

Federal Court



Cour fédérale

Date: 20120410

Docket: IMM-6120-11

Citation: 2012 FC 399

Ottawa, Ontario, April 10, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

HELEN UTOH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), of the decision of a Member of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated August 11, 2011. The Board refused the applicant's claim for refugee protection pursuant to section 96 and subsection 97(1) of the *IRPA*. The Board determined that the applicant is neither a Convention (United Nations' *Convention Relating to the Status of Refugees*, [1969] Can TS No 6) refugee nor a person in need of protection. For the reasons that follow, the application is granted.

Facts

[2] The applicant, Helen Utoh, is a citizen of Nigeria. She alleges that in March 2009, conflict between the applicant's village, Amai, and the village of Umuebu resulted in death and destruction of property on both sides. The applicant's husband, as one of the Chiefs of the village and several other members of their community were subsequently detained by the police for five months. Following their release the applicant's husband was accused by the people of Umuebu of bribing the police to secure his release. The applicant's husband then began to receive threats from the members of the Umuebu community that he and his family would be killed. He reported the matter to the police but the police did not investigate the complaint.

[3] In August 2009, while returning home, the applicant saw armed youths attacking her village. When her own home was attacked she was able to escape to the bush but was separated from her husband and children. She was able to flee to Benin after flagging down a man on a motorcycle, and then on to Lagos, where she hid in the home of her husband's friend.

[4] While in the home of her husband's friend in Lagos, she received threatening phone calls indicating that members of the Umuebu community knew where she and her family were hiding. Fearing for her safety the applicant fled Nigeria.

Decision Under Review

[5] The Board found that the applicant was neither a Convention refugee nor a person in need of protection. The two issues considered by the Board were the applicant's credibility and the availability of an Internal Flight Alternative (IFA).

Credibility

[6] The Board was not persuaded that the applicant was married to the Chief of her village who, together with his family, was allegedly being threatened by the people of Umuebu. The Board noted that there was no evidence of the marriage other than a picture from 1987 with a man holding a child.

[7] The Board was also not persuaded that the applicant's husband, together with his family, was threatened based on the lack of a police report or other evidence supporting the allegation.

[8] Finally, the Board found it implausible that the applicant had received threatening calls while staying with her husband's friend in Lagos. The Board noted that there was no evidence that the calls came from members of the Umuebu community and found it improbable that if they wanted to harm the applicant and her family they would call first, thereby warning them of their intent.

Internal Flight Alternative

[9] The Board found that, on a balance of probabilities, there was no serious possibility of the applicant being persecuted if she were to move away from her home village, which appeared to be the only area where problems occurred. The Board was not persuaded that she had been discovered in Lagos and noted that there was no evidence to suggest that the people of Umuebu would pursue, or even be interested in, her if she were not to return to her home village. The Board found that the applicant could relocate in other areas within Nigeria such as Ibadan or Benin City.

[10] As to the reasonableness of the relocation, the Board found that despite the applicant's basic education level, she has managed to establish herself in a foreign country, namely Canada, and therefore found that the applicant should be able to relocate relatively easily in her own native country.

Issues and Standard of Review

[11] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, that where the standard of review has been previously determined, a standard of review analysis need not be repeated. Questions of credibility and the viability of an IFA are questions of mixed law and fact to be determined on a standard of reasonableness.

Analysis

1. Was the Board's credibility determination reasonable?

[12] One of the key elements of the applicant's story that was disbelieved by the Board was the fact that the applicant was married to the Chief of her village. The Board stated that there was no evidence of the marriage other than a picture from 1987 with a man holding a child.

[13] This finding was unreasonable because it was made without regard to all the evidence before the Board. The picture was not the only evidence of the applicant's marriage. There was also her testimony about the marriage, including that she had no documentary proof because it was a traditional marriage, and there was an affidavit sworn by Emmanuel Eke, the friend of the applicant's husband with whom she had stayed while in Lagos. In his affidavit, Mr. Eke makes it clear that the applicant was married to Chief Fred Utoh, the affiant's close friend. Mr. Eke also

corroborates the applicant's claim that people suspected to be members of the Umuebu community made threatening calls while the applicant was staying with Mr. Eke in Lagos.

[14] While it was undoubtedly open to the Board to consider this evidence and grant it little probative weight, it was not open to the Board to disregard it altogether. In particular, the failure to expressly consider Mr. Eke's affidavit renders the Board's conclusion on credibility unreasonable. The affidavit it corroborated not only the fact that the applicant was married to the Chief, but also the conflict between the villages, the applicant's flight to Lagos, and the threatening calls from the people of Umuebu. Without any consideration of this evidence, I find that the Board's negative credibility finding is unreasonable.

2. Was the Board's IFA finding reasonable?

[15] In order to grant the application the decision must also not be able to be upheld on the basis of its conclusion that the applicant had a viable IFA. I find that the Board's IFA analysis is also unreasonable and therefore the decision must be set aside.

[16] First, the Board's conclusion that the applicant would not face persecution in another location in Nigeria is rendered unreasonable by its treatment of the evidence regarding members of Umuebu seeking her out in Lagos. The Board stated that there was "no evidence to suggest that the people of Umuebu would pursue or even be interested in her if she were not to return to her home village." This statement is incorrect as the applicant testified that members of Umuebu contacted her and threatened her in Lagos, and Mr. Eke's affidavit also states that members of Umuebu came looking for the applicant there. This finding therefore cannot stand. Either the Board has again

failed to consider the evidence before it, or it is relying on its earlier negative credibility findings, which I have already found unreasonable.

[17] The Board's consideration of whether it was reasonable to expect the applicant to relocate within Nigeria is also unreasonable. The sole finding by the Board on this point is that the applicant has "managed to establish herself in a foreign country, namely, Canada", and therefore "should be able to relocate relatively easily in her own native country." I am uncertain what the Board means by the applicant's "establishment" in Canada, or what evidence was relied on for that statement, but the extent to which the applicant has settled in Canada is irrelevant to the question before the Board. The applicant testified that she faced significant social, economic and cultural challenges relocating alone in a new city in Nigeria, but this issue was not considered by the Board. Therefore, the application must be granted.

[18] Furthermore, the Board failed to consider and apply the *Chairperson's Guidelines, Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution* (Gender Guidelines) in its analysis of the reasonableness of the proposed IFA locations. The Gender Guidelines expressly direct decision-makers to consider the claimant's gender in determining the reasonableness of a proposed 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.

[Emphasis in original]

[19] The Board made no reference to considering the Gender Guidelines in its decision and its analysis of IFA confirms that it failed to consider how the applicant's gender would impact the reasonableness of the proposed IFA.

[20] Finally, a review of the hearing transcript reveals that one of the IFA locations relied on the decision, Ibadan, does not appear to have been specifically identified by the Board as a proposed IFA and, more importantly, put to the applicant as a possible IFA. The jurisprudence is clear that the Board must identify the specific IFA locations; *Farias v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1035 at para 34, and fairness requires that the applicant have an opportunity to address its suitability. Therefore, this error also requires that the decision be set aside.

[21] The application is granted, the decision is set aside and the matter is referred back to the Board for re-determination by a different panel.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted, the decision is set aside and the matter is referred back to the Board for re-determination by a different panel.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6120-11

STYLE OF CAUSE: HELEN UTOH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: April 10, 2012

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