Federal Court  Cour fédérale

Date: 20120607

Docket: IMM-4095-11
IMM-4096-11

Citation: 2012 FC 708

Ottawa, Ontario, June 7, 2012

PRESENT: The Honourable Mr. Justice de Montigny

Docket: IMM-4095-11

BETWEEN:

FATAI AYINLA ADETUNJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

Docket: IMM-4096-11

AND BETWEEN:

FATAI AYINLA ADETUNJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] These are two separate applications for judicial review made by the same Applicant with regard to two decisions made by Officer Valérie Choinière, both dated May 3, 2011. In the first decision, the Officer rejected the Applicant's application for Pre-Removal Risk Assessment (PRRA). In the second, the Officer denied the Applicant's request for permanent residence based on humanitarian and compassionate grounds (H&C).

1. Facts

[2] The Applicant, Mr. Fatai Ayinla Adetunji, was born on April 6, 1965. He is a citizen of Nigeria. He has three children: two from a former spouse living in the United States, and one with his current spouse. The Applicant's spouse has four children of her own from a previous relationship.

[3] Prior to his arrival in Canada on August 30, 2007, the Applicant lived in the United States from 1990 to 2006, where he held a permanent residency status. Following a series of criminal convictions – notably fraud, forgery and domestic violence – and serving several years in a US correctional facility, he lost his permanent resident status and was deported to Nigeria in December 2006.

[4] Upon arrival in Nigeria, the Applicant's father was terminally sick and passed away eleven days later. According to the Applicant, his stepmother (the second wife of his father) had poisoned

his father in the hope of securing the inheritance. His father would have told him, shortly before he passed away, that he believed his wife had poisoned him.

[5] The Applicant alleged that his stepmother would have threatened to kill him should he return to the house. She indicated she would hire people to find and kill him after he had left Lagos for another Nigerian city (Port Harcourt). With a friend's help, the Applicant therefore managed to purchase an airline ticket for Canada, where he claimed refugee status upon arrival.

[6] In September 2007, a report under section 4 of the *Immigration and Refugee Protection Act* SC 2001, c 27 [*IRPA*] for inadmissibility was issued against the Applicant, his refugee claim was referred to the Refugee Protection Division (RPD), a departure order was issued against him and he was released under conditions by the Immigration Division of the Immigration Refugee Board.

[7] In October 2009, the Applicant filed an application for permanent residence based on humanitarian and compassionate grounds.

[8] In May 2010, the RPD rejected his refugee protection claim. As the criminal offences he had been convicted of and sentenced for in the US were found to be serious non-political crimes by the RPD, he was excluded from the benefit of refugee protection by virtue of s. 98 of the *IRPA*. The RPD made no determination on the inclusion aspect of his claim. In September 2010, this Court dismissed the leave application filed by the Applicant against that decision.

[9] The Applicant was offered a PRRA. On March 22, 2011, the Applicant submitted his PRRA application form, followed by written submissions and material. On May 3, 2011, both the PRRA and the H&C applications were refused.

[10] On June 21, 2011, the Applicant filed a leave application against both the negative PRRA and H&C decisions, and on July 12, 2011, the Court granted the Applicant's motion for a stay of removal pending the outcome of his leave application against the PRRA decision.

2. The impugned decisions

- The H&C decision

[11] The Officer noted that the Applicant has spent a little over three years in Canada, which is a relatively short period in terms of the immigration process. He is fluent in one of the official languages, English, and has created ties in his community. Meanwhile, the Applicant has no siblings or living parents in Nigeria. In addition, the Officer awarded high probative value to the Applicant's wife's willingness to sponsor the Applicant's permanent residence application. The Officer also gives significant weight to the fact that the Applicant holds a steady job and supports his family financially, as his wife is pursuing a nursing degree.

[12] However, the Officer indicated that the Applicant has not provided any explanation as to why alternate solutions cannot be found, such as obtaining gainful employment in Nigeria or having the father of his wife's four children contribute to the latter's financial welfare.

[13] The Officer acknowledged that the Applicant's son is two years old and requires the care of both his parents. With regard to the Applicant's two children who live in the United States, the Applicant has not provided any information on their financial needs or the manner in which his return to Nigeria would impact their relationship. As for his spouse's children, the Officer remarked that they have known the Applicant for less than a year since they arrived in Canada on August 25, 2010. Moreover, considering the age of these children – the youngest being 16 years old – and their relative autonomy, the Officer granted a minimal weight to their relationship with the Applicant.

[14] Finally, the Officer awarded significant weight to the Applicant's criminal convictions in the US for domestic violence and credit card fraud. In the latter case, the Officer opines that it was a serious offence considering the repetitive nature of the Applicant's criminal activities and the use of multiple identities in furthering those crimes.

[15] As for the risks of return to Nigeria, the Officer merely reiterated the analysis made for the purposes of the PRRA decision and concluded that there is insufficient evidence to show that the Applicant would face a personalized risk upon returning to Nigeria.

- The PRRA decision

[16] The PRRA decision was made under subsection 112(3) of the *IRPA*, as the Applicant made a claim for refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention. As a result, only the factors set out in section 97 of the *IRPA* could be considered, pursuant to paragraph 113(d) of the *IRPA*.

[17] The PRRA Officer began her analysis by mentioning the onus of proof the Applicant has to meet. She then identified all the documentary evidence the Applicant submitted in support of his PRRA application and some other evidence pertaining to risks he adduced with his H&C application.

[18] The PRRA Officer's analysis is two-fold. First, she reviewed and weighed each of the personal documentary evidence adduced by the Applicant. The PRRA Officer found that the evidence as a whole fell short to establish, on the balance of probabilities, that the Applicant would be personally in danger in his home country. With regards to the *Medical Certificate of Cause of Death* of the Applicant's father, according to which the primary cause of death was "severe shock" and the secondary cause was "food poisoning", the Officer relied on a publicly available website pertaining to health and medicine and remarked that food poisoning can result from chemical products as well as viruses, bacteria and parasites. The Officer also noted that the certificate did not specify that the death was caused by a criminal act. The Officer also awarded a low probative value to the Applicant's mother's *Medical Certificate of Cause of Death* because it was insufficient to support the Applicant's claim that his life would be at risk if he were to return to Nigeria. As for the *Certificates of Occupancy*, the Officer noted that they merely show that the Applicant's father had two properties in 2005 and 2000. Finally, the handwritten letter provided by Olufemi Oketadi to the effect that the Applicant's stepmother would kill him in order to secure the inheritance, was given little weight because the Applicant never explained his ties to the author of that letter.

[19] Second, the PRRA Officer reviewed and evaluated the alleged risk in the context of the situation prevailing in Nigeria as per the objective documentary evidence. The Officer did not

dispute that there are several problems in Nigeria, including serious corruption with the Nigerian police forces. The onus was on the Applicant to demonstrate a personalized risk, however, and the Officer noted that he failed to establish a link between his own situation and the country conditions.

[20] Furthermore, the Officer indicated that the Applicant asked to be convoked to an oral hearing, but determined that it was not necessary in this case as the Applicant's evidence did not raise a serious issue of credibility.

3. Issues

[21] The Applicant has raised a number of issues, some common to both applications, and some more specific to the H&C. The common issues can be summarized as follows:

a) Did the Officer breach the principles of procedural fairness:

- By failing to provide the Applicant with a hearing?
- By relying on extrinsic evidence?

b) Did the Officer err in assessing the risk of returning to Nigeria?

Additionally, the Applicant has raised the following two specific issues with respect to the H&C decision:

c) Did the Officer err by failing to properly analyse the best interests of the children?

d) Did the Officer err in her assessment of the various factors submitted by the Applicant in support of his application?

4. Analysis

[22] Questions of fact, such as the evaluation of evidence by an administrative tribunal, are submitted to the standard of reasonableness. The determination of risk on return to a particular country is in large part a fact-driven inquiry. The same is true of the assessment called for by an

H&C application, as the Officer is required to examine the particular situation of an applicant in order to determine if it would create a situation of unusual and undeserved, or disproportionate hardship if he or she was required to apply for permanent residence in this country from outside Canada. Indeed, the reasonableness standard has consistently been applied in reviewing PRRA and H&C decisions (see, for example, *Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18 at paras 25-26 (available on CanLII); *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18, [2010] 1 FCR 360). Accordingly, a significant degree of deference is owed to these decisions. As the Supreme Court of Canada stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*] "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[23] On the other hand, issues of procedural fairness call for a more exacting standard of review. In those cases, no deference is due to the decision-maker, as he or she has either complied with the content of the duty of fairness appropriate in the particular circumstances of the case, or has breached this duty (*Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 53, [2006] 3 FCR 392).

[24] That being said, there is a controversy in this Court as to the standard of review to be applied when reviewing an officer's decision not to convoke an oral hearing, particularly in the context of a PRRA decision. In some cases, the Court applied a correctness standard because the matter was viewed essentially as a matter of procedural fairness (see, for example, *Hurtado Prieto v Canada*

(Minister of Citizenship and Immigration), 2010 FC 253 (available on CanLII); *Sen v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1435 (available on CanLII)). On the other hand, the reasonableness was applied in other cases on the basis that the appropriateness of holding a hearing in light of a particular context of a file calls for discretion and commands deference (see, for example, *Puerta v Canada (Citizenship and Immigration)*, 2010 FC 464 (available on CanLII); *Marte v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 930, 374 FTR 160 [*Marte*]; *Mosavat v Canada (Minister of Citizenship and Immigration)*, 2011 FC 647 (available on CanLII) [*Mosavat*]). I agree with that second position, at least when the Court is reviewing a PRRA decision.

[25] PRRA applications are generally assessed on the basis of an applicant's written submissions and documentary evidence. Paragraph 113(b) of the *IRPA* makes it clear that a hearing is to be held in exceptional circumstances and provides that an officer may hold a hearing if he or she is of the opinion that a hearing is required on the basis of prescribed factors:

Consideration of application	Examen de la demande
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
…	…
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
…	…

[26] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] sets out the factors to be considered when determining whether a hearing is required:

Hearing — prescribed factors	Facteurs pour la tenue d'une audience
167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[27] Pursuant to these sections, the decision to hold a hearing is not taken in the abstract, according to what each Officer thinks is required by procedural fairness. On the contrary, the Officer is to determine this issue by applying the factors prescribed in s. 167 of the *Regulations* to the particular facts of each case. Therefore this is clearly a question of mixed fact and law, and one over which a PRRA officer has expertise. As such, I find that the decision to hold or not to hold an interview, at least in the context of a PRRA, attracts deference and is reviewable on the reasonableness standard.

[28] On the basis of these brief remarks with respect to the applicable standards of review, I shall now turn to the substantive issues raised in these applications.

a) Did the Officer breach the principles of procedural fairness:

- **By failing to provide the Applicant with a hearing?**
- **By relying on extrinsic evidence?**

[29] Counsel for the Applicant argued that the Officer, in finding that there was insufficient evidence to substantiate his allegations of a personalized risk upon return to Nigeria, made a veiled finding of credibility. As a result, she claimed that the Officer erred in not providing the Applicant with a hearing, and that such a failure amounts to a breach of procedural fairness.

[30] As mentioned, PRRA applications are generally assessed on the basis of an applicant's written submissions and documentary evidence. A hearing will be required only if all of the factors set out in s. 167 of the *Regulations* are met (*Mosavat*, above at para 11; *Marte*, above at paras 48 and 51). In the case at bar, I have no doubt that the Applicant's stepmother's willingness to kill for the inheritance is a serious and central element of the PRRA application that would substantiate the Applicant's fear of returning to Nigeria and that, if accepted, that evidence would have justified allowing the application for protection, pursuant to paragraphs 167(b) and (c) of the *Regulations*.

[31] The only question to be determined, therefore, is whether the Officer's decision to reject the Applicant's PRRA application was premised on the Applicant's credibility, or rather was based on the insufficiency of his evidence to support a finding that he would be personally at risk. These notions are quite different, and it is trite law that the Court must look beyond the words of a decision

in order to determine whether it is based on the sufficiency of the evidence or if it amounts to a credibility determination. As recently noted in *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at paras 15-19 (available on CanLII), not every finding of insufficiency of evidence can be found to be a credibility finding by a PRRA officer. There is a difference, albeit sometimes tenuous, between simply not believing an applicant and an applicant not having met his burden of proof on a balance of probabilities.

[32] In *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, 170 ACWS (3d) 397 [*Ferguson*], Justice Zinn held that a trier of fact may consider the probative value of the evidence without considering its credibility. In other words, there is a difference between saying that an applicant has not met his burden of proof than to conclude that his allegations are not credible. This is because applicants do have a burden to meet, and the evidence they adduce may or may not satisfy the legal threshold prescribed by law, without regard to credibility:

> It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question [whether the evidence is credible] is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.
>
> *Ferguson*, above at para 26.

[33] This is precisely what the PRRA Officer did in the case at bar. A careful reading of her reasons reveals that she made findings as to the probative value and sufficiency of the elements of evidence. She gave little probative value to the *Medical Certificate of Cause of Death* of the Applicant's father, because food poisoning, which is listed as the secondary cause of death, can

result from chemical products as well as viruses, bacteria and parasites. As such, this mention is insufficient to establish that the Applicant's father was poisoned by his stepmother. Similarly, the Officer found that the production of the Applicant's mother's *Medical Certificate of Cause of Death* alone, is similarly insufficient to support the Applicant's claim that his life would be at risk if he were to return to Nigeria. Finally, she also gave low probative value to both the two Certificates of Occupancy, as they merely establish that the Applicant's father owned these two properties, and to the handwritten letter of one Olufemi Oketadi, as the relationship between the Applicant and this person has not been established.

[34] None of these findings can be said to be "veiled" credibility findings, as was the case in *Begashaw v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1167, 354 FTR 296. It is clear both from the wording of the decision and from its overall thrust that the Officer rejected the Applicant's application because she found that the evidence which he submitted was insufficient to support his interpretation of the events that took place in his country and, therefore, did not establish on a balance of probabilities that he would be at risk upon returning to Nigeria.

[35] Since the first factor listed in section 167 of the *Regulations* was not met, convoking an oral hearing was not required in the present case. Whether the decision of the PRRA Officer is reviewed on a standard of reasonableness or correctness, there is no ground for this Court to intervene on this aspect of the decision.

[36] The same reasoning applies with equal force in the context of the H&C decision. Once again, the Officer did not question the Applicant's credibility, but rather questioned the probative

value and sufficiency of the evidence adduced to support his claim that he was targeted by his stepmother. H&C decisions are generally assessed on the basis of an applicant's written submissions and documentary evidence, and there is not even an equivalent to paragraph 113(b) of the *IRPA* providing an officer with the discretion to hold a hearing when certain factors are met. In the case at bar, the Applicant was afforded a reasonable opportunity to participate meaningfully in the H&C decision-making process, and there was no basis upon which the Officer could have been required to interview the Applicant whose credibility was not at stake.

[37] As for the other alleged breach of procedural fairness resulting from the fact that the Officer relied on "extrinsic evidence" with respect to the causes of food poisoning without proper disclosure of the information and without providing the Applicant an opportunity to respond, I am also of the view that it ought to be rejected. First of all, it seems to me that characterizing the definition of "food poisoning" found in a dictionary as extrinsic evidence is a little bit of a stretch. It has nothing to do with the kind of information the use of which was found to be detrimental to an applicant in cases such as *Muliadi v Canada (Minister of Employment and Immigration)*, [1986] 2 FC 205 (available on QL) (FCA) and *Haghighi v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 407 (available on CanLII) (FCA). In those cases, what was at stake was information obtained from an outside party and internal Ministry reports relied upon in making discretionary decisions. In the case at bar, the information is no more than a simple verification of terminology, and the terms came directly from the Applicant's own documentary evidence.

[38] The question is not whether the impugned document was available to the Applicant, but whether the information contained in that document was available to the Applicant, and whether the

Applicant could reasonably be expected to have knowledge of that information (see *Jiminez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1078 at paras 17-19 (available on CanLII); *Stephenson v Canada (Minister of Citizenship and Immigration)*, 2011 FC 932 at paras 38-39 (available on CanLII)). The relevant question, therefore, is whether the Applicant had knowledge of the information found by the PRRA Officer on the meaning of the term "food poisoning", and whether or not it would have been difficult to come across the said information.

[39] In the circumstances of the present case, both questions must be answered affirmatively. The Applicant knew or should have known the meaning of the term "food poisoning" mentioned in the Medical Certificate he used to support his allegation that his father had been poisoned by his stepmother. The information was publicly available, and it should have been obvious to the Applicant that a diligent officer would inquire into the proper meaning of the terms used by a medical practitioner to describe the causes of death in the Medical Certificate, that he chose to submit as documentary evidence. Indeed, the information relied upon by the Officer in her quest to interpret "food poisoning" can be considered common knowledge, and it is far from obvious what the Applicant could have said in an interview to dispute and counter what she found on a medical health website. Disclosure requirements aim at giving the opportunity to correct prejudicial misunderstandings, misstatements, errors or omissions. In his Record, the Applicant is silent on any comment or response he could have given to the meaning of "food poisoning" if presented with the opportunity to do so.

[40] In light of the above, no breach of procedural fairness by the Officer has been shown by the Applicant and this Court's intervention is unwarranted. I acknowledge that this conclusion appears

to contradict the finding of my colleague Justice Harrington, who granted the Applicant's stay motion on the basis that he should have been interviewed since his credibility was impeached. However, it is trite law that the threshold of a "serious issue" for the purpose of a stay motion is lower than the standard of an "arguable case" in the context of an application for leave and for judicial review, and significantly lower than what must be made out on a judicial review (see, for example, *Maximenko v Canada (Solicitor General)*, 2004 FC 504 at para 26, 130 ACWS (3d) 358; *Gray v Canada (Minister of Citizenship and Immigration)*, 2004 FC 42 at para 13, 128 ACWS (3d) 778; *Win v Canada (Minister of Citizenship and Immigration)*, 2008 FC 398 at para 17, 166 ACWS (3d) 299; *Echeverry v Canada (Minister of Citizenship and Immigration)*, 2007 FC 497 at paras 13-14, 157 ACWS (3d) 596). As a result, this Court's order granting a stay does not automatically mean that the Applicant has raised an arguable case and is in no way tantamount to a finding that the application should be granted on the merits.

[41] Moreover, one must bear in mind that the Applicant had not perfected his application for leave and judicial review, nor had the Respondent filed his memorandum of argument, at the time the motion judge rendered his stay order. The judge seized of the application, having had the benefit of a full record and of the written and oral representations of both parties, is in a much better position to assess the substantive issues raised by the Applicant. For all of those reasons, it is clear that the application judge cannot be bound by the decision reached by the motion judge.

b) Did the Officer err in assessing the risk of returning to Nigeria?

[42] The Applicant submitted that the PRRA Officer expected or required too much of him in terms of quality and quantity of evidence to establish his allegations of risk. He also contended that

the PRRA Officer took a compartmentalized approach when she assessed individually each personal document he adduced. On a careful reading of her reasons, none of these claims is substantiated.

[43] In dismissing the application for protection, the PRRA Officer held that the evidence submitted by the Applicant, both taken as a whole and *seriatim*, was insufficient to allow him to meet his burden of establishing that he would personally be at risk in the event of his return to Nigeria. The Officer assessed the personal documents adduced by the Applicant, and provided ample and cogent reasons for the conclusions she made. In the end, she determined the Applicant submitted insufficient evidence to support his own interpretation of the facts on the events that happened in his country. It was wholly within the PRRA Officer's purview to draw such findings.

[44] The Applicant expressed his disagreement with the manner in which the PRRA Officer evaluated his elements of evidence, and alleged that different findings could have been made. This is not enough. When reviewing a decision on a standard of reasonableness, a reviewing court must show deference and cannot substitute its own appreciation of the appropriate solution. In other words, the issue is not whether this Court would have come to the same conclusion as the Board, but 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).

[45] With respect to the country conditions, it was within the PRRA Officer's purview to conclude the Applicant had not established a link between his personal situation and the situation in Nigeria. The Applicant does not take issue with this finding.

[46] Finally, the Applicant relies on the presumption of veracity that attaches to his allegations (see *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (available on QL) (FCA)). First of all, this presumption is rebuttable upon a lack or insufficiency of corroborating evidence. Moreover, it only applies to allegations made under oath. In the present case, there was no affidavit or sworn testimony from the Applicant to establish his allegations. A refugee claimant's responses in his Personal Information Form are not sworn statements made under oath.

[47] For all of the above reasons, I am of the view that the decision of the Officer was reasonable and does not warrant the intervention of this Court.

c) Did the Officer err by failing to properly analyse the best interests of the children?

[48] The Applicant submitted that the Officer has not properly evaluated the best interests of the children, as she did not examine the level of economic hardship the children would face if the Applicant – the sole financial provider – were to return to Nigeria. Moreover, he argued the Officer's conclusions that his wife's children are autonomous because of their ages and the recentness of their relationship with the Applicant, are based on pure conjecture. He further argued she erred by not considering the evidence of his interaction with these children even before their arrival in Canada.

[49] In determining the best interests of the children, the Officer must be "alert, alive and sensitive" and must give great weight to this factor (*Baker v Canada (Minister of Citizenship and*

Immigration), [1999] 2 SCR 817 (available on CanLII)). In this process, the Officer must examine the degree of hardship to the children of a potential removal of the parent from Canada (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FC 555). That being said, consideration of the best interests of a child does not lead inescapably to the conclusion that the parent and the child should remain in Canada (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 FC 358; *Persaud v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1369, 134 ACWS (3d) 685). Moreover, the Federal Court of Appeal has confirmed in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 FCR 635, that it was up to the applicant to submit convincing evidence relating to all aspects of his H&C application, particularly to the factors relating to the best interests of the child.

[50] I believe that the Officer considered in great detail the best interests of the children. She found in favour of the Applicant that his two year old son would benefit from his father's presence and that the Applicant provided financially for his family. Nevertheless, in weighing the entirety of the evidence on this matter, the Officer discussed the impact of the Applicant's removal on the financial well-being of the family and observed that the Applicant had not provided information on possible alternatives; by way of example, that he could provide for them from Nigeria or that the father of his spouse's children could support them.

[51] As for his wife's children, I disagree with the Applicant that the Officer's remarks on the recent nature of the Applicant's relationship with them and these children's autonomy are based on conjecture. At the time of the decision, two of these children were adults, while the two others were in their late teenage years. It is clear that in comparison to the Applicant's two year old son, these

children are much more autonomous and the removal of the Applicant will have less of an impact on them, both financially and emotionally.

[52] Ultimately, the Officer found the Applicant's evidence regarding the best interests of the children to be insufficient on several grounds. While it is understandable for the Applicant to be dissatisfied with the weight given to the elements he provided, it cannot be said that the Officer ignored the best interests of the children. I find that she did not commit any reviewable error in this respect.

d) Did the Officer err in her assessment of the various factors submitted by the Applicant in support of his application?

[53] Finally, the Applicant acknowledges that the Officer did not ignore the positive elements of his application, but feels that they were not given enough weight to offset the negative impact of his serious criminality. Unfortunately for the Applicant, this argument amounts to no more than asking the Court to reweigh the evidence that was before the Officer.

[54] It is well recognized that the weight to be assigned to particular factors in assessing an applicant's case is discretionary and thus subject to a high level of deference from this Court. Indeed, the existence of a humanitarian or compassionate review offers an individual special and additional consideration to be exempted from Canadian immigration laws that are otherwise universally applied. The decision not to grant an exemption under ss. 25(1) of the *IRPA* takes no right away from an applicant, who may still apply for status from outside Canada, which is the usual requirement under Canadian immigration legislation.

[55] Bearing in mind these principles, and having carefully reviewed the decision made by the Officer, I am of the view that the Applicant's arguments are insufficient to impugn the H&C decision.

5. Conclusion

[56] For all of the foregoing reasons, these applications for judicial review ought to be dismissed. Counsel have not proposed any questions to be certified, and none arise in the present cases.

JUDGMENT

THIS COURT'S JUDGMENT is that these applications for judicial review are dismissed.

No question is certified.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-4095-11 and IMM-4096-11
STYLE OF CAUSE:	IMM-4095-11, FATAI AYINLA ADETUNJI v THE MINISTER OF CITIZENSHP AND IMMIGRATION ET AL IMM-4096-11, FATAI AYINLA ADETUNJI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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DATED:	June 7, 2012

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