



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
TA4-19433

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

13 October 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

23 November 2005

DATE DE LA DÉCISION

CORAM

E. Joanne Sajtos

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DU MINISTRE

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claims Convention refugee status by reason of his membership in a particular social group. Mr. claims that he is bi-sexual. His fear of persecution is based on his sexual orientation. He is also claiming that he is a person in need of protection in accordance with section 97(1)(a) and (b) of the Immigration and Refugee Protection Act (IRPA). s.19(1)

Claimant's Allegations

The claimant is bi-sexual. In 1994, he engaged in his first sexual encounter with another male. When this incident was made public, he was beaten "until I became unconscious" by members of his father's family, who felt that such actions would cure the claimant's desire to lead a bi-sexual lifestyle. Subsequently, in order to hide his bisexuality, he began dating women and eventually became a father.

According to the claimant, even though he was dating women, the people in his neighbourhood continued to harass and assault him based on the view that he was a bisexual.

In 2003, the claimant met at a bar. Shortly after that time, they entered into an intimate relationship that lasted until 2004. On s.19(1)
2004, the claimant and were at the claimant's office when they were viewed fondling each other by some of the claimant's colleagues. As a result, the claimant was

¹ Exhibit C-1, Personal Information Form (PIF), response to question 31, paragraph 5.

mocked by the staff and he lost his authority over them as a manager.

In 2004, the claimant's mother became aware that he was bisexual and she told this to his paternal relatives located in a village in . The claimant's *viva voce* evidence was that it was these people who are currently seeking and threatening to kill him. According to the claimant, there are approximately seven paternal family members who are looking for him and want to harm him.

The claimant came to Canada with the assistance of and false documentation, on 2004.

Determination

The Panel has determined that Mr. i is not a Convention refugee based on his membership in a particular social group, specifically that of bi-sexuals. Nor is the claimant a person in need of protection in accordance with section 97(1)(a) and (b) of the IRPA.

Analysis

After careful consideration of all of the evidence and representations, the Panel finds that there is insufficient credible and trustworthy evidence with respect to the claimant's identity. In addition, the claim lacks credibility in other pivotal areas of the testimony and evidence, notably whether the claimant faces serious harm at the hands of his relatives, colleagues and community.

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Identity

When the claimant came to Canada on 2004, he did so using a false passport. The claimant also brought a Nigerian Driver's Licence, issued on 2004,² which he stated was his own. When asked why there was nothing written beside the area for "blood group" on the Driver's Licence, the claimant testified that, "everybody in Nigeria has that spot blank." In a Response to Information Request dated 2003, with respect to the requirements necessary to obtain a Nigerian Driver's Licence, it states, in part, that "he or she must complete an application form and pay a fee of approximately N2,500, the equivalent of CDN\$24.24 (Oanda 10 Dec. 2003). The application form includes questions regarding the applicant's blood type, facial marks, height, use of glasses and date of birth; it also requires a set of the applicant's fingerprints."³ Thus, the Panel is not satisfied that the claimant's response as to why there is no response to blood group section of her Driver's Licence is reasonable. This requirement is noted to be one of several that are to be completed in order to obtain a licence. It was also noted that the claimant's height on the license is indicated as "1.57 M,"⁴ but is listed as 173 cm in the Information on Individuals Seeking Refugee Protection⁵ form. This is a difference of approximately 16 centimetres, which, in the

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC), Federal Republic of Nigeria National Drivers Licence.

³ Exhibit R-1, National Documentation Package - Nigeria, 4 March 2005, item 3.11, Response to Information Request (RIR), NGA42175.E, 11 December 2003.

⁴ Exhibit R-2, Federal Republic of Nigeria National Drivers Licence.

⁵ Exhibit R-2.

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Panel's view, is a substantial discrepancy. Based on the finding that the claimant's evidence was not reasonable as to why the licence was incomplete and the inconsistency in the claimant's height, the Panel finds that the Driver's Licence is not a trustworthy document and gives it no evidentiary weight.

The claimant provided an original Baptismal Certificate⁶ at the hearing. In reviewing this document, it was noted that several changes had been made on the face of the document with a different coloured pen, which the claimant stated he had not made himself. Also, there was no photograph attached, although the document allowed for one. Nor had a witness signed the document. According to the claimant, the latter two omissions were errors. When it was noted that the claimant's name was incorrectly spelled " " on the Certificate, this was also explained by the claimant as an error. Given the totality of errors and omissions found, the Panel is unable to find this document trustworthy and it will not be considered as valid identity evidence.

An employment identity card from the was also provided. When asked how the claimant received this document, he stated that he always kept it in his wallet; however, upon leaving Nigeria, he returned it to his employer. They, in turn, mailed it to him in Canada and he discarded the envelope. The Panel does not find that the claimant's evidence on this issue is plausible. He testified

⁶ Exhibit C-4, Copy of Baptismal Certificate.

⁷ Exhibit C-3.

that he was being taunted by colleagues when it was discovered that he was involved with another man. Also, he allegedly left the country in secrecy and haste due to fear for his safety from family members. Thus, it is not, in the Panel's view, reasonable that he would return the card to his employer prior to departure when there would be no benefit in doing so and he was allegedly in fear for his life. In addition, he had testified that he was being mocked by his colleagues, yet he was also supposedly assisted by them in order to get the document to Canada. This latter statement does not fit the profile of a person who is being harassed. The Panel does not find this document to be trustworthy based on the lack of credible evidence as to how it was obtained.

According to the claimant, he wrote to his school(s) in 2005 and requested copies of his educational documents. He has not received a response from the school(s), nor did he keep a copy of the letter that he sent. The Panel notes that the claimant has a duty to provide all relevant information in order establish his identity⁸ and he did not do so.

Given the totality of issues arising from the claimant's identification documents and his inability to explain the discrepancies, the Panel has concluded that the claimant has not provided acceptable documentation, as required by section 106 of the IRPA.

The claimant provided no trustworthy original identity documents. Nor is the Panel satisfied that the claimant provided reasonable explanations with respect to his lack

⁸ Section 106, Immigration and Refugee Protection Act (IRPA).

of credible documentation to establish his identity. Thus, the Panel finds that the claimant has not discharged the burden of establishing his identity as set out in section 106 of the IRPA.

Bi-sexuality

The claimant wrote in his Personal Information Form (PIF) that he has been "ridiculed and ostracized by my entire community and family."⁹ During the course of his testimony, however, he stated that the alleged agents of persecution were approximately seven members of his father's family, who resided in a village in The claimant lived in According to the claimant, the paternal relatives were informed by his mother sometime in 2004 that he was practicing a bi-sexual lifestyle. This evidence is not found in the written documentation. The claimant also testified that he is in contact with his mother and that she is "worried" about him because his father's relatives want to harm him. When asked why his mother would report him to the relatives and then worry about him for having disclosed the information, the claimant indicated that his mother was not aware that it would "get to this point." s.19(1)

The Panel notes the claimant's evidence that in 1994 his father's family members purportedly beat him into a state of unconsciousness when they thought that he was bi-sexual. Had this occurred, the claimant's mother should have known or expected that the consequences of reporting her son's sexual orientation to the same relatives would result

⁹ Exhibit C-1, PIF, paragraph 5.

in serious harm to the claimant. Thus, the Panel does not find it credible that his mother would on the one hand report her son and yet continue to be in contact with him because she was worried for his safety. In addition, the Panel noted that this family incident was considered to be so significant by the claimant that he left the country based solely on his fear of the alleged family members. Yet, the claimant failed to mention this event in his Personal Information Form or to Citizenship and Immigration Canada (CIC). Based on the implausible nature of his *viva voce* testimony, combined with the omission of this evidence in the written documentation, the Panel concludes that this event did not occur. Thus, the Panel is not satisfied that the claimant is being sought by his paternal family members due to his supposed sexual orientation.

With regard to the alleged incident at the claimant's workplace, he specifically stated that, although this made it difficult to continue working with his employer, he was able to do so. In addition, and most importantly, the claimant testified that he did not leave the country because of this event. Thus, there is no reason to fear persecution or a risk to life arising from this purported incident.

Based on the inconsistent testimony with respect to the claimant's alleged bisexual history and the lack of an objective basis for that fear, the Panel finds that the claimant's fear of persecution is not well founded.

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. Therefore, the Panel concludes that Mr. _____ is not a Convention refugee.

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Since the Panel finds the claimant's evidence with respect to his identity not to be credible and his fear of persecution not to be well-founded, the Panel finds that more likely than not,¹⁰ the claimant will not face serious harm should he return to Nigeria. Therefore, the Panel concludes that the claimant is not a person in need of protection pursuant to section 97(1)(a) and (b) of the IRPA, as there is no risk to his life, or of cruel and unusual treatment or punishment, or of a danger, believed on substantial grounds to exist, of torture, should he return to Nigeria.

Conclusion

The Panel is not persuaded that the claimant is a Convention refugee or a person in need of protection in accordance with sections 96 or 97(1)(a) and (b) of the IRPA. Accordingly, after considering all of the evidence, the Panel rejects the claim of _____ for refugee protection.

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"E. Joanne Sajtos"

E. Joanne Sajtos

DATED at Toronto this 23rd day of November, 2005.

¹⁰ Li, Yi Mei v. M.C.I. (F.C.A., no. A-31-04), Rothstein, Noël, Malone, January 5, 2005, 2005 FCA 1.