

Federal Court



Cour fédérale

Date: 20110930

Docket: IMM-604-11

Citation: 2011 FC 1122

Ottawa, Ontario, September 30, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ETUNE VERA AWOLO

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant's refugee claim was dismissed by the Refugee Protection Division of the Immigration and Refugee Board, principally on the basis of its assessment of implausibilities in her story. The Member found that she had fabricated the evidence in support of her fear of forced female genital mutilation.

[2] The applicant's evidence was as follows. She is a 22 year-old woman born in the village of Asaba, Nigeria, to a very poor family. In order for her to go to elementary school, her father borrowed money from Chief Obinna. The loan could not be repaid and on October 19, 2007 the Chief and his bodyguards went to the applicant's home and beat her father causing him to die the following day.

[3] Since the family could not repay the loan, the applicant's uncle, the new head of the family since his brother's death, proposed that she marry the Chief. The applicant was opposed to marrying the Chief because he was 75 years of age and because he demanded that she be circumcised before marriage.

[4] The applicant was forced to go to the Chief's house by her uncle in February 2008. The Chief, in turn, drove her to the home of an old woman in the village in order that she be circumcised. The woman took the applicant to a separate room, apparently to confirm that she had not been circumcised. After having made the confirmation, the old woman left the applicant and went to speak to the Chief, at which point the applicant escaped from the house.

[5] The applicant went to the neighbouring village of Oko where she hid for about three months. There she met Auntie Nnenna who was visiting. Auntie Nnenna contacted the police on the applicant's behalf, but they declined to take action, stating that the applicant's situation was a matter of tradition. Auntie Nnenna then took the applicant to her home in Lagos where they stayed until arrangements were made to remove her from Nigeria.

[6] Auntie Nnenna bought a plane ticket and provided the applicant with a Canadian passport. On her way to Canada, the applicant was stopped by United States immigration authorities on a stopover. The applicant was detained there from August 29, 2008, to January 21, 2009. Upon her release, she was advised by her counsel that her claim would likely not succeed. Fearing persecution upon return to Nigeria, she made arrangements to come to Canada. She arrived on March 31, 2009, and made a claim for protection the same day.

[7] As noted, a critical aspect of the Board's decision was that it did not accept the applicant's evidence regarding the attempt to have her circumcised; it found that she had fabricated that part of her story in order to enhance her claim.

[8] The Board set out two aspects of the circumcision story it found to be implausible.

[9] The Board stated that "it is implausible that this painful procedure, which the claimant was resistant to, would be carried out by one woman in her home." In my view, the Board's statement as to the implausibility of one person doing the procedure is reasonably valid; however, there was no evidence at all that the woman would be doing the procedure alone and not having assistance in performing the circumcision. The Board asked no question in this respect of the applicant. It is unreasonable to reject evidence as implausible unless the reason why it is found to be implausible is either obvious or is supported by other evidence before the Board. In this particular situation, no evidence was before the Board that the old woman would

be performing the procedure herself. Rather, the Board assumed that the woman would be performing the procedure without assistance. There was simply nothing on which it could reasonably base that assumption.

[10] The Board found “[e]qually implausible was the testimony that the Chief, who, according to the claimant, is wealthy and powerful, would drive the reluctant claimant to the old woman’s house without the assistance of a driver or bodyguards”. No explanation is offered by the Board as to why this is implausible. Counsel for the respondent suggested that a driver or bodyguard would be needed as the applicant was opposed to the circumcision and might be expected to flee or to be uncooperative. That may be the reason for the Board’s finding; however, it should not be left to counsel or the Court to speculate. In any event, even if that was the basis for the Board’s finding of implausibility, it assumes that the Chief knew that the applicant was opposed to being circumcised. There is no evidence at all in the record as to whether the Chief knew that the applicant was opposed either to the marriage or to the circumcision. The Board never asked the questions necessary to establish a factual base on which to support its assumption that the Chief was knowledgeable about these aspects of the proposed marriage and would therefore have arranged to have others accompany the applicant to ensure she did not escape. Absent that evidentiary foundation, the implausibility finding is unreasonable.

[11] There are other aspects of the decision that are troublesome. The most serious of which is the following statement:

It has now been almost three years since the claimant fled [the Chief’s] proposal, and according to her testimony he would be 78

years of age. It is implausible that the Chief would continue to mount an extensive search for the claimant, three years on. Were he desirous of another wife, it would seem he has the means and influence to easily procure one.

[12] The Board Member is engaging in utter speculation as to the motive, behaviour and personality of the Chief. This statement assumes that the Chief viewed the applicant to be nothing more than another wife and ignores whether the Chief had an interest for other reasons in the applicant. The only evidence in this regard was that the marriage was to be a repayment of an unpaid debt. In my view, it is unreasonable in those circumstances to view the applicant as merely another wife.

[13] Simply put, the Court finds that the Board Member's decision is based on assumptions and suppositions and speculations, none of which are founded in the evidence. This decision must be set aside.

[14] Neither party proposed a question for certification. There are none.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the applicant's claim for refugee protection is referred to a differently constituted Board for determination, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-604-11

STYLE OF CAUSE: ETUNE VERA AWOLO v.
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 1, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: September 30, 2011

APPEARANCES:

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