

Federal Court



Cour fédérale

Date: 20130118

Docket: IMM-4101-12

Citation: 2013 FC 46

Ottawa, Ontario, January 18, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**MONICA UAMAI
ALISHA EKILADO UAMAI (Minor)
DESMOND OKHIKUN UAMAI (Minor)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns an applicant who, although a Nigerian citizen, was a Spanish resident by reason of marriage. The Applicant lost her right to Spanish residency. The issue was whether she was excluded from a refugee-need of protection claim by virtue of her Spanish residency. As such, the following legislation is applicable:

98. A person referred to in section E or F of Article 1 of

98. La personne visée aux sections E ou F de l'article

the Refugee Convention is not a Convention refugee or a person in need of protection. premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

Immigration and Refugee Protection Act, SC 2001, c 27

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

Convention Relating to the Status of Refugees, 1951, Can TS 1969 No 6

II. FACTS

[2] The Applicant married a Spanish resident who was also Nigerian. In April 2006 the Applicant claimed that she was attacked by Muslims so she left for Spain. Some time later the Applicant discovered that her husband had fathered a child with another Nigerian living in Spain, Esther Victor.

[3] The Applicant claimed that in June 2009 this Esther Victor and some men (apparently Esther Victor was part of an extortion and drug cartel) threatened the Applicant and her children, and her husband was also beaten. Thereafter, the Applicant's family received threats against the Applicant's return to Nigeria.

[4] The Applicant's husband arranged for the Applicant and her children to come to Canada where she immediately applied for refugee protection.

[5] By reason of remaining outside Spain for more than six months in a one-year period, the Applicant lost her residency status in Spain.

[6] The Immigration and Refugee Board [IRB] concluded that the Applicant had the Spanish rights and obligations defined in Article 1E.

[7] To determine if the Applicant is excluded from refugee protection by virtue of Article 1E, the IRB Member addressed the factors set down in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118, [2011] 4 FCR 3 [*Zeng*]:

1. Whether a claimant has status similar to that of a country's nationals in the third country (Spain). The answer was negative.
2. Whether a claimant previously had status and lost it or had access to that status and failed to acquire it. Here the answer was affirmative.
3. Where the above answer is affirmative, there must be a consideration and balancing of various factors to determine if as a result of having lost status or failure to acquire it, a claimant should be excluded. The issues to be addressed include the reason for the loss of status, whether a claimant could return to the third country (Spain), the risk the claimant would face in the home country (Nigeria), Canada's obligations and any other relevant factors.

[8] On this issue, the Member concluded that the loss of status was voluntary, there was no effort to protect status, state protection and internal flight alternatives were available.

[9] On the question of return to Nigeria, the Member was not persuaded that the Applicant's perceived threats from Muslims existed. The Member also found that the Applicant had not claimed in her PIF a fear of her husband's ex-girlfriend (Esther Victor) in connection to Nigeria.

III. ANALYSIS

[10] The Applicant takes issue only with the finding of the third *Zeng* factor and most particularly whether a fear of Esther Victor in Nigeria was claimed.

[11] It is agreed that the standard of review is "reasonableness" (*Canada (Minister of Citizenship and Immigration) v Tajdini*, 2007 FC 227, 2007 CarswellNat 470).

[12] The Respondent takes the reasoning of *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, too far. It does not hold that if a decision-maker errs in its decision or fails to consider a relevant matter, the reviewing court is required to review the record and find a basis therein to support the ultimate result. The reviewing court is required to consider the decision as a whole when determining whether it is reasonable.

[13] In this case, it was reasonable for the Member to conclude from the Applicant's PIF that she was describing her husband's fear of Victor in connection to Spain. The Applicant's fear in regards to Nigeria was largely centered on fear of Muslims.

[14] The reasonableness of this conclusion is supported by the Applicant's claim for refugee protection in Canada where she listed her fear upon return to her country as:

Spain – Esther Victor: Nigeria – Christians and Muslims.

In Nigeria, the Christians and Muslims are always fighting.

In Spain, Esther Victor has threatened my life and my children's life [sic]. She told me to leave my husband. I didn't know he already had two children with her.

[15] The Member's conclusions were reasonably open to him and therefore I conclude that the decision is reasonable.

IV. CONCLUSION

[16] This judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4101-12

STYLE OF CAUSE: MONICA UAMAI
ALISHA EKILADO UAMAI (Minor)
DESMOND OKHIKUN UAMAI (Minor)

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 14, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** PHELAN J.

DATED: January 18, 2013

APPEARANCES:

Richard Odeleye FOR THE APPLICANTS

Bridget A. O'Leary FOR THE RESPONDENT

SOLICITORS OF RECORD:

BABALOLA, ODELEYE FOR THE APPLICANTS
Barristers & Solicitors
Toronto, Ontario

MR. WILLIAM F. PENTNEY FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario