Federal Court  Cour fédérale

**Date: 20170724**

**Docket: IMM-5128-16**

**Citation: 2017 FC 705**

**Toronto, Ontario, July 24, 2017**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**ESTHER OBIAGELI NWAEME**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of the decision of a senior immigration officer in the Backlog Reduction Office in Toronto [Officer], dated November 18, 2016 [Decision], which denied the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

## II. BACKGROUND

[2] The Applicant is a citizen of Nigeria and has resided in Canada since March 30, 2010. She arrived on a six-month visitor visa, which was renewed twice, and she worked for a family as a live-in caregiver.

[3] The Applicant claims that her relationship with the family she worked for in Canada deteriorated over time. She alleges that members of the family withheld her salary, verbally and physically attacked her, and isolated her from the local community as well as her Nigerian family. On January 31, 2015, the family arranged for the Applicant to return to Nigeria, but realized she could not travel because she had given her passport to a friend for safekeeping. After this incident, the family did not allow the Applicant back into their home and reported her to the Canada Border Services Agency [CBSA]. The Applicant has since lived in a women's shelter.

[4] On March 6, 2015, the Applicant submitted an application for permanent residence on H&C grounds [first H&C application]. The next day, she submitted a complaint to the police which alleged that she had been a victim of human trafficking. Based on these allegations, she was issued a six-month temporary resident permit that expired on October 28, 2015. Because of insufficient evidence, the police investigation did not result in charges against the family.

[5] The first H&C application was initially denied on September 18, 2015. Although the Applicant applied for leave for judicial review of the decision, the application was discontinued on consent prior to the hearing and the matter sent back for reconsideration.

[6] The Applicant then submitted a second H&C application, which comprised of two submissions dated January 25, 2016 and January 28, 2016. The negative decision for the second H&C application forms the subject of this judicial review.

## III. DECISION UNDER REVIEW

[7] The Decision sent from the Officer to the Applicant by letter dated November 18, 2016, determined that the Applicant did not qualify for an exemption from legislative requirements to allow her application for permanent residence to be processed from within Canada.

[8] With regards to the submissions on human trafficking, the Officer found insufficient objective evidence to conclude the Applicant was a victim of human trafficking. The Officer acknowledged the affidavit from Margaret Charles, to whom the Applicant had given her passport for safekeeping, and the police investigation that did not yield charges against the family the Applicant had worked for in Canada.

[9] Next, the Officer considered the submissions regarding the Applicant's profile as a single, older, and childless woman in Nigeria. After consideration of the Applicant's own submissions and independent research on country conditions, the Officer found that there was insufficient objective evidence to conclude that the Applicant had suffered any harm or abuse in Nigeria. The Officer also noted that the Applicant had previously lived in Nigeria as a single and childless woman until the age of 50, and had not reported any prior abuse or harm as a result of her status. Additionally, the Officer noted that the Applicant had attended hairdressing school and had gained employment in hairdressing in Nigeria.

[10] The Officer then referred to, and quoted from, the 2015 Country Report on Human Rights Practices – Nigeria issued by the United States Department of State [US DOS Report]. The US DOS Report covers multiple issues in Nigeria, including human rights abuses and widespread societal unrest. With regards to the role of the police, the US DOS Report states that the authorities committed human rights abuses and most cases were not resolved. The US DOS Report also states that women victims of violence have little recourse to justice, and that domestic violence remains widespread and socially acceptable, despite legislation such as the Violence Against Persons Prohibition Act [VAPP Act]. Women are also discriminated against in the workplace and remain marginalized.

[11] In his review of the documentary evidence on country conditions, the Officer found that Nigeria has a functioning police force and a judiciary committed to protecting women's rights. With specific reference to the VAPP Act, the Officer found that victims of violence are provided with care and protection.

[12] The Officer then considered the Applicant's mental disability and the treatment of women with mental disabilities in Nigeria. Although Dr. Venera Bruto, a clinical neuropsychologist, had concluded that the Applicant likely has a mental impairment, Dr. Bruto's evidence was not given much weight because the test used to assess her has limited validity with individuals who are non-English speaking and non-North Americans, such as the Applicant. Additionally, the Applicant had reported that she could write, draw, read her Bible, and that she has good comprehension without any difficulties concerning concentration or attention. Moreover, while Dr. Bruto had indicated the Applicant likely required social and health

assistance due to her mental disabilities in Canada, the Officer noted that there was no indication that such assistance would be required in Nigeria where the Applicant had resided without reported difficulties prior to moving to Canada. Accordingly, the Officer gave minimum weight to Dr. Bruto's report on the basis that the Applicant's evidence did not indicate an inability to function in Nigeria.

[13] Despite the uncertainty regarding whether the Applicant's family would be able to offer financial assistance, the Officer was satisfied that a network of support was available in Nigeria. The Officer also found that family reunification would occur upon the Applicant's return to Nigeria.

[14] With regards to the Applicant's integration upon return to Nigeria, the Officer found that she was adaptable and resourceful, having moved and adapted to Canada since 2010. Although it was acknowledged that the family she had worked for in Canada may have taken advantage of the Applicant, the Officer found she had been resourceful enough to refuse to return to Nigeria, had found friendship and legal aid in Canada, and had attended church and completed life skills training through the women's shelter, all of which would be beneficial to her upon her return to Nigeria. Additionally, since the Applicant had sought police assistance in Canada, she could also be able to do so in Nigeria. Moreover, the Applicant had family in Nigeria, but not in Canada. Since the Applicant was returning to the place where she had spent the majority of her life and was familiar with the language and culture, the Officer found that she would be able to continue her social development in Nigeria.

[1] After reviewing the H&C factors, personal circumstances, submitted grounds, and evidence, the Officer concluded that the Applicant had not established that an exemption was warranted on H&C grounds and refused the application.

## IV. ISSUES

[2] The Applicant submits that the following are at issue in this application:

1. Was the Officer's assessment of the country conditions in Nigeria unreasonable?
2. Did the Officer misapprehend the evidence?

## V. STANDARD OF REVIEW

[3] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[4] An officer's assessment of an application for permanent residence under H&C factors involves questions of mixed fact and law and is reviewable under the standard of reasonableness: *Motrichko v Canada (Citizenship and Immigration)*, 2017 FC 516 at para 16.

[5] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

## VI. STATUTORY PROVISIONS

[6] The following provision from the *IRPA* is relevant in this proceeding:

| | |
|---|---|
| **Humanitarian and compassionate considerations - request of foreign national** | **Séjour pour motif d'ordre humanitaire à la demande de l'étranger** |
| **25 (1)** Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible - other than under section 34, 35 or 37 - or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada - other than a foreign national who is inadmissible under section 34, 35 or 37 - who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident | **25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire - sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 - soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada - sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 - qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident |

| | |
|---|---|
| status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. | permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché. |

VII. ARGUMENT

A. *Applicant*

(1) Assessment of Country Conditions

[7] The Applicant submits that the Officer's consideration of the country conditions in Nigeria was unreasonable because it was selective in nature and ignored established jurisprudence.

[8] The Applicant's H&C application included substantial documentation regarding the treatment of elderly and unmarried women in Nigeria, as well as the hardships faced by those with mental disabilities. Additionally, the Applicant's counsel had provided submissions as to why the risk of hardship to the Applicant, as demonstrated by the adverse country conditions strongly supported a positive H&C decision. However, the country conditions were not analyzed by the Officer at all.

[9] First, the Applicant argues that the Officer's treatment of the country conditions was selective in nature and only considered the US DOS Report. The documentation contained

information such as: up to 75% of the elderly population in Nigeria are subjected to abuse and rely on familial support; 70% of Nigerian women live below the poverty line; being unmarried is considered "the ultimate crime" in Nigeria; and the lives of the mentally disabled in Nigeria are marked by extreme hardship. Since the Applicant fits the profile of an elderly, unmarried, illiterate woman with an intellectual impairment, there is a reasonable inference that she would experience the hardships referred to in the documentation if she returns to Nigeria. This inference is also supported by the medical evidence of Dr. Bruto and Dr. Carr.

[10] Despite the documentation, the Officer did not analyze the country condition documentation or explain why country conditions in Nigeria would not result in hardship to the Applicant. Instead, the Officer copied and pasted the partial contents of the US DOS Report to find that there was a functioning police and judiciary in Nigeria that would prosecute violence against women. The Applicant submits that this does not address the information on country conditions, which describes the risks faced by persons with disabilities and unmarried women, including include elder abuse, discrimination, poverty, and marginalization.

[11] Although the Officer was not required to refer to every document in the reasons, he or she was required to refer to documents that directly contradict any findings: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17. By citing only the US DOS Report and not considering the other documentation that specifically referred to the risks faced by elderly, unmarried women with intellectual impairment, the Officer conducted a selective assessment of the country conditions. Additionally, the Officer did not explain why the US DOS Report was preferred over the other country condition documentation.

[12] Moreover, the Applicant takes issue with the Officer's decision to copy and paste the US DOS Report rather than conduct a substantive analysis of her submissions. The reproduced section of the US DOS Report comprises 4.5 pages of the 6.5 page Decision. The Applicant submits that this demonstrates haste and carelessness that requires judicial intervention.

[13] Second, the Applicant claims that the Officer erred in discounting the country conditions by stating that, since the Applicant had not previously experienced hardship in Nigeria, the hardship in country conditions was inapplicable to her. In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], the Supreme Court of Canada held that it is an error for the officer to place such a requirement on an H&C applicant. The Applicant submits that the Officer should have assessed the country conditions she would face on return rather than merely finding that the Applicant had not personally experienced the hardships faced by women with her profile while living in Nigeria.

[14] Moreover, the Applicant argues that she did experience hardship in Nigeria, when she lived there, including exploitation, and the Officer's finding on this point is a gross misapprehension of the facts. Applicants are not required to provide evidence that they have been previously personally impacted, or would be personally impacted in the future; applicants need only show that they would likely be affected by adverse conditions: *Kanthasamy*, above, at para 56. Consequently, the Officer was required to turn his or her mind to the country conditions, assess them, and explain why they should not be given weight. The failure to do so without justifiable reasons undermines the purpose of s 25(1) of the *IRPA* and constitutes an improper

humanitarian analysis: *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714 at para 12.

[15] In summary, the analysis of the country conditions was unreasonable. The Officer should not have discounted hundreds of pages of documentation that demonstrated the risk of hardship to the Applicant by reproducing a section of the US DOS Report and then stating that the Applicant would not experience hardship in the future because she had not experienced it in the past.

(2) Misapprehension of Evidence

[16] The Applicant also submits that the Officer mischaracterized numerous facts, which is a reviewable error: *Deheza v Canada (Citizenship and Immigration)*, 2016 FC 1262.

[17] For instance, the Decision states that the Applicant is an adaptable and resourceful individual. However, there was evidence that the Applicant struggles to use a telephone, cannot remember a four-item word list, and definitively stated in a psychiatric assessment that the year was 1955. The Applicant also cannot perform simple arithmetic and can only read two-letter words. As a result, the Officer's conclusions are a serious misapprehension of the evidence that downplays and misconstrues the Applicant's serious vulnerability and mental impairment.

[18] Another example is the Officer's analysis of the application of Dr. Bruto's test; the Officer focused on the difficulties of conducting cross-cultural cognitive assessments via an interpreter. This analysis ignores Dr. Bruto's ultimate conclusion that, notwithstanding such

difficulties, the Applicant likely has an intellectual impairment and requires support from social workers and occupational therapists.

[19] The Officer also misapprehended the evidence by finding that the Applicant had not provided evidence of the hardship she had suffered as a result of being an unmarried, childless woman and that she could rely on familial support for reintegration in Nigeria. The Applicant submitted an affidavit that made it clear she had been exploited for free labour in Nigeria when she worked for a family for two years without payment, and had lived in poverty after the family abandoned her. The Applicant had also stated that she had become estranged from her own Nigerian family while in Canada and could not rely on them for support.

[20] Another misapprehension of evidence was the Officer's treatment of the Applicant's experience in Canada. Although the police did not lay charges for domestic trafficking against the family that the Applicant worked for in Canada, the Officer did not address the years of unpaid wages withheld by the family and the isolation and abuse experienced by the Applicant. Instead of analysing the impact of the family's mistreatment of the Applicant and her mental health and vulnerability, the Officer focused on whether the family had been charged. This is an error because it is not relevant to the hardship experienced by the Applicant in Canada and does not take into account the impact that removal would have on the Applicant in light of what she has experienced here: *Kanthasamy*, above, at para 48.

B. *Respondent*

[21] The Respondent submits that the Officer reviewed all the H&C considerations and weighed all the factors, including the adverse country conditions, allegations of domestic trafficking, and the Applicant's disability. However, the Officer reasonably determined that an exception was not warranted in the present case.

(1) Assessment of Country Conditions

[22] The Respondent submits that although the Applicant simply disagrees with the manner in which the country conditions were assessed, this does not amount to an error.

[23] The Decision states that the Applicant's submitted evidence on country conditions was considered, as well as the US DOS Report. The Officer was also clearly aware of the difficult problems faced by women in Nigeria and, in fact, relied on the documentary evidence regarding country conditions. Since the US DOS Report described the difficulties experienced by elderly and single women, which was similar to the information contained in the Applicant's submitted documentary evidence, the Officer was not obligated to refer to and analyze all of the documentation.

[24] The Officer found that the Applicant's personal circumstances did not fit the profiles described in the country condition documents. The Applicant has always been unmarried and childless in Nigeria, yet she had familial support and attended hairdressing school. According to her H&C application, she did not experience hardship in Nigeria. Accordingly, it was reasonable

for the Officer to find that the Applicant's circumstances did not fit the situations described in the country conditions.

[25] Additionally, there was no definitive diagnosis of the Applicant's mental health. Dr. Bruto did not make conclusive findings; she stated that there may be a possible intellectual impairment. Dr. Carr made similar findings that were also not definitive.

[26] Furthermore, the Applicant received five years of education in Nigeria and can read and do sums. The Applicant also reported in a psychological assessment that she can read the bible and she visits the library. Consequently, it was not unreasonable to find that the Applicant's personal circumstances did not fit the documentary evidence on country conditions.

[27] The Applicant's history did not support alleged hardship upon return to Nigeria and the medical evidence did not indicate whether the Applicant would require assistance in Nigeria. As such, the Officer found insufficient evidence that the Applicant would experience hardship due to her profile as a single, elderly, and childless woman with disabilities. The Officer also found that the alleged difficulties occurred in Canada and not Nigeria. Therefore, the Officer's findings are reasonable.

(2) Misapprehension of Evidence

[28] The Respondent submits that the Officer did not misapprehend the evidence.

[29] The Applicant's affidavit demonstrates that she is adaptive and resourceful. In Nigeria, she took care of her siblings, worked on the family farm, attended hairdressing school, and was employed as a hairdresser. The difficulties experienced by the Applicant occurred in Canada, not Nigeria.

[30] The medical evidence also does not support the argument that the Applicant cannot perform simple tasks. The reports state that language and cultural factors prevented a clear and definitive diagnosis, but that the Applicant spoke minimal English. Therefore, it is not unreasonable that the Applicant was not able to perform the tasks requested during the assessments. Moreover, the Officer recognized the limitations of the possible diagnosis. The Respondent contends that the Applicant's arguments are based on the premise that the diagnoses were definitive, and she fails to account for the difficulties in conducting the assessments.

[31] The Officer was also reasonable in finding that the Applicant could rely on her family in Nigeria because she had done so in the past, and there was insufficient evidence that she could not continue to do so in the future. There was also no evidence that her family would not provide emotional support.

[32] While the Officer recognized the alleged mistreatment faced by the Applicant in Canada, this was insufficient to establish that she was a victim of domestic trafficking. The mistreatment also occurred in Canada, not Nigeria. Additionally, there was no evidence of the impact the mistreatment would have on the Applicant upon removal; in fact, the Applicant stated that she was doing better after leaving the family that had mistreated her.

C. *Applicant's Further Argument*

(1) Assessment of Country Conditions

[33] The Applicant continues to argue that the Decision is unreasonable based on the assessment of the country conditions.

[34] The Applicant continues to assert that the analysis of the country conditions is flawed because it was selective in nature. She relies on the jurisprudence that says that evidence of adverse conditions in the country of origin must be considered in an H&C analysis as a relevant factor: *Shrestha v Canada (Citizenship and Immigration)*, 2016 FC 1370 at para 15; *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 at para 18.

[35] The Decision does not refer to any of the country condition documentation submitted by the Applicant; instead, the Officer merely states that the country conditions were considered, which, contrary to the Respondent's argument, is not sufficient to demonstrate that the Officer conducted a meaningful analysis. Moreover, the Decision does not consider the discrimination faced in Nigeria by elderly, unmarried, and childless women with mental disabilities.

[36] The Applicant also disagrees with the Respondent's argument that replicating parts of the US DOS Report was sufficient analysis because the information was identical to the other submitted documentation. In fact, the US DOS Report actually corroborates the concerns regarding discrimination against women with mental disabilities in Nigeria. The US DOS Report states that: "women experienced considerable economic discrimination"; "women generally

remained marginalized"; and "unmarried women in particular endured many forms of discrimination." This information contradicts the Officer's conclusion that the Applicant would not experience hardship in Nigeria, but the Decision does not explain why the Officer disagreed with the information.

[37] The Applicant further submits that the Officer erred in finding that she had not adduced sufficient objective evidence that she had suffered hardship in Nigeria based on her vulnerability as an unmarried and childless woman.

[38] First, this finding is incorrect. In her affidavit for the H&C application, the Applicant explained she had been severely exploited in Nigeria when her employers withheld two years of wages and abandoned her.

[39] Second, this analysis is a legal error because it requires the Applicant to demonstrate she would definitely personally experience the hardships described in the country condition documentation in order to identify the country conditions as a relevant factor. In *Kanthasamy*, above, at para 51, the Supreme Court of Canada explained that an applicant need only show it is likely they will be impacted by adverse country conditions, a principle that has been applied in other decisions: *Maroukel v Canada (Citizenship and Immigration)*, 2015 FC 83 at para 34.

(2) Misapprehension of Evidence

[40] The Applicant further submits that the Officer misapprehended important evidence.

[41] First, as stated previously, the Officer made a factual error in finding that the Applicant had not demonstrated she had suffered mistreatment while in Nigeria. The Applicant had sworn an affidavit that detailed the exploitation of free labour she had suffered for two years in Nigeria. Additionally, the Officer failed to consider that the Applicant had been mistreated during two of the six years she lived in Nigeria as an independent woman. Prior to 2004, the Applicant had lived on the family farm but was sent away by her brother. Afterwards, she was exploited for free labour, which is an experience that was repeated in Canada.

[42] Second, the Applicant also continues to argue that the Officer erred in finding that she was an adaptable and resourceful individual, despite evidence to the contrary. The medical evidence demonstrated that she was unable to tell Dr. Carr her address, read words longer than two letters, perform simple math, or recall the current year. Additionally, Dr. Bruto's report found that the Applicant does not know the alphabet and cannot remember a four-item word list. Furthermore, in the affidavit of Ms. Charles, to whom the Applicant had provided her passport for safekeeping, the affiant stated that the Applicant struggled with directions to her lawyer's office despite close proximity, and that the Applicant had difficulties using a telephone.

[43] Despite this evidence, the Officer focused on Dr. Bruto's statements regarding the challenges of conducting assessments through interpreters with individuals of a different culture. The Officer then erred by finding that the Applicant could write in English, read her bible, and did not have cognitive difficulties based on self-reports, despite Dr. Bruto's caution that the Applicant's self-reporting of her cognitive abilities was inaccurate because she did not actually know the alphabet. The Respondent now repeats this error and also errs by arguing that the

Applicant can do sums when Dr. Carr indicated that the Applicant is incapable of simple arithmetic.

[44] The Officer also found that, since the Applicant was able to seek out legal assistance, enroll in training courses, and file police complaints, she is adaptable and resourceful; however, this ignores the explanation that the Applicant accomplished these things with significant assistance from the community.

[45] Third, the error in finding that the Applicant did not have a mental impairment resulted in a failure by the Officer to analyze the country condition documentation that described the challenges experienced by persons with mental disabilities in Nigeria. This is a serious error because the documentation demonstrates the situation is dire for women with disabilities.

[46] Fourth, the Officer's finding that the Applicant could rely on her family in Nigeria for support ignores the fact that the Applicant has not had any contact with her siblings while in Canada, and was not even aware that one of her siblings had died.

[47] In summary, the Applicant submits that the Officer made serious misapprehensions of fact that are contradicted by the evidence. This renders the Decision unreasonable.

D. *Respondent's Further Argument*

(1) Assessment of Country Conditions

[48] The Respondent further submits that hardship is inevitable with the removal process and that the mere existence of hardship is not sufficient for H&C grounds to exist to warrant an exemption: *Kanthasamy*, above, at para 23. In the particular circumstances of this case, the Officer found that an exemption was not warranted.

(2) Misapprehension of Evidence

[49] The Respondent further argues that the onus was on the Applicant to submit sufficient evidence to establish H&C grounds that demonstrated an exemption was warranted. In the present case, the Applicant failed to do so and the Officer was not satisfied that such an exemption was warranted. The Applicant's arguments amount to disagreements with the manner in which the evidence was weighed and assessed, which does not amount to an error requiring judicial intervention.

VIII. ANALYSIS

A. *Introduction*

[50] The analysis section of the Decision contains an extensive quotation from the 2016 US DOS Report for Nigeria – much of which does not address the Applicant's particular profile and

risks – followed by a series of assertive findings that misconstrue the US DOS Report itself, as well as the other evidence provided by the Applicant in her H&C application.

[51] The Applicant is a somewhat elderly (57-year-old) woman from Nigeria who has been seriously mistreated in Canada by employers and who suffers from a number of disadvantages that render her extremely vulnerable in a country such as Nigeria where cultural norms and practices make life very difficult for elderly, unmarried, childless women, and particularly those with mental health and mental capacity problems. In my view, the Officer has failed to engage with these vulnerabilities in any meaningful way.

B. *The VAPP Act*

[52] After quoting portions of the US DOS Report the Officer provides the following analysis on violence against women in Nigeria:

> The documentary material researched indicates that Nigeria has a functioning police force and judicial authority committed to protecting the rights of women. This is evidenced in the government's recent enactment of the Violence Against Persons Prohibition (VAPP) Act which addresses sexual violence, physical violence, psychological violence, harmful traditional practices, and socioeconomic violence. Under the VAPP, spousal battery, forceful ejection from home, forced financial dependence or economic abuse, harmful widowhood practices, female genital mutilation/cutting (FGM/C), harmful traditional practices, substance attacks (such as acid attacks), political violence, and violence by state actors (especially government security forces) are offenses. The documents indicate that victims and survivors of violence are entitled to comprehensive medical, psychological, social, and legal assistance by accredited service providers and government agencies, with their identities protected during court cases.

[53] It is trite law that the enactment of legislation does not, *per se*, translate into adequate protection, and the Officer simply assumes that it does. Even more bizarre, however, is that the US DOS Report itself – relied upon by the Officer – makes it clear that the enactment of the VAPP Act has not brought about adequate or meaningful protection for women in Nigeria. The US DOS Report makes the following clear:

> (a) There is no comprehensive law for combating violence against women. As a result, victims and survivors had little or no recourse to justice. While some, mostly southern states, have enacted laws prohibiting some forms of gender violence or seeking to safeguard certain rights, a majority of states did not have such legislation … On May 25, the government enacted the [VAPP Act] … until adoption by the states, however, the provisions of the VAPP are only applicable to the FCT.
>
> (b) The VAPP Act criminalizes rape, but "Rape remained widespread … Sentences for persons convicted of rape and sexual assault were inconsistent and often minor."
>
> (c) "Police often refused to intervene in domestic disputes or blamed the victim for provoking the abuse."
>
> (d) The report repeatedly makes it clear that there are laws against many types of conduct oppressive to women, but these laws are ineffective. Nowhere does the report suggest that women have adequate or meaningful protection in Nigeria.

[54] In addition, there is nothing in the portions of the US DOS Report quoted and, presumably, relied upon by the Officer that deals with the Applicant's particular profile. She is not simply a woman; she is elderly; unmarried; childless; cognitively challenged; and, as I shall come to later, has no real family support in Nigeria.

[55] The Officer also fails to mention or address the plethora of documentary evidence provided by the Applicant that is relevant to her particular profile and which contradicts the

Officer's conclusions. For example, the Applicant submitted a large body of authoritative evidence about the ways that elderly, unmarried, and childless women are treated in Nigeria, and the hardships faced by persons with mental disabilities. See, for example:

> (a) According to the National Centre for Elder Abuse, 1 in 7 cases of abuse is physical. The WCADV (2009), puts the estimates at about 75%...In Nigeria, the statistics are unknown but there is evidence that elderly abuse is prevalent…A gender analysis also shows that more women were abused than men…Having low education and being female were significant factors in the experience of abuse (Akpan and Umobong, 2013). Living alone, being widowed and having low level education was corroborated by the Bangladesh study but women living with their families were 44% less likely to face abuse…
>
> "Abuse of the Aged in Nigeria: Elders Also Cry"
> American International Journal of Contemporary Research, Vol 3, No 9, September 2013
> Applicant's Record, p. 459 / Certified Record, p. 553
>
> (b) Older people's lives are characterized by growing inadequacies in customary family supports, social exclusion and non-existence social security targeted at them, thus leaving them very vulnerable to poverty and disease.
>
> "Country Report: Ageing in Nigeria – Current State, ISA RC11, Sociology of Aging, Summer 2007
> Applicant's Record, p. 464 / Certified Record, p. 558
>
> (c) According to [the Minister of Women Affairs and Social Development, Hajiya Zainab Maina], "Several inter-related socio-economic factors have led to poor economic status of a large segment of Nigerian women, such that 70% of people living below the poverty line are women.["]
>
> "70% of Nigerian women are living below poverty line – Minister"
> Daily Post Newsletter
> Applicant's Record, p. 370 / Certified Record, p. 456
>
> (d) A survey of attitudes in the community towards domestic violence in Nigeria, attests that the most frequent victims of

violence usually turn out to be unmarried women in the southern states, with figures as high as 70 percent in some places…

> "Unmarried women most at risk of physical violence in Nigeria – SURVEY"
> Vanguard News
> Applicant's Record, p. 272 / Certified Record, p. 358

(e) Okeke indicated that, mainly in the south, women are more likely to be abused when they are no longer with a male partner (26 Oct. 2012). Okeke added that women who head their own households in the south are "stigmatized" and exposed to "psychological violence" (26 Oct. 2012). The British Council In Nigeria report says that almost "half of unmarried women in parts of southern Nigeria have experienced physical violence"…

> "Nigeria: Whether women who head their own households, without male or family support, can obtain housing and employment in large northern cities, such as Kano, Maiduguri, and Kaduna, and southern cities, such as Lagos, Ibadan, Port Harcourt; government support services available to female-headed households [NGA103907.E]"
> Immigration and Refugee Board of Canada
> Applicant's Record, p. 281 / Certified Record, p. 365

(f) On becoming an adult, it is perceived that the most important status a woman attains is derived through marriage [.] Among the Igbo, it is expected that women must marry and this is the reason why marriage has precedence over descent…In fact an unmarried women is often seen as an irresponsible person...

> "Perception of Womanhood in Nigeria and the Challenge of Development"
> Feminist Knowledge: Identities, Culture & Religion
> Applicant's Record, p. 299 / Certified Record, p. 396

[56] None of this evidence is even referred to by the Officer.

C. *Mental Capacity*

[57] The Officer deals with – and discounts – the Applicant's mental challenges in the following way:

> I have also considered the submissions made by the applicant's counsel with regards to the applicant's mental disability and the treatment of females suffering from mental health and or disabilities. I have read and considered the reports from the doctors on file with regards to the applicant's cognitive functioning. I note the conclusions from Dr. Bruto but I also note that his conclusions are based on a test developed with English speaking North Americans and as such he states the validity of the test is limited with those from other cultures and who are not fluent in English. The applicant is a native of Nigeria and her mother tongue is Igbo. The applicant herself, according to the Dr. Bruto, did not endorse or report any cognitive difficulties. She does not endorse any difficulties with concentration or attention and she reports that she writes and draws well. She reports that she reads her Bible written in English and it is her belief her comprehension is good. The doctor concludes that his findings likely suggest the presence of a possible intellectual impairment and in his opinion it is highly likely that Ms. Naweme will require assistance from social and health care services due to deficits in intellectual/cognitive and adaptive functions. The Doctor does not indicate whether the applicant would require this assistance in her native Nigeria where she resided and worked and reported no difficulties prior to coming to Canada. I give minimum weight to the Doctor's findings as the applicant's evidence does not indicate that she was unable to function in her local native community.

[58] The Officer's conclusion that the Doctor's findings should be given "minimum weight" because "the applicant's evidence does not indicate that she was unable to function in her local native community" is not a reasonable assessment of the Applicant's impairments.

[59] Dr. Bruto acknowledged the difficulties of conducting a formal assessment in the Applicant's case, but his opinion is clear:

> It is highly likely that Ms. Nwaeme will require assistance form social and health care services due to defects in intellectual/cognitive and adaptive functions. Referral for occupational therapy assessment and follow-up as well as social work consultation would be indicated. Without such services she would be expected to be vulnerable to exploitation and at risk for poor mental health and social outcomes.

[60] The facts of the Applicant's experience in Canada also confirm that, notwithstanding what may have happened in Nigeria before she came to Canada, the Applicant's present situation, as set out by Dr. Bruto, needs to be assessed and taken into account.

D. *Family in Nigeria*

[61] The Officer's analysis and conclusions on this factor are as follows:

> I have considered that the applicant's family in Nigeria may not be able to offer her financial assistance but insufficient objective evidence has been presented that they would be unwilling to provide her with assistance in regards to resettlement and reintegration into the community and society. I am satisfied that the applicant has a network of support in Nigeria, while she has no family in Canada, and, as noted above, insufficient objective evidence has been adduced to indicate that these family members would be unable to provide support other than financial should the need arise. Moreover, I find that family reunification will take place between the applicant and her family in Nigeria should she return to Nigeria.

[62] There was no evidence before the Officer that the Applicant has "a network of support in Nigeria." The Applicant's network of support, as the evidence shows, exists in Canada:

(a) The record includes a letter from Jane Sumwiza, the Applicant's family settlement counselor at the Immigrant Women's Centre in Toronto, that speaks to the Applicant's

participation in classes, such as English classes, "Women getting work", and "Women Wellness." This indicates she is supported by the IWC;

(b) The record also includes a letter from Pastor Cosmos A Ezeonwuire, who confirmed that the Applicant is a member in good standing and had been volunteering her time at the church to help clean and serve on the welfare committee. This indicates she is supported by her church community;

(c) Additionally, Margaret Charles, the friend who held the Applicant's passport for safekeeping, also provided an affidavit in which she says that: "I went to every meeting with her at the Refugee Law Office while she prepared her Humanitarian and Compassionate Application. I also accompanied her to psychiatrist appointments, medical appointments, and to the police station to make a criminal complaint…I will continue to support her, and be her friend, as long as she is here. Please let Esther stay."

[63] The Applicant also provided evidence that she was exploited and abused when she lived in Nigeria.

E. *Adaptable and Resourceful Individual*

[64] The Officer characterizes the Applicant as an "adaptable and resourceful individual" while the evidence reveals that she is anything but. The Applicant clearly struggles with basic life skills. Dr. Carr indicated that the Applicant was unable to tell him what year it was, and that she could not tell him her address, do simple math, or read words longer than two letters.

[65] Margaret Charles, the Applicant's friend, explained in her affidavit that it was only with community support that the Applicant had been able to find legal assistance or file a police complaint. Dr. Bruto indicated that the Applicant has difficulty using a telephone and Ms. Charles says that she had difficulty finding her lawyer's office even though it is close to the shelter where she lives. As previously mentioned, Ms. Charles indicated in her evidence that she had to accompany the Applicant to every appointment with the police, legal aid, psychiatrist, etc. She also stated that "Though the shelter is not far from the Refugee Law Office, she was too afraid to walk there on her own."

[66] Dr. Bruto's assessment was that the Applicant has an intellectual impairment or low average intelligence. Some of Dr. Bruto's more telling conclusions are as follows:

- *"Mild difficulties were noted on a task of sustained attention. Ms. Nwaeme's performance on a task of visuospatial/constructional skills was significantly impaired"*

- *"Ms. Nwaeme exhibits significant difficulties in learning a 4-tem word list. Even with 9 trials she was unable to learn this short word list."*

- *"Significant deficits were noted on a task of verbal concept formation"*

- *"Ms. Nwaeme's judgement with respect to how she would respond to common problems was impaired relative to North American standards. She tended to demonstrate limited insight into these situations…"*

- *"Ms. Nwaeme's performance on brief assessment of cognitive functioning is clearly below expectations. Findings suggested moderate deficits in verbal learning, visuospatial/construction skills, verbal concept formation, and every day judgement. Mild difficulties in sustaining attention were also noted"*

- *"The possibility that cognitive difficulties on formal assessment and on interview reflect an intellectual delay/impairment or low average intelligence is in my opinion quite possible and requires comment."*

- *"Although Ms. Nwaeme does not describe any difficulties in adaptive functioning, it may be noteworthy in this context that her reporting of other skills may not be accurate. For instance, she reports that she has no difficulties reading and understanding her Bible. In spite of this assertion, she is unable to write the English alphabet."*

[67] Notwithstanding Dr. Bruto's warnings about the Applicant's self-assessment and her ability to read her Bible ("In spite of this assertion, she is unable to write the English alphabet"), the Officer appears to accept the Applicant's self-assessment at face value: "She reports that she reads her Bible written in English and it is her belief that her comprehension is good." The Applicant's "belief" about her own comprehension of the Bible, as well as other aspects of her life, may not, as Dr. Bruto warns, reflect reality. Yet the Officer accepts such beliefs without question and ignores Dr. Bruto's advice.

[68] Counsel for the Respondent has ably argued before me that the real justification for the Decision is that the Applicant did not experience difficulties in Nigeria before she left for Canada. She went to hairdressing school and found work as a hairdresser so the Respondent argues there is nothing to support that she will have difficulties if she returns to Nigeria where she will have the assistance of her brother and sister to re-establish herself and find work. The Respondent argues that women in general may have difficulties in Nigeria, but the Applicant's past experience does not suggest that the Applicant has faced difficulties, or will face difficulties upon her return.

[69] In my view, the Applicant's past history in Nigeria suggests that for most of her life she lived with her family on the family farm. When she was 43-years-old, a decision was made that she had to leave the farm and establish herself independently. This is a fairly advanced age to send a single, relatively uneducated woman out into a social and economic environment that the documentary evidence establishes as being very adverse to women, particularly single women. The Applicant was supported by her brother to acquire hairdresser training and she found a job for a year working in a salon. But, for her final two years in Nigeria she worked as a nanny for a couple who were able to exploit her vulnerabilities.

[70] She did not seek to come to Canada until a woman named Rebeccah suggested she become the nanny for her daughter and son-in-law in Canada who have exploited her in a disgusting way, even if criminal proceedings were not initiated against them.

[71] So the Applicant's vulnerabilities were exploited in Nigeria before she left and her history in Canada suggests that she is someone who requires extensive support, which she did not receive in Nigeria. The family support she received in Nigeria was to get her off the farm and away from dependence upon her family. Even the Officer accepts that she is not likely to receive economic support from her family if she returns.

[72] If the Applicant returns to Nigeria she will face all of the difficulties made clear in the documentation that are faced by vulnerable women, and there is no evidence that the Applicant has any kind of "support network" referred to by the Officer that will allow her to deal with these problems. The Officer appears to place great reliance upon family support, but the Applicant's

personal history is that she had to move off the family farm for economic reasons and was obliged – at a comparatively late age and with little in the way of education – to make her own way in the world. That eventually resulted in her being exploited by a Nigerian couple before she left Nigeria, and her experiences and medical assessments in Canada reinforce the picture of a single, childless, elderly woman who is extremely vulnerable and who will have great difficulty if she is now forced to abandon her support network in Canada to confront conditions in Nigeria that are extremely adverse to women in her situation. The submitted country condition documentation paints an extremely bleak picture for single women who are childless and elderly (*e.g.* 70% of victims of violence are women, 70% of women live below the poverty line, unmarried women are more likely to be abused, lack of any social services/support for single women, etc.). These conditions suggest life in Nigeria would be extremely difficult for someone with the Applicant's profile who may, according to Dr. Carr, have developmental challenges.

[73] The Officer's analysis ignores important aspects of the Applicant's past history in Nigeria, ignores the psychological and other evidence of cognitive difficulties and dependency on others, ignores the plethora of evidence of a very adverse environment for someone with the Applicant's profile in Nigeria, and ignores the lack of an adequate support network in Nigeria that would allow the Applicant to engage with, and re-adapt to, that environment in any meaningful way.

[74] The parties concur that there is no question for certification and the Court agrees.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. The application is allowed and the Decision is quashed. The matter is returned for reconsideration by a different officer;

2. There is no question for certification.

"James Russell"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-5128-16 |
| **STYLE OF CAUSE:** | ESTHER OBIAGELI NWAEME v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JUNE 12, 2017 |
| **JUDGMENT AND REASONS:** | RUSSELL J. |
| **DATED:** | JULY 24, 2017 |

**APPEARANCES:**

| | |
|---|---|
| Keith MacMillan | FOR THE APPLICANT |
| Margherita Braccio | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Refugee Law Office<br>Barristers and Solicitors<br>Hamilton, Ontario | FOR THE APPLICANT |
| Nathalie G. Drouin<br>Deputy Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |