

Federal Court



Cour fédérale

**Date: 20111214**

**Docket: IMM-1429-11**

**Citation: 2011 FC 1427**

**Ottawa, Ontario, December 14, 2011**

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

**BETWEEN:**

**GABRIEL IGBINOSA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

***Introduction***

[1] This decision arises out of an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) which found that the applicant was neither a Convention (United Nations' *Convention Relating to the Status of Refugees*, [1969] Can TS No 6) refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). For the reasons that follow, the application is granted.

*Facts*

[2] The applicant is a citizen of Nigeria. He attended and graduated from the Gateway Bible College in Benin City, Edo State, Nigeria. Upon graduation, he worked as an assistant pastor at God's Plan Bible Church in Benin City, Nigeria. He was assigned to start a branch of the God's Plan Bible Church in Oleten Village, located approximately 45 minutes from Benin City. Upon arrival the applicant experienced great success in his evangelical activities and converted many individuals to Christianity, however, he also drew the ire of other community members because many of the converted burned idols and various objects traditional to their former religion.

[3] Shortly following this conversion, residents of the village of Oleten were struck with an epidemic. Many of the non-converted elders believed this was the result of the applicant's evangelism, efforts at conversion, and insolence towards traditional religious practices. As a result, they apparently kidnapped him in the middle of the night, tied him to a tree in what the applicant claimed was referred to as the "evil forest," and left him there for three days until he was freed by another member of the Church.

[4] The applicant returned to Benin City where he sought refuge in a church. The elders and some youth of Oleten Village demanded that he be turned over to them or else they threatened to burn down the Benin City church. The applicant thus fled to another Nigerian city, Kaduna. In Kaduna, the applicant was discovered again by the Oleten Village elders and youth and they once again demanded that he be turned over. He managed to escape from the church in Kaduna and to the home of one the church elders. The church elders eventually learned that a member of their

church was informing the villagers of the applicant's whereabouts and thus suggested that he leave Nigeria.

### *Issue*

[5] The issue in this case is whether the decision of the Board is reasonable per *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. As stated by Binnie J. in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59:

Reasonableness is a single standard that takes its colour from the context. One of the objectives of *Dunsmuir* was to liberate judicial review courts from what came to be seen as undue complexity and formalism. Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

### *Analysis*

[6] There is a reviewable error with respect to the Board's finding that there was no nexus between the persecution suffered by the applicant and a Convention ground. Secondly, I find that the determination as to the existence of an internal flight alternative (IFA) to be unsustainable in light of the evidence before the Board.

[7] The Board's conclusion with respect to whether or not the applicant was persecuted by reason of his religious beliefs and preaching is unreasonable given the facts it found. The Board wrote:

The claimant alleges that he is being persecuted because of his religious beliefs. In fact, as he indicates in his Personal Information Form (PIF) narrative, when he first came to Oleten village he sought and was given permission by the "Elders and the District head for the use of classrooms in evenings on Sundays for prayer meetings and bible studies." He also conducted a very successful and public three-day prayer crusade, not only without any problems, but also with a great deal of wide acceptance in Oleten village. It was only when a widespread epidemic hit the village resulting in a number of deaths that he encountered difficulties – being held responsible for the destruction of traditional idols and icons by many of the villagers during his three-day crusade. The panel concludes that he would have been blamed for the epidemic, even if the destruction of the traditional totems of worship had not been a result of the prayer crusade.

The fact that the traditional items of worship were destroyed during a religious event was incidental to the destruction of the items. Had the traditional items been destroyed as part of a political or social gathering, for example, led by the claimant and an epidemic had ensued, the claimant would still have been held responsible. Ultimately, the claimant was targeted because he had the misfortune of having conducted his crusade, where the totems of traditional beliefs were destroyed, just before an epidemic hit the village.

[8] Unequivocal findings on the existence of a nexus to a Convention ground of persecution are essential to analysis of any refugee claim. Here, the meaning of these two paragraphs was the subject of considerable argument. I will not repeat the competing interpretations as, at best, they support the conclusion that the finding of a nexus was unclear. The stronger and preferred interpretation is that the Board found, on the evidence before it, evidence of persecution. The Board then proceeded to discount or negate the finding because, to put it colloquially, the applicant was at the wrong spot at the wrong time.

[9] The decision must be set aside as the Board rejects the finding of persecution on religious grounds using the wrong legal analysis. The Board concedes that had the same events occurred by reason of the preaching of “a political or social gathering” persecution would have been established. It makes no difference, on the facts as found by the Board, that the persecution arose by virtue of the preaching of a religious, as opposed to political, message. A nexus to Convention ground was established. As Justice Danièle Tremblay-Lamer said in *Nosakhare v Canada (Minister of Citizenship and Immigration)* 2001 FCT 772 at paras 11 - 12:

It is clear from this definition that there must be a nexus between the persecutory conduct and one of the five grounds provided therein; the existence of such nexus is a question of fact which falls clearly within the Board's expertise and is not subject to judicial review unless made in a perverse or capricious manner or without regard to the material before it (See, e.g., *Mia v. M.C.I.*, [2000] F.C.J. No. 120). I am satisfied that the Board erred in its findings of fact.

The evidence clearly demonstrates that the kidnapping and beating endured by the applicant were acts carried out by a religious group as a result of the religious belief of the applicant. Thus, I am satisfied that based on the record before the Board there was a nexus between the applicant's claim and one of the five convention grounds.

[10] A second error arises in the analysis of the nexus and that is that the persecution is both a subjective and objective test. The fact that the villagers unfairly and incorrectly attributed the epidemic to his preaching is irrelevant. What is relevant to the persecution analysis is that the villagers perceived him as the precipitating factor and attributed their misfortune to him and his religious belief. It was reasonable, in light of the facts found, for the applicant to fear them and to believe that they perceived him as the precipitating factor behind their misfortune.

[11] The conclusion that the Board erred in not finding a nexus between the persecutory conduct and a Convention ground has implications for its reasoning with respect to an IFA. A correct definition of the nature of the risk is integral to the IFA and state protection analysis. The viability of a safe place to hide from persecution requires, as a matter of logic, a correct understanding of that from which the individual is seeking to hide. I note as well the statement of the Board:

The panel recognizes some of the potential challenges the pastor might face if he were to return to Nigeria and resume his work as a pastor. Nonetheless, the panel also notes that the two times he was tracked down, were both in places where his church had a presence and, in both case, it was with the assistance of his own Church members. Were he to move to an area where his church did not have a branch or a presence, as a Pentecostal pastor he could begin working with another Pentecostal church, given that Pentecostalism is one of the fastest growing Christian sects in Nigeria.

[Emphasis added]

[12] This conclusion fails the test of justification and intelligibility in *Dunsmuir*. There is a logical gap in concluding that by starting to preach in another area that did not have a church, he would avoid persecution but could then resume preaching.

[13] I turn last to the findings of credibility. It is well established that the findings of credibility must be made in clear and precise terms. The findings do not meet that standard. The Board said it “had a few concerns” and that “it must question the authenticity of the entire police report”. These *concerns* pale in contrast to the Board’s acceptance of significant and material elements of the applicant’s testimony. In consequence, it is not clear what, if any, conclusions are to be drawn from these findings and their implication for the claim.

[14] Findings of credibility must be clear and precise: *Sadeora v Canada (Citizenship and Immigration)*, 2007 FC 430. In this case they are not and the decision must be set aside.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board to be redetermined by a differently constituted panel. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"

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Judge



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

**DOCKET:** IMM-1429-11

**STYLE OF CAUSE:** GABRIEL IGBINOSA v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** October 18, 2011

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

**DATED:** December 14, 2011

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