

**Date: 20070823**

**Docket: IMM-108-07**

**Citation: 2007 FC 852**

**Montréal, Quebec, August 23, 2007**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**ELIOT OSAGIE**

**Applicant**

**-and-**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 of a decision of the Refugee Protection Division of the Immigration and Refugee Board dated December 18, 2006 wherein it was determined that Mr. Osagie (the applicant) is not a Convention refugee or a person in need of protection.

## **Facts**

[2] Mr. Osagie is a citizen of Nigeria whose difficulties allegedly began when his family suspected that he was a homosexual, despite his attempts to keep his sexual orientation private. The local community priest, also suspecting Mr. Osagie's homosexuality, approached his family's home and performed a religious incantation, and suggested that Mr. Osagie would be sacrificed in order to cleanse the community of the sin he had brought on them.

[3] Mr. Osagie was then beaten by other members of the community and left tied up. He was able to free himself and fled to the home of a friend, Friday Obasuyi, with whom he began living. Mr. Osagie alleges that he and Friday were beaten on a number of occasions when they were together in public, and in one instance, in September 2005, Mr. Osagie and Friday were attacked in their own home. Mr. Osagie escaped and he and Friday separated.

[4] As a result of these ongoing threats, Mr. Osagie made the decision to leave Nigeria and met with an agent named "John" who made travel arrangements on Mr. Osagie's behalf, and accompanied him via Italy to Montreal.

[5] John disappeared once they arrived at Pierre Elliot Trudeau International Airport, and Mr. Osagie, lost, spent two days wandering in the airport. At some point, he began following other passengers, was stopped by an airport official who provided him assistance before he claimed asylum on October 24, 2005.

## **Decision of the Board**

[6] The Board summarized Mr. Osagie's allegations, noting principally his alleged attacks by members of his community upon their discovery of his homosexuality, his unsuccessful attempts to flee persecution by living with his friend Friday, and his subsequent travel arrangements with John.

[7] However, the Board was not satisfied that Mr. Osagie had conclusively established his identity. It considered four specific documents: a national identity card, an affidavit from his brother attesting to his age, a national birth certificate, and a membership card from the Quarter Jack Club where he first met John.

[8] The Board held that only the national identity card could conceivably be considered official and reliable. Nonetheless, the Board noted that the information contained on the card did not correspond to the information contained within his Personal Information Form (PIF):

- Mr. Osagie testified that in 2002 he was helping his father on his farm and occasionally working as a labourer in construction, yet his identity card indicated "business" as his occupation;
- Mr. Osagie testified that he did not know his height or blood type, yet the card indicated a measurement of 170 and blood type A+.
- Mr Osagie testified that in 2002 he lived with his father at 13, St-Manuel Street, Ugeudy, Benin, Edo State, yet the card indicates that his address is 26, Alawode

Street, Ikaje, Surulere, Lagos. The same discrepancy existed with his father listed as next of kin.

[9] A document of this calibre should contain true, not fabricated data. The Board rejected Mr. Osagie's suggestion that he provided a different address because he was temporarily living with his sister at the time his application was submitted. The Board also noted that Mr. Osagie failed to explain how his height and his blood type could have been indicated on his card, since he professed to be ignorant of them.

[10] Turning to the birth certificate, the Board noted that at his detention hearing, Mr. Osagie had stated that he could not retrieve his birth certificate as it was still located at his parent's home. This contradicted his testimony that he never possessed a birth certificate and that he never told the detention officer that he had one. Therefore, the Board also rejected an affidavit provided by his brother which had been affirmed in order to obtain a birth certificate. Had Mr. Osagie previously possessed a birth certificate, there would have been no need for such an affidavit. Noting that documents are easily forged in Nigeria, the Board gave no probative value to the certificate issued based on an affidavit.

[11] With respect to the membership card, there were no security features that would guarantee the reliability of the document and therefore, it was also rejected by the Board.

[12] Having found that Mr. Osagie had failed to establish his identity, the Board held that this was sufficient to reject the claim. However, the Board then addressed Mr. Osagie's testimony and

found that it was not credible due to a number of inconsistencies and omissions between his PIF and testimony. The Board did not accept that Mr. Osagie was illiterate such that he could not properly complete his PIF. Mr. Osagie had received six years of primary school education and his signature was not indicative of illiteracy.

[13] In Mr. Osagie's PIF, he indicated that he left Nigeria in October 2002, providing no dates of departure. Yet, prior to the hearing, Mr. Osagie made a number of corrections, although still not providing all the specific dates of travel. In particular, Mr. Osagie indicated that he left Lagos on October 20, 2005, traveled to Benin and then to Italy, arriving in Montreal on October 24, 2005. A second correction changed the date of arrival to October 22 or 23, 2005.

[14] The Board held that Mr. Osagie was unable to explain in a satisfactory way why at the time he completed his PIF he could not remember the dates of departure and transit points, yet could recall these details immediately prior to the hearing. Given that Mr. Osagie had the assistance of counsel during the completion of his PIF, the Board could not accept his explanation that John insisted he not mention the route or the date of departure.

[15] Furthermore, Mr. Osagie testified that he had never passed immigration control, and spent two days at the airport, sleeping in the restroom. The Board simply could not accept that his behavior would not have been noticed by the security personnel. Moreover, Mr. Osagie's testimony contradicted his declarations made during his Point of Entry (POE) interview. He stated that he and John passed through different Canadian customs officers, which would indicate that they left the arrival area. He also declared that John told him to go to through Immigration control and left with

all the travel documents. Yet, Mr. Osagie testified that John abandoned him before going to customs officers. Mr. Osagie provided no reasonable explanation for these discrepancies.

[16] The Board also noted inconsistencies with respect to Mr. Osagie's alleged persecution. Specifically, Mr. Osagie's PIF indicated that he had worked on his father's farm until 2003. However, Mr. Osagie corrected his PIF prior to the hearing in order to indicate that he stopped working in February 2003. It was inconceivable that Mr. Osagie could not remember this date when completing his PIF given that he testified that he stopped working when he was attacked in his village.

[17] Moreover, he testified that from February 2003 to October 2005, he did not work, yet his PIF, as did other immigration documents, indicated that he worked in construction in Ugeudu from 2003 to October 2005.

[18] Finally, Mr. Osagie's evidence with respect to his place of residence was contradictory. In his PIF, Mr. Osagie provided the address of St. Manuel Street in Ugeudu as his place of residence until February 2003. Thereafter he says he hid in various locations until the end of 2003 when he moved in the neighborhood of the village of Aho, staying there until September 2005. Finally he said he moved to Aduwawa where he stayed in a hotel at John's insistence until he left Nigeria.

[19] However, Mr. Osagie's PIF indicates that from 2004 to September 2005, he lived at 26, Alawade Street in Ugeudu. His PIF narrative states that after the attack in February, he went to live with Friday in another part of the village. Yet, he testified that Friday didn't actually live in Ugeudu

but in Aho, a completely different village. He further testified that there was no street address for Friday and that 26 Alawade Street was actually in Lagos.

[20] Moreover, in his testimony, Mr. Osagie suggested that he hid at all times after moving in with Friday, shunning any public activities, other than short walks around their home. Yet in his PIF, Mr. Osagie stated that he tried to live a normal life, which was unsuccessful.

[21] Consequently, the Board held that Mr. Osagie had not proven his identity or the underlying claims of his application, and on this basis, declined to give any weight to the documents he supplied to support his claim. The Board also refused to consider an internet news report stating that Friday had been killed and that Mr. Osagie had fled in fear. Having failed to establish his identity, the Board could not conclusively state to whom the document referred. In any event, the documentary evidence indicated that documents are easily purchased in Nigeria, even the most official ones, and the Board concluded from this that it would also be possible to have a press article written and published for a bribe.

## **ISSUES**

[22] The applicant raises the following four issues:

- Did the Board err when determining Mr. Osagie's identity was not established?
- Did the Board err when it exaggerated contradictions that were immaterial to the asylum claim?

- Did the Board err when it made a blanket statement to refuse corroborating evidence?

- Did the Board err when it ignored evidence?

#### **STANDARD OF REVIEW**

[23] The first issue raised by the applicant is the issue of identity and it should be reviewed on the standard of patent unreasonableness: *Umba v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 17. The three other issues are all related to the manner in which the Board assessed the evidence on the issue of Mr. Osagie's credibility. These questions should also be reviewed on the same standard.

#### **SUBMISSIONS AND ANALYSIS**

[24] The Minister's submissions recite, nearly word for word, the decision of the Board without any argument in support. The only independent argument made by the Minister is that having found that Mr. Osagie failed to establish his identity, no further analysis by this Court is necessary. Any summary of the Minister's submissions would simply be a review of the Board's decision and a duplicate of the above summary by the Court.

[25] **Did the Board err when determining Mr. Osagie's identity was not established?**

[26] The applicant submits that it was unreasonable for the Board to hold that his national identity card was not legitimate given that it was deemed authentic by the Canada Border Services

Agency. While conceding that the Board may reject a claimant's identity documents, the applicant submits that such a finding is only appropriate where those documents contradict themselves or show signs of tampering. He also submits that not only was the national identity document deemed authentic, but the Board ignored the assessment of the CBSA and referred only to the documentation completed prior to that decision.

[27] Applicant further submits that when considering a claimant's identity, reference must be made to the evidence beyond the documents themselves, particularly with reference to the claimant's background and residence. In a similar vein, the Board should have been more aware of certain difficulties in explaining the documents, given that Mr. Osagie's translator spoke a different dialect of Edo, the language of translation.

[28] The Court notes that on November 24, 2005, Mr. Osagie was released from detention by Rolland Ladouceur, a member of the Immigration Division of the Immigration and Refugee Board pending the hearing of his claim for refugee protection. In agreeing to Mr. Osagie's release, Mr. Ladouceur stated:

Considering that your national identity card came back from expertise as being authentic, Immigration is now satisfied of your identity, also a birth certificate was provided by your counsel. The Canadian Boarder Service Agency is still not satisfied with the information provided how you came to Canada, but nevertheless, they believe that an alternative to detention should be offered, considering that you are claiming refugee status.

[29] The applicant submits that pursuant to this decision, the Refugee Protection Division should have accepted his national identity card as authentic.

[30] True, there is no strict legal requirement that the Board must follow the factual findings of another member. But, as recently stated in *Siddiqui v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 6:

[18] What undermines the Board's decision is the failure to address the contradictory finding in the *Memon* decision. It may well be that the member disagreed with the findings in *Memon* and may have had good substantial reasons for so doing. However, the Applicant is entitled, as a matter of fairness and the rendering of a full decision, to an explanation of why this particular member, reviewing the same documents on the same issue, could reach a different conclusion.

[31] In *Siddiqui*, a Board member provided detailed reasoning as to why it accepted that there were reasonable grounds to believe that an organization had engaged in terrorism based on identical documentary evidence referred to by another Board member who, on that basis, reached a different conclusion. Despite providing its own rationale, Justice Phelan in *Siddiqui* held that the Board's failure to acknowledge and discuss the other Board decision was a patently unreasonable error.

[32] In the present instance, a member of the Immigration Division had previously determined that Mr. Osagie's national identity card was authentic. The Board was entitled to depart from this conclusion based on its own review of the evidence, and in fact did so. However, given the existence of the previous decision, the Board was required to explain why it was departing from the

conclusion of the Immigration Division. The failure to do so results in inconsistent and arbitrary decision-making.

**[33] Did the Board err when it exaggerated contradictions that were immaterial to the asylum claim?**

[34] The applicant submits that the discrepancies and contradictions with regards to Mr. Osagie's travel to Canada have been exaggerated and are based on the false assumption that he is literate. He also submits that to reject his contention that he is illiterate despite six years of primary schooling is unreasonable and contrary to common sense. And further, to suggest that his signature indicates that he is literate cannot be supported in light of the absence of any expertise of the Board in this regard.

[35] He also submits that his counsel attempted to provide at the hearing more precision as to the date of travel, proposing October 24, 2005 as the most likely date of arrival in Montreal as this was the date that his refugee application was filed. Counsel always maintained that Mr. Osagie was unaware of the exact travel date having been in the airport for a number of days.

[36] The Court notes that the applicant indicated in his PIF that he arrived in Canada in "October 2005" without providing a specific date. Prior to the hearing, he amended his PIF to indicate that he arrived on October 24, 2005. As his counsel explained at the hearing, Mr. Osagie remained unaware of the exact date of arrival, indicating October 24 as the most likely date. At the Board's prompting during the hearing, a second amendment was made to the PIF to indicate an arrival date of either October 22 or 23, 2005 which was more consistent with the applicant's allegations.

[37] Even if the Court accepts that an omission of a significant fact from the PIF can form the basis of a negative credibility finding, nevertheless where the claimant offers an explanation, the Board is bound to consider that explanation before drawing an adverse inference: *Bayrami v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1167. Furthermore, the Board must be cognizant of those instances where there is indeed an omission of significant details and where the claimant simply adds further details to his written statement: *Ahangaran v. Canada (Minister of Citizenship and Immigration)* (1999), 168 F.T.R. 315.

[38] The applicant provided two explanations for the omissions in his PIF regarding his arrival date and transit points. First, being illiterate, he was unable to complete the form in any detail and second, the form was completed not by himself, but by an immigration agent. The Board rejected both of these explanations because it did not believe the applicant was indeed illiterate and because he was assisted previously by a counsel.

[39] Both of these conclusions of the Board are unreasonable since the allegations of a claimant is deemed to be true unless there are reasons to doubt their truthfulness, *Maldonado v. Canada (Minister of Employment and Immigration)* [1980] 2 F.C 302.

[40] The mere fact that the applicant attended primary school is not conclusive proof of his literacy. In this case, the Board had no evidence other than speculation upon which to base its conclusion. Moreover, the Board's statement that Mr. Osagie's signature indicates he is literate is simply nonsensical, particularly given that it resembles a scribble.

[41] The Board suggests that Mr. Osagie understood the information which was requested of him and had no reason not to provide any information but the truth given that he had previously had the assistance of counsel.

[42] In respect of his travel, Mr. Osagie never provided contradictory evidence. Rather, prior to the hearing, his counsel attempted to provide greater detail for the benefit of the Board. The Board's suggestion that Mr. Osagie conveniently and suddenly remembered the dates of his travel immediately prior to the hearing is not reflective of the transcript of proceedings. However it is clear from the tribunal record that Mr. Osagie and his counsel never suggested that these dates were exact but were merely trying to provide more precision.

[43] Noting that a claimant's inability to provide consistent testimony as to his date and method of travel does not necessarily constitute a microscopic examination of the evidence. Rather, the means and moment at which a claimant has allegedly fled persecution is highly relevant. However, in the present case, the Court does not find that the evidence supports the Board's finding of contradictions and serious omissions.

[44] **Did the Board err when it made a blanket statement to refuse corroborating evidence?**

[45] The Board rejected the newspaper article regarding the death of Mr. Osagie's partner Friday by applying documentary evidence regarding the questionable authenticity of government documents to newspaper articles. In doing so, the Board discounted a relevant document confirming Mr. Osagie's identity. The documentary evidence indicated that any document, including official

documents such as a passport, driver's license or birth certificate can be bought; with this evidence the Board reasoned that surely a fake newspaper report could also be purchased.

[46] The Board does not specify what documentary evidence it reviewed that supports this conclusion. However, Response to Information Request NGA43280.E entitled "*Availability of false documents in and from Nigeria*" discusses the falsification of documents in the country and appears to be the most relevant. The document discusses the multitude of instances in which government documents, and in particular, identity documents can be forged. At no point however does the document refer to the possibility that a newspaper story can be bought. Therefore, if the same argument is made before another Board, the Minister should provide a reference in the documentary evidence to the ability of individuals to purchase newspaper.

[47] **Did the Board err when it ignored evidence?**

[48] The applicant submits that the Board failed completely to consider any of the evidence with regards to his sexual orientation or persecution, the heart of his claim. He claims that the Board accepted that he had been tortured when the Board refused his offer to show his scars during the hearing, and stated: "that is alright, I believe it."

[49] Furthermore, the applicant adds that the Board rejected his allegation that he is gay, by ignoring letters of support from community groups in Montreal and their presence at the hearing. The applicant insists that at no time he was directly questioned by the Board on the issue of his sexual orientation and that the Board never addressed the credibility of these documents on their

own, nor did the Board provide any reference to the contradictory evidence contained therein.

Rather, according to the applicant, the Board focused on minor inconsistencies on the periphery of his claim and ignored the consistency of the substance of his claim.

[50] The Minister argues that because the Board correctly concluded that Mr. Osagie's identity had not been established, it was not necessary to analyze the evidence any further: *Bhuiyan v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 290. However, in this case, the Board nonetheless went on with the analysis of the applicant's claim. Simply because the Board was not obliged to do so is not a sufficient reason to uphold its conclusions.

[51] Essentially, the Board accepted the basis of the applicant's allegations of torture during his hearing. Having accepted the veracity of these allegations, the Board erred by not considering the substance of Mr. Osagie's claim as a gay man, rather focusing on minor inconsistencies and peripheral matters to impugn his credibility.

[52] The statement by the Board member is particularly troublesome. It follows a lengthy discussion between the Board member and the applicant wherein he explains that between eight and ten individuals beat Mr. Osagie with sticks, batons, bottles and knives, cutting him on his back, leg and hand. Following this description, there is the following exchange:

BY COUNSEL (to applicant):

Q. With the... You still have a few scars?

A. Yes.

BY PRESIDING MEMBER (to applicant):

Q. No, that's... I believe it. I just want the claimant to describe.

[53] Yet, despite this intervention, it still appears that the Board member was not entirely convinced of Mr. Osagie's allegations. After several more questions regarding the beating, the Board member puts her concerns to Mr. Osagie:

- Q. Okay. Because, you know, when I hear you telling me that eight to ten people beat you for two or three hours with a stick, bottles, cutlasses, I wonder how could you survive that.
- A. The way if... The way I'm telling this thing to you is not the way it happened. I cannot explain the way that it happened, the way it happened to me, I cannot explain everything to you, because I was there, I was there alone, nobody was there with me.
- Q. No, that's why I'm asking you, sir.
- A. (Inaudible) I'm telling you now.
- Q. To do your best do describe to me, because I wonder how could you survive. People, ten, eight to ten people beating you so savagely for tow-three hours?

[54] It appears from these exchanges that the Board accepted that Mr. Osagie has scars resulting from a beating but doubted his recollection of the extent of that beating.

[55] The applicant argues that having accepted the existence of this beating, the Board's determination that Mr. Osagie was not a homosexual cannot be supported by a credibility determination based on peripheral matters and minor, irrelevant inconsistencies, particularly given the supporting Canadian documents.

[56] Clearly the transcript shows that the Board member accepted that the applicant had scars resulting from a beating, but at no time does the transcript indicate that the Board member accepted the applicant's homosexuality either in general or as the basis for the attack, and this even though a discussion did precede the details of the beating.

[57] Furthermore, some of the Board's credibility determinations were not related to matters peripheral to Mr. Osagie's claim. For example, the Board noted that Mr. Osagie testified that he and Friday were unable to go out in public, yet wrote in his PIF that they tried to lead a normal life. Moreover, he could not provide consistent testimony as to where he was living during the times he was in hiding from persecution due to his sexual orientation.

[58] Therefore, while it seems that the Board was satisfied that Mr. Osagie had likely been the subject of an attack, it never specifically agreed to the motive of the attack or its extent. Moreover, this did not preclude the Board from impugning his credibility on other central matters of his claim, as it proceeded to do.

[59] The Court concludes that the errors committed by the Board justify its intervention and that the application for judicial review should be granted.

[60] The parties were invited to present questions of importance for certification but declined.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that**

1. The application for judicial review is allowed, with costs;
2. The matter be returned to a differently constituted Board for re-determination; and
3. No question is certified.

“Maurice E. Lagacé”  
\_\_\_\_\_  
Deputy Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-108-07

**STYLE OF CAUSE:** ELIOT OSAGIE  
v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Québec

**DATE OF HEARING:** July 10, 2007

**REASONS FOR JUDGMENT:** LAGACÉ D.J.

**DATED:** August 23, 2007

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