Date: 20090414

Docket: IMM-3456-08

Citation: 2009 FC 372

Ottawa, Ontario, April 14, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PATRICIA EYAMARO
ONOME PATRIA EYAMARO
EFEMENA PAOLA EYAMARO
OVIE PATER EYAMARO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of a Board of the Refugee Protection Division of the Immigration Refugee Board (Board), dated July 8, 2008 (Decision) refusing the Applicants' application to be deemed Convention refugees or persons in need of protection under section 96 and section 97 of the Act.

BACKGROUND

[2] The Applicants are citizens of Nigeria. Patricia Eyamaro, the Principal Applicant, is a 46-year-old woman. She alleges that in April 2006, her family received a visit from her in-laws who insisted that her two puberty-aged daughters be circumcised (also referred to as female genital mutilation (FGM)) and that their son receive tribal marks. Two of the Principal Applicant's husband's nieces had been circumcised and had died as a result. The Principal Applicant and her husband refused his family's request.

[3] The Principal Applicant's in-laws returned in June 2006 and insisted that the circumcisions and tribal marks be performed. The Principal Applicant feared for her children and fled with them to Canada. They arrived in Canada by air in Toronto on August 26, 2008 and made their claim for refugee protection at the Etobicoke inland office on September 6, 2006. The Principal Applicant identified her husband's family members as the Applicants' agents of persecution. The Principal Applicant consented to act as a designated representative of the minor Applicants.

[4] After the Applicants fled Nigeria, a member of the Principal Applicant's in-laws, who was a policeman, issued threats to the Principal Applicant's husband. The husband's car was also set on fire when he went to see his ill mother.

DECISION UNDER REVIEW

[5] The Board found that the Applicants were not Convention refugees or persons in need of protection.

[6] The Board found that an internal flight alternative (IFA) existed for the Applicants in the areas of Abuja and even in parts of Lagos. The Principal Applicant did not lead evidence of any organized pursuit of the Applicants in other parts of Nigeria. The Applicants were not wanted by the police and had not committed any offences. The only issue the Applicants had in Nigeria was with the Principal Applicant's in-laws, who were located in the Delta region. The Principal Applicant mentioned that one of her husband's uncles is a policeman. However, he was not specifically referred to either in the affidavits of the husband or the sister as using his office to pursue the Applicants throughout Nigeria.

[7] When the Principal Applicant was asked why her children could not live safely in other parts of Nigeria, she said that her husband's family was influential and had representatives everywhere who move around and are aggressive. The Board found this to be speculative and found no evidence that the Principal Applicant's in-laws were alerted to look for or to apprehend the Applicants wherever they were located in Nigeria. The Applicants' counsel stated that, once the Principal Applicant enrolled her children in school anywhere in Nigeria, her husband's family would be able to trace them. The Board also found this to be speculative.

[8] The Board pointed out resources that the Applicants could access in Nigeria if they wanted to relocate and receive support through NGOs that support women who do not want to undergo FGM. The Board also stated that the documentary evidence supported internal relocation within Nigeria as being possible for women seeking to avoid FGM. The Board concluded that there were various resources available to assist the Applicants, particularly if they wished to avoid FGM in Nigeria. Specifically, they could reside safely in either Abuja or in many parts of Lagos.

[9] The Board concluded that it would not be unreasonable for the Applicants to live in any of the possible locations identified. The Principal Applicant had support. Her sister and husband swore affidavits that they were strongly in support of her and the children. The Board also noted that it could not ignore that the Principal Applicant is married to a supportive husband who enjoys a certain material comfort, evidenced by the Applicant's previous visits to Canada, France and other locations. The Principal Applicant presented no evidence to contradict the assumption that she and her husband would continue to raise their children together in Nigeria, and that he would continue to oppose any circumcision or tribal markings for his children.

[10] The Principal Applicant was manager of the family business, Mother's Dream Nigeria Ltd., from 2002-2006. She also has a three-year university education. The Board found that the Principal Applicant's education and work experience made her employable and able to raise her family in a viable fashion. As well, the minor Applicants would enjoy the protective custody of both of their parents. The Board was satisfied that the locations in Nigeria, particularly Abuja, were safe and

reasonable IFAs for the Applicants. The Board concluded that the Applicants had not established a lack of IFAs in Abuja or even in parts of Lagos.

ISSUES

[11] The Applicants submit the following issue on this application:

1. Did the Board commit error(s) of law and/or fact(s)?

STATUTORY PROVISIONS

[12] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
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,	**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 :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*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;
(*b*) not having a country of nationality, is outside the	*b*) soit, si elle n'a pas de nationalité et se trouve hors du

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

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

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 :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au 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 themself 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

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and	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.
Person in need of protection	**Personne à protéger**
(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.

STANDARD OF REVIEW

[13] In relation to the standard of review for an IFA, the Court in *Diaz v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1543 (F.C.) summarized the case law at paragraph 24 as follows:

> …*Ortiz* v. *Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1716, summarizes the features of IFA determinations in judicial review, "[Justice Richard] held at paragraph 26 that Board determinations with respect to an IFA deserve deference because the question falls squarely within the special expertise of the Board. The determination involves both an evaluation of the circumstances of the applicants, as related by them in their testimony, and an expert understanding of the country conditions" from *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 2018. In light of these issues, this Court has found the standard of review to be patent unreasonableness pre-*Dunsmuir* above. See for instance:

> *Nwokomah v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1889, *Chorny v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1263, *Nakhuda v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J No. 882. As Justice de Montigny stated in *Ako v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 836 at paragraph 20:
>
> > It is trite law that questions of fact falling within a tribunal's area of expertise are generally reviewed against a standard of patent unreasonableness. More particularly, this Court has consistently found that this is the proper standard to apply with respect to the existence of a viable internal flight alternative [...]
>
> Thus, it was well-settled that this Court should not disturb the Board's finding of a viable IFA unless that finding was patently unreasonable. The standard of review, therefore, is reasonableness as a result of *Dunsmuir* above.

[14] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[15] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may

adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[16] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the IFA issues to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[17] The Applicants also raise errors related to the Board's failure to take into account material evidence. This issue is reviewable on a standard of correctness. See *Uluk v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 149 at paragraph 16.

ARGUMENT

The Applicants

[18] The Applicants submit that the Board committed serious errors of law and fact, including misinterpretation and misapplication of the law.

Panel Failed to Consider and/or Ignored Conflicting Evidence

[19] The Applicants submit that the Decision is fatally flawed because the Board was required to, but did not, consider conflicting evidence on the record. This has previously been held to be an error: *Balasingham v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1387 (F.C.T.D.) and *Esparza-Alvarez v. Canada (Minister of Citizenship and Immigration)* 2007 FC 638.

[20] The Applicants disagree that they have an IFA in parts of Lagos or in Abuja just because these are large urban areas. They say that the documentary evidence before the Board suggests that, in large urban centers, some Nigerians experience a lack of acceptance by others and a lack of accommodation. The evidence also suggests that it is not very difficult to find a woman in Nigeria who may be refusing FGM because she may not "easily be harboured by [her] relatives or members of their community in another part of the country. Leaving [her] family signifies social and economic exclusion for the large majority of Nigerians and in particular women."

[21] The Applicants state that the Board ignored the documentary evidence which conflicts with its findings and did not provide analysis on the challenges that the Applicants would face in the proposed IFA.

Evidence Requirements

[22] The Applicants submit that the Board justified its IFA finding by stating that the Applicants did not present evidence that there was any organized pursuit of the Applicants in other parts of Nigeria, and that there was no evidence that the "extended family member [had] been alerted to look for and apprehend the claimants wherever they go in Nigeria." The Applicants say this rationale is unreasonable and imposes a higher and impossible burden of proof on the Applicants.

[23] The Applicants also say that the Board's conclusion that there was no evidence of an "organized pursuit" is in conflict with the evidence for the following reasons:

1) The Principal Applicant's husband was a target of an attack and his car was set on fire and destroyed in his village by the agents of persecution;
2) The agents of persecution visited the Principal Applicant's sister 3 times in Lagos in a bid to find the Applicants;
3) The agents of persecution repeatedly visited the Applicant's house in Lagos before they managed to flee from Nigeria.

[24] The Applicants also submit that the Board required the Applicants to provide evidence dealing with the *modus operandi* of the persecutors, which was not available to them. The burden on the Applicants was unreasonable and impossible.

Reliance on Resources

[25] The Applicants further submit that the Board outlined several resources that the Applicants could access in Nigeria if they wished to relocate and receive support through an NGO. The Applicants take issue with this since the resources identified do not deal with the persecution that could be faced by the male minor applicant. The Applicants also take issue with the fact that the Board identified NGOs in Enugu, which was not among the IFA locations cited and recommended.

[26] As well, the Board identifies a possibility of taking up residence in Lagos. The Applicants submit that, in order to find an IFA, there must be more then a possibility of taking up residence. The Board was required to find a location that was reasonably safe and available to the Applicants. The Applicants also say that the Board ignored documentary evidence that state protection is ineffective and unavailable to similarly situated people.

Reasonableness of Proposed IFA

[27] The Applicants point out that the Board reasoned that the Principal Applicant's husband would be available to assist them. However, the evidence on the record showed that the husband was fleeing from persecution and was in hiding. This evidence was also in his affidavit. The Board committed a serious error by ignoring this evidence.

[28] As well, the Board reasoned that the Principal Applicant's sister was available to assist the Applicants. However, there was evidence on the record that the Principal Applicant's sister was fearful of the Applicants' pursuers and had expressed a desire to relocate in order to avoid visits from the Principal Applicant's in-laws. The Applicants submit that a serious error of law was committed by ignoring this critical evidence. The Applicants conclude by stating that the Board's Decision and its reasons should be quashed.

The Respondent

No Serious Possibility of Persecution

[29] The Respondent submits that the Board was satisfied on the evidence that the Applicants did not face a serious possibility of harm or persecution at the hands of the Principal Applicant's in-laws. The Board did not believe that the in-laws would make a concerted effort to find the Applicants if they were to relocate, nor was there evidence to suggest an organized pursuit was in effect. This was not in conflict with the evidence, which only showed that the husband's extended family had made periodic visits to the Principal Applicant and her sister and had set fire to the Principal Applicant's husband's car when he visited his ill mother in the state where the husband's extended family resided.

[30] The Respondent says that there are organizations in Nigeria that could assist the Applicants to safely relocate. In considering the availability of state protection it is not an error to consider state agencies other than the police, including NGOs which receive state funding: *Pal v. Canada*

(Minister of Citizenship and Immigration), [2003] F.C.J. No. 894 (F.C.T.D.); *Nagy v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 370 (F.C.T.D.); *Zsuzsanna v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1642 (F.C.T.D.) and *Szucs v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1614 (F.C.T.D.).

[31] The Respondent says that the Board properly considered the documentary evidence and acknowledged that it might be difficult for a woman residing in the southern part of Nigeria who wished to avoid FGM to take up residence in the northern part of Nigeria. However, the Board noted that all Nigerians have the possibility of taking up residence in Lagos due to the ethnic diversity and size of the city.

[32] The Respondent submits that the documents relied on by the Applicants were part of the totality of the evidence which the Board considered and was entitled to weigh and assess. The excerpts from the documentation provided by the Applicants do not contradict the Board's findings or its conclusion.

[33] The Respondent submits that the Principal Applicant's situation is distinguishable from the circumstances described in the excerpts cited. The Principal Applicant has the support of her family, including her sister and her husband, and her allegations of persecution are only against the husband's family members. This is not a situation where the Principal Applicant must reside in the same location as her husband's family or where the Principal Applicant's own family want her daughters to be circumcised or her son to receive tribal marks.

[34] The Respondent reiterates that there was no evidence before the Board to suggest that the husband's family was looking for the Applicants no matter where they go in Nigeria, or that they were even seeking the Applicants. The Board was not persuaded on a balance of probabilities that the husband's family would successfully find the Applicants in a location such as Abuja or parts of Lagos.

[35] The Board is not required to refer to each and every piece of evidence submitted to it in detail in its reasons. The Board is presumed to have weighed and considered all of the evidence presented to it unless the contrary is shown: *Maximenko v. Canada (Solicitor General)*, [2004] F.C.J. No. 606 (F.C.) at paragraph 18; *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) at paragraph 1; *Hassan v. Canada (Minister of Employment and Immigration)*, (1992), 147 N.R. 317 (F.C.A.) at p. 318 and *Ortiz v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 1163.

[36] The Respondent notes that the Women's Aid Collective discussed by the Applicant does not operate solely in Enugu. It is also present in other areas of Nigeria, including Abuja. No error was made on the part of the Board in this regard.

[37] The Respondent submits that there is nothing in the documentary evidence to suggest that an NGO assisting the female Applicants would not also assist the male minor applicant. The Respondent reasons that the Principal Applicant's son could also receive assistance from NGOs. Therefore, an IFA in Abuja or parts of Lagos was viable for the Applicants.

Reasonableness of IFA

[38] The Respondent submits that it was reasonable for the Board to conclude that the Principal Applicant would be employable in the large urban centers of Abuja and Lagos. There was also no evidence to contradict the assumption that the Principal Applicant and her husband would raise their children together and that the Principal Applicant's sister would strongly support the Principal Applicant and her children. It was reasonable for the Principal Applicant and her children to relocate to Abuja and parts of Lagos.

ANALYSIS

[39] The Applicant says that the Board ignored evidence in the *United Kingdom (UK) 25 May 2007, Home Office, Border and Immigration Agency Country of Origin Information Report: Nigeria* report that contradicts the Board's finding that it is objectively reasonable for the Applicants to seek an IFA in Abuja or some parts of Lagos.

[40] The documentation in question says that "It is possible for Nigerians to relocate to another part of Nigeria to avoid persecution from non-state agents" and "internal relocation to escape any ill treatment from non-state agents was almost always an option," but that some individuals may face difficulties with regard to lack of acceptance, and community networks can become a source of persecution if someone has run afoul of her community." Of particular importance is the information that "[i]nformed communication networks function very well in Nigeria, and it is not

too difficult to find a person one is looking for. This is true also for so-called big cities whose neighborhoods are structured along village and community lines."

[41] The same report also points out that women fleeing FGM might not easily be harboured by their relatives, and even though there are NGOs who might take a woman in for a while, they will not support her forever, and then the only option is prostitution.

[42] When the Decision is read as a whole it seems clear that the Board expected the Applicants to relocate to Abuja or some area of Lagos where they would be supported by the Principal Applicant's husband and sister and where the Principal Applicant could find work using her business experience and university education.

[43] Although the Board mentions NGOs the Applicants might access to help them relocate, it seems clear that the Board was not suggesting that the Applicant would have to live with an NGO. The expectation is that she will be supported by a husband who has resources, so that it is hardly likely she will have to go into prostitution.

[44] In relation to the community network issue, although persons who relocate "usually seek to find shelter with a relative or a member of his or her community of origin," I do not see any evidence that this must always be the case, particularly for people as well educated and experienced as this family appears to be.

[45] So I cannot say that the evidence referred to by the Applicants necessarily contradicts the Board's findings on relocation. The same evidence states clearly that the "viability of an internal relocation alternative therefore depends on whether anybody would be interested to follow someone to e.g. Lagos."

[46] In this regard the Board found that there was "no evidence of any organized pursuit of the claimants in other parts of Nigeria." The Applicants disagree with this finding but, on the evidence as cited by the Board, I cannot say it was unreasonable. It is always possible to disagree but I think the finding falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law before the Board.

[47] Taking these findings together, I do not think that the evidence referred to by the Applicants does contradict the Board's findings. As the Board pointed out, no evidence was adduced that "the PC's husband's extended family members have been alerted to look for and apprehend the claimants wherever they go in Nigeria."

[48] I also think that the Applicants are misreading the Board's reference to WACOL's Enugu office. The Board's point is that there are obviously NGOs in Nigeria that would lend support to women who need to relocate and, if necessary, the Applicants can seek this support. The fact that organizations such as WACOL support women to relocate does not mean that the Board left the Principal Applicant's son out of account. The Board obviously anticipates that the Applicants will not live at WACOL or any other NGO, but will relocate to Abuja or some other part of Lagos where

they will be supported by the husband "who enjoys a certain material comfort evidenced by the claimants' previous recent visit to Canada, France and other locations," and that the "PC presented no evidence to contradict the assumption that she and her husband would continue to raise their children together in Nigeria … ."

[49] So, once again, I think the Applicants are misreading the Decision. The son will obviously accompany his parents and his sisters and will benefit from whatever support they can access from NGOs who will help them to relocate to Abuja or some other part of Lagos where they will continue to live together as a family. When the Decision is read as a whole I do not think that, on the evidence before the Board, such a conclusion could be called unreasonable within the meaning of *Dunsmuir*.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application dismissed.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3456-08
STYLE OF CAUSE:	**Patricia Eyamaro, Onome Patria Eyamaro, Efemena Paola Eyamaro, and Ovie Pater Eyamaro v. The Minister of Citizenship and Immigration**
PLACE OF HEARING:	Toronto, Ontario
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