Federal Court  Cour fédérale

Date: 20100517

Docket: IMM-3462-09

Citation: 2010 FC 540

Ottawa, Ontario, May 17, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ROSELINE AANU IJIOLA AWOLOPE
JOSEPH IYANUOLU IJIOLA AWOLOPE
BLESSING IJIOLA AWOLOPE
GRACE MARIA IJIOLA AWOLOPE

Applicants

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of a Pre-Removal Risk Assessment Officer (Officer), dated May 26, 2009 (Decision), which refused the Applicants' request to have their application for permanent resident status processed from within Canada based on Humanitarian and Compassionate (H&C) grounds pursuant to section 25 of the Act.

BACKGROUND

[2] The Principal Applicant and three of her children are citizens of Nigeria. The Principal Applicant fled Nigeria with her two daughters and one son, staying in the United States for approximately three months. The Applicants then came to Canada in March, 2005 and made a claim for refugee protection.

[3] Since her arrival in Canada, the Principal Applicant has given birth to her fourth child, another son. He is not under a removal order from Canada. As such, he is not included in this application.

[4] The Applicants claimed refugee status upon their arrival in Canada. The Principal Applicant alleged that her two daughters would be victims of Female Genital Mutilation (FGM) as well as Facial Tribal Markings (FTM) upon returning to Nigeria. The Principal Applicant's sons would also be victims of FTM upon their return to Nigeria. The Principal Applicant further alleged that her life is in danger upon return to Nigeria because her ex-husband's family has threatened to kill her for refusing to have the FGM and FTM rituals performed on the children at birth.

[5] The Applicants filed a Pre-Removal Risk Assessment (PRRA) application which was denied. However, judicial review of this decision was allowed. A further negative PRRA decision

was rendered to the Applicants on May 25, 2009, which is currently being reviewed by the Federal Court.

[6] The Applicants have been issued two stays of removal orders, one in November, 2006 and in the other in July, 2009.

[7] The Applicants sought an exemption from statutory requirements so that they may apply for permanent resident status from within Canada on humanitarian and compassionate grounds.

DECISION UNDER REVIEW

[8] The Officer considered the presence of the Principal Applicant's step-brother in Canada, but noted that "there is little evidence to support that they have a relationship, dependency or involvement such that severing it would be a hardship." Furthermore, although the Principal Applicant's step-brother had offered to help the Applicants financially in Canada, the Officer determined that neither he nor the Applicants had "indicated that his financial support would not be possible if [the Applicants] returned to Nigeria."

[9] The Officer noted a letter written on the Principal Applicant's behalf from the Reverend of the Applicants' church in Toronto. Although the Officer acknowledged that the Principal Applicant volunteered at the church, the Officer found that the Reverend had not indicated that the Principal Applicant had developed any relationships with members of the church that would cause hardship if severed.

[10] The Officer then considered the risks submitted by the Applicant and whether they might constitute unusual and undeserved or disproportionate hardship.

[11] The credibility of the Applicants had been a determinative factor in the RPD decision. The RPD noted that no adverse action had occurred between the birth of the second daughter and the time the Applicants fled Nigeria. This meant that the family had not forced the children to undergo FGM when they were still in Nigeria; so why would they force them to do so upon their return? It found that this inaction on the part of the Principal Applicant's in-laws was "indicative of lack of real desire on their part to harm the [Applicants] and therefore a lack of objective basis for the subjective fear of the [Applicants.]" The RPD also found the Principal Applicant's testimony with regard to her trip to the United States before arrival to Canada to be "vague and lacking in details."

[12] The Officer then examined country conditions in Nigeria, and noted that the Nigerian Demographic and Health Survey had reported a decline in the number of women subjected to FGM in recent years. Moreover, she noted that the federal government had publicly opposed FGM and that the procedure was banned in several states. The Ministry of Health and other groups in Nigeria have implemented projects focussing on the health hazards of FGM, and have worked to eradicate the practice, but there have been financial and logistical obstacles in eradicating the practice.

[13] The Officer then considered the United Kingdom Home Office Country of Origin Information Report: Nigeria, (December 2008), which found that "in theory it is not difficult for a

woman to relocate within Nigeria and in this way find physical safety." The Officer also noted that a bill on FGM had been created in Nigeria, but that further steps had to be taken before the president could sign this bill into law.

[14] The Officer acknowledged the Applicants' evidence which held that FGM was more prevalent within the Yoruba ethnic group. This same Home Office report also stated that Yoruba girls are circumcised during early infancy.

[15] While the Officer considered a letter written by the Principal Applicant's step-brother, she determined that he had not indicated having first-hand information with regard to the Principal Applicant's life of isolation in Nigeria after the birth of the children. Furthermore, the Officer found that the letter was written by a person who is not disinterested in the outcome of this application. The Principal Applicant's step-brother also stated that her father had received threats from her husband's family who had vowed to kill her for her failure to comply with the tribal rituals. However, the Officer found that the author of the letter had not indicated how he became aware of the threats, how or when they were delivered, or whether he witnessed them.

[16] The Officer also considered an e-mail submitted by the Applicants in which the author states that the Principal Applicant's father-in-law "continues to blame [her] for various misfortunes and illnesses suffered by your ex-husband and the death of his uncle Dejo." Furthermore, the father-in-law's family had suffered beatings due to his brother's (the Applicant's ex-husband's uncle) change of political parties. However, the Officer found this e-mail to be "vague and lacking in details." The

Officer noted that the e-mail did not include any information regarding the beatings suffered by the family, and that the author did not indicate any first hand knowledge of any threats from the Principal Applicant's father-in-law.

[17] The Applicants' evidence also included a letter from the Principal Applicant's ex-husband which said that his family blames her, and her unwillingness to have her children circumcised or marked, for the death of his uncle and his own illness. The letter also states that if he divorces her and disowns the children, "this will eventually eradicate the death of people in my family completely." The Officer found that this letter did not indicate that the Principal Applicant's ex-husband expects or needs to have the children circumcised. The Officer further noted that the reason for divorce on the proffered divorce order was verbal abuse on the part of the Principal Applicant, and not that she had refused to have the children circumcised or scarred.

[18] Further submissions by the Applicants included a letter from the Principal Applicant's family physician which said that the Principal Applicant has experienced sleeplessness, anxiety and "maternal anguish for her children." The Officer found this letter to be of low probative value, since the doctor did not indicate whether the Applicants' return to Nigeria would be a hardship.

[19] The Officer applied similar considerations to the psychologist's letter submitted by the Applicants which discussed the depression suffered by the Principal Applicant. The Officer found that the psychologist "relied on the [Principal Applicant's] observations to reach her diagnosis." Furthermore, the Officer noted that "the psychologist's report does not indicate what type of

treatment the applicant requires in order to recover from her depressions – aside from remaining in Canada."

[20] The Officer also assigned low probative value to the letter written by the Reverend of the Applicant's church in Ontario because "while he has written about Nigeria's belief in oracles, markings and circumcisions…he has not indicated that he has first hand knowledge of either country conditions in Nigeria or the circumstances of the applicants in Nigeria." Moreover, the Reverend had failed to indicate whether he based his beliefs on information other than that provided by the Principal Applicant herself. The Officer found his statements regarding the children to be speculative, vague and lacking in details.

[21] The Officer also considered the letter from the Principal Applicant's church in Nigeria which said that the Principal Applicant had told the church elders that she had problems with "certain members of her husband's family." The Principal Applicant then asked the church for money to help her travel to the U.S., and phoned the church upon her arrival. The Officer noted that "the author has not indicated that he or any of the other church members have first hand information regarding the [Principal Applicant's] circumstances in Nigeria other than her statements." Moreover, the Officer noted that "he has not indicated that he is aware of any continuing threats being addressed to the [Principal Applicant] of her family."

[22] While the evidence before the Officer supported the Applicants' allegation of FGM and FTM in Nigeria, the Officer was not satisfied that there was sufficient evidence to support that the

Applicants are similarly situated persons. The evidence showed that Yoruba girls were circumcised as infants. As such, the Officer found "the evidence is insufficient to support that the [Principal Applicant's] daughters face this ritual having passed infancy." Furthermore, there was insufficient evidence before the Officer that the Principal Applicant continued to be of interest to her ex-husband's family or that they wished to cause her harm.

[23] The Officer held that "considering the totality of the evidence before me I find that while there may be difficulties returning to Nigeria, they do not rise to a level of hardship that is unusual and undeserved or disproportionate.

[24] The Officer noted that Nigeria is a signatory to the *International Convention of the Rights of the Child*, 28 May 1990, 1577 UNTS 3, as well as African-based human rights legislation. Moreover, submissions to the Officer did not indicate that the children would be unable to obtain an education in Nigeria or to have their basic needs met. All in all, the Officer was not satisfied that "the best interests of the children are such that they warrant an exemption in that leaving Canada would not be an unusual and undeserved or disproportionate hardship."

[25] In considering the Principal Applicant's ties to the country, the Officer determined that her employment and volunteer efforts in Canada were "insufficient in and of themselves to indicate that the applicants have integrated into Canadian society such that leaving would be a hardship that is unusual and undeserved or disproportionate."

[26] In summary, the Officer determined that she was not satisfied with the evidence before her that sufficient humanitarian and compassionate grounds existed to approve the Applicants' exemption request.

ISSUES

[27] The issues on this application can be summarized as follows:

1. Did the Officer err by ignoring pertinent evidence, including the reasons and factual findings made by the Federal Court?
2. Did the Officer err in failing to properly consider the best interest of the children?
3. Did the Officer apply the wrong legal test in determining the section 25 application?

STATUTORY PROVISIONS

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

Humanitarian and compassionate considerations	Séjour pour motif d'ordre humanitaire
25. (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant	**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout

the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

STANDARD OF REVIEW

[29] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a 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.

[30] In *Dunsmuir*, the Supreme Court ruled that questions of law may be reviewable on a reasonableness standard, if they are not "legal questions of central importance to the legal system as a whole and outside a decision-maker's specialized area of expertise." See *Dunsmuir* at paragraphs 55 and 60. Jurisprudence of this Court, however, has determined that an Officer's application of the correct test in assessing risk in a humanitarian and compassionate application is reviewable on a standard of correctness. See *Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481, [2008] F.C.J. No. 601. As stated by Justice Dawson in *Zambrano*,

> Having regard to the absence of a privative clause, the relative lack of expertise on the part of an officer to appreciate whether he or she has applied the wrong test at law, and the importance of ensuring that officers apply the test that Parliament has prescribed, I conclude that the question of whether the officer applied the correct test is reviewable on the correctness standard.

As such, correctness is the appropriate standard in considering whether the Officer applied the correct legal test and legal threshold in assessing risk in the H&C application.

[31] Other issues brought before the Court by the Applicants require a more deferential standard of review. For instance, the standard of review applicable to H&C applications which are concerned with the best interests of the child is reasonableness. See *Qazi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 288, [2007] F.C.J. No. 412. As such, reasonableness is the appropriate standard by which to review whether the officer properly considered the best interest of the children.

[32] Reasonableness is also the appropriate standard upon which to review whether the Officer erred in her treatment of the evidence. The weight an officer chooses to assign to evidence is a discretionary decision which deserves deference. See *Aguebor v. Canada (Minister of Employment and Immigration)*, 160 N.R. 315, [1993] F.C.J. No. 732, and *Dunsmuir* at paragraphs 51 and 53.

[33] 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."

ARGUMENTS

The Applicants

Previous Decisions

[34] The Applicants submit that the Officer erred in failing to consider the findings of fact made by Justice O'Keefe upon granting a stay of deportation to the Applicants. Justice O'Keefe noted that "the applicant's children would also be subject to having ritual markings placed upon their faces." Further, Justice O'Keefe noted that "there is evidence that the two female children would most likely undergo FGM when they are returned to Nigeria via the United States."

[35] While the Officer is not bound by the previous decisions of the Federal Court, the Applicants submit that the Officer erred in failing to consider the country condition findings made by the Court in these instances. The Officer either ignored these factual findings, or failed to explain why she rejected them.

[36] In the previous judicial review undertaken by the Applicants, Justice Mandamin found that the officer in that instance had erred in "making no reference to the Ondo state where the Applicant

is from," since a report cited showed that "the prevalence of Female Genital Mutilation at 90-98% in Ondo state."

[37] In the case at hand, the Officer should have taken into account the factual country condition findings made by the Court, since these findings have a direct bearing on the Officer's determination.

[38] The Officer erred further in neglecting to consider the situation in Ondo state with regard to the best interest of the children. Instead, the Officer simply determined that the practice of FGM was in decline.

[39] The Applicants also submit that the "Officer implied and speculated that a viable Internal Flight Alternative may exist for the Applicants" [IFA]. A similar speculation of an IFA was found by Justice Mandamin in the Applicants' previous judicial review. Similarly, in the case at hand, without giving any reasons and without any degree of certainty, the Officer implied that an IFA existed for the Applicants.

[40] The Applicants submit that the potential harm they face has not changed since the factual findings were made by Justices O'Keefe and Mandamin. Rather, the Applicants contend that the potential for harm has increased, due to the birth of a Canadian son who "would also receive these tribal facial markings if the Applicants are sent back to Nigeria."

Evidence

[41] The Officer further erred by finding that there was insufficient evidence to support that the Principal Applicant risked harm from her ex-husband's family. The Applicants submit that, in coming to her conclusion, the Officer "ignored weighty evidence, selectively picked evidence to suit the Officer's conclusions and…made factual conclusions which were diametrically opposed to the actual evidence."

Letter from Brother-in-law & Letter from ex-Husband

[42] Evidence to support the danger faced by the Principal Applicant was given by her brother-in-law. He swore that "her in-laws have vowed that whenever she turns up they would make her pay the price with her own life for the calamity she brought to their family because of her refusal to conform to their traditions and social mores." Further evidence was given by the Principal Applicant's ex-husband, who warned her to "watch out for my family for they will surely retaliate on you any time you are around in the country." The Applicants submit that these pieces of evidence, in combination, constitute sufficient evidence of risk.

[43] The Officer also erred by selectively relying on certain portions of evidence. For example, the Officer discounted the weight of the letter from the Principal Applicant's ex-husband because it did not support the claim of risk made by the Principal Applicant. However, the Officer ignored a

paragraph of the same letter which, according to the Applicants, confirms that the Principal Applicant "is in mortal danger from his side of the family" if she ever returns to Nigeria.

Step-Brother's Affidavit

[44] Low probative value was placed on the affidavit sworn by the Principal Applicant's step-brother. The Applicants submit that the Officer erred in this regard, since the affidavit "clearly sets out that the step-brother lives in Nigeria and that he was making the sworn declaration based on his personal knowledge." The Officer also erred by requiring "unreasonably specific and arbitrary content to be within the affidavit." Furthermore, the Officer failed to consider the cultural difference and conditions in Nigeria where the affidavit was sworn.

Letter from Pastor

[45] The Applicants further argue that the Officer unreasonably discounted other pieces of evidence as well, including the letter from the Applicants' Nigerian Pastor. The Officer found that there was no indication that the Pastor had either first-hand knowledge of the country conditions in Nigeria or the circumstances of the Applicants; however, the Pastor himself is from Nigeria and is very familiar with the FGM and FTM customs. Moreover, he is also very familiar with the Applicants' circumstances.

Best Interests of the Children

[46] The Applicants also contend that the Officer failed to properly consider the best interest of the children or whether there would be a physical risk of tribal mutilation to the Canadian-born child and a "physical risk of female mutilation and tribal markings to the non-Canadian children." The Applicants contend that the failure of the Officer to consider this potential mutilation "shockingly breached the children's most basic Charter rights of physical safety and integrity."

[47] The Officer failed to properly consider the risk faced by the children upon their return to Nigeria. Furthermore, the Officer was not "alert, alive and sensitive" to the best interests of the children. See *Munar v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1180, [2005] F.C.J. No. 1448 and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. 4th 193.

[48] A legally binding international human rights instrument to which Canada is signatory is determinative of how the Act must be interpreted and applied. See *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436, [2005] F.C.J. No. 2119. As such, in failing to properly consider the best interests of the children, the Officer violated section 3(3)(*f*) of the Act, and articles 3 and 9 of the Convention of the Rights of the Child.

[49] The Officer further failed to consider the harm that may befall the Principal Applicant upon her return, since "the adult female Applicant would be likely killed in Nigeria."

Incorrect Legal Test

[50] Finally, the Applicants submit that the Officer applied the wrong legal test and legal threshold for a humanitarian and compassionate risk and hardship determination.

[51] Although the Officer used the word “hardship” within her reasons, the Officer failed to properly consider hardship, and instead focussed only on the PRRA risk factors.

The Respondent

[52] The Respondent submits that the Officer articulated and applied the correct legal test in the case at hand and came to a reasonable conclusion on the basis of the evidence.

[53] It is the Applicants’ onus to adduce evidence of their claim in an H&C application. As such, if the Applicants do not provide evidence supporting their claim with regard to the best interests of the children, “the officer may conclude that [the claim] is baseless.” See *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] F.C.J. No. 158 at paragraph 5.

[54] In this case, the Officer considered the best interest of the children, including the Canadian-born child, but found that there was insufficient evidence to demonstrate that the Applicants and the Canadian-born child would face the risks alleged. The Respondent submits that the Officer was

"alert, alive and sensitive" to the best interests of children affected by the decision. See *Baker*, above.

[55] The Respondent submits that the statutory scheme of section 25 applications is highly discretionary. It is the Applicants' onus to convince the Officer that there are adequate H&C grounds to warrant allowing the application. The Respondent contends that the section 25 process is designed to be exceptional and to relieve hardship caused by exceptional circumstances that is not anticipated by the legislation and beyond the control of the particular applicant. See, for example, the IP 5 "Immigrant Applications in Canada Made on Humanitarian or Compassionate Grounds" Ministerial Guidelines, and *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] F.C.J. No. 457.

[56] The RPD determined that the Applicants' fear of harm was not well-founded. The Applicants have remained in Canada regardless. The Applicants are not currently facing disproportionate hardship, but are simply facing hardship because they are being required to comply with the Act.

Previous Applications to the Court

[57] Contrary to the Applicants' submissions, the Officer is not bound to consider the decision made by Justice O'Keefe with regard to the Applicants' stay. Justice O'Keefe did not purport to make any final determinations of fact or law within the motion for injunction in a prior proceeding.

Furthermore, the Respondent submits that even if Justice O'Keefe had made what he deemed to be final determinations on the facts, the Officer would not be bound to these findings unless it was shown that the record before the Officer was the same as that before Justice O'Keefe.

[58] Moreover, the determinative decision in this instance is that of the RPD, since the Court refused the Applicants' application for leave to seek judicial review of that decision.

[59] The Applicants' argument that the Officer was required to take into account the factual country condition findings made by the Court is not contentious, since there is nothing showing that a) the Officer did not take them into account, or b) that the Officer's Decision is inconsistent with the country condition documents.

Evidence Considered was that which was Adduced by the Applicants

[60] The Officer was not required to only consider the conditions of the Applicants' home state. This is especially so where the Applicants themselves presented FGM practices in a variety of jurisdictions, including the United Kingdom. The Respondent submits that "[the Principal Applicant] cannot be heard to complain about the Officer's assessment of the evidence when she has proffered the evidence."

[61] Furthermore, the Respondent submits that the rate of FGM in Ondo state was irrelevant to the decision made by the Officer in this instance. The risk and hardship claims made by the

Applicants were dismissed by the Officer on the basis that no harm would occur with regard to the FGM, since the female children were no longer in their infancy. Furthermore, the grandparents had not expressed any recent interest in the children. As such, the Respondent contends that the risk claim cannot be accepted, or rejected, on the basis of reference to rates of FGM.

No Finding on an IFA

[62] Contrary to the Applicants' allegation, the Officer in this case made no findings as to an IFA. The Respondent submits that such a finding is "relevant only to the assessment of a protected person application."

Best Interests of the Children Were Considered

[63] The reasons demonstrate that the Officer gave full consideration to the best interests of the children in this case. Indeed, this issue is prominent within the reasons. However, consideration of the best interest of the children does not necessarily require that an application be allowed simply because of the presence of children.

[64] The Applicants allege that the Officer did not consider whether the children would be at risk in Nigeria. This allegation is unfounded, and can be refuted by even a cursory review of the Officer's reasons.

Evidence

[65] The Officer was entitled to assign weight to the evidence, including the letters and affidavit evidence. The Officer's decision to give these pieces of evidence low probative value was reasonable since the evidence was vague and lacking in details.

[66] The crux of the application is that the Principal Applicant believes that the Officer's Decision was unreasonable. However, the Officer is entitled to considerable discretion in making this decision, and she properly exercised her jurisdiction in determining that unusual and undeserved or disproportionate hardship did not exist in this case.

ANALYSIS

[67] I believe the Officer applied the correct legal test in determining the section 25 application. The Officer makes it clear that even though the risk might not be as high as to reach the levels set out in sections 96 and 97, such risk might nonetheless lead to unusual and undeserved or disproportionate hardship.

[68] Moreover, I am not convinced that the Officer did not fully consider the best interest of the children. Consideration of the best interest of the children will not automatically lead to a positive result in an application.

[69] My main point of concern arises out of the Officer's assessment of risk to the Principal Applicant and her conclusion that "there is insufficient evidence to support that the PA continues to be of interest to her in-laws in (*sic*) such that they would cause her harm." I have alluded to and assessed this issue in *Awolope et al. v. Canada (Minister of Citizenship and Immigration)*, IMM-3463-09 when reviewing the PRRA Decision involving the Applicants.

[70] I believe the Officer erred in the treatment of the letter from the Principal Applicant's ex-husband. While the Officer concluded from this letter that the Principal Applicant was not in danger because her ex-husband's and his family's bad luck would be stopped by his divorcing the Principal Applicant and disowning the children, the Officer ignored the portion of the letter that stated that the Principal Applicant's life would be at risk upon her return.

[71] Even if the Principal Applicant's ex-husband's family believes that their misfortunes will end because of his divorcing his wife and disowning his children, this does not account for the portion of the ex-husband's letter which clearly states that the Principal Applicant is still at risk upon her return. Because the Principal Applicant's ex-husband's family considers the Principal Applicant responsible for the misfortunes they have experienced to date, the family appears to still be seeking revenge. This is made clear in the letter provided by the Principal Applicant's ex-husband, and was overlooked by the Officer in this case. It is clearly an error for an officer to depend on one portion of the evidence to uphold a finding while ignoring another portion of the same evidence that clearly contradicts such a finding. See *Cepeda-Gutierrez v. Canada (Minister of*

Citizenship and Immigration), 157 F.T.R. 35, [1998] F.C.J. No. 1425 at paragraphs 15-17 (QL) and *Devi v. Canada (Minister of Citizenship and Immigration)* 2007 FC 149 at paragraph 11.

[72] What this means is that risk to the Principal Applicant was not properly assessed and, as a consequence, hardship under section 25 was not properly assessed in this application. I believe that the risk to the Principal Applicant upon her return to Nigeria could constitute hardship pursuant to section 25. The Officer clearly erred in failing to fully consider the evidence provided by the Principal Applicant's husband with regard to this risk and any hardship that could ensue.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3462-09
STYLE OF CAUSE:	ROSELINE AANU IJIOLA AWOLOPE ET AL - and - MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	MARCH 31, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	May 17, 2010

APPEARANCES:

George J. Kubes	APPLICANT
Lorne McCleanaghan	RESPONDENT

SOLICITORS OF RECORD:

George J. Kubes Barrister & Solicitor Toronto, Ontario	APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	RESPONDENT