Federal Court  Cour fédérale

Date: 20160330

Docket: IMM-4282-15

Citation: 2016 FC 359

Toronto, Ontario, March 30, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ANEMA NTIA

Applicant

and

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

Respondents

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision of a Senior Immigration Officer [Officer] with Citizenship and Immigration Canada [CIC], rejecting the applicant's Pre-Removal Risk Assessment [PRRA] application after finding she would neither face a serious possibility of persecution upon return to Nigeria pursuant to section 96 of the IRPA or be

personally subject to a danger of torture or subject to a risk to life or cruel and unusual treatment or punishment under section 97 of the IRPA.

[2] The applicant is a citizen of Nigeria, who came to Canada in 2005 on a student visa and received post-student authorization to work in her field of studies until December, 2008.

[3] The applicant sought protection in June, 2009 alleging a fear of persecution from the Nigerian government and oil companies due to her political activities, and her father's activities, in opposing oil exploration in Nigeria, particularly in the Niger Delta.

[4] In July, 2011, the Refugee Protection Division [RPD] of the Immigration and Refugee Protection Board of Canada [IRB] rejected the applicant's claim finding she is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA respectively.

[5] The RPD found core elements of the claim lacked credibility and that there was not a reasonable chance or a serious possibility that the applicant would face persecution from the Nigerian government or oil companies in her area due to her political opinion, perceived political opinion or membership in a particular social group should she return to Nigeria. The RPD provided detailed reasons for finding the applicant's evidence lacked credibility as far as who or what she is at risk from, and whether there was a nexus to a ground in the United Nations Convention Relating to the Status of Refugees. These credibility findings further led the RPD to conclude that the applicant failed to provide a personalized link between herself and the

objective documentary evidence relating to the environmental degradation of the Niger Delta by the oil companies and the government's response to those that were politically active in the Niger Delta.

[6] This Court denied leave for judicial review of the RPD decision in October, 2011.

[7] In oral submissions, counsel for the applicant acknowledged that in applying for a PRRA, the applicant, self-represented at that time, did not place any new evidence before the Officer contradicting the credibility findings of the RPD. Further, the personalized evidence on the applicant's alleged political activities before the PRRA was the same personalized evidence before the RPD. However, the applicant relies on the following portion of the Officer's decision to argue that the Officer did in fact make a positive credibility finding (Certified Tribunal Record at pages 7-8):

> The applicant states that she testified as a witness for court proceeding in Canada which involved a lawsuit against the travel agency and provides a court subpoena and the court decision. The applicant submits that she is submitting these documents to demonstrate that she was considered a credible witness contrary to the RPD findings during her refugee claim. I place low probative value and little weight upon these documents **as the applicant's credibility is not a concern in my analysis** [emphasis added]. I also note that the PRRA application is not a review or an appeal of the RPD's findings. Further the purpose of a PRRA application is not to revisit the applicant's failed refugee claim, neither is it meant to be an appeal of her negative RPD decision. Instead, the purpose of this application is to make an assessment based on new facts or evidence that the applicant is at risk of persecution, torture, or risk to life or risk of cruel and unusual punishment in their home country.

[8] The applicant submits that the positive credibility finding required the Officer to consider the nexus ground of political opinion or membership in a particular social group based on the facts advanced with the PRRA application that were the subject of the RPD's determination. The applicant argues the failure of the Officer to do so renders the decision unreasonable. I respectfully disagree.

[9] The issues raised relate to findings of fact and mixed fact and law, including the assessment of the documentary evidence before the Officer. The applicable standard of review is reasonableness (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 51 [*Dunsmuir*]).

[10] It is well-established in the jurisprudence that a PRRA brought by a failed refugee claimant is not an appeal or reconsideration of the RPD decision that rejected the claim for refugee protection (*Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at paras 12-13, 370 NR 344 [*Raza*]). Rather the PRRA is an opportunity for a failed refugee claimant to demonstrate that, due to changes in country conditions or personal circumstances since the RPD decision that the claimant is now at risk. Where a PRRA claimant does not meet this burden then the application will fail (*Torvar v Canada (Minister of Citizenship and Immigration)*, 2015 FC 490 at para 16 [*Torvar*]).

[11] It is clear that the Officer understood the purpose and scope of the PRRA and assessed the application on this basis. I cannot agree with the applicant's submission that an acknowledgement by the Officer that credibility is not a concern in the analysis amounts to a positive finding of the applicant's credibility before the RPD, notwithstanding that the latter

found the applicant not credible. In my opinion the above-quoted statement by the Officer simply reflects that the evidence advanced on the PRRA application does not raise an issue related to the prior RPD findings on credibility. In this case the Officer was not only entitled to rely on the prior negative credibility findings of the RPD, but was in fact bound by them except to the extent the applicant provided new evidence, within the meaning of paragraph 113(a) of the IRPA, contradicting the negative credibility findings (*Raza* at paras 12-13; *Torvar* at para 17; *Cupid v Canada (Minister of Citizenship and Immigration)*, 2007 FC 176 at para 4, 155 ACWS (3d) 396)).

[12] Since the applicant failed to provide new evidence within the meaning of paragraph 113(a) of the IRPA demonstrating a change in her personal situation or affecting the RPD's findings on credibility it was unnecessary for the Officer to provide detailed reasons assessing the alleged nexus between the applicant's alleged political activities and membership in a particular social group. The RPD previously determined that the core elements of that claim were not credible and those findings stand.

[13] The Officer addressed the applicant's evidence referring to issues of corruption and human rights violations in Nigeria. It was reasonably open to the PRRA Officer to conclude that there was insufficient evidence that the applicant faces a personalized risk upon returning to Nigeria on the basis that the applicant failed to adduce new evidence that could demonstrate a personalized risk.

[14] In considering the applicant's submissions that Boko Haram was operating in the Northern parts of Nigeria and she would not be safe in any part of that country including Lagos the Officer acknowledges that violence due to Boko Haram is an ongoing issue in Nigeria. However, the Officer concludes that the violence is concentrated in the Northern and Central regions of Nigeria and that Southern Nigeria, in particular Lagos, provides the applicant with a viable Internal Flight Alternative [IFA] and that the applicant failed to demonstrate that the IFA was not reasonable. In my opinion this finding falls with the range of reasonable acceptable outcomes based on the law and the evidence (*Dunsmuir* at para 47).

[15] The parties did not identify a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Joana Mennie	FOR THE APPLICANT
John Locar	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Bellissimo Law Group Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS