

Federal Court



Cour fédérale

**Date: 20141125**

**Docket: IMM-3545-13**

**Citation: 2014 FC 1105**

**Ottawa, Ontario, November 25, 2014**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**CHRISTOPHER OSA EVBUOMWAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2012, Mr Christopher Evbuomwan, fearing persecution based on his sexual orientation, fled Nigeria and sought refugee protection in Canada. A panel of the Immigration and Refugee Board found Mr Evbuomwan's claim to be credible, yet denied it on the basis that he had failed to provide adequate proof of his identity.

[2] Mr Evbuomwan argues that the Board failed to apply the proper standard of proof, ignored relevant evidence, and improperly faulted him for failing to obtain a Nigerian passport. He asks me to order the Board to conclude that he is a refugee or, in the alternative, to order another panel to reconsider the issue of identity. Mr Evbuomwan also requests an order of costs against the Minister.

[3] In my view, the Board's treatment of the issue of identity was unreasonable and, therefore, I must allow this application for judicial review. However, I would return the matter to another panel of the Board for reconsideration; I would not narrow the issues before the Board or direct it how to decide Mr Evbuomwan's claim. Further, I would make no order relating to costs.

[4] While Mr Evbuomwan has raised a number of discrete issues, I believe the essential question before me is whether the Board's decision was unreasonable.

## II. The Board's Decision

[5] On the issue of identity, the only documentary evidence Mr Evbuomwan had provided to the Board was his birth certificate. While this showed that Mr Evbuomwan was born in Nigeria in 1993, it did not, according to the Board, prove that he is currently a citizen of Nigeria.

[6] The Board also noted that Mr Evbuomwan had not obtained better evidence of citizenship, such as a passport or National Identity Card. The Board stated in its reasons that, after the hearing, it had given Mr Evbuomwan three weeks to obtain better evidence in the form

of a Nigerian passport from the High Commission in Ottawa and, perhaps, some school documents from Nigeria.

[7] Mr Evbuomwan provided school documents, but no passport. The Board concluded that those documents confirmed Mr Evbuomwan's presence in Nigeria for a number of years but did not definitively establish his Nigerian citizenship. Since Mr Evbuomwan had not provided a passport as requested, or an explanation for why he could not obtain one, the Board found that he had not proved his citizenship. Therefore, it was unnecessary to consider whether Mr Evbuomwan was entitled to refugee protection.

III. Was the Board's decision unreasonable?

[8] The Minister argues that the Board properly described the onus on the applicant and reasonably concluded that Mr Evbuomwan had not established his Nigerian citizenship.

[9] I disagree. There are three problems with the Board's decision.

[10] First, while the Board did not apply the wrong legal standard of proof, it misdescribed the evidentiary burden on Mr Evbuomwan. It did not, therefore, commit an error of law; rather, it unreasonably discounted the evidence in Mr Evbuomwan's favour. (For a discussion of the distinction between the legal burden and the evidentiary burden, see *Flores Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, at para 16-30.)

[11] The Board stated that Mr Evbuomwan had not discharged the burden of establishing his citizenship. The Board correctly identified the legal burden on Mr Evbuomwan – the ordinary civil standard – but also stated that he had not provided “all relevant evidence” of his citizenship, and that his school documents did not provide “definitive” proof. In my view, the Board mischaracterized the evidentiary burden on Mr Evbuomwan. His obligation was to provide “acceptable documents” relating to identity (according to the Rules in force at the time of the hearing, the *Refugee Protection Rules*, SOR/2002-228, s 7 – see Annex). Presumably, “acceptable” documents are ones that are genuine and probative on the issue of citizenship. Here, Mr Evbuomwan did provide some acceptable documents, but he obviously did not provide “all relevant documents” or any that constituted “definitive” proof of citizenship.

[12] In my view, the Board unreasonably overstated the evidentiary burden on Mr Evbuomwan by requiring him to provide “all relevant documents” relating to, and “definitive” proof of, his identity.

[13] Second, the Board seemingly did not consider all of the evidence relating to Mr Evbuomwan’s citizenship. As mentioned, it found that Mr Evbuomwan’s school documents were not definitive. But it apparently did not consider that evidence along with Mr Evbuomwan’s birth certificate, his written narrative in which he explained that his parents were both Nigerian citizens, and his uncontradicted testimony at the hearing. According to the Nigerian Constitution, which formed part of the evidence before the Board, a person is a citizen of Nigeria if he or she is born there and has at least one parent who is a citizen. In my view, the Board was obliged to

consider the evidence relating to identity as a whole before concluding that Mr Evbuomwan had failed to prove it.

[14] Third, the Board faulted Mr Evbuomwan for not obtaining a Nigerian passport even though he had been given time after the hearing to obtain one. In fact, according to the transcript of the hearing, the Board twice told Mr Evbuomwan that he would be given time to obtain “either school documents or a passport or both” (my emphasis). Mr Evbuomwan obtained the school documents but not the passport.

[15] The Board’s instruction created a reasonable expectation that school documents would allay its concerns about Mr Evbuomwan’s identity, presumably because they would show that he was not only born in Nigeria but spent much of his life there. It was unreasonable, therefore, for the Board to state in its decision that Mr Evbuomwan should have provided a passport as evidence of his identity when it specifically told him that he could provide either school documents or a passport. Further, it was unreasonable for the Board to discount the probative value of the school documents without explanation, having given the impression that they would provide adequate proof of citizenship.

#### IV. Conclusion and Disposition

[16] The Board’s treatment of the issue of Mr Evbuomwan’s identity was not transparent, justifiable or intelligible. I must, therefore, allow this application for judicial review.

[17] However, I cannot grant the remedy Mr Evbuomwan seeks – an order directing the Board to find that he merits refugee protection, or an order confining the reconsideration of his claim to the issue of identity. While Mr Evbuomwan was found to have given credible evidence supporting his claim, there has yet to be a finding that his claim for refugee protection has been made out. In my view, the matter must be returned to the Board to make that determination.

[18] Further, I see no special reasons that would merit an award of costs. The respondent opposed Mr Evbuomwan's request for an extension of time and this application for leave and judicial review, as it was entitled to do. I see no basis for Mr Evbuomwan's contention that his application was opposed at all costs, improperly, or in bad faith. The fact that the respondent might have been in a position to help expedite these proceedings and failed to do so is not a basis for an award of costs.

[19] Finally, neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed and the matter is returned to a different panel of the Board for reconsideration.
2. There is no order as to costs.
3. No certified question is stated.

"James W. O'Reilly"

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Judge

Annex

*Refugee Protection Division  
Rules, SOR/2002-228 (in force  
between March 22, 2006 and  
December 14, 2012)*

*Règles de la Section de la protection  
des réfugiés, DORS/2002-228 (en  
vigueur entre le 22 mars 2006 et le 14  
décembre 2012)*

Documents establishing identity  
and other elements of the claim

Documents d'identité et autres  
éléments de la demande

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer



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

**DOCKET:** IMM-3545-13

**STYLE OF CAUSE:** CHRISTOPHER OSA EVBUOMWAN v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 27, 2014

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** NOVEMBER 25, 2014

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