

Federal Court



Cour fédérale

Date: 20170125

Docket: IMM-2517-16

Citation: 2017 FC 93

Ottawa, Ontario, January 25, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

NGOZI BENSON OGBONNA

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Nigeria who arrived in Canada in May 2007. In March 2009, she sought refugee protection claiming that she feared being arrested, detained and tortured by the Nigerian authorities because her then husband was a member of the Movement for the Actualization of the Sovereign State of Biafra [MASSOB], which she supported. The Refugee

Protection Division [RPD] rejected her claim on May 30, 2011 and, on October 12, 2011, her application for leave and judicial review was dismissed by this Court.

[2] In January 2016, the Applicant submitted an application for a Pre-Removal Risk Assessment [PRRA]. In addition to reiterating her fears of persecution by the Nigerian authorities because of her ex-husband's membership in the MASSOB, she alleges to be at risk because she is a Christian and has spoken out against the actions of Boko Haram, especially in relation to the abduction of Chibok girls. She states that she will continue to do so and as a result, she will come to the attention of Boko Haram and be persecuted.

[3] The Applicant's PRRA application was rejected on April 11, 2016. The PRRA Officer first found that the Applicant had not established that she was at risk in Nigeria by the Nigerian authorities as a result of her ex-husband's involvement in the MASSOB. The PRRA Officer also found that the Applicant had not presented any evidence that demonstrated that Boko Haram would be interested in the Applicant or that it had the ability or influence to find her if she returned to Nigeria.

[4] The Applicant now challenges the decision of the PRRA Officer and submits that the PRRA Officer committed a reviewable error by misconstruing or ignoring her new evidence.

II. Analysis

[5] A PRRA Officer's decision, including his assessment of the evidence, involves questions of mixed fact and law and as such, is reviewable on a reasonableness standard (*Mbaraga v*

Canada (Citizenship and Immigration), 2015 FC 580 at para 22 [*Mbaraga*]; *Kulanayagam v Canada (Citizenship and Immigration)*, 2015 FC 101 at para 21 [*Kulanayagam*]). In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

A. *Risk posed by the MASSOB*

[6] The Applicant submits that the PRRA Officer misconstrued the evidence by relying on the findings of the RPD relating to her fear of the MASSOB, rather than analyzing the new evidence she provided in support of her PRRA application. In particular, the Applicant argues that the PRRA Officer failed to analyze the statement she made in her PRRA application explaining how the risks concerned her directly and personally. Finally, the Applicant alleges that the PRRA Officer misconstrued or failed to analyse her new documentary evidence relating to the current treatment of members of the MASSOB.

[7] This Court has held that in the case of failed refugee claimants, the risk assessment to be carried out at the PRRA stage is not a reconsideration of the RPD's decision but is limited to an evaluation of new evidence (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 12 [*Raza*]; *Kulanayagam* at para 23; *Mbaraga* at para 23). The PRRA Officer may properly reject evidence adduced by an applicant if it addresses the same risks considered by the RPD and

the applicant cannot prove that the relevant facts as of the date of the PRRA application are materially different from the facts as found by the RPD (*Raza* at para 17).

[8] Accordingly, it was reasonable for the PRRA Officer to look to the RPD decision to ascertain what risks were asserted by the Applicant before the RPD. After noting that the risk alleged by the Applicant was considered by the RPD, the PRRA Officer then properly considered the Applicant's new evidence and found that the letters written by the Applicant's friends and family did not contain any new information which was not already before the RPD. As a result, the PRRA Officer gave them little weight in demonstrating that the Applicant faced a personalized risk.

[9] The PRRA Officer also considered the Applicant's statement in her PRRA application. She stated that she was married to one of the leaders of the MASSOB and that one of the strategies of the government agents was to torture and punish spouses, children or close relatives of targeted MASSOB leaders in order to make them surrender. She also stated that many of her friends, who are the spouses of targeted leaders of the MASSOB have been tortured and killed. However, the PRRA Officer ultimately concluded that although the Applicant's ex-husband and son had been detained by the authorities in December 2008, the Applicant was no longer married to her ex-husband and that there was nothing on the record to show that since that date, her children who reside in Nigeria, had been arrested, detained or mistreated as a result of their father's membership in the MASSOB. Finding that the Applicant had not established that she was at risk in Nigeria at the hands of Nigerian authorities as a result of her ex-husband's

involvement with the MASSOB, the PRRA Officer gave little weight to the news articles and human rights reports presented by the Applicant.

[10] The Applicant has failed to persuade the Court that the PRRA Officer committed a reviewable error regarding the Applicant's evidence and the risk posed by the MASSOB. The PRRA Officer reasonably concluded that the Applicant had not demonstrated a new risk. This risk was assessed and rejected by the RPD and the Applicant's application for leave and judicial review was denied by this Court.

[11] Moreover, the Applicant's own PRRA application statement upon which she relied as new evidence fails to establish that she is at risk. Her statement speaks of spouses having been targeted. The Applicant was unable to identify any evidence in the record demonstrating that former spouses were equally at risk. Finally, the events upon which the Applicant relies to support a personalized risk occurred in 2008. She did not adduce any evidence demonstrating that since 2008, her family members who are still in Nigeria have been targeted by the MASSOB because of their father's membership in the MASSOB. On the basis of the evidence adduced by the Applicant, the PRRA Officer's finding was reasonable and the Court's intervention is not warranted.

B. *Risk posed by Boko Haram*

[12] The Applicant also submits that the PRRA Officer misconstrued her evidence regarding her fear of Boko Haram. She alleges that her evidence demonstrated that: 1) Boko Haram had the capacity to extend havoc across the country, if they succeeded in overrunning the northeast of

Nigeria; 2) she was active and had spoken out in Canada against Boko Haram and that it was only a matter a time before Boko Haram would find her if she returned to Lagos; and 3) Boko Haram had a presence in Lagos, as it had attacked her local church in Nigeria and twelve (12) of its members had been arrested.

[13] The PRRA Officer properly reviewed, considered and assessed the Applicant's claim to be at risk because she had spoken out and will continue to speak out against Boko Haram. The PRRA Officer explicitly acknowledged having read the letters written by the Applicant's friends who state that she has spoken out against the practices of Boko Haram and the kidnapping of Chibok girls. However, while recognizing that the Applicant may feel strongly about the situation in Nigeria as it relates to Boko Haram, the PRRA Officer found that the Applicant has not demonstrated how voicing her concerns to friends would bring her to the attention of Boko Haram in Nigeria.

[14] The PRRA Officer also acknowledged that Boko Haram has been accused of attempting to alter the religious and ethnic composition of the northeast of Nigeria, but found based on an assessment of the objective documentary evidence, that it did not appear to be a serious threat outside of north Nigeria. Noting that the Applicant's family lived in Lagos, in south Nigeria, the PRRA Officer ultimately found that the Applicant had not presented any evidence to show that Boko Haram would be interested in her or that it had the ability or influence to find her if she were to return to Lagos.

[15] The Applicant has not demonstrated that the PRRA Officer's assessment of the evidence was unreasonable. The evidence upon which the Applicant relies to demonstrate the presence of Boko Haram in Lagos is speculative and even suggests that state protection is operationally effective as members of Boko Haram were arrested by the authorities.

[16] Upon review of the Applicant's submissions, she is essentially asking this Court to re-weigh the evidence before the PRRA Officer and to come to a different conclusion. That is not the role of the Court on judicial review (*Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 15; *Kulanayagam* at para 31; *Khosa* at para 61).

[17] For all of the above reasons, this Court finds the PRRA Officer's conclusion that the Applicant had not provided sufficient evidence to support either of her claims to be reasonable as it falls within a range of possible, acceptable outcomes, which are defensible in light of the facts and law. Accordingly, the Court sees no reason to interfere with the PRRA Officer's decision.

[18] No question of general importance has been proposed by the parties. None will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: NGOZI BENSON OGBONNA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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JUDGMENT AND REASONS: ROUSSEL J.

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