

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 : MA4-03138

Private Proceeding  
Huis clos

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|-----------------------------------|-----------------------------------|--|
| <b>Claimant(s)</b>                |                                   | <b>Demandeur(s) d'asile</b>                |
| <b>Date(s) of Hearing</b>         | October 6, 2004                   | <b>Date(s) de l'audience</b>               |
| <b>Place of Hearing</b>           | Montréal, Québec                  | <b>Lieu de l'audience</b>                  |
| <b>Date of decision</b>           | November 2, 2004                  | <b>Date de la décision</b>                 |
| <b>Panel</b>                      | Diane Fecteau                     | <b>Tribunal</b>                            |
| <b>Claimant's Counsel</b>         | M <sup>e</sup> Michelle Langelier | <b>Conseil du demandeur d'asile</b>        |
| <b>Refugee Protection Officer</b> | Patricia Desroches                | <b>Agent de la protection des réfugiés</b> |
| <b>Designated representative</b>  | N/A                               | <b>Représentant désigné</b>                |
| <b>Minister's Counsel</b>         | N/A                               | <b>Conseil du ministre</b>                 |

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is 51 years old and he is a citizen of Nigeria. He is seeking refugee protection pursuant to sections 96<sup>1</sup> and 97(1)<sup>2</sup> 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) and to be a "person in need of protection".

#### ALLEGATIONS

The claimant is bisexual. He got married in 1977 and separated in 1988. He has two children. He lived in Lagos for 10 years prior to coming to Canada. He has 17 years of formal education and from 1994 he was working as a ( ) and in ( ) of ( )

The claimant discovered his homosexual tendencies while in boarding school. He had a long sexual relationship with a childhood friend, ( ) who went to live in England in 1980 but kept visiting him in Kenya. Every year, they spent two weeks together.

The claimant alleged that he had a business partner, ( ) who was also his sexual partner. This relationship lasted from 1999 until 2002. He alleged that ( ) was not in agreement with him seeing ( ) and took revenge first, by having him attacked by a mob while he was working in Kaduna and later on, during ( )'s visit by denouncing him to the police.

In ( ) 2003, ( )'s cousin was killed during an outbreak between Muslims and Yoruba. ( ) would have threatened the claimant that he would take revenge. The claimant went to complain to the police authorities and was told by a police officer that someone had written a negative report about him and police will continue to make his life difficult.

The claimant decided to leave his country. Arrangements were made by ( ) and on ( ) 2004, the claimant left Nigeria with false documents.

If he were to return to Nigeria, he fears for his life.

#### DETERMINATION

Having examined the oral and written evidence, as well as counsel's submissions, the tribunal concluded that the claimant is neither a "Convention refugee" nor a "person in need of protection".

## ANALYSIS

### Identity

The *Act* places emphasis on the need to have documentation<sup>3</sup> establishing identity.

In this case, the claimant provided a driver's license (Exhibit A-2). This document indicates that it was first issued on . 2003 in Lagos. During his testimony, the claimant stated that it was his second driver's license and that the first one was issued in Mina. The license indicates as well that it is a "commercial" license. Asked about it, the claimant said that he did not know, that he got the license and did not question what was written on it. Asked how he got this license, he described having filled a form, written an exam, passed a practical driving test and gave two passport photos. The documentary evidence<sup>4</sup> stated that no pictures are given by applicants and photographs of applicants are taken by the office at the time of the application. Only photos taken by the Road Safety Commission are valid.

In view of these inconsistencies, the tribunal gives no probative value to this document.

The claimant stated that he also gave an Age Declaration Certificate to Citizenship and Immigration Canada (CIC). However, there is no copy of this document in the file and no indication on the immigration documents (Exhibit A-2) that an Age Declaration Certificate was provided by the claimant.

The claimant had no other document to prove his identity.

The tribunal concluded that the claimant has not established his identity and has not provided any satisfactory explanations as to why he could not obtain any other documents. However, the tribunal believes that the claimant is from Nigeria.

The claimant stated that he left Nigeria on . 2003 and travelled on a false Nigerian passport containing his photograph and a visa. He stated to the Immigration officer that he did not remember the name used in the passport. He travelled with the agent who kept his passport and traveling documentation upon their arrival in Toronto.

Following the Federal court decision in *Elazi*<sup>5</sup>:

"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 is of the opinion that the claimant’s explanations undermine seriously his credibility in that he has not established his itinerary, his date of departure from Nigeria, his date of arrival in Canada and his identity.

The tribunal did not find the claimant’s story credible. There were discrepancies between his testimony and the narrative of his Personal Information Form (PIF), he did not declare to the Immigration that he was married and had children.

The claimant stated that he discovered his homosexual tendencies while in boarding school and maintained a long-term sexual relationship with a childhood friend, and business partner

He was married for years and in 2000, he had a relationship with another woman. The claimant did not produce a marriage certificate or a birth certificate for his children to support his marriage, or a document regarding his separation or the fact that his ex-wife has the custody of his two children. The tribunal notes that he did not disclose to the Immigration Officer that he was married. The tribunal is of the opinion that this omission and lack of supportive documentation undermine the claimant’s credibility on these issues.

The claimant stated that he was able to live as a bisexual from his boarding school period up to 2002 and that his wife and his family had no knowledge of his homosexual tendencies. He started having problems in 2002 because was very possessive and did not accept his relationship with

He stated that in 2002, he was first beaten by a mob while he was working with in the city of Kaduna. When he complained to he told him that he should figure out why. Following this incident, he did not receive any contract from During his testimony, he added that he went to complain to the police authorities in Lagos. Yet, in his PIF on page 3, he stated that told him “not to go to the police because such would be counter productive”. Confronted with that, he replied that it was an oversight. The tribunal is of the opinion that this addition undermines the veracity of his story.

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On 2003, 's brother, according to his testimony, or 's cousin, according to his PIF, was killed during a violent outbreak. Confronted with that, the claimant stated that it is normal in his culture to call everyone "brother". Yet, he explained that he had only met 's cousin once and would not have been able to recognize him. The tribunal is of the opinion that this discrepancy undermines the veracity of the claimant's story.

Because blamed the death of his cousin on the claimant and told him he would take revenge, the claimant decided to complain about him. The tribunal did not find the claimant's explanations coherent on this issue and did not understand why the claimant could be blamed for the death of 's cousin.

In 2003, the claimant stated that he went to complain to the police about 's threat. On that occasion, he stated that he learned from a police officer who was from his tribe, that someone had filed a negative report against him and that he should hide. The tribunal noted that the claimant continued to live at the same address. Confronted with that, the claimant replied that because he worked in the same business trade as he could always find him. The tribunal is of the opinion that the claimant's behaviour undermines his subjective fear and the credibility of his story.

In 2003, the claimant was arrested while being with they were detained and released the following day without charges. Asked why the police waited so long to act on the report, the claimant said he did not know for how long the police authorities had this report on him even though he mentioned earlier that he had learned about it in 2003. The tribunal found that on this issue, the claimant's explanations were confused and vague which undermines the veracity of his story.

The claimant stated that after the arrest and detention, he realized that his life was in danger and decided that he had to leave his country. The tribunal notes that he left on , 2004, months later. Confronted with this long delay in leaving his country, the claimant stated that it took time to gather his documents. The tribunal is of the opinion that this long delay does not support the claimant's subjective fear and completely undermines his credibility.

Once in Canada, he did not claim refugee status at the airport and it took him 10 days before reporting to the Canadian authorities. The claimant stated that he consulted a lawyer who told him

not to present himself unless he had identification documents because he could be detained. The tribunal is of the opinion that the claimant took a serious risk of being deported if caught while staying in Canada illegally, and this behaviour is not compatible with a subjective fear.

Although delay in leaving and delay in claiming refugee status are not in themselves decisive factors, when combined with a lack of credibility they are important factors to consider.<sup>6</sup>

Because the claimant has not established his identity and because of a serious lack of credibility, 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"<sup>7</sup> 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*

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Diane Fecteau

November 2, 2004

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Date

/grb

- 1 "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,  
(a) is outside each of their countries of nationality and is unable or, by reasons of that fear, unwilling to avail themselves of the protection of each of those countries; or  
(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."
- 2 "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  
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or  
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if  
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,  
(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and  
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care."
- 3 "106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation."
- 4 Exhibit A-1: National Documentation Package Index, 30 July 2004, tab 3.8, Response to Information Request NGA42175.E, December 2003.
- 5 *Elazi, Iseikete Simon v. M.C.I.* (F.C.T.D., no. IMM-1038-99), Nadon, February 17, 2000.
- 6 *Huerta, Martha Laura Sanchez v. M.E.I.* (F.C.A., no. A-448-91), Hugessen, Desjardins, Létourneau, March 17, 1993.
- 7 *Adjei c. M.E.I.* [1989] 2 C.F. 680 (C.A.)