Federal Court Cour fédérale

Date: 20220211

Docket: IMM-6755-20

Citation: 2022 FC 184

Ottawa, Ontario, February 11, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

NNENNA IKODIYA NWOSU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a pre-removal risk assessment [PRRA] by a Senior Immigration Officer of Immigration, Refugees, and Citizenship Canada [the "Officer"], dated September 18, 2020 [the "Decision"], pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "*Act*"].

II. Background

[2] The Applicant, Nnenna Ikodiya Nwosu, is a 74-year-old female citizen of Nigeria. The Applicant arrived in Canada on June 11, 2012. The Applicant has a significant immigration history, including an unsuccessful refugee claim (denied on December 21, 2017; appeal denied on February 1, 2018) and a refused application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds, which is also before this Court for judicial review in File No. IMM-6599-20 [the "H&C Application"], heard consecutively with this matter.

[3] The Applicant applied for a PRRA on May 8, 2019. The Applicant sought protection in Canada based on the risks that she is a female widow without an heir and she fears persecution by her family who accuse her of being a witch and causing her late husband's death, as advanced before the Refugee Protection Division [RPD].

[4] The Officer refused the Applicant's PRRA Application in the Decision, dated September 18, 2020. The Applicant seeks:

i. A writ *certiorari* quashing the Officer's Decision;

ii. An Order referring the matter to a different officer for redetermination; and

iii. Such further and other relief as counsel may advise and this Honourable Court deems just in the circumstances.

III. Decision Under Review

[5] The Officer noted that the purpose of the PRRA is not to re-try or to re-adjudicate the RPD decision of her refugee claim, but, rather, to consider new developments and risks faced by the Applicant upon removal according to subsection 113(a) of the *Act*.

[6] Upon review of the Chairperson's "Guidelines for Women Refugee Claimant Fearing Gender-Related Persecution", which was before the RPD in the Applicant's refugee claim, the Officer found that the country conditions documentation submitted in the PRRA application (even those documents postdating the RPD hearing) did not constitute new evidence – the risks and issues described concerning the treatment of women and persons accused of witchcraft, as well as tribal rituals, were issues raised and adjudicated previously before the RPD.

[7] In addition to finding that there had not been a "marked" change in country conditions since the date of the RPD decision, the Officer also found there was insufficient evidence that the agents of persecution continue to be interested in pursing the Applicant with the intent of causing her harm. Further, the RPD determined that there was a viable Internal Flight Alternative available to the Applicant.

[8] Lastly, the Officer found that the Applicant had not provided evidence to address or rebut the RPD findings.

[9] Upon consideration of the evidence before them, the Officer found that, upon removal to Nigeria, there is no more than a mere chance that the Applicant would face persecution on Convention grounds, pursuant to section 96 of the *Act*. The Officer also found that the Applicant, on a balance of probabilities, is not in danger of torture, and it not likely to face a risk to her life or a risk of cruel and unusual treatment or punishment, pursuant to section 97 of the *Act*.

IV. Issues

[10] Is the Officer's Decision reasonable?

V. Standard of Review

[11] The standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

A. *Preliminary issue – amendment of the style of cause*

[12] As a preliminary issue, the Respondent notes that the Applicant names "The Minister of Immigration, Refugees and Citizenship Canada" as the Respondent, which should be "The Minister of Citizenship and Immigration."

[13] The style of cause is hereby amended to: *Nnenna Ikodiya Nwosu v. The Minister of Citizenship and Immigration.*

B. *Was the Officer's Decision reasonable?*

[14] A PRRA application involves an evaluation of new submissions and evidence presented to a PRRA officer by an applicant in accordance with subsection 113(a) of the *Act*:

> **113** Consideration of an application for protection shall be as follows:
>
> **(a)** an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection; …

[15] The role of the PRRA officer is not to revisit the RPD's factual and credibility conclusions but to consider the present situation [*Razza v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1385 at paragraph 22 aff'd *Razza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 [*Razza*]].

[16] A PRRA officer must consider all evidence that is presented, unless it is excluded for lack of credibility, relevance, newness, or materiality.

[17] The assessment of the "new information" is not simply based on the date of the document, but whether the information is significant or significantly different than the information previously provided.

[18] In addition, evidence sought to be presented in support of a PRRA application cannot be solely rejected on the basis that it addresses the same risk issue considered by the RPD.

However, a PRRA officer may properly reject such evidence if it 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.

[19] Further, evidence that is newly presented, but attests to facts that were previously available at the time of the refugee hearing, are excluded from the assessment as new evidence under a PRRA [*Ghargi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1014 at paragraph 35; *Razza* at paragraph 13(5)(a)].

[20] PRRA officers are expected to respect negative refugee determinations by the RPD unless there is new evidence of facts that might have affected the RPD's determination [*Woldemichael v. Canada (Minister of Citizenship and Immigration)*, 2020 FC 655 at paragraph 37]. Further, the Officer's assessment of country condition evidence is owed deference by the Court [*Gombos v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 850 at paragraph 61].

[21] The Applicant argues two key issues in challenging the Officer's Decision:

i. The Officer erred in finding that the Applicant had not disclosed a new risk or presented new evidence pursuant to subsection 113(a) of the *Act*; and

ii. That the Officer breached procedural fairness by making veiled credibility findings without providing the Applicant the opportunity to respond to them at an oral hearing pursuant to subsection 133(b) of the *Act* and section 167 of the

Immigration and Refugee Protection Regulations (SOR/2002-227) [the "*Regulations*"].

[22] The Applicant argues that she presented a new risk that was not assessed by the Officer, namely, that witchcraft is a criminal offence in Nigeria – a fact previously unknown to the Applicant. Further, the Applicant claims that, even if this same risk was assessed by the RPD, it should have been revisited in the PRRA application because she brought new evidence, which the RPD failed to recognize.

[23] The Officer's Decision demonstrates that the Officer reasonably found that this alleged new risk was previously raised and adjudicated by the RPD. The Officer recognized that the Applicant was making distinct arguments that she faced risk from her husband's family and risk based on witchcraft allegations. They specifically stated that the risks and issues in the country conditions documentation submitted by the Applicant for the PRRA application "concerning the treatment of women and persons accused of witchcraft" were before the RPD. The alleged new risk merely echoes what was already before the RPD.

[24] In addition, the legislation prohibiting the practice of witchcraft in Nigeria was before the RPD in the National Documentation Package [NDP]. The Applicant's personal unawareness of this information is not relevant. The Applicant also provided evidence before the RPD that her daughter had contacted the Nigerian police regarding their family's allegations of witchcraft and that the police refused to get involved in cultural/tribal issues. Therefore, the police appear to have been aware of the witchcraft allegations being made against the Applicant and refused to

get involved, thus, undermining the Applicant's argument that there is a risk of prosecution by the state upon her return to Nigeria.

[25] Further, the Applicant had the opportunity to raise the risk of state prosecution for witchcraft before the RPD. Her failure to do so precludes her from now relying on this newly presented evidence to facts that were available at the time of the RPD hearing. Illegality of witchcraft was in evidence in the NDP before the RPD. A review of the Applicant's PRRA Application shows that she did not specifically allege a risk of state prosecution, but simply states that witchcraft is a criminal offence in Nigeria. Therefore, this risk, or any evidence to support this risk applies to the Applicant, was not before the Officer.

[26] The Officer's finding that the "new risk" was previously before and adjudicated by the RPD, and that the Applicant had not submitted significantly different evidence than what was previously before the RPD was reasonable.

[27] The Applicant also argues that the Officer breached procedural fairness by making veiled credibility findings in the H&C Application about her daughter's ability to assist her in Nigeria. The Applicant claims that these findings may have also impacted this PRRA Decision. She states that the Officer should have held an oral hearing in accordance with section 167 of the *Regulations* to resolve any issues of credibility or discrepancies in the evidence.

[28] In the context of a PRRA application, an oral hearing is the exception and serious credibility issues must be central to the PRRA application to trigger the holding of an oral

hearing [*Zarifi v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1207 at paragraph 17, citing *Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 89 at paragraph 38].

[29] As stated above, a judicial review of the H&C Application was also before this Court. In *Nnenna Ikodiya Nwosu v. The Minister of Citizenship and Immigration*, 2022 FC 181 at paragraph 25 to 26, the Court found that the Officer did not indicate any suspicions about the Applicant's credibility and that there was no indication that the Officer made veiled credibility findings.

[30] The Officer accurately referred to the RPD's findings that the Applicant's daughter had continued to reside in the City of Aba, unharmed. The evidence demonstrated that the Applicant has difficulty reaching her daughter by phone, not that they are estranged or that she in unsure of where she resides. The Officer never stated that the Applicant's daughter could support her in Nigeria. They stated that, if needed, the Applicant could re-establish contact with her daughter. Therefore, the Decision was not premised on an assumption that the daughter would support the Applicant if she returned to Nigeria.

[31] The Officer made reasonable findings based on the limited evidence in the record. As the Officer made no veiled credibility findings, there was no basis to hold an oral hearing in order to assess the PRRA.

VII. Conclusion

[32] For the reasons above, this Application is dismissed.

JUDGMENT in IMM-6755-20

THIS COURT'S JUDGMENT is that

1. The style of cause is hereby amended to name the Respondent as The Minister of Citizenship and Immigration.
2. This Application is dismissed.
3. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6755-20
STYLE OF CAUSE:	NNENNA IKODIYA NWOSU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 9, 2022
JUDGMENT AND REASONS:	MANSON J.
DATED:	FEBRUARY 11, 2022

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