Federal Court  Cour fédérale

Date: 20101022

Docket: IMM-6367-09

Citation: 2010 FC 1037

Ottawa, Ontario, October 22, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

ONYINYECHI ONYEMAECHI OHAKA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Onyinyechi Onyemaechi Ohaka is a citizen of Nigeria. She arrived in Canada in 2005 on a visitor's visa. She claims that if she is required to return to Nigeria, her daughters will be at risk of female genital mutilation (FGM). On the basis of that fear and other considerations, she submitted an application for permanent residence on humanitarian and compassionate (H&C) grounds under section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[2] In October 2009, Pre-Removal Risk Assessment (PRRA) Officer S. Neufeld rejected the Applicant's H&C application.

[3] The Applicant seeks to have the decision set aside on the basis that the Officer erred by:

i. misunderstanding the evidence;

ii. failing to properly analyze the best interests of the children; and

iii. failing to adequately consider the Applicant's level of establishment in Canada.

[4] For the reasons that follow, this application is allowed.

I. Background

[5] Ms. Ohaka and her son came to Canada in April 2005 on visitors' visas. At the time of her arrival, she was pregnant with twin girls. These twins were subsequently born in Canada while their father remained in Nigeria, apparently in the state of Anambra, one of the states in which their Igbo tribe is located.

[6] Shortly after the birth, Ms. Ohaka's estranged husband began contacting her, demanding that she bring the girls back to Nigeria to be circumcised, in accordance with the custom of their Igbo tribe. Given that FGM is brutal and could endanger the girls' lives, she submitted a refugee claim that was based largely on her fear that her daughters would be subjected to FGM if required to return to Nigeria. That claim was rejected, as was her application for leave and judicial review of that decision.

[7] Ms. Ohaka then submitted an H&C application in April 2007, which she updated in May and June of 2009. She also applied for a PRRA in September 2007, which was rejected by Officer Neufeld at approximately the same time that she rejected Ms. Ohaka's H&C application.

II. The Decision under Review

[8] The Officer began her assessment of Ms. Ohaka's H&C application by addressing the risks and hardship that she claimed she and her daughters would face if required to return to Nigeria. The Officer acknowledged Ms. Ohaka's claim that her estranged spouse's family would demand that her daughters be subjected to FGM, but noted that the Applicant had not provided evidence that she herself had been subjected to the practice. The Officer further noted that the Refugee Protection Division (RPD) of the Immigration and Refugee Board had found Ms. Ohaka's fears regarding potential abuse and FGM at the hands of her husband and his family to be not credible. In addition, the Officer referred to a report by the U.K. Border Agency, entitled *Female Genital Mutilation*, which reported that FGM is banned in Edo state, which she erroneously identified as being Ms. Ohaka's home state. Moreover, she noted that Ms. Ohaka, who is a trained dentist and a highly educated woman, had not provided sufficient information to indicate that she would be unable to protect her daughters from FGM if required to return to Nigeria.

[9] The Officer also rejected Ms. Ohaka's claim that she would face a risk of harm as a member of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB). In this regard, the Officer determined that Ms. Ohaka had not provided any evidence to indicate that she is personally involved with MASSOB to such an extent that she would be harassed by Nigerian authorities upon her return to Nigeria.

[10] Regarding the potential hardship that Ms. Ohaka and her daughters might suffer if required to sever personal or familial ties, the Officer simply observed that (i) the daughters have dual Canadian and Nigeria citizenship, such that they have the right to remain in Canada or return to Nigeria as Ms. Ohaka may determine, and (ii) insufficient information had been provided to indicate that any hardship would result in either scenario.

[11] The Officer also found that there was insufficient evidence to demonstrate that Ms. Ohaka or her daughters would suffer unusual and undeserved, or disproportionate hardship as a result of having to sever their ties with their friends or others in Canada.

[12] In considering the best interests of the children, the Officer crossed-referenced what she had already stated, noted that both parents are well-educated as doctors in Nigeria, and stated that insufficient information had been provided to indicate that they would be unable to pay fees for their children to attend school in Nigeria. The Officer further noted that, according to a report published by the United States Department of State, boys and girls have access to government health care. Based on the foregoing, the Officer concluded that the children would not likely suffer hardship if returned to Nigeria. She also observed that any hardship in this regard would be negated by being reunited with their father.

[13] Based on all of the foregoing, the Officer concluded that Ms. Ohaka had not demonstrated that any hardship which she and her children might face in connection with returning to Nigeria and having to apply for permanent residence in Canada from there would be unusual and undeserved or disproportionate.

III. Standard of review

[14] The issues raised by Ms. Ohaka are reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 51-56). In short, the decision rejecting her H&C application will stand unless it is not within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47).

IV. Analysis

A. *Did the Officer err by misunderstanding the evidence?*

[15] Ms. Ohaka submits that the PRRA Officer committed a reviewable error by rejecting her claim that her daughters would be at risk of FGM, after (i) erroneously observing that Ms. Ohaka is a member of the Edo tribe and that she would return to the state of Edo, where FGM is banned, rather than the state of Anambra, where there is evidence to suggest that the practice of FGM may remain very strong, and (ii) speculating that Ms. Ohaka would be able to prevent her estranged husband and his family from subjecting her daughters to FGM. I agree.

[16] The evidence before the Officer clearly indicated that Ms. Ohaka and her estranged husband are from the Igbo tribe, which is located in the state of Anambra. In addition, the same U.S. DOS report referred to by the Officer states that "FGM was much more prevalent in the southern region [of the country] among the Yoruba and Igbo." That report did not identify Anambra in its list of states that had banned FGM. In addition, it stated: "The federal government publicly opposed FGM but took no legal action to curb the practice." Other documentary evidence reported that the incidence of FGM in the southern states, where the Igbo tribe is located, has been estimated to be as high as 95%.

[17] The Respondent submits that the Officer's reference to the Edo tribe and the Edo state were not determinative and that the Officer did not ignore material evidence. The Respondent also asserts that the Officer rejected Ms. Ohaka's claims relating to FGM because she provided no evidence to indicate that she, as a member of the Igbo tribe, was personally subjected to FGM. I disagree.

[18] I am satisfied that the Officer's apparent misunderstanding of the evidence regarding the home state of Ms. Ohaka and the extent to which FGM continues to be practised in that state, particularly among Ms. Ohaka's tribe (the Igbo), may have played a significant role in the Officer's analysis of the nature of the hardship that Ms. Ohaka's daughters might face if they were to return with her to Nigeria.

[19] It may well have been reasonable for the Officer to reach the conclusions she reached if she had (i) assessed the risk of FGM with respect to the state of Anambra and the Igbo tribe, (ii) discussed the documentary evidence regarding that specific risk (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425, at para. 17 (T.D.)), (iii) discussed in greater detail Ms. Ohaka's ability to resist any attempts that her estranged husband and his family might make to subject her daughters to FGM, and (iv) conducted a more meaningful assessment of the nature of the hardship that her daughters might face if she left them behind in Canada, where she apparently has no family. However, the Officer's failure to do these things rendered her decision unreasonable.

[20] Given my conclusion on this issue, I find it unnecessary to consider the remaining issues that have been raised by Ms. Ohaka.

V. Conclusion

[21] The application for judicial review is allowed.

[22] There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT this application for judicial review is allowed.

"Paul S. Crampton"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6367-09
STYLE OF CAUSE:	OHAKA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 5, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Crampton J.
DATED:	October 22, 2010

APPEARANCES:

Onyinyechi Onyemaechi Ohaka	FOR THE APPLICANT ON HER OWN BEHALF
Monmi Goswami	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT