

Federal Court



Cour fédérale

Date: 20180815

Docket: IMM-306-18

Citation: 2018 FC 835

Ottawa, Ontario, August 15, 2018

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**FRANCES ENORE UGBAJA
EBICHI MOSES UGBAJA
ELAINE CHIAMAKA UGBAJA
CHRISTOPHER UCHECHUKWU UGBAJA**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Frances Enore Ugbaja and Ebichi Moses Ugbaja are husband and wife. They have two minor children, Elaine and Christopher. The family seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, which held that they

are neither Convention refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Before this Court, counsel for the Applicants acknowledges that Elaine Ugbaja, who was born in the United States and therefore has U.S. citizenship, is not in need of protection from that country.

[3] The determinative issue before the RPD was credibility. For the reasons that follow, I conclude that the RPD's adverse credibility findings were well-supported by the evidence. There was no breach of procedural fairness. The application for judicial review is therefore dismissed.

II. Background

[4] The Applicants are citizens of Nigeria. They say they fled Nigeria and fear return because of death threats they received from members of Mr. Ugbaja's family clan as a result of their refusal to subject their daughter to female genital mutilation [FGM]. Mrs. Ugbaja also says she was accused of witchcraft.

[5] The Applicants travelled first to the United States, and then to Canada where they claimed refugee status.

III. Decision under Review

[6] The RPD dismissed the Applicants' claims. Elaine was found not to be a refugee due to her U.S. nationality. The other Applicants' claims were rejected because there was insufficient credible and trustworthy evidence to demonstrate that the Ugbaja family clan had demanded that Elaine undergo FGM. Nor did the RPD accept that the Applicants would face a risk of death should they return to Nigeria.

[7] The RPD based its adverse credibility determination on numerous factual findings:

- (a) The family's Basis of Claim form [BOC] described their fear of persecution in broad and vague terms. The agents of persecution were said to be members of Mr. Ugbaja's family, but no names or family relationships (*e.g.*, father, mother, sister, brother) were provided. It was unclear who had made a threatening telephone call, who had administered a beating, who had damaged their vehicle, or who had consulted an oracle.
- (b) Mr. Ugbaja's verbal account of the agents of persecution was equally vague. He identified specific individuals only when pressed, and did not adequately explain why all 400 members of his clan were against him or how they could harm the family throughout Nigeria.

- (c) Mr. Ugbaja could not provide the name of Mrs. Ugbaja's clan, even though the family had allegedly sought their assistance to stop the persecution.
- (d) Mr. Ugbaja said he quit his job due to threats against his life, but in his Schedule A Form, he claimed that his employment was ongoing. He said this was a mistake, but provided no documentary evidence to substantiate this assertion.
- (e) The Applicants never reported the threats of FGM against Elaine, a citizen of the United States, to U.S. consular authorities in Nigeria.
- (f) The Applicants did not make asylum claims in the United States, despite travelling there on numerous occasions after the alleged persecution began. Mrs. Ugbaja travelled to the U.S. without her husband or children in July 2017. According to the RPD, this demonstrated a lack of subjective fear that went to the core of their claims.
- (g) Finally, a psychological report prepared by Dr. Devin, which concluded that the Applicants' testimony may be inconsistent due to post-traumatic stress disorder and depression, did not mention that Mr. Ugbaja had been diagnosed with stage 4 lung cancer. This suggested that the report was not a careful and detailed evaluation. Supporting letters were also found to be vague.

IV. Issues

[8] This application for judicial review raises the following issues:

- A. Was the RPD's adverse credibility determination reasonable?
- B. Was the RPD's decision procedurally fair?

V. Analysis

[9] The RPD's assessment of a refugee claimant's credibility is a factual determination that lies at the "heartland" of the RPD's jurisdiction, and is subject to review by this Court against the standard of reasonableness (*Omar v Canada (Citizenship and Immigration)*, 2017 FC 20 at para 11; *Eze v Canada (Citizenship and Immigration)*, at para 12 [*Eze*]). It must be afforded a high degree of deference (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 46 [*Khosa*]). The Court will intervene only if the decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[10] Questions of procedural fairness are reviewable by this Court against the standard of correctness (*Khosa* at para 43).

A. *Was the RPD's adverse credibility determination reasonable?*

[11] The Applicants argue that the RPD engaged in a microscopic examination of the evidence. They note that in his oral testimony, Mr. Ugbaja named four specific persons he feared, and said he feared his uncle the most. He never alleged that all 400 members of his family clan had made threats against the family. He said only that all of them would know of the family's refusal to subject their daughter to FGM.

[12] I am not persuaded by the Applicants' argument. The RPD is entitled to expect a degree of specificity with respect to the agents of persecution. Mr. Ugbaja's provision of four names in the course of oral testimony does not detract from the RPD's overall conclusion that his testimony was unacceptably vague, particularly given the Applicants' numerous opportunities to expand upon or correct their written narratives. In the words of the RPD:

[42] [...] if the panel is to accept the explanation that names were given wherever relevant, then it is not credible that the aunt would not have been referenced in the narrative at all, whether by name or relationship, as the person who had allegedly informed Mrs. Ugbaja of such a horrific matter as her daughter needing to undergo FGM in accordance with her husband's tribe's custom. Nor is it credible the clan member who ordered the family be killed, that is, the most senior clansman "Irahor," would not be mentioned. Nor is it credible the persons who beat up Mr. and Mrs. Ugbaja would not be mentioned, and likewise the identity of the caller(s) in regard to the significant telephone call that is discussed.

[13] As Justice Cecily Strickland observed in *Eze*, a case that bears some resemblance to the present one:

[21] In my view, while the nub of the Applicants' claim was captured in the [point of entry] interview, that the daughters are at

risk of FGM if returned to Nigeria, the omission of the uncle and other family members as agents of persecution was not an insignificant omission nor was this a mere detail that could later be provided to flesh out the claim.

[14] Omissions from the BOC and in oral testimony may reasonably be considered when assessing credibility (*Liu v Canada (Citizenship and Immigration)*, 2012 FC 440 at para 12).

[15] The family's frequent trips to the United States also provide a legitimate basis upon which to reject their allegations of persecution in Nigeria. Mrs. Ugbaja travelled there in July 2017 to assist with the birth of her sister's child, although the threats against her family had been ongoing since at least 2012. Her explanation was that the threats up to this point had not included death. The RPD rejected this explanation in clear and unequivocal terms:

According to the totality of the account, the claimants' circumstances at the time of Mrs. Ugbaja's trip to the U.S.A. were serious, involving: threats of FGM, kidnapping, blood rituals, and witchcraft; property damage; beatings; the ability to locate the children's whereabouts and the family's new location thereafter; and, threats to the children's caregiver, Mrs. Ugbaja's brother. In such context, it is not credible that Mrs. Ugbaja's focus would be to provide care to her sister in the U.S.A., leaving her own children in the care of her husband, who though [he] loves them, belongs to a clan that is after them. According to the totality of the written account, she left her children and her husband without having them securely in hiding at the time of her departure, but instead, residing in their own home (until the alleged additional threat, at which time they relocated to the house of her husband's friend "Sunny Ebebare"). On a balance of probabilities, the travel to the U.S.A. demonstrates that none of such alleged incidents had occurred and therefore the credibility of the core allegation relation to FGM is materially undermined.

[16] At no time did the family seek asylum in the United States. They were all present in the U.S. in August 2017, but said they did not request protection because it was too expensive. The

RPD noted that the Applicants provided no corroborating evidence for their story. While there is some dispute regarding the frequency and duration of Mrs. Ugbaja's visits to the U.S., she admitted to travelling there in December 2008, December 2010, November 2015 and July 2017. Mr. Ugbaja was found by the RPD to have travelled to the U.S. in February 2011, February 2014, July 2014, November 2015, April 2016, November 2016 and August 2017.

[17] While the Applicants may have valid points regarding the futility of reporting threats to U.S. consular officials in Nigeria and the manner in which the RPD rejected the psychological report, neither of these matters was central to the decision under review. In any event, a psychologist's report is not a cure-all for deficiencies in the Applicants' evidence (*Khatun v Canada (Citizenship and Immigration)*, 2012 FC 159 at para 94).

[18] I am therefore satisfied that the RPD's credibility determination was well-supported and is reasonable. It is not the role of this Court to re-weigh the evidence (*Khosa* at para 61). Moreover, the Court must consider the RPD's decision as a whole, and refrain from analysing each section in isolation (*Guarin Caicedo v Canada (Citizenship and Immigration)*, 2010 FC 1092 at para 30).

B. *Was the RPD's decision procedurally fair?*

[19] The Applicants complain that the RPD did not question Mr. Ugbaja extensively about how all 400 members of his family clan would know of the refusal to subject their daughter to FGM, and it was therefore not open to the RPD to dismiss his testimony as vague. They also

argue that the RPD failed to ask sufficient questions regarding the supporting documentation. The Applicants maintain that this amounts to a breach of procedural fairness.

[20] I disagree. It is not the RPD's responsibility to elicit the Applicants' case through careful questioning. The burden is squarely on the Applicants to adduce sufficient credible evidence to substantiate their claims. Furthermore, a review of the transcript confirms that the RPD gave the Applicants ample opportunity to expand upon their general assertions, *e.g.*: "But how do you know all 400 are against you? [...] I am still not quite following how it is that you know that all 400 are against you?"

[21] I am therefore unable to find a breach of procedural fairness in this case.

VI. Conclusion

[22] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-306-18

STYLE OF CAUSE: FRANCES ENORE UGBAJA
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MINISTER OF IMMIGRATION, REFUGEES AND
CITIZENSHIP CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 16, 2018

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: AUGUST 15, 2018

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