

Oloyede v. Canada (Minister of Citizenship and Immigration)

Between
Bolaji Oloyede, applicant, and
The Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 453
2001 FCT 255
Court File No. IMM-2201-00

Federal Court of Canada - Trial Division
Toronto, Ontario
McKeown J.

Heard: March 20, 2001.
Judgment: March 28, 2001.
(10 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Grounds, religion — Refugee Division, determination by — Appeals or judicial review, grounds.

Application by the refugee, Oloyede, for judicial review of a decision by the Convention Refugee Determination Division that he was not a Convention refugee. Oloyede was from Nigeria and his father was a member of a vampire cult. Oloyede claimed to have a well-founded fear of persecution on grounds of membership in a particular social group, namely, children of cult groups who refused to follow in their fathers' footsteps and his religion. Although he was dedicated to the group as a teenager, he presently refused to adhere to the cult. As a result of his decision, he was the victim of several serious criminal acts perpetrated by the cult members. Cult members who came looking for him shot his mother. As well, they had burned down one of his father's businesses and had blown up one of his cars. The Board found that Oloyede had been the victim of criminal acts, and not of persecution under the Convention definition. The Board found that no nexus existed between Oloyede's allegations and the Convention definition. The Board also went on to conduct an Internal Flight Alternative.

HELD: Application dismissed. The Board did not err in law by finding that there was no nexus between Oloyede's claim and any of the Convention grounds. Oloyede supplied no evidence of religious persecution. It was therefore open to the Board to determine that Oloyede had been subjected to cult criminal activity, rather than religious persecution based on his membership in a particular social group. As a result, it was open to the Board to find that there was no nexus between Oloyede's allegations and the Convention definition of persecution by reason of membership in a particular social

group. The Board's Internal Flight Alternative analysis was perverse. However, in view of the finding that Oloyede failed to establish a nexus to the Convention definition, there was no need for the Board to pursue the Internal Flight Alternative issue.

Counsel:

Nainesh Kotak, for the applicant.
Ian Hicks, for the respondent.

1 **McKEOWN J.** (Reasons for Order and Order):— The applicant seeks judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the "Board") dated March 24, 2000 when the Board found the applicant was not a Convention refugee. The two issues are:

1. Whether the Board erred in law by finding that there was no nexus between the claim of the applicant and any of the Convention grounds.
2. Whether the Board's analysis concerning the issue of Internal Flight Alternative ("IFA") is perverse or capricious.

The Facts

2 The applicant claimed to have a well-founded fear of persecution on grounds of membership in a particular social group, namely, children of cult groups who refuse to follow in their fathers' footsteps and his religion.

3 The applicant claimed that his life is at risk if he does not follow in his father's footsteps and join the Vampire cult in his home country of Nigeria. The applicant further alleged that he was dedicated to the group when he was 14 years old and was given three cuts on his arm and a cut on his face. He claimed further that his mother was shot by cult members who came looking for him and members of his cult burned down one of his father's businesses and had blown up one of his cars just before he entered it. He claims that the cult practices human sacrifice and he would have to sacrifice one of his daughters if he joined. The applicant also states he is Christian and joining the cult would prevent him from living according to his religious beliefs.

4 At pages 4-5 of its reasons, the Board concluded that:

[h]aving considered all the evidence, the panel finds that the claimant has been the victim of criminal acts and not of persecution under the Convention definition. The panel thus finds that no nexus exists between the claimant's allegations and the Convention definition.

5 At page 3 of its reasons, the Board also found that:

the retaliatory acts of the Vampire cult that the claimant enumerated are criminal acts. The shooting to death of his mother by two gunmen, whether Vampire operatives or otherwise, is a criminal act under any law. So is the blowing up of a car or the burning down of a business. The panel thus finds that the claimant is the victim of a group engaging in criminal acts.

6 The Board went on to discuss the applicant's claim that the practices of the Vampire cult went against his own religious convictions and that he might have to engage in these practices if he returned to Nigeria because he would not receive any state protection. The Board quoted from *Minister of Employment and Immigration v. Villa Franca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.) at 132 - 133:

Terrorism in the name of one warped ideology or another is a scourge afflicting many societies today; its victims, however much they may merit our sympathy, do not become Convention refugees simply because their governments have been unable to suppress the evil ... where a state is in effective control of its territory, has military, police and civil authority in place, and make serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection.

7 There were documents before the Board which showed that the government was arresting people for being members of cults and they had banned cults. The Board made a request for information (request number NGA31340.E) concerning membership in cults after graduation. The Research Directorate of the Immigration and Refugee Board's response cited information provided by a professor of religious studies who had completed a study of cults in Nigeria. The Directorate's response stated:

According to the Professor of Religious Studies there are three types of cults: "the terrorists" who are involved in thievery, "the mafia" which specialize in drug trafficking and "the godfather" type who are involved in protection rackets and extortion.

This information supports the finding that the violence suffered by the applicant constituted criminal activity, not religious persecution.

8 Furthermore, the applicant supplied no evidence of religious persecution. It was certainly open on the evidence for the Board to determine that the applicant had been subjected to cult criminal activity rather than religious persecution based on his membership in a particular social group. Thus it was open to the Board to find that there

is no nexus between the applicant's allegations and the Convention definition of persecution by reason of membership in a particular social group.

9 Notwithstanding the finding, the Board went on to conduct an IFA analysis which was perverse. The Board concluded that since documentary evidence indicates that no cult groups existed beyond Nigeria, therefore the Vampire cult does not extend across all of Nigeria. The Board failed to consider the particular circumstances of the applicant in its analysis. However, in view of the finding that the applicant failed to establish a nexus to the Convention definition, there was no need for the Board to pursue the IFA issue.

ORDER

10 The application for judicial review is dismissed.

McKEOWN J.