Federal Court  Cour fédérale

**Date: 20101116**

**Docket: IMM-2025-10**

**Citation: 2010 FC 1150**

**Vancouver, British Columbia, November 16, 2010**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**LILLIAN NAOMI OWOBOWALE**
**ESTHER TEMITOPE OLUFUNWABI OWOBOWALE**
**JOAN TOLUWANIMI OWOBOWALE**
**PEACE OLUWATOBI OWOBOWALE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The decision that the applicants were neither Convention refugees nor persons in need of protection is seriously flawed and must be set aside. The Refugee Protection Division of the Immigration and Refugee Board of Canada failed in its analysis of the minor female applicants' claims that they feared female genital mutilation (FGM) if returned to Nigeria.

[2] The applicants are Nigerian: a mother, Lillian Naomi Owobowale, and her three daughters Esther, Peace, and Joan, aged 15, 13, and 7, respectively, when the decision of the Board was rendered. Their claims were based on their fears that the young girls would be forced to undergo FGM at the hands of family members if returned to Nigeria. Ms. Owobowale was subjected to this procedure herself when she was 12-years-old.

[3] The applicants are from the Yoruba tribe, where FGM is still a prevalent practice; estimates suggest that 60% of female Yoruba undergo FGM. Ms. Owobowale's in-laws have repeatedly pressured her to allow her daughters to undergo FGM, and she fears her in-laws would impose this practice on her daughters without her consent. The applicants faced harassment from family members and requests that the relatives be permitted to take the minor applicants on a "holiday," a euphemism for a trip to their village to undergo FGM.

[4] Ms. Owobowale's husband has lived in the United States since 1999. Both parents of the three minor girls are born-again Christians and pastors. In Nigeria, Ms. Owobowale appeared on television as part of her religious work and has recorded albums of religious music. She has tried, unsuccessfully, to obtain visitors' visas to enter the United States. In June 2005, Ms. Owobowale obtained a visitor's visa for the United Kingdom for herself and Joan. She visited the UK and consulted with a lawyer there who told her that she could not obtain refugee status or other permanent status in the UK. She returned to Nigeria, but made another temporary trip to the UK in February 2006 with all three daughters. The in-laws attempted to take the daughters for a "holiday" in August 2007, but the applicants refused and stayed at a friend's house until leaving for Canada in September 2007.

[5] The Board found that the "determinative issue in these claims is a lack of subjective and objective fear by the claimants."

[6] The Board's decision is unreasonable because it focused on Ms. Owobowale and her actions without properly considering the three young girls who are at very real risk of harm if returned to Nigeria. The Board accepted the applicants' version of events, which makes it clear that family members in Nigeria want to circumcise the girls against their will. In this context, a focus on the mother's decisions with respect to immigration status and her desire to work is unreasonable. One short line from paragraph 12 of the Board's decision is emblematic of what renders the Board's determination unreasonable: "The panel finds that the claimant chose her career over her daughters' safety by continuing her profession."

[7] Ms. Owobowale's life choices are not relevant in assessing the subjective fear of her children. The subjective fear of the minor applicants cannot be determined by reference to their mother's decisions, which presumably attempt to balance their safety and her ability to provide for them. The Board unreasonably approached all of the applicants' claims from the perspective of Ms. Owobowale. Moreover, the Board's finding that Ms. Owobowale chose her career over her daughters' safety implies that her daughters would not be safe in Nigeria. The United Nations High Commissioner for Refugees' May 2009 *Guidance Note on Refugee Claims Relating to Female Genital Mutilation*, at paragraph 10, provides direction as to a more reasonable approach to assessing the daughters' subjective fear:

> It can happen that a girl is unwilling or unable to express fear, contrary to expectations. … This fear can nevertheless be considered well-founded since, objectively, FGM is clearly considered as a form of persecution. In these circumstances, it is up to the decision-makers to make an objective assessment of the risk facing the child, regardless of the absence of an expression of fear.

[8] The Board's conclusion that the applicants had not demonstrated subjective fear rested solely on an assessment of Ms. Owobowale's actions. This was unreasonable, as was the Board's finding with regards to the objective component of the daughters' fear.

[9] In assessing the objective component of the girls' fear, the Board again failed to approach the issue from the perspective of the minor applicants. Although the Board noted that the in-laws had not attempted to forcibly remove the minor applicants from their mother, it appears to have overlooked the more germane issue: that FGM itself is a non-consensual and physical act of violence. There is no dispute that the in-laws want to force the minor applicants to undergo circumcision. In the face of this evidence, the Board's focus on the lack of a physical aspect to the conflict between the in-laws and the mother and the fact that the in-laws would eventually leave after arguments about FGM fails to address the very real threat to the minor applicants.

[10] Given that the in-laws want to force young girls to undergo a painful and dangerous procedure with severe and well-documented negative physical and psychological ramifications, the Board's finding that "there is no evidence to suggest that the in-laws' threats amounted to anything" is unreasonable. Moreover, there was uncontradicted evidence before the Board that the in-laws had attempted to abduct the daughters without their mother's permission. Esther's signed statement, included in the applicants' PIF, explains that:

> A few weeks or so before traveling to Canada, my Dad's relatives came again to our house, but this time my Mum and my uncle were not around. I answered the door. My Dad's relatives told me that my Mummy had given permission for me and my two sisters to go on holidays to their village; they wanted us to pack our bags and go spend some time with them. Because my Mum had given an instruction earlier never to leave the house without speaking to her, I went into the bedroom, called my Mum, told her everything, and she told me not to go anywhere and she would be home immediately. When my Mummy came home, she was really upset with my Dad's

> relatives; she told me and my two sisters to go into another room and I could hear her and my Dad's relatives yelling at each other really loudly. I felt really scared.

[11] It is clear from this statement and the evidence that the in-laws are prepared to use any subterfuge to subject the minor applicants to FGM. In this context, a finding that the minor applicants lack an objective basis for their fear is unreasonable.

[12] Furthermore, I agree with the applicants' submissions that the Board erred by failing to consider the objective risk to the minor applicants based on their profile and available documentary evidence. The applicants presented evidence that FGM is prevalent in the Yoruba tribe and the minor applicants are within the age range targeted for FGM. In *Alexandria v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1616, at para. 4, Justice Campbell found that "it was incumbent on the RPD to consider the following evidence: the daughter is Nigerian, is of tender years, and FGM is prevalent in Nigeria."

[13] The Board Member addressed none of the objective documentary evidence that strongly suggested that the minor applicants would be at risk of female circumcision.

[14] The Board's statement that there has been no contact with the in-laws since 2007 and that there is no evidence the in-laws would have any interest in connecting with the applicants if they were to return to Nigeria ignores the reason there has been no contact: the applicants are safely in Canada, outside of their reach. Given the repeated attempts by the in-laws to force the minor applicants to undergo FGM, there is no logical basis for the Board's statement that the in-laws would not try to reconnect with the applicants if they were returned to Nigeria.

[15] Neither party proposed a question for certification.

## JUDGMENT

**THIS COURT'S JUDGMENT IS that:**

1. This application is allowed, the decision of the Refugee Protection Division of the Immigration and Refugee Board dated March 19, 2010, is set aside and their refugee and protection claims are referred to another member of the Refugee Protection Division of the Immigration and Refugee Board for re-determination; and

2. No question is certified.

"Russel W. Zinn"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2025-10 |
| **STYLE OF CAUSE:** | LILLIAN NAOMI OWOBOWALE et al.<br>v.<br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Vancouver, BC |
| **DATE OF HEARING:** | November 16, 2010 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | ZINN J. |
| **DATED:** | November 16, 2010 |

**APPEARANCES:**

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| Cindy Mah | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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