

Federal Court



Cour fédérale

Date: 20111205

Docket: IMM-2767-11

Citation: 2011 FC 1409

Ottawa, Ontario, December 5, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

KINGSLEY NOGHEGHASE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated March 17, 2011. The Board determined that the Applicant was not a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the following reasons, this application is dismissed.

I. Facts

[3] The Applicant is a citizen of Nigeria. He refused his father's demand to assume the position of Chief Priest and witch doctor of their village. He fears that he will be persecuted by family members and village elders who told him that his death was the only way to break the generational curse caused by his refusal.

[4] The Applicant fled to Kaduna, but claims that the alleged agents of persecution found him. He then fled to Lagos. Once there, he insists that police refused to intervene when he approached them. The Applicant was able to leave Nigeria with the assistance of his pastor.

II. Decision Under Review

[5] The Board acknowledged that individuals who had an interest in the Applicant assuming the priesthood would be upset and want to scare him into accepting, but was not satisfied that they were prepared to act on those threats. Some reports indicate a belief in Nigeria that harm comes to a person who breaks an oath, while others suggest that they have never heard of a priesthood being forced on someone. Elders may believe that the "divine wrath" would descend upon their community and proceed to threaten the Applicant with death. However, he was never actually harmed.

[6] The Board also turned its mind to the availability of an Internal Flight Alternative (IFA) and state protection. The Applicant suggested that the elders were able to find him in Kaduna and Lagos through the oracle. The Board did not accept this explanation as plausible and was not persuaded that the Applicant would not find an Internal Flight Alternative in Nigeria.

[7] Despite his claims, the Applicant was also unable to produce any evidence of having gone to the police in Lagos and that they were unwilling to assist him. Although the Nigerian police are reluctant to interfere in local traditions, it may be that they simply believe individuals who refuse traditional positions, such as the priesthood, will not actually be harmed.

III. Issues

[8] This application raises the following issues:

- (a) Was it reasonable for the Board to find that the Applicant did not have a well-founded fear of persecution?
- (b) Was the Board's conclusion that the Applicant had not rebutted the presumption of state protection reasonable?
- (c) Was the Board's reliance on an IFA for the Applicant reasonable?

IV. Standard of Review

[9] The Applicant has raised questions of mixed fact and law that should be reviewed on a standard of reasonableness (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 43).

[10] Reasonableness is “concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” as well as “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above at para 47).

V. Analysis

Issue A: *Fear of Persecution*

[11] The Applicant takes issue with the Board’s selective treatment of documentary evidence. He points to passages that refer to servants of a shrine forcing an individual to assume the role of priest and that they can be responsible for killing or harming those who offend the shrine. According to the Applicant, this calls into question the Board’s adverse inference that while individuals might scare him into accepting the priesthood it was not satisfied that they would act on these threats.

[12] The Board is, however, presumed “to have weighed and considered all the evidence presented to it unless the contrary is shown” (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). The Board acknowledged that some researchers believe that harm comes to those who refuse the priesthood. This was balanced against the opinions of others that it would not be perceived as an offence to refuse a position as the priest.

[13] Although the Board did not refer to the exact portions cited by the Applicant, this does not undermine its overall conclusion. Contradictory evidence was referred to and it remained open to the Board to find that the Applicant was not at risk of actual harm from those who had an interest in him assuming the priesthood.

[14] While the Applicant had a subjective belief that he would be persecuted, he was still required to establish an objective fear (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] SCJ no 74 at para 47). As in this case, where sufficient state protection is available, claimants will be unable to establish that their fear of persecution is objectively well-founded (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 2007 CarswellNat 950 at para 42).

[15] I also note that the Board is entitled to make adverse findings based on the implausibility of a narrative (see *Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 11, 38 ACWS (3d) 361 at para 1 (FCA)). The requirements for a finding of implausibility were discussed in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] FCJ no 1131 at para 7:

[7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[16] Although the requirements for a finding of implausibility appear rather onerous, it does not follow that the Board was unreasonable in rejecting the Applicant's explanation that the alleged agents of persecution were guided to Lagos by the oracle. It was not clear from the documentary evidence that someone refusing the priesthood would necessarily be harmed. The Board was simply not convinced that he had been followed to a second location.

[17] As a consequence, it was within the range of possible, acceptable outcomes for the Board to question the Applicant's objective fear of persecution.

Issue B: *State Protection*

[18] The Applicant raises similar concerns regarding the treatment of documentary evidence relevant to state protection. He claims the Board ignored evidence that those endangered by a shrine would be more likely to go to a church for assistance than to police. In *Okafor v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1108, [2002] FCJ no 1471 at para 8, Justice Douglas Campbell found that taking documentary evidence related to Nigeria seriously out of context amounted to an error.

[19] However, I fail to see how the same principle is directly applicable to the present case. *Okafor*, above, referred to an entirely different fact situation and claim in Nigeria.

[20] Perhaps more significant is that the Applicant never based his claim on an unwillingness to go the police and opting solely for the assistance of the church. Instead, he insisted that he had approached police in Lagos, but they did not intervene. It was this claim to have sought police protection that was formally evaluated by the Board. The Applicant had not provided any evidence to support his contention that he had contacted police in Nigeria and they refused to get involved.

[21] To rebut the presumption of state protection, the Applicant must provide clear and convincing evidence that state protection is inadequate or non-existent (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, 2008 CarswellNat 605 at para 38). Even if the Board was satisfied that the Applicant had approached the police in Lagos on one occasion, this would not necessarily be sufficient (*Carillo*, above at paras 31-36). It is reasonable for the Board to

require evidence of having approached police or to insist that one attempt at seeking such protection was insufficient.

[22] Admittedly, the Board makes a rather speculative comment in passing when it suggests that Nigerian police might be unwilling to intervene because they simply believed individuals who refuse the priesthood would not actually be harmed. Although the Board pointed to evidence that some individuals do not believe the priesthood will be forced on anyone, there was nothing linked to widespread police attitudes.

[23] However, the comment does not undermine the Board's conclusion that the Applicant was unable to provide evidence of having gone to police and been turned away on one occasion. This was the primary basis for the finding that the Applicant had failed to rebut the presumption of state protection.

Issue C: *Internal Flight Alternative (IFA)*

[24] The Applicant has raised concerns that the Board failed to identify where in Nigeria he would have a viable IFA. He relies on the decision in *Nosakhare v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 772, [2001] FCJ no 1120 at para 13 stating that an IFA "cannot be speculative or theoretical, it has to be a realistic option." The Board was found to commit an error when it failed to identify which part of the country would be objectively reasonable for the relocation of that applicant.

[25] The Respondent contends that since the Board found there was adequate state protection it should not be faulted for the failure to specify the location of the IFA. This argument is based on *Canseco v Canada (Minister of Citizenship and Immigration)*, 2007 FC 73, [2007] FCJ no 115 at para 7 where the Court determined that a decision based on state protection should not be found unreasonable for the failure to identify a specific IFA. Similar to the present case, the Board conducted a combined analysis under the heading “IFA/State Protection.”

[26] Given that state protection was the determinative issue, this Court should not intervene based solely on the failure to specify the location of a viable IFA in Nigeria.

[27] I must also consider the Applicant’s assertion that the Board detached itself from his particular circumstances by failing to consider the difficulties he faced in Kaduna and Lagos, given that the alleged agents of persecution could trace his whereabouts.

[28] Before making a finding of an IFA, the Board must be satisfied that there is no serious possibility of persecution in the IFA and that in all the circumstances, including those particular to the applicant, it would not be unreasonable to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ no 1256).

[29] The Applicant was unable to prove that an IFA was unreasonable in the circumstances. The Board was not persuaded that the alleged agents of persecution had pursued him to Lagos at his pastor’s house based on the divine powers of the oracle.

[30] As a consequence, I conclude that the Board's finding of an IFA was reasonable. Despite the failure to specify the location of an IFA, this finding was open to the Board when combined with a determination that there was adequate state protection. The Board was not convinced that the particular circumstances of the Applicant made him unable to seek refuge in other parts of Nigeria.

VI. Conclusion

[31] Given its consideration of contradictory evidence, the Board reasonably concluded that the Applicant did not have a well-founded fear of persecution in Nigeria based on threats by individuals interested in him assuming the priesthood. It was also open to the Board to find that the presumption of state protection had not been rebutted with a lack of evidence and only one attempt to contact police. Since the finding of state protection was determinative, the Board was not required to provide greater specificity in its reference to a possible IFA.

[32] Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

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