

Federal Court



Cour fédérale

**Date: 20140630**

**Docket: IMM-1949-13**

**Citation: 2014 FC 639**

**Ottawa, Ontario, June 30, 2014**

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

**BETWEEN:**

**EDAFE AKPOTU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT**

**UPON** an application for judicial review under s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a negative Pre-Removal Risk Assessment (PRRA) dated January 18, 2013;

**AND UPON** application for an order quashing or setting aside the decision of the Senior Immigration Officer (the PRRA officer) and an order that the matter be referred back to a different Immigration Officer for redetermination;

**AND UPON** reading the material filed and hearing the oral representations of counsel for the parties;

The applicant is a Nigerian citizen who claimed refugee protection upon arrival in Canada in May 2005 on the basis of political opinion and membership in a social group. The Refugee Protection Division (RPD) denied the applicant's refugee claim on March 23, 2007 on the basis of negative credibility findings relating to the applicant's identity and his fear of persecution. Leave for judicial review of that decision was refused on July 3, 2007. In his PRRA application, filed on May 28, 2012, the applicant alleged new risks relating to his sexual orientation and his long-term same-sex relationship with a Canadian citizen.

Upon consideration of the evidence submitted, the PRRA officer determined that the applicant "may be a gay man", but that he had failed to establish that he would be persecuted on the basis of his sexual orientation or his long-term same-sex relationship in Canada. The officer had found that the evidence did not establish that the applicant had been in a same-sex relationship with a Canadian citizen since 2005, or that he had had other same-sex relations or sexual involvement with men. In particular, the officer found that the partner's letter attesting to their relationship was unreliable, in part because it provided little detail concerning "important aspects of their relationship", and noted that while the men had been in a relationship for more than seven years, the applicant's partner had not applied to sponsor him. The PRRA officer also deduced that the applicant and his partner lived in separate residences on the basis of the address listed on the partner's letter. The officer held that since the applicant claimed that he had pursued a discrete same-sex relationship and there was minimal evidence that he intended to live his life as an openly homosexual man in Canada or in Nigeria, the applicant was not at risk since the

documentary evidenced cited by the officer stated that homosexuality was tolerated in Nigeria as long as homosexual acts were carried out discreetly and in private. Further, the officer found that the applicant had failed to provide sufficient evidence to support a finding of personalized risk. The PRRA officer did not hold a hearing to allow the applicant to respond to the credibility issues relating to his evidence.

Where procedural fairness is implicated, the standard of review is correctness. The Court must determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43.

As stated orally at the hearing, this application is granted as a result of the PRRA officer's breach of procedural fairness in considering the PRRA application. In light of the obvious credibility issues relating to the applicant's alleged risk under sections 96 and 97 of the *IRPA* and the evidence submitted in support of the application, as well as the fact that the evidence in question was at the heart of the matter before the PRRA officer and would have justified allowing the application had it been accepted, the PRRA officer should have exercised discretion to conduct an oral hearing pursuant to paragraph 113(b) of the *IRPA* and 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

In the result, the decision is quashed and the matter is referred back to another Immigration Officer for redetermination.

No question was proposed for certification.

**IT IS THE JUDGMENT OF THIS COURT that:**

1. the application is granted and the matter is remitted for redetermination by a different officer, and;
2. No question is certified.

“Richard G. Mosley”

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Judge