

CANADA / JUDGMENT

Ayorinde v. Canada (Citizenship and Immigration)

2026 FC 493

COURT

Federal Court

DECIDED

14 April 2026

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20260414 Docket : IMM-3349-25 Citation: 2026 FC 493 Toronto, Ontario , April 14, 2026 PRESENT:
Madam Justice McDonald BETWEEN: OLUWAFEMI SAMUEL AYORINDE Applicant and THE
MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] The Applicant, a citizen of Nigeria, seeks review of the second Refugee Protection Division (RPD) decision that found him ineligible for refugee protection on the grounds of serious non-political crime committed in the United States (US). He was excluded under Article 1F(b) of the United Nations Convention Relating to the Status of Refugees and section 98 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. I. Background [2] Mr. Ayorinde first entered the US in November 1994 using a Nigerian passport with a false name. He allegedly was involved with an identity theft ring, who stole personal information, opened multiple bank accounts, used fake identification to deposit cheques of non-existing funds, and then wrote cheques using other aliases so that banks would redeem the cheques for cash. US police documents indicate that the fraud was over \$8,000 USD.
- [3] In the US, he was arrested on January 9, 1997 on three felony charges, including fraud, forgery, and counterfeiting; however, he fled to Nigeria before the criminal proceedings commenced.
- [4] In 2002, he re-entered the US using another Nigerian passport with another alias. He departed in 2012, having been denied naturalization due to fraud and misrepresentation.
- [5] In May 2012, he entered Canada using a Nigerian passport with a third alias and made a refugee claim.
- [6] The RPD denied his claim on the grounds he was excluded from refugee protection under Article 1F(b) of the United Nations Convention Relating to the Status of Refugees and IRPA section 98.

- [7] Mr. Ayorinde successfully judicially reviewed this RPD decision in *Ayorinde v Canada* (Citizenship and Immigration), 2022 FC 113. Justice Gleeson found the RPD erred in assessing whether he engaged in “serious non-political crime”, because it failed to consider whether Mr. Ayorinde would have received a sentence at the low, medium, or high end of the sentencing spectrum if convicted.
- [8] On redetermination, the RPD again rejected his claim, finding that his conviction would be at the high end of the spectrum. II. Issue [9] The Applicant challenges the reasonableness of the RPD decision on two grounds: (1) that the RPD unduly focused on the maximum sentence; and (2) the RPD failed to properly weigh mitigating factors. III. Analysis A. Did the RPD unduly focus on the maximum sentence? [10] The Applicant argues that the RPD excessively focused on the maximum sentence range and that it conducted a “mechanistic, decontextualized, or unjust’ application of sentencing thresholds” contrary to the guidance in *Febles v Canada* (Citizenship and Immigration), 2014 SCC 68 at para 62 [Febles]. He asserts that he would have likely received a sentence on the lower end of the sentencing spectrum because the fraudulent transactions in question were for \$8,000 USD, which is only slightly above the \$5,000 threshold for indictable fraud.
- [11] The RPD did consider the quantum of the fraud but also considered that the Applicant acted in a criminal network to gain economic benefit, that he conducted multiple criminal acts over a period of time against multiple victims, and that he was charged with, and admits to, additional felony counts for identity theft and forgery. The RPD found these factors collectively would support a sentence on the higher end of the sentencing range.
- [12] On the issue of the sentencing range, the Applicant relies upon *Jung v Canada* (Citizenship and Immigration), 2015 FC 464 [Jung] where the Federal Court quashed an RPD decision that found Mr. Jung was excluded from refugee protection for serious non-political crime, based on a conviction for fraud for \$50,000 USD. The Court found that the RPD erred by failing to consider the sentencing range, and specifically found that Mr. Jung had received a 10-month sentence for his conviction, which would prima facie place his conviction on the lower end of the sentencing range (at para 48)
- [13] Jung is not helpful to the Applicant, as the issue there was the failure of the RPD to consider the sentencing range and the sentence imposed. By contrast here, the Applicant fled the US before any criminal trial or sentence could be imposed. In any event, the RPD did consider the sentencing range for his offences, noting that the Applicant admitted to his actions in the US consisted of counterfeiting, fraud, and forgery.
- [14] The RPD noted that the equivalent Criminal Code, RSC 1985, c C-46, s 380(1) [Criminal Code] provision for fraud over \$5,000 could carry a maximum penalty of 14 years of imprisonment. In considering if the crime was “serious” for the purposes of Article 1F(b), the RPD considered the elements of fraud over \$5,000 under the Criminal Code, and found that the elements were met, based on US police reports and the Applicant’s concession that he engaged in the alleged criminal conduct.

- [15] The RPD also considered the mode of prosecution, noting that offences in the US are either misdemeanours or felonies, with felonies being more serious. Here the Applicant was charged with felony counts, which indicated US authorities considered the conduct serious. The RPD found this comparable to the Crown's proceeding by indictment, rather than summary conviction, and found this factor indicated that the crime was serious.
- [16] Finally, the Applicant argues that the RPD's decision is unreasonable in light of *Febles*, which included a list of crimes that establish a presumption of serious non-political crime including homicide, rape, child molesting, wounding, arson, drug trafficking, and armed robbery (at para 62). The Applicant argues that fraud, counterfeiting, and forgery are unlike these crimes. However, this is a misreading of *Febles* as those paragraphs are described as "good examples" of crimes that warrant exclusion under Article 1F(b). The Supreme Court did not preclude other offences from falling within the purview of Article 1F(b), and this Court has repeatedly recognized fraud and other financial crimes as being within the Article's scope (*Shiraz v Canada (Citizenship and Immigration)*, 2025 FC 1775 (CanLII) at para 48).
- [17] Overall, the RPD reasonably considered and weighed the appropriate factors. The Applicant's argument is merely a request to reweigh the evidence put before the RPD. That is not the Court's role on judicial review. He has not raised a reviewable error on this point. B. Did the RPD fail to properly weigh mitigating factors? [18] The Applicant argues that the RPD failed to properly weigh mitigating factors, including his lack of a criminal record, his young age at the time of the offences, and his post-offence conduct.
- [19] The RPD accepted his lack of a criminal record as a mitigating factor but found that it was outweighed by the aggravating factors. Although the Applicant claims that his youth should have been considered, he was 28 years old at the time of the criminal events. In my view, the RPD was justified in not considering his age as a mitigating factor.
- [20] Finally, on his argument that his post-criminal good conduct should have been considered, this was rejected by the Supreme Court in *Febles* (at para 60).
- [21] The Applicant has failed to demonstrate that the RPD decision lacks transparency, justification, or intelligibility, or was outside a range of possible, acceptable outcomes based on the facts and law. The decision is therefore reasonable. IV. Conclusion [22] The RPD's finding, that the Applicant failed to rebut the presumption that his crime was a serious non-political crime and he was excluded under Article 1F(b) and IRPA section 98, was reasonable. This judicial review is dismissed. JUDGMENT IN IMM-3349-25 THIS COURT'S JUDGMENT is that : This judicial review is dismissed. There is no question for certification. blank "Ann Marie McDonald" blank Judge FEDERAL COURT SOLICITORS OF RECORD Docket : IMM-3349-25 STYLE OF CAUSE: AYORINDE v mci PLACE OF HEARING : Toronto, Ontario DATE OF HEARING: april 1, 2026 JUDGMENT AND REASONS: McDonald J. DATED: April 14, 2026 APPEARANCES : Kate Smirnova FOR THE APPLICANT Eli Lo Re FOR THE RESPONDENT SOLICITORS OF RECORD: Dov Maierovitz Barrister & Solicitor Thornhill,

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