

Federal Court



Cour fédérale

Date: 20180717

Docket: IMM-200-18

Citation: 2018 FC 745

Toronto, Ontario, July 17, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

EVELYN OBOAGUONONA AKPOJIYOWWI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Evelyn Oboaguonona Akpojiyovwi, is a citizen of Nigeria. She entered Canada on February 17, 2017 and claimed refugee status on the basis of her sexual orientation as a bisexual woman.

[2] In her Basis of Claim [BOC] form and narrative, the Applicant alleges that in October 2016, her boyfriend discovered her sexual orientation through text messages sent from another

woman. On her way back from work the following day, the Applicant was attacked and beaten by a group of seven (7) or eight (8) people. She was helped by a woman who brought her to her house and was treated by this woman's husband who was a doctor. After spending the night there, the Applicant fled to Lagos. While in Lagos, the Applicant traveled to several countries including Canada. When she returned from a conference in Egypt in January 2017, the Applicant found hate notes at the entrance of her apartment. Afraid, she moved to a hotel where she stayed until she came to Canada in February 2017 and claimed refugee status.

[3] In a decision dated June 21, 2017, the Refugee Protection Division [RPD] rejected the Applicant's claim, concluding that she was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RPD found that a number of issues undermined the Applicant's credibility regarding her claim to be bisexual. They included significant omissions in the BOC form, implausibilities and the Applicant's reavilment and failure to claim refugee status at the first opportunity. The RPD also found the documentary evidence provided by the Applicant not trustworthy or of sufficient weight to support the claim.

[4] The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD]. On December 18, 2017, the RAD dismissed the appeal and concurred with the RPD that the Applicant lacked credibility.

[5] The Applicant now seeks judicial review of the RAD's decision. She submits that the RAD made unreasonable credibility findings and unsupportable plausibility findings and that it

failed to consider relevant evidence as well as the Applicant's objective fear of persecution as a bisexual woman in Nigeria.

[6] The reasonableness standard of review applies when this Court is reviewing the RAD's credibility findings and assessment of the evidence (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). The Court should not intervene if the RAD's decision is justifiable, transparent and intelligible and if it falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[7] I agree with the Applicant that the RAD's decision must be set aside.

[8] The RAD considered the Applicant's submission that the RPD erred in finding that the Applicant's extensive travel outside Nigeria without claiming refugee protection indicated a lack of subjective fear and undermined her allegation that she is bisexual. The Applicant explained that when her sexual orientation was revealed in October 2016, she relocated to another city without fear of her ex-boyfriend or her community. When she received the hate notes in January 2017, she believed she could no longer hide and that her life was in danger. The RAD found the Applicant's explanation that she no longer felt safe in Lagos to be questionable. The RAD noted the Applicant's testimony that her ex-boyfriend discovered her address in Lagos because the Applicant's staff inadvertently provided it to him and stated that "it would appear that she would have been safe otherwise, and may well have been able to relocate, even within Lagos, a city of nearly 20 million people, especially given her willingness to not live openly as a bisexual".

[9] In my view, it was unreasonable for the RAD to suggest that the Applicant could have safely relocated elsewhere if she kept her sexual orientation secret. It is well-established that individuals need not conceal, restrain or repress innate elements of their identity in order to avoid persecution (*Okoli v. Canada (Citizenship and Immigration)*, 2009 FC 332 at paras 36 and 37; *Fosu Atta v. Canada (Citizenship and Immigration)*, 2008 FC 1135 at para 17; *Sadeghi-Pari v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 282 at para 29).

[10] As it is unclear from the RAD's decision whether this finding was determinative in the overall assessment of the Applicant's credibility, the decision must be set aside and referred back for a redetermination by a different panel.

[11] No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-200-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision of the Refugee Appeal Division is set aside and the matter is remitted back to a different panel for redetermination;
3. No question is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-200-18

STYLE OF CAUSE: EVELYN OBOAGUONONA AKPOJIYOVWI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 16, 2018

JUDGMENT AND REASONS: ROUSSEL J.

DATED: JULY 17, 2018

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