

# Nosakhare v. Canada (Minister of Citizenship and Immigration)

Between  
Brown Nosakhare, applicant, and  
The Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 1120  
2001 FCT 772  
Court File No. IMM-5023-00

**Federal Court of Canada - Trial Division**  
**Toronto, Ontario**  
**Tremblay-Lamer J.**

Heard: July 4, 2001.  
Judgment: July 6, 2001.  
(14 paras.)

*Aliens and immigration — Admission, refugees — Grounds, well founded fear of persecution — Particular social group defined — Religious belief — Persecution, protection of country of nationality — Appeals or judicial review, grounds.*

Application by Nosakhare for judicial review of a decision that he was not a Convention refugee. Nosakhare was a 25-year-old Nigerian who claimed to have a well-founded fear of persecution on the basis of membership in a particular social group, namely children of cult members who refuse to follow in their father's footsteps by joining the Ogboni cult. In 1997, Nosakhare converted to Christianity, which caused great conflict within his family. Following his father's death, Nosakhare was expected to take over his father's place in the cult. He refused to do so, and fled. When he was found, he was severely beaten and locked up for a week without food. Although the Board accepted Nosakhare's description of events, it found that he had been the victim of criminal acts by this particular group and not of persecution within the definition of Convention refugee. The Board also determined that there existed an internal flight alternative, although it failed to identify in which part of Nigeria it would be objectively reasonable for Nosakhare to relocate.

**HELD:** Application allowed. The matter was referred back for redetermination by a newly constituted panel. The Board erred in its findings of fact. There was a nexus between Nosakhare's claim and one of the five convention grounds. The kidnapping and beating were acts carried out by a religious group as a result of Nosakhare's religious belief. Further the internal flight alternative analysis was not proper. An internal flight alternative could not be speculative or theoretical.

**Statutes, Regulations and Rules Cited:**

Immigration Act, R.S.C. 1985, c. I-2, s. 2(1).

**Counsel:**

K. Jesuorobo, for the applicant.

J. Todd, for the respondent.

---

1 **TREMBLAY-LAMER J.** (Reasons for Order and Order):— This is an application for judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the Board), dated August 25, 2000, which determined that Mr. Brown Nosakhare (the applicant) was not a Convention refugee.

2 The applicant is a 25-year-old Nigerian who claimed to have a well-founded fear of persecution on the basis of membership in a particular social group, namely children of cult members who refuse to follow in their father's footsteps by (re)joining the Ogboni cult.

3 The applicant, as the first born son, was inducted into the Ogboni cult which allegedly engages in human sacrifice and cannibalism. The applicant realized, as he grew older, that he could not continue his membership in such a group and converted to Christianity in 1997, which caused great conflict within his family. His father told him that he could not leave the cult because there were severe penalties if he did.

4 The applicant alleges that when his father died in November of 1999, cult members expected him to perform certain rituals, which included removing parts of his father's body. The applicant refused to allow cult members to take parts of his father's body which caused a clash.

5 Cult members also insisted that the applicant attend the next meeting and take his father's position. The applicant decided to flee with his mother from Benin City (Edo State) to Warri (Delta State) and hid there for two weeks, until they found him, beat him and took him to Abudu (Edo State), where he was locked up for a week, without food, in the Chief of the cult's house. Cult members threatened the applicant with death if he did not take his father's place in the cult which he finally agreed to in order to secure his release. He then made his way to Canada.

6 In its decision dated August 25, 2000, the Board found that the applicant testified in a forthright manner but when questioned about some of the details he gave about cult activities which did not seem to be corroborated by the documentary evidence, his response was that the information coming out of Nigeria is controlled. The Board preferred the documentary evidence on the cult which does not present it as a violent one.

7 The applicant testified that he did not report the kidnapping to the police saying that his father told him that the cult had members within the police force and that it would be useless for him to seek protection from them. The Board noted the applicant responded to questions on the cult on the basis of knowledge acquired from his father.

8 The Board accepted the applicant's description of events but found that he had been the victim of criminal acts on the part of this particular group and not of persecution within the definition of Convention refugee. The Board found that there existed no nexus between the applicant's allegations and the definition of Convention refugee.

9 The Board then examined and determined that there existed an Internal Flight Alternative for the applicant in Nigeria.

10 Subsection 2(1) of the Immigration Act, R.S.C. 1985, c. I-2, defines a Convention refugee as "any 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 [...]."

11 It is clear from this definition that there must be a nexus between the persecutory conduct and one of the five grounds provided therein; the existence of such nexus is a question of fact which falls clearly within the Board's expertise and is not subject to judicial review unless made in a perverse or capricious manner or without regard to the material before it (See, e.g., *Mia v. M.C.I.*, [2000] F.C.J. No. 120). I am satisfied that the Board erred in its findings of fact.

12 The evidence clearly demonstrates that the kidnapping and beating endured by the applicant were acts carried out by a religious group as a result of the religious belief of the applicant. Thus, I am satisfied that based on the record before the Board there was a nexus between the applicant's claim and one of the five convention grounds.

13 Further, notwithstanding the finding that the applicant failed to establish that he fell within the definition of a Convention refugee, the Board conducted an IFA analysis and concluded that there was a viable one available to the applicant. Given that Nigeria is the largest country in Africa with a population of over one hundred million, the Board did not find it credible that a young 24-year-old man who had worked in his father's bakery could not relocate without undue hardship elsewhere in Nigeria. Again, I am not satisfied that this is a proper IFA analysis. An IFA cannot be speculative or theoretical, it has to be a realistic option. Here, the Board failed to identify in which part of the country it would be objectively reasonable for the applicant to relocate.

14 For these reasons, the application for judicial review is allowed. The matter is referred back for redetermination by a newly constituted panel.

TREMBLAY-LAMER J.