Federal Court  Cour fédérale

Date: 20100517

Docket: IMM-3463-09

Citation: 2010 FC 541

Ottawa, Ontario, May 17, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ROSELINE AANU IJIOLA AWOLOPE
JOSEPH IYANUOLU IJIOLA AWOLOPE
BLESSING IJIOLA AWOLOPE
GRACE MARIA IJIOLA AWOLOPE

Applicants

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the negative decision of the Applicants' Pre-Removal Risk Assessment (PRRA), dated May 25, 2009 (Decision), which refused the Applicants' application to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Principal Applicant and three of her children are citizens of Nigeria. The Principal Applicant fled from Nigeria to the United States with her two daughters and one son. The Applicants stayed in the U.S. for approximately three months before coming to Canada in March, 2005.

[3] Since her arrival in Canada, the Principal Applicant has given birth to her fourth child, another son. He is not under a removal order from Canada. As such, he is not included in this application.

[4] The Applicants claimed refugee status upon their arrival in Canada. The Principal Applicant alleged that her two daughters would be victims of Female Genital Mutilation (FGM) as well as Facial Tribal Markings (FTM) upon returning to Nigeria. The Principal Applicant's sons would also be victims of FTM upon their return to Nigeria. The Principal Applicant further alleged that her life is in danger upon return to Nigeria because her ex-husband's family has threatened to kill her for refusing to have the FGM and FTM rituals performed on the children at birth. The Applicants also allege that their family's involvement in politics in Nigeria may place them at risk.

[5] The Applicants also sought a section 25 exemption from statutory requirements so that they may apply for permanent resident status from within Canada on the basis of humanitarian and compassionate grounds. This application was denied and is currently before the Court for review.

[6] The Applicants filed a PRRA application in July, 2006 which was denied. However, judicial review of that decision was allowed. A further negative PRRA decision was rendered on May 25, 2009.

[7] The Applicants have been issued two stays of removal, one in November, 2006 and in the other in July, 2009.

DECISION UNDER REVIEW

[8] The Officer noted that the Applicants had submitted documentation with regard to their establishment in Canada. The Officer stated that she did not "give consideration in this application to evidence where the applicants have not indicated how it relates to the risks that they submit exist for them in Nigeria." Nor did the Officer consider any evidence that predates the RPD decision or could have been made available for the RPD decision where the Applicants did not indicate why it was not reasonably available at that time.

[9] The Officer noted that the risks alleged by the Applicants were essentially the same risks as were considered by the RPD, and that a PRRA is not an opportunity to reargue or reassess the RPD's findings.

[10] The RPD found that credibility was a determining factor and also noted that no adverse action had occurred between the birth of the Principal Applicant's second daughter and the time the

Applicants left Nigeria. The RPD found that this inaction on the part of the Principal Applicant's in-laws was "indicative of lack of real desire on their part to harm the [Applicants] and therefore a lack of objective basis for the subjective fear of the [Applicants.]" The RPD also found the Principal Applicant's testimony with regard to her trip to the United States before arrival in Canada to be "vague and lacking in details."

[11] In summary, the RPD determined that "based on all the evidence, I do not find the claimants' allegations credible and I am not convinced that their lives are threatened in Nigeria. Even if I had found the claimants credible, I find that they did not claim in the USA."

[12] While the Officer considered a letter written by the Principal Applicant's step-brother, she determined that he had not indicated any first-hand information with regard to the Principal Applicant's life of isolation in Nigeria after the birth of the children. Moreover, "the letter [was] written by a person who is not disinterested in the outcome of this application." The Principal Applicant's step-brother also stated that her father had received threats from her husband's family who had vowed to kill her for her failure to comply with the tribal rituals. However, the Officer found that the author of the letter had not indicated how he became aware of the threats, how or when they were delivered, or whether he witnessed them. Furthermore, the Officer found that "this is information that could reasonably have been presented to the RPD and that neither the [Principal Applicant] nor her brother have indicated otherwise." The Officer assessed this letter to be of low probative value.

[13] The Officer also considered an e-mail submitted by the Applicants, in which the author stated that the Principal Applicant's father-in-law "continues to blame [her] for various misfortunes and illnesses suffered by your ex-husband and the death of his uncle Dejo." Furthermore, the father-in-law's family had suffered beatings due to his brother's (that is, the Applicant's ex-husband's uncle) change of political parties. However, the Officer found this e-mail to be "vague and lacking in details." The Officer noted that the e-mail did not include any information regarding the beatings suffered by the family including "which family members were beaten, when it occurred or why he believes the attackers to be affiliated with a political organization." The Officer also noted that updated submissions had not referred to threats or attacks based on the political activities of family members. The author of the e-mail also failed to indicate having first-hand knowledge of any threats from the Principal Applicant's father-in-law.

[14] The Applicants' evidence also included a letter from the Principal Applicant's ex-husband which explained that his family blames her, and her unwillingness to have her children circumcised or marked, for the death of his uncle and his own illness. The letter also states that if he divorces her and disowns the children that "this will eventually eradicate the death of people in my family completely." While giving this evidence some weight, the Officer found that the letter did not indicate that the Principal Applicant's ex-husband "expects or needs to have the children circumcised." The Officer further noted the reason for divorce included on the proffered divorce order was verbal abuse on the part of the Principal Applicant, and not that she had refused to have the children circumcised or scarred. With regard to this letter, the Officer determined that "by

divorcing his wife and disowning his children [Mr. Awolope] will eradicate the misfortunes of his family. He does not indicate that further action will be necessary."

[15] Further submissions of the Applicants included a letter from the Principal Applicant's family physician in which the physician notes that the Principal Applicant has experienced sleeplessness, anxiety and "maternal anguish for her children." The Officer found this letter to be of low probative value, since the doctor does not indicate whether the Applicants would be at risk upon their return to Nigeria.

[16] The Officer applied similar considerations to a psychologist's letter submitted by the Applicants, which discussed the Principal Applicant's depression. The Officer found that the psychologist "relied on the [Principal Applicant's] observations to reach her diagnosis." Furthermore, the Officer noted that "the psychologist's report does not indicate as to what type of treatment the applicant requires in order to recover – aside from remaining in Canada."

[17] The Officer also gave low probative value to the letter written by the Reverend of the Applicant's church in Ontario. Although the Reverend had written about belief in oracles, markings and circumcisions that is prevalent in Nigeria, he had not indicated having first-hand knowledge of either "country conditions in Nigeria or the circumstances of the applicants in Nigeria." Moreover, the Reverend had failed to indicate whether he based his beliefs on information other than that provided by the Principal Applicant herself. The Officer found "his statements regarding the [Principal Applicant's] children to be speculative, vague and lacking in details."

[18] The Officer also considered the letter written by the Pastor of the Principal Applicant's church in Nigeria who wrote that the Principal Applicant had told the church elders she had problems with "certain members of her husband's family." The Principal Applicant then asked the church for money to help her travel to the U.S, and phoned the church upon her arrival there. Although this evidence could have reasonably been submitted to the RPD, the Officer considered it nonetheless. While the Applicants alleged that the church had provided them refuge prior to leaving, the Officer noted that the letter contained "no references in the declaration to the applicants staying at the church or with any church member or the pastor arranging the airline tickets and passport." The Officer also noted that "the author has not indicated that he or any of the other church members have first hand information regarding the [Principal Applicant's] circumstances other than her statements."

[19] The Officer then examined country conditions and noted that the Nigerian Demographic and Health Survey had reported a decline in the number of women being subject to FGM in recent years. Moreover, she noted that the federal government in Nigeria had publicly opposed FGM and that the procedure was banned in several states. Furthermore, the Ministry of Health and other groups in Nigeria have implemented projects focussing on the health hazards of FGM and have worked to eradicate the practice, but financial and logistical obstacles have resulted in limited contact with health care workers on the medical effects of FGM.

[20] The Officer then considered the United Kingdom Home Office Country of Origin Information Report: Nigeria, (December 2008), which found that "in theory it is not difficult for a

woman to relocate within Nigeria and in this way find physical safety." The Officer also noted that a bill on FGM had been created in Nigeria, but that further steps had to be taken before the president could sign this bill into law.

[21] The Officer acknowledged the Applicants' evidence that FGM was more prevalent within the Yoruba ethnic group. However, the Officer noted that "objective evidence indicates that when circumcised, Yoruba girls are in early infancy."

[22] The RPD had questioned the Principal Applicant as to why her husband's family did not pursue the girls' circumcisions at the time of birth and found that the Principal Applicant was not credible. It also noted her failure to make a claim in the United States. The Officer found that the Applicants provided little new evidence to overcome the RPD's findings. While the Officer acknowledged documentary evidence that supports the customs of FGM and FTM in Nigeria, she noted that "there is insufficient new evidence to support that the applicants are similarly situated persons," and further, "that there is insufficient new evidence to support that the [Principal Applicant] is of interest to her ex-husband's family."

[23] The Principal Applicant failed to explain to the Officer why her concerns with regard to her family's political affiliations could not have reasonably been heard and considered by the RPD. Furthermore, the Applicants had not demonstrated that they continue to be involved in politics or are at risk for any such involvement. Indeed, the Officer determined that the Principal Applicant's submissions were vague and lacking in details as to her family's involvement in politics, and that

there was little evidence to support that their political activity is such that she or her children are of interest to the authorities or other political parties.

[24] Based on her findings, the Officer determined that there is less than a possibility that the Applicants face persecution in Nigeria pursuant to section 96 of the Act, and that no substantial grounds exist to believe that the Applicants face a risk of torture or cruel and unusual treatment or punishment pursuant to section 97 of the Act.

ISSUES

[25] The issues on this application can be summarized as follows:

1. Did the Officer err by ignoring pertinent evidence, including previous decisions, reasons and factual findings made the Federal Court?
2. Did the Officer err in failing to properly consider the best interest of the children?
3. Did the Officer apply the wrong legal test in considering the PRRA application?

STATUTORY PROVISIONS

[26] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être

religion, nationality, membership in a particular social group or political opinion,

persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada 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

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Consideration of application

Examen de la demande

113. Consideration of an application for protection shall be as follows:

113. Il est disposé de la demande comme il suit :

(*a*) an applicant whose claim to refugee protection has been

a) le demandeur d'asile débouté ne peut présenter que des

rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

STANDARD OF REVIEW

[27] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[28] In *Dunsmuir*, above, the Supreme Court ruled that questions of law may be reviewable on a reasonableness standard, if they are not "legal questions of central importance to the legal system as a whole and outside a decision-maker's specialized area of expertise." See *Dunsmuir*, above, at paragraphs 55 and 60. Jurisprudence of this Court, however, has determined that an officer's application of the correct test in an assessment risk is reviewable on a standard of correctness. See, for example, *Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481, [2008] F.C.J. No. 601. As stated by Justice Dawson in, *Zambrano*,

> Having regard to the absence of a privative clause, the relative lack of expertise on the part of an officer to appreciate whether he or she has applied the wrong test at law, and the importance of ensuring that officers apply the test that Parliament has prescribed, I conclude that the question of whether the officer applied the correct test is reviewable on the correctness standard.

As such, correctness is the appropriate standard in considering whether the Officer applied the correct legal test and legal threshold.

[29] The remaining issues brought before the Court by the Applicant require a more deferential standard of review. These issues concern weight assigned to evidence, the interpretation and assessment of evidence, and whether the officer had proper regard to all of the evidence when reaching a decision. Such issues are reviewable on a standard of reasonableness. See *N.O.O. v. Canada (Minister of Citizenship and Immigration),* 2009 FC 1045, [2009] F.C.J. No. 1286.

[30] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicants

Previous Decisions

[31] In the judicial review undertaken of the Applicants' first PRRA, Justice Mandamin found that the officer erred by being selective in reviewing the documentary evidence. One example given by Justice Mandamin was the exclusion of the rate of FGM in Ondo state. The Court held that the Officer erred in "making no reference to the Ondo state where the Applicant is from," since documentary evidence showed that "the prevalence of Female Genital Mutilation at 90-98% in Ondo State."

[32] Hence, the Officer failed to consider the Applicants' PRRA application in accordance with the judgment given by Justice Mandamin. The Officer erred by giving no consideration to the situation in Ondo state.

[33] Justice Mandamin also determined that the officer in the first PRRA had erred in concluding the existence of an internal flight alternative. The Applicants submit that a similar error was made in the case at hand.

[34] Furthermore, the Applicants contend that the Officer erred in failing to consider the findings of fact made by Justice O'Keefe upon granting the Applicants a stay of removal. Justice O'Keefe noted that "the applicant's children would also be subject to having ritual markings placed upon

their faces." Further, Justice O'Keefe noted that "there is evidence that the two female children would most likely undergo FGM when they are returned to Nigeria via the United States."

[35] While the Officer is not bound by the previous decisions of the Federal Court, the Applicant submits that the Officer erred in failing to consider the country condition findings made by the Court in these instances. Indeed, the Officer erred in either ignoring these factual findings, or else by failing to explain why she rejected them.

[36] The Applicants submit that the potential harm they face has not changed since the factual findings were made by Justices O'Keefe and Mandamin. Rather, the Applicants contend that the potential for harm has increased due to the birth of a Canadian son who "would also receive these tribal facial markings if the Applicants are sent back to Nigeria."

[37] The risk to the Applicants has also increased due to the tragedy that has befallen the family of the Principal Applicant's husband. This tragedy has been blamed on the Principal Applicant's decision not to have her daughters circumcised or all of her children scarred. The Officer erred by ignoring the evidence of increased risk to the Applicants due to the misfortunes that have befallen the family of the Principal Applicant's ex-husband.

Evidence

[38] The Officer further erred by finding that there was insufficient evidence to support that the Principal Applicant risked harm from her ex-husband's family. The Applicants submit that, in coming to her conclusion, the Officer "ignored weighty evidence, selectively picked evidence to suit the Officer's conclusions and…made factual conclusions which were diametrically opposed to the actual evidence."

Letter from Brother-in-law and Letter from Ex-Husband

[39] The Principal Applicant's brother-in-law gave evidence to support the threat of danger faced by the Principal Applicant. He swore that "her in-laws have vowed that whenever she turns up they would make her pay the price with her own life for the calamity she brought to their family because of her refusal to conform to their traditions and social mores." Further evidence was given by the Principal Applicant's ex-husband who had warned her to "watch out for my family for they will surely retaliate on you any time you are around in the country." The Applicants submit that these pieces of evidence, in combination, constitute sufficient evidence of risk.

[40] The Officer also erred by selectively relying on certain portions of evidence; for example, the letter from the Principal Applicant's ex-husband. The Officer discounted the importance of this document because it did not support the claim of risk made by the Principal Applicant. However, the Officer ignored a paragraph of the same letter which, according to the Applicants, confirms that

the Principal Applicant “is in mortal danger from his side of the family” if she ever returns to Nigeria.

Step-Brother’s Affidavit

[41] The Applicants submit that the Officer also erred in placing such low probative value on the step-brother’s affidavit, since the affidavit “clearly sets out that the step-brother lives in Nigeria and that he was making the sworn declaration based on his personal knowledge.” The Officer also erred by requiring “unreasonably specific and arbitrary content to be within the affidavit.” Furthermore, the Officer failed to consider the cultural difference and conditions in Nigeria where the affidavit was sworn.

Letter from Pastor

[42] The Officer unreasonably discounted other pieces of evidence as well, including the letter from the Applicants’ Nigerian Pastor. The Officer found that there was no indication that the Pastor had either first-hand knowledge of the country conditions in Nigeria or the circumstances of the Applicants; however, the Pastor himself is from Nigeria and is very familiar with FGM and FTM customs. Moreover, he is also very familiar with the Applicants’ circumstances.

Best Interests of the Children

[43] Finally, the Applicants contend that the Officer failed to properly consider the best interest of the children and whether there would be a physical risk of tribal mutilation to the Canadian-born child, or a physical risk of female mutilation and tribal markings to the non-Canadian children.

[44] A legally binding international human rights instrument to which Canada is signatory is determinative of how the Act must be interpreted and applied. See *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, [2005] F.C.J. No. 2119. As such, in failing to properly consider the best interests of the children, the Officer violated section 3(3)(*f*) of the Act, and articles 3 and 9 of the *International Convention of the Rights of the Child*, 28 May 1990, 1577 UNTS 3.

The Respondent

[45] The Respondent submits that the PRRA process is not an appeal of an RPD decision, but is rather an opportunity for a "deportable individual" to adduce new evidence for an assessment of new risk developments from the date of the refugee hearing. See, for example, *Hausleitner v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 641, [2005] F.C.J. No. 786 at paragraphs 30-32.

[46] The Applicants failed to adduce new evidence that supported their allegations of risk. Rather, the Applicants simply reiterated the same risks on their PRRA application that were heard previously by the RPD. The new evidence provided by the Applicants was of low probative value and was not sufficient to displace the findings of the RPD.

[47] Nothing in the Officer's Decision is inconsistent with Justice Mandamin's reasons allowing judicial review. In this instance, the Officer clearly considered the prevalence of FGM in the southern states of Nigeria, and also the more general practice of FGM within the Yoruba ethnic group.

[48] The Applicants contend that the Officer erred in failing to consider the prevalence of FGM within a certain portion of the country. However, statistics with regard to the prevalence of FGM within a certain area of Nigeria are irrelevant, since the Applicants' claim is with regard to fear of actions to be taken by the Principal Applicant's in-laws.

[49] The Officer reasonably determined that the risks alleged by the Applicants were not well-founded and concluded that there was no new evidence upon which to displace this finding. Indeed, the Applicants bore the onus of adducing new evidence to prove risk. The Respondent contends that new evidence must be rejected if it does not prove that the relevant facts on the date of the protection decision are materially different from the facts as found by the RPD. See, for example, *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] F.C.J. No. 1632.

[50] The Applicants failed to adduce any evidence that could have resulted in the approval of their PRRA application. The letters provided by family members do not evidence any new risk to the Applicants. Furthermore, the country condition evidence does not indicate any increase in risk. Rather, they demonstrate a diminution of risk since 2005 when the RPD made its decision.

ANALYSIS

[51] The Applicants have raised a wide range of issues for the Court to examine. I have reviewed them all. For the most part, I do not think that the Officer committed reviewable errors in reviewing and weighing the relevant new evidence or in reaching her general conclusion that there is insufficient evidence to show that the children are at risk of FGM or FTM. The Applicants are essentially asking the Court to re-weigh the evidence on this issue and to reach a conclusion that favours them. That is not the role of the Court in judicial review proceedings. See *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] F.C.J. No. 457 at paragraph 11.

[52] However, the Officer also concludes that "there is insufficient new evidence to support that the PA is of interest to her ex-husband's family." This finding does raise a concern.

[53] The Respondent argues that since the Applicants' fear was of actions being taken by the paternal grandparents, statistics on the prevalence of FGM in a particular part of Nigeria are

irrelevant to the disposition of the Applicants' claim. What is at issue is whether the stated fears of actions by the paternal grandparents have any possibility of materializing.

[54] On this issue, the Applicants introduced new evidence in the form of a letter from Mr. Thompson O. Awolope, the Principal Applicant's ex-husband. The Officer relies upon this letter because Mr. Awolope says he is divorcing his wife and disowning his children and this means that "this will eventually eradicate the death of people in my family completely."

[55] The Officer says Mr. Awolope "does not indicate that further action will be necessary." It is unclear what interpretation the Officer is placing upon Mr. Awolope about eradicating death in his family. He appears to be saying that this means the children will not need to be marked or circumcised, and the act of disowning his wife and children means that the children need no longer fear FGM and FTM.

[56] So the Officer clearly accepts that the letter comes from Mr. Awolope, and that its contents can be relied upon for some kind of conclusion about the risks faced by the children.

[57] Yet the same letter also says that the Principal Applicant should "watch out for my family for they will surely retaliate on you any time you are around in the country."

[58] There is no mention of this aspect of the letter in the Decision and no explanation as to why some parts of the letter can be relied upon for conclusions that do not favour the Applicants, while other parts that do favour the Applicants can be disregarded.

[59] The Respondent argues that the risks from the grandparents do not "have any possibility of materializing." Mr. Awolope's letter – a document relied upon by the Officer – is directly relevant to this issue. Yet what it contains on point is entirely disregarded. The Officer cannot rely upon the letter to uphold a conclusion of no risk and ignore it when it contradicts the same finding. See, for example, *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425, and *Devi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 149 at paragraph 11.

[60] The Officer's failure to deal with this aspect of the letter may well have been an oversight, and I am not suggesting that the Officer should have accepted what Mr. Awolope's letter said about what his family would do to the Principal Applicant. However, this evidence contradicts (and is highly material to) the Officer's general conclusion that there is insufficient evidence to support that the Principal Applicant is of interest to her ex-husband's family. In my view, then, the Decision is unreasonable on the very point that the Respondent says is at issue and it must be returned for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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DATE OF HEARING:	MARCH 31, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	May 17, 2010

APPEARANCES:

George J. Kubes	APPLICANT
Lorne McCleanaghan	RESPONDENT

SOLICITORS OF RECORD:

George J. Kubes Barrister & Solicitor Toronto, Ontario	APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	RESPONDENT