

Date: 20090909

Docket: IMM-384-09

Citation: 2009 FC 892

Vancouver, British Columbia, September 9, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

I.I.

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of an immigration officer (PRRA officer), dated December 15, 2008, refusing I.I.'s (the Applicant) pre-removal risk assessment (PRRA) application.

Factual Background

[2] The Applicant is a citizen of Nigeria who entered Canada as a visitor in November 2004. His visitor visa expired in January 2005.

[3] In January 2005, the Applicant married a woman. His wife then submitted a family class sponsorship in support of his application for permanent residence. That application was refused in January 2006 on the ground that the marriage was not genuine.

[4] In February 2006, the Applicant entered into a common-law relationship with a different woman. A second sponsorship application was submitted in April 2006. That application was rejected as the Applicant had not met the required cohabitation time. The Applicant then married his common-law partner in October 2006 and a third sponsorship application was submitted.

[5] In April 2007, the Applicant attended a Minister's delegate review. Following that interview, an exclusion order was issued against him as he had failed to leave Canada at the end of his authorized stay.

[6] The Applicant submitted a PRRA application in June 2007. In the PRRA application, the Applicant claimed to be at risk if returned to Nigeria because of his sexual orientation. In support of his claim, the Applicant submitted a sworn statement relating homosexual relations that he had before his leaving Nigeria.

[7] In January 2008, during an interview by an immigration officer, the Applicant admitted that he had been living separately from his second wife since June of the previous year. Accordingly, the sponsorship application was rejected and the file was transferred to PRRA as a request had already been made.

[8] On December 15, 2008, the Applicant received the negative PRRA decision and reasons in a personal interview with a removal officer.

Impugned Decision

[9] The PRRA officer found that there was credible evidence showing that homosexuals face a reasonable chance of persecution in Nigeria. The evidence consulted included reports confirming that homosexuality is vilified in Nigeria and that homosexuals face harassment, arrest and arbitrary detention by the authorities. Those who are detained are subject to harsh punishment and lengthy sentences. He accepted that in addition to this, there is a federally proposed bill that would outlaw homosexual associations and advocacy and any public or private expression of homosexuality. He also accepted that homosexuals are also victims of violence by non-state actors.

[10] The PRRA officer then found that there was insufficient objective evidence that the Applicant is homosexual. He noted that in the Applicant's statement, the Applicant alleges that his life as a homosexual began in high school and gives detailed accounts of his homosexual encounters and the violence he faced as a result of being discovered. He then noted that the sworn statement is uncorroborated by another other objective evidence other than evidence of the Applicant's

participation in the National Youth Service Corps where he states that he had one of his homosexual relationships.

[11] The PRRA officer noted that the Applicant did not make a refugee claim at any time during his stay in Canada and it was only during the PRRA process that he advised that he feared returning to Nigeria due to his sexual orientation. The PRRA officer detailed the Applicant's relationship history while in Canada along with his various immigration applications. He also reproduced a portion of a transcript of the Applicant's April 2007 review interview where the Applicant says he cannot return to Nigeria because his wife is in Canada and he wants to work and support his wife and have a baby.

[12] The PRRA officer accepted that neither of the Applicant's marriages was successful but that there was no evidence that the Applicant's stated sexual orientation was a factor in these break-ups. The Applicant did not make any suggestion that this was the case nor did he mention his opposite-sex relationships in his PRRA.

[13] The PRRA officer concluded that in light of the Applicant's failure to make a refugee claim, his two marriages to women and the statements made at the April 2007 interview there was insufficient evidence to lead to the conclusion that, on the balance of probabilities, the Applicant is homosexual.

Issue

[14] The question at issue is as follows:

- a. Was the PRRA officer's assessment of the evidence unreasonable?

Relevant Legislation

[15] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

113. Consideration of an application for protection shall be as follows:	Il est disposé de la demande comme il suit :
--	--

...

...

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
--	---

[16] *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Immigration Regulations).

167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
---	---

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
--	--

(b) whether the evidence is central to the decision with respect to the application for protection; and

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

(c) whether the evidence, if accepted, would justify allowing the application for protection.

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

Analysis

Was the PRRA officer's assessment of the evidence unreasonable?

[17] The PRRA officer's evaluation of the evidence is a finding of facts to which deference is owed and should only be set aside if it "falls outside of the range of possible acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47, *Parchment v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1140, [2008] F.C.J. No. 1423 (QL) (*Parchment*)).

[18] The Applicant argues that the PRRA officer's evaluation of the evidence was unreasonable because an individual cannot provide objective evidence of his sexual orientation. In advancing this argument, the Applicant seems to be holding that the personal statement was sufficient evidence to prove on the balance of probabilities that the Applicant is homosexual.

[19] Two recent cases of this Court, *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, 74 IMM. L.R. (3d) 306, [2008] F.C.J. No 1308 (QL) and *Parchment* above, have dealt with similar issues and are heavily relied upon by the Respondents. Both of those

cases dealt with a woman who had made a claim that she could not be returned based on sexual orientation. In both, she provided an unsupported statement that she was lesbian in support of her claim.

[20] Evidence tendered by a witness with a personal interest in the case can be evaluated based on the weight that it will be given and typically will require corroborative evidence to have probative value (*Ferguson* at paragraph 27). It is open to the PRRA officer to require such corroborative evidence to satisfy the legal burden; particularly when the fact is one that is central to the application (*Ferguson* at paragraph 32). In *Ferguson*, it is suggested that such corroborative evidence could include a sworn statement by a partner and evidence of public statements (at paragraph 32). One must remember that evidence must have sufficient probative value. It will have sufficient probative value when “it convinces the trier of fact” (*Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636 at paragraph 30). Furthermore, the officer had to consider all of the other factors in the case in making the determination (*Parchment* at paragraph 28).

[21] The statement in this case was sworn, unlike those in *Parchment* and *Ferguson*, which does give it more weight. However, no other evidence was provided by the Applicant. It is obvious, in reading the reasons, that the PRRA officer was not convinced by the evidence presented that the Applicant is homosexual. The PRRA officer had to consider the other factors in the case including the Applicant’s immigration history, his relationships while in Canada and the previous statements made in immigration interviews.

[22] Counsel for the Applicant also reproaches the PRRA officer for not having explained the sort of objective evidence expected or given the Applicant the opportunity to explain its absence. I disagree. In a PRRA application it is the applicant who bears the burden of proof (*Ferguson* at paragraph 21). Thus the onus was on the Applicant to tender evidence to prove, on a balance of probabilities that he would be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Nigeria. The PRRA officer's role is to evaluate and weigh the evidence before him and make a reasonable finding not to set out, for the Applicant, what evidentiary elements he should provide in order to meet his burden.

[23] The PRRA officer considered and weighed all of the evidence before him. The Applicant does not say that an oral hearing should have been held here but it would have been appropriate for the PRRA officer to give to the Applicant an opportunity to respond to the officer's concerns.

[24] The Court is of the opinion that the determinative issue in the case at bar was the probative value of the evidence and not credibility. It was also open for the officer to take into account the Applicant's immigration history and heterosexual relationships in Canada in determining if the Applicant had discharged his burden towards his claim of homosexuality.

[25] The PRRA officer's evaluation of the evidence was not unreasonable and falls within the range of possible, acceptable outcomes.

[26] No questions for certification were proposed and none arise in this case.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-384-09

STYLE OF CAUSE: **I.I.**
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 8, 2009

REASONS FOR JUDGMENT
AND JUDGMENT: BEAUDRY J.

DATED: September 9, 2009

APPEARANCES:

Martin Bauer FOR APPLICANT

Jennifer Dagsvik FOR RESPONDENTS

SOLICITORS OF RECORD:

Bauer & Company Law Offices FOR APPLICANT
Vancouver, British Columbia

John H. Sims, Q.C. FOR RESPONDENTS
Deputy Attorney General of Canada
Vancouver, British Columbia