Federal Court  Cour fédérale

Date: 20141009

Docket: IMM-3940-13

Citation: 2014 FC 960

Ottawa, Ontario, October 9, 2014

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

HELEN OGBEIFUN (A.K.A. OGBEIFUN, HELEN EHIGIAMUSOE OMOIGUI)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application brought pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated April 24, 2013, in which it concluded that Helen Ogbeifun [the applicant] was not a Convention refugee under section 96 nor a person in need of protection under section 97 of the IRPA.

[2] The applicant is a 44 year-old female citizen of Italy who is originally from Nigeria. In 1993, her father forced her to marry a powerful man in Nigeria, to settle an unpaid debt that her father owed to this man. When she went to live with her new husband, she discovered that he kept multiple wives who he considered to be his property. He raped and beat her on multiple occasions and told her that she could only obtain her freedom if she repaid her father's debt.

[3] Then another man from her community offered to help the applicant escape to Italy allegedly to work for his sister, Diana, as a babysitter. In January 1995, the applicant travelled to Rome, Italy, with this man. Once there, she learned that she had been duped and sold into prostitution and would be required to work for Sister Diana to pay off her debt.

[4] The applicant met her current husband, an Italian citizen, who convinced her to leave prostitution and provided her with employment as a domestic worker in his home. The two married in August 1999 and relocated to Torino, Italy. They had a child together in 2002.

[5] The applicant received Italian citizenship in 2003.

[6] While she thought she had left her previous life behind, Sister Diana was looking for her in Torino and had promised to kill her. In 2004, she received a phone call from her brother in Nigeria who explained that her father had died after a beating by members of her first husband's gang.

[7] Thereafter the applicant claims she began receiving strange phone calls, messages and threats from Sister Diana. It appears that in 2004 she contacted the police and provided them with information about Sister Diana and her first husband, but the police were unable to track them down. The applicant believes these people are using fake names.

[8] In 2006, the applicant opened a business in Torino. She claims that people working for Sister Diana robbed the business on multiple occasions. She reported two of these robberies to the police, one in 2007 and one in 2008, but the robbers were not caught.

[9] During this period, the applicant's family in Nigeria continued to experience threats and turmoil at the hands of her first husband and his gang. The applicant returned home to Nigeria in 2010 to try and resolve the matter. She claims that while she was there, she had to hide because people were looking for her to kill her. She stayed for approximately five weeks and returned to Italy in December 2010.

[10] At one point, the applicant and her husband decided to leave Torino to stay with her husband's cousin in Vercelli. One day when she was leaving the doctor, she saw a girl she used to work with who told her that Sister Diana was planning to harm her and her family. The applicant then began to see a number of people in her area. At this point, she and her husband decided they should relocate because the police had been unable to help them. The Applicant decided to visit Canada because she feared she would be killed by Sister Diana and her gang if she remained in Italy.

[11] The applicant travelled to Canada, leaving behind her husband and daughter, on May 3, 2012, using her Italian citizenship and passport and made a refugee claim.

[12] The Board found issues with her credibility including several inconsistencies in her statements upon entering Canada and at the hearing. The Board also found that state protection is Italy was "effective". The applicant attacks both findings asking that they be set aside on the basis of reviewable errors.

[13] On the issue of adequate state protection, the parties agree that the presumption of state protection may only be rebutted by "clear and convincing proof" as established by *Canada (Attorney General) v Ward*, [1993] 2 SCR 689.

[14] The applicant points to three pieces of information to meet the test and argues review should be granted because they are not identified in the Board's reasons:

1. A report to the police concerning threats made against her and her family in Nigeria including the murder of her father in 2004. Police were not able to find the person making the threats because as the applicant says "we were not sure of the name he was using". There is no complaint that the police refused to act, rather that the police were not successful given the limited information about the identity of the alleged perpetrator. A sworn letter from the applicant's husband appears to relate to the same incident in 2004 or so. The husband concluded the report was "useless" because the name of the perpetrator was not traceable. He also noted the applicant's company was robbed in 2007 and 2008, and while

reported to police, the crime was not solved. In fact, the applicant filed police reports in this connection, such reports not being filed in respect of the other alleged police contacts. The applicant also testified on this matter at the hearing and supplemented the above by adding that police advised her that such reports were "regularly" made and that "they had nothing to do that would be of assistance" to the applicant.

2. A report from Flinders University on Human Trafficking from Nigeria to Italy for Prostitution concluding that: "Although Italian law is supposed to punish traffickers and give their victims an incentive to go to the police, it is not enforced with any conviction."

3. A report dated January 1, 2011 stating that "500 Nigerian victims of forced prostitution killed in Italy" in recent years.

[15] The applicant argues that threatening calls continued. It appears that the Board accepted that allegation in finding that she was the victim of "criminality". However, what is relevant to the issue of state protection is the fact that the applicant offered no evidence that she made any other requests for assistance from Italian authorities. We are left with only three approaches to the police to support the present claim for refugee status: (1) the 2004 request referred to above re theft from her store; (2) a report made on June 21, 2008 for allegations of fraud; and (3) another made on June 30, 2008 for allegations of theft.

[16] The Board delivered oral reasons for rejecting the applicant's claim at the hearing on February 21, 2013. A written decision, dated April 24, 2013, was issued on May 15, 2013.

[17] The Board concluded that the applicant is not a Convention refugee because she "fears a criminal organization and that is not a nexus to a Convention ground". She also rejected the applicant's claim under paragraph 97(1)(b) of the IRPA because the applicant's fear of criminality "is generalized and not particular, not targeted to her". The Board did not take issue with the applicant's identity and accepted her story regarding how she was duped and forced into prostitution, and later in 2003, became a citizen of Italy.

I. Issues

[18] The determinative issues are the applicant's credibility in relation to her subjective fear of persecution in Italy, and whether the applicant displaced the relatively strong presumption of state protection with clear and convincing evidence. For her judicial review to succeed, the applicant must succeed on both.

II. State Protection

[19] On the issue of state protection, the Board concluded that the applicant failed to provide "clear and convincing evidence of a lack of state protection". The Board noted that despite the applicant's submission that "illegal's [*sic*] from Nigeria cannot get state protection", the applicant was not an illegal and in fact is and has been an Italian citizen for many years. The Board referred to documents that confirm Italy is a democracy and a member of the EU, with a

Ministry of Interior and Defense that "maintain[s] effective control over police". The Board also noted that the police responded when the applicant complained about the theft at her business, indeed the applicant filed police reports in this regard.

[20] I accept the law on state protection as recently summarized by Justice De Montigny in *Bari v Canada (Minister of Citizenship and Immigration)*, 2014 FC 862 at para 21:

> [21] It is well established that a state is presumed to be able to provide protection to its citizens unless it is in complete breakdown. The burden is on the applicant to rebut the presumption of adequate state protection by providing clear, convincing and trustworthy evidence that satisfies the board, on a balance of probabilities, that state protection is inadequate: *Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 at para 30. It is also clear from the jurisprudence of this Court that when assessing the ability of a country to provide protection to its citizens, one must not only consider the best efforts to provide such protection, but also the actual effectiveness and real adequacy of these measures. As summarized by my colleague Justice Zinn in *Orgona v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1438 at para 11, "[a]ctions, not good intentions, prove that protection from persecution is available". See also: *Bors v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1004 at paras 59ff; *Hercegi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 250 at para 5; *Kemenczei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1349 at paras 55ff; *Majoros v Canada (Minister of Citizenship and Immigration)*, 2013 FC 421 at para 18; *Burai v Canada (Minister of Citizenship and Immigration)*, 2013 FC 565 at para 21; *Beri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 854 at paras 33-36.

[21] I also note the following excerpt in *Zhuravlvev v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 3 at para 31: "Local failures to provide effective policing do not amount to lack of state protection."

[22] On judicial review such as this, the issue is whether the conclusion comes within the parameters set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*], where the Supreme Court of Canada explained:

> [47] … A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[23] This Court should approach the Board's decision as an organic whole, without a line-by-line treasure hunt for error: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34, [2013] 2 SCR 458, at para 54.

[24] In my respectful view, the Board's findings on the adequacy of state protection were within the range of reasonable outcomes. The Board is not obliged to refer to every piece of evidence before it (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at para 16 [*Newfoundland Nurses*]). The Board is presumed to have considered the entire record before it (*Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 11). Courts may "look to the record for the purpose of assessing the reasonableness of the outcome" (*Newfoundland Nurses* at para 15).

[25] The Board had the submissions of the applicant noted above. Indeed the Board questioned and heard the applicant's evidence on this very point. The Board had the documentary evidence referred to in its reasons. The onus was on the applicant to establish with

"clear and convincing evidence" that the presumption of Italian state protection is rebutted. The Board found that the applicant had failed to overcome her legal burden. I am not asked to find whether state protection in Italy is adequate or not. I am asked to determine whether the Board's conclusion on state protection was reasonable. In my respectful opinion, the Board's finding on adequate i.e., effective state protection falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law per *Dunsmuir*. Therefore the application for judicial review must be dismissed on this ground alone.

III. Credibility

[26] In the circumstances it is not necessary to deal with Board's concerns with the applicant's credibility but I will note that findings of credibility are the heartland of the Board's jurisdiction: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 at 239 (FCA), and that the Board noted inconsistencies.

IV. Conclusion

[27] I therefore conclude that this application must be dismissed without costs. No question was submitted by the parties, and I find there is no question of general importance to certify.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no order as to costs.

3. No question is certified.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3940-13
STYLE OF CAUSE:	HELEN OGBEIFUN (A.K.A. OGBEIFUN, HELEN EHIGIAMUSOE OMOIGUI) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 11, 2014
JUDGMENT AND REASONS:	BROWN J.
DATED:	OCTOBER 9, 2014

APPEARANCES:

D. Clifford Luyt	FOR THE APPLICANT
Sybil Thompson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT