

Federal Court



Cour fédérale

Date: 20160622

Docket: IMM-5102-15

Citation: 2016 FC 703

Ottawa, Ontario, June 22, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**ITOHAN UKINEBO, ASMAO ASHAT SANI,
RABIETU SAKIRATU SANI and DAUDA
SALAMI SANI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision by the Refugee Appeal Division [the RAD] setting aside the Refugee Protection Division [RPD] decision and finding that the Applicants are neither Convention refugees nor persons in need of protection in the

meaning of sections 96 and 97(1) of the Act. The Applicants are seeking an order quashing the RAD's decision and to have the matter sent back for redetermination.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] The principal Applicant in this matter is Itohan Ukinebo. She is the designated representative of the other Applicants, her two daughters, Asmao Ashat Sani and Rabietu Sakiratu Sani, respectively aged 6 and 4, and her son Dauda Salami Sani, aged 2. The Applicants are all citizens of Nigeria.

[4] The principal Applicant alleges that around September 24, 2014, Boko Haram militants attacked the Christ Solution Ministry Christian Church where her husband, Mr. Sani, was a Minister. She claims that her husband was at the church at the time of the attack and has not been seen since. As a result of these events, the Applicants claim they fear being killed by the extremist group Boko Haram.

[5] On October 5, 2014, the Applicants left Nigeria and travelled through the Netherlands before arriving in Canada undetected with the aid of an agent.

[6] In November 2014, the Applicants made a refugee protection claim, which was accepted by the RPD on January 14, 2015 recognizing the Applicants as Convention refugees based upon a conclusion that the Applicants were credible.

[7] On February 20, 2015, the Minister appealed the RPD decision to the RAD regarding the identity of the Applicants based on alleged evidence demonstrating that the identity documents provided to the RPD by the principal Applicant were counterfeit or probably counterfeit.

[8] Both parties introduced new evidence not before the RPD. The Minister's request for a hearing was accepted. On October 8, 2015, the appeal was considered and on October 15, 2015, the RAD set aside the RPD's decision.

III. Impugned Decision

[9] With respect to the issue of the identity of the principal Applicant, based on the Minister's new evidence which consisted of a Document Analysis Report undertaken by the Canadian Border Services Agency [CBSA] of the identity documentation provided by the Applicants, the RAD concluded that the key corroborative identity evidence was counterfeit and that the birth certificates were also most likely counterfeit. However, the RAD also accepted the Applicants' newly introduced identity documents consisting of new passports. Based upon documentation taken from the Nigerian Immigration Service website, it concluded that the identity of the principal Applicant and her children was established.

[10] However, the RAD proceeded to assess the credibility of the principal Applicant, concluding that the positive RPD conclusion on credibility was an error. The RAD found that there were credibility issues with regard to the Applicants' identity documents provided to the RPD which were not known to it. The RAD also concluded that the principal Applicant was not credible before the RAD when testifying that she obtained her identity card from the Nigerian

National Identity Management Commission [NIMC] in 2005 as Nigerian government documentation indicates that the NIMC was only established in 2007.

[11] The RAD made a negative credibility finding based on the principal Applicant's testimony that she had never applied for a passport or handled the passport used to access Canada when the documentary evidence demonstrated that the principal Applicant paid the Nigerian government \$250USD, which is a penalty fee for a lost passport, instead of the normal \$30USD fee for a new passport or renewal. As a result, the RAD found the principal Applicant not credible on a balance of probability.

[12] The RAD found further credibility issues arising from the principal Applicant's documents used to secure her passport that indicated that she was an "indigene" of Benin City in the south of Nigeria, rather than Shaffa city in Borno State where she indicated she was living and where Boko Haram is present. This questioning was raised in the context of why the principal Applicant did not move to Benin City, rather than undertaking the expensive migration initiative from Nigeria to Canada. It found the principal Applicant's evidence that her travel was arranged outside of her control and knowledge by persons she was unable to specifically identify not credible. The RAD also did not find her explanation that she returned to Benin City to obtain her passport, because she wished to investigate her origins to let her know her "status," credible.

[13] Despite recognizing the RPD's positive credibility conclusion, the RAD set aside its decision. Given the record of falsified documentation and misleading testimony, the RAD

concluded that there were no credible substantive allegations in the file relating to residency and that the Applicants were neither Convention refugees nor persons in need of protection.

IV. Issues

[14] The Applicants raise the following issues:

1. Did the RAD breach procedural fairness by proceeding with the credibility assessment when the Minister had only appealed on the issue of identity and by relying upon country documentation only provided at the hearing as a basis for some of its negative credibility findings?
2. Did the RAD err in failing to consider corroborative evidence?

V. Standard of Review

[15] Procedural fairness issues are reviewed on a correctness standard while findings of facts, which include credibility findings, are reviewed on a reasonableness standard: *Dunsmuir v New Brunswick*, 2008 SCC 9.

VI. Analysis

A. *Breach of Procedural Fairness*

[16] The Applicants submit that the Minister's appeal rested on the issue of identity, as such, the Applicants were "ambushed" when the RAD proceeded to continue a hearing on the issue of

credibility after having established the Applicants' identities. I reject this submission because the evidence clearly indicates that the RAD gave more than two months advance notice that in addition to the identity issue, it would also consider the issues of credibility and internal flight alternative.

[17] Moreover, the principal Applicant was advised in advance that the Minister would be arguing that the corroborative objective documentation relied upon by the Applicants before the RPD was counterfeit. This obviously raises a significant credibility issue.

[18] In addition, the RAD gave notice of its intention to hold a hearing pursuant to subsection 110(6) of the Act. Hearings may only be held in respect of new documentation "that raises a serious issue with respect to the credibility of the person who is the subject of the appeal." The Court also notes that the principal Applicant, although represented, did not object to the RAD delving into the credibility. This undermines the seriousness of the argument: *Linares Morales v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1496 at paragraph 13 (*Linares Morales*).

[19] The Applicants further submit that the RAD did not afford them procedural fairness by its failure to provide an advance warning of its intention to rely on documents from the Nigerian government website concerning passport applications and identification documents in Nigeria. They were used to undermine the credibility of the Applicants.

[20] I also reject this argument inasmuch as the RAD member gave a copy of the documentation, which was not extensive, to the Applicant's lawyer at the commencement of the hearing indicating his intention to ask questions regarding the documents relating to passports and IDs. Thereafter, the RAD member recessed the proceedings to allow the Applicant's counsel time to consider the documentation. Upon returning, the Applicants raised no objection to the documents. The Applicants also did not object when the RAD member posed questions based on the documentation during the hearing, or afterwards before the decision was rendered, thereby again undermining the seriousness of the argument: *Linares Morales*.

B. *Failure to consider corroborative evidence*

[21] The Applicants submit that there was corroborative documentary evidence that runs counter to the RAD's findings. As such, they contend that the RAD erred in failing to properly refer to this evidence in its reasons. It is well established that a decision-maker is not required to make an explicit finding on each constituent element leading to its final conclusion, so long as the tribunal's reasons adequately explain the bases of its decision: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraphs 16-18. Nor is there a duty to mention all of the evidence submitted by a party: *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 408 at paragraph 18.

[22] In this matter, I am satisfied that given the seriousness of a credibility failure based on an intention to mislead the tribunal by the introduction of counterfeit documentation, and the failure to provide any corroborative evidence on the place of residence from which the flight was said to take place, along with those concerns arising from the evidence that was provided on that issue,

the reasons are reasonable in finding that the Applicants are not Convention refugees or persons in need of protection.

VII. Conclusion

[23] The application is dismissed and there are no questions requiring certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and there are no questions requiring certification.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5102-15

STYLE OF CAUSE: ITOHAN UKINEBO et al v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL

DATE OF HEARING: JUNE 15, 2016

JUDGMENT AND REASONS: ANNIS J.

DATED: JUNE 22, 2016

APPEARANCES:

Idorenyin E. Amana FOR THE APPLICANT

Bassam Khouri FOR THE RESPONDENT

SOLICITORS OF RECORD:

Idorenying E. Amana FOR THE APPLICANT
Barrister & Solicitor
Cornwall, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario