

Date: 20080221

Docket: IMM-5748-06

Citation: 2008 FC 233

Ottawa, Ontario, February 21, 2008

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

LOLADE TEMITOPE ADETOLA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Lolande Temitope Adetola (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dated October 2, 2006. In its decision, the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (“IRPA” or “the Act”).

[2] The Applicant, a citizen of Nigeria, claims protection in Canada on the basis of an alleged forced marriage and, conjunctively or alternatively, abuse at the hands of a boyfriend. The Applicant allegedly entered Canada on November 1, 2005. She made an inland refugee claim on November 2, 2006. On January 19, 2006, the Applicant gave birth to a child in Canada.

[3] In its decision, the Board made negative credibility findings expressing doubt that the Applicant was at risk of being forced into an arranged marriage. It commented on the failure of the Applicant to seek state protection from the risk of abuse from her boyfriend.

[4] The Board also expressed doubt as to the reliability of this Applicant's evidence concerning her entry into Canada. It found that the Applicant had failed to show that she was in Nigeria during the period of cohabitation with her boyfriend.

[5] The Board found that the Applicant had made no efforts to seek state protection in Nigeria. It also found that even if her allegations of persecution were credible, the Applicant had an internal flight alternative ("IFA") available to her in Nigeria.

[6] The first matter to be addressed is the applicable standard of review, having regard to a pragmatic and functional analysis. Four factors are to be considered: the presence or absence of a privative clause; the expertise of the tribunal; the purpose of the legislation and the nature of the question.

[7] There is no privative clause in the Act. No full right of appeal is provided but judicial review is available, if leave is granted. Accordingly, the first factor is neutral.

[8] The Board is a specialized tribunal and mandated to weigh the evidence submitted to it. This factor favours deference.

[9] The broad purpose of the Act is to regulate the admission of immigrants into Canada and to maintain the security of Canadian society. This involves consideration of many interests that may be in conflict with each other. Decisions made in a polycentric context tend to attract judicial deference.

[10] The final factor is the nature of the question. In this case, the question is whether the Applicant has shown that the Board erred in making its credibility findings. Credibility findings are similar to factual findings and attract a high degree of deference.

[11] Upon balancing the four factors involved in a pragmatic and functional analysis, I conclude that the applicable standard of review in this case is that of patent unreasonableness.

[12] Upon balancing the four factors, I conclude that the appropriate standard of review in this case is that of patent unreasonableness.

[13] The Board made negative credibility findings relative to the subjective basis of the Applicant's claim. These findings lie within the heart of the Board's mandate and unless the Applicant can show that such findings were made in the absence of evidence, there is no basis for judicial intervention. In that regard, I refer to the decision in *Conkova v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 300 (F.C.T.D.).

[14] Having regard to the Applicant's testimony before the Board, as well as the documentary evidence that was before the Board, I am satisfied that the Board's findings meet the standard of patent unreasonableness. The Board committed no reviewable error and this application for judicial review is dismissed.

JUDGMENT

This application for judicial review is dismissed, there is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5748-06

STYLE OF CAUSE: LOLADE TEMITOPE ADETOLA and THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 24, 2008

REASONS FOR JUDGMENT: HENEGHAN J.

DATED: February 21, 2008

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