

Federal Court



Cour fédérale

Date: 20180125

Docket: IMM-133-18

Citation: 2018 FC 82

Vancouver, British Columbia, January 25, 2018

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

EGBE MANKA EBIKA

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

ORDER AND REASONS

[1] Ms. Manka Ebika seeks an order staying the execution of her deportation to Cameroon, currently scheduled for January 26, 2018, and further requests that the Style of Cause be amended to add the Minister of Public Safety and Emergency Preparedness for the purposes of this motion. The requested amendment is not opposed by the Crown and the style of cause will be amended accordingly.

[2] The decision that underlies this motion is a negative Pre-Removal Risk Assessment [PRRA] dated December 9, 2017, which was served on the applicant on January 9, 2018. On January 15, 2018, she was served with a notice to report to the Vancouver International Airport on January 26, 2018, for removal to Cameroon that night.

[3] This motion came before me on short notice. Given the nature of the underlying decision, in order to obtain a stay of removal, the applicant must establish to my satisfaction that a serious issue is raised in the underlying application, that she is likely to suffer irreparable harm between now and the date the underlying application is disposed of if the stay is not granted, and that the balance of convenience rests with her: *Toth v Canada (Minister of Employment and Immigration)*, (1998) 86 NR 302 (FCA). All three of these components must be met. Having read the parties' written submissions and heard their oral submissions, I am not convinced that this applicant has met the test.

[4] To meet the requirement of a serious issue, the identified issue must be neither frivolous nor vexatious. The applicant identified two issues that she claims are serious. First, she submits that the PRRA Officer failed to mention and/or consider the totality of the evidence she adduced, and in particular, failed to refer to the IRB Chairperson's Guideline 9: Proceedings before the IRB involving Sexual Orientation and Gender Identity and Expression Guidelines [the Guidelines]. Second, she submits that the decision is unreasonable.

[5] The applicant who claims to be lesbian is a failed refugee claimant. The Refugee Protection Division [RPD] rejected her claim, finding that her claim "does not have a credible

basis.” An application for leave to judicially review that decision was dismissed by Justice Phelan of this Court: 2016 FC 582.

[6] In her submissions to the PRRA Officer, the applicant submitted that had the Guidelines been in place when her claim was adjudicated, “a potentially positive outcome” may have been available. The PRRA Officer makes no mention of the Guidelines or this submission. No detail is provided as to why the Guidelines may have impacted the RPD decision, although counsel provided some explanation when questioned in the oral hearing. I have read the RPD decision with care and am not convinced that the application of those Guidelines would have resulted in a different decision.

[7] The bias of the no credible basis finding rested on the following:

- The allegations in the applicant’s Basis of Claim form was a modified version of the same story contained in the Basis of Claim form submitted by the applicant’s sister six months previously;
- Both sisters allege that they met the only same-sex partner they had at a meeting of an organization in Cameroon known as Humanity First Cameroon;
- After each sister left Cameroon they allege that the police raided the residence of their partners and uncovered photos of each that lead them to believe that they are lesbians;

- Based on the photos each sister claimed that the police sought them out at their mother's residence and this lead each sister to apply for protection in Canada;
- Neither sister named the other in their Basis of Claim form; although each referenced the other in their initial visa application;
- The applicant stated that she only found out about her sister (who is really a half-sister as they share only a common mother) three days prior to the RPD hearing, yet she mentioned her in the visa application and both sisters used the same residence address on their refugee claims; the applicant could provide very limited information about her alleged lover in Cameroon – she had “significant difficulty describing what was this person's family or surname or what was her given name and her evidence on this point was contradictory”.
- The applicant stated that she met her partner through her association with Humanity First Cameroon and described that she was a member of it in her written responses, yet testified that she was not a member and had attended only two meetings of the organization; and
- She testified that she never spoke to her father about her situation, but the father's letter she provided stated otherwise.

[8] I am not persuaded that had the Guidelines been in place when she had the hearing before the RPD, that they would have addressed any of these contradictions and inconsistencies, or that the RPD would have reached any different conclusion.

[9] More importantly, although the Officer failed to mention the Guidelines, I am not satisfied that the officer overlooked them when considering the applicant application. In this regard it is relevant to note that scant reference made in the submissions to the Officer about the reason these Guidelines may have impacted the RPD decision.

[10] Absent evidence that the Guidelines would likely have changed the RPD decision, or that the Officer overlooked them, no serious issue is raised.

[11] As noted by the respondents, a PRRA is not an appeal or reconsideration of the RPD decision. An officer is bound to give it strong consideration, as this officer did, while taking into consideration any new evidence. This the Officer did. The Officer gave detailed explanation why some of the evidence submitted was not new and why other evidence was not persuasive. The officer's reasons are clear and intelligible and thus meet the reasonableness test.

[12] Contrary to the submission of the applicant, I am not convinced that the Officer dismissed, unreasonably, the "new evidence" from the medical professionals. The Officer noted that letters from VAST and the Rainbow Refugee society were given no weight by the RPD, a decision not overturned on review. He noted that simply because these organizations submitted

more recent letters did not make them new, nor did it reverse the previous finding. That analysis cannot be faulted.

[13] For this reason, I find there is no serious issue disclosed on the underlying application.

[14] I am also not persuaded that the applicant has established on clear and convincing evidence that irreparable harm will befall her if this stay is not granted. Her account of being lesbian was found not credible by the RPD. As such, her claim to face irreparable harm because of her sexual orientation is not persuasive. She submits that she has recently married a lesbian woman in Canada and thus may be perceived to be lesbian, putting her at risk in Cameroon. I find this to be speculative and hypothetical.

[15] Lastly, the balance of convenience rests with the respondents. The applicant has been in Canada since 2014. She has had a negative refugee determination, an unsuccessful review by this Court, and two negative PRRA decisions. Absent an extraordinary and material change in circumstances, the Minister's obligation to remove her from Canada tips the scale in the Minister's favour.

ORDER

THIS COURT ORDERS that:

1. The motion for a stay is dismissed; and
2. The Style of Cause is amended to add the Minister of Public Safety and Emergency Preparedness for the purposes of this stay motion.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-133-18

STYLE OF CAUSE: EGBE MANKA EBIKA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION AND THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 25, 2018

ORDER AND REASONS: ZINN J.

DATED: JANUARY 25, 2018

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