

Federal Court



Cour fédérale

Date: 20130524

Docket: IMM-6784-12

Citation: 2013 FC 540

Toronto, Ontario, May 24, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ROSINA NIMAKO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The issue in the present Application is whether, in considering the Applicant's claim for refugee protection as a citizen of Ghana, the Internal Flight Alternative found by the Refugee Protection Division is supportable on the evidence presented.

[2] The RPD Member who heard the Applicant's claim rendered a sensitive and straightforward decision. The Member accepted the Applicant's evidence supporting her claim recounted in the decision as follows:

Since the claimant's parents were poor, a man Kwaku Mensah ("Kwaku") agreed to pay for the claimant's education and assist her parents financially if they promised the claimant to him after she finished school.

In August 1980, while home during school vacation, the claimant was asked to go to Kwaku's house to help him clean. While there, the claimant was drugged and raped by Kwaku. Although she informed her parents, they did not take any action against Kwaku because he threatened to stop paying for the claimant's education and to ask for the money back he had given her parents. The claimant became pregnant as a result of the rape and was taken to have an abortion by Kwaku.

After completing her studies, the claimant was informed by her parents that she had been promised to Kwaku. In September 1981, she was appointed to teach in Kaasi and a few months later, started living with Kwaku. Although, there was tension over the claimant's inability to get pregnant, the claimant did not experience any serious problems with Kwaku until 2011.

In June 2011, Kwaku beat the claimant badly resulting in her having to receive treatment at the hospital. She reported the abuse to the police, but no action was taken. The claimant then attempted to transfer to a teaching position outside her region, but no one was willing to transfer with her. In September 2011, the claimant was again badly beaten by Kwaku. She went to the police and was directed to the Domestic Violence and Victim Support Unit (DOVVSU). Although DOVVSU promised to send someone to apprehend Kwaku, no one came. When she returned home after being treated for her injuries, Kwaku threatened to kill the claimant. Again, she went to DOVVSU, but no one came to the house or followed up. After sharing her experiences abuse with a friend, the friend assisted her in leaving the country.

(Decision, paras. 3 to 6)

[3] With respect to the availability of state protection in Ghana, the Member found as follows:

The panel considered the availability of state protection. According to the claimant, she reported the physical abuse she received at the hands of Kwaku and even though it was referred to DOVVSU, the authorities did not provide any assistance when approached by the claimant. Although, the country is taking steps to address domestic violence, no evidence is available to support the existence of

effective protection for victims of domestic abuse throughout the country.

(Decision, para. 9)

[4] On the basis of the findings made, the Member then turned to determining whether an IFA would be available in Ghana. The central factual issue of concern was whether Kwaku would search for the Applicant if she resided away from her family home in a larger area such as Accra. When asked by the Member whether the Applicant had considered such an IFA before fleeing to Canada, she replied that she had but a number of factors predominated: Kwaku is very influential; has money to use for bribery and to search for her; could use the police to assist in searching for her; and in his business he travels to most regions of the country. Because of the danger arising from these factors, the Applicant testified that she agreed to accept the advice and help of a friend to get out of the country (Certified Transcript, p. 118, lines 9 to 20).

[5] Nevertheless, the Member made the following finding that the Applicant would not be at risk away from her family home:

The panel also asked the claimant what efforts, her common-law spouse, Kwaku, had made in trying to locate her. She replied that other than going to her family's house, she is unaware of any other attempts. No persuasive evidence was available that suggests that Kwaku has made any efforts to search for the claimant beyond going to her family's house. Her brother's letter that Kwaku has been to their home several times and made threats and as a result they have taken the claimant's mother to her hometown - apparently they do not believe Kwaku will search for them there. The panel is, therefore, not persuaded that Kwaku would have the interest to search for the claimant outside their home area, Kaasi or the Greater Kumasi area.

[Emphasis added]

(Decision, para. 13)

[6] Counsel for the Applicant argues that the Member's conclusions are not supported by the evidence, in particular, with respect to the following passage from the letter from her brother dated November 25, 2011:

Sister, Mr. Kwaku Mensal as I told you on the phone has been here several times after you left. He is so furious and says he is tracking you to bring you back to his house. He does not know you are out of the country. He came again last Sunday saying you have fooled him and has wasted his time and money as well as his time. He swore in our presence that while he gets you, you will pay with your blood. Because of the threats, we have taken mother to her hometown, Ekeso to stay there since it will not help her health wise.

(Certified Tribunal Record, p. 69)

[7] I agree with Counsel for the Applicant's argument. The issue is not whether Kwaku has made efforts to search for the Applicant beyond going to the family home, the issue is whether he has the probable means and motivation to do so. According to the Applicant's evidence and the quotation from the letter, he has both. The letter can be read as establishing that Kwaku is dedicated to finding the Applicant and harming her. The fact that the Applicant's mother moved from the family home is evidence that the man is perceived as a violent threat. There is no evidence to support the conclusion that the family believes that Kwaku will not search for them or that the range of his search for the Applicant will be only in the vicinity of the family's home. I find that the Member's failure to apply the Applicant's evidence is a reviewable error.

[8] On the issue of whether an IFA anywhere in Ghana is reasonable, I find that to properly apply the *Chairperson's Gender 4: Women Refugee Claimants Fearing Gender-Related Persecution* it was incumbent on the Member to consider the emotional impact on the Applicant of being required to live her life in the fear that, at any moment, she could be confronted by the violent

predator. I believe that my previously expressed view on this issue is apt: for the Member to properly take the *Guidelines* into account in deciding the IFA issue in the present case, before placing any expectations on the Applicant, it was necessary for the Member to judge any potential expectation against the reality of the Applicant's life, including the tremendous upset she suffered as a result of the extreme violence she endured (see: *Perez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 425, para. 8). Unfortunately, the Member's sensitive treatment of the Applicant's claim did not extend to this consideration.

[9] As a result, I find that the Member's IFA determination is made in reviewable error.

ORDER

THIS COURT ORDERS that the decision under review is set aside, and the matter is referred back for redetermination, but on the following directions:

GIVEN that the Applicant's credibility was not placed in issue in the decision under review;

AND GIVEN that the only reviewable error found in the decision under review is with respect to the IFA finding as described in the reasons provided;

The redetermination is to be conducted by accepting and applying the Applicant's evidence already given before the RPD as credible, and by accepting and applying the lack of state protection finding made in the decision under review.

Thus, the only issue to be determined on the reconsideration is whether an Internal Flight Alternative exists. On this issue, the redetermination is to be conducted on the evidence on the present record, and in accordance with the reasons provided herein, with leave to add evidence as considered appropriate by the presiding Member.

"Douglas R. Campbell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6784-12

STYLE OF CAUSE: ROSINA NIMAKO V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 22, 2013

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: MAY 24, 2013

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