



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE
HUIS CLOS
TA5-07252

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

November 25, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

December 20, 2005

DATE DE LA DÉCISION

CORAM

Ken Sandhu

CORAM

FOR THE CLAIMANT(S)

**Elvira Akinyemi
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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a 39-year old citizen of Nigeria seeks refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

Allegations

The claim for refugee protection is based on the claimant's fear of persecution on the grounds of his religion and his membership in a particular social group, namely, bisexual men in Nigeria.

The following are the claimant's allegations:

He has always known that he fancied men since his secondary school days. The secondary school he attended was a residential boys' school. His first affair was with a fellow student at the school. He has known that homosexuals were not tolerated in Nigeria and saw on two occasions men being severely punished for homosexual acts in the village. As the only male child in the family, his father, a 1 chief, expected him to take over his position and marry and produce a male heir to the throne. He was therefore married in 2000, but the marriage was a sham because of his preference for the male sex.

He would bring male lovers home when his wife was out of town. He had an affair with that started in the University before his marriage and lasted until after his marriage. In 2004, he met 20-year-old who was a son of a retired police

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

He invited [redacted] for the weekend in [redacted] 2005, when his wife was expected to be out of town. However, on [redacted] 29, 2005, his wife's sister walked into the room and caught him and [redacted] in a compromising position. She started to scream. Her screams attracted the neighbours. The neighbours assaulted him and [redacted] The claimant ran away and went into hiding. [redacted] in order to save his own life, reported to his father that he was lured by the claimant and assaulted against his wish.

The retired police [redacted] reported the matter to the police. The claimant's wife became very upset with him when she found out about his homosexuality. His father has disowned him and barred him from returning to the family home. The police arrested his mother and detained her for three days to pressure her into disclosing his whereabouts. Fearing for his life, with the help of a friend who arranged an agent to smuggle him into Canada, he arrived on [redacted] 2005. He is afraid to return to Nigeria because he feels that [redacted] father and the police are looking for him. His father has barred him from returning to the parental home and the community will not tolerate his sexual orientation.

Determination

I find that the claimant is neither a Convention refugee, nor a person in need of protection. I do not find credible the allegations made by the claimant in support of his claim, in light of inconsistencies and implausibilities in his testimony. I am not persuaded that there exists a serious possibility of persecution, or of a risk to his life, or a risk of

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cruel and unusual treatment or punishment, or a danger of torture, should the claimant return to Nigeria.

ANALYSIS

Based on a birth certificate,² employment identity card³ and his school transcript,⁴ I am persuaded the claimant is a citizen of Nigeria.

The determinative issue in this claim is the lack of credibility in the claimant's testimony in establishing a subjective or an objective basis for his fear of persecution at the hands of the police or the community. Consequently, I find that the claimant has not established a well-founded fear of persecution. In rendering my decision, I have taken into consideration the documentary evidence, the claimant's testimony and counsel's submissions.

I am not persuaded that the claimant's allegations are credible for the following reasons:

There are major inconsistencies in the claimant's documentary evidence and his testimony pertaining to his first homosexual affair. He was asked when did his first homosexual encounter occur and he testified that it occurred in high school with a fellow student named who was in his final year. The relationship was so intense that they were together every night because they were roommates. The relationship continued for

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² Exhibit R/A-2, Information received from CIC.

³ Exhibit C-2, Disclosure of the claimant sent under cover of letter dated 1

⁴ Ibid.

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ten years, because after [redacted]'s graduation the claimant would leave the school for the weekend with [redacted] and stay with him at his apartment.

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Here is what he wrote in his personal information form (PIF):⁵

My first love affair was with a fellow student. Thereafter our relationship continued until he left me for another man. We started in the bathroom and thereafter we use the toilet for our hidden sexual action. (Typed with errors and/or omissions as per original).

In addition to the obvious inconsistencies about the relationship occurring in the "bed" room according to his testimony, as opposed to the bathroom and toilet according to his PIF, and then later in [redacted]'s apartment, [redacted]'s name is not mentioned at all in the PIF. He mentions names of all his subsequent lovers, [redacted] and [redacted] with the exception

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of one more person, [redacted]. When asked to explain the inconsistency, he testified that his main focus in his PIF narrative was what caused him to leave Nigeria. I find his explanation unacceptable because the central part of his claim is that he is a homosexual, homosexuality is not tolerated in Nigeria and he has to establish his credibility. His explanation is unreasonable also because he provided more details of his other affairs and yet left the details out of the first affair and none of the other affairs were as intense (frequency-every night for the first year and then every weekend), or as long (duration-ten years). I find his claim of the first homosexual affair not credible.

The second inconsistency pertaining to his homosexual affairs is the affair he had

⁵ Exhibit C-1, Personal Information Form (PIF), Narrative, Lines 11 to 15.

with He testified that he had a two-year affair with a fellow student at the university and the name of the student was ()'s name does not appear in the PIF. In between his first affair with and second affair with he testified that he went out with a woman. He did not mention this in his PIF, either. I find these omissions significant because the PIF⁶ instructions to question 31 specifically asks: s.19(1)

On the following 2 pages, set out in chronological order all the significant events and reasons that have led you to claim refugee protection in Canada.

He went on to write five pages of details in his narrative and yet left significant information such as the names and affairs out. I do not find it credible that he would leave those details out. I find that he is given to embellishing his allegations in his testimony.

Thirdly, he testified that regularly took him out every weekend to his apartment while he was in the high school because was a trusted graduate of the school. Yet he testified that his parents were only allowed to see him once a month and he could only return home to his parents during vacations. His parents lived in the same city. When asked how could the school allow him to leave every weekend with a non-family member, he testified that teachers granted him permission. I find it not plausible that school would break its policy to allow him to leave the school premises with a past student every weekend for over two years and yet restrict students to annual or bi-annual vacations to visit their parents or allow only monthly visits by parents. s.19(1)

⁶ Ibid. Page 9.

Fourthly, he was asked how many years was he in business for himself and he testified six years. When told that the PIF shows him to have been self-employed for thirteen years he did not have a satisfactory answer. He was asked how old he was when he went into his own business and he testified 26. According to his PIF, he was self-employed at the age of 20. He was not able to clarify the contradictions pertaining to this issue. Similarly, he was vague about his answers pertaining to length of time of his affairs and dates, generally. He did not remember the month in which he moved to He s.19(1) hesitated when asked about the date of the party where he first met Based on these contradictions, inconsistencies and his demeanour, I find his allegations pertaining to his sexual orientation not credible.

Fifthly, the claimant attempted to downplay his heterosexual life in order to impress me about his homosexual life. He wrote in his PIF that he was in a common-law relationship⁷ and not a marriage. However, he testified in the hearing that he married his wife on 2000. His wife is listed, along with their two children under his last s.19(1) name.⁸ By all accounts it was a normal traditional wedding according to his testimony, his wife and children were with him until the last alleged incident, and she sent him his documents in Canada. Yet he called his marriage a sham and a forced marriage.⁹ I find his documentary evidence and his testimony about his marital status contradictory.

⁷ Exhibit C-1, Personal Information Form (PIF), Question 3, Indicate your marital history...P.3.

⁸ Exhibit C-1, Personal Information Form (PIF), Question 4, List your relatives....P.3.

⁹ Exhibit C-1, Personal Information Form (PIF), Narrative, Line 38.

Sixthly, his PIF¹⁰ shows a daughter was born on 2001 and a son born to him on 2001. When asked how could this be possible, he testified that he had a one-night affair with another woman, which produced the first daughter and the son was born to his wife and a second child, a daughter, was born to his wife two years later. He allegedly has three children with two women. Two older children, one with his wife and the other in a one-night stand, would have been conceived prior to his wedding on 2000, but since I did not question him specifically on this issue, I do not know if they were premature children or when were they conceived. While being questioned about his lifestyle and in particular about his sex life he did not disclose the information about the one-night stand with another woman. It was only after he was questioned about the children that he disclosed it. I find he was not forthright and therefore not credible. s.19(1)

Finally, the last part of the claimant's allegations pertaining to being found by his sister-in-law in a sexually compromising position with and subsequent problems with 's father, the retired police is so full of inconsistencies, contradictions and omissions that it is not possible to capture them all. It is especially a problem because he testified to earlier omissions in names and details by claiming that he concentrated on the last part, the part that caused him to flee Nigeria. For example, he wrote in his PIF:¹¹ s.19(1)

¹⁰ Exhibit C-1, Personal Information Form (PIF), Question 4, List of relatives, P.3.

¹¹ Exhibit C-1, Personal Information Form (PIF), Narrative, Lines 49 to 53.

On 2005, following my wife's declared intent to visit her parents in , I invited to the house for the weekend. As we were making love in my room, my wife's sister entered the house with the spare key. (Typed with errors and/or omissions as per original).

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He submitted an Extract from crime Diary¹² that states the following:

Today the 2005 at about hrs, one Mr. a retired Police formerly of the Department, and resident at came to the station and reported that, he received a telephone call from his wife Mrs. stating that one (m) of have an unlawful Homosexual relationship with their son named (m), and that every effort made to reach the said failed, as he is on the run. Complainant stated further that, he then advised his wife to take the victim to the hospital for possible examination and treatment. (Typed with errors and/or omissions as per original).

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When asked why were the dates in his PIF and the police report different, he had no explanation. Before the start of the hearing, he changed the dates of his mother's detention from th to th to th to th but this still does not

explain the fact that the police report states that the complaint was being made on

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^h 2005 whereas the incident occurred on th 2005. Due to his inability to explain the variance of 19 days in the date on which he alleges to have been caught with

 and the date on which 's father reported it to the police, I am obliged to ascribe no probative value to the police report which includes detention of his mother.

Furthermore, the claimant's testimony pertaining to how events unfolded after his

¹² Exhibit C-2, Disclosure of the claimant sent under cover of letter, dated 1

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sister-in-law found him with became very vague. He testified that he first ran to his friend , another name missing from his PIF, who took him to his aunt's house where he hid for three weeks. Again the three weeks in hiding are not mentioned in the five-page narrative. Allegedly, based on threats from 's father, the police and his own father, he ran to Lagos where he stayed in hiding with an old friend named for one month. he alleged introduced him to the agent, who smuggled him into Canada. There is no mention whatsoever of or the claimant's stay in Lagos in his documentary evidence. None of the allegations pertaining to his attempts to hide are mentioned in his PIF narrative and places of hiding are not mentioned in the PIF, question 11, under "residence." The date mentioned, , as the last date at his apartment, where the incident with occurred does not match his testimony. He testified he was caught on 2005 and he ran away immediately after the neighbours started to beat him and he never returned to his apartment. Therefore, his date in the PIF contradicts his date in the narrative and his testimony. For all these inconsistencies, contradictions and omissions, I find the claimant's allegations of threats against his life not credible.

He provided his membership card in the in Toronto as evidence of his homosexuality, but when asked about the role and mandate of the organization, his testimony was vague and so was his description of his own role. will provide an additional letter of support where they are convinced

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of a member's commitment to the causes of gays and lesbians. The claimant provided no such letter.

I find that the claimant's testimony and his evidence do not support his allegations of persecution in Nigeria. I am not persuaded that his fears are well-founded. Consequently, I am not persuaded that there exists a serious possibility of persecution; for the same reasons, I conclude that the claimant's return to Nigeria would not subject him personally to a risk to his life or cruel and unusual treatment or punishment or to a danger of torture, believed on substantial grounds to exist.

Conclusion

I find that the claimant will not face a serious possibility of persecution in Nigeria. Having taken into account all of the evidence, I further find that the claimant's return to Nigeria will not subject him personally to a danger, believed on substantial grounds to exist, of torture and will not subject him personally to a risk to his life or a risk of cruel and unusual treatment or punishment, under Section 97(1) of the Immigration and Refugee Protection Act. Therefore, the claimant's claim fails on all three grounds under the Immigration and Refugee Protection Act.

For all of the foregoing reasons, the Refugee Protection Division determines that
is not a Convention refugee and that he is not a person in need of
protection. Therefore his claim is rejected. s.19(1)

"Ken Sandhu"
Ken Sandhu

DATED at Toronto this 20th day of December, 2005.