

Federal Court



Cour fédérale

Date: 20110204

Docket: IMM-4247-10

Citation: 2011 FC 127

Ottawa, Ontario, February 4, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**EVELYN JAMES
JAMES OBINNA JAMES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Evelyn James and her son, James Obinna Eluwe, sought refugee protection in Canada in 2008, after leaving their home in Benin City, Nigeria. Ms. James alleged that she feared a man who had been abusing her since 2004.

[2] A panel of the Immigration and Refugee Board denied Ms. James's claim and, because his claim was identical to hers, it also denied her son's claim. The Board found that Ms. James could live safely elsewhere in Nigeria where her abuser would not find her. Therefore, her fear of persecution was not well-founded.

[3] Ms. James submits that the Board erred in two respects. First, she argues that the Board erred by failing to consider the Chairperson's Guideline 3 – Child Refugee Claimants, as it was required to do in respect of her son's claim. Second, she maintains that the Board's conclusion that she had an internal flight alternative in Nigeria was unreasonable. She asks me to overturn the Board's decision and order a new hearing before a different panel.

[4] I can find no basis to overturn the Board's decision. In the circumstances, there was no need for the Board to cite Guideline 3; and, the Board's conclusion regarding an internal flight alternative was reasonable on the evidence before it. Therefore, I must dismiss this application for judicial review.

[5] There are two issues:

1. Did the Board have a duty to refer to Guideline 3?
2. Was the Board's conclusion regarding an internal flight alternative unreasonable?

II. Factual Background

[6] In 2004, on the death of her father, Ms. James was given to a Mr. Eluwe in satisfaction for her father's debts to him. Mr. Eluwe violently abused Ms. James. Mr. Eluwe always used a condom when having sex with Ms. James, but she became pregnant after having sex with Mr. Eluwe's son. She did not reveal who the father was.

[7] In 2007, Ms. James was able to escape Benin City to go to her mother's home, and then to her uncle's home in Jos. However, Mr. Eluwe kidnapped Ms. James's brother and, in order to prevent Mr. Eluwe from harming him, Ms. James returned to Benin City.

[8] Ms. James became pregnant again in 2008. This time Mr. Eluwe's son admitted that he was the father and helped Ms. James escape to Canada.

III. The Board's Decision

[9] The Board considered evidence that Ms. James's family continues to be threatened by Mr. Eluwe and was forced to leave their home in Benin City. The Board also considered a psychological report that described Ms. James's distress, depression and anxiety. The psychologist found that Ms. James's mental state would deteriorate if she returned to the place where she had been abused. Still, the Board found Ms. James's testimony to be coherent and credible.

[10] Regarding an internal flight alternative, the Board noted that Ms. James was able to leave Mr. Eluwe's home from time to time. Indeed, this was how she was able to escape to her mother's home in 2007.

[11] Further, the Board concluded that there was no evidence that Mr. Eluwe or his employees would look for Ms. James throughout Nigeria. While Ms. James testified that Mr. Eluwe had a number of residences in Nigeria, she was not sure where they were. Mr. Eluwe resides primarily in Benin City.

[12] The Board found it significant that Ms. James was able to live with her uncle in Jos for several days in 2007. Mr. Eluwe did not find her there; she returned to Benin City to protect her brother. There was no evidence that Mr. Eluwe had the means to find Ms. James.

[13] Country condition evidence supported the Board's conclusion that victims of human trafficking or other crimes can usually find refuge in other areas of Nigeria. Further, shelters exist in many locations to assist these persons. Finally, state officials in Nigeria are making efforts to prosecute these types of crimes, and to assist persons who, like Ms. James, are forced into servitude to satisfy debts.

[14] A number of potential safe locations were considered by the Board – Lagos, Abuja, Kano, Sokoto, Enugu, Uyo and Jos. The Board found it was reasonable to expect Ms. James to live in one of these places since she could find either a shelter or family support in each of them. Ms. James is educated and has work experience, so she could likely support herself there. Finally, living in one of

the cities identified by the Board would not require her to return to the site where she had been abused.

[15] From this evidence, the Board concluded that Ms. James had a number of viable and reasonable flight alternatives in Nigeria and dismissed her claim, and that of her son.

(1) Did the Board have a duty to refer to Guideline 3?

[16] Guideline 3 addresses a number of issues relating to child refugee claimants. In particular, the Guideline advises Board members on the procedures and evidentiary considerations that may be suitable when dealing with child claimants.

[17] However, in situations where the child accompanies a parent to Canada, the Board's main responsibility is to ensure that a designated representative is appointed for the child (usually the parent). The child's claim is usually heard together with the parent's, but a separate determination is made.

[18] The Guideline sets out a number of considerations in circumstances where the child testifies, but those factors were not in play here because Ms. James's son was too young to give evidence.

[19] In the circumstances, having appointed Ms. James the designated representative for her son, I see no need for the Board to have cited or considered other matters in Guideline 3 that were not

relevant. The Board specifically rejected both Ms. James's claim and her son's, as it was required to do. Therefore, I see no error on the Board's part.

(2) Was the Board's conclusion regarding an internal flight alternative unreasonable?

[20] Ms. James argued that the Board's conclusion was unreasonable because she was not able to live safely at her uncle's house in Jos, which was the farthest city from Benin City that the Board considered. Therefore, she submits, all of the other possibilities were worse.

[21] The burden fell on Ms. James to persuade the Board that there was a reasonable chance she would be persecuted in the cities under consideration, and that it would be unreasonable for her to live in them. The Board considered the likelihood of her being found in those cities, the resources available to her, and her ability to support herself in those locations. Its conclusion that she had a viable and reasonable flight alternative within Nigeria is a defensible outcome based on the law and the facts before it.

IV. Conclusion and Disposition

[22] The Board was not obliged to cite or analyze Guideline 3 – Child Refugee Claimants in the circumstances of this case. Further, its conclusion regarding an internal flight alternative in Nigeria was reasonable based on the facts and the law. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4247-10

STYLE OF CAUSE: EVELYN JAMES, ET AL v MCI

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: January 24, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: February 4, 2011

APPEARANCES:

Nduka Ahanonu FOR THE APPLICANTS

Camille Audain FOR THE RESPONDENT

SOLICITORS OF RECORD:

Duke & Company FOR THE APPLICANTS
Barristers and Solicitors
Edmonton, Alberta

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Edmonton, Alberta