

Federal Court



Cour fédérale

Date: 20190927

Docket: IMM-590-19

Citation: 2019 FC 1240

Toronto, Ontario, September 27, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

LUCKY OMOGIE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a refugee claim made by the Applicant, a citizen of Nigeria. The decision under review is that of the Refugee Appeal Division (RAD), dated December 20, 2018, on appeal from a rejection decision rendered by the Refugee Protection Division (RPD), dated January 8, 2018.

[2] The Applicant's claim concerns an event which occurred in his business exporting goods from Italy to Nigeria. The event was a mishap in which a shipment of used cars and goods was completely destroyed. The owners of the goods, known as "Tony" and "Royal", demanded large sums of money and threatened his life if not paid. Because the Applicant could not meet the demands made, he fled to the United States and subsequently to Canada where he made a claim for protection pursuant to section 97 of the IRPA.

[3] With respect to the Applicant's narrative in support of his claim, the RPD made multiple negative implausibility findings. The RPD found that the Applicant has an internal flight alternative (IFA) in Port Harcourt, Nigeria.

[4] On appeal to the RAD, the Applicant argued that the RPD's decision should be set aside because the relied-upon implausibility findings were unsupported by evidence on the record. The Applicant also argued that Port Harcourt is not a reasonable IFA.

[5] In reaching the decision presently under review, the RAD did not squarely address the Applicant's arguments with respect to the RPD's erroneous decision-making. The RAD confined itself to the merits of the IFA and a new evidentiary motion brought by the Applicant.

[6] The Applicant's argument on judicial review is confined to the reasonableness of the RAD's internal flight alternative determination.

[7] The central feature of the present Application concerns the manner in which the IFA was identified. It's uncontested that the first mention occurred at the opening of the hearing before the RPD as follows:

49 The panel gave notice at the outset of the oral hearing that an internal flight alternative was an issue for the claim, namely that the claimant may have a viable internal flight alternative in the city of Port Harcourt, Rivers State, Nigeria.

[8] No evidence exists on the RPD record as to how the IFA was selected.

[9] While the RPD took liberty to suggest the IFA, the Applicant is responsible for establishing that Port Harcourt is not a viable IFA. The Applicant provided cogent evidence to substantiate that the IFA selected is not viable.

[10] To meet his burden, the Applicant placed before the RPD the knowledge that an organization called the "Eiye Confraternity" is a potential risk agent. The Applicant's knowledge arises from a letter from his good friend in Italy, containing the following statement:

...seven men walked towards us and ordered lucky to open the door, lucky opened and when we entered his sitting room the one named Tony destroyed lucky's T.V. and also told us that he was among the people that came to destroyed [sic] the cars in his place of work.

Tony also said that he's a member of Secret Cult called Elye/Eiye [handwriting unclear] Confraternity, he said that he's giving mr. lucky two weeks to pay him 9,000.00 euro otherwise he will pay with his life...

(CTR at 240)

[11] The National Documentation Package relied on by the RPD and RAD contained the following information:

Sources indicate that the Supreme Eiyé Confraternity (SEC) (SEC n.d.; BBC 27 Jan. 2016) is also known as the Air Lords (ibid.; *The Guardian* 6 Nov. 2015) or the National Association of Airlords (SEC n.d.). Sources describe Eiyé as a “secret cult” (*The Guardian* 6 Nov. 2015; PM News 28 Oct. 2015) or “unlawful society” (ibid.). Sources further indicate that Eiyé is one of a number of similar groups active in Nigeria (Ezeonu 19 Sept. 2013, 270; ISS 31 Mar. 2015; UN 2014, 56).

...

According to the UNODC, the Eiyé confraternity functions “through a system of cells (called forums) operating locally, but connected to other cells established in different countries in West Africa, in North Africa, in the Middle East, and in Western Europe” (UN 2014, 56-57).

...

UNODC reports that, according to a 2014 investigation by Italian authorities, members of the Eiyé confraternity have operated in Italy since at least 2008 and have “a level of organization, violence and intimidation similar to other, better known mafias” (UN 2014, 56).

(CTR at 724-726)

[12] Also to meet his burden, the Applicant relies upon a newspaper article dated October 30, 2017 with respect to cult groups in Rivers State, which is the state in which Port Harcourt exists. The article lists “Eiyé of Air Lords Fraternity” as a cult group active in the Rivers State. The article also states:

In the past few months residents of Rivers State are living in perpetual fear following increasing wave of cultism, kidnapping, gangsterism, among other social vices.

During the Sir (Dr.) Peter Odili's administration, the Rivers State House of Assembly (RHSA) under the speakership of Rt. Hon.

Chibuike Rotimi Amaechi, the House passed the Secret Cult and Similar Activities (Prohibition) Law, No. 6 of 2004.

In the said law no fewer than one hundred and one (101) cult groups were listed. And the law says that anyone who give [sic] any financial or materials support or assistance to a secret cult or in any manner, sponsors the activities of a secret cult, commits an offence and is liable on conviction to imprisonment for ten years without an option of fine.

Despite the penalty(ies) spelt on [sic] in the Secret Cult and Similar Activities (Prohibition) Law, eleven (11) years after its enactment, activities of cultism seems to grow on daily basis. Businessmen are afraid to invest in the State.

Thus the rate of insecurity in Rivers State is increasing astronomically day by day.

Penultimate week, a chieftain of the Grassroot Development Initiative (GDI) in the state, Comrade Olale Osudu was gunned down by unknown armed bandits, while returning from a meeting.

Some weeks back, a young man was beaten to death at Ogbakiri in the Emohua Local Government Area, during a cult initiation process.

Last week no fewer than 10 persons were brutally murdered in Ke community in the Degema Local Government Area following a fierce battle between two rival cult groups.

Many hotels in Port Harcourt metropolis and its environs are harbouring cultists. Hence the Secret Cult Prohibition Law states that for the purpose of checking the activities of secret cults, all hotels, night clubs and similar places of business in the state shall be registered with the police within three months of the commencement of this law and a certificate of registration shall be issued by the police upon payment of a sum exceeding N500.

Most of the hotels in the state have not gone through the registration processes, hence hotels serve as a safe haven for cultists.

Our findings show that the prohibition law which placed ban on cult groups, some of them are still in operation.

(CTR at 629)

[13] On the basis of the Applicant's evidence quoted above, the RAD came to the following conclusion:

I have reviewed the evidence on the record, the testimony of the Appellant at two hearings and assessed his arguments. Following my independent analysis, taking the IFA Jurisprudential Guide into full consideration, I agree with the RPD that Port Harcourt offers the Appellant a viable IFA within Nigeria. I am satisfied, on a balance of probabilities, that there is no serious possibility of the Appellant being persecuted in Port Harcourt and that it would not be objectively unreasonable, in all the circumstances, for the Appellant to live there. [Emphasis added]

[14] In my opinion, the Applicant's evidence establishes that the RAD's conclusion is made in reviewable error because it is not responsive to the evidence. The evidence goes to establish that there certainly is a serious possibility of the Applicant being persecuted in Port Harcourt, and that it would be objectively unreasonable for the Applicant to live there.

[15] Accordingly, I find that the RAD's decision is unreasonable.

JUDGMENT IN IMM-590-19

THIS COURT'S JUDGMENT is that for the reasons provided, the decision under review is set aside and the matter is referred back for determination by a different Member.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-590-19

STYLE OF CAUSE: LUCKY OMOGIE v THE MINISTER OF CITIZENSHIP
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