

Date: 20071003

Docket: IMM-4605-06

Citation: 2007 FC 1012

Ottawa, Ontario, October 3, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SAMUEL OLUWALANA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated June 23, 2006, which found that the applicant was neither a Convention refugee, nor a person in need of protection.

Background

[2] The applicant, Samuel Oluwalana, is a citizen of Nigeria. He alleged having a fear of persecution in Nigeria on the basis of his religion. The circumstances which led to his claim for refugee status were set out in his Personal Information Form (PIF) narrative.

[3] In 2000, the applicant became a Pastor's assistant at a Christian church in Lagos, Nigeria. In March 2002, he joined a crusade to convert Hausa Muslims to Christianity. During the crusade, the son of a Muslim cleric confessed that he had embraced Christianity. Members of the Muslim population objected to the conversion, and a nation-wide "fatwa", or death sentence was declared against the applicant and his group.

[4] In April 2002, the applicant was proclaiming the gospel when a group of armed Islamic fanatics allegedly charged the group. The majority of the group escaped, but two people were beaten to death. The incident was reported to the police, however, the investigation did not result in any arrests. A similar incident took place in August 2002, and the applicant was injured during this attack. He was taken to a hospital and discharged after five days.

[5] The applicant no longer felt safe in Lagos; therefore, he decided to move to Port-Harcourt, Nigeria. Five days later, his home was set on fire. The applicant escaped and reported the fire to the police, who conducted an investigation. The applicant then decided to return to Lagos. In April 2003, the applicant was shot at while riding in a car. He was not hit, but was scared by the incident.

He made a report to the police and decided to return to Port-Harcourt in order to live with his Christian colleagues. Before he left Lagos, he found out that one of his colleagues had been shot and another had gone into hiding. As a result, he chose to stay in Lagos and keep a low profile.

[6] In September 2004, the applicant was abducted and attacked. This incident was also reported to the police. The applicant was advised by a friend that he was being trailed by extremists and something serious could happen to him. His friend escaped to Europe and the applicant went into hiding until he was able to flee Nigeria. The applicant arrived in Canada on October 18, 2005 and immediately claimed refugee protection. The refugee hearing was held on May 4, 2006, and the Board refused his claim by decision dated June 23, 2006. This is the judicial review of the Board's decision.

Board's Reasons

[7] The Board found that the applicant was neither a Convention refugee nor a person in need of protection, given that state protection was available to him in Nigeria. The Board believed the applicant's claim that he was being pursued by extremists due to his involvement in the movement to convert Muslims to Christianity. The Board cited *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, (1993) 103 D.L.R. (4th) 1, wherein the Supreme Court of Canada stated the following at paragraph 52:

A subjective fear of persecution combined with state inability to protect the claimant creates a presumption that the fear is well-founded. The danger that this presumption will operate too broadly is

tempered by a requirement that clear and convincing proof of a state's inability to protect must be advanced.

[8] The Board acknowledged documentary evidence which indicated that the Muslim/Christian conflict in Nigeria was ongoing and had resulted in many deaths. However, the evidence did not show that the police were complicit in these conflicts. The Board accepted that the Nigerian police force was understaffed and considered corrupt. However, in this case, the applicant had been interviewed by the police, the allegations were investigated and reports were taken. The Board noted that Nigeria was a democratic country with an organized police force and a judiciary. The applicant was unable to provide evidence that he had requested protection from the state and had been denied it.

Issue

[9] The applicant submitted the following issue for consideration:

Did the Board err in finding that state protection was available to the applicant in Nigeria?

Applicant's Submissions

[10] The applicant submitted that where the Board: (1) proceeded on improper principles; (2) based its decision upon erroneous factual findings made in a perverse manner; (3) made a decision based upon an error of law, or (4) made its decision in bad faith, its decision was liable to be

quashed. It was submitted that where the Board drew unreasonable inferences, its decision should be overturned.

[11] The applicant noted the Board's finding of state protection and submitted that despite his uncontradicted testimony, the Board drew an erroneous inference that went to the heart of his claim. It was submitted that the Board's decision was therefore based upon speculation and unwarranted inferences. The applicant submitted that the Board erred in finding that the presumption of state protection had not been rebutted. It was submitted that the presumption was rebutted by documentary evidence which showed that Christians were being killed by extremists in Nigeria and that no arrests were being made. The applicant submitted that despite minor efforts by the police in his case, the Nigerian state was unable to protect him from the extremists (see *Badran v. Canada (Minister of Citizenship and Immigration)* (1996), 111 F.T.R. 211 (F.C.T.D.)). It was submitted that the Board failed to point to any evidence that police efforts had yielded positive results for the applicant, or for similarly situated persons.

[12] The applicant submitted that the Board failed to consider the particular circumstances of his case, given that he was under a "fatwa", when finding that state protection was available (see *Mendivil v. Canada (Secretary of States)* (1994), 167 N.R. 91, 23 Imm. L. R. (2d) 225 (F.C.A.)). The applicant submitted that he should not be forced to risk his life in order to prove that the state would provide him with ineffective protection (see *Ward* above).

Respondent's Submissions

[13] The respondent submitted that the standard of review with respect to state protection was bifurcated. It was submitted that the Board's factual findings on this issue were subject to review on the standard of patent unreasonableness. The respondent submitted that the question of whether the facts constituted clear and convincing evidence of the state's inability to protect was a question of mixed fact and law (see *Hanna v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 580).

[14] The respondent submitted that the applicant had failed to show that the Board made a patently unreasonable error in rejecting his claim for refugee protection. In *Ward* above, the Supreme Court of Canada held that refugee claimants must provide clear and convincing evidence of a state's inability to protect in order to rebut the presumption of state protection. The respondent noted that Nigeria was not in a state of civil war, invasion or internal collapse. It was noted that the applicant went to the police, and that the police took reports and investigated his allegations.

[15] In *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 99 D.L.R. (4th) 334, 150 N.R. 232 (F.C.A.), the Federal Court of Appeal found that state protection need not be perfect, and that serious efforts to protect citizens, even if not always successful, may be enough. As a result, it was submitted that the Board did not make a patently unreasonable error in concluding as it did. In *Smirnov v. Canada (Secretary of State)*, [1995] 1 F.C. 780 (T.D.), Justice

Gibson of the Federal Court stated that the Court should not impose on other states a standard of effective protection that police forces in our own country sometimes only aspire to.

[16] The respondent noted that the Board was aware that a “fatwa” had been declared against the applicant. It was submitted that it was open to the Board to find that state protection was available to the applicant even though he was being pursued by religious fanatics, given the police actions and investigation, the documentary evidence regarding state protection, and the fact that Nigeria was not in a state of complete breakdown (see *Akoji v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 147).

Analysis and Decision

Standard of Review

[17] The standard of review applicable to the Board’s findings of fact with respect to state protection is patent unreasonableness. The Board's findings on the adequacy of state protection is a question of mixed fact and law that is reviewable on a standard of reasonableness (see *Hanna* above).

[18] **Issue**

Did the Board err in finding that state protection was available to the applicant in Nigeria?

The applicant submitted that the Board erred in finding that he could obtain state protection in Nigeria, given the ineffectiveness of the police and the fact that a “fatwa” or nation-wide death sentence had been declared against him. The respondent submitted that the applicant had failed to rebut the presumption of state protection, given that Nigeria was a democratic country and the police had investigated his allegations.

[19] The Board’s decision noted the applicant’s claim that a “fatwa” had been declared against him in March 2002. The Board was persuaded that the applicant was being pursued by Muslim extremists in Nigeria, but found that he had failed to rebut the presumption of state protection. The Board stated the following regarding state protection:

The panel is cognizant of the fact that the Nigerian Police Force is understaffed and often considered corrupt and ineffective. However, in the claimant’s circumstances, he has been unable to discharge the presumption that state protection was available to him as the police, interviewed the claimant, wrote reports and investigated the allegations.

...

Counsel for the claimant submitted that state protection is not available to this claimant because the Nigerian Police Force is ineffective and corrupt. While that may be so in some circumstances, there is no evidence to support that the police and/or state is ineffective in all circumstances.

...

Nigeria is a democratic country...

The claimant has not persuaded that state protection was denied in his particular circumstances. In fact, he has demonstrated in his testimony the willingness of the police to get involved. The claimant did not provide the panel with any evidence that he had requested protection from the state and it had been denied.

Having considered all of the evidence, the panel finds that the claimant has not demonstrated a lack of state protection in Nigeria in his circumstances...

[20] The applicant's evidence indicated that he had contacted the police after the incidents he had suffered at the hands of those pursuing him. I would note that the police responded by taking reports and investigating the applicant's allegations. The Board acknowledged the applicant's criticism of the Nigerian police force, but found no evidence that he had requested protection from the state and been denied it. In my view, the Board's finding of state protection cannot be characterized as unreasonable, given the fact that the applicant had obtained a response from the Nigerian police force.

[21] The application for judicial review is therefore denied.

[22] Neither party wished to submit a serious question of general importance for my consideration for certification.

JUDGMENT

[23] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.:

<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p> <p>97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p> <p>97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Article 1 of the Convention
Against Torture; or

sens de l'article premier de la
Convention contre la torture;

(b) to a risk to their life or to a
risk of cruel and unusual
treatment or punishment if

b) soit à une menace à sa vie ou
au risque de traitements ou
peines cruels et inusités dans le
cas suivant:

(i) the person is unable or,
because of that risk, unwilling
to avail themselves of the
protection of that country,

(i) elle ne peut ou, de ce fait, ne
veut se réclamer de la
protection de ce pays,

(ii) the risk would be faced by
the person in every part of that
country and is not faced
generally by other individuals
in or from that country,

(ii) elle y est exposée en tout
lieu de ce pays alors que
d'autres personnes originaires
de ce pays ou qui s'y trouvent
ne le sont généralement pas,

(iii) the risk is not inherent or
incidental to lawful sanctions,
unless imposed in disregard of
accepted international
standards, and

(iii) la menace ou le risque ne
résulte pas de sanctions
légitimes — sauf celles
infligées au mépris des normes
internationales — et inhérents à
celles-ci ou occasionnés par
elles,

(iv) the risk is not caused by the
inability of that country to
provide adequate health or
medical care.

(iv) la menace ou le risque ne
résulte pas de l'incapacité du
pays de fournir des soins
médicaux ou de santé adéquats.

(2) A person in Canada who is a
member of a class of persons
prescribed by the regulations as
being in need of protection is
also a person in need of
protection.

(2) A également qualité de
personne à protéger la personne
qui se trouve au Canada et fait
partie d'une catégorie de
personnes auxquelles est
reconnu par règlement le besoin
de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4605-06

STYLE OF CAUSE: SAMUEL OLUWALANA
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 26, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: October 3, 2007

APPEARANCES:

Richard A. Odeleye

FOR THE APPLICANT

David Cranton

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Babalola, Odeleye
North York, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT