

Date: 20090323

Docket: IMM-3544-08

Citation: 2009 FC 305

Ottawa, Ontario, March 23, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

STANLEY CHIDIEBERE IGBO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a decision of the Refugee Protection Division rejecting the applicant's claim for refugee protection. For the reasons that follow, the application is allowed.

Background

[2] Stanley Chidiebere Igbo is a 34-year old citizen of Nigeria of Ibo ethnicity. In Nigeria, Mr. Igbo was vocally opposed to the Movement for the Actualization of the Sovereign State of Biafra (MASSOB). He claims that as a result, he began to receive threatening phone calls from MASSOB,

and went into hiding by sleeping away from his home in Lagos. Armed men invaded his home in October, 2006, but left when they discovered that he was not there. They returned nine days later and threatened to shoot the applicant's family if they did not produce him. Since Mr. Igbo felt unable to obtain police protection, and had nowhere else safe to go in Nigeria, he fled to Canada. He has been in Canada since December 2, 2006.

[3] The applicant was self-represented at his refugee hearing due to a failed legal aid application. The RPD found that Mr. Igbo was neither a Convention refugee nor a person in need or protection. The Board notes significant credibility concerns and inconsistencies within the applicant's narrative. Because of these concerns, the Board accepted the objective evidence, which differed from the applicant's evidence, that MASSOB is a non-violent organization. Furthermore, it was found that the applicant did not attempt to seek protection from Nigerian authorities, and could not offer "clear and convincing proof" of the state's inability to protect him. The Board was of the opinion that since MASSOB members are typically persecuted by Nigerian authorities, there was insufficient evidence to show that an anti-MASSOB protester would have been unable to seek state protection in Nigeria.

Issues

[4] The applicant raises three issues:

1. Whether the Board erred in misstating the evidence and, as a consequence making an adverse credibility finding;
2. Whether the Board erred in failing to fully apprise the applicant of his right to counsel; and

3. Whether the Board erred in failing to grant an implied request for an adjournment.

I find no merit in the second and third issues raised; however, there is merit to the first issue raised.

Analysis

Credibility Finding

[5] The applicant submits that the Board erred in his appreciation of some of the evidence at the hearing which he then relied upon to make an adverse credibility finding. The Board writes:

Finally, I note that in his PIF (signed December 18, 2006) the claimant identified his Nigerian passport as a document he has or could obtain for the hearing; however, at the hearing the claimant alleged that he destroyed the passport while he was in Austria (November 26 to December 2, 2006). Although the claimant was unfortunately not asked about this at the hearing, the information provided is clearly inconsistent.

[6] In fact, there is no inconsistency as the passport that the applicant says he could obtain from Nigeria was his “expired Nigerian passport”, not the current passport that he destroyed in Austria.

[7] The credibility finding is significant because the Board relies, in part, on its finding that the applicant was not credible when it turned to consider whether MASSOB is or is not a violent group.

The Board writes:

Given the numerous credibility concerns identified above and the objectivity of the IRB’s Research Directorate, I prefer the objective documentation (including the lack of any indication that MASSOB members are violent in dealing with dissident Ibos) to the subjective testimony of this claimant. I therefore find on a balance of probabilities that state protection is available for the claimant.

[8] The respondent concedes that the Board erred in its analysis of the testimony regarding the passports but submits that this error did not impact the decision reached because there were other reasons offered as to why the Board found that the applicant was not credible.

[9] In addition to the passport issue, on which the Board erred, it found five other inconsistencies. There are worth examining individually.

[10] The first has to do with an inconsistency between the applicant's PIF and his evidence concerning his parents. The Board writes:

In his PIF, the claimant neglected to list any parents. Under questioning, the claimant alleged he has parents who are now American citizens living in Minnesota, United States of America, (U.S.A.). He said the PIF omission was "a mistake".

[footnote omitted]

[11] The use of the words, "under questioning" suggests that the evidence was not forthcoming from the applicant; in fact, it was. The transcript reveals that the Board member, who did all of the questioning, stated to the applicant that the PIF did not mention his parents and he then inquired of the applicant as to whether they were alive. The applicant responded that they lived in Minnesota. If the applicant wished to hide his parents or provide testimony consistent with the PIF, he would have lied. He did not. He was frank about their existence and, when asked the reason for not listing them on the PIF, stated that he thought the question asked only to list siblings, which he did. When it was pointed out to him by the Board member that it asks that all immediate family be listed, he

responded “Oh so I made a mistake on my part.” I do not consider this oversight to be as damning as the Board member apparently did.

[12] The second inconsistency relates to his period of work in Nigeria. The Board member describes the inconsistency as follows:

In his PIF the claimant wrote that he worked in Nigeria from November 2000 until October 2006; however, in the hearing the claimant said he last went to work sometime towards the end of September. Asked about the inconsistency he replied that he had a boy who worked for him taking care of his business (and by implication doing so in October). However, the claimant soon thereafter stated that he sold all his cars in September except for one, to raise the money to come to Canada. I note that “taking care of his business” implies doing considerably more than selling one automobile.

[footnote omitted]

[13] The applicant was self-employed selling cars. He was asked when he last went to work and he responded as follows:

It was, can I remember the date? It was sometime in September, it was the end of September, I can't remember exactly the date.

[14] The Board member then notes that the PIF indicates that he worked to October 2006, and he responds “Yeah, because my business was still on.” He goes on to explain that he had one car left to sell and that he had someone who worked for him who “was taking care of the business”. I see no serious inconsistency, if there is any at all. The PIF asks “list all employment, including full-time, part-time, temporary and self-employment, beginning with the most recent” and provides a

from and to date column. One is self-employed as long as the business operates even if one is not actually attending that workplace.

[15] The third inconsistency is related to his timing of his decision to leave Nigeria. The Board member writes:

More importantly, I note that by saying he sold all his cars except for one in September so he could come to Canada, the claimant is in effect alleging that he made his decision to come to Canada based upon the anonymous oral threats he received (including by telephone); his sister's home was not invaded for the first time until October 1, 2006. This testimony is not only inconsistent with a natural reading of the PIF narrative that tacitly indicates the invasions were a significant component of the claimant's decision to leave Nigeria, but it also raises a plausibility concern about the claimant deciding to flee his country because of some threats for which he could not even identify the perpetrators, other than that they were apparently members of MASSOB.

[16] The transcript indicates that the applicant's evidence was that he was first confronted by unknown persons in September 2006, in the marketplace and "they told me, if I don't stop the public campaigns, I would be dead". He testified that he took them seriously. He then began to sleep away from his sister's house where he lived. This, he testified, was on September 28, 2006, shortly before the first time that they came to his sister's house. They came a second time on October 10, 2006, and made threats. He testified that he had stopped buying new cars because he knew he was leaving Nigeria and that he had three cars to sell; two were sold in September and one was left to sell, which it did in October.

[17] At no time did the Board member put to the applicant that there was any inconsistency in this evidence. On a fair reading of the transcript I am hard to put to say that there is more than the possibility of a minor inconsistency in the evidence. In fact, if he sold two of the cars in the last few days of September, there is no inconsistency in his evidence. The Board member never put that question to him. Thus, to suggest that there is an inconsistency is unfair and unreasonable.

[18] The fourth basis for the credibility finding dealt with his lack of knowledge of MASSOB.

The Board member wrote:

The claimant provided very little evidence other than his personal assertions to establish his profile as a political activist who would be so outspoken against MASSOB to incur their undying enmity. His knowledge of MASSOB was very limited; he could not remember when MASSOB was formed and he incorrectly said MASSOB is a very violent group, a comment that will be addressed more fully below.

[19] While it is true that the only evidence the applicant offered to support his assertion that he was outspoken against the MASSOB was his own, there was no evidence to the contrary. The applicant, I note, never called himself a “political activist” – that was the Board member’s term. The applicant gave the reason why he was opposed to the MASSOB, and it was based on his understanding of the troubles the country had previously experienced when that movement was active. He was not asked by the Board member to give detailed knowledge of that organization and his reason for being opposed to them did not require such knowledge. The Board member relies on the fact that he did not know the date that MASSOB was founded. How is that relevant? How many Canadians, whether supporters or opponents of any of our political parties, know when they were founded? Lastly, on this issue, he relies on the “fact” that the applicant states that they are a

violent group. As noted above, the Board member says this because he found the applicant not to be credible. His reasoning on this latter point is circular: 'I find that he is not credible because he says they are violent and I find they are not violent because he is not credible'.

[20] The last basis for the credibility finding relates to the fact that the applicant did not go to get documents from his father's home in Owerri before he left Nigeria. He writes:

The claimant's account of how he spent his time in Nigeria after the first attack on his sister's house defies credulity. He had already said he sold his cars in September to raise money to come to Canada, when he stayed indoors after October 10, 2006 to get the documents [sic] to leave the country, although he acknowledged he already had his Nigerian passport. The only documents he seems to have obtained during the approximately two-month period are the Nigerian driver's license and a visa to Austria. I note he did not produce the school documents that he alleged at the hearing were back in his home in Owerri in Imo State, although there was no specific testimony as to why he could not have gone himself to Owerri to obtain these and other documents.

[21] The issue of documents arose only because the Board member asked at the commencement of the hearing whether he had any more documents to submit. The applicant was not represented and the transcript makes it clear that the initial reference to school documents was from the Board member saying that they were the sort of documents that he was looking for. No doubt had the applicant known that these would be important he would have tried to get them before he left. There is nothing to indicate that he knew or had any reason to know they would be important or relevant; thus there was no reason for him to seek them out while he was in hiding.

[22] In summary, the Board member, in my view, conducted a microscopic review of the evidence on which to base his credibility concern. In my view, his conclusion on credibility, based on the record is unreasonable and does not meet the test of transparency, set out by the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[23] The decision is unreasonable in this regard. It is not possible to assert with any assurance that the same result would have occurred but for this unreasonable finding. As a consequence, the application must be allowed. Neither party proposed a question for certification, and there is none.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed. The decision under review is set aside and the applicant's application is referred back to the respondent for redetermination by a different Board member; and
2. No question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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THE MINISTER OF CITIZENSHIP
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**REASONS FOR JUDGMENT
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