Date: 20081218

Docket: IMM-2902-08

Citation: 2008 FC 1398

Toronto, Ontario, December 18, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

JANE OKOJIE
SAMUEL OKOJIE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are an adult woman and her minor son. Both are citizens of Nigeria. The female Applicant also has an infant daughter born in Canada who is not a subject of these proceedings.

[2] The decision under review is that of a Pre-Removal Risk Assessment (PRRA) officer who, in a written decision dated March 25, 2008 rejected the Applicants' application on the basis that they would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Nigeria.

[3] The Applicants seek to have that decision quashed and the matter returned for a re-determination by a different officer. Their counsel raises two issues in this regard:

1. Did the PRRA Officer breach the rules of procedural fairness, natural justice and the Applicants' right to fundamental justice?
2. Was the PRRA Officer's assessment of the evidence characterized by patent unreasonableness?

[4] For the following reasons, I hold that the application is dismissed.

Issue 1: Procedural Fairness and Natural Justice

[5] Applicants' Counsel's main argument in the written material and in oral argument dealt with the issue of procedural fairness and natural justice. I agree with Applicants' Counsel that no question of standard of review arises in this regard. If there was a lack of procedural fairness that amounted to a denial of natural justice then the judicial review must be allowed and the matter returned for proper determination by someone else.

[6] In the present case the Applicants submit that there was an oral hearing conducted by a PRRA Officer at which the adult Applicant and her friend were questioned but that the Applicants' lawyer representative was ejected from the room at an early stage of the hearing leaving the Applicants without proper representation and in no fit state to continue to be questioned or conduct themselves at the hearing.

[7] In the regard the Applicants have provided an affidavit from the adult Applicant and the lawyer who was ejected, Henryson Nwakobi. The Respondent filed the Affidavit of the PRRA Officer Vaughn Spence. No affiant was cross-examined.

[8] The version of the events in question differs as between the affiants. Where there is a conflict, I prefer the evidence of Spence since it is based on notes he made shortly having the hearing while the others base their evidence on recollection several months later. I have also carefully reviewed the Tribunal Record. As a result the following facts emerge and are largely not contradicted by the Applicants except where noted.

1. The Applicants sought a Pre-Removal Risk Assessment (PRRA) based essentially on the allegation that the adult female Applicant says she is a lesbian and to return to Nigeria would place her at risk;

2. The PRRA application form signed by the adult Applicant names her Canadian representative as “Julius Ehikwe (Dr.)”

3. The PRRA Officer who was dealing with the application, Spence, conducted an oral hearing on March 18, 2008;

4. Present at the hearing in addition to the Officer were the adult female Applicant, her friend Ms. Richards, Julius Ehikwe (Dr.) and one other male person.

5. The Officer was led to believe that the one other male person was present as an observer and was a brother of Ehikwe. Here the evidence is in conflict, the female Applicant says that the other person was there as her "representative" but what she does not say is whether she advised the Officer that such was the case or not is not stated in her affidavit. The male person, later identified as Henryson Nwakobi, an Ontario Lawyer, in his affidavit also says that he was present as the Applicants' representative but does not say that he advised the Officer as to that matter. Spence, in his affidavit, states that if Nwakobi was present a representative nobody told him. Spence attests that if someone had said so, that he, Spence, would have made a note in his file to that effect. Applicants' Counsel in oral argument appears to accept the fact that Nwakobi was not introduced to the Officer as a representative of the Applicants' in that he argues that the Officer had a duty to inquire of Nwakobi when he turned up at the hearing, as to the capacity in which he was present. I simply do not accept this argument. A person turning up at a hearing of this kind, who is acting as a representative, has the duty to identify himself/herself as acting in such a capacity. Here I accept the evidence of Spence that the person was simply introduced as an observer who was permitted to sit in. Nwakobi, as a lawyer should bear the onus of positively identifying himself to the Officer if he was acting in the capacity as representative.

6. Shortly into the questioning of the adult female Applicant by the Officer the Applicant appeared to be hesitant in completing an answer. At this point the other

male person (now identified as Nwakobi) spoke up and interjected, completing the answer that he believed the Applicant was going to give. An exchange between the Officer and Nwakobi followed (who said what to whom and who was heated in giving remarks is in dispute but unimportant). As a result Nwakobi was ejected from the hearing room.

7. The adult female Applicant appeared to be upset by the incident and took a few minutes to compose herself.

8. The Applicants' were given an opportunity to seek an adjournment but declined. Julius Ehikwe remained during the completion of the examination of the adult female Applicant and of her friend Ms. Richards.

9. The negative PRRA decision was communicated by letter addressed to the Applicants and a carbon copy was sent to Julius Ehikwe.

10. No complaint as to the ejection of Nwakobi from the hearing was made until the filing of the Application for Leave to seek judicial review. The Applicants, accompanied by Ehikwe continued with the hearing. Ehikwe was on the record as representative before, during and after the hearing. Nwakobi was never on the record in any capacity.

[9] I am satisfied on the evidence that Ehikwe, not Nwakobi, was the representative of the Applicants and acted throughout, before, during and after the oral hearing as the Applicants' representative. Nwakobi, if he was acting in any capacity at all, was never so identified in any written material and neither he or anyone else made that point clearly to the Officer at the hearing. Nwakobi, as a lawyer, has a duty to the Officer to disclose his capacity, if indeed he had any. Nwakobi had a further duty as a lawyer, whether or not he represented anybody, to be respectful and to behave himself during the hearing. I appreciate that the evidence is in conflict in this regard therefore I do not, and I need not, take the point of respect and behaviour any further. The point is, as a lawyer, Nwakobi had a duty, if he acted as a representative for a person, to identify himself as such. He did not. He cannot now, nor can others, when it appears to suit the Applicants' convenience, identify himself as a representative of the Applicants.

[10] There was no lack of procedural fairness or denial of natural justice.

Issue #2: Officer's Assessment of the Evidence

[11] Each party was content, in respect of this issue, to rely on the written representation made in there Memorandum of Argument.

[12] Applicants' representations were brief and amounted to nothing more than a quarrel with certain findings made by the Officer. The function of the Court is not to reweigh factual findings made by the Officer in the absence of a material misunderstanding or oversight (e.g. per Layden-

Stevenson J. in *Augusto v. Canada (Solicitor General)*, 2005 FC 673 at para. 9). No such misunderstanding or oversight arises in the case. There is no basis for review in this respect.

Certification and Costs

[13] Counsel for the Applicants proposed questions for certification. Counsel for the Respondent did not, arguing that the matter raised here are fact specific and no question of general importance arises. I agree. No question will be certified.

[14] There are no special reasons to award costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed;

2. No question is certified;

3. No costs are ordered.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2902-08
STYLE OF CAUSE:	JANE OKOJIE and SAMUEL OKOJIE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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