



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
TA5-01008

CLAIMANT(S)	s.19(1)	DEMANDEUR(S)
DATE(S) OF HEARING	20 June 2005	DATE(S) DE L'AUDIENCE
DATE OF DECISION	18 July 2005	DATE DE LA DÉCISION
CORAM	Pamila Ahlfeld	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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a citizen of Nigeria,' claims refugee protection pursuant to ss. 96 and/or 97(1) of the Immigration and Refugee Protection Act (IRPA).

Allegations

The claim for refugee status is based on the claimant's fear of persecution on the grounds of membership in a particular social group, namely, homosexuals in Nigeria.

The following are the claimant's allegations.

Between 1986 and 2004, the claimant was involved in a number of homosexual relationships. He also had one heterosexual relationship.

The claimant met _____ on _____, 2004. They entered into a secret homosexual relationship whereby they would go and stay in a hotel in Lagos every Friday night. _____' father was a retired _____ Police and a wealthy businessman.

On _____ 2004, _____ invited the claimant to his home. His parents had gone out of town and his sister was supposed to go out. While they were having sexual relations, _____' sister walked in and started screaming. She called for the guards and the neighbours to come. Three guards came in and grabbed and beat the claimant. When

¹ Exhibit R-2, Nigerian Birth Certificate attached to CIC notes. The panel finds, on a balance of probabilities, that the claimant is Nigerian.

one guard went to make a call to [redacted] father, the claimant escaped and ran to his friend's home.

The claimant stayed in a number of locations in Lagos. The claimant's sister told him that [redacted] father and the police were looking for him. She advised him that the police informed his parents that he should turn himself in at the nearest police station.

The claimant's sister gave him the money to leave Nigeria. The claimant found an agent who arranged for the claimant to come to Canada. The claimant arrived in Canada on [redacted] 2005, and sought refugee protection on [redacted] 2005.

After the claimant's arrival in Canada, he heard from his sister in Nigeria that the police have been to his parents' home on two occasions in [redacted] 2005, looking for him. He also heard from his sister that the police arrested the claimant's cousin and tried to arrest her because they would not reveal to the police the claimant's whereabouts.

Determination

The panel has found that the claimant is neither a Convention refugee, nor a person in need of protection. The panel does not find credible the allegations made by the claimant in support of his claim, in light of implausibilities and inconsistencies in his testimony. Consequently, the panel is not persuaded that there exists a serious possibility of persecution; or of a risk to his life, or a risk of cruel and unusual treatment or punishment, or a danger of torture, should the claimant return to Nigeria.

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Analysis

The determinative issue in this claim is the lack of credibility in the claimant's testimony in establishing a subjective or an objective basis for his fear of persecution at the hands of his lover's father, and the Nigerian police. Consequently, the panel finds that the claimant has not established a well-founded fear of persecution.

The panel finds it implausible that the claimant and [REDACTED] would have sex in [REDACTED] family home, for the following reasons.

The claimant and [REDACTED] were allegedly involved in a secret relationship. They did not want anyone to know about their homosexuality. It is for that reason, the claimant testified, that he and his lover would check into a hotel every Friday night. The panel finds it implausible that the claimant would risk having sex at his lover's parents' residence in light of the fact that the claimant told the panel that his lover's father was a devout Muslim, the ex [REDACTED] Police and allegedly a very influential man. Furthermore, the claimant and his lover were not entirely alone as there were allegedly guards surrounding the house.

The claimant testified that once caught by his lover's sister, he managed to escape from the home. He told the panel that three guards came running in when his lover's sister screamed. The guards allegedly apprehended the claimant and beat him with a baton. The claimant testified that he managed to escape when one guard left to make a

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call. The panel finds the claimant's version of his escape implausible. He told the panel that he managed to escape, even though there were two guards beating him. He had earlier testified that [redacted]'s parents' residence was a large gated home on a large property, yet the neighbours were still allegedly able to hear [redacted]'s sister's screams. Not only did the claimant have to escape from the guards, but he also had to run from the neighbours who were allegedly mulling around the gate to see what was happening. The panel is not persuaded, in view of all the alleged barriers to the claimant's escape, that he could manage to reach his friend's residence. In light of the above implausibilities, the panel is not persuaded that any of the alleged events on [redacted] 2004, occurred.

The claimant was inconsistent in his rendition of how he spent his time in hiding. He initially testified that he spent one week with his friend [redacted] and then afterwards, he testified that his sister told him to go and stay with his brother's friend, [redacted] sic]. He later told the panel that he went from house to house hiding between 2004, and the beginning of [redacted] 2005. He stated that he first went to [redacted]'s house and then he went to stay with his friend [redacted]. When asked about the inconsistency in his testimony, the claimant told the panel that he was confused about where he stayed. The claimant's escape from his alleged persecutors is pivotal in establishing an objective basis for his fear of persecution. The panel is therefore not persuaded that had the events of [redacted] 2004 occurred, the claimant would have forgotten how he managed to

avoid his persecutors. The panel is therefore not persuaded that anyone is seeking the claimant.

The claimant did not submit any documentary evidence to support his claim of being pursued in Nigeria other than two emails from his sister,² nor did he submit any documentary evidence of his homosexual relationships in Nigeria. He submitted a membership card from [redacted] and a letter confirming that he attends meetings at [redacted] in Toronto. He testified that he had a s.19(1) relationship in Toronto, however, his partner did not come to the hearing, nor did he submit an affidavit. A friend of the claimant from [redacted] came and observed the hearing.

In light of the implausibilities and inconsistencies in the claimant's testimony and the lack of supporting documentation, the panel is not persuaded that the claimant is homosexual. However, even if he were homosexual (which the panel does not believe), the panel is not persuaded that there is a serious possibility of persecution from the police, should he return to Nigeria. While homosexuality remains a criminal offence in Nigeria, reports of the federal government's enforcement could not be found among sources contacted by the Research Directorate of the Immigration and Refugee Board.³

² Exhibit C-2, pp. 75-78.

³ Exhibit C-3, p. 5.

⁴ Ibid., p. 8.

⁵ Exhibit R-1, National Documentation Package – Nigeria, March 4, 2005, item 6.2, Response to Information Request (RIR), NGA43276.E, 15 February 2005, p. 2.

In fact, in correspondence with a non-governmental organization representing gay and lesbian rights, a representative of Alliance Rights Nigeria, said that the "Nigerian penal code is more strict on paper than [it is] practically. He further claimed that in Lagos, for example, gays and lesbians can live freely as long as they do not impinge upon the rights of others."⁶

The claimant testified that he had a few long-term relationships in Nigeria spanning nineteen years. Other than the claimant's allegations with respect to the last relationship, which the panel did not find to be credible, he did not indicate that he had experienced any problems. In light of the fact that the law regarding homosexuality in Nigeria between consenting adults is rarely administered, the panel is not persuaded, on a balance of probabilities, that there exists a serious possibility that the claimant would be persecuted by the authorities, because of his homosexuality, should he return to Lagos, in Southern Nigeria.

Having considered all of the evidence, the panel finds that the claimant has not established a well-founded fear of persecution by reason of his membership in a particular social group. Accordingly, the panel finds that the claimant is not a Convention refugee.

⁶ Ibid.

A Person In Need of Protection

The panel also considered whether the claimant is a person in need of protection because of a risk to his life, or a risk of cruel and unusual treatment or punishment, or because of a danger of torture. Given the lack of credibility in the claimant's testimony with respect to past persecution and the objective evidence with respect to the treatment of homosexuals in Nigeria, the panel is not persuaded that the claimant has suffered serious harm while in Nigeria or that, on a balance of probabilities, the claimant would suffer serious harm should he return to that country. The panel concludes, therefore, that the claimant is not a person in need of protection pursuant to section 97(1)(a) and (b) of the Immigration and Refugee Protection Act (IRPA).

Conclusion

Accordingly, the panel rejects the claim of for s.19(1)
refugee protection.

"Pamila Ahlfeld"
Pamila Ahlfeld

DATED at Toronto this 18th day of July, 2005.