



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
TA4-18848

s.19(1)

CLAIMANT(S)		DEMANDEUR(S)
DATE(S) OF HEARING	4 May 2005 6 September 2005 7 November 2005	DATE(S) DE L'AUDIENCE
DATE OF DECISION	19 April 2006	DATE DE LA DÉCISION
CORAM	S.E. Kitchener	CORAM
FOR THE CLAIMANT(S)	Solomon Orjiwuru Barrister and Solicitor	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	C. Bernard	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE		REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL		CONSEIL DE LA MINISTRE

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claims to be a citizen of Nigeria born on 1964. He alleges a well-founded fear of persecution in that country at the hands of community and church members, from whom state protection is not available to him. He bases his claim on his membership in a particular social group, namely bisexual Nigerian men.

Summary of Personal Information Form (PIF) Allegations

In his PIF the claimant alleges that he fears persecution in Nigeria at the hands of community and church members by reason of sexual orientation as a gay man. He alleges that while living in Germany, his marriage to ended in divorce in 2000 in large part because of his homosexual orientation. Having lost his immigration status in Germany, he was asked to leave and return to Nigeria in 2003.

In Nigeria in 2003, he settled in , a small town from which his parents hailed and attended the church in the neighbouring village of

There he formed a close friendship with a fellow parishioner, which developed into a secret homosexual relationship. Queried by church members about the nature of their association, both the claimant and denied that theirs was a homosexual relationship. The same denial was made to the pastor. Still,

Exhibit C-1.

suspicious remained. A church elder kept close watch on the two men and soon found them having sex in a hotel room.

As a result the claimant was excommunicated from the church. He refused to accede to traditional community leaders' demands that both men undergo public fetish rituals of appeasement, because of his Christian faith. His refusal led to the burning of his shop by members of the traditional council of [redacted], his banishment from the town and a proclamation that he was an enemy of the people of [redacted]. That proclamation marks him for attack and inhuman treatment by any [redacted] and [redacted] person coming into contact with him.

The claimant escaped to [redacted] to join [redacted] who had already fled there. The claimant did not seek state protection, lest police arrest him as a homosexual, homosexual activity being a criminal offence in Nigeria. About a week later, [redacted] indigenes came to the home of [redacted]'s cousin where the two men were staying. They were seeking [redacted] who was out, and did not at first recognize the claimant. Aware that they were turning their aggression upon him, he ran to his car and drove off. The claimant fled to [redacted]. He later learned that [redacted] had been caught, beaten and handed over to police on the word of [redacted] community leaders in [redacted].

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In Lagos, the claimant tried to avoid being seen by Inyi natives whom he knew would be present as they are in all Nigerian cities due to their mobility as traders. An Inyi native spotted him and threatened to report him to authorities. Fearing for his safety, the claimant left for Germany. His claim for asylum there was rejected because he had previously made a claim for refugee status in that country and he was asked to leave. Rather than return to Nigeria where he feared persecution, the claimant came to Canada using an improperly obtained Belgian passport and claimed refugee protection here.

Determination

I find the claimant not to be a Convention refugee because he has not established a well-founded fear of persecution on a Convention ground in Nigeria.

In addition, given my negative credibility findings I find that the claimant is not a person in need of protection in that his removal to Nigeria would not subject him personally to a risk to his life or to a risk of cruel or unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Nigeria will subject him personally to a danger of torture.

Preliminary Matters

As a preliminary matter, I note that, at the outset of the first sitting on 1 2005, counsel submitted a large number of documents relating to the claimant personally. Getting explanations for their late submission, examining the documents briefly and ordering them took considerable time. Given the volume of documents and their apparent relevance to the claim, in the interests of proceeding expeditiously, I entered them as exhibits² and reserved the right to assign them the weight I deemed appropriate.

As a further preliminary matter, I note that missing from documents tendered at the first sitting, were the decisions and the reasons for them of the claimant's claims for asylum in Germany and in Switzerland. The Board³ had requested these in the 1

2005 file screening form. In my view, these documents were important to the claim. The hearing was adjourned to 2005 to enable counsel to tender, before resumption and in accordance with Board rules, documentary evidence of the claimant's immigration status in each country, including decisions and reasons and should he be unsuccessful, of his attempts to obtain such documents from German and Swiss authorities. At resumption on September 06, 2005, the requested documents were submitted late and counsel was not completely successful in his efforts. I again used my

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² Exhibit list pp. 1, 2, Exhibits 1-12.

³ Immigration and Refugee Board.

discretion to enter documents⁴ with the reservation that I would afford the documents the weight I believed appropriate.

Finally, I note that at the sitting of _____ 2005, a due date was set for counsel's written submissions. However, because I had excused the Refugee Protection Officer (RPO) without hearing his observations, a date was set to hear the RPO's oral observations and counsel's oral submissions rather than his having to write them. The hearing resumed again on _____ 2005. At that time, counsel tendered and I entered as a relevant document, a canceled passport in the claimant's name.⁵

Analysis

The issues in this matter were identified at the outset of the hearing as credibility; civil identity and identity as to sexual orientation; the objective basis for a well-founded fear of persecution in Nigeria on a Convention ground. Although exclusion was identified as a potential issue, it did not arise during the hearing and was not an issue.

⁴ Exhibit list, p.3, Exhibits C-13, C-14, C-15 and C-16.

⁵ Exhibit C-17, Passport, Federal Republic of Nigeria, issued 01.06.99, valid to 31.05.04.

Credibility

I found the claimant not to be a credible or trustworthy witness. Having heard and observed the claimant over the course of two sittings, in my opinion his manner of testimony was neither candid nor straightforward. I found he had a tendency to exaggeration and glibness. His evidence was at times internally inconsistent and inconsistent with the documentary evidence in my view. I found he was unable to provide reasonable explanations for such inconsistencies or for the omission from his PIF narrative of a matter significant to his claim. I found the claimant was not a credible or trustworthy witness.

Case law has established that a claimant's contradictory testimony can cast doubt upon the totality of his or her *viva voce* evidence. In Dan-Ash, Mr. Justice Hugessen stated:⁶

"Unless one is prepared to postulate (and accept) unlimited credulity on the part of the Board, there must come a point at which a witness's contradictions will move even the most generous trier of fact to reject his evidence".

In my view that opinion is applicable to this matter.

⁶ Dan-Ash v. M.E.I. (1988), N.R. 33 (F.C.A.), at 35.

Serious credibility concerns arose from the claimant's evidence that, between 1992 and 2005, he attempted to gain Convention refugee status four times in three countries on three different grounds under three different names and variously using as identity documents two passports from Nigeria and one from Belgium.

His claims in Germany, Switzerland and again in Germany were all denied. In that each claim failed, in my opinion each constitutes a significant event leading to his fourth claim, that before me in Canada. As such, I find each of his first three claims to be matters significant to his claim in Canada. I have examined each earlier claim individually.

Claim 1: Germany

I accept on a balance of probabilities, that the claimant was wed to [redacted], a German citizen in [redacted], Nigeria on [redacted] 1993 based on the Certificate of Marriage.⁷ As well I accept on a balance of probabilities, based on the documentary evidence,⁸ that [redacted] filed for divorce [redacted] 1998 with the divorce being proclaimed final and absolute on [redacted], 2000.

⁷ Exhibit C-4, Certificate of Marriage, Marriage Registry, [redacted], 1993.
⁸ Exhibit C-6, Dachau Local Court, divorce proceedings.

However, for the following reasons, I found not credible the claimant's evidence about the ground on which he first claimed refugee protection in Germany. He stated that he feared persecution in Nigeria at the hands of members of the Islamic community based on his Christian religion when he claimed asylum in Germany in 1992 and that this fear of persecution continued through 1993.

According to the claimant's initial testimony, he married in 1993 for immigration purposes after his 1992 claim to be Convention refugee based on feared persecution in Nigeria was denied by German authorities. Even had I believed this was the case, which I did not, I would still have found internally inconsistent and not credible the claimant's explanations of why despite his fears, about a year after claiming in Germany, he returned to Nigeria, the country in which he allegedly still feared persecution. He explained variously that he returned to in 1993 with her to grant her wish see his country; that he returned just to write exams and had not lived there and that German officials required the couple to go to Nigeria to be married. I found his explanations taken together to be internally inconsistent and not credible. Moreover, I found each explanation not credible when considered on its own.

First, I found it not plausible that a person still fearing persecution, as the claimant maintained he was, would return to the country he had fled a year or so earlier, simply because his bride-to-be wanted to see his country. In my opinion, the latter explanation

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and claimant's alleged continuing fear of persecution through 1992/93 are mutually inconsistent and not credible.

Second, I found not credible the claimant's explanation of the circumstances surrounding his returning to Nigeria in 1993 to write exams. His claim that he did not live in Nigeria in 1993 appears to be to be inconsistent with his own documentary evidence.⁹ His documentary evidence identifies him¹⁰ as being a student of the

1992 until 1994. A statement of his results¹¹ shows the duration of the course as two years and lists the claimant's results for the 1993/ 94 second semester.

Even if I accepted, which I did not, that the school sent him course materials to study and that he returned to Nigeria only to write exams, I would still find not credible his claim that, while in Lagos, he kept a low profile to elude members of the Muslim community. The claimant was comfortable enough to marry Γ on 1993.¹² He acknowledged that many Muslims, including members of the Hausa tribe whom he allegedly particularly feared, live in Lagos. Yet, he was married in that city.¹³ Further, he was married publicly, having wed in the Registry Office.¹⁴ In my opinion, his

⁹ Exhibit C-3, previously unnumbered, now numbered for ease of reference.

¹⁰ Ibid., dated 1995 p. 4.

¹¹ Ibid., Statement of Result, Examinations Department, dated 1995, p. 6.

¹² Exhibit C-4, Certificate of Marriage, Marriage Registry, Lagos, 1993.

¹³ Ibid.

¹⁴ Ibid.

actions are inconsistent with his claimed continuing fear of persecution in 92/93. I find him not to be a credible witness regarding his alleged fear of persecution in 92/93.

Third, I do not believe the claimant's oral evidence that German officials forced him to return to Nigeria in 1993 with [redacted] to be married. Counsel pointed to an untranslated stamp¹⁵ on the back of the Nigerian marriage certificate as documentary support of the claimant's allegation. I recognize, and a dictionary¹⁶ confirms that 'botschaft' means 'embassy'. I can accept that the stamp is from the embassy of the Federal Republic of Germany in Lagos on [redacted] 1993. However, the stamp is not translated. I have no idea whether the stamp indicates simply that German officials registered the couple's Nigerian marriage or whether, as the claimant alleged, he was required by Germany to marry [redacted] in Nigeria so that she could identify him to German officials there. I cannot rely upon the stamp as documentary support of the claimant's allegation. Absent reliable supportive documentary evidence that Germany required failed refugee claimants to return to their countries of feared persecution to be married to their German citizen prospective spouses, I do not believe forced return to Nigeria by Germany as explanation for the claimant's going back to Nigeria in 1993.

¹⁵ Exhibit C-4, Botschaft Der Bundesrepublik Deutschland, Lagos, p. 1, dated [redacted] 1993.
¹⁶ Midget Dictionaries, English-German, German-English, published by Burgess & Bowes, Ltd., London, N.W.2.

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Given all of the foregoing, I find the claimant not to be a credible witness as to why he claimed to be a Convention refugee in Germany in 1992 and yet returned to his country of alleged persecution in 1993. I found him not to be a credible witness regarding the grounds for his first claim in Germany. In my opinion, he was not a credible witness in a matter I have found significant to his claim in Canada.

I accept that on a balance of probabilities that, for six years, the claimant had some kind of status in Germany from the time of his marriage in 1993. However, according to the claimant, in 1999, a week before he was to get landed status in Germany, he went to Spain for a wedding. In that the claimant gave no reasonable explanation for his actions, I found it not plausible that a person fearing persecution in his home country would leave the country that was about to grant him landed status for a wedding in a third country.

The claimant gave two explanations as to why he could not go back to living in Germany. He explained that could not do so on the one hand because he had lost his passport in Spain in 1999. He also explained that, having divorced in 2000, he lost his German status and could no longer return to live there. In my view, his explanations were internally inconsistent. The documentary evidence from Germany regarding the claimant¹⁷ is not helpful in that it refers only to the requirement for the claimant to leave Germany on 2004. Given the claimant's inconsistent

¹⁷ Exhibit C-16, Departure from Germany, dated 2004.

evidence, I was not satisfied with his explanation as to why he was unable to return and remain in Germany.

Claim 2: Switzerland

For the reasons that follow, I found the claimant not to be a credible witness regarding his second claim, that in Switzerland.

The claimant's PIF narrative tells only of his living in Germany, his return to Nigeria from 2003 to 2003, his fleeing back to Germany but being asked to leave there after his claim Convention refugee status was denied and his consequent flight to Canada.¹⁸ The claimant makes no mention of his residence in Switzerland in his written account of the events leading to his claim in Canada. He does not mention in his written account that he claimed refugee status in Switzerland in ;¹⁹ that Swiss authorities refused his claim in) or that they asked him to leave the country.²¹

The claimant's explanation for omitting any reference to Switzerland from his PIF Narrative was that he thought he had thought he had covered events in Switzerland in his answer to question 21(a) of his PIF. While I acknowledge that in answer to question 21(a) the claimant indicated that he was refused entry to "Germany/ Switzerland" in "15.

¹⁸ Exhibit C-1, PIF, when the claimant arrived in Canada - , 2004.

¹⁹ Exhibit C-13, Letter, Swiss Confederation, Federal Office for Immigration, dated . 2005.

²⁰ Ibid.

²¹ Ibid.

10. 01” because his refugee claim was denied,²² I am not satisfied by his explanation. In the first place, the claimant has conflated refused entry in two different countries, Germany and Switzerland, to one date. In the second place, claimants are asked to set out “all the significant events and reasons” that have led them to claim refugee protection in Canada.²³ In my opinion, the claimant’s residence in Switzerland of 1½ years followed by the refusal of his claim for refugee status there and a request that he leave the country is indeed a significant event on the way to claiming refugee protection in Canada. I cannot speculate as to why the claimant failed to mention the events in Switzerland from his written account. However, I found his explanation not credible.

Second, at the initial sitting, the claimant stated that the ground he gave in claiming in Switzerland was feared persecution as a Christian citizen of Nigeria at the hands of the Muslim community, given religious riots in Jos, Nigeria. However, on resumption the documentary evidence before me from Switzerland²⁴ reveals that the claimant made his claim there for refugee status under the alias a s.19(1) citizen of Sudan.

²² Exhibit C-1, PIF, p. 7.

²³ Exhibit C-1, PIF, p. 9.

²⁴ Exhibit C-13, Letter, Swiss Confederation, Federal Office for Immigration, dated 2005.

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At the second sitting, the claimant changed his evidence after the Swiss document²⁵ had been revealed. He stated then that the ground on which he had claimed to be a Convention refugee in Switzerland was political opinion and that he feared persecution by political groups in Sudan. He gave no reasonable explanation for changing his earlier testimony. In my opinion, the claimant's given two different grounds for claiming in Switzerland were internally inconsistent and not credible. I found him not to be a credible witness regarding the grounds he gave claiming refugee protection in Switzerland.

In light of the claimant's testimony, I found him not to be a credible witness regarding his claim in Switzerland, I found him not to be a credible witness regarding this, his second claim for refugee protection, a matter, as noted earlier is significant to his claim in Canada.

Further serious credibility concerns arose from the claimant's contention that he had learned not to misrepresent himself in immigration matters from Swiss authorities rejecting his claim because of his false identity documents.

He claimed that, having learned this lesson, when he claimed asylum in Germany the second time, in 2003, he used documents showing his true identity. The documentary

²⁵ Ibid.

evidence from Germany²⁶ does identify the claimant as a Nigerian citizen, as he alleges, born 1964. Yet, despite the claimed lesson learned, when the claimant entered Canada in 2004, he did so using a Belgian passport in the name of .²⁷ He continued to maintain he was in two separate interviews with two different Canadian Immigration officials.²⁸ Moreover, only after he realized he would not gain entry to Canada, did the claimant indicate that the passports under the name were not his.²⁹ As well, he made a refugee claim only to the second official that interviewed him.³⁰ Moreover, the claimant made no mention of his stated 1½ year residence in Switzerland from 2001 until 2003 or of his claim there to either of the two Canadian immigration officials who interviewed him. Even had I accepted his explanation of nervousness as the reason for these omissions, I would still have found his failure to mention events in Switzerland to be inconsistent with his claim that his experience in Switzerland had taught him not to misrepresent in immigration matters. Furthermore, as is noted above, the claimant continued to give contradictory evidence before me. I do not believe his claim to have learned the lesson alleged from his Swiss experience. I found the claimant not to be a credible or trustworthy witness in that regard.

²⁶ Exhibit C-16, Departure from Germany, dated 2004.

²⁷ Exhibit R-2, Immigration Canada documents, (pages formerly unnumbered, now numbered for case of reference), Minister's Delegate Notes, dated 2004, p. 44.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

Claim 3: Germany

Additional serious credibility concerns arose from the claimant's raising yet a fourth ground for feared persecution in Nigeria, namely his sexual orientation. The claimant testified that this was the basis for his claim for his 2003 second claim for refugee status in Germany.

I found not credible the claimant's allegation that, from the beginning of 1999 until the end of 2000, he had a close homosexual relationship with a Ghanaian man resident in New York, who traveled regularly to Germany. Because is the only man with whom the claimant alleged he had a serious long-term homosexual relationship, in my view that bond is a matter at the heart of his claim. However, I found vague and not credible the claimant's evidence about his and 's alleged relationship. Moreover, given their purportedly intense and intimate alliance, together with its alleged duration of more than a year, I found it not plausible that the claimant had no idea of 's sir-name. I did not believe the claimant's account of an alleged homosexual relationship with I found the claimant not to be a credible witness in this a matter at the heart of his claim.

Second, according to the claimant he lived with his wife to whom he was emotionally and romantically attracted for some six years, from their marriage in 1993 until 1999. I found not credible the claimant's evidence that the reason their marriage foundered was because thought him gay. He stated initially that she was about

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70 per cent sure he was homosexual. Asked how he knew this, the claimant explained that [redacted] had teased him once by calling him a funny name in German that translates roughly as homosexual. Later he said that they parted because [redacted] no longer had feelings for him. In my opinion, the claimant's testimony that [redacted] divorced him because she thought him homosexual was vague, internally inconsistent and not credible.

Third, the claimant acknowledged that, before the divorce initiated by [redacted] was finalized in [redacted], 2000,³¹ he was already well into an affair with another woman, the future mother of the son born to them [redacted] 2000.

Thus, in my opinion, the claimant's stated loving and romantic attraction to [redacted] over an approximate 6-year period, together with his sexual relationship with the mother of his son, was reflective of what might reasonably be expected of a heterosexual man, rather than of a homosexual or bisexual man.

I found the claimant not to be a credible witness regarding his second claim in Germany, his third consecutive claim and a matter I have determined is significant to his claim in Canada.

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³¹ Exhibit C-6, [redacted] Local Court, divorce proceedings.

Claim 4: Canada

The claimant gave as the basis for his claim in Canada feared persecution at the hands of community and church leaders in Nigeria from whom state protection is unavailable to him by reason of his homosexuality/bisexual orientation. I found not credible the claimant's alleged homosexual relationship with [redacted] as is canvassed earlier.

Furthermore, serious doubt was raised in my mind about the claimant's account of his homosexual relationship with [redacted] and its consequences in Nigeria in 2003, for the following reasons. He purportedly returned to Nigeria in [redacted] 2003 and fled to Germany, claiming refugee status in [redacted] 2003. He thus claimed to have been back in Nigeria for only about 7 months. Yet, according to his PIF Narrative, the claimant was able to do all of the following: get settled back in [redacted] set up and undertake business as a [redacted] begin attending his parents' church in [redacted] meet [redacted] at church; develop a friendship with him; have the friendship grow into an intimate relationship *after a few months* (my emphasis); have the relationship *eventually*³² become a sexual one; arouse the suspicions of church members, despite trying not to publicly display affection; be questioned by church members; be questioned by the pastor; have church members spy on the two men; get found by a church member having sex with [redacted]

³² Ibid.

in a motel; get ex-communicated from the church;³³ have word spread about his homosexual relationship with ; get called to a meeting of traditional leaders that resulted in his shop being set afire and his being banished; flee to get discovered there after about a week; flee to Lagos; get spotted there; make arrangements to flee to Germany; buy false travel documents; depart Nigeria and arrive in Germany; claim refugee status there.

The question that was raised in my mind was whether it was plausible to have all that happen in 7 months. I acknowledge that it is not beyond the realm of possibility. Nevertheless, the numerous instances in which I found the claimant gave inconsistent or contradictory evidence in areas important to his claim, led me to conclude on a balance of probabilities that I could not give him the benefit of the doubt in this regard. I do not believe his allegations about a homosexual relationship with or about the consequences that followed.

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³³ Exhibit C-12, after a church trustee meeting 09, according to the Church letter.

I give no weight to the faxed copy of the letter regarding the claimant's excommunication from his church because of homosexuality.³⁴ The letter itself is dated , 2003,³⁵ over a year and a half before the faxed copy of the letter was put before me at the 2005 first sitting of the hearing into the claimant's claim for refugee protection.

The claimant acknowledged that the letter was important to his claim. Asked the reasons for the delay in getting the document before the Board, the claimant explained that the original of the letter was in Nigeria; that someone was supposed to post it to him but that there was there was insufficient time for the letter to be sent to him. He explained that he called a family friend to get the letter and fax him a copy because the hearing of his claim was to be the day after his phone call. According to the claimant, the family friend did so and when he, the claimant, received the copy, he faxed it on to counsel. This particular friend acted with apparent dispatch in following the claimant's request according to his testimony. I found the 2005,³⁶ fax date on the document to be supportive of the claimant's explanation as far as it goes.

³⁴ Exhibit C-12, Letter, ' Mission.

³⁵ Ibid.

³⁶ Ibid.

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However, in my opinion the claimant's focus on the urgency of faxing the letter was insufficient explanation for why he did not call this family friend earlier to ask the friend to mail or courier the original letter to him, the claimant. The document is important to his claim, in my view. The faxed copy³⁷ was the single piece of documentary evidence the claimant tendered in support of his alleged homosexual relationship with _____ of the purported past persecution he suffered as a result in Nigeria; of his presence in Nigeria in 2003; and of his claimed future fear of persecution in Nigeria. The original letter was not before me. I am not satisfied by the claimant's explanation of why he was unable to get the original letter. These above factors, along with the many instances in which I found the claimant lacked credibility in other areas important to his claim, led me to conclude that I could not rely on the faxed copy of the letter³⁸ as supportive documentary evidence of his claim for refugee protection. I give the document³⁹ no weight.

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Identity: Civil

Based on a combination of certain of the claimant's identity documents, I accept on a balance of probabilities, the claimant is who he says he is and is a citizen of Nigeria.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

He has put before me two passports in the name . The earlier passport⁴¹ contains a German visa issued in Germany on ., 1999.⁴² In my opinion, the dates in the passport are consistent with the claimant's evidence that, after he returned to Germany from Spain, he applied for and received a Nigerian passport for identity purposes and a German visa in an attempt to facilitate continued stay in Germany. According to the claimant, he left the passport in Germany with the mother of his son after he was asked to leave Germany; he is not on good terms with her and only his continued exhortations finally led her to send it to him in Canada. I accept as reasonable his explanation for the late submission of the passport.

Also before me are Nigerian education documents bearing the claimant's name,⁴³ his certificate of marriage in Nigeria to and documentary evidence of their divorce in Germany.⁴⁵

Based on the documentary evidence, I accept on a balance of probabilities, the claimant is who he says he is and is a citizen of Nigeria.

⁴⁰ Exhibits C-17 and C-2.

⁴¹ Exhibit C-17, Federal Republic of Nigeria, Passport issued J valid to .

⁴² Ibid., p. 5.

⁴³ Exhibits C-3 and C-4.

⁴⁴ Exhibit C-4, Certificate of Marriage, Marriage Registry, Lagos,

⁴⁵ Exhibit C-6, Local Court, divorce proceedings.

Identity: Sexual Orientation

As is discussed under credibility, I found not credible the claimant's allegations that he is sexually attracted to men. I did not believe his evidence of involvement in homosexual relationships. In my opinion, no credible or trustworthy evidence was before me that the claimant is bisexual by orientation.

Objective Basis For A Well-Founded Fear of Persecution

The documentary evidence⁴⁶ reveals that homosexual activity is illegal under federal law⁴⁷ in Nigeria and that homosexual practices are punishable by up to 14 years imprisonment.⁴⁸ However, I found not credible the claimant's claim that he is sexually attracted to men. I did not believe the claimant's evidence of his participation in homosexual activity.

The documentary evidence⁴⁹ also reports that, where Sharia law applies, adults convicted of having engaged in homosexual practices are subject to sentences of execution, although no such sentences have been imposed.⁵⁰ However, the claimant is

⁴⁶ Exhibit R-1, U. S. Department of State, Nigeria, Country Reports on Human Rights Conditions, 2004, issued .28.02.05.

⁴⁷ Ibid., p. 20.

⁴⁸ Ibid.

⁴⁹ Ibid., p. 11.

⁵⁰ Ibid., p. 20.

from Plateau State which is not among those that have adopted Sharia law.⁵¹ Moreover, the claimant is Christian. The documentary evidence reveals that non-Muslims are not required to submit to Sharia law in any state.⁵² Finally, I found not credible the claimant's alleged about his sexual activity.

I did not believe the claimant's account of the events leading to his claim to be a Convention refugee. In my opinion, no credible or trustworthy evidence is before me that the claimant has an objectively well-founded fear of persecution on a Convention ground in Nigeria. I conclude that there is not a serious risk of persecution in Nigeria under section 96 of Immigration and Refugee Protection Act (IRPA).⁵³

Person In Need Of Protection Under Subsections 97(1)(a) and 97(1)(b) of IRPA

I did not believe the claimant's purported homosexual/bisexual identity or his story of the events that led to his claim for refugee protection in Canada. In my opinion, no credible or trustworthy evidence was before me that would allow me to conclude on a balance of probabilities that the claimant is a person in need of protection under subsections 97(1)(a) or 97(1)(b).

⁵¹ Ibid., p. 11.

⁵² Ibid.

⁵³ Immigration and Refugee Protection Act, s.c. 2001, c.27.

Determination

I find (a.k.a.) not to be a Convention refugee because he has not established a well-founded fear of persecution on a Convention ground in Nigeria.

In addition, given my negative credibility findings I find that (a.k.a.) is not a person in need of protection in that his removal to Nigeria would not subject him personally to a risk to his life or to a risk of cruel or unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Nigeria will subject him personally to a danger of torture.

I reject his claim.

"S.E. Kitchener"
S.E. Kitchener

DATED at Toronto this 19th day of April, 2006.

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