

Date: 20070605

Docket: IMM-5146-06

Citation: 2007 FC 594

Ottawa, Ontario, June 5, 2007

Present: The Honourable Mr. Justice Martineau

BETWEEN:

OLUSHOLA OLAYIN AJAYI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision dated August 21, 2006, by the Refugee Protection Division of the Immigration and Refugee Board (the IRB or the panel) that the applicant is not a Convention refugee or a “person in need of protection” as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The applicant, Olushola Olayin Ajayi, is a citizen of Nigeria. She claims that she fears both her stepmother, who wants to excise her, and her father, who wants to force her to participate in a major initiation ritual (Obitum) during which she will have to climb a high hill. The applicant says that she is also afraid of powers and supernatural beings. She alleges that refusing to participate in the ritual in question resulted in her having nightmares and heavy menstrual bleeding. She and her boyfriend then moved to Port Harcourt. In July 2005, the applicant became pregnant. The bleeding recommenced, and the applicant and her friend left Nigeria for the Republic of Benin. In December 2005, the applicant arrived in Canada.

[3] The panel determined that the applicant had not established her identity, her residence in Nigeria or her travel itinerary from Nigeria to Canada. In addition, the panel found that the applicant's testimony was not credible. The panel also noted that the applicant did not have an objective fear of persecution. Although the applicant stated in her Personal Information Form (PIF) that she feared both her father and stepmother, she testified at the hearing that she was not afraid of her father when she refused to participate in the ritual, nor was she afraid of her stepmother because her stepmother had never tried to force her to submit to the excision. What remains is her subjective fear of powers and supernatural beings. The panel found that the applicant's testimony on this issue was not credible and that even if it were objectively credible, Canada could not offer state protection in such circumstances.

[4] The applicant wants the impugned decision to be set aside and the matter referred to a new panel of the IRB. The applicant maintains that there was no valid reason for the panel to find that

she had not established her identity or that her claim was without merit, given the strangeness of her fear of persecution. On this point, the applicant argues that the documentary evidence confirms that tribal customs exist in Nigeria. The applicant acknowledges that no state can protect her from forces from beyond but submits that Canada can protect her from the obligation to participate in initiation rites where the participants invoke supernatural powers.

[5] In this case, whether the appropriate standard of review is patent unreasonableness or reasonableness *simpliciter*, I am satisfied that this application must fail.

Issues concerning the applicant's identity

[6] Generally, where the Board's findings as to identity are based on the applicant's credibility, the applicable standard of review is patent unreasonableness. On the other hand, where the Board must assess the authenticity of documents or the validity of foreign documents, the Court has applied two standards: patent unreasonableness and reasonableness *simpliciter*. For an overview of the particular circumstances that led to the application of these standards, see: *Wu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 513 at paragraph 16; *Li v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 296 at paragraph 5; *Bouyaya v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1042 at paragraphs 6-7; *Rasheed v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 587; *Umba v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 25.

The driver's licence

[7] The panel could reject the driver's licence. The applicant testified at the hearing that she obtained her licence at a local government office without having to pass a driving test. This contradicts the documentary evidence that indicates an applicant must pass a written exam and a driving test to obtain a licence and that the licences are issued by the Nigerian Road Safety Commission, not by a local government office. In this case, the panel could prefer the documentary evidence over the applicant's testimony, and its finding is not patently unreasonable. I also note that the uncontradicted analysis of the forgery analyst from the Canada Border Services Agency concluded that the licence was a falsified document because of several anomalies.

The birth certificate

[8] The panel could also reject the birth certificate because there were contradictions in the applicant's testimony regarding the fact that she had lived with her stepmother, whom she refers to as her mother, since she was quite young. Even more important is the lack of a valid explanation as to why the name of her stepmother, not her biological mother, is on the birth certificate in question, which the applicant claims was issued by the maternity hospital where she was born. Moreover, the certificate in question is not an original, and the uncontradicted analysis of the forgery analyst mentions various anomalies in it. The panel's conclusion is not patently unreasonable.

The certificate of origin

[9] The panel's finding that the certificate of origin had no probative value is not patently unreasonable. In fact, it appears that the certificate of origin also bears the name of the applicant's stepmother and not her biological mother. Moreover, the uncontradicted analysis in the file also

raises various anomalies as to how this document was made, and its authenticity cannot be established.

The university ID card

[10] The panel could reject the university ID card as evidence of identity because there were significant contradictions in the applicant's testimony regarding the years in which she claims to have studied at the university. In fact, the testimony, the PIF and the immigration documents all indicate a different year and the university ID card yet another year. The panel's finding that this document was of no probative value and that it was a fabrication is based on the evidence and is not patently unreasonable.

The police certificate

[11] Finally, the panel could reject the police certificate because the applicant never lived at the address indicated; it is the address of the pastor who allegedly assisted her. The panel could therefore conclude that the document in question had no probative value.

[12] The applicant bore the entire burden of establishing her identity through credible and trustworthy evidence, by submitting acceptable identity documents. The fact that the applicant had been detained for identification purposes, then released following a decision by the IRB's Immigration Division when the legality of her detention was reviewed, is not conclusive in this case. On the other hand, the assertion that the applicant's identity could have been established by sending her fingerprints to the Nigerian High Commission is purely speculative and was not argued

before the panel. In my view, therefore, the panel's findings regarding the applicant's identity can reasonably be supported by the evidence in the file and are not patently unreasonable.

Issues of credibility and state protection

[13] Once the panel had concluded that the applicant's identity had not been established, it was not necessary for the panel to analyze the evidence any further (*Husein v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 726 at paragraph 13 (QL)). That being said, the panel nevertheless reviewed the allegations of fear of persecution and risk pursuant to sections 96 and 97 of the Act and rejected those allegations. The panel's general finding of non-credibility is based on the evidence and is not patently unreasonable.

[14] In particular, the panel could find that the applicant had not established that she resided in Nigeria at the time the events alleged in her refugee claim occurred. The applicant had the opportunity at the hearing to clarify the contradictions in her PIF regarding the various periods of time she stayed in Port Harcourt and the people with whom she lived. Her testimony remained rife with confusion.

[15] The panel could also conclude that the applicant had not established her travel itinerary from Nigeria to Canada. The applicant first maintained that she had left Nigeria on December 8, 2005, then transited through Amsterdam to London before arriving in Montréal. Yet, there was no Dutch, British or Nigerian stamp on the passport that she used. Confronted with this contradiction, the applicant testified that she had never been to Amsterdam and that she had only transited in London

for a few hours. The panel found the applicant's explanation unreasonable. The panel simply did not believe that the applicant lived in Nigeria before coming to Canada. The panel's conclusion that the applicant failed to establish her itinerary is not patently unreasonable.

[16] Finally, I acknowledge that a person's fear of magic or witchcraft can be genuine on a subjective basis but, speaking objectively, the state cannot provide effective protection from magic, witchcraft, supernatural powers or beings from beyond. The state can only protect a person from actions by members of a sect or a tribe participating in rituals where supernatural powers or beings from beyond are invoked or may appear. However, the applicant testified on this issue that she was not afraid of her father when she refused to participate in the ritual, nor was she afraid of her stepmother because her stepmother had never attempted to force her to submit to excision.

[17] Accordingly, it was not patently unreasonable to find that the applicant did not have an objective fear of persecution and that the applicant is not a Convention refugee or a "person in need of protection" under sections 96 and 97 of the Act.

Conclusion

[18] For all these reasons, this application for judicial review must fail. No question of general importance was raised, and none arises in this case.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5146-06

STYLE OF CAUSE: OLUSHOLA OLAYIN AJAYI, Applicant
- and -
MINISTER OF CITIZENSHIP AND IMMIGRATION, Respondent

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 30, 2007

**REASONS FOR ORDER
AND ORDER BY:** The Honourable Mr. Justice Luc Martineau

DATED: June 5, 2007

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