agent's number who would help the Applicant get a visa to Canada, which undermined the Applicant's allegations that he left Kenya in the manner he alleged.
- [38] The Applicant submits that the RAD erred in not accepting his explanation for the discrepancy. Further, by "overriding" the Applicant's testimony that he disclosed his sexual identity to his cousin because he thought his cousin was open-minded, with the NDP information that individuals in Kenya fear assault by their family members when disclosing their sexual orientation. He asserts that the RAD failed to consider his perspective. The Applicant submits that the RAD failed to uphold its obligation to adequately consider the SOGIESC Guidelines in evaluating the reasonableness of the Applicant's explanation. And, regarding the contradiction between sourcing the travel agent's number, the Applicant argues that a decision-maker must not be overzealous in their attempts to find inconsistencies and that this is peripheral to the claim.
- [39] In my view, based on the record before it, the RAD reasonably found that there was a contradiction in the Applicant's evidence about when he told his cousin about his sexual orientation. The Applicant does not dispute this. The RAD pointed out that the Applicant's explanation for the discrepancy was that he may have told his cousin in November 2021, but forgot that he did so, while his cousin remembered this. The RAD found, as the Applicant claimed this his cousin was the only person he confided in, that the RPD was correct to expect him to remember this and to draw a negative inference when he did not.
- [40] I agree with the Applicant that the RAD's additional finding with respect to the NDP did not take into consideration that the Applicant testimony that his cousin was open-minded. More generally, however, as the Respondent submits, the NDP document and the Applicant's own submissions in support of his claim speak to the hostile environment faced by gay persons in Kenya. This supports that the Applicant would reasonably be expected to remember when he made such a significant disclosure to his cousin. It was reasonable for the RAD to afford the letter little weight.

- [41] Given the significance of making such a disclosure in Kenya, whether the cousin was open-minded or not, I find that the RAD reasonably drew a negative inference from the Applicant's failure to recall when he informed his cousin of his sexual orientation and reasonably did not accept the offered explanation.
- [42] I also agree with the Respondent that the RAD's treatment of the discrepancy regarding whether the cousin or the Applicant found the travel agent was reasonable. When taken alongside the RAD's other negative credibility findings, it was reasonable for the RAD to view this as another inconsistency that eroded the Applicant's credibility.

Remaining support letters and photographs [43] The Applicant submits that the RAD erred in finding that the remaining evidence was insufficient to establish his sexual orientation on a balance of probabilities. I do not agree with the Applicant.

- a) Letter from the 519 [44] The RAD noted that the RPD explained why it reached its conclusion. Namely, that since the 519 is open and inclusive, anyone can join. Accordingly, although the RPD accepted as credible the Applicant's claim that he registered with the 519, and gave the letter full weight, it also found that the letter was based on his self-declaration that he is a gay man and thus was insufficient on its own to establish his sexual orientation, on a balance of probabilities. The RAD found that the RPD was correct to point out that this letter stating that the Applicant is a member of the LGBTQ community was insufficient to overcome a finding that his testimony about his sexual orientation was not credible. The RAD also stated that this Court has previously found that while membership is one factor to be considered in SOGIESC claims, "it will seldom be sufficient on its own to establish this" (citing *Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at para 58).
- [45] The Applicant acknowledges that the jurisprudence establishes that membership in LGBTQ+ organizations will seldom suffice, on its own, to establish an individual's sexual orientation. However, he asserts that SOGIESC Guideline 7.2.3. states that such evidence may be presented for consideration and that the RAD wrongly discounted the 519 letter because it requires the Applicant to self-identify as a member of the LGBTQ community.
- [46] I do not agree. The RAD reasonably considered this letter and found no error in the RPD's decision to accept as credible the Applicant's claim that he registered with the 519, and to afford the letter full weight in that regard. However, that it was insufficient on its own to establish his sexual orientation or to overcome the adverse credibility findings arising from his testimony. As I previously explained in *Jayaraman v Canada (Citizenship and Immigration)*, 2022 FC 458, concerning an applicant's alleged bisexuality:
- [59] Letters of this nature from The 519 and other organizations are frequently filed in support of various immigration proceedings. For example, in *Oviawe v Canada (Citizenship and Immigration)*, 2021 FC 204 [Oviawe], the applicant relied on letters and other documents from LGBTQ+ organizations regarding her attendance and participation. The RAD took the position that anyone is able to attend events at LGBTQ+ organizations, and that participation in such organizations is insufficient to establish a claim of bisexuality. This Court held that

the RAD could reasonably come to that conclusion. Further, that this was a matter of weighing and assessing evidence, which was not the role of the reviewing court. Similarly, in *Obalade v Canada (Citizenship and Immigration)*, 2021 FC 1030, the RAD considered two support letters from LGBTQ organizations. The RAD accepted the applicant's participation in the two groups but found that the letters did not establish that he was bisexual as "Substantively, they did not and could not establish Mr. Obalade's sexual orientation" (at para 23).

- [47] Notably, in *Obalade v Canada (Citizenship and Immigration)*, 2021 FC 1030 referenced above, Justice Walker found that letters of this sort could not establish an applicant's sexual orientation because the reference to the applicant's allegations was "derived from [the applicant] himself" (para 23). This same reasoning applies here.
- b) Photographs with Hussein [48] For similar reasons, I find that the RAD reached a reasonable conclusion regarding the photographs of the Applicant and Hussein.
- [49] I appreciate the difficulties of establishing one's sexual orientation through photographs. I agree with the Applicant that proving one's sexual identity is a difficult task because sexuality is inherently private (*Gergedava v Canada (Citizenship and Immigration)*, 2012 FC 957 at para 10). And, that SOGIESC Guideline 7.2.4 states that "[i]t is not expected that an individual establish their SOGIESC through the use of sexually explicit photographs, videos or other visual material".
- [50] However, the RPD found that the photos could be indicative of two friends or could have been staged, and the RAD agreed. The RAD found that the RPD was correct that the photos were insufficient on their own, or together with the other evidence, to establish that the Applicant was in a same-sex relationship with Hussein. The RAD's reasoning on this point was clear and justified. Further, the Applicant does not explain how the photos could overcome the RAD's prior credibility concerns arising from his testimony and regarding his sexual orientation. Rather, he is of the view that those findings are flawed.
- c) Letter from friend [51] The Applicant submits that the RAD erred in affording low weight to a support letter provided by the Applicant's friend, Mohamed, in establishing the Applicant's sexual identity.
- [52] In its decision, the RAD agreed with the Applicant that a minor inconsistency pertaining to the description of Mohamed as a colleague could reasonably be explained. However, it agreed with the RPD's decision to afford the letter low weight because the author was relying on information received by him from the Applicant as to his sexual orientation. There was also an additional discrepancy between the letter and the Applicant's testimony. While the letter indicates that Mohamed and the Applicant had a few conversations about the LGBTQ community in Kenya, the Applicant testified that that he did not join in such conversations. Accordingly, the RAD agreed with the RPD's overall decision to afford the letter low weight in establishing the Applicant's sexual orientation.

- [53] The Applicant now points to his BOC narrative, where he stated that in May 2018, he overheard his colleagues Mohamed and Musa speak angrily about a bar in Nairobi that secretly allowed LGBTQ activities and that he “joined the conversation and pretended to be against homosexuality to get more information about the club”. Mohamed’s letter states that he was not aware that the Applicant was gay prior to the Applicant contacting him once the Applicant was in Canada and that he could recall a few conversations with the Applicant and another friend, Musa, about the LGBTQ community. As noted by the RAD, when asked about this statement in the letter at the RPD hearing, the Applicant stated that he did not talk to Mohamed about the LGBTQ community, but just heard Mohamed engage in these conversations.
- [54] Given that the Applicant’s testimony is contradicted by his BOC narrative and that Mohamed’s letter states that he did not know the Applicant was gay until the Applicant told him this when they were in Canada, the RAD reasonably afforded the letter low weight in establishing the Applicant’s allegation that he identifies as gay.
- [55] And, in any event, neither Mohamed’s letter, nor the 519 or his cousin’s letter, separately or together could overcome the RAD’s prior adverse credibility findings.

Conclusion [56] The RAD made reasonable adverse credibility findings which supported its finding that the Applicant failed to establish his sexual orientation as a gay man. It also reasonably found that the remaining documentary evidence could not establish this core fact nor could it overcome the prior credibility findings. The RAD acknowledged when certain credibility findings were peripheral but, based on its other findings, and looked at cumulatively, the RAD’s decision was justified, based on the record before it, and was reasonable.

JUDGMENT IN IMM-3696-24

THIS COURT’S JUDGMENT is that

The application for judicial review is dismissed;

There shall be no order as to costs; and

No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-3696-24

STYLE OF CAUSE:

HASSAN MOHAMED ALIO v THE MINISTER OF CITIZENSHIP AND, IMMIGRATION

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