Date: 20080605

Docket: IMM-3830-07

Citation: 2008 FC 705

Ottawa, Ontario, June 5, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

Sophia ESANGBEDO OBIDIGBO and Chuwkumomso ESANGBEDO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by a pre-removal risk assessment officer (PRRA officer) dated August 8, 2007, refusing the pre-removal risk assessment application filed by the applicants.

II. Factual background

[2] The female applicant was born in Benin, Nigeria, on March 1, 1982, and is a Nigerian citizen.

[3] The male applicant is the female applicant's son, who was born on March 30, 2003, in Dublin, Ireland, and is an Irish citizen.

[4] In August 1999, when the female applicant was 17 years old, her father told her that she had been promised in marriage. However, she refused the marriage.

[5] In December 1999, the female applicant's father allegedly found out that she was pregnant. Her father confined and beat her, causing her to lose the baby.

[6] In January 2000, with the help of her sister, the female applicant saved herself and went to live with her spouse in Lagos.

[7] The female applicant's father then allegedly disowned her. She apparently found out that her father was furious that she had run away and that her spouse had not asked his permission to marry his daughter. During her first pregnancy, he had allegedly asked where his grandson was to be born. Afraid for her own safety and that of her unborn child, the female applicant allegedly left Nigeria in March 2003 to seek refuge in Ireland.

[8] On March 30, 2003, the female applicant gave birth to her first son, the male applicant. He apparently had health problems that his biological father allegedly attributed to the Irish climate. He then allegedly convinced the female applicant to return to Nigeria in January 2004. Consequently, the female applicant abandoned her refugee claim in Ireland and returned to live in Lagos in her spouse's apartment.

[9] In May 2004, the father of the female applicant's spouse allegedly died. Following a disagreement as to the inheritance, the female applicant's spouse apparently received death threats from his half-brothers. In July 2004, her spouse allegedly disappeared.

[10] In August 2004, some of the female applicant's spouse's half-brothers allegedly came to see her at her apartment in order to obtain documents concerning their father's property. She did not know where to find the documents and apparently received death threats. That same day, two strangers allegedly robbed and raped her in her apartment. She did not file a complaint with the police.

[11] Following that incident, the female applicant went to meet with her spouse's family. The family then allegedly told her that they no longer recognized the child she was carrying (she was then pregnant with her second son), and given that she was not legally married to her spouse, threatened to throw her out of the apartment. A few days later, her spouse's family carried out their threats. The female applicant then sought refuge in a church with the male applicant and allegedly arranged to leave Nigeria.

[12] On September 4, 2004, the female applicant left Nigeria alone to travel to the United States. She allegedly arrived in Canada the next day when she was seven months pregnant. She was detained upon her arrival in Canada until November 2004.

[13] On November 26, 2004, the female applicant gave birth to her second son in Montréal.

[14] While the female applicant was in Canada, the male applicant stayed at the church in Nigeria. However, following threats from his biological father's family, the male applicant allegedly left Nigeria for Italy with a member of the religious congregation. He apparently stayed in Italy until his arrival in Toronto on May 9, 2005.

[15] The Immigration and Refugee Board's Refugee Protection Division (RPD) rejected the female applicant's refugee protection claim on May 30, 2005, and the male applicant's on December 7, 2005.

[16] The applicants filed applications for leave and for judicial review with the Federal Court for each of these two decisions. The female applicant's application was dismissed on August 25, 2005, and the male applicant's on April 7, 2006.

[17] The applicants filed an application for humanitarian and compassionate consideration (H&C application) on February 23, 2006.

[18] The applicants filed an application for pre-removal risk assessment (PRRA application) on December 21, 2006.

[19] The PRRA and H&C applications were refused on August 8, 2007.

[20] An application for leave and for judicial review of the H&C decision was filed on September 20, 2007, and dismissed on February 8, 2008.

[21] This application challenging the decision refusing the PRRA application was filed on September 19, 2007.

III. Impugned decision

[22] I will summarize below the PRRA officer's observations from her decision dated August 8, 2007:

(a) The applicants stated the same risks and relied on the same facts as were raised before the RPD;

(b) The female applicant's identity was established because she filed an Emergency Travel Certificate (ETC) dated October 14, 2005. However, that document does not provide any new information or evidence concerning the risks alleged in the PRRA application;

(c) The female applicant's affidavit dated July 20, 2005, commented on the RPD decision and provided no new information or evidence concerning the risks alleged in the PRRA application;

(d) No weight was attached to the letters from the McGill University Health Centre concerning the state of the male applicant's health because they contain no new information concerning the alleged risks and because state of health is not a factor to

be considered in PRRA applications since it does not correspond to the risks defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S.C. 1985, c. I-2 (the Act);

(e) The letters of people involved in or of witnesses to the applicants' departure from Nigeria are self-serving evidence, and limited probative value was attached to them;

(f) There is unsatisfactory evidence of the violent events that triggered the applicants' departure from Nigeria and of the existence of personal risks to their lives and safety;

(g) The objective evidence indicates that the overall situation from the time of the applicants' departure from Nigeria until now still raises concerns;

(h) The applicants were unable to prove that it would have been impossible for them to seek an internal flight alternative in their countries. They were also unable to demonstrate that the female applicant's in-laws could track them everywhere in Nigeria.

[23] For these reasons, the PRRA officer found that the applicants had failed to demonstrate that they would be persecuted on their return to Nigeria or that they would be in danger of torture or subject to a risk to their lives or to a risk of cruel and unusual treatment or punishment as defined in the Act. The application was refused.

IV. Statutory framework

[24] The relevant provisions of the *Immigration and Refugee Protection Act* are provided in the Annex.

V. Issues

[25] The applicant is raising the following issues:

(a) Did the PRRA officer infringe on the female applicant's fundamental rights by rendering her decision in French, given that the female applicant does not understand French?

(b) Did the PRRA officer err in not taking into account the best interests of the children and the family unit when she rendered her decision?

(c) Was the PRRA officer's decision made based on an erroneous finding of fact or without regard for the evidence before her?

VI. Standard of review

[26] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada found that there should be only two standards of review: correctness and reasonableness. The Court indicated that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law (see *Dunsmuir* at paragraph 50). When applying the correctness standard, a reviewing court will not show deference to the decision-maker's reasoning process; it will rather undertake its own analysis to decide whether the decision is correct.

[27] The Supreme Court also indicated that, in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law (see *Dunsmuir* at paragraph 47).

[28] Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law (see *Dunsmuir* at paragraph 54). The following factors will determine whether deference ought to be given to a tribunal: whether there is a privative clause, whether the decision-maker has special expertise in a discrete and special administrative regime and what the nature of the question of law is (see *Dunsmuir* at paragraph 55).

[29] In *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, Mr. Justice Mosley applied the pragmatic and functional approach comprehensively to determine the standard of review applicable to PRRA officers' decisions. He found as follows at paragraph 19:

> [19] Combining and balancing all of these factors, I conclude that in the judicial review of PRRA decisions the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness. I am fortified in my conclusions by the positions taken by my colleagues in other recent PRRA decisions. [Emphasis added.]

[30] The Act does not provide for the right to appeal a PRRA officer's decision. Although it provides the possibility of recourse to judicial review, it can only be done with the leave of the Federal Court. Furthermore, it contains no privative or limitation clause. Concerning the nature of the issue, the PRRA officer's decision is entirely based on a question of mixed law and fact, which militates in favour of certain deference (*Haque v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1312 at paragraph 14). The expertise of the PRRA officer is variable, depending on the nature of the question considered (*Kim*, above, at paragraphs 16 through 19). Somewhat more deference should nonetheless be shown in cases where the PRRA officer is dealing with questions of mixed fact and law for which they can be expected to have some

knowledge, training and experience, such as the application of the legal definition of protected person to the facts of a given case.

[31] The first issue in this case is one that raises a question of procedural fairness and natural justice. A decision resulting from an unfair proceeding, that is, one that breaches procedural fairness, would be set aside.

[32] The second issue essentially raises the question of whether the PRRA officer applied the proper test in the context of the PRRA application, namely, considering the best interests of the female applicant's children. In my opinion, this is a question of law, reviewable on the correctness standard.

[33] The third issue is basically a question of fact. The applicable standard of review is reasonableness.

VII. Analysis

A. *Did the PRRA officer infringe on the female applicant's fundamental rights by rendering her decision in French, given that the female applicant does not understand French?*

[34] No one is challenging the fact that the applicants had proceeded exclusively in English until the decision dated August 8, 2007, and that the PRRA decision was rendered in French.

However, the application for leave indicates that the female applicant received the written reasons for the decision on September 7, 2007, and that she did not request that an English version of the decision be sent to her. The female applicant's counsel merely said that [TRANSLATION] "the female applicant's fundamental rights were infringed on because she received a decision only in French, without a translation, which resulted in her being unable to understand the reasons without an interpreter . . . " without stating the type of harm she had supposedly suffered. It should be noted that the letter that was sent with the PRRA decision was in English and that, *a priori*, the language of the PRRA decision did not seem to have hindered the female applicant from finding out what it said, despite having to use an interpreter, and of then undertaking legal proceedings within the prescribed time limit. Considering that the female applicant did not request a translation of the reasons for the officer's decision and that she suffered no harm (*Yassine v. Canada (Minister of Employment and Immigration*, (1994) 172 N.R. 308 (F.C.A.) [1994] F.C.J. No. 949 (QL)), I am of the opinion that there was no breach of the duty of procedural fairness in the circumstances. Consequently, this Court's intervention is not warranted for this reason.

B. *Did the PRRA officer err in not taking into account the best interests of the children and the family unit when she rendered her decision?*

[35] The female applicant is claiming that the PRRA officer failed to consider the best interests of her two children, who are very young and are of Irish and Canadian nationality respectively. The female applicant's claims concerning the best interests of her children and of the family unit and the various humanitarian and compassionate considerations are factors to be considered within the scope of an H&C application. In addition, the Federal Court of Appeal has

ruled, in *Varga v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394, [2006] F.C.J. No. 1828 (QL) at paragraph 20, that a PRRA officer has no obligation to consider those interests when conducting a PRRA of at least one of the children's parents. See also *Toure v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 480 at paragraph 19; *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1660 at paragraph 12, and *Sherzady v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 516 at paragraphs 14 to 15.

[36] Therefore, I am of the opinion that the female applicant's claims concerning the second issue have no merit in the context of a PRRA application.

C. *Was the PRRA officer's decision made based on an erroneous finding of fact or without regard for the evidence before her?*

[37] The risks raised by the female applicant in her PRRA application are based on allegations of persecution surrounding the settlement of the estate of the father of her spouse, who has disappeared, and of her marginalization as a single woman with two children in Nigeria.

[38] In support of their PRRA application, the applicants repeated the same facts and fears previously examined by the RPD. The RPD found that the evidence submitted was not credible and did not believe the allegations concerning the risks to the lives and safety of the applicants.

[39] Since the RPD rejected their refugee protection claim, the applicants have submitted no new evidence or facts that would have supported the alleged personal risks. It was up to the PRRA officer to determine the weight to be attached to the various pieces of evidence filed in support of the PRRA application, including the letters of support (*Singh v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1329 (QL) at paragraph 3; *Diallo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1063 at paragraph 17, and *Malhi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 802 at paragraph 6). The PRRA officer did not err in the assessment of that evidence. In their claims, the applicants are essentially expressing their disagreement with the PRRA officer's findings. In my opinion, the applicants have not demonstrated in what way these findings pertaining to the risks to their lives and safety were unreasonable. Consequently, the Court's intervention is not warranted.

[40] Despite the lack of new evidence and facts, the PRRA officer conducted an analysis of the contemporaneous documentary evidence on the situation in Nigeria. The task of weighing this evidence and attaching more weight to evidence from sources that she believed to be more reliable and credible than to other evidence was the responsibility of the PRRA officer, after a thorough examination of that evidence. I am of the opinion that the PRRA officer made no errors in her assessment of that evidence.

[41] I also note that the female applicant did not challenge the PRRA officer's finding that an internal flight alternative is possible for her in Nigeria. That finding alone is sufficient for the PRRA application to be refused.

VIII. Conclusion

[42] For these reasons, I find that the PRRA officer's decision is not unreasonable. It falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law. Consequently, the application for judicial review will be dismissed.

[43] The parties did not propose a serious question of general importance to be certified as set out in paragraph 74(*d*) of the Act. I am satisfied that this case raises no such question. No question will therefore be certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Edmond P. Blanchard"
Judge

Certified true translation
Susan Deichert, Reviser

Annex

Immigration and Refugee Protection Act, R.S.C. 1985, c. I-2:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes

from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

113. Consideration of an application for protection shall be as follows:

(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on

originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

113. Il est disposé de la demande comme il suit:

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité

grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

FEDERAL COURT

SOLICITORS OF RECORD

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