

Federal Court



Cour fédérale

Date: 20191024

Docket: IMM-5693-18

Citation: 2019 FC 1330

Montréal, Quebec, October 24, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JESSICA ONYINYECHUKWU OKONKWO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Protection Division [RPD] made on July 17, 2018 which dismissed the applicant's claim for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The proper respondent should be the Minister of Citizenship and Immigration, and the style of cause is amended accordingly.

[2] The applicant is a 19-year-old (18 at the time of the hearing) female citizen of Nigeria from Lagos where she resided with her family. On August 5, 2017, the applicant travelled to the United States for a vacation with her family. She was sexually abused in Nigeria by her father. While in the United States, she contacted her maternal uncle who lives in Canada to explain her situation and ask him if she could live with him. On November 30, 2017, the applicant travelled to Canada where she made a refugee claim. The applicant states that she fears that if she returned to Nigeria she would continue to be the victim of sexual abuse from her father.

[3] The RPD rejected the applicant's claim on three cumulative grounds which must be assessed together:

- (a) The applicant was not credible with respect to her father's alleged power and influence in Nigeria;
- (b) There was not enough probative evidence that her father was willing to pursue her or that he had the power and influence to find her through state authorities; and
- (c) The applicant had an Internal Flight Alternative [IFA], namely the city of Onitsha in Anambra State.

[4] For the reasons mentioned below, I find the impugned decision unreasonable.

[5] The test for assessing an IFA is set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA). The test requires (1) that the claimant show, on balance of

probabilities, that there is a serious risk of persecution throughout the country including the suggested IFA, and (2) that the proposed alternative not be unreasonable given the circumstances of the individual claimant. Both conditions must be satisfied to establish that the applicant has an IFA.

[6] In a nutshell, the RPD accepted that the applicant's father repeatedly sexually assaulted the applicant. Consequently, the applicant cannot be said to be safe with her father. However, there is no serious possibility that the applicant would be persecuted or that she would be subjected to a danger of torture or to a risk to life or a risk of cruel and unusual treatment or punishment if she were to re-establish herself in Onitsha, in Anambra State. In this respect, the RPD considers that the applicant has some maternal family members in the city, which the RPD claims "have not been shown willing to collude with the father to assist him in finding the claimant".

[7] Onitsha appears to have been the only IFA considered by the RPD. It was unreasonable to conclude that the applicant would be safe in Onitsha merely because she has family there. If the applicant's father were to be looking for her, then it is likely that he would look first for her among her family members where she could have tried to find help. For this reason alone, the decision should be returned for redetermination, but I also find that the RPD's determination with respect to the second prong of the IFA test is also problematic.

[8] The *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* alerts the decision-maker to have special care for the situation of women when it comes to IFA:

In determining the reasonableness of a woman's recourse to an internal flight alternative (IFA), decision-makers should consider the ability of women, because of their gender, to travel safely to the IFA and to stay there without facing undue hardship. In determining the reasonableness of an IFA, the decision-makers should take into account factors including religious, economic, and cultural factors, and consider whether and how these factors affect women in the IFA.

[9] In the case at bar, the applicant is now a 19-year-old female with little or no financial resources who has always lived with her parents before coming to Canada and is clearly vulnerable. The applicant testified that: she did not know the culture, language, and customs of the people in the IFA; beside her now-deceased grandmother, she did not have a home or house to go to in the IFA; and that she has never worked, and did not have employment waiting in the IFA.

[10] First, I note that from the National Documentation Packages [NDP], Igbo is the *lingua franca* of the proposed IFA. In a document titled “Languages of Nigeria”, SIL International details the usage of Igbo:

Language Status: 2 (Provincial). De facto provincial language in southeastern region. Main LWC [Language of Wider Communication] of Abia, Anambra, Ebonyi, Enugu, and Imo states.

[11] Be that as it may, the respondent submits that the fact that the applicant does not speak Igbo – the local language in Onitsha and Anambra State – it is not relevant because English is the

national language of Nigeria and her cousins speak English. While the applicant does speak English, it is unclear how prevalent English as a second-language is in the proposed IFA. Consequently, although she could communicate in English with her cousins, the fact that the applicant does not speak Igbo is more likely than not to hinder her capacity to find employment in Onitsha.

[12] Second, the RPD assumes that there will not be any issue of accommodation for the applicant because she could live with her maternal family in the IFA, but then goes on to state that she should not necessarily live with her maternal family without ever considering the availability of accommodation for the applicant.

[13] Third, according to a Response to Information Request listed at 5.9 in the NDP, the situation of women alone in Nigeria is difficult. Although the situation is easier in cities in the South like Onitsha than in the North of Nigeria, young females on their own would still face serious hardship.

[14] Fourth, regarding the availability of housing, the Response to Information Request highlights the following:

4.1 Housing in the South

According to the University of Nigeria professor, a woman heading her own household can obtain housing if she can afford the "steep rents" in places like Lagos, Ibadan and Port Harcourt (5 Jan. 2012). He stated that, in urban areas, people usually have to pay two to three years of rent in advance of obtaining a home, plus paying commission to the rental agents (Professor 5 Jan. 2012). Digital Journal, a global media network based in Canada (n.d.), similarly indicates that, in Lagos, landlords charge two to three years of rent in advance, and reports that sometimes fees paid for

the rental agreement and for the agent exceed the amount of the rent (22 Mar. 2012). According to Digital Journal, some agents in Lagos are fraudulent and take money without providing a home, and some take advantage of "the seeming desperation" of the person searching for a home (22 Mar. 2012).

[15] Fifth, when it comes to employment, the Response to Information Request highlights the following:

3.1 Employment in the South

The University of Nigeria professor indicated that a woman living without male support "can only get a reasonable job" in Lagos, Ibadan or Port Harcourt with the help of someone "in authority or very rich" (5 Jan. 2012). He said that, when a woman can find a job, it is usually a "low paying and high demanding" job in the informal sector, which is "equally difficult to come by" due to the "almost stagnant" economy, poor infrastructure, and underdeveloped industrial sector (Professor 5 Jan. 2012). The Women's Rights Watch Nigeria project coordinator stated that, although times are changing because more women are going to school, it is "generally easier" for women in the south to obtain work than women in the north, although they often end up working in "difficult" jobs, such as "petty trading" and subsistence agriculture (18 Oct. 2012). Okeke indicated that educated women in the south can obtain employment, but "many of them face sexual harassment" (26 Oct. 2012).

[16] Certainly, the objective evidence supports the conclusion of the RPD that women from higher social status are more likely to gain employment. That said, the applicant would not fall into that category as a young woman on her own with little to no financial means.

[17] Taking into account the particular situation of the applicant and the objective context as provided by the NDP, I find that the conclusion that the applicant would not face undue hardship were she to relocate on her own in the proposed IFA is not an acceptable outcome.

[18] The application for judicial review is allowed and the claim shall be redetermined by a different panel. There is no question of general importance for certification.

JUDGMENT in IMM-5693-18

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to reflect the correct respondent the Minister of Citizenship and Immigration, The application for judicial review is allowed and the claim shall be redetermined by a different panel;
2. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5693-18

STYLE OF CAUSE: JESSICA ONYINYECHUKWU OKONKWO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

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JUDGMENT AND REASONS: MARTINEAU J.

DATED: OCTOBER 24, 2019

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