

Federal Court



Cour fédérale

Date: 20130312

Docket: IMM-2599-12

Citation: 2013 FC 224

Ottawa, Ontario, March 12, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

KINGSLEY IDUGBOE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Kingsley Idugboe worked as an engineer in the Niger Delta area of Nigeria. A militant group called the Egbesu boys extracted a 30% royalty from individuals and companies operating in that region. Mr Idugboe was threatened with death if he did not comply. Another group, the Movement for the Emancipation of the Niger Delta (MEND), made similar demands. Mr Idugboe contacted police but was told there was nothing they could do.

[2] In 2010, because he had failed to pay, the Egbesu boys came looking for Mr Idugboe. He fled to Benin City and then to Jos, where he contacted police. Again, he was told the police could not help. Some men came looking for Mr Idugboe in Jos, so he fled to Lagos and, from there, to Canada, where he sought refugee protection.

[3] A panel of the Immigration and Refugee Board denied Mr Idugboe's claim, even though it largely believed his account of events. The Board found that Mr Idugboe had not been persecuted on a ground recognized by the Refugee Convention. Rather, he had been a victim of crime. In any case, the Board also found that Mr Idugboe could live safely and find employment in Lagos; therefore, he had an internal flight alternative (IFA) within Nigeria.

[4] Mr Idugboe maintains that the Board erred by finding that he was the victim of generalized criminality. In addition, he contends that he was treated unfairly because the Board allowed him to make submissions only on the issue of IFA, yet it rendered its decision on broader grounds. Further, Mr Idugboe suggests that the Board unreasonably concluded that he had an IFA in Lagos. He asks me to quash the Board's decision and order another panel to reconsider his claim.

[5] I am satisfied that the Board's conclusion on an IFA was not unreasonable. There was little evidence showing that Mr. Idugboe would be at risk in Lagos, and he conceded that he could easily find employment there. Therefore, it is unnecessary for me to consider the other issues Mr Idugboe raises.

II. The Board's decision

[6] The Board accepted Mr Idugboe's assertion that he was threatened by the Egbesu boys. However, his fear of the Egbesu boys, a criminal organization, was not tied to a Convention ground – race, religion, nationality, membership in a particular social group, or political opinion. Therefore, there was no basis for a claim of refugee protection under s 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* (statutory provisions cited are set out in an Annex). Similarly, Mr Idugboe faced a generalized, not a personalized, risk of mistreatment and, accordingly, he did not have a claim under s 97 of IRPA.

[7] The Board also found that Mr Idugboe had an IFA in Lagos because there was no evidence that the Egbesu boys operate there and, as an engineer, he could reasonably be expected to relocate there.

III. Was the Board's conclusion on an IFA unreasonable?

[8] Mr Idugboe argues that the Egbesu boys have the capacity to seek out anyone, anywhere in Nigeria, even though their principal operations are in the Niger Delta.

[9] The burden fell on Mr Idugboe to show that he faced a substantial risk of mistreatment from the Egbesu boys in Lagos. The evidence before the Board did not support that proposition.

[10] The documentary evidence showed that the Egbesu boys, as well as MEND, confine their operations to the Niger Delta region, and that MEND was responsible for a single bombing in Abuja. Further, as a result of a government amnesty, the level of violence from the Egbesu boys has declined in recent years. Finally, Mr Idugboe spent a month in Lagos before travelling to Canada and he had no difficulties there. Mr Idugboe concedes that he could find employment in Lagos.

[11] I accept, as Mr Idugboe argues, that he genuinely fears the Egbesu boys and it would theoretically be possible for them to find him in Lagos if they wished. However, that is not sufficient. Mr Idugboe had to demonstrate that he would actually be at risk in Lagos. His claim is speculative, not based on the evidence.

[12] Accordingly, I cannot conclude that the Board's finding that Mr Idugboe had an IFA in Lagos was unreasonable.

IV. Conclusion and Disposition

[13] There was little evidence before the Board suggesting that Mr Idugboe would be at risk from the Egbesu boys in Lagos. Mr Idugboe conceded that he could find employment there. Therefore, the Board's conclusion that Mr Idugboe had an IFA in Lagos fell within the range of defensible outcomes based on the facts and the law. It was not unreasonable. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex "A"

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

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

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être 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 themselves 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 themselves 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,

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

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

(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) 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) 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

(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.

Personne à protéger

(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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2599-12

STYLE OF CAUSE: KINGSLEY IDUGBOE
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 22, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 12, 2013

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