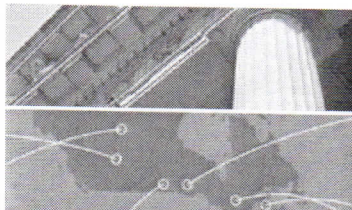
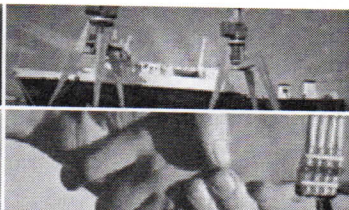
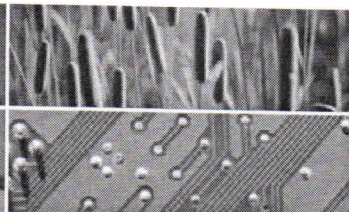


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Case name: Adegbola v. Canada (Citizenship and Immigration)

Date: 2007-05-14

Neutral citation: 2007 FC 511

File numbers: IMM-3758-06

Date: 20070514

Docket: IMM-3758-06

Citation: 2007 FC 511

Ottawa, Ontario, May 14, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

VICTORIA BOSEDE ADEGBOLA

and

Applicant

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), for judicial review of a decision by the Immigration and Refugee Board (Refugee Protection Division)

(the Board) dated June 16, 2006, which determined that the applicant was neither a Convention refugee nor a person⁺ in need of protection.

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[2] The applicant requests that the decision be set aside and remitted for redetermination by a differently constituted panel of the Board. The applicant also seeks an order declaring that she is a Convention refugee.

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Background

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[3] The applicant, Victoria Bosede Adegbola, is a citizen of Nigeria. She alleged having a fear of persecution on the basis of her membership in a particular social group, namely, women abused by their common-law husbands. She also claimed to be a person in need of protection. The applicant set out the circumstances leading to her claim for protection in the narrative portion of her Personal Information Form (PIF).

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[4] The applicant met her common-law husband, Tunde Olawole, in the spring of 1990 and they began living together in December 1990. The applicant was a single parent at the time and was struggling to work and care for her daughter. In 1998, the applicant's husband began physically abusing her. He returned home intoxicated one night, and she told him not to drive drunk. He became angry and beat her. He apologized the next day and the relationship continued.

[5] The applicant's husband beat her again in 1999, and she was taken to the hospital. When she returned to work the next day, her supervisor took her to the police station and reported the incident. The applicant claimed that the police treated her situation as a domestic matter that was better resolved within the family. She was beaten by her husband again later that year. He told her that she should not make him angry as he had friends in the security force. He threatened to kill her should she leave him.

[6] On December 24, 2000, the applicant returned home and found her husband lying in bed with her daughter. He threatened the applicant with death should she report the incident. The applicant was unable to seek help for her daughter until early January 2001, as she was being watched by her husband. When he left home, the applicant's daughter told her that he had been sexually abusing her for a long time, but she was uncertain as to when the abuse had begun. The applicant took her daughter to the hospital and the doctor confirmed that she had suspicious bruises, but did not appear to have been raped.



[7] The applicant took her daughter to the police station, but was told that the matter was private and that the police could not intervene. When her husband found out that she had reported the sexual abuse, he returned home and beat her. He threatened her and later moved out of their home. He stayed away from the family until May 2005, when he returned to the applicant's home. The applicant did not want him to return, but she was pressured by the police to accept him. She was beaten by her husband and he continued to molest her daughter.

[8] In August 2005, the applicant was seriously beaten by her husband. She was introduced to a church official who helped her flee to Canada. The applicant left Nigeria for Canada on August 11, 2005. She claimed refugee status three days later. The refugee hearing took place on May 5, 2006, and her claim was rejected by decision of the Board, dated June 16, 2006. This is the judicial review of the Board's decision.

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Board's Reasons

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[9] The Board determined that the applicant was neither a Convention refugee, nor a person in need of protection. The claim turned on the credibility of the applicant's allegation that she had suffered harm and feared for her safety at the hands of her husband, Olawole, should she return to Nigeria. The applicant could not explain why she did not have any photos of herself and Olawole together. However, she had obtained other documents, and should have been able to establish that he lived with her. The Board could not confirm that the man in one of the photos was Olawole. As a result, the applicant was unable to establish that she had been in a relationship with the man who had allegedly abused her.

[10] The applicant specified certain dates while testifying, but was unable to provide a reasonable explanation for having forgotten the date or month in 1999 when she had suffered a traumatic beating by Olawole. As a result, no evidentiary weight was given to evidence regarding this incident. The applicant's story also contained discrepancies with respect to the circumstances surrounding the alleged beating.

[11] The Board also noted inconsistencies with respect to the applicant's description of the events which unfolded after she reported the abuse of her daughter to the police. In her PIF, the applicant noted that Olawole drew out a gun and threatened her if she told anyone about the incident, stayed home for a week and then left with his belongings. However, she testified that Olawole beat her, left home that day and did not take anything with him.

[12] When asked why she did not mention that Olawole had a gun during her testimony, the applicant became  defensive and stated that she had not been given the opportunity to do so. When asked about the discrepancy in the amount of time Olawole stayed home after she reported the incident, the applicant responded that she was confused and did not remember. Finally, with respect to his belongings, the applicant stated that Olawole had not taken anything with him. Given these discrepancies, the Board found that the applicant's evidence with respect to this event was not credible and concluded that she had not been assaulted in January 2001.

[13] The Board also noted problems with the applicant's description of the circumstances surrounding the sexual abuse suffered by her daughter:

- a letter from her daughter indicated that Olawole had sexually assaulted her in December 2000, and had made sexual comments to her when he went on a trip;
- the applicant testified that her daughter told her that Olawole had touched her sexually long before he was discovered in December 2000;
- when asked about this statement, she responded that Olawole had never had intercourse with her daughter, but had sexually touched her daughter before he was caught; and
- the applicant's statement that her daughter had told her that Olawole had touched her breasts before December 2000 was not confirmed by any documents, nor was it consistent with her earlier testimony.

[14] The Board found that inconsistencies in the evidence led to the conclusion that the applicant was not truthful about the alleged sexual assaults against her daughter. The Board found that the lack of trustworthy documents and the applicant's inconsistent evidence led to the conclusion that she had failed to establish an objective basis for her fear of persecution. In addition, the Board concluded that the claimant, more likely than not, would not face serious harm if returned to Nigeria.

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Issues

[15] The applicant submitted the following issues for consideration:

1. Whether the Board proceeded on improper principles and based its decision on erroneous findings of fact made in a perverse or capricious manner without regard for the material before it and or whether the Board's assessment of the totality of the evidence was patently unreasonable and thereby subject to review?
2. Whether the panel's credibility findings were made in a perverse and capricious manner and therefore a reversible error?



[16] I would rephrase the issues identified by the applicant as follows:

Did the Board err in finding that the applicant lacked credibility?

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Applicant's Submissions

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[17] The applicant submitted that where an administrative tribunal: (1) proceeded on improper principles; (2) based its decision on erroneous factual findings, made in a perverse or capricious manner without regard to the material; (3) made a decision based upon an error of law; or (4) acted in bad faith, its decision could be quashed. It was submitted that where a tribunal based its decision upon unreasonable inferences, the decision should be overturned.

[18] The applicant submitted that the Board misunderstood the evidence and that its decision was based upon unwarranted inferences. It was submitted that the Board failed to consider vital evidence which supported the applicant's claim and explained why she fled Nigeria. It was submitted that where an applicant swears to the truth of certain allegations, the allegations are presumed true unless there are reasons to doubt their truthfulness (see *Armson v. Canada (Minister of Employment and Immigration)* (1989), 101 N.R. 372, 9 Imm. L.R. (2d) 150 (F.C.A.)).

[19] The applicant submitted that the Board erred in impugning her credibility because she had not produced a photo of herself with her husband. It was submitted that the Board erred in failing to clearly set out why her credibility was doubted upon this basis. The applicant noted that if the photograph existed, it would have been very hard to obtain when she was fleeing Nigeria. It was submitted that the Board could have specifically requested such a photo under the commentary to Rule 7 of the *Refugee Protection Division Rules*, S.O.R./2002-228.

[20] The applicant submitted that the Board erred by focusing upon small variances between her PIF and her oral testimony in making its credibility finding. It was submitted that there were no discernible contradictions between the applicant's testimony and her daughter's letter regarding the allegations of sexual abuse. The applicant submitted that in weighing evidence and assessing credibility, the Board should act reasonably and in good faith.

[21] The applicant submitted that credibility findings leading to a negative decision must be germane to the central issue of the refugee claimant's persecution (see *R.K.L. v. Canada (Minister of Citizenship and Immigration)* (2003), 228 F.T.R. 43, 2003 FCT 116). It was submitted that the Board erred in impugning her credibility on the basis of peripheral issues. In *Valtchev v. Canada (Minister of Citizenship and Immigration)* (2001), 208 F.T.R. 267, 2001 FCT

776, the Court held that tribunals should be careful when rendering decisions based upon lack of plausibility, since  refugee claimants come from diverse backgrounds and actions which may appear implausible by Canadian standards, may be plausible when considered from their milieu.

Respondent's Submissions

[22] The respondent submitted that the Board's decision withstood review on the standard of patent unreasonableness (see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.)).

[23] The respondent noted that the Board's adverse credibility finding was based upon omissions, contradictions and inconsistencies in the applicant's evidence. It was submitted that the Board gave the applicant an opportunity to address these concerns and supported its credibility finding with sufficient reasons. The respondent submitted that the finding was reasonably open to the Board (see *Sahi v. Canada (Minister of Citizenship and Immigration)* (2001), 105 A.C.W.S. (3d) 1120, 2001 FCT 527).

[24] The respondent submitted that omissions in a claimant's PIF may be considered by the Board in assessing a claimant's credibility. It was submitted that consistency between one's PIF and oral testimony was important to establish a credible basis for a claim (see *Castroman v. Canada (Secretary of State)* (1994), 81 F.T.R. 227, 27 Imm. L.R. (2d) 129 (F.C.T.D.)). The respondent submitted that while the discrepancies in the applicant's evidence might seem insignificant, they cumulatively supported a negative credibility finding (see *Nejme v. Canada (Minister of Citizenship and Immigration)* (1994), 54 A.C.W.S. (3d) 321 (F.C.T.D.)).

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[25] The respondent noted that the applicant bore the responsibility of providing the Board with evidence establishing her connection to the alleged agent of persecution, Tunde Olawole (see *El Jarjouhi v. Canada (Minister of Citizenship and Immigration)* (1994), 48 A.C.W.S. (3d) 790 (F.C.T.D.)). It was submitted that the Board was entitled to draw a negative inference from her inability to prove her common law relationship with Olawole. The respondent submitted that the applicant's mere disagreement with the Board's conclusion did not constitute a sufficient basis for intervention by the Court (see *Ye v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1233 (C.A.) (QL)).

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Analysis and Decision

**Standard of Review**

[26] The Board's credibility findings are entitled to a high level of deference and are subject to review on the standard of patent unreasonableness (see *Aguebor* above).

[27] **Issue 1**

Did the Board err in finding that the applicant lacked credibility?

The Board determined that the applicant lacked credibility because: (1) she failed to provide evidence of her relationship with Olawole; (2) she failed to provide details about a beating which allegedly took place in April 1999; (3) there were inconsistencies in her evidence regarding the beating which allegedly took place in January 2001; and (4) there were inconsistencies in her evidence with respect to the sexual abuse of her daughter. The applicant submitted that the Board relied upon peripheral inconsistencies in order to undermine her credibility, and that most of her evidence was consistent. The respondent submitted that the Board was entitled to question the applicant's credibility on the basis of the inconsistencies in her evidence.

[28] *Existence of Common-Law Husband*

The applicant provided the Board with the following evidence which specifically named Olawole as her common-law husband: (1) her sworn testimony; (2) her PIF and narrative; and (3) a letter from her daughter. The following documents constitute evidence that the applicant had a common-law spouse, but do not specifically name Olawole: (1) Port of Entry notes; (2) a letter from Pastor Timothy; (3) a letter from pastor Toyin Awotide; and (4) photographs. There is also evidence on file indicating that the applicant was treated for injuries at a hospital on April 4, 1999.

[29] In my view, there was evidence indicating that the applicant was involved in a spousal relationship with someone who was abusing her. Therefore, the fact that she failed to provide a photo of her common-law husband does not support a negative credibility finding.

[30] *1999 Assault*

The Board asked the applicant why she had omitted the specific date and extent of the 1999 assault noted in her PIF form. The applicant answered that it had not occurred to her. The Board did not accept that she could not explain why she had forgotten the exact date of the beating, and attributed little evidentiary weight to the evidence

provided regarding the incident. The refugee hearing was held about seven years after the date of this assault. In my⁺ view, the specific date upon which it occurred was not particularly relevant to her credibility. The applicant's PIF indicated that during the beating:

He threw me against the wall and I hit my head on the floor. It started bleeding, I screamed. My daughter screamed too. A neighbour came and helped me to the hospital, where I was attended to.

[31] An amendment to the applicant's PIF indicated that the applicant's mouth and hands were injured in the incident. In addition, a letter from the hospital which treated her confirmed that the incident took place on April 4, 1999. In my view, the applicant's credibility bears a tenuous connection to her inability to recall the date of an incident which took place seven years ago. I would note that this is especially the case, given that there was other evidence confirming the nature of her injuries and the date upon which they were inflicted.

[32] *Actions Following Report of Sexual Abuse*

The Board noted certain discrepancies in the applicant's evidence with respect to her husband's actions after she reported the sexual abuse of her daughter to the police. Her PIF indicated that her husband drew a gun, stayed home for a week and left with his belongings. However, during her testimony, the applicant did not mention the gun until prompted to do so by the Board. She testified that her husband left the day he came home to confront her and did not take his possessions with him. The following are excerpts of the hearing transcript where the applicant appears to contradict herself:

CLAIMANT: On his arrival from that trip he came in and he frowned his face and he started beating me up again. He said that he had comments that I had already reported the case to the police and queried my intention of reporting the matter to the police. He left home and left his belongings at home. I had peace of mind and I was living with my daughter until 2003.

PRESIDING MEMBER: Okay, so just back to – when did he get back from his trip, the last trip?

CLAIMANT: He came back the following weekend.

...

PRESIDING MEMBER: ... And I asked you several questions surrounding that incident and at no point did you mention that he pointed a gun at you. Why is that?

CLAIMANT: The reasons why I didn't mention it, when I attempt to answer your question, before I can finish the question you always said next.

...

He pulled a gun on me. After pointing the gun on me, he told me that if I don't care, if I'm not careful by myself, that he will kill me. That was the occasion on which he walked out and he left the home.



...

PRESIDING MEMBER: So, how – did he just leave after he did that? He came home, and how long was he there before he beat you up?

CLAIMANT: He came home, he frowned his face, and as soon as he came in he started beating me up. He accused me of having reported him to the police.

PRESIDING MEMBER: Okay, so he beat you the same day that he came home.

CLAIMANT: It was the same day.

PRESIDING MEMBER: And did he leave the same day?

CLAIMANT: Yes, the same day.

COUNSEL: Did he leave the same day?

CLAIMANT: He left home immediately he beat me up, the same day.

PRESIDING MEMBER: Okay. He took all of his stuff and left?

CLAIMANT: He didn't take anything.

PRESIDING MEMBER: When did he take his stuff?

CLAIMANT: He didn't take his stuff. He left everything and he left himself.

[33] The details of the event upon which the Board is focusing took place in early January 2001, over six years ago. Certain details, such as the day Olawole left the applicant's home, and whether he took his belongings with him, are clearly peripheral to the case at hand. While it was open to the Board to question the applicant's failure to recall that Olawole had aimed a gun at her during the alleged incident, I do not believe that this finding was necessarily sufficient to ground a negative credibility finding.

[34] *Sexual Assault Against Daughter*

The following evidence of the alleged sexual abuse suffered by the applicant's daughter formed the basis of the Board's finding:

The daughter's letter indicated that Olawole had sexually assaulted her in December 2000 and had previously made sexual comments toward her.

The applicant's PIF indicated that her daughter had told her that Olawole had been "touching her in her private part for a long time", but she could not say exactly when it had begun. The PIF stated that her daughter had been examined by a doctor, who confirmed bruising but no sign of rape.

A letter from the doctor confirmed the applicant's testimony that her daughter had been sexually assaulted, but not raped.

During the hearing, the applicant testified that her daughter had told her that Olawole had been sexually abusing her for a long time. The applicant also confirmed that he had never raped her daughter.

[35] The Board found that the applicant's testimony and PIF, which indicated that Olawole had sexually assaulted daughter prior to the December 2000 incident, contradicted the daughter's letter. In my opinion, the Board erred in relying upon this alleged inconsistency and appears overzealous in its approach to the evidence. The daughter's letter does not indicate that the first time she was sexually assaulted by Olawole was in December 2000, she simply states that she was assaulted by him on this date and her mother had intervened. I would note that the applicant's testimony is consistent with the statement in her PIF that her daughter had been subjected to sexual abuse by Olawole "for a long time" prior to his discovery in 2000. The applicant's evidence that her daughter was assaulted but not raped was also confirmed in the doctor's letter. I do not believe that the evidence in this regard was inherently contradictory, and I find that the Board erred in finding that it lacked credibility.

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[36] Based on my conclusions, I am of the view that the Board's negative credibility finding was patently unreasonable.

[37] The application for judicial review is therefore allowed and the matter is referred to a different panel of the Board for redetermination.

[38] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[39] **IT IS ORDERED** that the application for judicial review is allowed and the matter is referred to a different panel of the Board for redetermination.



“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c.27.:

- | | |
|--|--|
| <p>96. A Convention refugee is a 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,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p> <p>97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of</p> | <p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p> <p>97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;</p> |
|--|--|



torture within the meaning of Article 1 of the Convention Against Torture; or

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-3758-06

STYLE OF CAUSE:

VICTORIA BOSEDE ADEGBOLA

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION



PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 2, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: May 14, 2007

APPEARANCES:

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