

Federal Court



Cour fédérale

**Date: 20160613**

**Docket: IMM-4061-15**

**Citation: 2016 FC 654**

**Ottawa, Ontario, June 13, 2016**

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

**BETWEEN:**

**ISABEL ANGWI ANGWAH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] Ms. Isabel Angwi Angwah [Ms. Angwah] seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated August 21, 2015, in which the RAD dismissed the appeal and confirmed the determination of the Refugee Protection Division [RPD] that Ms. Angwah is neither a Convention refugee nor a person in need of protection, pursuant to ss 96 and 97 of the

*Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. For the reasons that follow, I would allow the application for judicial review.

## II. Background

[2] Ms. Angwah is a 23-year-old citizen of Cameroon. She testified that when she began her university studies in 2009 in Cameroon she started a relationship with Harry Tatsa [Mr. Tatsa]. They resided together in the city of Bamenda, where Ms. Angwah's family members also reside. After she became pregnant in December 2012, Ms. Angwah claims Mr. Tatsa became verbally and physically abusive toward her. In March 2013, Mr. Tatsa returned home intoxicated and allegedly assaulted Ms. Angwah and pushed her down the stairs. She claims to have suffered a miscarriage as a result. She sought help from a neighbour who took her to the hospital where she remained for one week. Ms. Angwah reported the incident to the police who advised her to return to her partner and resolve the matter privately. Ms. Angwah also testified that her parents spoke to Mr. Tatsa about his conduct but to no avail. In fact, he warned them not to interfere in his private family matters.

[3] Several months later, Ms. Angwah returned to live with Mr. Tatsa. She claims that the abusive behaviour continued and that she sought assistance from family and friends. Ms. Angwah says that when Mr. Tatsa learned she had spoken to a friend about his behaviour, he beat her (Ms. Angwah), threatened her life and poisoned her dog. Ms. Angwah testified that in July 2014, Mr. Tatsa locked her in their home for three days. She was able to escape and hid at her friend's home. She again reported Mr. Tatsa to the police. Once again, the police refused to intervene. Upon her friend's advice, Ms. Angwah applied and was accepted as a student at

Centennial College in Canada. She arrived in Canada on December 13, 2014, and made a refugee claim on February 5, 2015.

[4] In a decision dated May 6, 2015, the RPD rejected Ms. Angwah's refugee claim. The RPD found that the determinative issue was credibility. The RPD concluded there were contradictions between her oral testimony, the statements in her Basis of Claim form and the evidence she submitted. The RPD found her explanations for those contradictions to be vague and evasive. As a result, it concluded the whole of her testimony lacked credibility.

### III. Impugned Decision

[5] Ms. Angwah appealed the RPD decision to the RAD. She contended that the RPD's credibility findings were based on a misapprehension of the evidence. In accordance with the requirements of s 110(4) of the Act, she submitted the following proposed new evidence on the issue of credibility: (1) affidavits from her sister and her mother; (2) a police report; (3) a copy of the National Identity Card of Mr. Tatsa; (4) an email message to which was attached three photographs; and (5) an envelope mailed in Cameroon. The RAD upheld the rejection of Ms. Angwah's refugee claim, but for different reasons. The RAD concluded Ms. Angwah had an accessible and viable Internal Flight Alternative [IFA] in Yaoundé, Cameroon. The RAD concluded it could decide Ms. Angwah's refugee claim uniquely on the IFA issue. In coming to that determination, it relied in part upon the new evidence that Ms. Angwah had submitted. The RAD determined that pursuant to its statutory authority to confirm or substitute a decision of the RPD pursuant to s 111(1)(a) and (b) of the Act, it can confirm the determination of the RPD on alternative grounds.

[6] After a review of the record, including the transcription and the audio recording of the hearing before the RPD, the RAD concluded that the RPD had “fully canvassed” the possibility of an IFA in Yaoundé, Cameroon, but it (the RPD) made no findings in that regard. The RAD observed that Ms. Angwah had the opportunity to make oral submissions to the RPD regarding the IFA. The RAD invited counsel for Ms. Angwah to provide additional written submissions on the issue of the IFA. Counsel provided additional submissions in August, 2015.

[7] The RAD concluded it was unnecessary to determine whether the RPD had made a reviewable error with respect to its credibility findings. Although the RAD noted it did not rely upon the RPD's credibility findings in making a determination on the viability of an IFA, the RAD was silent on the issue of credibility. The RAD further found that the application of a standard of review was not necessary in this case since it was conducting its own assessment of the viability of an IFA. In its analysis at paragraphs 23 and 24, the RAD applied the two-pronged test found in the cases of *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ No 1172 [*Thirunavukkarasu*]:

[23] Firstly, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

[24] Secondly, conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all circumstances, including those particular to the claimant, for him or her to seek refugee there.

[8] In its assessment, the RAD expressed sensitivity for the position of women in such circumstances and took into consideration Ms. Angwah's ability to travel safely to the IFA and

to stay there without facing undue hardship. The RAD also took into consideration religious, economic and cultural factors.

[9] Based upon its assessment of the evidence, which included, as will be seen below, some of the new evidence offered by Ms. Angwah on the credibility issue, the RAD concluded Ms. Angwah does not face a personalized risk to her life, or cruel and unusual treatment or punishment, as contemplated by s 97(1) of the Act, in the event she returns to Yaoundé, Cameroon.

#### IV. Issues

[10] Counsel for Ms. Angwah contends the RAD: (1) erred in deciding the appeal on grounds other than those considered in the RPD decision and raised on appeal, namely the credibility findings; (2) erred in its determination that a standard of review analysis was unnecessary; and (3) made an unreasonable determination on the issue of a viable IFA.

#### V. Standards of Review

[11] I am of the view the question of whether the RAD may decide the issue on a ground other than that which was decided by the RPD must be decided on the standard of reasonableness. I say this because the determination of whether the Act and jurisprudence permits such an approach constitutes a legal question wholly within the jurisdiction of the RAD and is not one that is of general application (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93;

[2016] FCJ No 313 at paras 30-35 [*Huruglica*]). Although I consider the standard of review to be reasonableness on whether the RAD may decide the matter on an issue not raised by the parties, the RAD's approach to determining the issue will inevitably involve questions about whether all parties had an opportunity to address the new issue raised, hence, a matter of procedural fairness which attracts, for that part of the analysis, the standard of correctness: *Ojarikre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 896, [2015] FCJ No 909 at para 13 [*Ojarikre*]; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43.

[12] In applying the reasonableness standard, this Court will only intervene if the RAD's decision is not justified, transparent and intelligible, or if it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47). When applying the correctness standard, this Court will not show deference to the RAD's reasoning process, but will rather undertake its own analysis of the question (*Dunsmuir*, above at para 50).

## VI. Relevant Provisions

[13] Subsections 111(1)(a) and (b) of the Act enable the RAD to confirm the RPD decision or to substitute its own determination (see Appendix 'A').

## VII. Analysis

[14] Counsel for Ms. Angwah relies on *Jianzhu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 551, [2015] FCJ No 527 and *Ojarikre*, above, to contend the RAD did not have the jurisdiction to decide Ms. Angwah's refugee claim on the issue of the IFA, since the RPD had not determined the matter and it was not raised on appeal.

[15] The Minister contends the *Ojarikre* case relied upon by Ms. Angwah, although factually similar, does not apply. I agree. *Ojarikre* establishes that when the RAD chooses to raise new issues, it must do so by inviting the parties to make submissions on those issues. An appellate court may raise new issues, provided it is clothed with jurisdiction to decide those matters, notifies the parties, and gives them an opportunity to present submissions on the new issue (*R v Mian*, 2014 SCC 54, [2014] 2 SCR 689; *Ojarikre*, above at para 10). While neither party raised the issue of the IFA before the RAD, upon a plain reading of the legislation and jurisprudence, I am of the view the RAD is clothed with jurisdiction to decide such an issue.

[16] However, in making its decision on the IFA, I am of the view that the RAD's decision is neither transparent nor intelligible. I reach this conclusion for three reasons. First, I note that when the RAD confirms the decision of the RPD on another basis, it must do so after it determines the existence of an error in the RPD decision (*Huruglica*, above at paras 78, 103). Here, the RAD did not conclude the RPD had made any such error. It could have clearly stated the RPD made an error on credibility or erred in failing to conclude an IFA exists on the facts before it (RPD). It did neither.

[17] Second, for purpose of its analysis, the RAD presumed Ms. Angwah's truthfulness with respect to the IFA. However, the RAD did not clearly and plainly state it had disabused itself of the RPD's credibility finding. That credibility finding deserved some attention before the RAD carried out its own analysis on the IFA. I fail to understand how the RAD can presume truthfulness in the face of an unresolved negative credibility finding.

[18] Third, the RAD held that it could determine the IFA issue because the matter was "fully canvassed" before the RPD. However, on its path to finding an IFA the RAD considered new evidence in the form of affidavits from Ms. Angwah's mother and sister, and a police report dated June 4, 2015 regarding an assault allegedly committed by Mr. Tatsa on Ms. Angwah's sister. Because the RAD accepted written submissions and considered evidence which were not before the RPD for purposes of making its IFA determination, I fail to see how the RAD could conclude the IFA issue was "fully canvassed" by the RPD. As such, the RAD's conclusion is tainted by an internal contradiction. While this internal contradiction might be overlooked based upon the principles set out in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, I am of the view these concerns cannot be remedied upon a review of the whole record, including the observations made in paragraphs 16 and 17, above.

#### VIII. Conclusion

[19] In summary, I am of the view that in the circumstances of this case, the RAD's: (1) failure to find the RPD had erred; (2) presumption of truthfulness in the face of an unresolved negative credibility finding; and (3) internal contradiction in its decision, result in a decision that



is neither transparent nor intelligible. Given all of the above, I need not consider the second ground of judicial review advanced by Ms. Angwah. The decision does not meet the test of reasonableness as set out in *Dunsmuir*. I would therefore allow the application for judicial review.

### **JUDGMENT**

#### **THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The matter is remitted to another panel of the RAD for redetermination.
3. There will be no order of costs.
4. There is no question certified.

“B. Richard Bell”

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Judge

**APPENDIX A**

*Immigration and Refugee  
Protection Act, SC 2001, c 27*

*Loi sur l'immigration et la  
protection des réfugiés, LC  
2001, ch 27*

**Decision**

**Décision**

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

(a) confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

...

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4061-15

**STYLE OF CAUSE:** ISABEL ANGWI ANGWAH v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 8, 2016

**JUDGMENT AND REASONS:** BELL J.

**DATED:** JUNE 13, 2016

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