Federal Court  Cour fédérale

Date: 20151105

Docket: IMM-2843-14

Citation: 2015 FC 1255

Ottawa, Ontario, November 5, 2015

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

JUAN JACKSON OMOROGIE
MICHEAL NAYABA BANGURA (a minor)
DESTINY NAYABA BANGURA (a minor)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants' claim for refugee protection was denied by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board). They now apply for judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The applicants seek an order setting aside the negative decision and returning the matter to a different member of the Board for redetermination.

I. Background

[3] The applicants are citizens of Nigeria who had been granted permanent resident status in Italy. The applicants are a mother, Juan Jackson Omorogie (the principal applicant), with her two minor children.

[4] In 2001, the principal applicant was deceived by a woman named Madam Grace who promised to bring her to the United Kingdom and get her a job. Madam Grace smuggled her into Italy and forced her to work as a prostitute. For twelve years, Madam Grace extorted and assaulted the principal applicant and forced her to work as a prostitute.

[5] In 2002, the principal applicant was granted permanent resident status in Italy as a result of a general amnesty.

[6] In September 2006, the principal applicant married a man in Italy and later gave birth to the two minor applicants. She is now separated from her husband.

[7] In 2010, the principal applicant got a job, but Madam Grace forced her to continue paying and to continue working as a prostitute on the weekends.

[8] The principal applicant alleges that on June 30, 2012, Madam Grace had the principal applicant's father murdered in Nigeria because the principal applicant tried to leave prostitution and stopped paying money.

[9] In October 2012, the principal applicant fled Italy to the United States (the U.S.) in order to claim asylum. Following a conversation with a stranger at the airport, she decided not to claim asylum and returned to Italy.

[10] In February 2013, the principal applicant went to the U.S. again, this time to work as a prostitute for Madam Grace and she brought her children with her. The principal applicant ran away with her children and met a stranger at a McDonalds. They stayed with this stranger in the U.S. for fourteen days, following which they travelled to Canada and claimed refugee protection in March 2013.

II. Decision Under Review

[11] The hearing took place in August 2013. In a decision dated March 18, 2014, the Board rejected the applicants' claim. It found the applicants were excluded under Article 1E of the *United Nations Convention Relating to the Status of Refugees*, 189 UNTS 150 [the Convention] due to their Italian permanent residency status. In the alternative, the Board found the applicants are not Convention refugees and are not subject to a risk of life or a risk of cruel and unusual punishment upon return to Nigeria.

[12] The Board considered the following issues: exclusion under Article 1E of the Convention, credibility, delay in leaving Italy, not making a claim in the U.S. and re-availment.

[13] The Board noted the exclusion provision under Article 1E of the Convention, incorporated into Canadian law by subsection 2(1) of the Act. It cited *Shamlou v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1537, 103 FTR 241 [*Shamlou*] and observed exclusion under Article 1E requiring the applicants' basic rights to meet the four criteria:

i) the right to return to the country of residence;

ii the right to work freely without restrictions;

iii) the right to study, and

iv) full access to social services in the country of residence.

[14] The Board observed after the Minister raised a *prima facie* case that the applicants were excluded under Article 1E of the Convention, the onus then shifted to the applicants to establish that they no longer had status in Italy.

[15] The Board acknowledged being born in Italy does not in itself make the minor applicants citizens of Italy. It noted Article 1E arises when a claimant does not have a well-founded fear of persecution or a risk of harm under Article 97(1) in the Article 1E country. It also acknowledged the Article 1E country must be safe for the applicants. It noted the documentary evidence on whether the applicants would automatically lose their permanent residence after one year outside of Italy was inconsistent. The Board preferred the evidence from the Italian police indicating that status "can" be revoked and found that this meant revocation is not automatic. It found even in

light of this inconsistency, as of the date of this hearing, the applicants continue to have permanent resident status in Italy until February 14, 2014 which gives them the *Shamlou* rights.

[16] Next, the Board assessed the applicants' alleged risk faced in Italy and found the applicants' claims not credible. It found that parts of the principal applicant's testimony and some of the allegations in the claim did not have a "ring of truth" to them.

[17] First, the Board noted the applicant maintained Madam Grace and her associates would kill her and her children if she returned to Italy; but she re-availed herself to Italy after talking with a stranger without any legal expertise at the airport in 2012. The Board did not find the principal applicant's action reasonable and drew an adverse credibility inference.

[18] Second, the Board found the allegations surrounding the applicants' 2013 U.S. trip unreasonable. It found it would be reasonable to assume the children would have remained in Italy with their father because the purpose of the 2013 U.S. trip was prostitution. Also, it was unreasonable that Madam Grace would allow the principal applicant to bring her children on this trip, who were four and six years old at the time. Further, it was unreasonable that the principal applicant did not know the name of the man who tried to save her and her children's lives and whom she stayed with for fourteen days in the U.S.

[19] Third, the Board did not find the principal applicant's explanation reasonable as to why she did not go to the police in Italy. She alleged she and her husband's lives were threatened by Madam Grace who was connected with the Mafia. The Board found her testimony was very

vague and lacked details on these threats. Also, the principal applicant did not provide any credible evidence to establish that Madam Grace was connected with the Mafia or had any influence over the police. The Board considered the Chairperson's Gender Guidelines with respect to this claim. Nevertheless, it found it would be reasonable to assume the principal applicant would have contacted the police in Italy sometime in the twelve years. The Board found adequate state protection was available to the applicants in Italy based on documentary evidence.

[20] Fourth, the Board drew an adverse inference regarding the principal applicant's allegation that Madam Grace murdered her father. It noted the death certificate did not indicate who killed her father. The police report also did not indicate who killed her father and whether it was related to the allegation in the claim. The Board found it unreasonable that it took Madam Grace two years to allegedly order the murder after the principal applicant attempted to escape from the sex trade in 2010.

[21] Fifth, the Board drew an adverse credibility finding due to the principal applicant's delay in leaving Italy. It stated it would be reasonable to assume that she would have left or tried to leave Italy much sooner than twelve years.

[22] Further, the Board found there was not enough credible evidence to establish Madam Grace would hurt the children. There was no evidence that Madam Grace ever directly or indirectly threatened them. To the contrary, Madam Grace allowed the principal applicant to

bring the children and agreed to provide a babysitter while she went to see clients during the 2013 U.S. trip.

[23] As for the medical assessment documents, the Board found Dr. Dalfen does not have firsthand knowledge of whether the principal applicant was harassed, threatened, assaulted or forced into prostitution. So, it found Dr. Dalfen is not in a position to state the causes for the principal applicant's mental condition. It found Dr. Asekomhe's letter also does not address the credibility concerns. Further, the Board acknowledged the letter from a violence prevention counsellor. The Board assigned very little evidentiary weight to the affidavit from the principal applicant's sister and an undated letter from her friend about the principal applicant's forced prostitution.

[24] The Board concluded the applicants have their *Shamlou* rights and given the negative credibility findings and a lack of credible evidence, it found the applicants are excluded from making a claim for protection in Canada under Article 1E of the Convention.

[25] In the alternative, the Board found the applicants' alleged risks are not supported by credible evidence and therefore they are not Convention refugees and are not subject to a risk of life or a risk of cruel and unusual punishment upon return to Nigeria.

III. Issues

[26] The applicants raise the following issues:

1. Did the Board misapprehend or ignore material evidence properly before it to the extent that the Board committed an error of law and/or fact?
2. Was the Board's overall assessment of the totality of evidence patently unreasonable, perverse and capricious?
3. Did the Board err in law by drawing negative inferences unsupported by the evidence and decide the case on the basis of its conjecture and speculations and not the evidence before it?
4. Did the Board proceed on improper principles and base its decision on irrelevant considerations, or take extraneous factors into consideration in its assessment of the applicants' credibility and/or ignore critical evidence?

[27] The respondent raises the following issues:

1. Was the finding that the claim was not credible reasonable?
2. Was the finding that the applicants failed to rebut the presumption of state protection reasonable?
3. Was the finding that the applicants were excluded due to their permanent residence in Italy reasonable?

[28] I would rephrase the issues as follows:

A. What is the standard of review?

B. Was the Board's finding on the applicants' permanent resident status in Italy reasonable?

C. Were the Board's credibility findings reasonable?

D. Was the Board's state protection analysis reasonable?

E. Was the Board's decision reasonable overall?

IV. Applicants' Written Submissions

[29] The applicants submit the appropriate standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[30] First, the applicants submit the Board made unreasonable findings regarding the issue of exclusion. They argue it rejected their well-founded fear of persecution and the non-existent legal rights to return to Italy. The evidence indicates after staying more than twelve months out of Italy and being in Canada before the impugned decision was rendered, the applicants could no longer return to Italy because their rights as permanent residents had automatically ceased to exist after February 14, 2014. Here, the Board erred in law by using the date of the hearing as the decisive date instead of the date of decision.

[31] Second, the applicants submit the Board's mindset was contaminated because it chose to believe the Italian police website even though it did not completely contradict the Italian Embassy's report.

[32] Third, the applicants submit the Board fettered its discretion by not considering the applicants' well-founded fear of persecution which is the focal issue of the application. The applicants argue the principal applicant testified about the existence of a fear of persecution in Italy, the applicants therefore discharged the onus of establishing exclusion.

[33] Fourth, the applicants submit the Board unreasonably assessed the applicants' difficulties in making a claim in the U.S. They argue the Board did not appreciate the principal applicant's entire circumstances. The reliance of the principal applicant on the information she gathered from the people she met in the U.S. was not unreasonable or out of place given that she was in a state of confusion. They cite the "Human Rights First Blueprint - How to Repair the U.S. Asylum System" which states refugees who seek asylum in the U.S. are often detained for months.

[34] The applicants submit the Board's credibility findings were made based on mere speculation and conjecture and these findings lack evidential proof. They cite *Dhillon v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 1040, 12 Imm LR (2d) 118 (FCA) and *Isse v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1020, 155 FTR 298 for support.

[35] Fifth, the applicants submit the Board unreasonably assessed state protection. They argue the Board's review of the evidence was selective and ignored key evidence supportive of their claim. The applicants submit there was inadequate and/or no state protection for the applicants in Italy. For support of the applicants' allegations, they cite the documents "Women in the World - Nigerian Girls Sold Into Sex Slavery in Italy", "Sexual Slavery: Our Ordeal in Italy - Nigerian Prostitutes" and "Trafficking of Women & Children" in Italy.

[36] Sixth, the applicants submit the Board's assigned weight to the affidavit evidence and medical evidence was unreasonable. They cite *Zapata v Canada (Solicitor General)*, [1994] FCJ

No 1303, 82 FTR 34 for support, where this Court overturned a Board's decision for the failure to accord due weight to medical evidence of post-traumatic stress disorder in its credibility determination.

V. Respondent's Written Submissions

[37] The respondent submits the standard of review for the issues of credibility and state protection, which concern findings of fact, are reviewable on a standard of reasonableness (*Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 408, [2008] FCJ No 547; and *Valdez Mendoza v Canada (Minister of Citizenship and Immigration)*, 2008 FC 387, [2008] FCJ No 481). As for the issue of exclusion under Article 1E of the Convention, this concerns findings of mixed fact and law and is also reviewable on a standard of reasonableness (*Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 at paragraph 34, [2011] 4 FCR 3 [*Zeng*]). It submits each of these findings was determinative of the applicants' claim.

[38] First, the respondent submits the Board's credibility findings were reasonable. The Board found many of the details alleged by the principal applicant were not credible. They have not challenged any of the specific findings and they have not shown the Board made these findings without support from the evidence. It is well-established that the Board is entitled to draw inferences and make findings based on the implausibility of evidence (*Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 11, 38 ACWS (3d) 361 (FCA) [*Alizadeh*]).

[39] The respondent argues the Board reasonably drew a negative inference from the applicants' failure to claim protection in the U.S. because the principal applicant relied on the advice of a stranger who had no expertise or knowledge. The Board assessed the claim while considering the Gender Guidelines and the letters and documents from the principal applicant's doctors and support worker. The applicants' disagreement does not mean the Board ignored evidence. Also, the Board was reasonable to give little weight to the personal documentary evidence given the credibility concerns and the lack of in-person testimony. Here, the applicants disagree with the assigned weight of the evidence. It is trite law that disagreements with the weight assigned to evidence is not a basis on which the Court should intervene (*Ye v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1233).

[40] Second, the respondent submits the Board was reasonable to find that adequate state protection was available (*Camacho v Canada (Minister of Citizenship and Immigration)*, 2007 FC 830 at paragraph 10, [2007] FCJ No 1100). Italy is a functioning democracy with laws and services in place to combat violence against women and sexual violence. Here, the principal applicant made no attempts over twelve years to approach the state for protection. The Board reasonably found there was no credible evidence that the principal applicant's persecutor, Madam Grace, had connections with the Mafia or influence over the authorities. The documents cited by the applicants show human trafficking and prostitution are persistent problems in Italy; but they do not show state protection is inadequate so that the principal applicant was not required to seek assistance from the Italian state before seeking refugee protection.

[41] Third, the respondent submits the Board was reasonable to find the applicants were excluded under Article 1E of the Convention. The applicants do not challenge the Board's finding that as permanent residents, they enjoy the rights set out in *Shamlou*. The respondent argues the applicants have not cited any case law in support of the argument that their status had to be assessed at the time of the decision and not the time of the hearing. The case law does not support the proposition that if status is lost through an individual's own action or inaction between the date of the hearing and the date of the decision, that individual will not be excluded (*Zeng* at paragraph 16).

[42] Further, the Board acknowledged the inconsistent documentary evidence on whether the loss of status is automatic. No evidence was submitted at the time of the decision, thirteen months after the applicants' departure from Italy, that the applicants had lost their status in Italy.

[43] In the respondent's further memorandum, it submits the Board was reasonable to draw a negative credibility finding against the applicants' delay in seeking refugee protection. Delay amounts to a lack of subjective fear (*Mejia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 851 at paragraph 14, [2011] FCJ No 1062 [*Mejia*]).

VI. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[44] Where the jurisprudence has satisfactorily resolved the standard of review, the analysis need not be repeated (*Dunsmuir* at paragraph 62).

[45] First, for the issue of exclusion under Article 1E of the Convention, this concerns findings of mixed fact and law and is reviewable on a standard of reasonableness (*Zeng* at paragraph 34).

[46] Second, for the issue of the Board's credibility findings, this involves questions of fact. Both credibility findings and the treatment of evidence are areas within the Board's specialized expertise. This attracts the standard of reasonableness.

[47] Third, for the issue of the state protection analysis, the standard of reasonableness also should be applied. The Federal Court of Appeal has determined in *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraph 36, [2008] FCJ No 399, that the standard of review is reasonableness for the analysis of state protection.

[48] The standard of reasonableness means that I should not intervene if the Board's decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (*Dunsmuir* at paragraph 47). Here, I will set aside the Board's decision only if I cannot understand why it reached its conclusions or how the facts and applicable law support the outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708). As the Supreme Court held in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraphs 59 and 61, [2009] 1 SCR 339, a court reviewing for reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

B. *Issue 2 - Was the Board's finding on the applicants' permanent resident status in Italy reasonable?*

[49] I find the Board's finding on the applicants' Italian permanent residency status was reasonable.

[50] Article 1E of the 1951 UN Convention provides "This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."

[51] Section 98 of the Act provides:

A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[52] The applicants do not challenge the Board's finding that as permanent residents they enjoy the rights set out in *Shamlou*, they argue they should not be excluded under Article 1E because their permanent resident status was lost in between the hearing date and the decision date. The respondent argues the loss of status, if it indeed is the case, is through the applicants' own actions.

[53] Under *Zeng*, the Federal Court of Appeal at paragraph 16 found the Board's inquiry on whether a claimant should be excluded under Article 1E is limited to all relevant facts to the date of the hearing. It outlined the steps of analysis for exclusion under Article 1E in paragraph 28:

> Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations and any other relevant facts.
>
> [My emphasis added]

[54] I find the Board's determination was reasonable. Here, the Board acknowledged the applicants' permanent resident status in Italy was not lost on the date of the hearing. It observed the inconsistency in the documentary evidence on whether the applicants would automatically lose their permanent residence after one year outside of Italy. It chose to believe the information on the Italian police website (certified record at page 161) even though it did not completely contradict the Italian Embassy's report (certified record at page 159). The Italian police website indicates the applicants' permanent resident status "can" be revoked after one year outside of Italy. The Italian Embassy information indicates the applicants' permanent resident status "will" be lost after one year outside of Italy. The Board preferred the evidence from the Italian police website and reasoned this evidence means revocation is not automatic.

[55] The Board has the power to assign weight to evidence and it is not the role of this Court to reweigh evidence. Given the Board's rationale, I am satisfied that the Board has thoroughly examined the evidence in front of it. It not only followed the instruction outlined in *Zeng*, but also considered the potential consequence of the applicants remaining outside of Italy for more than one year. I find the Board's conclusion falls within a range of acceptable outcomes.

C. *Issue 3 - Were the Board's credibility findings reasonable?*

[56] I find the Board's credibility findings were reasonable.

[57] It is trite law that the determination of an applicant's credibility is at the heartland of the Board's jurisdiction (*RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraphs 7 and 8). The Federal Court of Appeal has found the Board is entitled to draw inferences and make findings based on the implausibility of evidence (*Alizadeh*).

[58] Here, the applicants have not challenged any of the specific findings and they have not shown the Board made these findings without support from the evidence. The applicants' arguments indicate they disagree with the Board's assessed weight of the evidence. In my opinion, mere disagreements with the Board's findings do not indicate these findings are unreasonable.

D. *Issue 4 - Was the Board's state protection analysis reasonable?*

[59] As part of their arguments, the applicants state that Article 1E exclusion should not apply to them because they would face a risk in Italy should they return. They feared that Madam Grace would attempt to kill them and the police would not protect them. The Board specifically found that the principal applicant was not a credible witness and as a result, there was not enough trustworthy or credible evidence to establish the allegations in her claim ever occurred. Consequently, there is no need to address state protection for the applicants.

E. *Issue 5 - Was the Board's decision reasonable overall?*

[60] I find the Board's decision was reasonable overall.

[61] Article 1E of the Convention arises when the claimant does not have a well-founded fear of persecution or a risk of harm under Article 97(1) in the Article 1E country.

[62] This Court has repeatedly found that delay in seeking refugee protection amounts to a lack of subjective fear (*Mejia* at paragraph 14). Further, the Board's negative credibility findings regarding the principal applicant's allegations also indicate a lack of subjective fear.

[63] Here, the Board was reasonable to conclude the applicants have their *Shamlou* rights and given the negative credibility findings, the delay in seeking refugee protection and a lack of credible evidence, the applicants are excluded from making a claim for protection in Canada by Article 1E of the Convention. Its alternative finding was also reasonable, wherein the Board

found the applicants' alleged risks are not supported by credible evidence and therefore they are not Convention refugees and are not subject to a risk of life or a risk of cruel and unusual punishment upon return to Nigeria.

[64] Therefore, the Board's overall decision was reasonable.

[65] As a result, the application for judicial review must be dismissed.

[66] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

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

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

2. (1) The definitions in this subsection apply in this Act.	2. (1) Les définitions qui suivent s'appliquent à la présente loi.
…	…
"Refugee Convention" means the United Nations Convention Relating to the Status of Refugees, signed at Geneva on July 28, 1951, and the Protocol to that Convention, signed at New York on January 31, 1967. Sections E and F of Article 1 of the Refugee Convention are set out in the schedule.	« Convention sur les réfugiés » La Convention des Nations Unies relative au statut des réfugiés, signée à Genève le 28 juillet 1951, dont les sections E et F de l'article premier sont reproduites en annexe et le protocole afférent signé à New York le 31 janvier 1967.
…	…
72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
…	…
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions

politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent

in or from that country,	ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
…	…
98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

United Nations Convention Relating to the Status of Refugees

ARTICLE 1	ARTICLE PREMIER
…	…
E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2843-14
STYLE OF CAUSE:	JUAN JACKSON OMOROGIE, MICHEAL NAYABA BANGURA, DESTINY NAYABA BANGURA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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