Federal Court  Cour fédérale

Date: 20160413

Docket: IMM-4997-15

Citation: 2016 FC 409

Toronto, Ontario, April 13, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

NIHINLOLA VERONICA FAMUREWA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 37 [the Act] of a pre-removal risk assessment [PRRA] decision wherein the Officer determined that the applicant would not be subject to persecution, danger of torture, risk to life or risk to cruel and unusual treatment or punishment as per s 97 if returned to her country of origin.

I. Facts

[2] The applicant is a citizen of Nigeria. She became a permanent resident of Canada in June 2006 after a successful skilled worker application. Her two minor sons accompanied her to Canada but her spouse, although approved as an accompanying dependent, remained in Nigeria. The applicant gave birth to a daughter in Canada in October 2006.

[3] On July 29, 2013, the applicant was convicted of one count of aggravated assault contrary to s 268 of the *Criminal Code* for burning her 10 year-old son with a hot iron. She was sentenced to 20 months imprisonment and 3 year probation. Her children were placed in foster care, where they remain today.

[4] The applicant was found inadmissible to Canada pursuant to s 36(1)(a) of the Act because of her criminal conviction and her status was revoked. She became the subject of a removal order in February 2015, which was stayed on November 25, 2015 by Madam Justice Strickland until final determination on the present matters.

II. Issues

[5] This matter raises the following issues:

A. Did the Officer err in finding that the applicant was not at risk because of an outstanding arrest warrant in Nigeria?

B. Did the Officer err in finding that there was adequate state protection in Nigeria for women victims of domestic abuse?

III. Decision

[6] The Officer accepted the adverse country conditions in Nigeria, that the applicant's spouse had made a criminal complaint against her and that the applicant had been a victim of domestic violence, but found that there was not a serious possibility or more than a mere chance that the applicant would face harm if returned to Nigeria.

[7] The Officer noted that the applicant's husband had allowed the children to immigrate to Canada and that, if she were to be arrested, she could easily access her immigration file to prepare her defence and retain legal services from NGOs advocating for women's rights. The Officer also noted that the warrant issued against the applicant was dated 2006 and there was no current evidence that the Nigerian authorities were still looking for her.

[8] As to the allegations of mistreatment due to her gender, the Officer found that Nigeria has mechanisms to protect women from domestic violence and is making efforts to better assist victims of domestic violence. The Officer however recognized that obtaining police protection is not ideal for women in Nigeria, but given her profile as an educated woman and the efforts Nigeria is making, the applicant should reasonably be able to request help from the police or a higher authority. The Officer also observed that the applicant had not tested state protection prior to immigrating to Canada in 2006.

IV. Submissions of the Parties

A. *The Applicant*

[9] The applicant submits that the Officer reached several conclusions by speculating without regard to the evidence.

[10] The Officer never impugned the applicant's credibility or that of her supporting documents, and accepted the adverse country conditions as reported by the objective evidence. The Officer nevertheless unreasonably assumed that the warrant against the applicant would no longer be executed due to the passage of time and that she would be given the opportunity to defend herself, if arrested.

[11] Moreover, the Officer erred in concluding that the applicant could benefit from state protection because Nigeria was making efforts to help victims of domestic violence when the Officer should have examined whether state protection was adequate.

B. *The Respondent*

[12] The respondent submits that it is not the role of the Court to reweigh the evidence. It was reasonable for the Officer to conclude that the warrant did not demonstrate a forward-looking risk. The applicant simply failed to show that anyone was interested in finding her today in relation to the 2006 warrant. It was also reasonable for the Officer to find that, if the applicant were to be arrested, she would have a readily available defence in her husband's consent to their

children's immigration to Canada and she would have access to viable options for obtaining legal defense.

[13] Moreover, the respondent submits that the presumption of state protection can only be displaced upon clear and convincing confirmation of a state's inability to protect a person. Protection has to be adequate, not effective, and it is insufficient for the applicant to rely solely on documentary evidence of flaws in the justice system when she has never tested state protection in Nigeria. The applicant had to exhaust all avenues of protection.

V. Analysis

A. *Standard of Review*

[14] It is well-established in the jurisprudence that an Officer's review of the evidence in the context of a PRRA is reviewable under the reasonableness standard. Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process, 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, para 47).

[15] Determining the test for state protection is a legal question about the interpretation of sections 96 and 97of the Act, while the application of that test to the facts of a case is a question of mixed fact and law. The determination of the test will therefore attract the correctness

standard, while its application will attract the reasonableness standard (*Glasgow v Canada (MCI)*, 2014 FC 1229, para 23).

B. *Did the Officer err in finding that the Applicant was not at risk because of an outstanding arrest warrant in Nigeria?*

[16] I do not agree with the respondent that it was open to the Officer to assign low probative value to an authentic warrant for the applicant's arrest in the absence of any evidence that the passage of time lessened her risk of being apprehended upon her return to Nigeria. The applicant is wanted for kidnapping her children and unlawfully taking them out of Nigeria, which is a serious crime.

[17] Given the nature of the charge, the Officer assumed that the applicant should have been actively pursued by her husband and the state of Nigeria after her departure for Canada. The applicant's husband may too, have decided that harassing a spouse who resides abroad is too complex or time-consuming, or he may simply did not have the means to do it. Or, as suggested by the Officer, he may have lost interest in regaining custody of his children and moved on. But all that is certain is that there is a live arrest warrant awaiting the applicant on charges of child abduction in Nigeria. The Officer could not dismiss that evidence by relying on speculation.

[18] As to the availability of legal assistance and defenses should the applicant be arrested, this position presupposes that Nigeria has a criminal justice system similar to Canada's, in which the applicant would be permitted to retain a lawyer after being arrested and prior to being questioned by the police which is not supported by the documentary evidence.

[19] I conclude that the Officer made a reviewable error when he found that the applicant would not be at risk in Nigeria because of the outstanding warrant for her arrest.

C. *Did the Officer err in finding that there was adequate state protection in Nigeria for women victims of domestic abuse?*

[20] The Officer accepted the applicant's story unconditionally and recognized the adverse country conditions, including the fact that "obtaining police protection in Nigeria is not ideal for women". In fact, the Officer, in the decision, quoted extensively from a document stating that the current laws in Nigeria do not adequately protect women from domestic violence. Yet, the Officer found that Nigeria was making efforts to assist victims of domestic violence and that the applicant, being a financially independent and educated woman, would not face the same obstacles in obtaining protection as the general population.

[21] "Making efforts" is not the appropriate test for state protection. It is well-established in the jurisprudence that adequacy is the proper test (*Flores Carillo v Canada (MCI)*, 2008 FCA 94, para 8-11). I am not satisfied that this was the test applied by the Officer in this case. 'Efforts' is the word most commonly used by the Officer to describe Nigeria's policies towards victims of domestic abuse. Coupled with the Officer's admissions that police protection is 'not ideal' for women and their choice of supporting document, I cannot conclude that the Officer used the correct test for state protection. This constitutes another reviewable error.

[22] For these reasons the application is allowed and the matter is referred back for redetermination. The parties have not proposed any questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is sent back for redetermination by a different Officer.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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