Federal Court  Cour fédérale

Date: 20150508

Docket: IMM-3187-14

Citation: 2015 FC 613

Ottawa, Ontario, May 8, 2015

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ANULI UKAMAKA ASHLEY ODURUKWE
DARREN CHIAGOZIEM ODURUKWE (minor)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Anuli Ashley Odurukwe challenges a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada denying her claim for refugee protection. The claim of her minor child Darren had been joined to hers and was also denied. For the following reasons, this application is dismissed.

I. **Background**

[2] Mrs Odurukwe is a citizen of Nigeria. She belongs to the Igbo ethnic group. On May 1, 2010, she married Kelvin Odurukwe. Her extended family and village elders objected to the marriage because they believe that Kelvin belongs to the Osu caste, whose members are considered "outcasts" or "untouchables" by the Igbo. Nonetheless, the applicant received the blessing of her parents, who were devout Christians and opposed this sort of discrimination.

[3] Shortly after the marriage, the applicant alleges that village elders began to threaten her father with violence if he did not convince her to terminate her marriage and participate in a cleansing ritual. Local women also berated her mother. The father sought the assistance of the traditional ruler but discovered that he too objected to intermarriage between Igbo and Osu.

[4] The applicant's mother died from an aneurism only seven days after the marriage. The applicant alleges that the threats made against her family placed great stress upon her mother and ultimately caused her death.

[5] The applicant's father was ostracized from village life because he refused to give in to the community's threats and demands. In the meantime, the applicant gave birth to her son Darren on April 11, 2011.

[6] In July 2011, the applicant, her husband and their infant son visited the United Kingdom so that the husband could receive a university degree.

[7] In May 2012, the applicant and her husband applied for visas to visit Canada. At that time, they already had valid visas to visit the United Kingdom and the United States.

[8] On June 20, 2012, the applicant alleges that matters took a turn for the worse – her father was abducted. His abductors called her from his cellular phone and demanded that she turn over her son Darren in exchange for his release. The applicant notified her uncle and he went to file a police report. The police called the applicant and discussed the matter with her. The next day, a passerby found her father beaten and unconscious on the street. He was taken to a hospital and succumbed to his wounds. The police were informed but took no further action.

[9] At that time, the applicant and her family were living in Sokoto, a city in the northwest of Nigeria (whereas her ancestral village is in the southeast). Due to her father's murder and subsequent threats, the applicant and her family rented a second apartment in Sokoto and lived there secretly. On September 6, 2012, a group of men from her village tried to find her at her first apartment and asked her neighbour if she knew her whereabouts.

[10] After this incident, the applicant fled Nigeria. On September 22, 2012, she entered Canada with her husband and Darren on their visitor's visas. The applicant and Darren applied for refugee protection three days later. Her husband returned to Nigeria after spending one week in Canada.

[11] The Board held a hearing on March 26, 2014. By that time, the applicant had given birth to a second child on Canadian soil. She also submitted new documents to the Board, including

evidence that her husband had been assaulted in December 2013 by members of her village who were looking for her and her son.

[12] The Board rendered a negative decision on April 8, 2014. The applicant sought judicial review at this Court.

[13] In the decision under review, the Board explains that the case involves three issues: credibility, subjective fear and the existence of an internal flight alternative [IFA].

[14] The Board accepts that testimony must be presumed to be true unless there exist reasons to question its truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 248 (FCA)). Yet the Board raises several concerns with the applicant's credibility.

1. In her personal information form [PIF], the applicant alleged that the community threatened her father that they would kill him, his wife and his daughter. They further demanded that he convince the applicant to terminate her marriage and perform a cleansing ritual. At the hearing, the panel asked the applicant about the community's response to her marriage. She testified that her father received threats against his life. She did not mention any threats against her life or her mother's life. She provided no reasonable explanation for this discrepancy. Furthermore, the applicant did not mention the demands made upon her father until the panel prompted her.

2. In her PIF, the applicant alleged that she went into hiding and stopped working as of July 2012.Yet in her port of entry [POE] notes, she stated that she was employed in two separate places until September 2012 – just before she left for Canada. In her POE, she also stated that she resided at the same address until September 2012, contrary to what is alleged in her PIF. The applicant could only say that these were omissions. The Board draws a negative inference from these discrepancies.

3. The panel asked the claimant if it was a coincidence that serious problems only arose two years after her marriage and at the same time she and her husband were applying for visitor's visas to Canada. The applicant merely repeated her allegations. On a balance of probabilities, the panel finds the coincidence possible but not probable.

4. The panel asked the claimant why her husband did not stay in Canada, since he has relatives here and faces problems in Nigeria. The claimant testified that her husband is considered untouchable because he is Osu, and therefore will not face physical violence in Nigeria. She explained that if a person kills an Osu, the killer becomes defiled and there is a curse on his land. The panel acknowledges the documentary evidence on segregation but finds that it does not preclude physical harm being meted out to an Osu. Indeed, some of the evidence submitted by the applicant states that Osu face attacks, violence and death at the hands of non-Osu. The panel draws a negative inference from the husband's return to Nigeria.

[15] The applicant offered the death certificates of her parents. The panel affords them little weight because they are copies instead of originals. Moreover, the mother's cause of death is stated as "cerebral aneurysm" and the secondary cause as "hypertension". There is no

indication that the threats caused her death. Similarly, the father's primary cause of death is listed as "hypovolemic shock" and the secondary cause as "internal hemorrhage". This provides no evidence that he was beaten or murdered.

[16] The applicant provided several other documents. Due to its adverse credibility findings, the panel gives them no probative value.

[17] The panel then turns to subjective fear. In July 2011, the applicant and her family travelled in the United Kingdom for twelve days. They afterwards returned to Nigeria. At that time, the applicant was already aware that the community was threatening her and her family. She alleges that her mother died as a result of those threats. The panel asked the applicant why she returned to Nigeria instead of seeking protection in the United Kingdom. She answered that her father was still alive at that time. She had not been personally contacted by those who objected to her marriage. She had supposed that the matter would die down and had no idea that it would escalate.

[18] The panel does not find these explanations satisfactory. The applicant was aware that her father had received numerous threats against her own life. The documentary evidence upon which the applicant relies mentions widespread hostility to marriages with Osu and instances where couples have had to break up because one of the partners was Osu. The panel does not believe it reasonable that the applicant would not have understood there was a serious possibility of harm if the facts she alleges actually occurred. The panel draws a negative inference due to her re-availment.

[19] In the alternative, the panel finds that that the applicant has an IFA in Lagos. The two-step test for an IFA was set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1256 (FCA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172 (FCA). First, the Board must be satisfied that there is no serious possibility that the claimant will be persecuted at the location of the IFA. Second, the Board must be satisfied that it would not be unreasonable for the claimant to seek refuge there. With respect to the second step, the panel considers *Syvyryn v Canada (Citizenship and Immigration)*, 2009 FC 1027, where the Federal Court stated that the Board must consider the particular ability of women to travel safely with due regard to religious, cultural and economic factors.

[20] On the balance of probabilities, the Board finds that there is no serious possibility that the applicant would be persecuted if she were to relocate to Lagos. A report prepared by the UK Border Agency states that there is a constitutional right to travel within Nigeria and that relocation is almost always a feasible option, in the absence of exceptional circumstances.

[21] The applicant testified that her persecutors would be able to find her in Lagos because they will receive information from Igbo social groups located there. She would not be able to remain in hiding indefinitely because she will have to work, attend church and take her children to school. She further explained that her husband did not live in Lagos and that it would be difficult to live without him. If he moved to Lagos, he would be exposing himself and his family to harm. She pointed out that her persecutors were able to find him in the northwest and so they would likely be able to find them in Lagos.

[22] The panel references independent evidence showing that the Igbo make up 18% of Nigeria's 175 million citizens. The applicant does not have a high profile in Nigeria and it is unlikely that she would be recognized in a city of over 20 million people.

[23] The panel acknowledges that members of her community were able to locate her in Sokoto. However, she had been living and working there since her marriage. It is reasonable that the persecutors went to an area where she was known to live. There is no persuasive evidence that they have the interest or resources to search for her throughout the country given its enormous population. She has been out of the country for over one and a half years. Her persecutors would not be advised that she had returned to Nigeria and settled in Lagos. It is a very large city located at a considerable distance from her home village and previous place of residence (Sokoto). There is no serious possibility that she would be persecuted there.

[24] With respect to the second prong, the panel is not persuaded that it would be unreasonable for the applicant to relocate to Lagos. She speaks English and Igbo and is a Christian, so she would be able to adapt to her new surroundings. The documentary evidence states that women who require physical protection can seek the assistance of the Federal Ministry of Social Affairs and Women's Development. There are also more than fifty non-governmental organizations that can provide shelter and other assistance to women in Nigeria.

[25] Even if the applicant's husband does not join her, it would be reasonable for her to relocate to Lagos. Given her age, education and professional experience, there is no indication

that she would face any great economic disadvantage. She could also benefit from the moral and spiritual support of non-governmental and religious organizations.

[26] For the above reasons, the Board rejects the claims of the applicant and her son under sections 96 and 97 of the *IRPA*.

II. **Issues**

[27] The Court is of the view that this application raises three issues:

1. Did the Board err in evaluating credibility?
2. Did the Board err in evaluating the documentary evidence?
3. Did the Board err in evaluating the existence of an internal flight alternative?

III. **Standard of Review**

[28] Credibility findings are questions of fact. They are reviewable on reasonableness: *Triana Aguirre v Canada (Citizenship and Immigration)*, 2008 FC 571 at paras 13-14; *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1078 at para 51. Similarly, plausibility findings deserve great deference: *Aguebor v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 732 (FCA).

[29] The evaluation of the evidence is a question of mixed fact and law reviewable on reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 53-54.

[30] The existence of an internal flight alternative is also a mixed question of fact and law reviewable on the standard of reasonableness: *Shehzad Khokhar v Canada (Citizenship and Immigration)*, 2008 FC 449 at paras 21-22; *Guerilus v Canada (Citizenship and Immigration)*, 2010 FC 394 at para 10.

IV. **Analysis**

A. *Did the Board err in evaluating credibility?*

[31] The Board correctly accepted the principle that the allegations of a refugee claimant must be presumed to be true unless there are reasons to doubt their truthfulness, citing *Maldonado*. Yet it found such reasons. The Court will consider the Board's findings on subjective fear under this issue as well, since the ultimate purpose of those findings was to assess whether the applicant credibly fears a return to her country of origin.

[32] The Court defers to the Board's conclusion that the applicant lacked credibility. Although some of its findings were strained, the Board's main reasons for questioning her credibility were reasonable.

[33] Specifically, the Court is of the view that the first concern raised by the Board was unreasonable. The Board expected particular answers to open-ended questions and accused the applicant of inconsistency with her PIF narrative because she gave incomplete answers. Yet there are no actual contradictions between the sworn testimony and the PIF narrative on the threats and demands made by the village elders to the applicant's father. Moreover, the

applicant gave the answers that the Board desired after it repeated its questions. The Board's concerns in this regard were microscopic and could not reasonably call the applicant's credibility into question: *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429 at para 20.

[34] However, the other credibility concerns were eminently reasonable. It was open to the Board to point to the contradictions between the POE notes and the PIF narrative, the improbability that the applicant's alleged problems would begin only one month after she had applied for a visitor's visa to Canada, and her husband's return to Nigeria.

[35] In particular, the husband's behaviour is highly relevant to the applicant's credibility. She says that she is afraid of individuals who want to kill her because they object to her marriage. The fact that her husband has continued to live in the same country as those individuals, despite having the opportunity to claim refuge in Canada with his wife and child, undermines the credibility of her allegations. The Board could reasonably point to the documentary evidence describing violence against the Osu to reject her explanation that the persecutors would never touch an Osu like her husband. That explanation is further undermined by the evidence which the applicant herself filed with the Board prior to her hearing, to the effect that her husband allegedly suffered an assault in December 2013.

[36] It was open to the Board to give the death certificates little weight because they were copies and did not explicitly endorse the applicant's version of her parents' deaths. While battery may be the cause of hypovolemic shock and internal bleeding, there are other possible

causes, such as suffering a stroke or being in a car accident. Contrary to the applicant's argument, the Board did not dismiss these documents out of hand simply because it did not deem her testimony credible. The concerns expressed by the Board pertained to the actual documents.

[37] On judicial review, the Court cannot reweigh the evidence. The Board's finding that the numerous other documents submitted by the applicant deserved no weight was reasonably open to it, given the problems with her credibility. On reasonableness review, it does not matter that the Court might have given them a different weight, since the Court is not "developing, asserting and enforcing its own view of the matter": *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 28. Moreover, it is "well-established that an applicant's overall credibility may affect the weight given to the documentary evidence": *Jia v Canada (Citizenship and Immigration)*, 2014 FC 422 at para 19; see also *Devundarage v Canada (Minister of Citizenship and Immigration)*, 2005 FC 245 at para 12.

[38] The Court is not certain that the Board made a reasonable finding that the applicant re-availed herself of Nigeria's protection upon returning from the United Kingdom. Nevertheless, her husband's return to Nigeria after they reached Canada casts doubt on her alleged fears, as was previously explained.

[39] To conclude, the Court rejects the applicant's argument that the Board erred by disregarding the *Gender Guidelines*. The cases she cites involved sexual assault or domestic violence: see e.g. *John v Canada (Citizenship and Immigration)*, 2011 FC 387; *Ahmed v*

Canada (Citizenship and Immigration), 2012 FC 1494; *Raju v Canada (Citizenship and Immigration)*, 2013 FC 848. The applicant has never presented herself as a victim of sexual assault or domestic violence. She never established a nexus to the Convention ground of gender. There is no evidence that she suffers from any psychological condition which might have been caused by gendered abuse. In fact, a review of the hearing transcript reveals that she testified without any noticeable difficulty. In these circumstances, the Court is not persuaded that the *Gender Guidelines* are relevant to her case, and even less that they would mandate an approach or outcome different from that adopted by the Board.

[40] It must be kept in mind that the *Gender Guidelines* do not require the Board to accept every one of the applicant's allegations and documents at face value. My recent comments in *Molefe v Canada (Citizenship and Immigration)*, 2015 FC 317 at para 25, apply with equal force to Mrs Odurukwe's claim:

> The Court has recognized that the *Gender Guidelines* are not intended as a cure for deficiencies in a refugee claim. Their aim is to ensure a fair hearing: *Newton v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 738 (TD) at para 18; *Keleta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 56; *Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at paras 5-6. I am satisfied from a review of the transcript and the Board's reasons that Ms Molefe received a fair hearing.

B. *Did the Board err in evaluating the documentary evidence?*

[41] There is no merit to the applicant's argument that the Board ignored relevant evidence, especially documentary evidence on the country conditions in Nigeria. She is essentially

pleading for the Court to reweigh the evidence before the decision-maker. That is not the Court's function on judicial review.

[42] With respect to the objective basis of the claims, the Court of Appeal stated the law authoritatively in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3:

> …where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[43] In the case at bar, the Board could reasonably conclude that the applicant did not meet the onus of demonstrating that "independent and credible documentary evidence in the record" supported her claim. There is no basis for the Court to intervene.

C. *Did the Board err in evaluating the existence of an internal flight alternative?*

[44] The applicant concedes that the Board correctly stated the law with respect to IFAs. The Court recently restated the two-pronged test in *Zablon v Canada (Citizenship and Immigration)*, 2013 FC 58 at para 20.

> The test for a viable IFA is two-pronged. First, the Board must be satisfied that there is no serious possibility of the claimant being persecuted in the IFA found to exist. Second, it must be objectively reasonable to expect a claimant to seek safety in the part of the country considered to be an IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) at 710-711). The burden is on the applicant to show that an IFA is not viable (see *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) at paras 5-6).

[45] In *Guerilus*, above, at para 20, Justice Boivin explained that applicants who challenge the viability of an IFA must meet a high threshold.

> The applicants had the onus of demonstrating why, on a balance of probabilities, there is a serious possibility that they would be persecuted in another part of the country where an internal flight alternative might be available (*Thirunavukkarasu*). The applicants must meet a very high threshold in order to show that the IFA is unreasonable. As explained in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, 266 N.R. 380 (F.C.A.) below at paragraph 15,
>
> > … It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized…

[46] In this case, the Board reasonably concluded that the applicant had not met the onus of establishing that Lagos was not a viable IFA. There is no reason to disturb its finding.

[47] Contrary to the applicant's assertion, the Board did not offend the *Gender Guidelines* by invoking the existence of non-governmental organizations devoted to helping women in Lagos. That is because this factor was invoked at the second step, not the first. The Board did not imply that the applicant should be expected to seek protection from volunteers if the police refuse to intervene when she encounters problems. Rather, it stated that living in Lagos would not place her in a position of undue hardship because she could benefit from the assistance of

these organizations, in addition to religious groups and the family members with whom she has good relations.

[48] The Court rejects the applicant's suggestion that these findings were speculative and unreasonable. If the Board were not permitted to consider support from women's organizations, religious groups and family members in its analysis of hardship, it is difficult to fathom what exactly it could consider.

[49] For these reasons, this application is dismissed. No questions were proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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