

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié

Section de la protection des réfugiés

RPD File # / No. dossier SPR : MA5-00721

Private Proceeding
Huis clos

Claimant(s)

Demandeur(e)s d'asile

Date(s) of Hearing

July 8th, 2005

Date(s) de l'audience

Place of Hearing

Montréal, Québec

Lieu de l'audience

Date of decision

August 10, 2005

Date de la décision

Panel

Diane Fecteau

Tribunal

Claimant's Counsel

M^c Paul Grzela

Conseil du demandeur d'asile

Refugee Protection Officer

Galia Rouleau-Dumont

Agent de la protection des réfugiés

Designated representative

N/A

Représentant désigné

Minister's Counsel

Marie-Josée Dionne
[Deposit of documents]

Conseil du ministre

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s.19(1)

is a 32-years-old citizen of Nigeria. He is seeking refugee protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act* (the *Act*).

He claims to have a well-founded fear of persecution on the basis of his membership in a particular social group (sexual orientation). He also claims to be a "person in need of protection".

ALLEGATIONS

The claimant is single, a practising Muslim and a member of the _____ tribe. He resided in Lagos. He has a university degree and sixteen years of formal training. He worked in a _____ and as _____

In his Personal Information Form (PIF) the claimant alleged to be homosexual. On _____ 2003, he was caught having sex with one of his students while teaching him in his room.

He alleges that the father of his student, who was his father's friend, stabbed him and he had to be hospitalized. He complained to the police authorities and disclosed that he was homosexual and was stabbed but no action were taken.

Because he was threatened, in _____ 2004 he fled to Jos city in Plateau State where he remained for six months according to his PIF or four months according to his Schedule 1 form. He alleged that while in Jos, he was discovered and attacked by unknown assailants. The claimant believes that his father ordered this attack because when he called his mother she informed him that his father had told her that he was dead.

In view of this situation his mother paid an agent and he was able to leave Nigeria and come to Canada.

If he were to return to Nigeria, he fears his father and his student's father.

s.19(1)

DETERMINATION

Having examined the oral and written evidence, as well as Counsels' submissions, the Tribunal concluded that the claimant is not credible and consequently is neither a "Convention refugee" nor a "person in need of protection".

ANALYSIS**IDENTITY**

The claimant's identity is established by his testimony and the submitted documents namely a National Driver's license, his education documents, a registration of birth, a Confirmation of state of origin. (Exhibits A-2¹).

The claimant stated that he did not own a Nigerian passport and that he travelled with a false one that contained his picture under the name of . He stated that he travelled with his agent but that he had the passport in his hands for short periods. However he was unable to indicate from which country this passport was issued from, explaining that he never travelled before and did not know if there was a visa. The Tribunal is of the opinion that the claimant has a university degree, worked in a that it is not plausible that he would not know the country from which this passport was issued or if he had a visa which he needed to enter Canada.

He stated that he left all his travelling documents to his agent . Following the Federal court decision in *Elazi*² :

"I take this opportunity to add that it is entirely reasonable for the Refugee Division to attach great importance to a claimant's passport and his airline ticket. In my opinion, these documents are essential to establish the claimant's identity and his journey to come to Canada. Unless it can be assumed that a refugee status claimant is actually a refugee, it seems unreasonable to me to ignore the loss of these documents without a valid explanation. In my view, it is too easy for a claimant to simply state that he had lost these documents or the facilitator has taken them. If the Refugee Division insists on these documents being produced, the facilitators may have to change their methods."

The Tribunal concluded that the claimant, who has the burden of proof, has not satisfactorily established his itinerary, his date of departure from Nigeria and arrival in Canada. This situation undermines his credibility.

There is a presumption that a person who fled his country because of persecution will normally ask for protection at the first opportunity. In this case, the claimant stated that he stopped in Germany, got off the plane and boarded another plane in order to come to Canada. The claimant did not claim refugee status in Germany. Upon his arrival in Canada on January 1st, 2005, he did not claim refugee status because he followed his agent's instructions.

The Tribunal is of the opinion that this behaviour is not compatible with a subjective fear and undermines the claimant's credibility.

The Tribunal did not find the claimant credible in that he contradicted statements that he made to the Immigration Officer, and there were discrepancies in the information provided in his PIF and testimony or on Schedule 1 Form.

The claimant alleges that he is homosexual, that he first discovered his sexual orientation while in boarding school. He stated that while in Nigeria he had two homosexual relationships.

The Minister's representative submitted documents in which the claimant is accused of being his common law spouse. (exhibit A-1³, A-2). In response, the claimant stated that she was a friend, he was assisting her and had met her upon his arrival at the YMCA. He denied her stating that « they were just playing », he also denied being her husband and father of her child. In support of it, he submitted a detailed police report (exhibit P-4⁴, page 3) in which the stated that he is not the father of her child, that he called her because she was using his phone and he wanted to know where she was the night before, that he had seen her previously and that she feared him being convinced that he could kill her. A restriction order has been issued against the claimant.

The police officer assigned to the case, stated in her report that while interrogating the victim who was in shock, she had difficulty in explaining her relationship with the claimant but all made her believe that they did form a couple even though they were not living together :

« [...] Elle explique difficilement sa relation avec le suspect. Tout porte à croire qu'il forme « un couple » même s'ils ont deux adresses différentes [...]. »

s.19(1)

The case will be heard in 2005. Therefore, the Tribunal cannot make any inference on the claimant's culpability with regards to the accusations against him but is of the opinion that this situation undermines the credibility about his sexual orientation.

The claimant was also confronted to his declaration to the Immigration Officer in that he stated on questions 56 and 57 that the reasons why he claimed refugee status was « because of his rights, because he is gay and bisexual. »

The claimant stated that he made this statement to the Immigration Officer but contradicted himself during his testimony and replied that he has no feeling for women and never had a sexual relation with a woman in Nigeria or in Canada.

The Tribunal is of the opinion that this contradiction undermines his credibility.

In order to support his homosexuality, the claimant submitted pictures of him with his former boyfriend. The Tribunal is of the opinion that these pictures are not indicative of his sexual orientation and represent simply the picture of two young men.

The claimant has the burden to establish his sexual orientation and in view of these documents and the above contradictions the Tribunal does not believe that the claimant is homosexual.

The claimant stated that because of the intensive threats against him that he had to move from Lagos to Jos city in Plateau State. In question 31 of his PIF he stated that he moved to Jos in 2004, in questions 7 and 11 of Schedule 1 form he stated that he moved in 2004. When confronted to this discrepancies, the claimant replied that he moved to Jos in 2004 for two months but had to go back to Lagos because he did not have enough money and after a few days in Lagos, he went back to Jos.

The Tribunal is of the opinion that these discrepancy undermine the veracity of his story.

The claimant submitted a medical report (exhibit D-2⁵) dated 3rd, 2005 in which it is reported that he was stabbed on 22, 2003. The Tribunal does not disagree with the diagnostic in this document but in view of the claimant's lack of credibility is of the opinion that there is no information in this document which would support his allegations.

s.19(1)

The Tribunal notes that it was issued at his request two years after the alleged incident. The Tribunal concludes that this document has no probative value.

Because the Tribunal does not believe that the claimant is an homosexual and a serious lack of credibility (*Sheikh*⁶), the Tribunal concluded that the claimant is neither a "Convention refugee" nor a "person in need of protection".

The Tribunal concluded that no evidence was produced to establish that the claimant would face a "serious possibility"⁷ of a risk of torture or a risk to his life or a risk of cruel and unusual treatment or punishment upon his return to Nigeria.

CONCLUSION

For all the above mentioned reasons, the refugee claim is rejected.

Diane Fecteau

Diane Fecteau

August 10, 2005

Date

/at

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- ¹ Exhibit A-2, Immigration documents.
² *Elazi, Iseikete Simon v. M.C.I.* (C.F. Ire inst., IMM-1038-99), Nadon, February 17, 2000.
³ Exhibit A-1, National documentation package Index, March 4, 2005.
⁴ Exhibit P-4, Complementary report police, 2005.
⁵ Exhibit D-2, Letter from Lagos State Government, 2005.
⁶ *Sheikh, Abdulhakim Ali v. M.E.I.* (F.C.A., no. A-521-89), MacGuigan, Iacobucci, Desjardins, July 4, 1990.
 Reported: *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.); 11 Imm. L.R. (2d) 81 (F.C.A.)
⁷ *Adjei v. Canada*, 1989, 2 FC 680, (C.A.)

s.19(1)