Federal Court  Cour fédérale

Date: 20091110

Docket: IMM-1112-09

Citation: 2009 FC 1151

Montréal, Quebec, November 10, 2009

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

JONES ERNEST AM NWAEZE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Jones Ernest Am Nwaeze (the "Applicant") pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("*IRPA*"), for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Tribunal") dated February 23, 2009, denying the Applicant's claim for refugee protection pursuant to ss. 96 and 97 of the *IRPA*.

BACKGROUND FACTS

[2] The Applicant is a citizen of Nigeria. On September 13, 2001, he obtained permanent residency in Hungary, following his marriage to a Hungarian citizen a year earlier.

[3] However, the Applicant was convicted for fraud and, following a prison term, in December 2004, he was ordered deported from Hungary and became inadmissible to that country.

[4] The Applicant returned to Nigeria. He then went to Italy and Austria for brief stays, and finally came to Canada on May 12, 2006. He claimed asylum on that date.

[5] On May 17, 2006, the Applicant was pardoned by the President of Hungary. As a result, he became admissible to Hungary again. However, he did not return to that country and pursued his asylum claim in Canada.

[6] The Applicant alleged that while he lived in Hungary he was at all times the victim of persistent discrimination. He claimed that he was refused entry or ostracized wherever he went: in restaurants, in public pools, buses, taxis, and subways. He and his wife had difficulty finding an apartment, although they did find one with a more open-minded landlord. The Applicant also alleged that he was unable to find a job, and had to open his own business because of this. He also claimed that he was not accepted by his in-laws, and was harassed by police. Finally, he stated that he was insulted, because of his race, at a soccer game which he attended.

DECISION UNDER REVIEW

[7] The Tribunal denied the Applicant's asylum claim, finding that his alleged fear of persecution in Hungary was not reasonable.

[8] The Tribunal noted that "persecution" means mistreatment more serious than mere harassment or discrimination, although repeated incidents of harassment or discrimination can, by accumulation, amount to persecution.

[9] The Tribunal concluded that "none of the incidents alleged by the claimant can constitute persecution if taken individually; and even when considering the cumulative effects of the various discrimination measures suffered, the Tribunal concludes that it does not establish a reasonable fear of persecution." More specifically, the day-to-day manifestations of discrimination (*e.g.* in bars and restaurants) "did not rise to the level of depriving the [Applicant] of any fundamental right"; that he "is not credible about his alleged impossibility to find a job in Hungary"; that he was able to open a business without any difficulty, and was helped by his wife's family; and that he got married and obtained permanent residence in Hungary without problems.

[10] The Tribunal accepted the Applicant's claims about the difficulties he had finding an apartment, but noted that the Applicant was able to find one after all. The Tribunal also accepted the Applicant's claims about the insults his children were subjected to, but found that while such incidents were deplorable, the children were not denied their right to education. As for controls by

police, the Tribunal considered that the Applicant failed to prove that these were due to his race, and were not also directed at other marginalized groups, or "a general attitude of police" that is "a residue of the communist era".

[11] In response to the Applicant's claims of having been the victim of discrimination in the course of his criminal proceedings, the Tribunal noted that the Applicant had been released pending an appeal, and then released for good behaviour after completing part of his sentence. In any case, such discrimination "is clearly not a prospective risk, because there is no evidence to suggest that the [Applicant] will be accused, condemned and jailed again if returned to Hungary."

[12] Finally, the Tribunal found that the evidence before it was not sufficient to conclude that extremist groups existing in Hungary, including the neo-Nazi "National Guard," "would pose a risk to the claimant's life or a risk of cruel and unusual treatment or punishment," because such groups mostly engage in acts of intimidation, not violence.

[13] The Tribunal concluded that the "treatment suffered by the [Applicant] is deplorable; it is disgraceful that such experiences of racism still occur;" but deplorable though they are, they do not amount to persecution.

ISSUES

1) Did the Tribunal err in law by taking the wrong approach to the issue of persecution?
2) Did the Tribunal fail to consider all relevant evidence?

ANALYSIS

1) *Did the Tribunal err in law by taking the wrong approach to the issue of persecution?*

[14] The Applicant argues that the Tribunal wrongly concluded that only a complete denial or deprivation of a fundamental right could constitute persecution. According to the Applicant, the Tribunal thus failed to consider the possibility that an accumulation of acts of harassment and discrimination none of which, taken in isolation, amounts to a complete denial of a right can also constitute persecution. I disagree.

[15] As I stated in *Liang v. Canada (Citizenship and Immigration)*, 2008 FC 450, at para. 19, that "the determination of what constitutes persecution involves an analysis of many factors, including persistence, seriousness, and the quality of the alleged incidents." In its reasons, the tribunal points to nine different defects in the Applicant's evidence.

[16] For instance, the Tribunal notes his lack of credibility about his alleged impossibility to find a job in Hungary. The Applicant's wife contradicted his testimony about the job interviews which

he underwent; he then changed his story. He also changed his testimony about the work permits required for a foreigner in Hungary. The Tribunal found that the applicant was “adjusting his testimony when faced with contradictions [and] has not credibly established that he suffered discrimination related to employment”.

[17] As submitted by the Minister, the “persistence, seriousness and quality” of the discrimination suffered by the Applicant were “quite relative.” Thus the Tribunal was entitled to find that the various incidents of discrimination did not amount to persecution.

[18] Contrary to the Applicant’s assertion, the Tribunal did not “require” a complete “deprivation” or “denial” of the Applicant’s rights, but rather found that they were not “seriously” restricted.

[19] The Tribunal was well aware of the correct test when it cited the Federal Court of Appeal’s decision in *Madelat v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 49 (QL), for the proposition that “the cumulative effect of repeated experiences of harassment and discrimination can amount to persecution.”

[20] However, the Tribunal denied the Applicant’s claim because it found that the discrimination which he suffered was not as serious and constant to amount to persecution. The Tribunal did not misdirect itself in law. The Applicant’s real quarrel seems to be with its factual conclusions, but these cannot be said to be unreasonable.

2) ***Did the Tribunal fail to consider all relevant evidence?***

[21] First, the Applicant claims that the Tribunal improperly failed to take into account evidence of his harassment by the police. The Tribunal doubted whether police harassment was directed only at racial minorities and not at other minority or unpopular groups.

[22] Second, the Applicant contends that the Tribunal failed to consider under s. 96 of the *IRPA* the risk that he would be attacked by members of the "National Guard," which he submits is "clearly racist and targets visible minorities such as [him]."

[23] Third, the Applicant claims to have submitted "evidence to show that his trial … was marred by racism" and that he was mistreated in prison because of his race. The Applicant argues that the Tribunal was wrong to dismiss this risk as non-prospective, because, being targeted by the police, he would be more likely than others to come into contact with the criminal justice system.

[24] According to the Applicant, failure to take these risk factors into account is an error of law and justifies this Court's intervention.

[25] The tribunal found that on the basis of the evidence before it, it "cannot appreciate if [harassment] is a general attitude of police, or if it is discrimination based on the [Applicant's]

race." [My emphasis.] The Applicant does not point to any evidence in the record which would have warranted a contrary finding. The link to a Convention ground is thus not made out.

[26] Regarding the threat posed by the National Guard (and other extremists), I am not satisfied that the Tribunal simply ignored this evidence, because it addressed it at later stage of its reasons. The Tribunal was obviously aware of that evidence, and estimated that extremists posed a risk, but a limited one, to the Applicant. Therefore, although it could have addressed this issue more clearly, I agree with the Minister's submission that the Tribunal did not commit a material error that would warrant this Court's intervention.

[27] As for the alleged risk that the Applicant will again be discriminated against by the Hungarian criminal justice system, it is doubly unproven. The Tribunal found that there was not enough evidence to conclude that the Hungarian police were motivated by racism; and it found that there was no evidence of racism in the judicial system. As the Minister points out, the Applicant's argument is mere conjecture.

[28] For these reasons, the application for judicial review of the decision will be dismissed.

JUDGMENT

THIS COURT ORDERS that the judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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