

Federal Court



Cour fédérale

Date: 20240110

Docket: IMM-475-23

Citation: 2024 FC 41

Edmonton, Alberta, January 10, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**JANE UGO NDUKWE
CHINONYEREM ADA NDUKWE
OBINNA NNAEMEKA NDUKWE
CHIDERA OLAMMA NDUKWE
CHIDUBEM FAVOUR NDUKWE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Ndukwe seeks judicial review of her negative pre-removal risk assessment [PRRA]. I am granting her application, because the decision appears to be based on veiled credibility findings.

I. Background

[2] The applicants are Ms. Ndukwe and her children, who are citizens of Nigeria. Ms. Ndukwe is bisexual. While she is married to a man, she has had romantic relationships with women. When her husband discovered this, he initially became angry and told members of his family, who then made threats to kill her. Ms. Ndukwe came to Canada with her children and they claimed refugee protection.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board dismissed their claim. The RPD believed that Ms. Ndukwe was bisexual, but noted that she had reconciled with her husband and intended to remain in a long-term relationship with him. The RPD found that the determinative issue was the existence of an internal flight alternative [IFA] in Lagos, where her in-laws were unlikely to find her. An application for leave and judicial review to this Court was dismissed.

[4] The applicants then sought a PRRA. Ms. Ndukwe alleged that since the RPD's decision, various organizations in her hometown have sought her. In particular, Christian youth activists have burned down her house there. Moreover, several organizations have contacted her husband and asked him to produce her for a traditional ritual that would put her life in jeopardy. They also contacted her sister. The police also questioned Ms. Ndukwe's husband on several occasions regarding her whereabouts. Ms. Ndukwe submitted affidavits from her husband and sister, as well as copies of letters they received.

[5] The PRRA officer denied the application. After a lengthy review of the new evidence put forward, the officer concluded that the organizations that wrote the letters were located at a considerable distance from Lagos. Given Nigeria's size and population, the officer found that the applicants would be able to safely relocate in Lagos.

[6] The applicants now seek judicial review of their negative PRRA.

II. Analysis

[7] In my view, the PRRA decision is unreasonable. Although I do not subscribe to all of her submissions, Ms. Ndukwe has identified sufficient shortcomings for the Court to lose confidence in the soundness of the decision.

[8] The main issue is that the key findings of the decision cannot be explained by the insufficiency of the evidence, as the Minister suggested at the hearing of this application. Rather, they can only be based on veiled credibility findings.

[9] I reach this conclusion mainly because Ms. Ndukwe's evidence, if believed, would go a long way towards proving that she is at risk of persecution if she returned to Nigeria and that she would not have a viable IFA. Where evidence that has high probative value is given little weight, this indicates that it was found not credible: *Cho v Canada (Citizenship and Immigration)*, 2010 FC 1299 at paragraphs 24, 26; *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 at paragraph 51; *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 at paragraph 31; *Islam v Canada (Citizenship and Immigration)*, 2022 FC 261 at paragraph 43.

[10] In particular, Ms. Ndukwe's husband states that the police interrogated him on several occasions regarding his wife's whereabouts. This occurred where he was then living, in a different state than the one where his family's hometown is located and where the burning of his house took place, as well as in a different village where he moved to try to avoid further interaction with the police. If believed, this tends to prove that the police is making sustained efforts to find Ms. Ndukwe in different places in Nigeria. Nowhere in the PRRA decision can one find any discussion of this evidence.

[11] Moreover, the PRRA officer noted that Ms. Ndukwe's evidence "comes from persons interested in the outcome of this application and as such these documents are afforded minimal weight." This Court has repeatedly found similar statements to be unreasonable: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraphs 44–45. It shows that the claim was rejected on grounds of credibility rather than sufficiency. The PRRA officer also noted contradictions between Ms. Ndukwe's narrative and statements she made to a clinical counsellor, which also goes to credibility.

[12] Yet, with the exception of the above-mentioned contradiction, the decision does not contain any explanation for a general negative credibility finding. We are thus left in a situation where the main basis for the decision is entirely devoid of justification. This cannot be reasonable. In addition, if credibility concerns were the main basis for the decision, the officer may well have been required to hold a hearing.

[13] Another issue arises from the PRRA officer's treatment of Ms. Ndukwe's stated intention to remain in a long-term relationship with her husband and to refrain from relationships with other women. The PRRA officer seems to consider that this would shield Ms. Ndukwe from persecution based on her sexual orientation. This, however, misses the point. The evidence tends to show that Ms. Ndukwe would be perceived as bisexual irrespective of her current intentions. What is relevant is the agent of persecution's point of view: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 747.

[14] Lastly, the PRRA officer gives significant weight to the RPD's conclusions regarding the IFA. In doing so, the officer overlooks the fact that the evidence before them is significantly different from that before the RPD.

III. Disposition

[15] For these reasons, the PRRA decision is unreasonable. Accordingly, I will grant the application for judicial review, set aside the PRRA decision and remit the matter to a different officer for reconsideration.

[16] At the hearing, Ms. Ndukwe's counsel requested more time to think about a question to certify for the consideration of the Federal Court of Appeal. Given this outcome, it is not necessary to decide this question. I would simply note that this Court's *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings* (June 24, 2022) require counsel to give notice to opposing counsel before proposing a question to certify. In any event, this matter raises essentially factual questions that do not justify certifying any question.

JUDGMENT in IMM-475-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The decision regarding the applicant's pre-removal risk assessment dated October 6, 2022 is set aside.
3. The matter is remitted to a different officer for reconsideration.
4. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-475-23

STYLE OF CAUSE: JANE UGO NDUKWE, CHINONYEREM ADA
NDUKWE, OBINNA NNAEMEKA NDUKWE,
CHIDERA OLAMMA NDUKWE, CHIDUBEM
FAVOUR NDUKWE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: JANUARY 9, 2024

JUDGMENT AND REASONS: GRAMMOND J.

DATED: JANUARY 10, 2024

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