Date: 20080107

Docket: IMM-6475-06

Citation: 2008 FC 14

Ottawa, Ontario, January 7, 2008

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

ANDARATU SALIFU
(a.k.a. Anderatu Salifu)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] Two issues are raised in this judicial review application by Andaratu Salifu (the "applicant"), a citizen of Ghana, whose claim for refugee status was rejected on November 15, 2006 by the Refugee Protection Division (the "tribunal") on two grounds: credibility and state protection.

[2] The Applicant, who is 34 years of age, fears her father and other family members who attempted on her a forced but failed female genital circumcision. This attempted circumcision is

coupled to an arranged marriage with an older man contrary to her wishes. She was born to Muslim parents in Tamale located in the northern part of that country. She completed a university degree in 1998 and began working as a social worker.

[3] As to credibility, the tribunal cited two instances of internal inconsistencies in her testimony for finding she had not established an objective basis for her fear she will be forced to undergo circumcision and the arranged marriage if she returns to Ghana: 1) an inconsistency why the attempted circumcision in February 2004, in her father's village in northern Ghana, failed and, 2) an internal inconsistency as to what her father said to her when she first met him after the failed attempt when she returned to the family home.

[4] The second issue is state protection. The applicant did not seek protection from Ghana and, in particular, from the police force's Women and Juvenile Unit (WAJU) which changed its name in 2004/2005 to the Domestic Violence Victim Support Unit. The applicant testified she was justified in not seeking protection from WAJU because of her personal experience as a social worker and the lack of response from WAJU when one of her friends sought protection from that organization, a protection which was not forthcoming. On this issue, the tribunal, after examining the documentary evidence on WAJU's role in assisting abused women and juveniles, including its power to prosecute cases of domestic abuse, preferred that documentary over the applicant's evidence to conclude state protection in Ghana was available in cases of domestic abuse and was effective.

The tribunal's decision

[5] My reading of the tribunal's decision leads me to conclude the principal reason which led the tribunal to refuse the applicant's claim is the availability of state protection in Ghana against forced circumcision. This finding is determinative of this case if it was not reached erroneously.

[6] The applicant's evidence is clear she did not request assistance from WAJU. She had heard of WAJU but never had personal contact with that organization. This organization had the power to "protect the rights of women and children against all forms of abuse … provide advice on crime prevention to perpetrators and members of the public; and arrest and prosecute where necessary".

[7] As noted, one reason for not doing so was because a friend had once gone to WAJU to request assistance and had been told it was "a family issue". Her friend's case was not one of forced circumcision but one of domestic abuse at the hands of her husband.

[8] The tribunal found the applicant went to Accra on several occasions; it found her to be educated and urbanized. It concluded she had the skills and ability to approach the WAJU or other services available to women in Ghana, and request protection.

[9] The tribunal also held she had not requested assistance from the police in her father's home village because she "did not know where the police station was located" and "if you report your parents to the police, you will be declared as a bastard".

[10] The tribunal's analysis of the issue of state protection is expressed in the following paragraphs of the tribunal's decision:

> "The Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 724-725 found that except in a situation where the state is in a state of complete breakdown, states must be presumed capable of protecting its citizens. This presumption can be rebutted by "clear and convincing" evidence of the state's inability to protect. In the case at hand, the Panel notes that Ghana is a democratic state and there was no evidence to suggest that there has been a breakdown of its state or judicial authority. The claimant had specific knowledge of the unit then known as WAJU, but chose not to avail herself of its services. The Panel is unable to find that the claimant has rebutted the presumption that the state of Ghana is not capable of providing her with reasonable protection. [Emphasis mine.]
>
> Given the documentary evidence, the Panel is satisfied that the level of state protection available to the claimant was adequate. It suggests that the state is making a serious effort to protect women from domestic violence. In turn, the claimant has a duty to make herself aware of these services and accept assistance. But, the claimant stated that she made plans to study abroad instead. For this reason, the Panel is of the view that the claimant did not fully take the initiative to secure available protection in Ghana; rather, she chose to come to Canada. Thus, the claimant failed to fully seek state protection prior to requesting international protection. [Emphasis added.]
> …
> Based on the evidence suggesting that state protection is reasonably available, the Panel has concluded that the claimant has failed to establish that she has an objective basis for her fear of persecution. Also, as state protection is reasonably available, the Panel is unable to invoke the Chairperson's Guidelines on Women Refugee Claimants on behalf of the claimant.
>
> Thus, upon reviewing the documentary evidence, the Panel is satisfied that Ghana, though "not perfect," is willing and able to protect women. Citing the Reasons for Judgment of my colleague Justice Layden-Stevenson in *Kwayisi, Vida v. M.C.I.*, 2005 FC 533.

[11] To the Tribunal's analysis, I quote the following additional comment from *Ward*. In *Ward*, above, at page 724, Justice La Forest formulated the test for state protection as follows:

> "only in situations in which state protection "might reasonably have been forthcoming", will the claimant's failure to approach the state for protection defeat his claim. Put another way, the claimant will not meet the definition of "Convention refugee" where it is objectively unreasonable for the claimant not to have sought the

> protection of his home authorities; otherwise, the claimant need not literally approach the state." [Emphasis mine.]

[12] Justice La Forest then asked himself how, in a practical sense, a claimant makes proof of a state's inability to protect its nationals as well as the reasonable nature of the claimant's refusal to actually seek out this protection. He continued:

> "On the facts of this case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens."

[13] Counsel for the applicant argues, on the objective evidence, it was not unreasonable for her not to claim protection from WAJU for the following reasons:

1) Because, in her personal experience, that protection would not be reasonably forthcoming;

2) She stated it was an organization that is out to help in mediating domestic violence cases or issues (transcript, hearing of February 22, 2006 at page 219 of the certified record). She recognized she did not have, at any time, any association with that organization;

3) In answer to a question from the tribunal: "Would you have reported it to the police if you had known where the station was located?" She said:

> "I would have done it, but the response from the police wouldn't have been something positive. Even if I were to do it that would have been the end of my life for me. In my culture, in the northern culture, if you report your parents to the police then it means you have sold them out, and you will never be recognized in the family, you will be declared as a bastard. Though I did not even report my dad he still sees me to be a bastard because I don't want to take his instruction, I don't want to do whatever he says so he doesn't see me to be part of the family.
>
> The police if you go and tell them they tell you, "It's a family issue, it's between you and your dad, he has brought you in the world. You should go home and then resolve the issue with him". (Transcript, ibid, pages 228 and 229)."

4) At transcript, page 240, the applicant was asked again whether she thought of going to WAJU. She stated she did not go to WAJU and provided the following answer to the question: "Why not?":

> "WAJU in Ghana it's an organization that do not protect women. The role of WAJU in Ghana is to help women, and what they do is carry out educational campaigns and violence issues, like in terms of protecting women who are at risk. I have been telling people that on paper we hear what WAJU does, but in practical terms working as a social worker I haven't seen the impact of WAJU in terms of protecting women who are at risk. With my experience with WAJU a friend of mine who had an issue with her husband had to go to report to WAJU, and finally she was beaten up and the eye was swollen. She went to WAJU and what was done was to ask the husband to come, and when the husband came they were told to take the issue home and resolve it because it's a family issue. Usually in the north we say -- we don't take -- you don't take a family member to the police. If you take a family member to the police you have sold the family to the police, and even in my organization a colleague of mine son abused a girl, and the girl's mother reported the case to the police and WAJU. The guy came to boast that he went and paid 200,000 to withdraw the case for them to resolve it at home. So the poor woman was left alone by being told that she should go home with the guy and resolve the issue because they live in the same house."

[14] The applicant was asked whether WAJU had been revamped and renamed and whether she knew anything about this. She answered no. She also stated at line 20 of page 240 that when she was in Ghana it was still called WAJU.

Analysis

(a) The standard of review

[15] The parties agreed on the applicable standard of review for the two issues involved in this judicial review. I endorsed the view of counsel on both points as being supported by recent jurisprudence of this Court and that of the Court of Appeal.

[16] On the availability (adequacy) of state protection or the unwillingness of a claimant to seek it, the Federal Court of Appeal in *Hinzman et al v. the Minister of Citizenship and Immigration*, 2007 FCA 171, at paragraph 38, recently confirmed the standard of review was reasonableness.

[17] In order to set aside the tribunal's finding of credibility, which is a finding of fact, those findings must have been drawn by the tribunal arbitrarily or capriciously or without regard to the evidence before it which includes a misreading of that evidence. The standard of review is, therefore, one of patent unreasonableness.

(b) Conclusion

[18] Counsel for the Minister characterized the tribunal's determination on state protection in Ghana in terms of female genital circumcision or mutilation (F.G.M.) as one where the tribunal preferred the objective documentary evidence on the issue over her testimony. After reviewing the

two volumes of the certified tribunal record (C.T.R.), I agree counsel for the Minister's characterisation captures the essence of the matter. The documentary evidence dated in 2003 shows the practice of F.G.M. has been illegal in Ghana since 1994. This practice is most present in northern Ghana. I refer to documentary evidence of an arrest, prosecution and a five year sentence for F.G.M. but that documentary evidence also deplores the small number of arrests since the law came into force and seeks the reason why. This documentary evidence stresses the role of WAJU played in the arrest (see page 174 of the C.T.R.).

[19] Similar documentary evidence can be found:

- In the Research Directorate's update on state protection in Ghana regarding F.G.M. and WAJU's role (C.T.R., page 141);

- In the Research Directorate's April 6, 2006 update on the Domestic Violence Victim Support Unit replacing WAJU and the effectiveness of that unit (C.T.R., page 147);

- In the Research Directorate's Ghana Update (C.T.R., page 138);

- See generally the documentary evidence (C.T.R., pages 178 to 205).

[20] What this documentary evidence shows is that on the reasonableness standard, it was reasonably open for the tribunal to come to the conclusion it did on state evidence in the fight against F.G.M. – state protection was available to the applicant should she return to Ghana and

therefore her fear was not objectively well founded. She was not justified in not approaching WAJU. As noted, the tribunal referred to my colleague Justice Layden-Stevenson's decision in *Kwayisi*, above.

[21] I reviewed my colleague's decision. It dealt with state protection in Ghana for a 34 year old female who feared physical abuse from her husband. The Tribunal concluded by reference to WAJU state protection was available to her. The *Kwayisi* case is on point. For these reasons this judicial review application must be dismissed. As state protection is determinative there is no need for me to deal with the credibility issue.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this judicial review application be dismissed. No certified question was proposed.

"François Lemieux"

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Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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