

Federal Court



Cour fédérale

**Date: 20111020**

**Docket: IMM-6224-10**

**Citation: 2011 FC 1194**

**Ottawa, Ontario, October 20, 2011**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**LEKAN AKINOSHO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Lekan Akinosho challenging a decision by a Pre-Removal Risk Assessment Officer (Officer) which denied his claim to humanitarian and compassionate (H & C) relief. In a collateral decision, the Officer also rejected Mr. Akinosho's application for a pre-removal risk assessment (PRRA).

[2] Mr. Akinosho arrived in Canada from the United States in 2002. Within a short time, he sought refugee protection on the basis of allegations of political persecution arising from his work as a journalist and human rights advocate critical of the governing regime in Nigeria.

[3] The Immigration and Refugee Board (Board) rejected Mr. Akinosho's claim to protection on the basis that he lacked credibility and because he failed to produce reasonably expected corroborating evidence. Of particular concern to the Board was Mr. Akinosho's failure to produce copies of his supposedly frequently published criticisms of the Nigerian authorities. The Board rejected Mr. Akinosho's evidence that this omission was an innocent mistake and concluded that the missing evidence was readily accessible to Mr. Akinosho. The Board also doubted his explanation for not producing it because he had been able to produce press clippings to verify his role in the student union between 1986 and 1990. The Board also found his explanation for failing to produce a press card that he had left with his father in Nigeria to be unreasonable because he had known to produce evidence from Canada describing him as a journalist in exile. The Board dismissed this evidence from Canada because it failed to verify the sources relied upon and because it was self serving.

[4] Because of the lack of reliable corroborating evidence from Nigeria, the Board did not believe that Mr. Akinosho was a journalist or a human rights activist. It also found, in the alternative, that because of a political regime change, he would not be at risk if he returned to Nigeria.

[5] The Board also did not believe Mr. Akinosho's evidence of arrest and torture in 1989, 1992 and 2001. The Board based that finding on several omissions, contradictions and inconsistencies in the evidence he produced. These included a failure to recall details of the material events in 2001, a contradiction about the source of an injury to his eye, a failure to mention in his Personal Information Form (PIF) that he had been tortured in custody, an absence of documentary evidence to verify his involvement in serious rioting in Lagos in 2001 and a contradiction about whether he was in hiding after being released from custody. These testimonial deficiencies were of sufficient significance that the Board found Mr. Akinosho not to be credible and it rejected his evidence of persecution.

[6] Mr. Akinosho's applications for a PRRA and for H & C relief were based on precisely the same risk narrative that he had unsuccessfully advanced to the Board. The only difference was that he attempted to bolster his evidence by providing corroborative evidence to the Officer in the form of his Nigerian Press Card, copies of additional press clippings he had written, accounts of persecution of other journalists in Nigeria, a letter from his mother and correspondence from Amnesty International which purported to verify his Nigerian history as a journalist and human rights activist.

[7] Mr. Akinosho's PRRA was rejected because he had failed to produce any new evidence in the form of materials that were not reasonably available at the time of his refugee hearing. The Officer correctly held that most of the documentary evidence Mr. Akinosho had presented (ie. Amnesty International letters, press clippings, press card) could have been put to the Board and, therefore, could not be considered in a subsequent PRRA. The additional materials he presented

dealing with the risks faced by journalists in Nigeria and his mother's letter were found to be inapplicable to his personal circumstances or insufficient to overcome the Board's previous adverse credibility findings.

[8] Counsel for Mr. Akinosho contends that the Officer had a duty in the context of the H & C application to consider the new evidence of risk, whether or not it was admissible in the PRRA. He maintains that, in the absence of any specific reference, this evidence must have been overlooked. He also argues that the Officer confused the tests for assessing risk as between a PRRA and a H & C application. Finally, he argues that the Officer's decision was perverse in the sense that it was inconsistent with the evidence that Mr. Akinosho was a journalist in Nigeria and, therefore, remained at risk there. None of these arguments have merit.

[9] I accept that had the Board been given the information apparently later obtained by Mr. Akinosho, it may have come to a different conclusion about the extent of his journalistic activity in Nigeria. But this evidence would not have rehabilitated his credibility with respect to many of the material contradictions, omissions and inconsistencies identified by the Board in his evidence.

[10] The Officer was entitled to pay deference to the Board's credibility findings and, indeed, it is well established that, like a PRRA, a H & C application is not a back-door appeal from a failed refugee claim. This point was addressed by Justice Marc Nadon in the following passage from *Hussain v Canada (MCI)*, 97 ACWS (3d) 726 at para 12 (FCTD), [2000] FCJ no 751 (QL):

12 I should note that before Mr. St. Vincent on their H&C application, the Applicants proceeded on the basis that Mr. Hussain

was a member of the MQM, notwithstanding the clear findings made by the Refugee Board and by the PDRCC Officer to the contrary. The Applicants seem to be of the view that if they continue to add documents to the record, the credibility findings of the Refugee Board are somehow going to be "reversed" or "forgotten". In my view, that is a mistaken view because the officer who hears an H&C application does not sit in appeal or review of either the Refugee Board or the PDRCC Officer's decision. Thus, on the H&C application, Mr. St. Vincent could not proceed on the basis that Mr. Hussain was an MQM member, given the Refugee Board's findings in that respect. In short, the purpose of the H&C application is not to re-argue the facts which were originally before the Refugee Board, or to do indirectly what cannot be done directly -- i.e., contest the findings of the Refugee Board.

Also see *Nkitabungi v Canada (MCI)*, 2007 FC 331 at para 8, [2007] FCJ no 449 (QL) and *Potikha v Canada (MCI)*, 2008 FC 136 at paras 49-54, [2008] FCJ no 167 (QL).

[11] Here the Officer clearly reviewed the fresh evidence provided by Mr. Akinosho but found that it did not sufficiently substantiate his allegations of personal risk or overcome the substantial credibility problems identified by the Board. Although the Officer did not specifically refer to the Amnesty International letter in his H & C decision, it was clearly referenced in the PRRA decision along with much of the supposedly new evidence that Mr. Akinosho could easily have submitted to the Board. I am satisfied that the Officer considered this evidence in the context of the H & C assessment because it is referenced in the following passage:

In assessing his PRRA Application, I found that the submissions made by the applicant did not rebut any of the findings of the IRB. I did not find the applicant provided sufficient objective evidence that would be indicative of new risk developments in either country conditions or his personal circumstances which have arisen since the date of the RPD decision.

The applicant contends that his writings and commentaries on the political events in Nigeria are well-known to the government. He

states emphatically that he remains a person of interest to Nigerian authorities. However, I do not find sufficient objective evidence has been provided to corroborate these assertions.

[12] It is also clear that the Officer understood the requirement to analyze the evidence of risk in the H & C assessment through the lens of hardship and not persecution. In the end, though, the Officer found the evidence before him to be insufficient to overcome the Board's adverse credibility findings. That finding was reasonably available to the Board on this record and it cannot be set aside on judicial review simply because a different view of the evidence might have been adopted.

[13] Mr. Akinosho also contends that the Amnesty International letter established conclusively that he was a person of interest to the Nigerian police and remained at risk of arbitrary detention. The Amnesty International letter referenced information supposedly obtained from a reliable Canadian source, Dr. Owens Wiwa, the brother of the noted Nigerian writer Ken Saro-Wiwa. Mr. Akinosho characterized this evidence as being so compelling that the Officer's contrary conclusion was perverse.

[14] The Officer reasonably concluded that this evidence deserved little weight. The supposedly corroborating information in the Amnesty International letter is reported in a way that supports the Officer's decision to reject it. The opinion in the letter that Mr. Akinosho remained at risk was based on statements attributed to an unidentified source (it may have been Mr. Akinosho) who had presumably spoken to Dr. Wiwa. Dr. Wiwa is reported to have contacted other unnamed sources in Nigeria about Mr. Akinosho. The nature of the information that was supposedly obtained by Dr. Wiwa is not mentioned in the Amnesty International letter and there would be no way for

anyone to verify its reliability and probative value. Presumably, Dr. Wiwa could easily have provided a letter detailing the results of his enquiries and identifying his sources. Mr. Akinosho's reliance on vague and thrice removed hearsay is, nevertheless, unexplained.

[15] The Officer also reviewed the news articles that Mr. Akinosho had authored and found that their content did not substantiate his claim to be a high profile political activist and writer whose work would draw adverse attention from the authorities. That, too, was a reasonable interpretation of the evidence which cannot be overturned on judicial review.

[16] I can identify no reviewable error in the Officer's decision and therefore this application for judicial review is dismissed.

[17] The Applicant proposes the following three questions for certification:

1. Does an immigration officer assessing an H&C application breach procedural fairness if he does not specifically mention pertinent documentary evidence provided in support of the application, containing information relevant to the disputed facts but instead proceeds to adopt reasons from the applicant's IRB decision and the PRRA decision of which he was the decision maker, knowing that the relevant documentary evidence before him was not provided in support of the IRB and PRRA applications?
2. Does the credibility concern raised by the IRB panel member absolve an officer assessing an H&C application from reviewing the evidence before him and making his own assessment of the extent of hardship that may be suffered by the applicant based on the evidence before him?
3. In a situation where the basis of the H&C application, PRRA application and the Refugee claim is the same, does the officer assessing the H&C application have the obligation to base his decision on his own review of the evidence provided

to him in support of the H&C application and to specifically mention any evidence that may be relevant to any fact in dispute and to assess the applicant's application based on the hardship that he may suffer if returned to his country of origin or is it sufficient for the officer assessing the H & C application to adopt the reasons of the IRB panel and the PRRA officer despite the fact that most of the evidence before him (H&C officer) were not before the IRB panel and the PRAA officer?

[18] The Respondent opposes the certification of a question in this case on the grounds that no issue of general importance arises on this record and that the issues raised by the Applicant are well settled in the jurisprudence. I agree with the Respondent and decline to certify a question. The determinative issues in this case are all evidence-based and do not give rise to an issue of general legal importance.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

"R.L. Barnes"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6224-10

**STYLE OF CAUSE:** AKINOSHO v MCI

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** September 22, 2011

**REASONS FOR JUDGMENT:** BARNES J.

**DATED:** October 20, 2011

**APPEARANCES:**

STELLA IRIAH ANAELE

FOR THE APPLICANT

AMY KING

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stella Iriah Anaele  
Barristers and Solicitors  
Toronto, ON

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada  
Toronto, ON

FOR THE RESPONDENT