

Federal Court



Cour fédérale

**Date: 20120522**

**Docket: IMM-5625-11**

**Citation: 2012 FC 615**

**Ottawa, Ontario, May 22, 2012**

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

**BETWEEN:**

**RICHARD PAULINUS AHONSI JOHNSON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant, Richard Paulinus Ahonsi Johnson, contests a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 10, 2011, finding that he was not a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Facts

[2] The Applicant is a Nigerian citizen. His refugee claim in Canada is based on a fear of his stepmother, who he alleged revenged the loss of her son with the murder of his mother and sister. He claimed that this led him to go into hiding and eventually flee the country. He also insists that his stepmother took over his father's estate.

II. Decision Under Review

[3] The Board considered the determinative issue to be the Applicant's credibility. He did not provide clear and convincing evidence corroborating the murders of his mother and sister. There were no witnesses or police report related to their murder by members of the community at the direction of his stepmother. The Board found it implausible that he would not have followed up with police on these alleged murders. Moreover, the certificates of death did not indicate a cause of death.

[4] The Board also determined it was implausible that as the Chief Executive Officer of the family business, the Applicant "would simply allow his stepmother to attack his mother and sister and then to ultimately take over the estate without any response." It was similarly improbable that the Applicant "would not enlist the support of the police or lawyers in prosecuting or opposing his stepmother."

[5] Despite the Applicant's claim that he would be recognized in other Nigerian cities of Ibadan and Port Harcourt because his family name is unique and extended family members live throughout the country, the Board noted that there was no evidence to support these assertions. It found an Internal Flight Alternative (IFA) would be available to the Applicant in those cities.

[6] Finally, the Board gave little weight to the Applicant's assertion that he did not attempt to seek state protection because "police are easily bribed and that he could not count on them for protection."

### III. Issue

[7] The application raises the following general issue:

- (a) Is the Board's decision reasonable?

### IV. Standard of Review

[8] Issues of fact and credibility are reviewed according to the reasonableness standard (see *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14). This standard also applies to the determination of an IFA (*Galindo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1114, [2011] FCJ no 1364 at para 18) and state protection (see *Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ No 771 at paras 11-13).

[9] In considering reasonableness, this Court must have regard to “the existence of justification, transparency and intelligibility” and whether the decision falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

[10] The Applicant raises various concerns with the Board’s assessment of his credibility as based on erroneous findings of fact. For example, the reasons state there were no witnesses to the murder of his mother and sister, although the Applicant testified that his neighbours were present and informed him of what transpired while he was away. The Board refers to the death certificates of his sister and mother as not listing a cause of death but did not address that they had the same date, an indication that the death was not of natural causes. The Board faulted the Applicant for not producing a police report without mentioning his testimony that his uncle unsuccessfully followed up with police. According to the Applicant, documentary evidence was also presented as to related persecution in Nigeria.

[11] I agree that there are issues associated with these factual findings. While it is open to the Board to attribute little weight to the some of the Applicant’s evidence, these misstatements and lack of fulsome analysis raise questions regarding the reasonableness of its approach.

[12] The Board suggests that much of the Applicant's story is simply implausible. It is appropriate to make implausibility findings based on rationality and common sense (see *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 415).

However, this Court also stressed in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] FCJ no 1131 at para 7:

[7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[13] Based on this reasoning, I do not consider the Board's credibility findings that significant aspects of the story were simply implausible justified in the circumstances. In light of the evidence, the facts and analysis remain unclear.

[14] I also find the Board's consideration of the availability of an IFA and state protection unreasonable. Although the Board clearly considered and rejected the Applicant's responses, its basis for doing so without any reference to documentary evidence as it relates to the suitability of the IFA and problems of police corruption is not evident.

[15] As a whole, the Board's decision does not demonstrate the existence of justification, transparency and intelligibility.

VI. Conclusion

[16] For this reason, I am allowing the application for judicial review and remitting the matter back to a newly constituted panel of the Board for reconsideration.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed and the matter is remitted back to a newly constituted panel of the Board for reconsideration.

“ D. G. Near ”

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Judge

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

**DOCKET:** IMM-5625-11

**STYLE OF CAUSE:** RICHARD PAULINUS AHONSI JOHNSON v MCI

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** APRIL 4, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** MAY 22, 2012

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