Federal Court Cour fédérale

Date: 20170505

Docket: IMM-4632-16

Citation: 2017 FC 455

Ottawa, Ontario, May 5, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

PITRA ELOGHENEVIANO MELFORD-JOWOH (a.k.a. PITRA ELOGHENEV MELFORD-JOWOH)

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Pitra Elogheneviano Melford-Jowoh (also known as Pitra Eloghenev Melford-Jowoh) is a citizen of Nigeria. She arrived in Canada from the United States on February 21, 2016 while pregnant and sought refugee protection on March 9, 2016. She claims she fears persecution from her husband's uncle, a former senator, and from other members of her

husband's clan for refusing to participate in pregnancy rituals which would endanger her health and that of her unborn child and which are contrary to her Christian beliefs.

[2] In a decision dated June 7, 2016, the Refugee Protection Division [RPD] rejected the Applicant's claim for protection on the ground that she had a safe and reasonable internal flight alternative [IFA] elsewhere in Nigeria.

[3] On October 6, 2016, the Refugee Appeal Division [RAD] dismissed the Applicant's appeal and upheld the RPD's finding regarding the existence of a viable IFA elsewhere in Nigeria. The RAD found that there was no serious possibility that the Applicant would be persecuted in the proposed IFA and moreover, that the Applicant had not provided sufficient evidence to demonstrate that relocating to the proposed IFA would be unreasonable in her circumstances.

[4] The issue to be determined in this application for judicial review is the reasonableness of the RAD's conclusion that the Applicant had a viable IFA elsewhere in Nigeria. The parties agree that the determination of an IFA is a question of mixed fact and law, to be reviewed on the standard of reasonableness (*Asif v Canada (Citizenship and Immigration)*, 2016 FC 1323 at para 20; *Bokhari v Canada (Citizenship and Immigration)*, 2016 FC 1306 at para 14; *Mchedlishvili v Canada (Citizenship and Immigration)*, 2010 FC 630 at para 12 [*Mchedlishvili*]).

[5] In assessing reasonableness, the Court must consider the justification, transparency and intelligibility of 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" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[6] The determination of whether a viable IFA exists involves a two-prong test. The tribunal must first be satisfied, on a balance of probabilities, that there is not a serious possibility of the claimant being persecuted in the part of the country in which it finds an IFA. Second, the conditions in the IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration*), [1994] 1 FC 589 (CA) at paras 9 and 12 (Q.L.) [*Thirunavukkarasu*]; *Rasaratnam v Canada (Minister of Employment and Immigration*), [1992] 1 FC 706 (CA) at para 10 (Q.L); *Mchedlishvili* at para 16).

[7] The Applicant bears the *onus* of demonstrating that an IFA does not exist or that it is unreasonable in her circumstances (*Thirunavukkarasu* at paras 5, 9 and 12). The Applicant must satisfy this high threshold on a balance of probabilities (*Okechukwu v Canada (Citizenship and Immigration)*, 2016 FC 1142 at para 35 [*Okechukwu*]; *Mchedlishvili* at para 17).

[8] The Applicant submits that the RAD's conclusion that she would face no serious possibility of persecution in the proposed IFA is unreasonable. She argues namely that she provided ample evidence to show that: 1) her husband's uncle, as a former senator, has a very high profile and connections such that he would be able to locate the Applicant in the proposed IFA; 2) the fact that a member of her husband's family lives in the proposed IFA increases the

chance that she could be located there; and 3) since the Applicant's departure, her husband's uncle has additional motives to locate her.

[9] I am not persuaded by the Applicant's arguments. The RAD's finding regarding a viable IFA elsewhere in Nigeria is based on its conclusion that the uncle and the rest of her husband's clan are not serious about fulfilling their threats against the Applicant. This is based on, namely, the fact that the Applicant was not targeted when she lived with her friend for two (2) months before leaving Nigeria and because her husband, who remained in the same home he had shared with the Applicant, was not targeted. It was reasonable for the RAD to conclude that the fact that the Applicant stayed in her home city and continued going to work without being targeted for more than two (2) months, was an indication that the uncle had either no motivation to find her or was unable to do so. It was also reasonable for the RAD to infer that because the uncle was unable to find her when she was at her place of employment, he would be unable to find her in the proposed IFA which is a significant distance away from the village where her alleged persecutors reside.

[10] To support its finding that the uncle would not be able to find the Applicant in the proposed IFA, the RAD noted that Nigeria had a population of over 180 million people and that the proposed IFA has a population of over two (2) million inhabitants. The RAD also considered Nigeria's lack of infrastructure, noting, for instance, that only 11.6 percent of urban residents and 1.5 percent of rural residents had access to the Internet. The RAD also rightly relied on the absence of evidence demonstrating that the Obimo Ndigbo Youth Association and the Obimo Ndigbo Indigene Association had the capacity to locate the Applicant. Similarly, it was

reasonable for the RAD to ask itself why the Applicant was bearing the full force of the anger of her husband's uncle when her husband had not consented to the rituals and, by all accounts, was supporting his wife's decision.

[11] Furthermore, in the absence of any evidence demonstrating that the Applicant's husband's uncle had any other relatives living in the proposed IFA aside from the one member of the Applicant's husband's family, it was not unreasonable for the RAD to infer that this person would not divulge the Applicant's location, given that she had agreed to sign an affidavit on behalf of the Applicant despite the uncle's notoriety and influence.

[12] The Applicant also submits that in assessing the other branch of the IFA test, that is whether it would be unreasonable for the Applicant to relocate to the proposed IFA, the RAD failed to consider: 1) the Applicant is now more vulnerable as it is more difficult for her to remain safe and less visible in the proposed IFA with a young baby; 2) a psychological assessment which concludes that she exhibited post-traumatic stress disorder, anxiety and depression and that her mental state would deteriorate if she returns to Nigeria; and 3) the Chairperson's Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution [Guidelines] as the Applicant was subject to sexual abuse and is also now in a position where she would have to protect her daughter from female genital mutilation which is highly gendered violence.

[13] The Applicant has not submitted any evidence to substantiate the assertion that having a baby makes the proposed IFA less viable. I reiterate that the Applicant has the *onus* of

demonstrating why the proposed IFA is not reasonable. The burden does not fall on the RAD to explain why the proposed IFA would be safe for the Applicant and her baby.

[14] It was also reasonable for the RAD to conclude that the psychological assessment of the Applicant was insufficient to meet the high threshold of showing that seeking refuge in the proposed IFA would be unreasonable. While the report speaks about the psychological impact of the Applicant returning to Nigeria, it does not indicate: 1) how the psychotherapist came to the medical opinion that the Applicant's medical condition would deteriorate if she were to return to Nigeria; 2) the type of treatment the Applicant needed; and 3) whether she could obtain the treatment in the proposed IFA (*Okechukwu* at para 39; *Egbesola v Canada (Citizenship and Immigration),* 2016 FC 204 at para 15).

[15] Moreover, the psychological report must be read in the context of the Applicant's pregnancy and the effect that the threat of returning to Nigeria was having on the Applicant's unborn child. In the absence of any evidence regarding the Applicant's current condition, with the exception of a doctor's prescription, it was not unreasonable for the RAD to give the report little weight in the context of considering the Applicant's current circumstances.

[16] Finally, I do not find that the decision was made in contravention of the Guidelines. The RAD explicitly stated that it had considered them. I also cannot say from reading the decision that the RAD lacked sensitivity in approaching the Applicant's case. In any event, the failure to refer to the Gender Guidelines does not in itself constitute a reviewable error (*Chappell v*

Canada (Immigration, Refugees, and Citizenship), 2016 FC 1243 at para 18; *Sargsyan v Canada (Citizenship and Immigration),* 2015 FC 333 at para 15).

[17] The Applicant also argues that the RAD ignored or misconstrued the evidence before it in reaching its decision. However, to the extent that the RAD erred in the weight it assigned the evidence, I do not find these errors to be determinative.

[18] Keeping in mind that the RAD's decision must be reviewed as an organic whole and that judicial review is not a line-by-line treasure hunt for errors (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54), I find that when viewed as a whole, the RAD's decision is reasonable as it falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir* at para 47).

[19] Accordingly, this application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4632-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause is amended to replace the "Minister of Immigration, Refugees and Citizenship Canada" with the "Minister of Citizenship and Immigration"; and
3. No question is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4632-16
STYLE OF CAUSE:	PITRA ELOGHENEVIANO MELFORD-JOWOH (a.k.a. PITRA ELOGHENEV MELFORD-JOWOH) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	MAY 5, 2017

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