Federal Court  Cour fédérale

Date: 20160818

Docket: IMM-552-16

Citation: 2016 FC 941

Ottawa, Ontario, August 18, 2016

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

OYINDAMOLA ADEO ANNI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by Oyindamola Adeo Anni [the Applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by a Senior Immigration Officer [the Officer], dated January 14, 2016, wherein the Officer rejected the Applicant's pre-removal risk assessment [PRRA] application on the basis that the Officer determined the Applicant would not be at risk of persecution, personally subject

to a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment if returned to her country of nationality [the Decision]. The application is granted because of the Officer's erroneous and unreasonable assessment of the Applicant's evidence.

II. Facts

[2] The Applicant was born in Nigeria in 1983. She is of the Christian faith, and of the Yoruba people. She married a man named Kayode Kazeem Anni [Kayode]; he is of Muslim faith and was violent and abusive in their relationship. Kayode is the father of two of the Applicant's three children. The same two children were born in Canada, though the youngest child was not. The youngest child is also applying for refugee protection.

[3] The Applicant first came to Canada in 2007 while pregnant with her first child. She applied for refugee protection. Kayode found out about the Applicant's whereabouts and also came to Canada. At that time the physical and emotional abuse started again. The Applicant claims Kayode would rape her during this time as well. Kayode was eventually arrested for a crime and required to leave Canada. The Applicant, having given birth to Kayode's child during Kayode's incarceration, was convinced to go back to Nigeria with her husband in July 2008. She took no further action with regards to her refugee application. It was subsequently deemed abandoned in 2010.

[4] Upon return to Nigeria, the domestic abuse continued. The Applicant became pregnant again. Her husband and his brother tried to convince her to undergo female circumcision, which

the Applicant did not wish to do. She ran away to Canada once more in February 2009. She gave birth to her daughter in Canada in April 2009. In this period, the Applicant's father died, leaving the Applicant wondering who would take care of her son.

[5] She returned to Nigeria in June 2009 to get her son. She intended to return to Canada immediately with her son. However, she was not permitted to return to Canada at that time. The Applicant tried to evade Kayode multiple times, but each time Kayode would track her down and drag her home with the children, where the abuse continued. Kayode's family practiced female genital mutilation/female circumcision [FGM] and tried to persuade the Applicant to have FGM done on herself and her daughter.

[6] In 2011, the Applicant caught her husband about to rape their almost four-year-old daughter; the daughter was asleep and her trousers pulled down, with Kayode in the room. The Applicant took her children and went into hiding thereafter, moving from place to place. Every time they moved, Kayode would call the home where they were staying.

[7] At one point, the Applicant was raped when one of her friends' places was burglarized. She became pregnant. She sought to abort the pregnancy but it was too late. Around this time, Kayode found the Applicant and told her she had to get rid of the baby, even if that meant she had to kill him at the time of his birth. Kayode beat her when she refused to do this. He believed a baby born of rape is a bad omen.

[8] The Applicant and her children then went to New York in January 2015. In August 2015, the Applicant went to Georgia to live in a Nigerian community. The Applicant and her children then attempted to come into Canada on October 27, 2015. The Applicant was arrested by CBSA and detained. The children were sent into foster care. The Applicant was transferred to a holding centre in December; her children joined her at that time. The Applicant and her family were released from detention in February 2016.

[9] The Applicant has recently been diagnosed with an oral cancer in her mouth from HPV, which should be surgically removed. There is little indication on the prognosis.

III. Decision

[10] The Officer found the Applicant provided insufficient evidence to establish that she will be at risk if returned to Nigeria. Because the children were not included in the Officer's assessment of this PRRA application, the risks they will face if returned were not considered by the Officer. These unassessed risks include that her youngest son would be killed and her daughter would be forced to undergo FGM.

[11] The Decision assessed the risk of FGM to the Applicant by looking to secondary sources and concludes that "… the applicant has provided insufficient evidence to establish that her in-laws will be able to act above and beyond the law or that her in-laws have significant influence in the area where they live."

[12] The Officer considered ritual murder and found there was no documented evidence or otherwise corroborative evidence that the form of ritual murder claimed by the Applicant (i.e., that children of rape and their mothers should be killed) existed.

[13] The Officer found that the Applicant lived in a region where there were mixed reports that the police were willing to help in cases of domestic abuse and that there are many support services for women in Nigeria. The Applicant did not submit any evidence corroborating the abuse she underwent; the Officer noted that the Applicant hadn't provided a letter or affidavit from her mother (who was also without a husband or other children living with her) to demonstrate the risk of violence she faces as a single woman living alone. Therefore, the Officer concluded that the Applicant had not established that she would be at risk of violence against women in Nigeria.

[14] The Officer said a PRRA does not assess whether there is appropriate health and medical care available in the country of origin. There is no evidence of discriminatory access of medical treatment which may be grounds for protection under a PRRA. Her health issues were therefore given little weight as to the risk the Applicant would face if returned.

[15] In this case, on each risk assessed, the Officer found that the Applicant would not face a risk of FGM, ritual murder, violence against women, or health risk from the cancer in her mouth. The Officer concluded that the Applicant did not face a reasonable chance of persecution under section 96 of IRPA and that there were no substantial grounds to believe that the Applicant faced

a danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment should she be returned to Nigeria.

IV. Standard of Review

[16] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." In a case like this, the Officer's assessment of the evidence is to be reviewed on the reasonableness standard of review: *Muhammad v Canada (Minister of Citizenship and Immigration)*, 2014 FC 448 at para 52. In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> 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.

V. Issue and Analysis

[17] While a number of issues were raised by the Applicant, the determinative issue is the Officer's assessment of the Applicant's affidavit evidence that she filed and relied upon in support of her PRRA. In this connection, the Officer stated:

> I find that letters or affidavits made by the applicant, who has a personal interest in this matter, require a degree of corroboration in order to contain much weight.

[18] This statement is contrary to long-established jurisprudence established by the Federal Court of Appeal in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5 (FCA):

> When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness. On this record, I am unable to discover valid reasons for the Board doubting the truth of the applicant's allegations above referred to.

[19] The same may be said in this case.

[20] The Officer said nothing of having reasons to doubt the truthfulness of the Applicant. Nor did the Officer provide any reasons for rejecting the Applicant's presumed truthfulness as would have been required if that were the case; in *Hilo v Canada (Minister of Citizenship and Immigration)*, 26 ACWS (3d) 104, [1991] FCJ No 228 (FCA) (QL/Lexis), the Federal Court of Appeal said decision makers have a duty give reasons for casting doubt upon a party's credibility, and to do so in clear and unmistakable terms:

> The appellant was the only witness who gave oral testimony before the Board. His evidence was uncontradicted. The only comments as to his credibility are contained in the short passage quoted supra. That passage is troublesome because of its ambiguity. It does not amount to an outright rejection of the appellant's evidence but it appears to cast a nebulous cloud over its reliability. In my view, the Board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The Board's credibility assessment quoted supra is defective because it is couched in vague and general terms. The Board concluded that the appellant's evidence lacked detail and was

> sometimes inconsistent. Surely particulars of the lack of detail and of the inconsistencies should have been provided. Likewise particulars of his inability to answer questions should have been made available.

[21] In my respectful view, the Officer's approach to the Applicant's evidence is in direct and fatal conflict with this direction from the Federal Court of Appeal, which direction has been repeated and followed in cases almost too numerous to mention in this Court. I was provided with no case authority to support such a serious departure from legal precedent.

[22] This sort of error is particularly troubling in a case, as here, where there are allegations of serious physical and sexual violence against women, not only in connection with the Applicant, but potentially in connection with her young daughter as well. These serious allegations are made in addition to the Applicant's evidence of repeated threats of forced FGM, made by the husband and his family. A departure from the Federal Court of Appeal's direction cannot be justified because an affiant has "a personal interest in this matter"; if that were the case, all applicants would require corroboration of their sworn testimony, which would directly contradict *Maldonado*'s instructions.

[23] I was invited to review the evidence as a whole, but in doing so, I am confirmed in my view that the Officer reviewed the Applicant's evidence through a distorted and incorrect evidentiary prism that was not in conformity with established legal precedent. I say this because elsewhere the Officer also found the Applicant's evidence wanting notwithstanding her sworn affidavit. In my respectful opinion, this mistaken approach casts a long shadow over and creates doubt respecting the entire decision. The failure to follow the instructions given in *Maldonado*

results in a decision that is not defensible in respect of the law, and which is thus unreasonable per *Dunsmuir*. Therefore, judicial review must be granted and the decision re-determined.

[24] Given my conclusion on the Officer's approach to the Applicant's affidavit evidence and the rule in *Maldonado*, it is not necessary to deal with the other issues raised, which included: the assessment of an oral hearing if indeed credibility findings were made, albeit disguised, as alleged; procedural fairness in considering matters in respect of which the Applicant allegedly had no opportunity to respond; and, not considering the best interests of the children. They are for the redetermination.

VI. Certified Question

[25] Neither party proposed a question of general importance to certify, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that judicial review is granted, the Officer's decision is set aside, the matter is remitted to a different Officer for re-determination, no question is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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