

BETWEEN:

MICHAEL OLUGBENGA OJO,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

HEALD D.J.

This is an application for judicial review of a decision of the Convention Refugee Determination Division (the "C.R.D.D.") dated June 18, 1996. By that decision, the C.R.D.D. found the applicant not to be a Convention refugee.

THE FACTS

The applicant was born and raised in Nigeria. His oral evidence may be summarized as follows: He joined a group called the Concerned Professionals (the "C.P.") in April of 1993. This group of 400 elite professionals were sited throughout Nigeria. It was a legal organization and was not engaged in clandestine activities. Its objectives were, *inter alia*, to promote human rights. The C.P. formed a symposium to discuss the political impasse that was pushing the country to the brink. The symposium had just commenced when the military arrested the applicant and other members of the C.P. The applicant said that he was detained and tortured for three weeks. Between late July of 1994, when he was released, and November of 1994, soldiers came to his

home and his office several times and questioned him concerning his activities with the C.P. They also searched his computer where they found numerous names of prominent Nigerians. He was then detained, questioned again, and released the next day. He continued to be fearful of further military investigation. He obtained a Nigerian passport on January 3, 1995 and a Canadian visa on January 24, 1995. He left Nigeria on January 28, 1995 and arrived in Canada on the following day. On his departure from Nigeria, he said that he bribed the Nigerian customs officer by presenting cash along with his passport. He applied for Convention refugee status on June 21, 1995.

THE DECISION OF THE C.R.D.D.

The C.R.D.D. found the applicant not to be a Convention refugee. The rationale for this decision was based solely on the issue of credibility. The C.R.D.D. found that the applicant's oral testimony and his PIF differed materially from the documentary evidence before the tribunal.

The tribunal found the following inconsistencies in the applicant's evidence:

- (a)The applicant was not certain as to whether the C.P. symposium was held on June 30, 1994 or early in July of 1994. He also said he was arrested, detained and tortured on the date of the symposium. The panel found that it was not plausible that the applicant could not remember the exact date of the symposium given that he was arrested at the same time. The panel believed that the claimant has fabricated his testimony in this respect and did not give it any credence.
- (b)The applicant said that he was tortured in detention. However, the evidence is that he returned to work within a couple of days and did not require medical treatment.
- (c)The applicant said that after his first release, he was frequented by the military at work and at home. However, the panel points out that he made no attempt to leave his work or his home or the city of Lagos where he lived. The panel found this action to be inconsistent with his alleged fear of persecution from the military.

(d)The applicant did not seek help from the C.P. even though he remained in Nigeria for a considerable period of time before leaving. The panel found this circumstance to be inconsistent and unreasonable.

(e)The panel also found that the five month delay in making his refugee claim after arrival in Canada was inconsistent with the applicant's alleged problems in Nigeria.

ISSUES

The applicant raises two issues:

(a)The panel's adverse findings with respect to the applicant's credibility is not supported by the record herein; and

(b)The applicant's counsel was incompetent and failed to properly represent him at the hearing before the C.R.D.D.

ANALYSIS

(a) Adverse Credibility Findings

My perusal of this record persuades me that the panel's adverse credibility findings were properly based on discrepancies and inconsistencies between the documentary evidence and the applicant's testimony. The panel clearly articulated its reasons for rejecting the applicant's oral testimony and for preferring the documentary evidence. The documentary evidence was objective in nature. The panel gave the applicant the opportunity to explain the discrepancies and inconsistencies in his oral evidence when compared to the documentary evidence. The applicant was unable to explain these inconsistencies.

On the record, I have no difficulty in concluding that the tribunal's adverse findings of credibility with respect to the applicant's evidence was reasonably open to it.

(b) Fundamental Justice

The applicant submits that in the circumstances of this case, the principles of fundamental justice have been breached and, accordingly, the intervention of the Court is warranted.

The applicant was represented before the C.R.D.D. by legal counsel. The applicant states that his counsel only conferred with him for approximately 45 minutes prior to the hearing. The hearing record establishes that the applicant was questioned by his counsel for approximately two hours. Counsel for the applicant intervened frequently during the applicant's testimony to protect his interests. On this record, I am not persuaded that the applicant was inadequately and improperly represented by counsel.

CONCLUSION

Accordingly, and for all the above reasons, the within application for judicial review is dismissed.

CERTIFICATION

The applicant has proposed six questions for certification:

- 1) Does section 7 of the *Charter* include a refugee claimant's right to the effective assistance of counsel, if the claimant wishes the assistance of counsel?
- 2) If a refugee claimant wishes the assistance of counsel and obtains the services of counsel, but counsel fails to provide effective assistance is there a breach of the applicant's section 7 rights?
- 3) If so, what is the remedy and can the Federal Court provide a remedy, under the *Federal Court Act*?
- 4) Does *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571 overrule wholly or in part, or otherwise affect the holding concerning the reviewability of implausibility findings in *Aguebor v. M.E.I.* (1993), 160 N.R. 315 (F.C.A.)?
- 5) With respect the issue of the Applicant's delay in making a refugee claim, can the Applicant's explanation of seeking legal advice within a reasonable amount of time ever be found to be an unsatisfactory explanation, as the Refugee Division found in this case? [sic]
- 6) Is the requirement that the Refugee Division consider explanations of the Applicant that a rule of law? [sic]

The first three questions are not dispositive of this case, since the facts do not establish a lack of effective counsel. Similarly, question four does not arise since this case does not turn on the degree of deference owed to findings of implausibility. I have held that the findings of the tribunal were reasonable in view of the arguments and evidence before the tribunal. The finding referred to in question five was simply not made by the tribunal. Question six raises no question of general importance since it is well established that the

tribunal must consider the totality of the evidence. Accordingly, I will not certify any of the questions posed by counsel for the applicant.

Darrel V. Heald
Deputy Judge

Ottawa, Ontario
July 23, 1997