Federal Court  Cour fédérale

**Date: 20160216**

**Docket: IMM-3058-15**

**Citation: 2016 FC 204**

**Ottawa, Ontario, February 16, 2016**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MORIYIKE EGBESOLA**
**TENIOLA EGBESOLA (MINOR)**
**OLATEJU EGBESOLA (MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicants seek judicial review of a decision of the Refugee Appeal Division [RAD], affirming the Refugee Protection Division's [RPD] decision to deny their refugee claim.

[2] The applicants are a mother, Moriyike Egbesola, her son, Olateju Egbesola, and daughter, Teniola Egbesola, who are both minors. The applicants are citizens of Nigeria. They sought

refugee protection in Canada on the grounds that, if returned to Nigeria, the mother (the principal applicant) and her daughter will be subject to female genital mutilation [FGM].

[3] For the reasons that follow, this application must be dismissed.

**Background**

[4] The principal applicant claims that her husband's extended family tried to force her and her daughter to undergo FGM. In July 2013, the family of the husband of the principal applicant suggested that her daughter undergo FGM. Initially, the husband, Olusola Kunle Egbesola, joined the principal applicant in opposing FGM. However, after being pressured by his extended family, he began to change his position and, in July 2014, eventually agreed that both his wife and his daughter should undergo FGM on November 30, 2014. The principal applicant pretended to acquiesce to her husband's wishes, while secretly planning to move to Canada and seek protection.

[5] On August 23, 2014, the applicants left Nigeria for a vacation in the United States. They were joined by the principal applicant's husband on August 25, 2014. The husband returned to Nigeria on September 8, 2014, and the applicants were supposed to return on September 10, 2014. Instead, the applicants stayed in the United States and made arrangements, with the help of an agent, to get into Canada to make refugee claims.

[6] On October 1, 2014, the applicants entered Canada with the agent. They made refugee claims two weeks later in Toronto.

[7] On January 21, 2015, the RPD rejected the applicants' claims. It held that the principal applicant's story lacked credibility and, largely on that basis, found that the applicants were not Convention refugees or persons in need of protection. In the alternative, the RPD also held that an internal flight alternative [IFA] was available in Port Harcourt, Nigeria.

[8] In its appeal to the RAD, the applicants raised four issues, including a submission that the RPD had failed to conduct a thorough IFA analysis. The RAD rested its decision solely on the RPD's IFA finding, which it found was reasonable.

**Issues**

[9] The applicants raise several issues on judicial review, but they concede that if the RAD's IFA finding is reasonable, that is determinative of the application. Because I find that the IFA finding is reasonable, the other issues raised, which may have merit, need not be addressed.

**Analysis**

[10] The applicants object to the RAD's identification of Port Harcourt as an IFA. First, they submit that the RAD's analysis ignored the report of Dr. Gerald Devins, who found that the principal applicant suffered from post-traumatic stress disorder, that her treatment "should not be interrupted," and that "[i]f refused permission to remain in Canada, her condition will deteriorate." Dr. Devins concluded that "Ms. Egbesola's condition can improve with appropriate care and guaranteed freedom from the threat of removal" and that "it will be impossible for Ms. Egbesola to feel safe anywhere in Nigeria." Second, they submit that the RAD ignored relevant documentary evidence when assessing Port Harcourt's suitability as an IFA. Third, they submit

that the RAD failed to consider evidence that the principal applicant would have poor employment prospects in Port Harcourt. Fourth, the applicants submit that the RAD failed to reasonably assess their claim that the applicant's husband's family, and the Nigerian police, are looking for the principal applicant and will be able to find her anywhere in Nigeria. I shall address these four submissions in some detail.

[11] As to the first submission, I accept that the RAD does not specifically mention the report from Dr. Devins, but that fact alone does not establish that it failed to consider it. The report must be considered on the basis of what it may actually establish from an evidentiary standpoint.

[12] As submitted by the respondent, the "facts" on which the report is based are those told to Dr. Devins by the principal applicant, and thus are not facts until found to be so by the tribunal. What can be reasonably taken from the report is that the principal applicant suffers from PTSD, and that she requires medical treatment for it.

[13] This Court has observed that reports such as that before the RAD may cross the line separating expert opinion from advocacy: *Molefe v Canada (Minister of Citizenship and Immigration)*, 2015 FC 317 [*Molefe*]. In *Molefe*, Justice Mosley found at para 34 that the report submitted in that case, also from Dr. Devins, had crossed the line and was not of "such importance to a central issue of the case that the failure to mention it and analyse it requires a finding that the decision was not made in accordance with the evidence." Justice Mosley writes at para 32:

> In my view, Dr Devins's report crosses the line separating expert opinion from advocacy. Indeed, it concludes as follows:

> Ms Molefe's condition can improve with appropriate care and guaranteed freedom from her threat of removal. It is fortunate, therefore, that she is currently receiving ongoing counselling. This should not be interrupted. If refused permission to remain in Canada, her condition will deteriorate. As noted, it will be impossible for Ms Molefe to feel safe anywhere in Botswana.

[14] Virtually identical language is found in Dr. Devins' report in this case. Here he writes:

> Ms. Egbesola's condition can improve with appropriate care and guaranteed freedom from the threat of removal. If refused permission to remain in Canada, her condition will deteriorate. As noted, it will be impossible for Ms. Egbesola to feel safe anywhere in Nigeria.

[15] Like Justice Mosley, it is my view that the doctor became an advocate and the statement that the principal applicant will not feel safe anywhere in Nigeria has virtually no probative value. To the extent that the report does offer expert opinion, the RAD did consider whether the applicant would have access to healthcare in Port Harcourt, and found that she would. This is not challenged by the principal applicant. Accordingly, the failure to directly address the medical report does not render the IFA finding unreasonable.

[16] As to the second submission, I do not agree with the applicants that the RAD ignored relevant documentary evidence when assessing Port Harcourt's suitability as an IFA. It was submitted that the RAD failed to properly consider whether Port Harcourt was an appropriate IFA for the applicant given her personal circumstances, even if objectively she could be provided protection there.

[17] In my assessment, much of the information cited by the applicants is consistent with the RAD's decision. It suggests that relocation within Nigeria is a realistic option for adult women, including in cases involving FGM, but cautions that some women may be vulnerable to abuse, especially when relocating to an area where they have no family connections. The principal applicant does not fit that profile. She has at least one family connection in Port Harcourt: the uncle who submitted an affidavit on her behalf. While this uncle's evidence was not found to be credible, it is clear from his affidavit that he does not think she is a witch and he supports her resistance to FGM. Accordingly, the principal applicant will have some personal support in the IFA.

[18] As to the third submission, the applicants claim that the RAD ignored evidence about the principal applicant's employment prospects. In their memorandum of argument before the RAD, the applicants make the following submissions:

> The Appellant testified that she would need the financial, material, and emotional support from her husband and family if returned to Nigeria, that she would not be able to receive, especially since her husband is now unemployed.
>
> The Principal would also be unemployed upon arriving to Nigeria; therefore, her family would have absolutely zero source of income. While the Principal Appellant is educated, the reality of the employment situation is bleak. Even for those who are educated, and have experience, finding and securing employment may be difficult.

[19] I do not accept that the RAD ignored these submissions; it simply disagreed with the suggestion that the principal applicant's employment prospects were bleak. The RAD was alive to the importance of employment prospects in Port Harcourt; that is why it noted that Port Harcourt is a "major industrial city and is the chief oil-refining city in Nigeria." Given the

background of the principal applicant as an accountant, its determination on this point was reasonable.

[20] Lastly, the RAD did examine the claim that the principal applicant's husband's family and the police are searching for the principal applicant, and that they will be able to find her anywhere in the country. The RAD held that those claims are not credible in light of the communications difficulties faced by the police and public school system, and the sheer size of the country (177 million people and just under 1 million square kilometres of territory). The RAD also expressed doubt that the police would help the husband's family search for the principal applicant in Port Harcourt, given that FGM is outlawed in the entire state of which Port Harcourt is the capital. Notwithstanding counsel's able submissions, I am not persuaded that the RAD's interpretation of the documentary evidence on the communications difficulties of the police and the public schools was unreasonable.

[21] Examined in totality, I find the decision of the RAD to be reasonable and one that should not be upset on review.

[22] No question was offered to be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3058-15 |
| **STYLE OF CAUSE:** | MORIYIKE EGBESOLA ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | FEBRUARY 2, 2016 |
| **JUDGMENT AND REASONS:** | ZINN J. |
| **DATED:** | FEBRUARY 16, 2016 |

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| David Joseph | FOR THE RESPONDENT |

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