Federal Court  Cour fédérale

Date: 20101207

Docket: IMM-714-10

Citation: 2010 FC 1240

Ottawa, Ontario, December 7, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

CAROLINE AJOKE AWOLAJA

Applicant

and

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*, R.S.C. 1985, C. 1-2 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 7 January 2010 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of Nigeria. She, her husband and their children lived in the city of Ikorodu in Lagos State, where she was employed as a registered nurse. The Applicant alleges that her husband became a member of the Democratic Alternative Party, which frequently clashed with the more popular Advance Party.

[3] According to the Applicant, her husband disappeared in March 2004 after "community heads" accused him of involvement in political election violence and of murdering a well-known person in the community. The Applicant says that she was approached by community people, who believed she knew her husband's whereabouts. Feeling threatened, she hid her children and travelled alone to England the following month.

[4] The Applicant visited Nigeria in October 2005 upon the death of her son due to food poisoning. While there, she officially resigned from her position at the hospital where she had formerly been employed. One month later, she returned to England. The Applicant did not claim asylum in England. She remained there until May 2007, when she entered Canada under a false passport and claimed protection as a Convention refugee or a person in need of protection.

[5] The Applicant appeared before the RPD in November 2009. Her claim was based on: (a) a well-founded fear of persecution as the wife of a politically active man; (b) the likelihood that she

would face a risk of cruel and unusual treatment or a risk to her life if she were to return to Nigeria; and (c) an inability to live safely in another part of Nigeria.

[6] The RPD rejected her claim in its Decision of 7 January 2010. This is the decision that is subject to judicial review.

DECISION UNDER REVIEW

[7] In its Decision of 7 January 2010, the RPD made a general finding that pivotal aspects of the Applicant's claims were neither credible nor supported by the documentary evidence.

[8] Specifically, the RPD found that the Applicant had failed to establish, on a balance of probabilities, that her husband was targeted because of his political affiliations and that, by extension, she was targeted as his wife. The RPD identified four inconsistencies in the Applicant's evidence.

[9] First, the Applicant said in her Port of Entry (POE) interview that she left Nigeria because she feared community members. At the hearing, however, she added that she feared the repercussions of her husband's political activities. The only explanation she could offer for this change of position is that she did not think to mention her husband's political involvement in the POE interview. The RPD drew a negative credibility inference from this omission because "the nexus of the claim is that her husband was a member of a political party involved in election

violence." Given the Applicant's education and what the RPD considered her "high level of professional status," it was unreasonable and evasive for the Applicant to respond to questions about the source of her fear by simply repeating that she felt threatened by the community members who had accused her husband of murder. The RPD expected that the Applicant should "be able to, at a minimum, speak of her husband's political activities coherently." The RPD claimed that it took into account the Chairperson's *Guidelines on Women Refugee Claimants Fearing Gender-related Persecution* in assessing the credibility of the Applicant's testimony.

[10] Second, in her Personal Information Form (PIF), the Applicant said that her husband joined the Democratic Alternative Party in 1991, whereas at the hearing she said that he joined between 2000 and 2001. She could offer no explanation for these inconsistent dates.

[11] Third, in her PIF, the Applicant said that community members came to her house looking for her husband on one occasion, in March 2004. At the hearing, the Applicant said they came to the house three times. The RPD found that, at the hearing, the Applicant embellished this aspect of her claim. It found no credible evidence that anyone came looking for her husband or that he abandoned the family because he felt he had to flee the community or because he was being pursued by community members.

[12] Fourth, at the hearing, the Applicant asserted that community members murdered her son because of her husband's political involvement. However, the Applicant had not mentioned this in

her POE interview. Moreover, there is no credible evidence that her son's poisoning was in any way related to her husband's political affiliations, or that it demonstrated that she needed protection.

[13] In addition to the negative credibility findings, the RPD gave "substantial weight" to the Applicant's failure to establish, on a balance of probabilities, that she had a subjective fear of persecution that was well-founded "when objectively assessed in the context of country conditions." This is what is required under section 96 of the Act. The RPD concluded that, if the Applicant was in fear, she would not have returned to Nigeria for a month. It rejected her testimony that she was "in hiding" in Nigeria: a person in hiding would not "tak[e] care of business matters" such as officially resigning from her job. Her answers regarding her other activities while visiting Nigeria were "evasive and vague."

[14] Also, the Applicant could not establish a "serious possibility" that she would be persecuted if she returned to Nigeria. She could not explain why community members would want to harm her, given that her husband had been gone for six years and that her daughters and her husband's parents had all been living safely in Nigeria. Alternatively, even if the RPD were to accept the Applicant's testimony to be credible, it concluded that she still had a reasonable IFA. The onus was on the Applicant to provide "clear and convincing evidence" that there was a serious possibility that she would be persecuted if she returned to a new location in Nigeria. Any problem that the Applicant might have in Nigeria is localized to one part of Lagos. Therefore she could reasonably relocate to another part, particularly given her education and work experience.

[15] Finally, the RPD drew a negative inference from the Applicant's failure to seek asylum at the earliest opportunity while she was living in England. Her explanation that her passport was stolen, that she was unable to obtain another and that she was focused only on getting her children to England was not accepted.

[16] In the RPD's view, the death of the Applicant's son, her separation from her daughters and the disappearance of her husband, all of which were discussed in the psychological reports before the RPD, could certainly explain why she was depressed and "psychologically fragile." However, such misfortunes do not constitute torture under section 96 or section 97 of the Act.

[17] Therefore, based on a general negative credibility finding as well as her failure to meet the criteria of sections 96 and 97 of the Act, the RPD rejected the Applicant's claim.

ISSUES

[18] The issues are as follows:

a. Whether the RPD based its decision on an erroneous finding of fact, which was made in a perverse or capricious manner or without regard to the material before it;
b. Whether the RPD breached the principles of natural justice in reaching its negative decision.

STATUTORY PROVISIONS

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

Convention refugee **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,	**Définition de « réfugié »** **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 country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*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.
Person in need of protection **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	**Personne à protéger** **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 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.

Person in need of protection

(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.

Personne à protéger

(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

[20] 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.

[21] The issue of whether the RPD based its decision on an erroneous finding of fact is a factual issue. Accordingly, it will be reviewed on a standard of reasonableness. See *Dunsmuir*, above, at paragraph 64.

[22] 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." See *Dunsmuir*, above, at paragraph 47. Put another way, the Court should intervene only 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."

[23] The Applicant also alleges that the RPD breached principles of natural justice. A standard of correctness is the appropriate standard for the review of issues involving procedural fairness and natural justice. See *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, 263 D.L.R. (4th) 113 at paragraph 46; and *Dunsmuir*, above, at paragraphs 126 and 129. Therefore, correctness is the standard to be used when considering whether the RPD breached procedural fairness in making this decision.

ARGUMENTS

The Applicant

RPD Made Erroneous and Perverse Findings of Fact

[24] The Applicant submits that the RPD erred and acted in a perverse manner by accepting that the Applicant's spouse disappeared and that her son died while, at the same time, refusing to accept her explanation of the circumstances surrounding those events—that is, that her husband fled for political reasons and that her child was deliberately poisoned by community members. The RPD had no reason to disbelieve her explanation and there was no evidence to contradict her.

[25] The RPD's finding that the Applicant returned to Nigeria in 2005 to resign from her nursing position was directly contrary to the Applicant's own evidence.

[26] The RPD failed to acknowledge the documentary evidence concerning the abuse of women and the violence against women in Nigeria.

[27] The RPD erred when it attached little weight to the psychological report, particularly given its conclusion that the Applicant might be emotionally traumatized. The RPD attributed her emotional torture and trauma to physical torture and trauma.

[28] The RPD erred in concluding that the Applicant was evasive during the hearing. Had the RPD applied the *Gender Guidelines*, instead of refusing to do so, the RPD would have understood the Applicant's demeanour and responses as indicating emotional trauma and not evasiveness. The RPD also erred in focusing on the Applicant's education and professional achievements in its assessment of her emotional state of mind.

[29] The Applicant submits that the RPD erred and acted in a perverse manner by concluding that the Applicant did not tell the POE immigration officers about the way her son was killed.

RPD Breached the Principles of Natural Justice

[30] The RPD breached the principles of natural justice in concluding that the Applicant has a viable IFA. The Applicant is a trained nurse. If she were to work as a nurse in Nigeria, she would have to work in a public place and her identity would be revealed on her name tag. Consequently, it would be easy for those seeking her to find her.

[31] The RPD acted unfairly by attaching little weight to the psychological report, even though the RPD acknowledged that the Applicant was emotionally depressed and psychologically fragile.

The RPD was also unfair in concluding that the Applicant's responses were evasive when, in fact, they were consistent with and caused by her psychological trauma.

[32] The RPD acted unfairly when it concluded that the Applicant does not have a well-founded fear of persecution, even though it accepted that the Applicant's "son and husband situation (*sic*) were credible."

[33] The panel acted unfairly by contradicting the Applicant's testimony regarding the period during which she returned to her country of origin and the situation regarding her resignation.

The Respondent

RPD Considered All Evidence

[34] The Respondent submits that this Court must assume that the RPD has weighed and considered all evidence, unless the Applicant can rebut that presumption. In the instant case, the Applicant has not done so. See *Florea v. Canada*, [1993] F.C.J. No. 598 (F.C.A.) (QL). That the RPD failed to mention very document entered into evidence is no indication that those documents were disregarded. See *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.) at 318.

RPD Is Entitled to Weigh Evidence

[35] The RPD decides what weight to give to the evidence and is permitted to prefer documentary evidence over the Applicant's oral evidence. See *Zvonov v. Canada (Minister of Employment and Immigration)* (1994), 83 F.T.R. 138 at 141; *Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.) (QL). In the instant case, the Applicant has failed to prove that the RPD ignored or misconstrued evidence or that it made its findings of fact in a capricious or perverse manner. The Respondent submits that the Applicant simply disagrees with the RPD's Decision and that, in reality, there is no arguable issue upon which this judicial review can succeed. *Brar v. Canada (Minister of Employment and Immigration)*, [1986] F.C.J. No. 346 (F.C.A.) (QL); *Ye (Yao Cheng) v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1233 (F.C.A.) (QL).

Applicant Had No Subjective Fear of Persecution

[36] The Respondent submits that it is reasonable for the RPD to take into account the Applicant's failure to claim asylum in England when assessing the credibility of the Applicant's refugee claim in Canada and her subjective fear of persecution should she return to Nigeria. See *Heurta v. Canada (Minister of Employment and Immigration)* (1993), 157 N.R. 225 (F.C.A.) at 225; *Heer v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. No. 330 (F.C.A.) (QL); *Radulescu v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 589

(F.C.T.D.) (QL); *Bogus v. Canada (Minister of Citizenship and Immigration)* (1993), 71 F.T.R. 260 (F.C.T.D.) at 262, aff'd [1996] F.C.J. No. 1220 (F.C.A.) (QL).

RPD Considered the *Gender Guidelines*

[37] The Respondent submits that the *Gender Guidelines* are not binding on the RPD. The *Guidelines* do not relieve the Applicant of the burden of establishing her claim with credible evidence, and they do not create a new ground for finding a person to be a victim of persecution. However, they are to be considered in appropriate cases, and they were considered in the instant case. The *Guidelines* require the RPD to be sensitive to identified factors, which may explain the reactions and behaviours of women in relation to certain events, particularly domestic abuse. However, they cannot cure an otherwise deficient claim. See *Fouchong v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1727 (F.C.T.D.) at paragraph 10.

ANALYSIS

Credibility and Subjective Fear

[38] At the hearing of this matter in Toronto on 26 October 2010 counsel for the Applicant took the Court very carefully through the record and cited examples of where the RPD has, in its Decision, ignored material evidence, misrepresented the Applicant's responses to questions put to her at the hearing and other evidence, and ignored explanations provided by the Applicant. While I do not accept all of the Applicant's objections to the Decision, I do think that there are sufficient

errors to render the Decision unreasonable as regards the RPD's credibility and subjective fear findings.

[39] It is unnecessary to recite here every error that occurs, but I think a few significant examples will suffice to show the nature of the problem.

[40] In the Decision at paragraph 8, the RPD says that the "claimant's sworn evidence at the Port of Entry (POE) was that she was afraid of community members with no mention of any political parties." It is true that the Applicant did not mention specific political parties but she made it clear that the threat she faced did have a political dimension. She said at the POE "It's a political problem in the community in Ikorodu, where we live," and in her declaration she connected her coming to Canada to a community problem in her husband's village where the husband was accused, along with others, "of killing of one of the villagers (*sic*), during the community political crisis (2004) …." Also, in her PIF narrative, the Applicant had explained that when her community was preparing for the local government election in March 2004, "our community in Ikorodu was in chaos and serious violence. Opposition party members were involved in fights, injuries and killings." The RPD appears to have ignored the evidence that at the POE the Applicant did connect her fears to political violence.

[41] On the other hand, there are certainly instances where the Applicant provides contradictory evidence. An example occurs when the RPD says in paragraph 8 that the Applicant

> [t]estified at the hearing that, sometime between 2000 and 2001, her husband joined the DAP and that he went to meetings every month.

> However, in her Personal Information Form (PIF) narrative she states that her husband joined the DAP around 1991. The claimant had no explanation with regards to the contradictory dates between her PIF narrative and her oral testimony.

[42] The Applicant argues that her answer was that she could not remember when her husband joined the DAP. However, at page 372 of the Tribunal Record the following exchange occurs:

i. [Your husband is an] [a]ctive member of what?

C. The party. The Democratic Alternative. That is the name of the party.

M. What's the name of the party?

C. Democratic Alternative.

M. What kind of party is that?

C. AD is a party.

M. I know it's a party. I'm asking you what is it? What kind of party is it? Is it a party?

-

C. It's a political party.

M. Is it a federal party or is it a local party?

C. It's a federal party.

M. So, in 2000, he became a member.

C. Yeah, he became a member.

[43] In her PIF narrative, at paragraphs 6, 7 and 8, it seems clear to me that the Applicant did indicate that her husband became involved in politics with the Democratic Alternative in the early

‘90s, so the discrepancy does exist. The Applicant says that this discrepancy in her evidence was not put to her and she was not given an opportunity to provide an explanation.

[44] Justice Muldoon said in *Tanase v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 32, that the law surrounding the duty of a panel to provide an applicant with notice of its concerns and an opportunity to explain “has yet to be settled by this Court.” Based upon my review of the jurisprudence, I agree. Nevertheless, the Court is not exactly divided.

[45] While it is true that some decisions say there is a duty and others say there is not, it seems to me that most judges recognize expressly that their analysis is dependent on the facts of the matter before them. My review of the jurisprudence suggests that most judges believe there will arise situations in which the RPD should put contradictions to the applicant because, in the particular circumstances, that is the fair thing to do.

[46] The Court appears to be reluctant to describe this as the RPD’s “duty,” however. Justice Muldoon said at paragraph 12 in *Tanase*, above: “[I]t should never be forgotten that federal adjudicative panels, such as the CRDD, are in the ‘business’ of fairness and justice.”

[47] On the other hand, Justice Gibson indicated in *Ayodele v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1833 at paragraph 17, that the Court does not want to place an “unwarranted burden” on such panels with respect to how they do their job. However, if in doing

that job a panel chooses not to put contradictions to the applicant, then a court may find that it has acted unreasonably.

[48] Cases that find a duty to put contradictions to a claimant and to provide an opportunity for an explanation typically rely on the Federal Court of Appeal decision in *Gracielome v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 463 (FCA). In *Gracielome*, Justice Hugessen observed:

> In support of its finding that the applicants were not to be believed, the majority of the Board relied on three alleged contradictions in the evidence given by them. Although this Court is not generally empowered to intervene in questions that involve weighing the evidence, it is otherwise when that process is itself based on errors of law or findings of fact that are manifestly in error: and that is the case here….

[49] Justice Hugessen took each "alleged contradiction" in turn and found that the first two were not actually contradictions—the panel had misconstrued the applicants' evidence. The third alleged contradiction (concerning the spelling of a name) was found not to be the fault of the witness, who was illiterate and who gave evidence through an interpreter. Justice Hugessen then made his now oft-quoted observation:

> It is worth noting that in none of the three cases were the applicants confronted with the alleged contradictions or asked for explanations. On the contrary, it is apparent that each example was found by the majority [of the panel] after the fact from a painstaking analysis of the transcripts of the evidence. In these circumstances, the Board is in no better position to weigh the contradictions than is this Court.

[50] Although claimants have used this case as authority to argue that the panel must put contradictions to the applicant, Justice Muldoon's comments on *Gracielome* in *Tanase*, above, are illuminating. He says, beginning at paragraph 13:

> **13** As for *Gracielome* …, this has often been relied on for the propositions advanced by the applicant. See for instance *Nadesu v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1381, (IMM-4606-96, October 21, 1997) (F.C.T.D.) and *Vorobieva v. Canada (Solicitor General)*, [1994] F.C.J. No. 1193, (IMM-4863-93, August 15, 1994) (F.C.T.D.). Unfortunately, *Gracielome*, *supra* has been misinterpreted time and again by counsel.

[51] Justice Muldoon quotes Justice Hugessen's well-known passage and then states as follows:

> **14** This passage [from *Gracielome*] stands for the proposition that, where a claimant is not confronted by a panel with alleged contradictions or asked for explanations prior to a decision on credibility being made, the reasons for showing deference to the panel are severely diminished as it is in no better position to weigh the contradictions than is this Court. This proposition does not imply, however, that the duty of fairness requires a panel to alert a claimant to a potentially adverse credibility finding in every case or in matters of trivial importance. The duty is strong here. Though neither party submitted the case of *Kahandani v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1769, (IMM-2742-98, November 17, 1999) (F.C.T.D.), this Court notes that in it, Pinard J. reaches a similar conclusion. Also of note is *Ayodele v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1833, (IMM-4812-96, December 30, 1997) (F.C.T.D.).

[52] Justice Muldoon's interpretation of *Gracielome* finds no duty; rather, it observes that, in the absence of further questioning of an applicant regarding his or her contradictions, the legitimacy of a panel's decision is "severely diminished" because the panel has not made a point of fleshing out the applicant's story. It has abandoned an opportunity to become better informed about the applicant's claim.

[53] Even the Court's most firm statements against finding a duty to put contradictions to the applicant are usually tempered by the phrase "on the facts." The decision relied upon by the Respondent in the instant case is no different. In *Ayodele*, above, Justice Gibsondealt with the issue as follows:

> **16** With great respect, at least on the facts of matters such as this, I am not satisfied that *Gracielome* goes as far as counsel for the applicant would have me find. In that decision, Mr. Justice Hugessen wrote:
>
> > It is worth noting that in none of the three cases were the applicants confronted with the alleged contradictions or asked for explanations. On the contrary, it is apparent that each example was found by the majority after the fact, from a painstaking analysis of the transcripts of the evidence. In these circumstances, the Board is in no better position to weigh the contradictions than is this Court.
>
> **17** On the face of the material before me there is nothing that would indicate that here the contradictions were uncovered by a "painstaking analysis of the transcripts of the evidence." The hearing of this matter took place in one, apparently rather brief, sitting. I was not able to find anything in the certified tribunal record to indicate that the panel members relied on a transcript. Further, the applicant was represented by counsel. I think it is fair to assume that any contradictions in the applicant's testimony would have been as apparent to counsel as to the CRDD members. In such specific circumstances, to have a decision fail, by reason only of the failure on the part of the CRDD members to put the contradictions to a represented applicant goes well beyond what I take to be the position enunciated in *Gracielome* and places what, in my view, is an unwarranted burden on members of the CRDD. To reiterate, the Applicant was represented. Presumably, counsel was attentive to the testimony. It was open to counsel to examine or reexamine his or her client on any perceived inconstencies (*sic*) without coaching from the CRDD members. [my emphasis]

[54] In *Ngongo v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1627, Justice Tremblay-Lamer provides a summary of the jurisprudence as well as guidelines for determining whether the RPD has erred in failing to put a contradiction to the applicant:

> **13** I note that in its decision, the panel relied on Mr. Justice Gibson's recent decision in *Ayodele v. Canada (M.C.I.)*. That decision limits the scope of *Gracielome v. Canada (M.E.I.)* and holds that failing to put a contradiction to a claimant is not in itself an error of law:
>
> > I think it is fair to assume that any contradictions in the applicant's testimony would have been as apparent to counsel as to the CRDD members. In such specific circumstances, to have a decision fail, by reason only of the failure on the part of the CRDD members to put the contradictions to a represented applicant goes well beyond what I take to be the position enunciated in *Gracielome* and places what, in my view, is an unwarranted burden on members of the CRDD. To reiterate, the Applicant was represented. Presumably, counsel was attentive to the testimony. It was open to counsel to examine or reexamine his or her client on any perceived inconsistencies without coaching from the CRDD members.
>
> **14** More recently in *Matarage v. M.C.I.*, Mr. Justice Lutfy used the same reasoning.
>
> **15** Mr. Justice Lutfy stated that there may still be circumstances, however, where a discrepancy should be brought to the attention of a refugee claimant. On this point, he cited *Guo v. Canada (M.C.I.)*.
>
> **16** In my view, regard should be had in each case to the fact situation, the applicable legislation and the nature of the contradictions noted. The following factors may serve as guidelines:
>
> > 1. Was the contradiction found after a careful analysis of the transcript or recording of the hearing, or was it obvious?

> 2. Was it in answer to a direct question from the panel?
>
> 3. Was it an actual contradiction or just a slip?
>
> 4. Was the applicant represented by counsel, in which case counsel could have questioned him on any contradiction?
>
> 5. Was the applicant communicating through an interpreter? Using an interpreter makes misunderstandings due to interpretation (and thus, contradictions) more likely.
>
> 6. Is the panel's decision based on a single contradiction or on a number of contradictions or implausibilities?

> **17** Having regard to these factors, I am of the view that in the case at bar, the panel was not required to confront the claimant. This matter is proceeding in the context of the new legislation. The contradiction was obvious and in answer to a direct question from the panel. It did not stem from a careful analysis by a panel seeking to justify an adverse credibility finding. It admittedly escaped the panel's notice such that the applicant was never directly confronted over the contradiction. However, he was represented by counsel. In my view, as in *Ayodele*, the contradiction was as apparent to counsel as to the CRDD members, such that counsel could have reexamined his client on that point.

[55] Taking this jurisprudence into account, I think that I have to conclude on the facts before me, and for much the same reasons cited by Justice Tremplay-Lamer in *Ngongo*, that there was no duty on the RPD to put this particular contradiction to the Applicant and it was not unreasonable for the RPD not to do so. However, this significant contradiction has to be weighed against other instances where, it appears to me, the RPD has made unreasonable findings.

[56] In paragraph 9, the RPD refers to the Applicant's "evasive answers with regards to what is the core of her fear of returning to Nigeria" and her inability to "speak of her husband's political activities coherently." Reading the transcript, it is hard to see how the Applicant was evasive. She gave a clear explanation that, because she is a woman, her husband would not be culturally disposed to tell her in any detail about what he was doing politically. When she was asked what she knew about the Democratic Alternative Party, the Applicant explained these cultural issues in the following way:

> I don't know much more because I know it's a party. There are different party people join. Because when you have to vote, you vote with the party you supported. I'm more like at the house taking care of that things and my work, but he's more involved than me because he goes to meeting. He doesn't – he doesn't even discuss much, you know. No, ma'am, they don't discuss much about what they are doing. Even if I say, "Oh, what is this?" What is my business sometimes –

[57] The RPD omitted to take into account these important cultural nuances when assessing the Applicant's credibility on this point.

[58] Another discrepancy concerns the number of times that community members and the police came to the house looking for her husband. The Applicant had omitted in her PIF to specify the number of times community members searched for her husband. At the hearing she said that they came three times. The RPD determined that "the claimant embellished her *viva voce* testimony and that there is no credible evidence anyone ever came looking for her husband."

[59] At page 377 of the transcript, when the RPD raises the issue of how many times they came, the Applicant explains that in her PIF she was talking about the first time they came but, all in all, they came three times. When the PIF is read, there is no necessary reading that she said they came only once. She simply said that she was afraid for her husband's safety but was surprised to see some of the community heads come to my house to ask for my spouse and accused him of being involved in the fights and that he was responsible for killing a well known person in the community. She does not say that they only came once. There is no necessary discrepancy here and, because the RPD does not put the issue squarely to the Applicant at the hearing, she would not even know that the RPD might regard the matter as a discrepancy, and so would not know that further explanation was required. In this instance, then, I think the RPD was unreasonable not to specifically address this issue with the Applicant.

[60] At paragraph 11, the RPD says that the Applicant "did not state at the POE that she believed her son was killed." However, the Applicant's POE declaration says: "Since they can kill my son I am afraid of my life too …." This kind of oversight creates the impression that the RPD is overlooking important evidence and relying upon discrepancies that are just not there.

[61] In dealing with subjective fear, the RPD refers in paragraph 12 to the Applicant's return to Nigeria for a month in 2005 when her son died. The Applicant testified that it was during this trip that she officially resigned from her job. The RPD says that the Applicant's testimony about this one-month period was evasive and vague and that "the claimant's behaviour of taking care of business matters is not in line with someone in hiding":

> The panel finds the claimant's return to Nigeria for a month demonstrates a lack of subjective fear and that there is no credible evidence she was in hiding, if she went to resign from her work at the hospital.

[62] A review of the transcript reveals that there is nothing evasive or vague in the Applicant's testimony about why she was able to return for a month:

i. Did anybody from your husband's community try to contact you?

C. They didn't even know I was there. I didn't even get near there. Nobody knew I was around, except as my friend that they knew I was coming and they sneaked the children – they show – they bring the children for me.

[63] So the Applicant never went near the husband's community. And when it came to resigning her job, the Applicant's evidence was that, to stay in hiding, she had to "resign through paper (*sic*)." It is not readily apparent to me why resigning in writing is in any way inconsistent with staying in hiding. Once again, the RPD is not really dealing with the evidence before it.

[64] At paragraph 17, the RPD says that the Applicant "could not provide a reasonable explanation of why the community members would want her after almost six years, taking into account that her daughters have been living in Nigeria without being persecuted." The Applicant, in fact, explained that she was still a target because the community members are still looking for her husband:

i. So, it's been five years since 2004, where you say you were threatened. Why would they be looking for you now? It's been five years.

C. Yes, it was five years.

M. The risk has to be – in a refugee – is what you would be afraid of going back to now, not what necessarily what happened before. So, why, after five years would they be looking for you now?

C. Oh, because they are still looking for my husband. My husband has not appear. And the children tell me this, what is going on at home. Even my friend that was there, sometimes he tell me what is going on, that they are still talking about it. They are still looking for the money, still hearing the rumour and, according to one of my children, communicate with me with letter and on the phone. It made me scared and afraid.

[65] The Applicant also explained as follows:

i. But they're after your husband, ma'am.

C. In Nigeria, if they don't see the husband, the next target is the wife.

[66] The Applicant also explained as follows:

C. Because the problem is still on. The problem is still on. It doesn't die away, especially it involve life. They don't forget things like (inaudible). They will revenge. It's they will reven – they don't forget anything that – this – involve life, human being. And this man, this party, this man, (inaudible) is a big man. He has so many political talks (inaudible). It involve life. Anything that involve life, they, they want to revenge.

[67] When it came to the Applicant's daughters, the Applicant explained that in Nigeria there are cultural reasons why the girls would not be targeted:

> C. No. No, they are not really after girls, you know. They know that the girls does (inaudible) they get married and they – they would go away. They don't keep the family name. The girls, they don't value much about girls. Not that they are even going, they are changing. So, they don't (inaudible) scared. They don't go to that environment at all. They don't know where they are.

[68] The Applicant had also explained in her PIF that girls are not valued in Nigeria. They are not important enough to target.

[69] None of this is vague or evasive, and it is certainly not unreasonable. The RPD is simply leaving out of account what the Applicant has said.

[70] There are other problems along the same lines, but this is enough to convince me that, as regards the RPD's credibility and subjective fear findings the Decision is unreasonable. I say this even though there were obviously some problems with the Applicant's evidence that were not explained and where the RPD's negative findings cannot be said to be unreasonable. My concern is with the Decision as a whole. There are just too many instances of the RPD coming to negative conclusions on the basis of evidence that it says was neither evasive or contradictory, but which was not.

[71] The only other issue is whether the IFA finding is reasonable and whether it can stand alone and cure the other problems in the Decision referred to above. The Respondent says it can because, even if the Applicant's testimony is believed, the risks she faces are community-based and local. She can avoid them by going to one of the alternative centres mentioned in the Decision.

[72] The Applicant does, however, provide evidence that she is afraid of a national political organization and of the Nigerian police, all of whom are looking for her. This aspect of her evidence is not dealt with in the Decision and, in any event, I do not see how the RPD could reasonably deal with IFA when it has not reasonably assessed the risks that she allegedly faces. See *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589.

[73] All in all, I think that it would be unsafe to allow this Decision to stand. It has to go back for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed. The Decision is quashed and returned for reconsideration by a differently constituted RPD;
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-714-10
STYLE OF CAUSE:	CAROLINE AJOKE AWOLAJA Applicant - and - MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
PLACE OF HEARING:	Toronto, Ontario
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DATED:	December 7, 2010

APPEARANCES:

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