

Federal Court



Cour fédérale

**Date: 20111123**

**Docket: IMM-3005-11**

**Citation: 2011 FC 1351**

**Toronto, Ontario, November 23, 2011**

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

**BETWEEN:**

**VIVIAN IHUOMA OHAKAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application is a judicial review of the Refugee Protection Division's (RPD) decision that the Applicant is not a person in need of protection pursuant to s. 96 or s. 97(1)(a) or (b) of the *IRPA*. The Applicant argues that the RPD erred in assessing the reasonableness of a viable internal flight alternative (IFA) in Nigeria proposed by the RPD to be the city of Abuja.

[2] The RPD accepted the Applicant's evidence that: she is a citizen of Nigeria; while living in Lagos in May 2008 she was beaten and raped by her live-in-boyfriend, suffering a miscarriage as a result; the violence caused her to flee to live with her cousin in Abuja; the boyfriend found her there and convinced her to return to Lagos with him; the violence continued, which caused her to flee to Canada in September of 2008 to seek refugee protection on gender grounds; upon arrival in Canada she lived in a shelter in Toronto where a friend of her boyfriend tracked her down, prompting the boyfriend to call the shelter to find her; and, as a result, the Applicant fled to Winnipeg where she currently lives, and where her claim for protection was heard. By accepting the Applicant's evidence the RPD can be taken to have determined that, if the Applicant returns to Nigeria, there is more than a mere possibility that she will be persecuted by the man from whom she is fleeing.

[3] With respect to the RPD's proposed IFA in Abuja, three critical findings were made: a negative credibility finding; an embellishment finding; and an IFA reasonableness finding. The negative credibility finding relates to the Applicant's conduct after learning that her persecutor had tracked her down at the shelter where she was staying in Toronto. The RPD interpreted the evidence to find that the Applicant had denied that she was told by shelter workers to go to the police; however, from the transcript of the Applicant's evidence before the RPD (see: Certified Tribunal Record, p. 128), I find that there is no doubt that the RPD misinterpreted the evidence as identified in the Applicant's affidavit in support of the present Application (see: Applicant's Application Record, p. 17). The erroneous negative credibility finding is used by the RPD to support the following conclusion:

I therefore find that the claimant is not credible in her account of what she was told at the shelter, and therefore there is no explanation for her failure to contact the Toronto police, had she genuinely believed that Mr. Obi had traced her whereabouts to Canada. I

therefore find that the claimant was embellishing her testimony about Mr. Obi's alleged ability to locate her if she should relocate.

[Emphasis added]

(Decision, para. 17)

[4] The RPD's IFA reasonableness finding is as follows:

The claimant stated that Mr. Obi has a demonstrated ability to locate her whereabouts. She noted that the first time she went to Abuja to say with her distant cousin, Mr. Obi had tracked her down there. However, on that occasion, she testified that Mr. Obi had talked to the claimant's friend who had dropped the claimant off and who informed him that the claimant was living there. The claimant said that she had then been convinced to return to Lagos and resume her relationship with Mr. Obi. The claimant also stated that Mr. Obi has a construction business and many contact in Nigeria, and following the hearing she submitted a copy of a business card indicating that Mr. Obi had branch offices in Lagos, Abuja, Port Harcourt and Kawo-Kano. However, Abuja is a large city, and even with business contacts there, there is no indication of how Mr. Obi would become aware that the claimant had returned to Nigeria to the city of Abuja, if the claimant did not inform extended relatives about her arrival in Abuja.

(Decision, para. 15)

[Emphasis added]

In my opinion, the RPD's erroneous negative credibility and embellishment findings, in large part, unfairly fuelled rejection of the Applicant's statement and evidence tendered to prove that Abuja is not a reasonable IFA. The Applicant argues that it is unreasonable for the RPD to expect that, to protect herself, the Applicant must not contact her family in Abuja. I agree. The proposed IFA in Abuja is unreasonable because it does not take into consideration the support needs of the Applicant, being a woman who had been assaulted and raped by her persecutor. Because the proposed IFA in Abuja requires the Applicant's to make a secret return to Nigeria to what amounts

to a life in hiding and exclusion from her natural support group, being her extended family, I find that the RPD's decision is manifestly unreasonable.

**ORDER**

**THIS COURT ORDERS** that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3005-11

**STYLE OF CAUSE:** VIVIAN IHUOMA OHAKAM v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 22, 2011

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** NOVEMBER 23, 2011

**APPEARANCES:**

Solomon Orjiwuru FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Solomon Orjiwuru FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario