

Federal Court



Cour fédérale

Date: 20110921

Docket: IMM-6743-10

Citation: 2011 FC 1084

Ottawa, Ontario, September 21, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

**ADESUWA ANGELA IDAHOSA,
CHINELLO ALESSI OBIORA and
CHIDERA NADIA OBIORA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the October 19, 2010 decision of Patrick Lemieux of the Refugee Protection Division (the Member) where the Member held that Adesuwa Angela Idahosa (the Applicant) and her two minor dependants (collectively the Applicants) are not refugees under ss 96 or 97(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the Act).

[2] The Member found that the Applicant had a viable Internal Flight Alternative [IFA] in her native Nigeria. Therefore they did not meet the definition of a Convention refugee under the Act.

[3] For the reasons that follow, this application for judicial review is dismissed.

I. Facts

[4] The Applicant and her children are citizens of Nigeria. The Applicant fled her country on April 5, 2008 because of a claimed fear of the family of her former common-law partner. The Applicant claims that her former common-law partner's family has threatened to circumcise her female children and to kill her and her children because she is a member of the Osu caste, which is considered to be an outcast group.

[5] The Member found that there was a lack of credibility for several aspects of the Applicant's story but agreed that the main allegations had been generally established (para 9 – Member's Decision). The Member determined at the outset of his decision, however, that the determinative issue was the existence of an IFA. The Applicant had not proved that she and her children were at risk everywhere in Nigeria or that it would be unreasonable to seek refuge in another part of the country, namely Abuja.

II. Legislation

[6] Sections 96 and 97, *Immigration and Refugee Protection Act*, SC 2001, c 27:

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,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(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.

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

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

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

III. Issues and Standard of Review

[7] The sole issue before this Court is whether or not the Member erred in concluding that the Applicants have a reasonable IFA in Abuja. The application of the IFA test to the facts is subject to the reasonableness standard of review (*Khokhar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 449 at para 21).

IV. Parties' Submissions

[8] The Applicant claims that the Member erred because he failed to properly adhere to the Chairperson's Guidelines of the Immigration and Refugee Board in respect of women refugee claimants fearing gender-related persecution. The Applicant also claims that the proposed IFA is speculative and cannot constitute a realistic and viable option.

[9] According to the Applicant, the Member failed to take into account the documentary evidence presented regarding the restriction on the freedom of movement in Nigeria and the prevalence of police roadblocks that attempt to extort money from travellers (para 14 – Further Memorandum of the Applicant). The Applicant also points the Court to Justice Pinard's recent decision in *Onyenwe v Canada (Minister of Citizenship and Immigration)*, 2011 FC 604 [*Onyenwe*], where he allowed the judicial review of a decision that had indicated Abuja as a viable IFA for a male applicant.

[10] The Applicant further contends that the Member failed to consider religious, economic and cultural factors that would affect the Applicant in the proposed IFA (para 15 – Further Memorandum of the Applicant). The Applicant does not have any money, has limited education and has no family in Abuja. The social stigma in Nigeria of single mothers who live without their family means that it will be hard for the Applicant to support herself, especially since there is no social safety net in that country. The Applicant notes that the absence of family support combined with other factors has been determined to be a relevant consideration when determining whether it would be unduly harsh to expect an individual to seek out an IFA (*Ramanathan v Canada (Minister of Citizenship and Immigration)* [1998] FCJ No 1210, 152 FTR 305), but the Member failed to take any of these arguments into consideration.

[11] The Respondent, on the other hand, argues that the Member correctly evaluated the presence of an IFA in Abuja and properly considered the documentary evidence that was before it. In his decision, the Member noted that the Applicant's parents were helping to raise her remaining children that were left behind in Nigeria and would likely continue to assist in whatever way possible (para 21 – Respondent's Memorandum). The Member also noted that the Applicant had formerly operated a trading business and it would be open to her to do that again, possibly with the assistance of religious support organizations and non-governmental organizations (para 21 – Respondent's Memorandum). The Respondent draws attention to the fact that the Member found that moving to Abuja would no doubt be difficult for the Applicant, but the overall circumstances carefully weighed and assessed relevant to her situation made that city a viable IFA.

[12] The Respondent likens this case to the decision of Justice Russel in *Eyamaro v Canada (Minister of Citizenship and Immigration)*, 2009 FC 372, where he found that the Board was reasonable in suggesting that the applicant, in that case, would be able to access support networks and organizations in Nigeria for women who did not want to have to undergo circumcision (para 24 – Respondent’s Memorandum).

V. Analysis

[13] An IFA analysis must meet the criteria outlined by the Federal Court in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at paras 4 to 7. Firstly, the circumstances in the part of the country to which the claimant could have fled must be sufficiently secure to ensure that the applicant would be able “to enjoy the basic and fundamental human rights.” and conditions in that part of the country must be such that it would not be unreasonable for an applicant to seek refuge there. The Federal Court of Appeal has stated that a refugee claimant must meet a high threshold to establish that it would be unreasonable to relocate to an IFA: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15:

... It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions...

[14] The Member was presented with evidence that travel in Nigeria can be restricted by police roadblocks. The Applicant also testified that she had not encountered any difficulties on trips between Benin City and Lagos when she travelled for business (para 29 – Member’s Decision). In addition, there was significant documentary evidence presented to the Member about the difficulties

single women without families face in Nigeria, even in Abuja. The Member found that the Applicant has a very supportive family who is already caring for two of her children. There was nothing to suggest that “even her extended family could not provide some form of support, regardless of whether or not they live in the same city” (para 33 – Member’s Decision).

[15] This is a case where the general documentary evidence about a country does not reflect the individual circumstances of the Applicant. The Member was not unreasonable in his decision since he did consider the totality of the evidence. In fact, it is very clear to the Court that the Member did evaluate the country condition evidence but simply came to a conclusion with which the Applicant does not agree.

[16] The Member’s decision in the case at bar can be distinguished from the situation in *Onyenwe*, above, cited by the Applicant, because in that case the member had failed to acknowledge the documentary evidence at all. The judicial review was allowed because there was no indication that the member had taken into account the documentary evidence that ran counter to his findings. In this case, the member’s decision is clear. All the evidence was assessed and duly taken into consideration. The decision is reasonable and forms part of the possible outcomes. There is therefore no need for this Court to intervene.

VI. Conclusion

[17] For the reasons above, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question of general interest to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6743-10

STYLE OF CAUSE: DESUWA ANGELA IDAHOSA,
CHINELLO ALESSI OBIORA and
CHIDERA NADIA OBIORA
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: August 9, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** SCOTT J.

DATED: September 21, 2011

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