Date: 20080421

Docket: IMM-2241-07

Citation: 2008 FC 509

Toronto, Ontario, April 21, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

OSAMEDE JOE IDUGBOE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board found that Osamede Joe Idugboe was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] In his Application for Judicial Review Mr. Idugboe raised numerous grounds; however, in oral argument counsel characterized the alleged errors as being three-fold. Mr. Idugboe asserts that the Board erred in finding:

1. that he did not have a well-founded fear of persecution in Nigeria;

2. that he had not rebutted the presumption that state protection was available to him; and

3. that, in any event, he had an internal flight alternative within Nigeria.

[3] For the reasons that follow, I am not persuaded that the Board erred as alleged by Mr. Idugboe, and accordingly, his application for judicial review is dismissed.

I. BACKGROUND

[4] Mr. Idugboe is a citizen of Nigeria. He had been working as a Finance Manager for Base Water Nigeria Ltd. in Warri, Nigeria. On May 8, 2006, he was approached by two Ijaw youth, Lucky and Friday, who tried to bribe him to allow them to use a tanker truck to steal oil from oil pipelines in the area. Mr. Idugboe refused but did not report the proposition they made to him.

[5] The following week Mr. Idugboe went to Benin and upon his return on May 15th he learned that police had shot and killed Lucky and Friday that evening. Apparently they had been caught siphoning oil from the pipeline. The Ijaw youth accused Mr. Idugboe of reporting their plot to vandalize the oil pipelines to the police. As a consequence, he was seen by them as having caused the deaths of Lucky and Friday. Mr. Idugboe also discovered that the house where he had been staying had been burned down and that his friend, who owned the house, had been beaten.

[6] Mr. Idugboe left that night for Benin and then on to Lagos, Nigeria. While in Benin he was called by his friend in Wassi who had been beaten by the Ijaw youth. He informed Mr. Idugboe that he had been forced to tell the Ijaw youth that he was with his father in Benin and had disclosed the

address. He also informed Mr. Idugboe that the youth had promised revenge for the deaths of their friends and stated that they dealt mercilessly with those who were police informants. He suggested that Mr. Idugboe flee.

[7] His father was later visited in Benin by some Ijaw youth who assaulted him and told him that they were going to get his son.

[8] Mr. Idugboe's father spoke to a friend, who is a police officer in Benin, concerning the threat to his son and was advised that the police could do nothing. No formal report was made to the police either by the Applicant or his father.

[9] After staying in Lagos, Nigeria for about a month Mr. Idugboe fled to Canada where he claimed refugee status on the basis of his political belief.

II. THE BOARD'S DECISION

[10] The panel found that Mr. Idugboe was not a Convention refugee as he did not have a well-founded fear of persecution in Nigeria. The underpinning for this finding was its assessment of Mr. Idugboe's credibility. That assessment is summarized in the following paragraph from the decision under review.

> The panel finds that omissions in the claimant's Personal Information Form (PIF) seriously undermined the claimant's credibility. The claimant failed to mention in his port of entry (POE) Notes that Lucky and Friday had been killed, despite the fact that his claim was based on threats to his life from Ijaw youth as revenge for the deaths of Lucky and Friday. The claimant was asked to explain why this

> fact that was the cornerstone of his claim was missing from his POE Notes. He responded that he should have included it in the POE Notes because it was important. Upon examination from Counsel, the claimant indicated that he told the Immigration officer that people had been killed, but that the Immigration officer had not recorded it. The claimant was asked why his POE Notes did not indicate that his father had been attacked by Ijaw youth; the POE notes only indicate that his father was threatened. The claimant responded that he had mentioned it to the Immigration officer but, again, it was not recorded by the officer. The panel finds it implausible that the key fact which was the basis of his claim (retribution for the deaths of 2 Ijaw youth), and the fact that the Ijaw youth attacked his father in Benin resulting in his father's hospitalization were not recorded by Immigration officers in the claimant's POE Notes. The panel assigned a negative inference to the claimant's credibility based on the fact that the deaths of Lucky and Friday, and the Ijaw youth attack on his father were not included in his POE Notes. The claimant signed his POE Notes on June 26, 2006.

[11] The Board also found that Mr. Idugboe had not rebutted the assumption of state protection.

[12] Lastly, the Board found that the fear of Ijaw youth throughout Nigeria was not well-founded and thus Mr. Idugboe had an internal flight alternative.

III. THE BOARD'S FINDINGS ON CREDIBILITY

[13] Mr. Idugboe testified that he told the Immigration Officer who wrote the POE Notes about both the fact that Lucky and Friday were killed and about the fact that his father was beaten. The Minister argues that the answers given when questioned about these issues were not satisfactory or plausible. He characterizes them as "weak and lame" and asserts that it is "unthinkable" that the Applicant would not have mentioned the deaths: see *Sahota v. Canada (Minister of Citizenship and Immigration*), 2004 FC 1256.

[14] In fact, the Applicant's evidence is that he did mention to the Immigration Officer the deaths and his father's assault, but asserts that his statements were not recorded in the POE Notes.

[15] The Board did not fail to consider the explanations given by Mr. Idugboe for the omissions in the POE Notes as was alleged by the Applicant; rather, the Board was simply not convinced or persuaded by the explanation.

[16] Until recently, the standard of review for a credibility finding was that of patent unreasonableness: *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315. Since the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the standard of review now is that of reasonableness. In assessing the reasonableness of the Board's decision regarding credibility, we are to be guided by the following observations of the Supreme Court of Canada in paragraph 47 of its decision.

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of

> possible, acceptable outcomes which are defensible in respect of the facts and law.

[17] The Applicant has the burden of establishing that the inferences drawn by the panel could not reasonably have been drawn. In my view, the panel substantiated its decision by stating in clear and unequivocal terms the reasons for which it doubted the explanation given by Mr. Idugboe that he had stated these important facts to the Immigration Officer. The Board found that it was implausible that the Immigration Officer would not have included the critical fact regarding the deaths of the Lucky and Friday and the subsequent beating of Mr. Idugboe's father in the POE Notes if that information had truly been provided by the Applicant. The Board assessed this to be implausible because this evidence formed the very basis of the refugee claim. In particular, the deaths of the two Ijaw youth provided the very foundation for the Applicant's explanation as to why his life was in danger.

[18] I am not persuaded that the inference drawn by the Board was unreasonable.

IV. THE BOARD'S FINDINGS ON STATE PROTECTION

[19] The Applicant did not personally go to the police in Nigeria. His evidence was that a police officer who was a friend of his father said that there was nothing that could be done, that they had received a number of such complaints, and that the best thing the Applicant could do would be to leave as the police "were no match for the Ijaw youth".

[20] The 2005 United Kingdom Home Office Report was before the Board and it was summarized by the Board as establishing that there are non-registered vigilante groups who have committed human rights violations and have been responsible for inter-ethnic clashes in the Delta Region of Nigeria where Warri is located. It was acknowledged by the Board that few who have run afoul of such groups would seek police protection in that area.

[21] However, no objective evidence was provided by Mr. Idugboe that there were challenges in police enforcement in other locations within Nigeria. In my view, while the Applicant may have had a subjective view that there would be no state protection available for him anywhere in Nigeria, it was reasonable for the Board to find on the evidence that there was no objective basis for his view.

[22] Aside from the 2005 United Kingdom Home Office Report the objective evidence offered by the Applicant was that once, in Benin, his father inquired of a friend of the availability of state protection. This fails to establish on the balance of probabilities that such protection was not available for Mr. Idugboe elsewhere in the county. In light of the Report, it was open to the Board to find that the Applicant had not rebutted the presumption of state protection elsewhere than in the Delta Region.

V. THE BOARD'S FINDING OF A VALID INTERNAL FLIGHT ALTERNATIVE

[23] In order to qualify under section 97, a refugee claimant must have no internal flight alternative. The Federal Court of Appeal has held this is inherent in the definition of “refugee”

under section 96 as well: *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706.

[24] The Board found that Mr. Idugboe could have gone either to Lagos or Abjua, both large cities where he would have had protection from the Ijaw youth. The Board accepted that he should not have to go to northern Nigeria where Shari law is enforced and where Christians, such as Mr. Idugboe, were treated poorly. It also found that the Ijaw youth were predominately located in the Delta Region where the Applicant may have had legitimate concerns for his safety.

[25] The finding that there were areas of Nigeria where Mr. Idugboe could reasonably reside that would be safe was a reasonable finding open to the Board on the evidence before it. Mr. Idugboe simply did not present evidence to rebut that presumption. The Board's finding is thus not unreasonable.

[26] Counsel for the Applicant argued that the only safe locations within Nigeria were remote country locations where Mr. Idugboe would be unable to practice his trade or calling and that he could only do so in major cities and not in rural areas. It was suggested that this fact made those flight alternatives unreasonable.

[27] In my view, a full answer to that submission may be found in paragraph 15 of the decision of the Federal Court of Appeal in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164.

> We read the decision of Linden J.A. for this Court [in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589] as setting up a very high threshold for the unreasonableness test. *It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area.* In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. *This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.* (emphasis added)

[28] Even if the Applicant would have had difficulty finding employment that suited his education and skills in these other areas of Nigeria, there was no evidence presented that his life or safety would be jeopardized in those other locations.

VI. CERTIFIED QUESTION

[29] Counsel for the Applicant asked that this Court certify the following question: “Is a Refugee Claimant’s loss of work opportunities a factor to consider when determining the reasonableness of the internal flight alternative?”

[30] In my view, the law in this regard is well established and reflected in the decision of the Federal Court of Appeal in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 in the passage reproduced above, and accordingly the proposed question is not a serious question of general importance.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2241-07
STYLE OF CAUSE:	OSAMEDE JOE IDUGBOE v. MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 14, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	ZINN, J.
DATED:	April 21, 2008

APPEARANCES:

Mbong Elviran Akinyemi	FOR THE APPLICANT
Stephen H. Gold	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MBONG ELVIRAN AKINYEMI Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT