Date: 20080131

Docket: IMM-5358-06

Citation: 2008 FC 127

Ottawa, Ontario, January 31, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

MARYAM MORENIKE ATUNWA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Maryam Morenike Atunwa (the "Applicant") pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "IRPA") for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board ("the Board"), dated September 12th, 2006, wherein the Board determined that the Applicant was not a Convention Refugee nor a person in need of protection as per sections 96 and 97 of the IRPA.

Background

[2] The Applicant is a Yoruba Christian from Lagos, Nigeria. Her mother is Christian while her father is Muslim. She claims that her father is forcing her to marry a man not of her choosing

and this marriage will be accompanied by forced circumcision. She claims her proposed husband is also Muslim and is much older than her.

[3] The Board found that the Applicant was not being forced to enter into a marriage not of her choosing. In the alternative, the Board found that the Applicant had an Internal Flight Alternative ("IFA") available to her in Benin City, Edo State.

Issues

[4] While the Applicant and Respondent have stated the issues in several different formulations, I find three issues arise:

a. Did the Board err in finding that the Applicant was not credible in her claim that she was being forced into an arranged marriage?

b. Did the Board err in determining that the Applicant's fear of persecution was not well-founded on an objective basis?

c. Did the Board err in concluding that a viable IFA existed?

Standard of Review

[5] The Refugee Protection Division is a specialized tribunal with expertise on immigration matters. Judicial review of its decisions are commenced under s. 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 with leave being sought under subsection 72(1) of the IRPA. In *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741 at para. 25, after a thorough analysis based on the pragmatic and functional approach, Justice Richard (as he then was) held:

> Thus, in reviewing decisions of the Refugee Division with respect to questions of law and fact within their expertise, the standard of judicial review to be applied to the grounds of review set out in paragraphs 18.1(4)(c) and (d) of the Federal Court Act is that of patent unreasonableness.

[6] The first issue involves the Board's finding on credibility. The standard of review for a credibility finding by the Refugee Protection Division has been confirmed at the appellate level where Justice Decary held that findings of credibility should be reviewed on the standard of patent unreasonableness *(Aguebor v. Canada (Minister of Citizenship and Immigration),* [1993] F.C.J. No. 732 at para. 4 (F.C.A.)).

[7] The second issue requires determining the standard of review of a decision by the Board on the objective component of a refugee claim. In order to claim refugee status under section 96 of the IRPA, a claimant must subjectively fear persecution and this fear must be well-founded on an objective basis. In other words, a subjective fear must exist in the mind of the claimant and this fear must be well-founded in an objective sense *(Canada (Attorney General) v. Ward,* [1993] 2 S.C.R. 689 at para. 47; *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 at 134).

[8] In *Ali v. Canada (Minister of Citizenship and Immigration),* 2004 FC 1449 at para. 7, Justice Dawson held that the standard of review of a decision by the Refugee Protection Division concerning the objective component of the definition of a Convention Refugee should be patent unreasonableness.

[9] The third issue relates to the Board's finding of an WA. In *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999 at paras. 8-9, Justice Snider held that the standard of review with respect to the existence of an IFA is patent unreasonableness.

The Decision Under Review

[10] The Applicant claimed that she was being forced into an undesired marriage by her Muslim father. The Board did not believe the Applicant. The Board felt that it was not enough that the Applicant's oral and written testimony were consistent, the Applicant's allegations had to be consistent with the probabilities suggested by the objective documentary evidence.

[11] The Board relied on the documentation provided to arrive at the conclusion that the "vast majority of Yoruba's no longer practice arranged marriages...(and) most marriages are based on the choice of the individuals involved" (Board Reasons at 1-2). The Board found that the trend in urban centres in the predominantly Christian south is away from forced marriages. It further noted that the Immigration and Refugee Board's Research Directorate could not find specific information on forced marriages among the Yoruba and that the Applicant did not provide documentary evidence to counter the evidence relied upon by the Board.

[12] The Board found that the objective evidence overwhelmingly suggests forced marriages among the Yoruba and other Christian communities in southern Nigeria are not prevalent. As a result, the Board concluded, on the balance of probabilities, that the claimant was not being forced into a marriage not of her choosing.

[13] The Board then examined a possible IFA from Lagos to Benin City, the capital city of the predominantly Christian Edo State in southern Nigeria. The Board relied on the absence of infoni ation on the occurrence of forced marriages in Edo state to find that an IFA was available. The Board discounted the Applicant's arguments that she would not be able to live in the IFA region because she did not have a university degree, that she would be unable to find a job, that she knows no one in Benin City and that her father may fmd her there.

[14] The Board found that the Applicant's claim for Convention refugee status and as a person in need of protection failed due to the lack of an objective basis. The Board found, in the alternative, even if her claims were an exception to the norm, the Applicant had a viable IFA in Benin City. As the Board found no objective basis for the Applicant's claim, the Board did not invoke the Chairperson's Guidelines relating to Women Refugees Fearing Gender-Related Persecution.

ARGUMENTS

Applicant Submissions

[15] The Applicant submits that inferences drawn by the Board, mainly that the Yoruba no longer practice arranged marriage and that most marriages are based on the choice of the individuals involved, are unsupported by the record submitted and therefore constitute an error. According to the Applicant, the documentary evidence relied upon by the Board also suggests that customary law has encouraged cultural attitudes towards child or forced marriages in Nigeria and that husbands are selected on social, religious and monetary grounds and as a result are often much older than the prospective bride (NGA101044.E). Although the documentary evidence

states that the vast majority of Yorubas no longer practice arranged marriages, the Applicant submits that the Board failed to consider that her father is not part of the vast majority, specifically that he is a Muslim man with strong convictions who still believes in the practice of arranged marriage.

[16] With respect to the Board's finding of a viable IFA, the Applicant argues that the Research Directorate's failure to find information on the prevalence of forced marriage in Edo State does not mean that it does not occur. The Applicant relied on excerpts from documentary evidence indicating that forced marriages continue to occur in the southern part of Nigeria and thus an IFA to Edo state in southern Nigeria was not viable (NGA100418.E). In support of her claim that an IFA in Benin City is not viable, she further argues that she has no means of earning a livelihood, poor education, no rental accommodation and does not know anyone in the IFA region.

Respondent Submissions

[17] The Respondent argues that the Applicant's fear was not well-founded as it lacked an objective basis. The Applicant resided in Lagos, was educated and the supposed marriage was not to occur until she reached the age of 21. According to the Respondent, all of these factors were in contrast with the documentary evidence which suggested that reported forced marriages occurred amongst Muslims in rural areas with younger brides. The Respondent submits that the Board is not obliged to accept inferences the claimant (now Applicant) draws from the facts *(Derbas v. Canada (Solicitor General),* [1993] F.C.J. No. 829 at para. 3).

[18] The Respondent argues that although documentary evidence suggests that forced marriages may occur in southern Nigeria they are most common in Muslim communities. The Respondent notes that the Benin City in Edo State is in southern Nigeria and is for the most part a Christian city. The Respondent submits that the Applicant has not discharged her onus to show that Benin City is not a viable IFA. The Respondent submits that the Applicant's argument relating to her personal circumstance relate to degrees of convenience and not to the viability of an IFA in Benin City.

Analysis

[19] The Board stated that the Applicant's testimony had to be consistent with the probabilities suggested by the objective documentary evidence. The Board, however, acknowledged that the Applicant's story might be one that was an exception to the norm. In so acknowledging, the Board must have some rational basis for'disbelieving the Applicant's claim that she was being forced into a marriage not of her choosing.

[20] The elements of the Applicant's claim that she insists takes her out of the general trend of the documentary evidence showing that forced marriages and its attendant consequences are very much in decline among the Yoruba in Nigeria is that her father is a Muslim with a very strong belief in the practice of arranged marriages, and that the prospective husband is an older Muslim. The Applicant's underlying contention is that her father will insist and pursue her to Benin City to enforce the marriage. Moreover, some documentary evidence shows that forced marriages continue in Nigeria among Muslim communities. This is the Applicant's strongest argument.

[21] If the Board were to insist that the Applicant's account must be consistent with the probabilities suggested by the documentary evidence that the trend in forced marriages were overwhelmingly in decline in urban centres in the predominantly Christian southern part of Nigeria without some regard as to how it relates to the Applicant, the Board's decision might well fail to have a rational grounding. This is not the case here.

[22] The Board is presumed to have reviewed all of the evidence before it even if it does not refer to every document submitted to it in its reasons *(Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.)). The Board found the Applicant was a Yoruba, Christian, and from Lagos, Nigeria's largest urban centre which is located in the southern portion of the country. The Board also noted that the Applicant's mother was Christian and that the Applicant was relatively well educated, having taken some university level courses. As the Respondent noted, the evidence also disclosed that the alleged husband was waiting until she was 21 before forcing her to many. It must also be observed that the evidence before the Board also establishes that the Applicant's father had a Christian wife and the Applicant herself was raised in the Christian faith.

[23] The foregoing evidence supports the Board's finding that, on the balance of probabilities, the Applicant was not being compelled to enter into an arranged marriage. As a result, I cannot say the Board's finding on credibility was clearly irrational so as to be patently unreasonable.

[24] The Applicant's profile described in the preceding paragraph is sufficiently correlated with the documentary evidence that forced marriages were not prevalent among the Yoruba and other

Christian communities in southern Nigeria. This supports the reasonableness of the Board's finding that the Applicant has not made out an objective basis for a claim under section 96 of the IRPA. I do not find the Board's finding on the objective component of section 96 Convention refugee status to be patently unreasonable.

[25] The Applicant argued that she did not have an IFA in Benin City because her father may find her and she would face difficulties in settling in Benin City. The Board concluded that it was no more than a mere possibility that her father would find her and that the Applicant could settle in Benin City given that she was young, flexible, and relatively well educated and willing to face similar challenges in settling in Canada. I do not find the Board's reasoning patently unreasonable.

CONCLUSION

[26] I do not find the Board's decision on the Applicant's credibility, the objective component of a section 96 Convention refugee claim, and the existence of an TA to be patently unreasonable.

[27] This application for judicial review should be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

2. No question of general importance is certified.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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