Federal Court  Cour fédérale

Date: 20120208

Docket: IMM-3151-11

Citation: 2012 FC 186

Ottawa, Ontario, February 8, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ESTHER OBOH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges the decision of a Pre-Removal Risk Assessment Officer who rejected her application for permanent residence from within Canada based on humanitarian and compassionate grounds.

[2] The applicant is a citizen of Nigeria. On February 19, 2006, she arrived in Toronto and claimed refugee status based on a fear of persecution from the father of her unborn twins who she claimed was trying to force her to have an abortion. The Immigration and Refugee Board dismissed the application for refugee status, concluding that the applicant contrived the entire story about the supposed father trying to force her to have an abortion. Leave to judicially review that decision was refused on January 23, 2007.

[3] On March 8, 2007, the applicant filed an application for permanent residence based on humanitarian and compassionate grounds, seeking an exemption from the requirement that her permanent residency application be filed outside of Canada. On August 27, 2010, the applicant was notified of her right to file a Pre-Removal Risk Assessment (PRRA) application which she did on September 3, 2010. The PRRA application was refused and leave for judicial review was denied.

[4] In a letter dated March 3, 2011, the officer rejected the applicant's claim for humanitarian and compassionate relief. In this application for judicial review of the officer's decision, the applicant has argued that there are several problems with the decision. After considering both parties' submissions and the evidence before me, I have concluded that the officer's conclusion with respect to the best interests of the children concerned is unreasonable. Consequently, the application must be allowed.

[5] The applicant gave birth to twins after her arrival in Canada. She is the mother of two Canadian children, a boy and a girl. The applicant submitted that they were at risk of female genital mutilation (FGM) and scarification should they have to go to Nigeria with their mother while she applied for residency from outside of Canada.

[6] The documentary evidence indicates that the risk of FMG in Nigeria varies based on region, ethnicity and age. Based on these factors, the officer concluded that the risk to the applicant's Canadian born daughter is such that "the applicant has failed to demonstrate that her children would personally be subject to the alleged risks of scarification and female genital mutilation." On the contrary, I find that the evidence accepted by the officer clearly shows that the female child is personally at risk of FGM based on the evidence outlining these factors. It may be that the risk she faces is not as great as that of other girls in Nigeria, but that is neither the requirement nor the standard against which the daughter's risk is to be assessed.

[7] The following is a summary of the evidence relating to each of the three identified factors.

Region

[8] The officer stated that the applicant "comes from Edo, a south-western state, and the evidence indicates that in that region, it is the Yoruba and Ibo who are most affected."

[9] The Immigration and Refugee Board of Canada Response to Information Request NGA103520.E (RIR) referenced by the officer states that the regions where FGM is most

frequently practised are the south-east and south-west areas of Nigeria. The applicant comes from the region of Nigeria where it states that FMG is most frequently carried out; 53.4 percent of girls are subjected to this practise. Further, as noted by the officer, looking at the country as a whole, the RIR states that "30% of girls have been subjected to female mutilation in Nigeria."

[10] Accordingly, the region from which the applicant hails indicates that her daughter is at the highest risk of FGM.

Ethnicity

[11] As noted above, the officer stated that "the evidence indicates that in [Edo], it is the Yoruba and Ibo who are most affected" whereas the applicant is a member of the Esan." While true, this statement ignores the evidence that those, like the Esan, who are classified as "others" in the RIR experience FGM at a rate of 14 percent. While this rate is less than the Yoruba (58.4%) and the Igbo (51.4%), it is a significant rate of FGM that the officer, in my view, unreasonably discounted as it was less than the rates of FGM experienced by girls from other tribes.

Age

[12] The officer stated that as the applicant's daughter will soon be older than four years of age, her risk of FMG is lessened because the majority of such procedures are generally done between the ages of a few weeks and four years. However, the evidence does not state that no girl is subjected to FGM after the age of four. In fact, the evidence relied on by the officer indicates that a child is at greater risk of FGM after age five than she is between the ages of one

and four. The RIR states: "With respect to the age at which FGM takes place, the results of the NDHS survey indicate that 82.54 percent of women underwent FGM before 1 year of age; 1.6 percent between 1 and 4 years of age; and 12.5 percent after age 5."

Other Evidence

[13] In my view, the officer also discounted the affidavit evidence provided by the applicant, which states that there is family pressure being brought to bear to have the female child undergo the "traditional procedure", because he considers this evidence to be self-serving. That might have been a reasonable assessment but for the fact that the applicant herself was subjected to FGM by her family. This fact strongly supports the applicant's allegation of family pressure. Such pressure ought to have been given significant weight, but it was not.

Conclusion

[14] For these reasons, I find that the officer's decision and conclusions are not justified, transparent nor intelligible, and do not fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" as required by *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. Consequently, the decision must be set aside.

[15] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the application is returned for determination by a different officer and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3151-11
STYLE OF CAUSE:	ESTHER OBOH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 29, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	ZINN J.
DATED:	February 8, 2012

APPEARANCES:

Kingsley I. Jesuorobo	FOR THE APPLICANT
Kareena R. Wilding	FOR THE RESPONDENT

SOLICITORS OF RECORD:

KINGSLEY I. JESUOROBO Barrister & Solicitor North York, Ontario	FOR THE APPLICANT
MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT