Federal Court | Cour fédérale

Date: 20181003

Docket: IMM-622-18

Citation: 2018 FC 981

Ottawa, Ontario, October 3, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

BILIKISU OLAYOMIBO OLAYINKA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

and

PIUS LEKWUWA OKORONKWO

Intervener

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated January 25, 2018 [the Decision] to dismiss the Applicant's application to re-open

her appeal of the negative decision of the Refugee Protection Division [RPD] dated April 5, 2017. In a previous decision dated September 14, 2017, the RAD had dismissed the Applicant's appeal.

[2] The Applicant states that she is Nigerian and that her name is Bilikisu Olayomibo Olayinka. She claimed refugee protection in Canada based on fear of her husband, who she alleges was abusive. The Applicant's claim was refused by the RPD on the basis that she had not met the onus upon her to establish her identity.

[3] The Applicant appealed to the RAD, but that appeal was dismissed in a decision which is the subject of a separate application for judicial review in Court file IMM-4270-17. The Applicant also sought new counsel and requested that the RAD re-open its decision, alleging incompetence of her former counsel. That request was refused by the RAD in the Decision which is the subject of the present application for judicial review. Both applications for judicial review were heard on July 25, 2018.

[4] Because the Applicant's arguments in seeking to re-open her appeal make allegations of incompetence of counsel, her former counsel, Pius Lekwuwa Okoronkwo, was granted intervener status in this matter by Order of Prothonotary Milczynski dated May 10, 2018. While that Order did not expressly add Mr. Okoronkwo to the style of cause, this was discussed at the hearing, and I confirmed that my Judgment would effect such addition.

[5] As noted by the RAD in the Decision under review, section 49 of the *Refugee Appeal Division Rules*, SOR/2012-257 permits it to re-open an appeal only if there was a failure to observe a principle of natural justice. The RAD denied the Applicant's request to re-open her appeal, because it considered her allegations of incompetence of counsel but held that she had failed to establish that there had been a breach of natural justice when her appeal was dismissed.

[6] The Court has issued a separate decision in IMM-4270-17, in which I have dismissed the application for judicial review in that matter, concluding that the RAD's decision in that matter, to dismiss the Applicant's appeal, was reasonable. In that matter, the Applicant also raised the same arguments, that she had been deprived of natural justice because of incompetence of her former counsel, as were the subject of the present application surrounding the effort to re-open her appeal. My decision dismissing the application in IMM-4270-70 rejected those arguments.

[7] At the hearing of both applications on July 25, 2018, I sought the parties submissions on the effect of section 171.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 upon the present application, once the Court had made a decision in IMM-4270-17. Section 171.1 provides as follows:

No reopening of appeal	**Appels non susceptibles de réouverture**
171.1 The Refugee Appeal Division does not have jurisdiction to reopen on any ground — including a failure to observe a principle of natural justice — an appeal in respect of which the Federal Court has made a final determination.	**171.1** La Section d'appel des réfugiés n'a pas compétence pour rouvrir, pour quelque motif que ce soit, y compris le manquement à un principe de justice naturelle, les appels à l'égard desquels la Cour fédérale a rendu une décision en dernier ressort.

[8] The parties agreed that the effect of section 171.1 is to make the present application moot, once the Court has decided IMM-4270-17, regardless of the outcome of that decision. I concur with this conclusion, as the decision in IMM-4270-17 represents a final determination by this Court in respect of the Applicant's appeal to the RAD, as a result of which the RAD does not have jurisdiction to re-open the appeal. There would therefore be no practical effect if the Court were to make a decision in the present application.

[9] The parties made no submissions that the Court should consider exercising its discretion to hear this application notwithstanding that it is moot (per *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342). Rather, they agreed that, following the issuance of a decision in IMM-4270-17, the Court should dismiss the present application. This Judgment therefore so provides and, as follows therefrom, states no question for certification for appeal.

JUDGMENT in IMM-622-17

THIS COURT'S JUDGMENT is that:

1. The style of cause in this application is amended to add the Intervener, Pius Lekwuwa Okoronkwo.

2. This application for judicial review is dismissed.

3. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-622-18
STYLE OF CAUSE:	BILIKISU OLAYOMIBO OLAYINKA V THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND PIUS LEKWUWA OKORONKWO
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 25, 2018
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	OCTOBER 3, 2018

APPEARANCES:

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Amina Riaz	FOR THE RESPONDENT
Soloman Orijiwuru	FOR THE INTERVENER

SOLICITORS OF RECORD:

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