

Federal Court



Cour fédérale

Date: 20181009

Docket: IMM-706-18

Citation: 2018 FC 1008

Ottawa, Ontario, October 9, 2018

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DEBORAH OKOLOISE
ALEXANDER OSAHON (MINOR)
MAUREEN OSAHON (MINOR)
ABIGAIL OSAHON (MINOR)
ANNABEL OSAHON (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Okoloise and her four minor children are Nigerian. They lived with her husband and their father in a village near Lagos, Nigeria. He became a Chief for the community and decided that Ms. Okoloise and her three daughters must undergo the customary practice of female genital

mutilation [FGM]. She refused and was threatened, and she and her children fled to Canada to seek protection.

[2] Ms. Okoloise's former husband remarried after she fled to Canada. His new wife has miscarried twice and he believes that his former spouse is the cause of the miscarriages, through witchcraft, and has spread a rumour to that affect.

[3] The Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] decided that Ms. Okoloise, and as a result her children, were not Convention refugees or persons otherwise in need of protection because they had access to an Internal Flight Alternative [IFA] in the cities of Abuja and Port Harcourt, in Nigeria.

[4] The PRD found that the Applicant was credible and accepted her testimony. However, they did not find that the psychologist report [the Pilowsky Report] regarding her PTSD very convincing, noting that it was brief and was based on only one interview, which they commented was "too little interview experience". They also noted that the report tended to cross the line into advocacy.

[5] As indicated, the RPD found that Abuja and Port Harcourt would be safe for the Applicant on the IFA test, drawn from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); namely:

1. The circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that he or she would be able to enjoy the basic and

fundamental human rights and that there are no reasonable grounds to believe that he or she would be subject to risk to life or cruel and unusual treatment, punishment, or torture; and

2. The conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[6] The decision under review found both conditions satisfied with respect to the two cities examined as IFAs.

[7] The reasonableness of the RPD's assessment of the Pilowsky Report was challenged, but in the end I can see little reliance placed on the assessment as to whether the Applicant suffers from PTSD. Moreover, I generally agree with the RPD's characterization of the report as crossing the line into advocacy.

[8] The sole issue in this application is the reasonableness of the RPD's decision that in all the circumstances it would be unreasonable for Ms. Okoloise to seek refuge for herself and her children in either Abuja or Port Harcourt.

[9] The Respondent submits that the Applicants' submissions show that they disagree with the RPD's decision but fail to establish that the decision is unreasonable. It is submitted that the RPD acknowledges the challenges facing Ms. Okoloise in the IFA cities, but made a reasonable assessment of them. The Respondent further observed that the IFA need not be perfect, or the claimant's situation as attractive as it would be in Canada. The Respondent points to the

observation of the Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at para 15:

In conclusion, it is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.

[10] The Applicant submits that the National Documentation Package [NDP] shows it is dangerous to live as a single woman in Abuja. The NDP explains that single women in Abuja might be seen as prostitutes and face sexual harassment and violence. Moreover, single women living alone in Abuja have challenges obtaining employment, housing, and support services.

[11] The Applicant also cites the NDP as showing that women relocating by themselves without family networks are vulnerable to abuse, will have a lack of empowerment, and a lack of accommodation and job opportunities. It also shows that that work is almost impossible to find in Port Harcourt unless you are a skilled worker in the oil industry.

[12] It is further submitted that relocation is difficult because of the concept of indigeneship. Authorities distinguish between "indigenes", who are of the ethnic group indigenous to the land, and the "settlers" who are sometimes discriminated against. The NDP shows that indigeneship status is less important in big cities such as Abuja and Port Harcourt, although the indigenes still receive more jobs and settlers face discrimination in politics.

[13] The Respondent submits that all of these concerns were addressed by the RPD in the following passage from its reasons:

As to the second prong, the panel notes that country document evidence indicates that a woman living alone would have some difficulty accessing resources or services in the proposed IFAs. However, the same source indicates, in regard to Abuja in particular, that that city is a melting pot. Issues such as ethnicity and religion do not have a big impact on the woman's ability to live on her own.

The panel notes, that the claimant has 14 years of education and it is reasonable to assume that an educated woman would have good opportunities for work in that city.

The panel also notes, the claimant has a very large family, parents, five sisters and six brothers. The claimant testified that her parents interceded since female circumcision is not practised in that family but her husband did not agree with them.

The panel also notes, the claimant's mother provided an affidavit indicating further support for the claimant.

The panel finds that it's reasonable to assume that in re-settling into Abuja or Port Harcourt, the claimant would have the support of this very large family, which could provide the male presence, which is not available to her because her husband is the agent of persecution.

[14] I agree with the Respondent that the RPD recognized the serious challenges facing a single woman in relocating to either of the IFA cities he identified; however the member concluded that these would be overcome because (1) the claimant had 14 years of education and "and it is reasonable to assume that an educated woman would have good opportunities for work;" (2) "the claimant's mother provided an affidavit indicating further support for the claimant;" and (3) she would not be perceived to be a single woman living alone because her family "could provide the male presence."

[15] If there were evidence to support these three claims, then the decision would be reasonable; however, I find that they are made with no or very little support in the record.

[16] First, the record indicates that Ms. Okoloise has no skills or experience in the oil industry, or any family connections in these cities, nor indeed any previous work experience. The NDP indicates that some or all are required to obtain employment. Accordingly, the assumption of the RPD “that an educated woman would have good opportunities for work” is unreasonable and made without foundation.

[17] Second, the “family support” referenced by the RPD appears to be significantly different than the member suggests. The record indicates that her parents and aunt live close to her former husband, in Lagos State. Her parents “interceded” with her husband in a very minor way (they talked to him at least once) and it was with respect to his insistence that she and her daughters undergo FGM. Her aunt, who had been circumcised herself, helped the Applicant escape and provided the money used for the agent, but she also wanted it paid back. Critically, the affidavit provided by the mother of Ms. Okoloise contains nothing indicating further support for her daughter as the RPD says. Accordingly, the assumption that in re-settling in the IFA she would have family support is made without foundation and unreasonable.

[18] Third, the RPD assumes that Ms. Okoloise would not be perceived as a single woman living in the IFA because her family “could provide the male presence.” There is no evidence in the record that any of her brothers are living in either IFA city or are prepared to do so. The member’s assumption appears to be mere speculation. Accordingly, the assumption that she

would not face discrimination in these IFA cities as a single woman because of the substitute male presence is unfounded and unreasonable.

[19] Neither party submitted any question to be certified, and there is none as this case turns solely on its own facts.

[20] The Respondent is not properly named, and the Court shall order that it be amended to be The Minister of Citizenship and Immigration.

JUDGMENT IN IMM-706-18

THIS COURT'S JUDGMENT is that the application is allowed, the claim for protection is remitted back to the Refugee Protection Division for determination by a different member, no question is certified, and the name of the Respondent is amended to be The Minister of Citizenship and Immigration.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-706-18

STYLE OF CAUSE: DEBORAH OKOLOISE ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 2, 2018

JUDGMENT AND REASONS: ZINN J.

DATED: OCTOBER 9, 2018

APPEARANCES:

Letebrhan Nugusse

FOR THE APPLICANTS

Nadine Silverman

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Johnson Babalola
Barrister & Solicitor
North York, Ontario

FOR THE APPLICANTS

Attorney General of Canada
Department of Justice Canada
Ontario Regional Office
Toronto, Ontario

FOR THE RESPONDENT