

Federal Court



Cour fédérale

Date: 20130506

Docket: IMM-6082-12

Citation: 2013 FC 471

Ottawa, Ontario, May 6, 2013

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

OLUWAJUWON ROMEO MONDAY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Monday, a citizen of Nigeria, received a negative Pre-Removal Risk Assessment. He seeks judicial review of that decision under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He contends that the PRRA officer unreasonably disregarded his documentary evidence, made a veiled credibility finding and failed to conduct an interview.

[2] For the reasons that follow the application is denied.

BACKGROUND:

[3] The applicant was born in Nigeria in 1974. He arrived in Canada in August 24, 2007 with a false passport and claimed refugee protection on the ground of persecution by reason of his Christian religion. This was denied on June 29, 2010 for lack of credibility. An application for leave for judicial review of that decision was dismissed. As was an application for an exemption from the visa requirements to allow him to apply for permanent residence from within Canada on humanitarian and compassionate grounds.

[4] On June 28, 2011, Mr. Monday applied for a Pre-removal Risk Assessment (PRRA). He alleged that his sister and brother had been arrested by the Nigerian State Security Service (SSS) in Lagos as suspected associates of the terrorist group Members for the Emancipation of the Niger Delta (“MEND”), which had carried out a bombing in Abuja on the day of the independence celebration, October 1, 2010.

[5] Mr. Monday states that he was informed on October 18, 2011 that both of his siblings had been murdered by the state authorities on May 18, 2011. It was alleged that they had been trying to escape while being transferred from SSS custody to police custody. Death registration certificates from Lagos City Hall were submitted in support of Mr. Monday’s PRRA application. Mr. Monday noted that he no longer knew the whereabouts of any of his family members. He had been told that the SSS was trying to find them and capture them.

[6] A family friend, Mr. Jerry Olawale Martins, provided an affidavit saying that he saw the two Monday siblings being arrested and beaten with gun butts, and that the Monday family members have now all fled. A lawyer provided a letter and an affidavit affirming Mr. Monday's claims. In the letter the lawyer explains that he has been retained on behalf of Mr. Monday by an uncle whose name he cannot give due to security implications.

DECISION UNDER REVIEW:

[7] The PRRA officer accepted that Mr. Monday had provided new evidence of risk arising since the rejection of his asylum request. In analyzing the evidence, the officer noted that photocopies of the death certificates had been submitted, not originals. They gave the date of death as May 18, 2011 and the date of registration of the two deaths as July 2011. The cause of death and the person providing the information are not recorded. The address of both deceased is given as that of Mr. Monday's younger brother in Lagos, although Mr. Monday had stated that they were only visiting that address.

[8] The officer concluded that the documents did not permit him to determine that the Monday siblings were tortured or murdered. He gave them no weight as evidence that the Monday family was targeted due to suspected MEND links.

[9] In considering the letter and affidavit from the lawyer, the officer noted that they were also photocopies with illegible seals and lacked details and dates. The information in the affidavit is similar but not identical to that which is in the letter. The officer concluded that the documents were

unreliable and gave them no weight. A letter from a neighbour which stated that the two siblings were living at the Lagos address was also discounted.

[10] The officer found that the documentation provided did not establish that the deceased Monday siblings were members of suspected members of MEND, nor that they were murdered. No personalized risk to the applicant was established due to targeting for membership or perceived membership in MEND. Additional documentation about the difficult situation and violence in Nigeria did not demonstrate a link to his particular situation. No interview was conducted.

ISSUES:

[11] The issues raised by the parties are as follows:

1. Was the rejection of the documents provided by the applicant unreasonable?
2. Did the PRRA officer make a veiled credibility finding which should have required him to conduct an interview?

ANALYSIS:

Standard of Review;

[12] With respect to the first issue, rejection of the applicant's documentary evidence, as stated in *Martinez Giron v Canada (MCI)*, 2013 FC 7 at paras 11-13 the applicable standard of review is that of reasonableness. The role of the court is therefore not to substitute any decision it might have

made on the evidence but rather to determine 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.

[13] Regarding the second issue, questions of procedural fairness are typically determined on the correctness standard. However, it has been held by the Court that the question of whether an interview should have been conducted in the application of ss 113(b) of the IRPA does not necessarily give rise to procedural fairness considerations. As stated by Justice O'Keefe in *Ullah v Canada (MCI)*, 2011 FC 221 at para 21, in deciding whether to hold a hearing, the PRRA officer applies the facts to the factors outlined in s 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. This is a determination of mixed fact and law reviewable on the standard of reasonableness. A failure on the part of the officer to turn his or her mind to the issue of whether to hold an oral hearing would give rise to concerns of procedural fairness calling for the correctness standard.

[14] In the present case, the officer specifically indicated that he had turned his mind to the section 167 factors and the issue of whether an oral hearing was required. I therefore conclude that the standard of review for both the first issue and the second issue is reasonableness.

Was the rejection of the documents provided by the applicant unreasonable?

[15] The applicant contends that the officer ought to have viewed each of the documents as part of the whole and considered the story that they told when put together. The officer was too critical

of the documents and focused on information which they did not contain rather than the information that was there. It was unfair to criticize the applicant for submitting photocopies considering the difficulty in obtaining originals and, indeed, originals were not requested.

[16] The respondent argues that the applicant had the burden of proof and did not establish that he was at risk. The officer reasonably had a number of concerns with the death certificates which were submitted, the lawyer's letter and affidavit, and the affidavit from the neighbour. It was reasonable for him to find that the documentation did not establish that the applicant's siblings were suspected of being members of MEND nor that the family was being targeted by the authorities on that basis.

[17] In my view, it is clear from the decision that the officer considered all of the evidence. The weighing of it was within his domain and his assessment of its probative value must be accorded deference. His concerns about the authenticity of the documents were reasonable in the circumstances. The officer acknowledged the problem of violence and corruption in Nigeria but there was no evidence linking that generalized situation to the applicant's personal situation.

Did the PRRA officer make a veiled credibility finding which should have required him to conduct an interview?

[18] The risks raised by the applicant in his PRRA application were unrelated to those alleged in his refugee claim and had not been assessed in a hearing, the applicant submits. While the officer framed his discussion in terms of insufficient evidence to prove the applicant's claims, the applicant

asserts that in reality he was making an adverse credibility finding on which the outcome turned, and doing so without the benefit of an oral hearing. The court must determine whether a credibility finding was made, explicitly or implicitly, and if so, must determine if the issue of credibility was central to the decision: *Prieto v Canada (MCI)*, 2010 FC 253 at para 30; *Adeoye v Canada (MCI)*, 2012 FC 680 at paras 7-8.

[19] However, the officer did not reject the applicant's story and the applicant's credibility was not in issue because he had no personal knowledge of the events asserted in support of the claim. There was nothing to connect the applicant to the reason given for the arrest of his siblings, the Abuja bombing. Assuming that all of his statements were true did not support an inference that he shared his siblings' risk. There was no direct evidence against him, only vague suggestions from the lawyer. The officer rejected the applicant's documents and found that this left insufficient evidence to prove the story. He also specifically considered the criteria of s 167 before deciding that no oral hearing was necessary.

[20] Overall, the decision satisfies the standard of reasonableness. No questions were proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6082-12

STYLE OF CAUSE: OLUWAJUWON ROMEO MONDAY

AND

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 28, 2013

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

DATED: May 6, 2013

APPEARANCES:

Jonathan Fedder FOR THE APPLICANT

Christopher Ezrin FOR THE RESPONDENT

SOLICITORS OF RECORD:

JONATHAN FEDDER FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario