

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 : MA5-06308

Private Proceeding
Huis clos

Claimant(s)

Demandeur(s) d'asile

Date(s) of Hearing

September 27th, 2006

Date(s) de l'audience

Place of Hearing

Montréal, Québec

Lieu de l'audience

Date of decision

November 14, 2006

Date de la décision

Panel

Barbara Berger

Tribunal

Claimant's Counsel

Idorenyin E. Amana Esq.

Conseil du demandeur d'asile

Refugee Protection Officer

Deposit of documents

Agent de la protection des réfugiés

Designated representative

N/A

Représentant désigné

Minister's Counsel

N/A

Conseil du ministre

You can obtain the translation of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB at the following address: 344 Slater Street, 14th Floor, Ottawa, Ontario K1A 0K1, by e-mail to translation@irb.gc.ca or by facsimile at (613) 947-3213.

La Direction des services de révision et de traduction de la CISR peut vous procurer les présents motifs de décision dans l'autre langue officielle. Vous n'avez qu'à en faire la demande par écrit à l'adresse suivante: 344, rue Slater, 14^e étage, Ottawa (Ontario) K1A 0K1, par courriel à traduction@cisr.gc.ca ou par télécopie au (613) 947-3213.

s.19(1)

Mr. [redacted] a citizen of Nigeria, asked for Canada's protection based on Sections 96¹ and 97(1)² of the *Immigration and Refugee Protection Act*.

ALLEGATIONS

The claimant is a 40-year-old single man. He alleges that he is bisexual. On [redacted] 2005, his girlfriend found the claimant in his apartment in an intimate and compromising position with his boyfriend, [redacted]. She ran out and alerted the neighbours about what she just had seen. The claimant's boyfriend was able to escape through the window. However, the claimant was beaten by a mob and handed over to the police. He was detained for two weeks. On [redacted]

2005, he was released on bail with a notice that he should appear in court, on [redacted] 2005, to face charges.

The claimant went immediately to Lagos. He was hiding at his friend's house until he was able to leave Nigeria with false documents. He came to Canada on October 29, 2005, and, at the airport, asked for protection. Should he go back to Nigeria, he is afraid that, as a bisexual person, he will be charged by the police and face a sentence of up to 14 years of prison for homosexuality.

ANALYSIS

In the evaluation of this claim, I took into consideration the psychological evaluation produced by [redacted] (exhibit C-11), a letter from the psychologist, [redacted] (exhibit C-13), a medical certificate produced by doctor [redacted] (exhibit C-5) and another one, issued by the Center of physiotherapists (exhibits C-4 and C-7).

The hearing

The claimant testified in English which, as indicated in his Personal Information Form (PIF), is his first language. At the beginning of this hearing, the claimant confirmed that he spoke English well and that he understood my English. I also did not have a problem understanding the claimant's English, as I have heard a lot of Nigerian claims and have gotten used to the accent.

After a break following the questions from the tribunal, the counsel suggested that the claimant had difficulty expressing himself in English. The counsel stated that early in the session, when the tribunal questioned the claimant about injuries allegedly sustained in [redacted] 2005, counsel realized that there was a problem with the claimant's English. However, at that time,

counsel did not make a motion asking to stop the hearing and call an interpreter from Ibibio, the language also spoken by the claimant. Only towards the end of this hearing, when it became obvious that there were very serious credibility problems with the claimant's testimony, the counsel suggested that it was because the claimant does not speak English well enough. And yet, during the hearing, the claimant expressed himself in English with the ease and fluency of a native English speaker. Consequently, I rejected counsel's suggestion. It was clear to me that the claimant's English was very good and the difficulties in his testimony were due to credibility problems and not to language problems.

Also, in his submissions, counsel suggested that, due to medication, which the claimant allegedly takes, he was not able to testify to the best of his ability. Responding to a question from his counsel, the claimant said that he was taking painkillers and sleeping pills. Only after counsel's leading questions the claimant said that, sometimes, he feels dizzy. After more leading questions, he added that he felt dizzy before and during the questions and that, before the hearing, he had informed his counsel about the above-mentioned problems. However, at the beginning of this hearing, counsel did not request that the hearing be postponed because his client was not in a condition to testify. He spoke about only at the end of the session, when it was apparent that there were very serious credibility problems. Also, in the medical certificate produced for the tribunal, there is no indication that the claimant's capacity to testify could be affected by medication or other problems. Consequently, I do not believe that the claimant was not able to testify to the best of his ability during this hearing.

Identity and Credibility

I have very serious doubts as to the claimant's real identity. He testified that while in Nigeria, he was issued a passport with which he travelled to Venezuela in 2004. He never produced that document, even though during his Port of Entry interview, he indicated that his Nigerian passport was left at home and that he would be able to have it sent to Canada. The claimant's testimony, as to why it was not possible, was not credible. Also, the claimant produced a Declaration of age allegedly mailed by his father in November 2005 and a birth certificate issued by the National Population Commission based on that declaration³. These documents indicate that the claimant's birth was never registered. The claimant was not able to reasonably explain how he could have obtained a genuine Nigerian passport in 2004 without ever having his birth registered

beforehand. According the documentary evidence⁴, a birth certificate is absolutely necessary in order to obtain a Nigerian passport.

Confronted with the documentary evidence, the claimant was not able to provide a reasonable explanation. He was also not able to explain how he could have had obtained a genuine passport in Nigeria with his family name and his date of birth, different from those indicated on the travel documents issued by the Nigeria High Commission in Ottawa (exhibit C-14). According to the I.D. card which was allegedly issued to the claimant by the Venezuela authorities (exhibit A-2), based on his Nigeria's passport, his family name would have been [redacted] and given name [redacted], born on [redacted] while according to the travel documents issued by the Nigeria High Commission (exhibit C-14), the claimant's family name is [redacted] his given name [redacted] and his date of birth, [redacted]. And yet, according to the claimant's testimony, the family name in his Nigerian passport would have been [redacted] not [redacted] and not [redacted]. I believe that the claimant is using various family names and various dates of birth in different countries and in different circumstances and, despite the Nigeria High Commission's document, I have serious doubts as to his true identity. In the circumstances, I do not give much weight to other I.D. documents produced by the claimant. They do not have any security features and could have been easily fabricated⁵. As for the "Letter of Undertaken" (exhibit A-2), it is clearly a fabricated document. Documentary evidence indicates that false documents are very easy to obtain in Nigeria⁶.

The claimant produced an emergency travel certificate issued on November 28, 2005 by the Nigeria High Commission in Ottawa (exhibit C-14). This document confirms the claimant's identity and his Nigerian citizenship. I do not know what verifications, if any, or what procedures, if any, the Nigerian High Commission in Canada follows in order to issue such documents. However, faced with the document issued by the Nigerian High Commission in Ottawa, event if I still have serious doubts as to the claimant's identity, I do not have any other choice as to accept that he has established his identity.

The claimant has not established that he was in Nigeria during the alleged persecutory events which would have happened in October 2005. According to the claimant's PIF, (questions 8 and 20), from [redacted] to [redacted] 2004, he was a permanent resident of Venezuela. He testified that in [redacted] 2004, he went to Venezuela on a business trip, sent there by [redacted] a

company for which he worked at that time, as a [redacted] to enquire about the acquisition of tiles. He testified that when he came to Venezuela, there was a "Presidential amnesty" which enabled anybody to obtain permanent residency. As did many others foreigners, he also asked for the residency, which he obtained as is confirmed by his permanent resident card (exhibit A-2). He indicated that he just submitted his passport to the Venezuelan authorities and, based on that passport, he was issued an identity card (exhibit A-2). I have already dealt with differences in the family name and the date of birth between the Venezuela I.D. and the travel document provided by the Nigeria High Commission. In addition to that, the holder's signature on the Venezuelan I.D. is distinctly different from the claimant's signature on documents produced in Canada. Asked to explain, he stated that each time when he signs, he does it differently. I did not accept this explanation as credible, since all the documents signed by the claimant in Canada bear the same signature. Finally, the claimant was not able to reasonably explain why he wanted to obtain permanent residency in Venezuela where he was, allegedly, just on a business trip, sent there by his company.

In addition to that, the claimant's testimony about his alleged employment in Nigeria was not credible. He testified that he used to work for [redacted] until [redacted] 2004. He resigned after coming back from Venezuela because he was not satisfied with his salary and started working for his uncle's company [redacted] where he worked until he was arrested by the police in [redacted] 2005. That testimony contradicts the claimant's PIF and his immigration documents. According to his PIF (question 19), the claimant worked for [redacted] from 2000 to 2002 and for [redacted] from 2002 until [redacted] 2005. From [redacted] to [redacted] 2004, he was self-employed in Venezuela. According to his immigration documents (Schedule 1), he worked for [redacted] from 2002 until [redacted] 2005 and was unemployed from [redacted] 2005 to [redacted] 2005. Asked to explain the differences, the claimant stated that when he came to Canada, he was stressed and nervous. I do not consider this explanation sufficient, particularly given the fact that there are contradictions between the claimant's testimony and his Personal Information Form which he produced in December 2005, one month after he came to Canada and when he already had the services of his counsel. I conclude that the claimant's testimony about his work in Nigeria in recent years was not credible and I believe that those discrepancies are due to the fact that he did not work in Nigeria, at this time, because he was already out of his country.

s.19(1)

This conclusion is further reinforced by the claimant's not credible testimony about his travel. The claimant did not produce any travel documents. He alleges that he travelled with a false passport. When he came to Canada, he indicated that he travelled from Lagos to Germany. From there, with one stop over in an unknown country, he came to Canada. This information was repeated in the claimant's Personal Information Form (PIF) (question 32). In his PIF, the claimant indicated that he did not know what country issued the passport with which he travelled and that he did not remember the name of the holder. However, during the hearing, the claimant remembered that he travelled with an European passport, possibly Dutch, that he travelled under the name of that he took Lufthansa Airlines from Frankfurt, which landed at another airport in Germany to take more passengers, before flying to Canada. Asked to explain, the claimant stated that when he came to Canada, he was nervous and stressed and did not remember all the details of his travel. However, he was not able to reasonably explain, how was it possible not to remember all the above-mentioned details one month after coming to Canada when he had completed his PIF and remembering it all now, almost one year later. Consequently, I do not give any credit to the claimant's explanations.

Also, according to the claimant's testimony, the smuggler, who travelled with the claimant, took back all the travel documents and the false passport while they were still on the plane, a few hours before the plane landed at the Montreal International Airport. After leaving the airplane in Montreal and before clearing Immigration and Customs, the claimant approached an immigration officer and asked for asylum. However, according to the claimant's PIF, the events were different. The claimant wrote that after he and the agent arrived in Montreal Airport: "We cleared Customs and Immigration separately and when we arrived in the lobby of the airport, he collected back the passport and all other documents from me and, informed me, that his assignment had been carried out and done the (sic) he simply disappeared into the crowd". Asked to explain, the claimant stated that he believed that he was being questioned by the tribunal about Customs declaration and not about his passport and other travel documents. I do not give any credit to this clearly improvised answer.

Considering all the above, I reject the claimant's testimony about his whereabouts in the recent years and his travel to Canada, as not credible. Consequently, I conclude that he has not established that he lived in Nigeria during the alleged persecutory event. I do not know where the

s.19(1)

claimant lived, for how long and with what status, before he came to Canada. I do not know from where he came before he asked asylum in October 2005. That is fully sufficient for me to reject his claim.

Also, his testimony about the alleged persecutory events in Nigeria was not credible. There were crucial contradictions between his Port of Entry declarations and his PIF and testimony. In his written and oral testimony, the claimant alleges that on [redacted] 2005, he was seen by his girlfriend while making love to his boyfriend. Consequently, he was severely beaten, arrested, detained for two weeks and released on bail. He was supposed to appear at court on [redacted] 2005, in order to face charges of homosexuality. However, according to his immigration documents (Schedule 1, question 4), he was never detained or put in jail. During the Port of Entry interview, the claimant indicated (question 14) that he was "never arrested or detained". He explained (question 18, POE notes), that after he was discovered by his girlfriend, she called the police. The claimant's partner was arrested while the claimant ran away and the police were still looking for him. Confronted with this contradiction, the claimant was not able to give any reasonable explanation.

In addition to that, the claimant's testimony about his hiding in Nigeria was also contradictory. In his testimony, he declared that after he was released on bail, he was hiding for one day in [redacted] before he went to [redacted] where he stayed until he left Nigeria. His friends in Lagos introduced him to a smuggler who made the necessary travel arrangements. However, during his Port of Entry interview, the claimant declared that he stayed in the village of [redacted] for one month between his release from detention and his departure from Nigeria and that his friends, at [redacted] and not in Lagos, introduced him to a smuggler. The claimant was not able to reasonably explain the contradictions.

There were many other credibility problems in the claimant's testimony, for example, concerning the beginning of his sexual relations with his male partner, the circumstances of the claimant's arrest and the alleged beating by the mob or the injuries which he supposedly sustained on that occasion. I will not analyze these problems any further since I believe that the credibility problems analyzed above in details are sufficient in order to reject the claimant's testimony as not credible and his story as invented. I do not believe that the claimant is a bisexual man and that he was persecuted as such in Nigeria. Consequently, I do not give any weight to documents produced

by the claimant in support of his story, most of all to the alleged police "wanted" poster (exhibit C-6) and the letter of the claimant's brother (exhibit C-9). I do not give any probative value to the psychological evaluation (exhibit C-11) and the letter from Mrs. (exhibit C-13). Their conclusions are based on the story told to them by the claimant, the story which I rejected as not credible.

As for the medical report of Dr. describing scars on the claimant's body (exhibit C-5), I do not doubt the existence of these scars, but I do not believe that the injuries were sustained in the circumstances alleged by the claimant.

DECISION

Considering that I do not know where and with what status the claimant lives during the alleged persecutory events in Nigeria and considering the fact that his testimony about those events was not credible, I conclude that he has not established a well-founded fear of persecution in Nigeria as per Section 96 of the *Immigration and Refugee Protection Act*. No credible evidence was produced to the tribunal in order to allow me to conclude that the claimant is a "person in need of protection" as per Section 97(1) of the *Immigration and Refugee Protection Act*.

CONCLUSION

The claim of Mr. Emmanuel Bassey USORO is rejected.

Barbara Berger

Barbara Berger

November 14, 2006

Date

s.19(1)

/lc

- 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 himself 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 Exhibit C-15.1 - Certificate of origin (& Receipt) and Exhibit C-15.4 - Declaration of Age (& Receipt).
- ⁴ Exhibit A-1 - Index of the National Package on Nigeria, April 7, 2006, tabs -
- 3.8: NGA42953.FE . Registration of birth, including the name of the organization responsible for the registration; the role of an organization called “Native Birth Register”; the document issued to a person to attest to the registration of his or her birth, particularly the document issued in 2002 attesting to a birth in the 1960s that was registered in 1966 in the city of Lagos (
- 3.13: NGA43281.E . Information on the various identity documents in Nigeria and the names of the agencies that issue them (2002-2004); and,
- 3.15: NGA100147.E . Passport issuance procedures within Nigeria.
- ⁵ Exhibit C-15.1 - Certificate of origin (& Receipt); Exhibit C-15.2 - First School Leaving Certificate and Exhibit C-15.3 - Primary School Leaving Testimonial.
- ⁶ Exhibit A-1 - Index of the National Package on Nigeria, 2006, tab - 3.12: NGA43280.E. 2005. Availability of false documents in and from Nigeria (2002-2004).

s.19(1)