Federal Court  Cour fédérale

**Date: 20120710**

**Docket: IMM-8566-11**

**Citation: 2012 FC 871**

**Ottawa, Ontario, July 10, 2012**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**AGHAHOWA OBAZEE**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

### INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD), dated 27 October 2011 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

**BACKGROUND**

[2] The Applicant is a 48-year-old citizen of Nigeria from Benin City. He fears persecution in Nigeria because he is a Christian.

[3] The Applicant is his parents' only son and his father (Usiobaifo) was the chief priest and healer of Obe village in Edo state. The Applicant was raised under the assumption that he would one day inherit his father's position. As a result, Usiobaifo prevented him from pursuing post-secondary schooling. After he completed secondary school in 1983, the Applicant began helping his father carry out his duties in the village and learning his father's techniques.

[4] In November 2009, the Applicant met a girl from a nearby community. When he went to meet her at her church, the pastor there invited him in for the service. The Applicant realized that he had been worshipping false idols and began practicing Christianity in secret. The Applicant refused to participate in his village's spiritual practices, which led to an argument with Usiobaifo and the community elders.

[5] Usiobaifo had the guards of the village's shrine watch the Applicant's house in Benin City. On 1 February 2010, the Applicant was kidnapped by four of the guards, who assaulted him and detained him for a week in the Awanuoro shrine. Usiobaifo threatened to kill the Applicant unless he helped celebrate an upcoming ritual and renounced Christianity. Fearing what would happen if he refused, the Applicant agreed but said that he had to go back to the city to finish some things before he could move to the village permanently. When he got back to Benin City, the Applicant went to the hospital to have his injuries treated.

[6] On 23 February 2010, the Applicant learned that his father had died in his sleep. The community elders wanted the Applicant to take over Usiobaifo's responsibilities. The elders became increasingly angry when the Applicant did not respond to their requests. He approached the pastor of the church where he discovered Christianity and the pastor made arrangements to help him leave Nigeria. They did not contact the police because they thought this would create difficulty for the church. The Applicant arrived in Canada and claimed refugee protection on 21 April 2010.

**DECISION UNDER REVIEW**

[7] The RPD found the Applicant had established his identity and was a credible witness. Based on his limited education and his upbringing as the son of a village medicine man, the RPD accepted the genuineness of the Applicant's belief that the elders of his community had special powers to find him anywhere in Nigeria. It also found that he had a genuine subjective fear of persecution.

[8] However, the RPD also found that the Applicant had an Internal Flight Alternative (IFA) in Abuja, Port Harcourt, Warri, or any other major centre in Nigeria. The RPD referred to *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172 which establishes that, where IFA is raised, the RPD must be satisfied there is no serious risk in the proposed IFA location and it is reasonable for the claimant to relocate there. Once raised, the onus is on the claimant to show an IFA does not exist.

[9] Based on evidence from the National Documentation Package and the Applicant's low profile and history of working as a truck driver, the RPD found that there was not a serious possibility he would be persecuted if he relocated to a large urban centre and that it would be reasonable for him to relocate. The RPD noted that a large number of Christians reside in Abuja and

the surrounding area and that the Applicant would be able to find moral and spiritual support if he relocated there.

**ISSUES**

[10] The Applicant raises the following issues in this proceeding:

a. Whether the RPD's IFA finding was reasonable;

b. Whether the RPD breached his right to procedural fairness.

**STANDARD OF REVIEW**

[11] The Supreme Court of Canada in *Dunsmuir v New Brunswick* 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[12] The standard of review applicable to the RPD's IFA finding is reasonableness. See *Mejia v Canada (Minister of Citizenship and Immigration)* 2010 FC 530 at paragraph 10, *Martinez v Canada (Minister of Citizenship and Immigration)* 2012 FC 5, at paragraph 8, *Ponce v Canada (Minister of Citizenship and Immigration)* 2011 FC 1360, at paragraph 13, and *Zavala v Canada (Minister of Citizenship and Immigration)* 2009 FC 370 at paragraph 5.

[13] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[14] The Applicant says the RPD breached his right to procedural fairness by wholly ignoring his evidence and submissions. *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at paragraph 22 establishes that procedural fairness includes the opportunity to make submissions and have them considered. As an aspect of the duty of fairness, the second issue is subject to the correctness standard. In *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)* 2003 SCC 29, the Supreme Court of Canada held at paragraph 100 that "It is for the courts, not the Minister, to provide the legal answer to procedural fairness questions." Further, the Federal Court of Appeal in *Sketchley v Canada (Attorney General)* 2005 FCA 404 at paragraph 53 held that the "procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty."

**STATUTORY PROVISIONS**

[15] The following provisions of the Act are applicable in this proceeding:

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| **96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, | **96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : |
| (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or | a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; |
| […] | […] |
| **97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally | **97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : |
| (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or | a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; |
| (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if | b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : |
| (i) the person is unable or, because of that risk, unwilling | (i) elle ne peut ou, de ce fait, ne veut se réclamer de la |

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| to avail themself of the protection of that country, | protection de ce pays, |
| (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, | (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and | (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. |
| […] | […] |

**ARGUMENTS**

**The Applicant**

**Breach of Procedural Fairness**

**[16]** The RPD breached the Applicant's right to procedural fairness when it ignored all his testimony and the evidence he presented. Even though it found he was a credible witness and that his testimony was truthful, the RPD ignored the evidence he submitted.

**IFA Finding Unreasonable**

[17] The IFA finding was unreasonable because the RPD ignored evidence. The Applicant testified to the harm he suffered from the guards at the Awanauro shrine. He also submitted

photographs to show the injuries he suffered while he was detained at the shrine. The Applicant gave evidence he was well known in the village because he had assisted Usiobaifo with ceremonies, and that he could therefore be found anywhere in the country. The people who had come to his father for help from all over Nigeria can find him wherever he goes, which means he is at risk everywhere in Nigeria. It is unduly harsh to expect him to live in perpetual fear that he will experience if he must relocate in Nigeria.

**The Respondent**

**[18]** The IFA finding was reasonable because the RPD applied the proper test and based its conclusion on the evidence before it. The RPD relied on the *Operational Guidance Note – Nigeria* from the United Kingdom Home Office. This document, which was in the RPD's National Documentation Package, said that internal relocation is almost always an option in Nigeria. The Applicant said he did not have an IFA, but it was open to the RPD to prefer documentary evidence over his testimony. Although the Applicant testified that Usiobaifo's agents found him in Benin City, this does not show an IFA is not available to the Applicant in Nigeria.

**[19]** The RPD reasonably concluded that ten to fifteen elders who were seeking him would not be able to find him in a country of 150 million people. A claimant must provide more than a general assertion of danger to establish that he or she does not have an IFA. As *Abiona v Canada (Minister of Citizenship and Immigration)* 2011 FC 1400 establishes, the burden was on the Applicant to establish a serious possibility of persecution everywhere in Nigeria. He did not meet the onus on him. Although the Applicant disagrees with the RPD's conclusion, this is not a proper ground for judicial review and it is not open to the Court to re-weigh the evidence which was before the RPD.

**ANALYSIS**

[20] The Applicant says that the RPD's assessment of the totality of the evidence was patently unreasonable, perverse and capricious. He also says that the RPD misstated and misapprehended material evidence before it.

[21] These bare assertions are not supported or explained in any way. The Applicant simply repeats the situation in which he finds himself. He repeats that he was beaten and that the community was insulted and decided he must be killed because he embraced Christianity. None of this has any relevance for the IFA finding that is the basis of the Decision.

[22] He then reiterates what he said at the hearing, that many people from various states in Nigeria visited his father to consult and "he was sure that no matter where he went there would be people who would know him including his family members who are widely spread." The Applicant also argues in his affidavit that "it would be unduly harsh to expect [him] to move to another part of the country and leave [*sic*] in perpetual fear of being captured again after all that he has suffered" and that his "family members and the community could find him if just one member of his community finds that he was residing in any part of the country." His principal argument is as follows:

> It is submitted that with the continue [*sic*] movement of people from state to state in Nigeria the applicant could never be an island. It would amount to a persecution of some sort to expect the applicant to live in isolation. He is not married and definitely would like to marry and relate with people and work. In carrying out any of these activities the applicant is bound to find or meet people who could recognize him.

[23] There is no indication that the RPD overlooked the Applicant's concerns, his view that the community would find him, or any evidence that supported his position.

[24] As the Respondent points out, the RPD properly directed itself to apply the two-pronged test for an IFA endorsed by the Court of Appeal in *Thirunavukkarasu*, above.

[25] The RPD's finding that the proposed IFA met both branches of the test was supported by the evidence and reasonably available to it. The RPD gave significant weight to the objective documentary evidence before it, particularly the United Kingdom *Operational Guidance Note – Nigeria*. This report indicated that "internal relocation to escape ill-treatment from non-state agents is almost always an option and, in the absence of exceptional circumstances, it would not be unduly harsh for an individual to internally relocate." It was open to the RPD to prefer this objective documentary evidence over the Applicant's testimony.

[26] The Applicant says he had been found in Benin City at the company where he then worked, and this shows he can be found anywhere in Nigeria. The RPD was not persuaded that this would make it probable for him to be found in any of the three major cities it considered for the IFA. Although he claimed that "approximately 10 to 15" community elders were angry at him, the RPD was not persuaded that they would be able to locate him in a country of 150 million people. The RPD noted that the Applicant had not established a particularly high profile, and there was no evidence that the alleged agent of persecution had any special resources or connections. This was a reasonable conclusion which was open to the RPD on the evidence.

[27] In the particular context of Nigerian IFA determinations, more is required than a vague assertion that the Applicant will be in danger everywhere in the country. It is for the Applicant to

establish through persuasive evidence why a proposed IFA would not be viable. In *Abiona*, above, Justice Anne Mactavish said at paragraph 4:

> The burden is on the individual seeking refugee protection to establish on a balance of probabilities that there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA: […]. While Mr. Abiona explained why Port Harcourt was not a viable IFA, he did not provide any evidence to show why he could not live safely in Ibadan, beyond his general assertion that he would not be safe anywhere in Nigeria.

[28] In the end, then, it is not that the RPD overlooked, misstated, or misapprehended material evidence. The RPD simply did not accept the Applicant's views and evidence as to why there was no reasonable or viable IFA for him in Nigeria, and relied upon objective evidence for its findings. The reasons are very clear that the RPD considered the Applicant's position fully and they explain why other evidence is to be preferred. The Applicant now disagrees with the RPD's conclusions. Disagreement, however, is not in itself a ground for judicial review. See *Abdollahzadeh v Canada (Minister of Citizenship and Immigration)* 2007 FC 1310 at paragraph 29 and *Deol v Canada (Minister of Citizenship and Immigration)* 2009 FC 406 at paragraphs 70 and 71. Against the objective evidence, the Applicant asserts that community and family will find him anywhere in Nigeria. Court jurisprudence says that this assertion is not sufficient to render the RPD's conclusions based upon objective evidence unreasonable, as Justice Mactavish pointed out in *Abiona*, above.

[29] Even if, on the evidence, it would have been reasonable to accept the Applicant's position, this does not mean that the Decision on IFA was unreasonable. See *Sinan v Canada (Minister of Citizenship and Immigration)* 2004 FC 87 at paragraph 11 and *Medley v Canada (Minister of Citizenship and Immigration)* 2005 FC 365 at paragraphs 7 and 8. The Decision on this point falls

within the *Dunsmuir* range and I cannot interfere even if I might have reached a different conclusion on the evidence.

[30] The Applicant's second argument, that the RPD violated the principle of "natural fairness," is not a separate issue at all. He says the RPD accepted his subjective fear but "disregarded the entire testimony of the applicant and the evidence presented which the Board found to be truthful, by concluding that a reasonable IFA existed for the applicant." However, the Applicant offers no further argument on this point. He is simply attempting to characterize his first point as a "procedural fairness" issue. As the reasons and the record show, the RPD did not disregard the Applicant's testimony on the IFA issue. The RPD accepted the Applicant's subjective fears and took into account his arguments as to why no IFA existed, then explained why it could not accept this position. The RPD clearly referred to evidence that supports a reasonable and viable IFA. There was no procedural fairness error in this approach.

[31] In summary, I cannot find a reviewable error in this Decision. I accept that the Applicant's subjective fears are genuine — as did the RPD — but subjective fear is not sufficient to ground a claim under section 96 or section 97.

[32] Counsel agree there is no question for certification and the Court concurs.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-8566-11 |
| **STYLE OF CAUSE:** | **AGHAHOWA OBAZEE**<br>- and -<br>**THE MINISTER OF CITIZENSHIP AND IMMIGRATION** |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | June 13, 2012 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | HON. MR. JUSTICE RUSSELL |
| **DATED:** | July 10, 2012 |

**APPEARANCES:**

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| Mercy Dadepo | **APPLICANT** |
| Christopher Ezrin | **RESPONDENT** |

**SOLICITORS OF RECORD:**

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| Myles J. Kirvan, Q.C.<br>Deputy Attorney General of Canada | **RESPONDENT** |