

Date: 20080204

Docket: IMM-561-07

Citation: 2008 FC 147

Toronto, Ontario, February 4, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

NELSON IDAHOSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant is a citizen of Nigeria who applies for refugee protection based on a current threat to his life in Nigeria. The Refugee Protection Divisions of the Immigration and Refugee Board (RPD) rejected the Applicant's claim on a negative credibility finding based primarily on a determination that critical parts of his evidence are implausible.

[2] The RPD concisely describes the Applicant's story as follows:

The claim for refugee protection is based on the claimant's fear of persecution on the grounds that he impregnated a young woman

[Doris] who was to be married to a rich man [Musa] and now the rich man and her family are out to kill him.

(RPD Decision, p. 1)

[3] In the decision under review the RPD characterized the Applicant as a “suitor and a caring father” and then made negative implausibility findings because the Applicant failed to act in accordance with the RPD’s understanding of what might be expected of the Applicant acting in these roles.

[4] Important features of the Applicant’s evidence leading to the claim for protection are: Doris became pregnant only one month after meeting the Applicant; upon learning of the pregnancy, the Applicant expressed a willingness to create a family out of the situation; Doris balked, and avoided telling the Applicant about Musa; Doris resisted taking the Applicant to meet her parents; under threat of abortion, Doris fled to have the baby and rejected the Applicant’s request to go with her; in the course of their search for Doris, Doris’s parents came to the Applicant’s home and made a death threat against the Applicant; upon learning about the threat the Applicant wanted to talk to Doris’s parents, but his mother advised against it; the threat was reported to the police; subsequently the parents and Musa, acting together, came to the Applicant’s home and beat him; after the Applicant went into hiding, his parents were beaten and were hospitalized because they were seriously injured; the Applicant fled for Canada in fear of his life and continues to be under death threat.

[5] With respect to the Applicant's evidence it is important to note that, following the first threat from Doris's parents, while the Applicant had cursory contact with Doris, there was no romantic content to it. Indeed, there is no clear evidence that he had any contact with the child.

[6] The RPD found that the Applicant's conduct with respect to not meeting the Applicant's parents is implausible:

It would have been logical to go to her parents and ask for their blessing, but for unexplainable reasons this never happened. I find it implausible that he did not take any action to formalize their relationship. I further find it inconsistent that Doris, who is allegedly capable of independent action, chose to leave her home to avoid the pressure of abortion but was reluctant to take the claimant to meet her parents.

(RPD Decision, p.4)

The RPD also found that the Applicant's conduct with respect to not continuing the relationship with Doris and her child is implausible:

He still did not go to see his new born daughter or Doris. He did not know when the baby was due. He does not know where the mother and daughter are, today. While he calls Doris, his fiancée, he has no picture of her or his daughter. His explanations for why he did not take care of Doris and his daughter were unsatisfactory. He testified he did not go to Kano [where Doris had fled] because he had never been there and did not know how to get there. I find it implausible that a professional driver with several years of driving experience in Nigeria is incapable of finding his way to Kano from Benin City to provide support for his young girlfriend who is there to avoid forced abortion of their child. He testified he did not go to her parents' home after his daughter was born in January 2006, because he was afraid. I again find it implausible that he would be afraid when he personally had not been harmed until after Doris decided to flee again. He did not allege any further contact or threats by her family after the

incident in August 2005, when his mother was mistreated. Finally, he did not mention the first and only meeting with his newborn daughter in his oral testimony during a lengthy hearing, until he was specifically asked about her. Based on the evidence I find his actions inconsistent with his allegations of a suitor and a caring father. For these reasons I am not persuaded that his allegations of fathering a child are credible.

(Emphasis added)
(RPD Decision, p. 5)

[7] To make an implausibility finding according to law it is necessary for the RPD to set out what is expected of an applicant's behaviour, given the applicant's specific circumstances, and then to clearly given reasons as to why the applicant's behaviour is outside of what could reasonably be expected in the situation (*Hilo v. Canada (M.E.I.) (1991)*, 130 N.R. 236 (F.C.A.); *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131).

[8] In my opinion, the RPD's characterization of the Applicant as a "suitor and caring father" is a misunderstanding of the evidence. The essential component of the situation, which the RPD failed to take into consideration in making the implausibility findings, is that the Applicant was under death treat. Given this fact it is not hard to understand why he did not go to Doris's parents and did not react to the child's birth as the RPD expected.

[9] As a result, I find that the implausibility findings are patently unreasonable, and, therefore, the RPD's decision is made in reviewable error.

ORDER

Accordingly, I set aside the RPD's decision and refer the matter back to a differently constituted panel for re-determination.

"Douglas R. Campbell"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-561-07

STYLE OF CAUSE: NELSON IDAHOSA v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 24, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: FEBRUARY 4, 2008

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