

Federal Court



Cour fédérale

Date: 20170206

Docket: IMM-1876-16

Citation: 2017 FC 134

Ottawa, Ontario, February 6, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

OYINDAMOLA ADEO ANNI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Oyindamola Adeo Anni [Ms. Anni] seeks judicial review of a decision rendered by the Immigration and Refugee Board's Refugee Protection Division [RPD] on March 7, 2016 in which the RPD dismissed Ms. Anni's application to re-open her refugee claim. The RPD concluded Ms. Anni had failed to establish a breach of natural justice as required by Rule 62(6) of the *Refugee Protection Division Rules* [the Rules], SOR/2012-256.

[2] For the reasons set out herein, I would dismiss the application for judicial review.

II. Facts

[3] Ms. Anni is a citizen of Nigeria. She has three children, two of whom are Canadian born. Her youngest son, born in Nigeria, resulted from the rape of Ms. Anni. The facts set out below explain in some detail the circumstances surrounding the birth of her two Canadian born children, Ms. Anni's travels between Nigeria, Canada and the United States, and the unusual circumstances surrounding this request, made in March 2016, to re-open a refugee claim deemed abandoned on March 10, 2010.

[4] Ms. Anni, while pregnant, fled to Canada to avoid the physical and emotional abuse endured at the hands of her spouse in Nigeria. She sought refugee protection in Etobicoke, Ontario on October 16, 2007. Shortly thereafter, Ms. Anni's spouse learned of her departure from Nigeria. He followed her to Canada where they once again co-habited. Ms. Anni contends the abuse continued but acknowledges that at no time did she contact the police or other authorities in Canada. In July 2008, a Canadian court convicted Ms. Anni's spouse of drug and trafficking related charges. Upon his release from prison he was deported to Nigeria. Ms. Anni and their first Canadian-born child returned with him. I here note that she was not required by Canadian authorities to return to Nigeria.

[5] In February 2009, Ms. Anni, once again pregnant, returned to Canada without her Canadian-born son, by using a fraudulent American passport. She was detained by a Canadian Border Services Agency officer, but eventually released on a cash bond of \$1,500. During her

release, she gave birth to her second Canadian-born child, a daughter. Ms. Anni and her newborn daughter returned to Nigeria in June 2009, after learning that her father, who had been caring for her son in Nigeria, had passed away. Ms. Anni contends her spouse learned of her return to Nigeria where he forced her and their two children to live with him.

[6] During this latest period of co-habitation with her spouse, Ms. Anni contends he attempted to sexually assault their four-year-old daughter. She removed her children from the marital home, left her husband, and, while living with various friends and relatives, was gang-raped which resulted in a pregnancy. She then gave birth to her third child, the first child of hers to have Nigerian citizenship.

[7] In January 2015, Ms. Anni and her three children arrived in the United States. She and her youngest child subsequently returned to Nigeria in April 2015 and returned again to the United States in May 2015. In October 2015, Ms. Anni and her children arrived in Canada from the United States. Following the issuance of a removal order and an unsuccessful pre-removal risk assessment [PRAA] hearing, Ms. Anni brought an application in March 2016 to re-open her refugee claim made in 2007.

[8] I note here that Ms. Anni successfully sought judicial review of her unsuccessful PRAA. In *Anni v The Minister of Citizenship and Immigration*, 2016 FC 941, [2016] FCJ no 1076, a Justice of this Court set aside the PRAA officer's decision and remitted the matter to a different officer for re-determination.

III. Impugned Decision

[9] The RPD noted that Ms. Anni made her refugee claim with the assistance of legal counsel in October 2007. She provided her address and that of her counsel to the Respondent. On February 3, 2010, after proper notice, neither she nor her counsel appeared at her refugee hearing. A show cause hearing was scheduled for February 8, 2010. Neither Ms. Anni, nor her counsel appeared at the appointed time and place. Rather than declare her claim abandoned, a hearing was scheduled for March 10, 2010. Ms. Anni and her counsel received notice of the hearing at the last known addresses provided to the Respondent. Once again, neither Ms. Anni nor her counsel appeared. During this March 10, 2010 hearing, a Canadian Border Services Agency officer [the Officer] provided a declaration regarding Ms. Anni's travels. The Officer stated that Ms. Anni had departed Canada for Nigeria in July 2008. The Officer further reported that in February 2009, Ms. Anni was apprehended at the Lester B. Pearson Airport while attempting to enter Canada with a fraudulent passport. She was detained and eventually released on a cash bond of \$1,500 and performance bond of \$5,000, subject to reporting requirements. She was also required to report any change of address to the CBSA. Upon her failure to report as required, a warrant was issued for her arrest on October 30, 2009. In November 2009 the CBSA learned that Ms. Anni had returned to Lagos, Nigeria and therefore vacated the arrest warrant.

[10] The RPD noted that during Ms. Anni's time in Canada, she never sought help from police, other authorities, or her counsel regarding her spouse's abusive behaviour. The RPD also noted that while in Canada in 2009, Ms. Anni never made any inquiries regarding the status of her refugee claim. In addition, although she returned to Canada in October 2015, she only made

the application to re-open her refugee claim in March 2016 following an unsuccessful PRAA.

Ms. Anni offered no explanation for this delay.

[11] Ms. Anni provided the RPD with a psychiatrist's report which concludes she suffers from post-traumatic stress disorder [PTSD], depression, and battered wife syndrome. The RPD gave this report little weight, observing there was no indication as to how the doctor arrived at his conclusions. Furthermore, the RPD concluded the psychiatric report made conclusory statements regarding Ms. Annie's credibility and right to remain in Canada which were within its (RPD's sole domain). The RPD concluded there was no breach of natural justice as defined by Rule 62(6) of the Rules and consequently denied Ms. Anni's application to re-open her refugee claim.

IV. Relevant Legislative Provisions

[12] It is trite law that the RPD must not allow the re-opening of an application unless the applicant establishes a failure to observe a principle of natural justice: Rule 62(6).

V. Issues and Standard of Review

[13] The sole issue can be framed as follows: was the RPD's conclusion there was no breach of natural justice, which would justify the re-opening of the claim, reasonable in the circumstances?

[14] The question of whether there was a breach of natural justice is one of mixed fact and law. The appropriate standard of review is reasonableness (*Huseen v Canada (Minister of*

Citizenship and Immigration), 2015 FC 845 at para 13, [2015] FCJ no 956; *Gurgus v Canada (Minister of Citizenship and Immigration)*, 2014 FC 9 at para 19, [2014] FCJ no 4). The RPD's decision must therefore fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The reasoning process must demonstrate justification, transparency and intelligibility (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2009] 1 SCR 190).

VI. Analysis

[15] In her written submissions, Ms. Anni contends the Respondent failed to demonstrate that the RPD's decision was reasonable. In this regard, Ms. Anni misstates the law. The Respondent bears no onus to establish that the decision is reasonable. It rests upon Ms. Anni to establish unreasonableness (*Djilal v Canada (Minister of Citizenship and Immigration)*, 2014 FC 812 at para 28, [2014] FCJ no 848).

[16] In 2007, when making her refugee claim, Ms. Anni was represented by counsel. In February 2009, when she returned to Canada using a fraudulent passport, she did not contact counsel or enquire about the status of her claim. Neither Ms. Anni, nor her counsel, appeared at the hearings scheduled for February 3 and 8, 2010 or March 10, 2010. Ms. Anni provided no new addresses to the Respondent despite her numerous relocations. Furthermore, I note Ms. Anni appeared willing to forfeit the \$1,500 cash bond and \$5,000 performance bond when she voluntarily returned to Nigeria. As noted by the RPD, following her return to Canada in October, 2015, Ms. Anni waited 5 months before taking steps to re-open her application.

[17] Ms. Anni contends the RPD failed to take into consideration that she is a victim of domestic violence, that she endured physical and emotional abuse, and that she suffers from battered wife syndrome and PTSD. Ms. Anni contends the RPD failed to give adequate consideration to the psychiatric report as justification for her failures to appear. She contends these are “relevant factors”, as contemplated by Rule 62(7); however, based upon the contents of its decision, it is evident the RPD took into consideration the abuse allegations. The RPD addressed the history of abuse, referred to the psychiatric report, and relied upon *Molefe v Canada (Minister of Citizenship and Immigration)*, 2015 FC 317, [2015] FCJ no 304, to accord little weight to the report.

[18] The issue before the RPD was not whether Ms. Anni suffered from abuse. Rather, it was whether her ability to respond to administrative procedures, attend hearings, and engage counsel was compromised by those diagnoses such that there was a breach of natural justice. The RPD considered many factors including Ms. Anni’s ability to leave her country of origin because of abuse, make an application for refugee status, engage legal counsel, travel extensively over an extended period of time between Nigeria, the United States and Canada, and obtain and use false passports, in reaching the conclusion there was no breach of natural justice. Whether the evidence demonstrated a breach of natural justice was the RPD’s decision to make.

[19] It is not the role of this Court on judicial review to re-weigh the evidence or substitute its view for that of the RPD (*Khosa v Canada (Minister of Citizenship and Immigration)*, 2010 FC 83 at para 37, [2010] FCJ no 99; *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 673 at para 10, 170 ACWS (3d) 147. Furthermore, there is an abundance of evidence in

the record to support the reasonableness of the conclusion reached by the RPD: see *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

VII. Conclusion

[20] In view of all of the above, I would dismiss the application for judicial review without costs. Neither party proposed a question of general importance for certification and none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. No question is certified.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1876-16

STYLE OF CAUSE: OYINDAMOLA ADEO ANNI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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