Federal Court  Cour fédérale

Date: 20110111

Docket: IMM-2196-10

Citation: 2011 FC 20

Toronto, Ontario, January 11, 2011

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

IVA IBRAHIM KHALIL IBRAHIM
(A.K.A. IVA IBRAHIM KHA IBRAHIM)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a 73-year old female citizen of Sudan. She came to Canada in July 2008 and applied for refugee protection in August 2008 on the basis of her fear of persecution on the grounds of her religion. As described in her Personal Information Form (PIF), the Applicant, a Christian widow, fled to Canada when ordered to report for service with the Popular Defence Forces

(PDF). She is fearful that she would be forced to go to the Darfur Region of Western Sudan, or, "at the very least, I would be imprisoned and tortured" for failing to report for service with the PDF. The Applicant believes that she has been specifically targeted for service – in spite of her age and ill health – because she is a Christian.

[2] In a decision dated March 25, 2010, a panel of the Immigration and Refugee Protection Board, Refugee Protection Division (the Board) determined that the Applicant was neither a Convention refugee nor a person in need of protection. The determinative issue was credibility. A key finding was that the Board did not believe that a woman of her age would be required to serve in the military in Sudan. The Board also found other inconsistencies in the Applicant's testimony.

[3] The Applicant seeks judicial review of this decision.

[4] A finding of lack of credibility is one with which the Court will normally not interfere. The standard of review is reasonableness. According to the Supreme Court, in determining whether a decision is reasonable, the factors to be considered are justification, transparency and intelligibility within the decision-making process. The outcome must be defensible in respect of the facts and law (*Dunsmuir v. New Brunswick (Board of Management)*, 2008 SCC 9, [2008] 1 SCR 190 at para 47). In spite of this high standard, the jurisprudence teaches that a decision maker errs by failing to have regard to evidence that speaks directly to the issues before the decision maker (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 (QL)(FCTD.)).

[5] The most serious problem with the decision is that the Board fails to have regard to the Statutory Declaration of a member of the clergy with the Applicant's Church in Sudan. In this Declaration, the clergyman corroborates many details of the Applicant's story. In particular, he states that he had has had numerous complaints from members of the congregation in Sudan "about the government calling on all PDF trainees for active duty in Darfur . . . regardless of age and medical condition". Although the Board mentioned this Declaration in the context of the Applicant's identity, no reference to the document is made in dealing with the key aspects of her claim. The Declaration is highly relevant and appears to squarely contradict the Board's central finding of fact that the PDF would not require a person of the Applicant's age and health to serve. In my view, the Board's failure to refer to the Declaration constitutes a reviewable error.

[6] A second (albeit less serious) concern is that I question whether the Board clearly differentiated between the military and the PDF.

[7] The Applicant was questioned, during her hearing, about whether it was likely that a person of her profile (age and health) would be exempted from service. The Applicant responded that no exemptions were given by the PDF. In its decision, the Board states that "the idea of this claimant serving in the military seems somewhat implausible".

[8] In reviewing the documentary evidence related to military service, the Board observes that:

> The claimant's insistence that there are no exemptions is not consistent with the findings of a Danish fact finding mission, which reported in 2001 that persons who are not medically fit are exempted from service.

[9] As a result, it appears that the Board misapprehended the claim of the Applicant that she feared conscription into the PDF – and not into the military.

[10] For these reasons, the application for judicial review will succeed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, the decision is quashed and the matter is remitted to a different panel of the Board for re-determination; and

2. No question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2196-10
STYLE OF CAUSE:	IVA IBRAHIM KHALIL IBRAHIM (A.K.A. IVA IBRAHIM KHA IBRAHIM) v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
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