



IMMIGRATION AND REFUGEE BOARD  
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE  
HUIS CLOS  
TA5-06016

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

**November 21, 2005  
February 13, 2006**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**April 21, 2006**

DATE DE LA DÉCISION

CORAM

**Amarnath V. Misir**

CORAM

FOR THE CLAIMANT(S)

**Mbong 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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is a thirty-seven-year-old Nigerian national who claims refugee protection pursuant to Sections 96 and 97(1)(a) and (b) of the *Immigration and Refugee Protection Act (IRPA)*.

The claimant alleges a well founded fear of persecution on the ground of his membership in a particular social group i.e. as a male homosexual, by the Nigerian police and members of the general community.

He also alleges that if he is removed to Nigeria, he would be personally subjected to a danger of torture, believed on substantial grounds to exist as defined in Article One of the Convention against torture, and to a risk to his life, or to a risk of cruel and unusual treatment and punishment. He therefore claims to be a person in need of protection.

#### **Determination**

The panel determines that the claimant is a Convention refugee on the basis of his sexual orientation. The panel having been provided with sufficient credible evidence of the claimant's homosexual activities concludes that there is a reasonable chance that he would be subjected to persecution if he were to return to Nigeria.

#### **Allegations**

The claimant is a homosexual. He has practiced this form of sexual relationship exclusively throughout his life. He kept his affairs under cover. In 2004, he met a young man 21 years of age. He was the son of the Police. They started a relationship and had sexual relations frequently. The claimant's

friend invited him to his home on 2005. The family members were away all engaged in their own social pursuits leaving the pair to indulge their proclivities without fear of being disturbed. The claimant and his partner were in the heat of their love making when 's sister returned home and entered his room through an unlocked door. She was horrified at what she saw and her screams brought the guards to the bedroom. They beat the claimant before he managed to break free and escape.

The claimant is wanted by the police, the his own father and members of the community who are all outraged at his shocking behaviour and would like to do him serious harm.

The claimant had fled to but was afraid that knowledge of his hideout would be uncovered and he would be found. The claimant was advised to leave Nigeria and seek protection abroad in Canada. His friend and sister advised and assisted him in making the arrangements and in raising the finances in order to leave.

#### **Determinative Issues**

Having read the written allegations of the claimant, received his oral testimony, affidavit evidence of his current gay partner in support of his claim, the submissions of his counsel, the panel found the primary determinative issue in this claim to be that of credibility.

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**Identity and Nationality**

The claimant relied on the certified copy of his birth certificate, letter from the Council of Chiefs and elders of State, an extract from the crime diary of Police station as well as his written and oral representations to support his nationality as a Nigerian and his personal identity.<sup>1</sup> The panel accepted the evidence submitted and found on a balance of probabilities that the claimant was a Nigerian and that he was the person the he had identified himself to be.

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**ANALYSIS**

The panel found the claimant to have been a credible witness. He was straightforward and answered the majority of questions directly and spontaneously. The claimant's oral testimony was consistent with his prior declarations of the facts on which his claim was based. The panel accepted the claimant's account provided in his oral testimony of all facts alleged by him central to his claim. The panel accepted and found that he was indeed a homosexual and that he had indeed exposed himself to a serious risk when his homosexual engagement with the son of the was discovered. The panel accepted the documentary evidence of the claimant, i.e. the extract from the crime diary as corroborative of the situation described by the claimant as well as

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<sup>1</sup> Exhibit C-2.

the penalties and risks that he encountered as a result.<sup>2</sup> The panel also accepted the letter of the Council of Elders taking notice of his conduct and calling him to account.

The panel also accepts the claimant's account of his fears of being discovered in any part of Nigeria and having secured help in finding a place of refuge and the means to get to Canada. The panel also accepts that the claimant entered into a steady relationship with another male homosexual as is confirmed in the affidavit of

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The panel finds that the claimant's sexual status as a homosexual and his previous encounter with the Nigerian police authorities in connection with such homosexual conduct does create a risk if the claimant were to return to Nigeria. The panel also considers that the claimant would in all likelihood continue to express his homosexual self and engage in gay relationships. The panel finds that the claimant would continue to create a risk for himself in such circumstances. The panel also refers to the documentary exhibits on the problems faced by gays in Nigeria. The panel accepts and finds that homophobia is a feature of Nigerian society and that persons have been killed even on mere suspicion of being homosexual. The panel finds also that the documentary records also support the mistreatment by gays by the police in custody.<sup>4</sup>

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<sup>2</sup> Ibid.  
<sup>3</sup> Exhibit C-5, Affidavit of  
<sup>4</sup> Exhibit C-2.

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The panel finds that in such circumstances that the fear alleged by the claimant is well founded and determines that the \_\_\_\_\_ is a Convention refugee. s.19(1)

“Amarnath V. Misir”  
Amarnath V. Misir

DATED at Toronto this 21<sup>st</sup> day of April, 2006.