

Federal Court



Cour fédérale

Date: 20111124

Docket: IMM-1412-11

Citation: 2011 FC 1352

Montréal, Quebec, November 24, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

TOCHUKWU PETER ANWUOBI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] One can well understand why Mr. Anwuobi is reluctant to return to his homeland of Nigeria. After all, his wife, his father and his mother were all viciously murdered by one Tompolo and his vicious gang which operates in Nigeria's Niger Delta. However, one of the basic principles of refugee law is that international aid need not be made available if the applicant has a viable internal flight alternative. In this case, the Refugee Protection Division of the Immigration and Refugee Board of Canada found that such an internal flight alternative existed for Mr. Anwuobi,

namely Enugo State, hundreds of kilometres from where the Tompolo gang operates. This is the judicial review of that decision.

[2] Mr. Anwuobi was found to be credible. The only issue is whether the Board's finding that Enugo State represented a viable internal flight alternative was reasonable.

[3] In *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 140 NR 138, the Federal Court of Appeal set out the following two-pronged test:

- a. the Board must be satisfied on the balance of probabilities that there is no serious possibility of the claimant being persecuted in the place proposed; and
- b. the conditions there must be such that it would not be unreasonable, upon consideration of all the circumstances, for the claimant to seek refuge there.

[4] The burden remains with the claimant.

[5] The RPD was of the view that the Tompolo gang would not pursue Mr. Anwuobi outside its own operating area.

[6] The Niger Delta is an area of recurring violence between members of different ethnic groups, gangs, and militia groups and security forces sent to restore order. Violence often occurs within the context of the control of crude oil. Individuals remain vulnerable to attack by criminal gangs.

[7] Although Mr. Anwuobi's father was a thorn in the Tompolo gang's side and accepting as credible the gang's threat to kill all the members of the family, the RPD was of the view that that threat was dissipated over time and distance. Mr. Anwuobi ought to be relatively safe once he left the area. Country conditions support this view, particularly the *U.K. Border Agency Operational Guidance Note for Nigeria* of 14 April 2009, which deals with the Niger Delta, and an Immigration and Refugee Board of Canada Response to Information Request of 6 December 2010 dealing with Mr. Tompolo, which stated that no information could be found that he exercises any influence outside the Niger Delta.

[8] The Enugo State was considered a viable alternative because Mr. Anwuobi was born, raised and attended college there. As he was a successful businessman in Niger Delta, there was no reason why he could not reconstitute himself in Enugo State.

[9] Although it was submitted on Mr. Anwuobi's behalf that the RPD decision was highly speculative, with respect, the speculation rests with Mr. Anwuobi. He speculates that he would be tracked down and speculates that Mr. Tompolo has both the will and the wherewithal to do so. Although his subjective fear is understandable, the objective analysis by the RPD stands up to scrutiny. The decision was reasonable and so shall not be set aside.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1412-11

STYLE OF CAUSE: ANWUOBI v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 22, 2011

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: NOVEMBER 24, 2011

APPEARANCES:

Idorenyin E. Amana Esq.

FOR THE APPLICANT

Daniel Baum

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Idorenyin E. Amana Esq.
Barristers & Solicitors
Cornwall, Ontario

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada
Montreal, Quebec

FOR THE RESPONDENT