

Federal Court



Cour fédérale

Date: 20160826

Docket: IMM-331-16

Citation: 2016 FC 973

Ottawa, Ontario, August 26, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**TAJUDEEN MODUPE OLUWAKEMI
TAJUDEEN DAMILOLA YUSSUF**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a mother and her child, are both citizens of Nigeria. They made a claim for protection on the basis that they have been accused of being witches, and as a result were being pursued by the family of the principal Applicant's husband and the police. The Refugee Protection Division [RPD] rejected their claim on the basis of credibility and on finding that there was an internal flight alternative [IFA] available to them.

[2] They appealed that decision to the Refugee Appeal Division [RAD]. They filed new evidence and sought an oral hearing before the RAD. The RAD accepted that the evidence filed was new within the meaning of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 but declined to hold an oral hearing. Its interpretation of the relevant sections of the Act was as follows:

When read together, Sections 110(3), (4) and (6) establish that the RAD must not hold a hearing in an appeal such as this unless there is new evidence, in which case the RAD may hold a hearing if that new evidence raises a serious issue with respect to the credibility of the Appellant, is central to the RPD's decision, and that, if accepted would justify allowing or rejecting the refugee protection claim.

The RAD finds that the new evidence admitted in this appeal does not meet the test set out in 110(6) and as such, the RAD must proceed without a hearing.

[3] At the leave stage, the applicants represented themselves and filed a brief memorandum of argument that suggests they had assistance from someone with legal training or knowledge of immigration jurisprudence.

[4] At the oral hearing of this application, they were represented by counsel. No further memorandum was filed. Counsel advanced a number of submissions that were not reflected in the memorandum before the Court. He did not advise counsel for the Minister beforehand that he would be advancing these new submissions. I agree with the submission of counsel for the Minister that this manner of proceeding takes the Minister by surprise and is prejudicial. Had counsel not more than adequately addressed these new submissions, I would not have given them any consideration.

[5] The Applicants submit that the RAD in this case was required to hold a hearing. They complain that the RAD failed to offer any analysis as to why it was not required to hold a hearing except for the observation quoted above, that “the new evidence admitted in this appeal does not meet the test set out in 110(6).”

[6] I agree with the Applicants that it would have been helpful had the RAD explained in more detail why the test in subsection 110(6) was not met; however, it is clear from a full reading of the decision that the RAD concurred with the view of the RPD as to the credibility of the applicants. It also assigned very little weight to the “new” evidence and found that it was insufficient to overcome the previous negative credibility finding. As such, the new evidence which was accepted could not justify allowing the claim and the conditions in the subsection had not been met.

[7] In any event, as was pointed out by the Minister, even when all the conditions of the subsection are met, the decision as to whether to hold a hearing still remains within the discretion of the RAD as the subsection provides that it “may” hold a hearing in those circumstances. I do not find that it exercised its discretion in an unreasonable manner.

[8] The Applicants also submit that the RAD embarked on an “unwarranted excursion based on speculation” when it stated that the psychological report from Dr. Devins crossed “the line separating expert opinion from advocacy when it advocates the granting of refugee status.” While Dr. Devins does not use those words, a fair and reasonable reading of his opinion is that

he is indeed advocating that the principal Applicant be granted status. I find nothing speculative in the discussion by the RAD. I too find that he crossed the line.

[9] The Minister correctly notes that in the written memorandum, the Applicants do not challenge the IFA finding of the RAD and thus must have accepted it. This finding alone, it was submitted, is dispositive of the application. At the oral hearing counsel submitted that it was an unreasonable finding because it ignored the “fact” that the police are one of the agents of persecution.

[10] That was one of the grounds of appeal to the RAD – that the RPD erred in failing to observe that the police are agents of persecution. The RAD deals with that submission at paragraphs 83 – 84 of its reasons. It found that the allegation that the Applicants were being pursued by the police was not credible. In my view, that was a reasonable finding based on the record. In particular, the “Wanted Poster” presented by the Applicants is close to a laughable attempt to create the impression that the principal Applicant is sought by the police. The RAD’s analysis of that document illustrates why:

[T]he wanted posters contained hand-written insertions of the biographical information and photographs of the appellants which had been pasted onto the document. ... [T]he posters do not bear the hallmarks of a genuine document and are inconsistent with the quality and style of the police reports in Nigeria.

[11] For these reasons, the application must be dismissed as the decision of the RAD is reasonable and amply supported by the record before it.

[12] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-331-16

STYLE OF CAUSE: TAJUDEEN MODUPE OLUWAKEMI, TAJUDEEN
DAMILOLA YUSSUF v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 9, 2016

JUDGMENT AND REASONS: ZINN J.

DATED: AUGUST XX, 2016

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