

Date: 20071023

Docket: IMM-1042-07

Citation: 2007 FC 1097

Ottawa, Ontario, October 23, 2007

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

**CHRISTOPHER AYALOGU
EVELYN AYALOGU
FRANCIS-XAVIER AYALOGU
KATE AYALOGU
ELIZABETH AYALOGU**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The principal applicant, Christopher Ayalogu, his wife, Evelyn Ayalogu, and their children Francis-Xavier Ayalogu, Kate Ayalogu, and Elizabeth Ayalogu, bring this application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated January 31, 2007 and signed February 21, 2007. In that decision the Board concluded that the applicants were not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

FACTS

[2] The applicants are citizens of Nigeria. The principal applicant is 65 years old and has been a dedicated Nigerian police officer and public servant for over four decades. The applicants came to Canada in 1998 when the principal applicant commenced work as an Administrative Attaché at the Nigerian High Commission in Ottawa. After retiring from the Nigerian public service in 2003, the applicants remained in Canada and, in May 2003, commenced an application for permanent residence.

[3] In October 2004, the principal applicant received a telephone call from a friend in Nigeria alerting him to the death of his brother, who had died on September 15, 2004 from a head injury and trauma resulting from assault. The principal applicant alleges in his “Personal Information Form” that his brother was “assassinated by the hirelings” of the Nigerian government, and that the October 2004 telephone call warned him “that the bounty killers are also on my lookout.”

[4] On November 25, 2004, in light of this information, the applicants filed claims for refugee protection. The claims were first heard on April 13, 2005. On April 29, 2005, the Board rejected the claims on the ground that the applicants “failed to provide sufficient credible evidence that they have a well-founded fear of persecution for any ground in the definition of a Convention refugee.” The Board concluded that the applicants were “economic migrants who want to stay in Canada to continue on living ‘the better life that they have come to know, rather than return to Nigeria.’”

[5] On March 26, 2006, Chief Justice Lutfy found that the Board failed to consider the “relevance and probative value” of a letter that the applicants attempted to introduce at their hearing before the Board. Accordingly, Chief Justice Lutfy granted the applicants’ application for judicial review and ordered that the matter be sent back to the Board for “rehearing and re-determination.”

The refugee claim

[6] The principal applicant claims that his life would be in serious danger should he return to Nigeria because he is a member of the Igbo tribe, which he alleges has been subject to a government-led campaign of persecution as a result of rumours that “the Igbos were planning to organize anew their efforts to recreate the State of Biafra by founding the movement MASSOB (Movement to Actualize the Sovereign State of Biafra).”

[7] The principal applicant also bases his claim on the argument that, as a former soldier in the Biafran Army who fought for Biafra from 1967-1970 in the civil war, he is perceived by the government as being a leader and organizer behind the MASSOB. The principal applicant claims that former soldiers are “now being systematically hounded and assassinated” by the government, and that “bounty killings have become the order of the day.” The principal applicant points to the 2004 death of his brother, also an ex-Biafran soldier, as being one such example.

[8] The claims of the principal applicant’s family are premised upon his claim.

Decision under review

[9] On January 8, 2007, the applicants' claim for refugee protection was heard by a different Board member.

[10] On January 31, 2007, the Board concluded that the applicants were neither Convention refugees nor persons in need of protection. The Board found many discrepancies between the principal applicant's testimony and the documents he adduced in support of his claim, concluding that these discrepancies "undermined his credibility as regards the danger of return to his country for himself and the members of his family."

[11] The Board held that the applicant did not submit any evidence from an "independent and credible source" to support that his brother's death a politically-motivated assassination. At the hearing, counsel for the applicant submitted that the medical certificate was independent and credible evidence on this fact.

[12] With respect to the principal applicant's fears of persecution associated with his Igbo ethnicity, the Board stated that "although documentary evidence indicated that there were serious inter ethnic problems in Nigeria and that active members of the MASSOB, were often the object of police harassment, there was no indication that the President of the country was presently carrying out a 'genocide' as he alleged against the Igbos."

[13] With respect to the principal applicant's fears of persecution associated with his service in the Biafran Army, the Board held that he had not submitted "any clear evidence either that he was himself an ex-Biafran soldier [or] that these older [soldiers] were behind the MASSOB."

[14] Finally, the Board also found that the applicants' delay in filing their refugee claims – from the principal applicant's March 2003 retirement until their November 2004 refugee claims were made – impacted negatively on their credibility. As the Board stated:

The tribunal noted that his work terminated in March 2003 and that his brother died in October of the following year. The claimant explained he was in the process of requesting permanent residency in Canada and that his request was still pending. The tribunal understands the claimant's efforts to try and remain in Canada, however his behaviour and his delay in claiming refugee status does not reflect that of a person whose life and safety are truly in danger. The renewal of the family's passports in Canada does not indicate that the claimant feared the authorities in his country. His delay in claiming asylum undermines his subjective fear.

Applicants' basis to the Federal Court application

[15] At the hearing, the applicant challenged three credibility findings of the Board as being patently unreasonable. The applicant alleges that it was patently unreasonable to find:

1. the applicant "did not submit any other evidence from an independent and credible source to support that his brother's death was indeed an assassination for political reasons";
2. the applicant did not submit any "clear and convincing evidence to support his allegations that the current government was carrying out systematic persecution against the Igbos in his country" or that the applicant, himself, was "an ex-Biafran soldier"; and
3. the applicant's "delay in claiming asylum undermines his subjective fear" of persecution.

ISSUE

[16] The only issue raised in this application is whether the Board made patently unreasonable credibility findings.

STANDARD OF REVIEW

[17] With respect to the Board's factual findings, including determinations of credibility, the appropriate standard of review is patent unreasonableness. Only if the Board's findings are unsupported by the evidence before it will the decision under review be patently unreasonable. Otherwise, the Court will not revisit the facts or weigh the evidence before the Board: *Jessani v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 127, 270 N.R. 293 at paragraph 16.

ANALYSIS

Issue: Did the Board err in making patently unreasonable credibility findings?

[18] The Board's decision to reject the applicants' refugee claims centred on the finding that the principal applicant's story was not credible. As the Board stated:

The tribunal found several credibility issues with the claimant's story and the documents he adduced in support of his claim. The answers he gave to the tribunal's questions were not satisfactory. The many discrepancies between his story, his testimony and the documents he adduced in support of his claim undermined his credibility as regards the danger of return to his country for himself and the members of his family.

The Board is in the best position to "gauge the credibility of an account and to draw the necessary inferences": *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315

(F.C.A.). As I recently stated in *Olal v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 811, [2007] F.C.J. No. 1067 (QL) at paragraph 13:

¶ 13 The Board has complete jurisdiction to determine the plausibility of testimony, gauge the credibility of a claimant's account and draw the necessary inferences

Accordingly, the Board can conclude that the principal applicant was not credible on the issues, and such a finding will not attract judicial intervention unless found by the Court to be patently unreasonable.

[19] The applicants submit that the Board's decision is patently unreasonable because there were no contradictions in the applicant's evidence and that such uncontradicted evidence "must be considered credible," and "does not require corroboration": *Lachowski v. Canada (Minister of Employment and Immigration)* (1992), 18 Imm. L.R. (2d) 134 at 144. I am not persuaded by this argument and, in this regard, I prefer the statements made by Mr. Justice MacKay in *Akinlolu*, above, where he stated at paragraphs 13-14:

¶ 13 Questions of credibility and weight of evidence are for the [Board] panel in considering refugee claims. Thus, the panel may reject uncontradicted evidence if it is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence or it is found to be implausible. Particularly where there has been an oral hearing and the panel's assessment appears clearly dependent, as in this case, at least in part, upon seeing and hearing the witness, this Court will not intervene unless it is satisfied that the panel's conclusion is based on irrelevant considerations or that it ignored evidence of significance. In short, its decision must be found to be patently unreasonable on the basis of the evidence before the panel.

¶ 14 Where the determination of the panel ultimately turns on its assessment of credibility, an applicant for judicial review has a heavy burden, as the reviewing Court must be persuaded that the

determination made by the panel is perverse or capricious or without regard to the evidence before it. Thus, even where the reviewing Court might itself have come to a different conclusion on the evidence it will not intervene unless the applicant establishes that the decision of the panel is essentially without foundation in the evidence.

[20] Accordingly, the Court concludes that the Board's decision was not patently unreasonable. I am satisfied that the Board properly weighed and considered all of the evidence before it, and that it was entitled to conclude that the principal applicant's story was not credible on the evidence. I also agree with the Board's conclusion that it is difficult to comprehend how the principal applicant could be "targeted as a dangerous person by his government after a long career as a member of the Nigerian Police Force and as a civil servant with the Ministry of Foreign Affairs."

[21] In particular, the Board's credibility finding is not patently unreasonable with respect to the medical certificate, which makes no reference as to whether the brother's death was caused by criminality, accident, or any other reason. Accordingly, the medical certificate is not an "independent and credible source" to support the allegation that the death was a politically-motivated assassination.

[22] The Court agrees that the applicant did not submit any clear evidence that he was an ex-Biafran soldier or that there exists objective evidence that ex-Biafran soldiers were being systematically persecuted by the Nigerian government.

[23] As well, the applicant's delay in claiming refugee status undermines his subjective fear of persecution. The applicant had no sense of any danger of persecution prior to his brother's death. Moreover, he was an employee of the government until he retired in 2003 after a 40-year career as a government employee, first as a police officer and then as a diplomat.

[24] For these reasons, this application for judicial review must be dismissed.

CERTIFIED QUESTION

[25] Both parties advised the Court that this case does not raise a serious question of general importance that should be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1042-07

STYLE OF CAUSE: **CHRISTOPHER AYALOGU ET AL. AND
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Ottawa, ON

DATE OF HEARING: October 9, 2007

REASONS FOR JUDGMENT: KELEN J.

DATED: October 23, 2007

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