

Immigration and Refugee Board of
Canada
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié du Canada
Section de la protection des réfugiés

RPD File # / No. dossier SPR : CA5-00025

Private Proceeding
Huis clos

Claimant(s)		Demandeur(s) d'asile
Date(s) of Hearing	6 March 2006	Date(s) d'audience
Place of Hearing	Edmonton, Alberta	Lieu de l'audience
Date of Decision	11 April 2006	Date de la décision
Panel	Marnie Armstrong	Tribunal
Claimant's Counsel	Simon Yu	Conseil du demandeur d'asile
Refugee Protection Officer	Not Attending	Agent de la protection des réfugiés
Designated Representative	Nil	Représentant désigné
Minister's Counsel	George Woytowicz	Conseil du ministre

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The claimant, _____, is a citizen of Nigeria and claims protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.

ALLEGATIONS

The claimant alleged that he fears current and former members of the military, especially military security. He also fears authorities and segments of Nigeria society because he is bisexual.

The claimant alleges he went to _____ Secondary School in Abuja, Nigeria. He alleged that he joined the _____ Cadet Corps. While involved in the corps, he and some other cadets were sent on surveillance missions and through the surveillance the claimant "saw and heard many things." He alleged that high profile military and political figures had been arrested and convicted because of the surveillance. He testified that he is a "voice to be silenced" and that he has "violated the code" and that he will be killed, intelligently.

The claimant testified that he would not have made a claim for protection if not for fear as he is a proud person and cannot handle the situation on his own and has even obtained a firearms permit in Canada.

As a bisexual man he fears he will "attacked or lynched by zealous members of society" if he returns to Nigeria.

The Minister's Representative alleged that the claimant lacks credibility and that his claim is a "fiction."

DETERMINATION

The panel determines that the claimant has not satisfied his burden of establishing a serious possibility of persecution on a Convention ground or that it is more likely than not that he would be subjected to a danger of torture or face a risk to life or a risk to cruel and unusual treatment or punishment upon return to Nigeria.

ANALYSIS

The claimant's identity as a national of Nigeria was established by his testimony and the supporting documentation filed, namely, his passport. The panel is willing to accept that

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the claimant was a student at the (Secondary School in Abuja, Nigeria and that he joined the Cadet Corps.

This claimant came to Canada on September 22, 1999, using his own passport and authorization to study until September 1, 2003. On February 18, 2004, he was issued a work permit for one year. Information on the file¹ indicates that he applied for permanent residence on April 12, 2004. The claimant testified that the application is "probably still underway" and that he is still dealing with it. He testified that his primary objective is to ensure his position under the "qualified federal skilled worker program." He initiated his refugee in January 2005. He testified that a sponsorship application has also started.

The panel considered the over seven year period that the claimant has been away from Nigeria, his attempts at maintaining and acquiring status in Canada in the context of the following analysis. The panel finds, on a balance of probabilities, that the central issues of this claim were fabricated to mislead the panel in an abuse of the Refugee Protection Division to somehow ensure his status in Canada.

The claimant provided no reliable and trustworthy evidence to support his allegations regarding his fear of current and former members of the military. Rule 7, of the Refugee Protection Division (RPD), which is authorized by subsection 100(4) of the Immigration and Refugee Protection Act (IRPA), clearly requires claimants to provide "acceptable documents establishing identity and other elements of the claim."

The claimant testified that he spoke to the Attorney General (several times about his experiences in the cadet corps before he left Nigeria. He also testified that he contacted members of the press in Nigeria in 2001. He testified that he had documents and pictures and tapes and that he always made duplicates. He testified that he "pretty much wanted to bring people to justice." He testified that he spoke to the Nigerian Minister of Sports when he came to Canada for the World Championships in 2001 and that he signed "certain documents" regarding false coup plots and surveillance. He testified that he signed the documents to confirm that the information regarding "false coup plots" and surveillance information was true. The claimant was not clear as just what was in these documents and tapes. The claimant was asked if he had taken these documents with him when he left Nigeria for Pakistan in 1998. He responded, "if only I had decided to change while in Canada." The panel finds the claimant's testimony regarding the evidence he allegedly gathered to be vague and deliberately evasive. The claimant's vague, evasive manner leads the panel to find the claimant's testimony regarding the documents

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and tapes he saved and shared with certain officials and members of the press not credible. The panel further finds that the claimant did not obtain and provide information to the Attorney General, the press or the Minister of Sports.

The claimant was unable to corroborate his testimony with reliable documentation, specific to his allegations. The claimant explained that he tried to get as much information as possible. The claimant has had benefit of counsel since at least March 14, 2005. The panel draws a negative inference regarding the lack of specific corroboration. The panel acknowledges the many news articles² disclosed but finds they have no corroborative value regarding the claimant's allegations regarding those he alleges to fear, the persons to whom he allegedly reported and with whom he communicated, his leadership in the cadet corps and its activities. They are just news articles.

The panel accepted a document³ that the claimant unexpectedly presented during the hearing, which he alleged corroborated his membership and leadership in the cadets. The panel notes that this claim was referred on January 17, 2005, and that the claimant had benefit of counsel since March 2005 and had more than sufficient time to obtain his documents. He testified that his mother obtained the document. The letter states he was active in the Cadet Corps Club, which the panel is willing to accept; however, the letter has no further corroborative value as to his leadership and activities. As well, the photos⁴ of the claimant in combat fatigue have no corroborative value regarding his leadership activities.

Those to whom the claimant allegedly spoke or confided or gave tapes and documents to are dead. Their deaths do not corroborate anything except the claimant's self-serving testimony. The Attorney General was assassinated in 2001.⁵ There was no mention of arrests or trials of military members. This news article is of no use to the panel when assessing the credibility of the claimant or his allegations. The claimant disclosed a group photo of some people in front of a tent with a hand drawn arrow pointing to the Minister of Sport at Heritage Days. This photo has no corroborative value regarding the claimant's relationship with the minister or his allegations about his fears in Nigeria. The claimant disclosed a manifest⁶ of a plane that crashed which killed the Minister of Sports. The claimant testified that a plane crash was a common method in Nigeria to get rid of people. The claimant's testimony is not supported by any of the documents before the panel, including those he submitted. The article, which contained the manifest, indicated that the crash was the result of a failed engine. This article has no corroborative value regarding the allegations of the claimant. The claimant testified that rabid

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hyenas attacked another person involved. There was no reliable corroborative evidence. The panel finds that the preceding documents and testimony do not in any way connect the deaths of the victims to the claimant or his allegations.

The claimant indicated in his narrative that one of the people he fears is a General. He disclosed a news article⁷ about him that indicates that the general is now in prison and was released to the Directorate of Military Intelligence for questioning. Again the article indicates to the panel that the general exists but there is nothing in the article to connect the general or his activities to the claimant or his allegations. The computer news articles disclosed are available to anyone and have no corroborative value regarding the specific situation and allegations of this claimant.

There is absolutely no documentary evidence connecting the claimant to any of the deaths, arrests or targeting of individuals.

The claimant testified that no one in Nigeria had contacted his mother regarding his whereabouts. The claimant testified that no one would contact her because he never told his mother about any of his experiences or problems. He confirmed his testimony. Later in the hearing the claimant suddenly remembered that his mother had been contacted. The panel finds this sudden recollection lacking credibility because the claimant omitted it from any statement, including his narrative. This is a significant omission because such contact could increase the level of risk faced by a claimant. The panel gives the claimant's previously omitted testimony about someone contacting his mother no weight.

The claimant testified that his friends told him his name was "ringing like a bell" and his meetings with the Attorney General were common knowledge. As well, there were Nigerian officials calling him in Canada from Nigeria. He identified those he fears as generals, oil barons and drug lords and further described them as some of the richest people in Nigeria. He testified at the beginning of his hearing that he feared current and former members of the military and in particular military intelligence. The panel finds on a balance of probabilities that if the people described by the claimant were interested in his whereabouts, they would have contacted his mother. The panel finds that the persons the claimant alleged to fear have no serious interest in him.

The panel finds the claimant's allegation that the military arranged for him to obtain a driver's license at the age of thirteen to help carry out surveillance activities for the Nigerian military elite implausible. The panel also finds the allegations and descriptions of his

alleged activities implausible. As corrupt and ambitious certain persons might be, it would make little sense to place security issues such as the spying on so-called "rogue contactors" or colleagues and the taping of conversations in the hands of teenagers. There is no reliable or trustworthy documentation, which states or even suggests that this situation existed in a military junior high and high school in the capital district of Abuja and that the young people involved were now being targeted. The panel finds it reasonable to expect some reliable and trustworthy corroborative evidence when such allegations are being put forward. The panel finds the allegations of the claimant stretch the bounds of credulity.

The claimant was a day student for about five years; he was thirteen years old when his alleged surveillance activities began. He testified that he went home every day to his home in Abuja. He indicated in his narrative that he would receive sealed instructions and would often communicate to his peers from remote and sometimes mobile locations. He added that he was in charge of telecommunications and mobility and transportation. The panel finds it implausible that a thirteen-year old son would be recruited and involved in such activities and entrusted to such responsibility. The panel also finds it implausible that a teen-aged boy could keep all aspects of such activities secret. His absence from home and numerous assignments and activities would surely have been noticed over a period of five years. The panel finds the allegations regarding the claimant's activities with the cadet corps are not credible.

The claimant testified that he had just received a "police clearance" document from Nigeria to support his application for acceptance under the skilled worker program. The panel asked how he was able to obtain such a document considering that powerful, influential people, including the Department of Military Intelligence were interested in him. The claimant testified that no one was aware of his need for police clearance from Nigeria. The panel finds on a balance of probabilities that if such interest as testified to by the claimant existed, the claimant would not be receiving a police clearance document from authorities in Nigeria to support an application to stay in Canada.

The claimant submitted a Witness Statement Form from the Edmonton Police Service.⁸ The form is signed on January 16, 2005, one day before the claimant initiated his refugee claim. The panel finds that the claimant is the only source of the content of this document. The panel also finds that the claimant purposely and falsely reported to police to obtain what he considered would be helpful corroborative evidence for his refugee claim. As it is completely

self-reported, the panel gives it little weight as a corroborative document. The claimant testified that he also contacted the RCMP. For the same reasons as above and the fact that there is no documentary evidence to support his testimony, the panel gives his testimony no weight.

The claimant called two witnesses from Nigeria to support his claim. Both witnesses were alleged to be fellow students at the claimant's school and members of the Cadet Corps. There was no reliable documentation to establish the identity and their expertise regarding the claimant's allegations. The panel also considered their friendship to the claimant. The panel finds the lack of acceptable documentation regarding the identity and knowledge of these witnesses affects the credibility of their testimony.

The claimant testified that he was planning to return to Nigeria and called some friends just before Christmas 2004. He was told his name had been "ringing like a bell" and that his discussions with the attorney general about corruption were well known. He testified that he was told at the time he called it was not safe for him to come back. He then decided he must make a refugee claim. The first witness testified that he could not give any names of military people involved due to security problems. This testimony was of no corroborative value to the panel. He then testified that he told the claimant not to come back three years ago. When asked again, he confirmed and clarified that he told the claimant in "2002 about three or four years ago." This significant contradiction by a witness called to support the claimant's allegations further undermines the credibility of the allegations and testimony of the claimant and the testimony of the other witness. Given the previous credibility findings regarding the allegations of the claimant, the panel gives the testimony of the second witness no weight.

Having considered all of the evidence, the panel determines that the claimant has not provided sufficient credible and trustworthy evidence to establish a serious possibility of persecution or that it is more likely than not that he would be subjected to a danger of torture or face a risk to life or a risk to cruel and unusual treatment or punishment by reason of political opinion if he were to return to Nigeria. This finding of insufficient credible and trustworthy evidence applies to all three grounds of protection.

The panel then considered the claimant's allegation that he would face a serious possibility of persecution on a Convention ground or that it is more likely than not that he would be subjected to a danger of torture or face a risk to life or a risk to cruel and unusual treatment or punishment upon return to Nigeria be reason of his bisexual orientation.

The panel is willing to accept that the claimant is bisexual based on testimony of his present live-in girlfriend and former male associate.

Based on all the evidence, the panel finds the claimant has a viable internal flight alternative in Lagos.

The claimant testified that he would not relocate to Lagos because he could be attacked or even stoned or lynched by zealots. His live-in girlfriend testified that he was not overly demonstrative in public with his male friends. The claimant testified that a person does not have to be flamboyant because one person might find out and could tell another. The panel finds his testimony to be speculation. He added that he would not be safe anywhere because of Sharia Law.

The panel applied the two-pronged test.⁹

Having concluded through the following analysis that an internal flight alternative (IFA) is available to the claimant in Lagos the panel has not made any finding in relation to the well-foundedness fear of persecution or degree of harm feared in Abuja as a result of his bisexuality.¹⁰

Is there a serious possibility that the claimant will be persecuted or it is more likely than not that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual punishment in the IFA location of Lagos by reason of his bisexuality?

The panel consulted the recent United States Department of State Country Report of Human Rights Practices, which indicates that the Constitution provides for the right of freedom of movement and that the Government generally respected this right.¹¹

Lagos is not a Sharia state.

The recent documentary evidence indicates that homosexuality is indeed criminalized in Nigeria and that some homosexuals have been seriously mistreated in some states with Sharia Law.¹² Amnesty International's office in Bonn regards Nigeria's Criminal Code Act as severe; however, it concedes that it is unaware of any cases in which the Act's punitive measures were carried out, or of individuals having been convicted of practising homosexuality. Amnesty International also said that a variety of sources, from Germany's Foreign Office to international homosexual organizations, operate on the assumption that voluntary homosexual acts between adults are no longer being punished.

The Toronto Star, reporting on the Nigerian Anglican Church's attitude toward the ordination and acceptance of gays, also suggests that although homosexuality is a criminal

offence, sentences are seldom meted out. The United States Department of State Country Report of Human Rights Practices for 2004, supports that evidence.

A representative of Alliance Rights Nigeria (ARN), a non-governmental organization promoting the interests of lesbian, gay, bisexual and transgendered persons in Nigeria said that the Nigerian penal code is stricter on paper than it is in practice. He further claimed that in Lagos, for example, gays and lesbians could live freely as long as they do not impinge upon the rights of others. He cautioned, however, that gays and lesbians residing in Nigeria's northern states are not as free since Sharia is more serious.

Societal attitudes are not overwhelmingly acceptable for homosexuals in Nigeria particularly among church leaders, a situation not unfamiliar to people in Canada.

There was no evidence of the claimant being flamboyant (his own words), or openly predatory.

The panel finds on a balance of probabilities that the claimant could live his bisexual life style, perhaps in a manner similar to the one he is leading in Canada, in Lagos, without fear of harm and that although the prevailing view in Nigeria is one that regards homosexuality as an abuse of traditional values, reports from a variety of sources have even suggested that gays and lesbians are "quietly tolerated" and "widely ignored" in Nigeria.¹³

The panel finds that the claimant will not face a serious possibility of persecution on a Convention ground or that it is more likely than not that he would be subjected to a danger of torture or face a risk to life or a risk to cruel and unusual treatment or punishment upon return to the IFA location, Lagos. This finding applies to all three grounds of protection.

Would it be unreasonably harsh in all circumstances for the claimant to move to the IFA location?

The claimant appeared to be in good health and there was no evidence to suggest otherwise. This claimant is well travelled. His mother is a diplomat. He has adjusted to a variety of educational experiences in different countries. The claimant has a number of years of post-secondary education and has been self-employed. His mother continues to help support him in Canada and the panel finds no evidence or reason that she would not continue to do so in the IFA location. He has traveled to and lived in Canada since 1999. His actions and initiatives while in Canada exhibit his resourcefulness and flexibility. Lagos is accessible.

The panel finds that would not be unreasonably harsh in all circumstances for the claimant to move to the IFA location, Lagos.

The panel notes that section 97(1)(b)(ii) of the Act speaks only of a risk faced by the person in every part of the country, it does not explicitly add a reasonableness element to the availability of a safe area in the country, an element that has been extensively interpreted by the Federal Court in the context of Convention refugee cases. In order to find, therefore, that the claimant has an internal flight alternative (IFA), the panel must be satisfied that the IFA is an area of the country which is reasonably accessible to the claimant, and where the claimant would not face a risk to life or a risk of cruel and unusual treatment or punishment. In the alternative, the panel refers to the above analysis regarding the reasonableness of the IFA.

The panel finds that the claimant has an internal flight alternative in Lagos. This finding applies to all three ground of protection.

Having considered all of the evidence, the panel determines that the claimant has not satisfied his burden of establishing a serious possibility of persecution on a Convention ground or that it is more likely than not that he would be subjected to a danger of torture or face a risk to life or a risk to cruel and unusual treatment or punishment by reason of his sexual orientation upon return to Lagos, Nigeria.

The panel considered all of the evidence in this claim. The panel concludes that the claimant has not satisfied his burden of establishing a serious possibility of persecution on a Convention ground or that it is more likely than not that he would be subjected to a danger of torture or face a risk to life or a risk to cruel and unusual treatment or punishment.

CONCLUSION

For these reasons, the panel determines that the claimant, is not a Convention refugee, under section 96 of IRPA or a person in need of protection within the meaning of section 97(1)(a) or (b) of IRPA, and therefore rejects his claim.

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"Marnie Armstrong"
Marnie Armstrong

DATED: April 11, 2006

¹ Exhibit # R-1, Page 1.

² Exhibit # C-2, Items 10 to 13.

³ Exhibit # C-5.

⁴ Exhibit # C-2, Pages 34-35.

⁵ Exhibit # C-2, Item 11.

⁶ Exhibit # C-2, Item 10.

⁷ Exhibit # C-2, Item 13.

⁸ Exhibit # C-2, Item 2.

⁹ *Rasaratnam, Sivaganthan v. M.E.I.* (F.C.A., no. A-232-91), Mahoney, Stone, Linden, December 5, 1991. Reported: *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.)

¹⁰ *Kanagaratnam, Parameswary v. M.E.I.* (F.C.A., no. A356-94) Strayer, Linden, McDonald, January 17, 1996

¹¹ Exhibit # R-3, United States Department of State Country Report of Human Rights Practices for 2004.

¹² Exhibit # R-3, Items 6.1 and 6.2, Response to Information Request # NGA42748.E, Nigeria: Situation of Homosexuals ..., July 14, 2004 and Response to Information Request # NGA43276.E, Nigeria: Situation of Homosexuals ..., February 14, 2005.

¹³ Exhibit # R-3, Items 6.1 and 6.2, Response to Information Request # NGA42748.E, Nigeria: Situation of Homosexuals ..., July 14, 2004.