Date: 20080205

Docket: IMM-2795-07

Citation: 2008 FC 138

Ottawa, Ontario, February 5, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BARNABAS MAICHIBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

OVERVIEW

[1] [36] The Applicant's evidence of risk was not found credible by the IRB, and this position was adopted by the PRRA Officer, which he was entitled to do. Other evidence submitted was found not to corroborate the Applicant's alleged personal risks. The Officer concluded "...that the Applicant's circumstances are not of such a nature that he would face unusual, under served, or disproportionate hardship if required to submit his permanent residence application from outside Canada." In so doing, the Officer articulated the proper test to be applied in assessing the Applicant's H&C application.

[37] Considering the Officer's H&C decision and the reasons in support thereof, I find that the Officer applied the appropriate test and committed no reviewable error in assessing the H&C application. I also find that the Officer's conclusion on the H&C application was reasonably open to him on the evidence.

(As specified by Justice Edmond Blanchard in *Rai v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 12, [2007] F.C.J. No. 12 (QL).)

[2] [12] It is also a well-recognized principle that it is insufficient simply to refer to country conditions in general without linking such conditions to the personalized situations of an applicant (see for example, *Dreta* v. *Canada* (*The Minister of Citizenship and Immigration*), [2005] F.C.J. No. 1503, 2005 FC 1239 and *Nazaire* v. *Canada (Minister of Citizenship and Immigration)* [2006] F.C.J. No. 596 416).

[13] It must also be recalled the standard of review of an I.O.'s decision refusing an application for permanent residence on H&C considerations is reasonableness (see *Baker, supra*).

(As specified by Justice J. Françios Lemieux in *Hussain v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 719, [2006] F.C.J. No. 916 (QL).)

INTRODUCTION

[3] In an application for permanent residence, filed from within Canada, based on humanitarian and compassionate grounds (H&C), the officer must examine if the Applicant faces unusual, undeserved or disproportionate hardship should he file his application from outside Canada.

[4] It is clear, from the reasons, that the officer applied the correct standard and addressed the risks alleged by the Applicant in the framework of unusual and undeserved or disproportionate hardship.

JUDICIAL PROCEDURE

[5] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of the decision of an Immigration Officer, dated June 13, 2007, refusing the Applicant's application for an exemption, on H&C grounds, to allow him to apply for permanent residence from within Canada

FACTS

[6] The Applicant, Mr. Barnabas Maichibi, is a citizen of Nigeria. Between 1983 and 1990, he lived and studied in the United States. In 1990, he returned to Nigeria, until October 2, 1999, when he left to sojourn a few days in France and two months in Israel. He entered Canada, on December 2, 1999, as a visitor and claimed refugee status a few weeks later.

[7] On November 21, 2000, his refugee claim was rejected by the former Convention Refugee Determination Division of the Immigration and Refugee Board (IRB). The Board found that Mr. Maichibi's story was completely lacking in credibility. On May 1, 2000, the Federal Court dismissed the application for leave filed by Mr. Maichibi. On June 29, 2002, his application under the Post-Determination Refugee Claimant Class in Canada was denied.

[8] In February 2004, Mr. Maichibi submitted his H&C application. He based it on his degree of establishment in Canada and his fear of returning to Nigeria because of his political opinions, his religion and the tribal strife which prevails in Nigeria.

DECISION UNDER REVIEW

[9] On June 13, 2007, the officer denied the Applicant's H&C application. In her notes, the officer focussed on the notion of establishment, the best interest of the children, and personalized risk and hardship.

[10] With respect to establishment, the officer noted that the Applicant had been involved in his community through his church and that he had held four jobs, the last of which was as journalist, editor and owner of "The African Voice" newspaper; however, the officer noted that the Applicant had not provided evidence to demonstrate that the newspaper had been published after 2004 and that he had acted as journalist or editor after 2004 or that the newspaper provided a source of income. Thus, the officer determined that there was insufficient evidence to conclude that the Applicant had established strong ties to Canada. (Applicant's Record, p. 9; Officer's notes, p. 5.)

[11] With regard to the best interest of the Applicant's son who lives in Nigeria, as well as the Applicant's brothers and sisters, the officer noted that the Applicant had not provided any information to indicate his degree of involvement in his son's life; therefore, the officer found that the Applicant had not demonstrated that his departure from Canada would be injurious to the best interest of his son and that it would cause him unusual or undue hardship. (Applicant's Record, above; Officer's notes, above.)

[12] With respect to personalized risk and hardship, the officer noted that the Applicant's allegations were identical to those made before the IRB. Considering that the IRB concluded that

the Applicant's story was devoid of credibility and that the Applicant had not provided any evidence regarding his involvement in human rights movements or that he would be sought by the authorities, the officer determined that he could not revisit the IRB's factual and credibility conclusions. As such, she concluded that the Applicant had not demonstrated that he had a political profile that would cause him a personalized risk which would equate to unusual and undeserved or disproportionate hardship should he return to Nigeria. (Applicant's Record, pp. 9-10; Officer's notes, pp. 5-6.)

[13] The officer also considered the general documentary evidence concerning religious violence in Nigeria. She noted that the situation in Nigeria was one which affected the entire population and that the Applicant had not established that his situation was not similar to that of other Nigerians; therefore, the officer concluded that the Applicant had not demonstrated that he faced a personalized risk to his life or a risk to his security that would amount to unusual or undeserved or disproportionate hardship. (Applicant's Record, p. 11; Officer's notes, p. 7.)

[14] Overall, the Applicant had not demonstrated that he gave information to third parties and that the authorities are looking for him; nor did he establish that he would face a personalized risk because of his religious faith or because of the violence in Nigeria and that these situations would cause him hardship if he returned in his country. The officer concluded that the Applicant had not met his burden of proving the existence of unusual, undeserved or disproportionate hardship justifying his application for permanent residence from Canada. (Applicant's Record, above; Officer's notes, above.)

ISSUES

[15] (1) It must be emphasized that the Applicant did not address in his submissions the question of the establishment and the best interest of the child. Consequently, these conclusions must stand.

(2) Did the officer apply the wrong test in her H&C assessment?

(3) Did the officer err by requiring the proof of a personalized risk and not applying the standard of "unusual and underserved or disproportionate hardship" in assessing the risk allegedly faced by the Applicant?

ANALYSIS

[16] The officer applied the correct test in assessing the risk factors of Mr. Maichibi's H&C application. Her analysis clearly revealed an assessment of the relevant facts against the threshold of unusual, undeserved or disproportionate hardship as required in the context of an H&C application.

[17] The officer referred to the IRB decision and accepted the Board's decision as to credibility, something which she was entitled to do. (*Rai*, above, paras. 35-36.)

[18] The officer noted that Mr. Maichibi did not adduce any evidence of personalized risk should he return to Nigeria. As a result, the officer concluded that Mr. Maichibi had not established that he had a profile that would put him personally at risk that would amount to an unusual and undeserving or disproportionate hardship.

> Si le demandeur avait établi, selon la prépondérance des probabilités, l'existence des faits invoqués, notamment sa divulgation de renseignement secret ou le fait que les

> autorités soient à sa recherche, mais que les risques qui en découlaient ne rencontraient pas les critères de la définition de réfugié, ou de personne à protéger, il m'eut été loisible de revoir ces faits, ce n'est pas le cas en l'espèce.
>
> Le demandeur ne soumet pas de document se rapportant à une participation dans des mouvements de défenses des droits humains.
>
> Le demandeur ne fournit pas de documents qui indiqueraient qu'il aurait divulgué de l'information à des groupes de défense des droits humains, et que les autorités pourraient être à sa recherche étant donné cette situation.
> Il n'a pas établi, non plus, que les autorités nigérianes puissent être à sa recherche suite à un emploi occupé au sein du gouvernement.
> Je note d'ailleurs qu'il aurait renoncé à cet emploi en 1995, quelque 4 années avant de quitter le Nigeria.
>
> Le demandeur n'a pas démontré avoir un profil politique qui pourrait lui causer un risque objectivement personnalisé pour sa vie ou sa sécurité qui équivaudrait à des difficultés inhabituelles et injustifiées ou excessives advenant un retour vers(sic) le Nigeria.
>
> (TRANSLATION NOT AVAILABLE.)

(Applicant's Record, p. 10; Officer's Notes, p. 6.)

[19] In so doing, the officer articulated the proper test to be applied in assessing Mr. Maichibi's H&C application.

[20] Conversely, the officer reviewed the documentary evidence dealing with the country conditions in Nigeria and noted that the situation Mr. Maichibi feared is faced generally by other individuals in that country did not constitute a personalized risk. Consequently, the officer came to the conclusion that Mr. Maichibi would not suffer unusual, undeserving or disproportionate hardship since there was no objective evidence of personal risk:

> Le demandeur n'a pas démontré avoir un risque objectivement personnalisé à sa vie ou à sa sécurité qui représenterait des difficultés inhabituelles et injustifiées ou excessives.

> Monsieur ne m'a pas démontré qu'il ait donné de l'information à de tierces personnes, il n'a pas démontré que les autorités le recherchent. Pas plus qu'il n'a établi qu'il puisse avoir un risque objectivement personnalisé étant donné sa foi chrétienne ou étant donné les violences qui sévissent au Nigeria, et que ces situations pourraient lui causer des difficultés advenant un retour vers son pays d'origine.
>
> (TRANSLATION NOT AVAILABLE.)

(Applicant's Record, p. 11; Officer's Notes, p. 7.)

[21] Not only did the officer correctly set out the H&C test, but she was correct in requiring that Mr. Maichibi show that he would personally be at risk in Nigeria in order to sustain a finding that denial of an exemption would cause unusual, undeserved or disproportionate hardship.

[22] Section 13 of Chapter IP-5 of the Immigration Manual: Inland Processing (IP) "Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds" published by Citizenship and Immigration Canada, requires the risk to be personalized:

Personalized risk	**Risque personnalisé**
Positive consideration may be warranted for persons whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them **personally to a risk to their life or to a risk to security of the person**.	On peut justifier une décision favorable pour un demandeur qui courrait un risque objectivement personnalisé s'il était renvoyé du Canada vers un pays dont il a la nationalité ou, s'il n'a pas la nationalité d'un pays, le pays où il avait sa résidence habituelle. Il peut s'agir d'un **risque pour sa vie ou un risque pour sa sécurité.**

(Emphasis added.)

[23] The Court's case law acknowledges the necessity of proving a personalized risk to be entitled to a favourable H&C decision. This was notably reiterated in *Mathewa v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 914, [2005] F.C.J. No. 1153 (QL), where Justice Pierre Blais confirmed a decision where the officer required a particular risk in order to conclude to an unusual or undeserved hardship:

> [10] As for the argument that the Officer erred in imposing a legal requirement that the applicant demonstrate a **particular risk** in order to show an unusual or undeserved hardship, I find it to be unfounded in the facts before me. The Officer simply stated in the earlier part of her decision that the applicant **had not convinced her of a personalized risk**. During the second part of her decision, she then goes on to analyse the hardship which would be experienced by the applicant if he were to be denied his H & C application. **There is no error on behalf of the Officer**. As has been stated previously, H & C grounds may exist in cases that would not meet the "unusual and undeserved" criterion but where the hardship of having to apply for an immigrant visa from outside of Canada would have a disproportionate impact on the applicant due to his or her personal circumstances. (*Irmie v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1906, at paragraph 10) (Emphasis added.)

[24] In *Pannu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1356, [2006] F.C.J. No. 1695 (QL), at paragraph 37, this Court also confirmed a decision where an H&C officer came to the conclusion that "the Applicant would not suffer unusual and undeserving, or disproportionate hardship since there was no objective evidence of personal risk", as in the present case. In the Court's opinion, the officer correctly set out the H&C test. (Reference is also made to *Rai*, above, para. 36.)

[25] In *Hussain*, above, concerning also an H&C decision, this Court reiterated the principle that it is insufficient to refer to country conditions in general without linking such conditions to the personalized situations of the Applicant:

> [12] It is also a well-recognized principle that it is insufficient simply to refer to country conditions in general **without linking such conditions to the personalized situations of an applicant** (see for example, *Dreta* v. *Canada* (*The Minister of Citizenship and Immigration*), [2005] F.C.J. No. 1503, 2005 FC 1239 and *Nazaire* v. *Canada (Minister of Citizenship and Immigration)* [2006] F.C.J. No. 596. 416). (Emphasis added.)

[26] Considering that Mr. Maichibi had not provided any evidence in his H&C application to show he faced a particular risk in Nigeria (Applicant's Record, p.11; Officer's Notes, p. 7), the officer was entitled to conclude the way that she did. The documents of general nature on the situation in Nigeria were insufficient to show the existence of a personal risk that would amount to unusual, undeserved or disproportionate hardship.

[27] The Federal Court decisions, referred to by Mr. Maichibi in his memorandum, can easily be distinguished from the present matters, as in those decisions, the officer applied a wrong test and assessed risk and not hardship, which is not the case here. In the current case, the officer clearly assessed the hardship and concluded that Mr. Maichibi would suffer no unusual, undeserved or disproportionate hardship if forced to return to Nigeria given the absence of evidence about a personalized risk in this country.

[28] As for the argument that the issue of state protection was irrelevant to the assessment of the hardship Mr. Maichibi would suffer in Nigeria, is unfounded, since this issue was never discussed in the immigration officer's notes.

[29] Considering the officer's H&C decision and the reasons in support, the officer applied the appropriate test and committed no reviewable error in assessing the H&C application.

CONCLUSION

[30] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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