Federal Court  Cour fédérale

**Date: 20110531**

**Docket: IMM-6907-10**

**Citation: 2011 FC 604**

**Ottawa, Ontario, this 31st day of May 2011**

**Present: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**ICHECHUKWU ONYENWE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") by

Ichechukwu Onyenwe (the “applicant”). The Board determined that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant is a citizen of Nigeria, born on November 27, 1979. He comes from Ogbakiri in the Niger Delta. The applicant alleges that he was a founding member of a youth group called the Organization for Better Ogbakiri Youth (OBOY).

[3] The applicant alleges that he reported the illegal activities of the militia group, the Movement for Emancipation of Niger Delta (MEND) to the local authorities. OBOY also attempted to appeal to the youth through non-violent means such as education, in order to offer a practical alternative to violent groups such as MEND.

[4] The applicant alleges that MEND was offended by OBOY activities because OBOY was the only local organization that took a high profile stance against the militia groups. In November 2008, MEND carried out an attack against the executive members of OBOY. OBOY’s president was beaten to death. MEND also attacked the claimant’s home, and when they discovered that he was not present, they assaulted his mother and burnt down the house. The applicant now fears persecution and a risk to his life at the hands of MEND.

[5] The applicant came to Canada on February 13, 2009 and claimed refugee status shortly thereafter.

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[6] The Board found that the determinative issue in the case was the existence of an Internal Flight Alternative (IFA) in Abuja, the capital city of Nigeria.

[7] The Board went on to state that pursuant to *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), in order to find a viable IFA, the Board must be satisfied that (1) there is no serious possibility of the claimant being persecuted or, on the balance of probabilities, in danger of torture or subjected to a risk to life or cruel and unusual treatment or punishment in the IFA and (2) that conditions in that part of the country are such that it would be reasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[8] The applicant raised two issues in this application:

a. Did the Board incorrectly state and/or misconstrue the law in finding a viable IFA for the applicant?
b. Did the Board, in applying the IFA test to the facts, err by ignoring or misconstruing evidence?

[9] The question of the correct legal test to be applied in the determination of the existence of an IFA is a question of law, and should be reviewed on a standard of correctness (*Gonzalez v. Minister of Citizenship and Immigration*, 2010 FC 691 at para 7; *Lugo v. Minister of Citizenship and Immigration*, 2010 FC 170 at paras 30-31).

[10] The application of the IFA test to the facts is subject to the reasonableness standard of review (*Khokhar v. Minister of Citizenship and Immigration*, 2008 FC 449 at para 21). Therefore, the Board's conclusion must fall within the "range of possible, acceptable outcomes which are

defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47).

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[11] Having found that "there is no serious possibility of persecution or, on the balance of probabilities, of a danger of torture or risk to life or cruel and unusual treatment or punishment in Abuja by MEND", the Board concluded that it would be reasonable for the applicant to re-locate in Abuja:

> [17] The claimant testified that despite tribal and religious differences in Nigeria, people of all backgrounds live in Abuja. I also note that the Nigerian constitution provides for the right to travel within the country and the Federal Government is known to generally respect this right in practice [footnote omitted].
>
> [18] The claimant stated that he has no family in Abuja. I note that until he met his wife in Canada, he did not have family in this country either. The claimant has some university education and has been working as a mattress builder in Canada. I therefore do not find the conditions for him in Abuja particularly difficult. Having considered the conditions in Abuja and all the circumstances of this case, including those particular to the claimant, I find that it is not objectively unreasonable for the claimant to seek refuge there.
>
> [19] I find that having a viable IFA is fatal to claims made under both section 96 and subsection 97(1) of the Act.

[12] I have serious doubts as to the merit of the applicant's argument that the Board misstated the first branch of the test for a viable IFA. In any event, I find that the Board's application of the second branch of the test was not reasonable, which is determinative of this application for judicial review.

[13] Regarding the second branch of the test, the applicant submits that the question of how well he has adapted to life in Canada is not relevant to what should have been a careful and detailed assessment of his individual circumstances in evaluating the reasonableness of the IFA in Abuja. The applicant submits that the Board based its evaluation on only one document stating that the Nigerian government generally respects mobility rights, and the applicant's testimony to the effect that "the capital has people from every part of the country". The applicant argues that the Board failed to consider relevant evidence in the form of the document entitled *Nigeria: No End to Internal Displacement. A Profile of the Internal Displacement Situation* (Internal Displacement Monitoring Centre, Norwegian Refugee Council, 19 November, 2009), which was referred to in counsel's written submissions following the hearing. The Board does not explicitly refer to this document, which the applicant argues establishes that it would be unduly harsh for him to move to Abuja given the high level of internal displacement in Nigeria due to inter-ethnic and religious violence. The applicant argues that the Board did not engage in any discussion regarding the specific conditions in Abuja that would make an IFA reasonable, and should not have come to its conclusion without referring to documentary evidence. The applicant cites the following excerpt from the document cited above:

> . . . The Centre on Housing Rights and Evictions estimated in 2008 that over two million people had been forcibly evicted since 2000 in cities such as Lagos, Port Harcourt and Abuja (COHRE, May 2008, p.7). In Abuja, residents of informal settlements were evicted as part of the implementation of the Abuja Master Plan, a planning framework drawn up to make the new federal capital more orderly than its predecessor Lagos (Reuters, 23 July 2008; IRIN, 23 November 2007). Most demolitions have affected residents who arrived after the establishment of the Federal Capital Territory in 1991, also referred to as "non-indigenes" or settlers, and they have often been carried out with violence by heavily-armed security agents (COHRE, May 2008, p.11).

[14] The respondent submits that a refugee claimant must meet a high threshold to establish that it would be unreasonable to relocate to an IFA, as stated by the Federal Court of Appeal in *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, at paragraph 15:

> . . . 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. . . .

[15] The respondent submits that the Board mentioned the applicant's ability to adapt to Canadian life only because he had stated that he had no family in Abuja. The lack of relatives in a safe place on its own does not meet the threshold established in *Ranganathan* (as per paragraph 15 of that case). I note that in *Ranganathan*, at paragraph 18, the Court held that it could be an error for the Board not to consider such a factor, though it was but one factor. I see no error in the Board's choice to mention this factor in the present case.

[16] The respondent also submits that the document cited by the applicant discusses internal displacement generally but does not discuss conditions in Abuja that would make it unreasonable for the applicant to seek refuge there. The respondent submits that the applicant's counsel's written submissions on the subject are general and do not explain how the high level of internal displacement in Nigeria renders the IFA unreasonable. The Board stated that she had considered the applicant's evidence; this would be presumed to include the documentary evidence (*Florea v. Minister of Employment and Immigration* (June 11, 1993), A-1307-91 (F.C.A.) at para 1). The respondent argues that this document was not of sufficient pertinence to merit a specific discussion.

[17] The respondent further contends that the onus was not on the Board to establish that the applicant would be safe in Abuja, but rather on the applicant to establish that it would be unreasonable for him to relocate to Abuja, seen against the high threshold established in *Ranganathan*.

[18] I am troubled by the fact that the Board did not address the significant evidence put forth in the document cited by the applicant. Though I agree with the respondent that the applicant's submissions did not explain how generalized issues of internal displacement due to inter-ethnic violence would affect him personally, the excerpt cited, in my view, points to specific problems facing new arrivals to Abuja, including "violence by heavily-armed security agents". The existence of such violence could have the potential to meet the high threshold set out in *Ranganathan*, given that it could "jeopardize the life and safety" of the applicant. I find that this evidence was pertinent to the consideration of whether it would be objectively reasonable for the applicant to attempt to move to Abuja, and that it was sufficiently contradictory to the Board's conclusion regarding the conditions in Abuja that the Board should have mentioned why it did not find this evidence to be persuasive (as per *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at paras 16-17). The decision on the second branch of the test was therefore unreasonable.

[19] Given that the test for an IFA requires that both branches be met, it is sufficient for the applicant to show that the decision on one branch of the IFA test was not reasonable (see *Calderon v. Minister of Citizenship and Immigration*, 2010 FC 263).

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[20] For the above-mentioned reasons, the application for judicial review is allowed, the impugned decision is set aside and the matter is sent back for reconsideration by a differently constituted panel of the Board.

**JUDGMENT**

The application for judicial review is allowed. The decision rendered on November 1, 2010 by a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the "Board") is set aside and the matter is sent back for reconsideration by a differently constituted panel of the Board.

"Yvon Pinard"

Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6907-10 |
| **STYLE OF CAUSE:** | ICHECHUKWU ONYENWE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Vancouver, British Columbia |
| **DATE OF HEARING:** | May 10, 2011 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Pinard J. |
| **DATED:** | May 31, 2011 |

**APPEARANCES:**

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| Mr. Robert James Kincaid | FOR THE APPLICANT |
| Mr. François Paradis | FOR THE RESPONDENT |

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