

Federal Court



Cour fédérale

**Date: 20110616**

**Docket: IMM-6869-10**

**Citation: 2011 FC 711**

**Toronto, Ontario, June 16, 2011**

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

**BETWEEN:**

**AKANBI NOAH OTAPO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a claim for refugee protection by a citizen of Nigeria who identifies his persecutor as the police in Nigeria because of his failure to pay them a bribe. The Applicant's claim was rejected by the Refugee Protection Division (RPD) on the basis of a global negative credibility finding, which is dependent on two principal implausibility findings.

[2] With respect to the implausibility findings made, I find that the RPD reasonably applied the correct approach as stated by Justice Muldoon in the decision of *Istvan Vodics v. Minister of Citizenship and Immigration*, 2005 FC 783:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[3] On the basis of verifiable documentary evidence, the RPD properly established the expectations that, because the Applicant did not pay a bribe he would be arrested and would be beaten in custody, and his family would be arrested and detained if he fled. In applying these expectations the RPD made the factual findings that “neither in his oral nor written evidence did [the Applicant] suggest that he was beaten or otherwise mistreated during his confinement (Decision, para. 5), and “no member of the claimant’s family, including his 14-year old daughter

has been arrested or detained by the police since he absconded” (Decision, para. 10). The factual findings form the basis of the implausibility findings.

[4] With respect to the first factual finding, the Applicant in his PIF states that he “was beaten and intimidated by the police and two criminals” while in custody (Applicant’s Application Record, p. 36), and with respect to the second factual finding, there is no direct evidence on the record before the RPD concerning police misconduct *vis a vis* members of the Applicant’s family. On the latter point I accept Counsel for the Applicant’s argument that the issue of such conduct was simply not engaged in the course of deciding the Applicant’s claim. As a result, I do not accept Counsel for the Respondent’s argument that no misconduct can be inferred from the fact that there is no evidence of such misconduct on the record. As a result, I find that the factual findings are unsubstantiated.

[5] As a result, I find that the decision under review is unreasonable because it is not defensible on the facts.

**ORDER**

**THIS COURT ORDERS that:**

The decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

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"Douglas R. Campbell"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-6869-10

**STYLE OF CAUSE:** AKANBI NOAH OTAPO v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 16, 2011

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

**DATED:** JUNE 16, 2011

**APPEARANCES:**

RICHARD ODELEYE FOR THE APPLICANTS

MONMI GOSWAMI FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

RICHARD ODELEYE FOR THE APPLICANT  
BARRISTER & SOLICITOR  
TORONTO, ONTARIO

MYLES J. KIRVAN FOR THE RESPONDENT  
DEPUTY ATTORNEY GENERAL OF CANADA  
TORONTO, ONTARIO