

Federal Court of Canada
Trial Division



Section de première instance de
la Cour fédérale du Canada

Date: 19971106

Docket: IMM-3918-96

DEC 10 1997

BETWEEN:

OMOLARA ABIMBOLA OLOJO

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

LUTFY J.

[1] The Convention Refugee Determination Division made a negative finding of credibility concerning the applicant. The tribunal did not believe that the applicant, a citizen of Nigeria, was married to Godwin Olojo, a prominent businessman and human rights activist in that country. Mr. Olojo, a member of the Ogoni tribe, supported the Movement for the Survival of the Ogoni People (MOSOP).

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[2] The applicant states that the couple was married in February 1995 after a long relationship. He worked in Port Harcourt and she in Abuja. They would visit each other on the weekends. The Nigerian government's execution of Mr. Ken Saro-Wiwa and eight other activists on November 10, 1995 was followed by demonstrations in Port Harcourt which the applicant's husband helped organized. On November 15, 1995, security agents called on the couple at their residence in Port Harcourt and arrested her husband. She has not seen him since. The applicant claims that she became pregnant in September 1995 and suffered a miscarriage as a result of being beaten by the security agents when her husband was arrested.

[3] The tribunal's adverse finding of credibility concerning the marriage is stated in the following terms:

The claimant had no documents with her husband's name nor any documents connecting her to her husband. *She had a photograph, supposedly their wedding picture. However, nothing on this Exhibit indicated that the other person in the photograph was her husband, Godwin Olojo.*

After the hearing, the claimant was asked to submit their marriage registration. The panel received posthearing submissions from counsel, but the marriage registration was not included.

...

The claimant had ample opportunity to present supporting evidence with regard to the central issue of her claim. We accept that the claimant comes from a culture in which personal documents play only a minor role, *yet the claimant had Canadian counsel who would have made her aware of the importance of corroborating documentation.*

Even after being advised by the panel that evidence of a marriage would be helpful, *the claimant apparently made no genuine effort to obtain such*

documentation, either from her family who remain in Nigeria, or from any MOSOP organization, both avenues which could presumably have yielded additional important information in her claim. The claimant's sister and other family members are now living in Lagos and could have provided help in this matter.

...

The onus is on the claimant to present her case. We find that she did not ask for time to submit proof of the existence of her husband, allegedly a MOSOP member and human rights activist, because no such person exists. *Owing to the lack of effort in providing any supporting evidence, the panel finds that the claimant has invented the story to create this refugee claim.* [Emphasis added.]

[4] These extracts from the tribunal's decision, especially those italicized, disclose reviewable errors. The applicant's testimony concerning her marriage to Mr. Olojo is uncontradicted. If the tribunal found inconsistencies within her testimony, none is disclosed in its reasons and none is apparent from a reading of the transcript. In response to a question from a tribunal member, the applicant was able to produce spontaneously a wedding photograph of herself and her husband. The tribunal did not explain its reasons for not accepting this photograph as corroborative evidence.

[5] It was also wrong, in my view, for the tribunal to speculate that her counsel "would have made her aware of the importance of corroborating documentation", particularly after noting that she came from a culture in which personal documents play only a minor role. There is no evidence adduced during the hearing to support either the finding concerning the advice the applicant may have received from her counsel or the tribunal's statements concerning her lack of genuine effort to obtain further documentation.

[6] The tribunal states that the claimant was asked to submit the marriage registration. This is not apparent from the record. The applicant's counsel at the hearing volunteered that he would ask the claimant to determine if a copy of the registration could be obtained. Some three weeks after the hearing, the counsel advised that the applicant "... was unable to obtain her marriage certificate". The tribunal's reasons were issued one month later. Some four weeks after her receiving the decision, the applicant filed with this Court an affidavit explaining a misunderstanding between her former counsel and herself with respect to the necessity of producing further identity documentation. Upon motion by the applicant, an order authorized the production before this Court of the applicant's marriage certificate.¹

[7] The applicant raises other possible discrepancies in the decision under review. The tribunal's conclusion that the applicant "provided security agents with a fake name and address" implies that she did so with respect to her own identity when the transcript refers to her non-disclosure of the identity of another MOSOP member. Its finding of her having "openly resided" on her husband's Port Harcourt residence after November 15, 1995 is also open to some doubt.

¹ Rule 4 of the Federal Court Immigration Rules, 1993 incorporates by reference Rule 1102 of the Federal Court Rules. The respondent filed no submissions in response to the applicant's Rule 324 motion to introduce the marriage certificate. Rule 1102 would appear to be the basis for the order authorizing its introduction.

[8] There are at least four statements in the tribunal's reasons which are either inconsistent with or unsupported by the evidence. This warrants this Court's intervention. On the re-hearing of this matter, the newly constituted panel will make its own finding concerning the credibility of the marriage and the applicant's consequent fear of persecution upon the basis of her testimony, the marriage certificate and any other evidence she may have to support her claim.

[9] Neither party suggested that a question be certified.

"Allan Lutfy"

Judge

Ottawa, Ontario
November 6, 1997



FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: IMM-3918-96

STYLE OF CAUSE: OMOLARA ABIMBOLA OLOJO v. THE MINISTER OF
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PLACE OF HEARING: TORONTO

DATE OF HEARING: OCTOBER 29, 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE LUTFY

DATED: NOVEMBER 6, 1997

APPEARANCES:

Mr. Bola Adetunji

FOR THE APPLICANT

Ms. Bridget O'Leary

FOR THE RESPONDENT

SOLICITORS ON THE RECORD:

Bola Adetunji
Toronto, Ontario

FOR THE APPLICANT

Mr. George Thomson
Deputy Attorney General of Canada

FOR THE RESPONDENT

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