Date: 20080602

Docket: IMM-6191-06

Citation: 2008 FC 690

Toronto, Ontario, June 2, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

ROSELINE AWOLOPE and JOSEPH AWAOLOPE,
BLESSINGS AWOLOPE, GRACE AWALOPE
by their litigation guardian ROSELINE AWOLOPE

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, this is an application for judicial review of a decision made by a Pre-Removal Risk Assessment Officer ("Officer") dated October 16, 2001. The Officer determined that Roseline Awolope (the "Applicant"), her two daughters and son, would not be subject to risk of persecution or risk of cruel and unusual treatment if removed to Nigeria, their country of citizenship.

[2] The basis for the PRRA application was the Applicant's fear that her daughters would be at risk of female genital mutilation ("FGM") as practiced by the Yoruba tribe in Ondo state, Nigeria, of which she and her children are members. The Applicant claims that despite her desire and that of the father's children, her now ex-husband, that FGM not be performed on her daughters, her in-laws were and remain insistent on continuing the traditional practice.

[3] The Applicant's husband's family threatened to enforce the practice because an Oracle predicted harm would befall the family if the tribal custom of FGM was not followed.

[4] Included in the information the Applicant submitted to the Officer was a letter from her husband dated November 10, 2005 conveying the dissolution of marriage court order dated November 9, 2005. The letter informed the Applicant that her then husband had been advised by the Oracle to perform rituals and to divorce the Applicant in order to break the ill-fortune experienced by his family. It was the family's view that the ill-fortune which had befallen them was directly linked to the Applicant's refusal to comply with tribal custom.

[5] The Officer gave little weight to the now ex-husband's letter because it was not objectively founded. The Officer noted the submission of the dissolution of marriage court order, but made no further comment. The Officer held that the determinative issue in the PRRA application was the availability of state protection. He noted that several states, among them, Bayelsa, Edo, Ogun, Cross River, Osun and Rivers states have banned the practice of FGM and further noted that Edo state has made the commission of FGM a criminal offence.

[6] He also noted that there were various groups in Nigeria involved in combating FGM procedures. Based on the above, the Officer concluded that the Applicant had not established that she or her children would be subject to risk from her in-laws. In addition, the Officer held that the Applicant had an opportunity to relocate with her children to avoid her husband's family and the chance that the children may undergo FGM. The Officer stated "a viable IFA may exist for the Applicant in Lagos" (PRRA Reasons at 10).

[7] The determinative issue in this application is whether the Officer had regard to the evidence submitted in arriving at his decision that state protection was available for the Applicant and her children. State protection is a question of mixed fact and law (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193 at para. 11). This application was heard but not decided before the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Prior to *Dunsmuir*, a question of mixed fact and law was assessed on the reasonableness *simpliciter* standard. However, as a result of *Dunsmuir* there are only two standards of review: correctness and reasonableness (*Dunsmuir* at para. 34). At paragraph 51, the Supreme Court of Canada informs that questions of mixed fact and law are now reviewed on the reasonableness standard. Accordingly, this is the standard to be applied in the case at bar.

[8] Reasonableness is concerned with, among other things, justification in the decision-making process (*Dunsmuir*, above, at para. 47). A decision cannot be reasonable if it is not justified. An unreasonable decision is one that is made without regard to the evidence submitted (*Katawaru v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 612 at para. 15).

[9] In my view, the Officer erred in failing to assess the significance of the dissolution of marriage court order which tends to confirm the husband's letter. A letter to which the Officer attributed little weight.

[10] I also find that the Officer was selective in reviewing the documentary evidence. While he mentions progress being made against the practice of FGM in several Nigerian states, he makes no reference to the Ondo state where the Applicant is from. In the report, cited as a source by the Officer, titled "*Nigeria: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)*", the authors report the prevalence of FGM at 90-98% in Ondo state. In the same document, the authors state that they are unaware of any support groups to protect an unwilling woman or girl against this practice.

[11] Finally, the Officer concluded that a viable Internal Flight Alternative ("IFA") may exist for the Applicant in Lagos. This is nothing more than speculation about a possible IFA. The existence of a suitable IFA is one which must be supported by reasons and an acceptable degree of certainty (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 at para. 14 (F.C.A.)).

[12] For the above reasons I find the PRRA Officer's decision to be unreasonable.

[13] The judicial review is granted. The matter will be referred for re-determination by a different PRRA Officer. No question of general importance has been submitted and I find that none arises.

ORDER

THIS COURT ORDERS that:

1. The judicial review is granted. The matter will be referred for re-determination by a different PRRA Officer.
2. No question of general importance is certified.

"Leonard S. Mandamin"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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