



RPD File No. / N° de dossier de la SPR : TB2-07629
TB2-07650
TB2-07651
TB2-07652

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX (a.k.a. XXXX XXXX XXXX) XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	October 30, 2017 January 23, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	February 9, 2018	Date de la décision et des motifs
Panel	Luis F. Agostinho	Tribunal
Counsel for the Claimant(s)	Dov Maierovitz Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

REASONS FOR DECISION

[1] The principal claimant, XXXX XXXX (a.k.a XXXX XXXX XXXX), and her minor children, XXXX XXXX XXXX, XXXX XXXX XXXX, and XXXX XXXX XXXX, all claim to citizens of Nigeria and are seeking refugee protection pursuant to sections 96 and section 97(1)(a) and (b) of the *Immigration and Refugee Protection Act* (IRPA).¹

[2] These claims were joined in accordance with Rule 55 of the *Refugee Protection Division Rules*.²

[3] The principal claimant was the designated representative of the minor claimants as per RPD Rules.

ALLEGATIONS

[4] The allegations related to the claim are set out in their Personal Information Forms (PIF)³ dated June 22, 2012. The principal claimant's PIF alleged domestic abuse in Nigeria of both her children and herself by her common law spouse. An amended PIF narrative was submitted January 12, 2018, declaring completely different allegations to the first submitted PIF narrative.⁴ In this PIF narrative, the principal claimant alleges she was a victim of human trafficking in the sex trade; she was forced to pay a woman known as "Madam" two million Lire every ten days to pay for the expense of being transported to Italy. Once in Canada, the principal claimant became the victim of two counsels who coerced her into making a false claim for refugee protection.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 as amended, sections 96 and 97(1).

² Rule 55, Immigration and Refugee Board, Refugee Protection Division Rules, SOR/2012-256.

³ Exhibit 2, Personal Information Forms, dated June 22, 2012.

⁴ Exhibit 12, Claimant's supporting documents, dated January 12, 2018, at pp. 1-13.

IDENTITY

[5] The principal claimant's identity has been accepted as XXXX XXXX as a permanent resident of Italy by virtue of the documentation she presented just prior to the hearing.⁵ There is also a copy of a passport issued in the name of XXXX XXXX by the government of Nigeria on May 23, 2011 at Lagos.⁶ These documents were issued by a democratic country who is a member of the European Union, and as such I can presume that they are very credible and authentic. The principal claimant during both sittings testified that her real name is XXXX XXXX XXXX and that she had given the name of XXXX XXXX to the police in Italy when she was arrested because it was the easiest to spell. The panel asked why she never corrected it, and the principal did not give an answer. The minor claimants' identity is also accepted by virtue of the documentation received just prior to the hearing, as being born and being permanent residents of Italy.⁷ The panel finds on a balance of probabilities that the principal claimant's identity and those of the minor claimants as permanent residents of Italy is established by her testimony and supporting documentation filed.⁸

DETERMINATION

[6] Having considered all the relevant factors and evidence, the panel rejects this claim, as the claimants are excluded under article 1E of the Convention and section 98 of the IRPA, as they are permanent residents of Italy, with a status substantially similar to Italian nationals. The panel determines, therefore, that the claimants are not Convention refugees or persons in need of protection. Or in the alternative, the panel finds the claimants' refugee claims have no credible basis. Section 107(1) of IRPA provides that the RPD shall make a finding of no credible basis if it determines that there was no credible or trustworthy evidence on which it could have made a favourable decision.

⁵ Exhibit 11, Claimant's supporting documents, dated January 16, 2018, at pp. 1-12.

⁶ Exhibit 12, Claimant's supporting documents, dated January 12, 2018, at p. 29.

⁷ Exhibit 11, Claimant's supporting documents, dated January 16, 2018, at pp. 13-21.

⁸ Exhibit 12, Claimant's supporting documents, dated January 12, 2018, at pp. 14-21.

ANALYSIS

[7] In assessing this claim, the panel focused on article 1E as well as the principal claimant's credibility.

Exclusion Article 1E

[8] Article 1E of the Refugee Convention:

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of nationality in that country.

[9] That article is reflected in section 98 of IRPA: "A person referred to in section E or F of article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection."

[10] In the *Zeng* decision, the Federal Court of Appeal set out the test to be applied in article 1E exclusions. The Court stated:

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded.⁹

[11] In the present case the principal claimant declared in her Generic Application Form for Canada (IMM 1156)¹⁰ that she was a citizen of the Republic of Nigeria and had not travelled anywhere and the minor claimants were born in Nigeria.

[12] However, at the first sitting of her refugee claim on October 30, 2017, the principal claimant, approximately 45 minutes into the claim, advised the panel that her Personal Information Form was incorrect, and that she had been residing in Italy since XXXX, 1998.

⁹ *Zeng, Guanqiu v. M.C.I.* (F.C.A., no. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010, 2010 FCA 118.

Reported: *Zeng v. Canada (Minister of Citizenship and Immigration)*, [2011] 4 F.C.R. 3 (F.C.A.).

¹⁰ Exhibit 1, Package of information from the referring CBSA/CIC.

[13] At the resumption of the hearing on January 23, 2018, she testified that she has a permanent resident card to reside in Italy. Copies of the claimants “Permesso di Soggiorno” and translations of the documents are also disclosed.¹¹ The Permesso di Soggiorno was issued on February 26, 2010 and is valid until “indefinite”.¹²¹³ Later, when questioned by her counsel, the claimant stated that she does not think that she still has status in Italy because she has been away for a long time. The claimant stated that she has not had any correspondence concerning the cancellation of her permanent resident status, nor has she contacted the Italian embassy or consulate to verify the validity of her permanent resident status.

[14] The principal claimant, at the second sitting of her hearing on January 23, 2018, stated that she lived in Italy beginning XXXX, 1998. The principal claimant met her husband in Italy and they got married, had the three minor claimants, and continued to reside in Italy until the end of 2010, when they moved to Nigeria. Due to health problems with herself and one of the minor claimants, the entire family returned to Italy in XXXX, 2011. The principal claimant and minor claimants travelled to the United States of America (USA) in XXXX, 2012, and remained there until they travelled to and entered Canada in XXXX, 2012.

[15] According to the Response to Information Request (RIR)¹⁴ item 3.3 of Exhibit 8, a permanent resident of Italy has the rights as set out in *Shamlou*,¹⁵ and in this case the claimants clearly from the evidence presented have that permanent residence, and therefore are entitled to those same rights.

[16] It is also clear that the claimants have are status “substantially similar to nationals of Italy,” as set out in the test from *Shamlou* where the Federal Court considered the rights and obligations set out in article 1E, and held that these include the right of return, the right to work freely without restrictions, the right to study, and full access to social services.

¹¹ Exhibits 11 and 12, Claimant’s supporting documents.

¹² Exhibit 12, Claimant’s supporting documents, dated January 12, 2018, at p. 14.

¹³ Exhibit 14, Translation of Permesso di Soggiorno, received at hearing, January 23, 2018.

¹⁴ Exhibit 8, National Documentation Package (NDP) for Italy (May 31, 2017), Item 3.3.

¹⁵ *Shamlou, Pasha v. M.C.I.* (F.C.T.D., no. IMM-4967-94), Teitelbaum, November 15, 1995. **Reported:** *Shamlou v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D.).

[17] The panel further notes that according to the same RIR, the permit can be revoked in the following cases:

It has been acquired fraudulently;
The state has ordered an expulsion measure against the applicant;
The applicant no longer meets the requirements of the permit;
The applicant has been absent from EU territory for 12 consecutive months;
The applicant has "acquired long-term resident status in another European Union member State";
The applicant has been absent from Italy for more than 6 years. [footnotes omitted]¹⁶

[18] There is no information before the panel that any of the above noted cases are applicable to the claimant.

[19] According to Canadian case law, exclusion under article 1E will not apply if a claimant has a well-founded fear of persecution for a Convention reason, or is a person in need of protection, in the article 1E country.¹⁷ In addition, the United Nations (UN) has advocated that the Refugee Protection Division should consider a claim of fear of persecution against a 1E country as if the 1E country were a country of reference.¹⁸ In this context, the panel proceeded to hear evidence regarding the claimant's alleged fear of persecution in Italy.

¹⁶ Exhibit 8, NDP for Italy (May 31, 2017), Item 3.3, at para 2.21.

¹⁷ *Kroon, Victor v. M.E.I.* (F.C.T.D., no. IMM-3161-93), MacKay, January 6, 1995. **Reported:** *Kroon v. Canada (Minister of Employment and Immigration)* (1995), 28 Imm. L.R. (2d) 164 (F.C.T.D.); *Mobarekeh, Fariba Farahmad v. M.C.I.* (F.C., no. IMM-5995-03), Layden-Stevenson, August 11, 2004, 2004 FC 1102; *Li, Hong Lian v. M.C.I.* (F.C., no. IMM-585-09), Mandamin, August 24, 2009, 2009 FC 841.

¹⁸ United Nations High Commissioner for Refugees, *UNHCR Note on the Interpretation of Article 1E of the 1951 Convention Relating to the Status of Refugees*, March 2009.

CREDIBILITY

[20] In assessing the credibility of the evidence presented by the claimant regarding her fear of persecution in Italy, the panel is mindful of the decision of the Federal Court of Appeal in *Maldonado* wherein the Court stated, in part, that “when a claimant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.”¹⁹

[21] The claimant stated in her PIF, dated and signed on June 22, 2012, that she was a citizen of Nigeria and had met her common law spouse XXXX XXXX in XXXX in 2001. She further stated that he owned a XXXX business and she was selling XXXX XXXX in the XXXX market. The principal claimant further alleged that her common law spouse began physically assaulting and abusing her in 2008. The principal claimant continued to narrate that the abuse became violent and that the common law spouse also abused the children to the point that in March, 2012, she fled with the children to her aunt’s house in Lagos. The aunt, in April, 2012, advised the principal claimant to stay at the local church since her common law spouse had attended at her residence with some thugs looking for her and the children. With the help of the aunt, an agent was located and he aided the claimants travel to Canada.

[22] The principal claimant at the first sitting of her hearing on October 30, 2017, advised the panel some 45 minutes into the hearing that the narrative in her PIF was incorrect. The principal claimant upon responding to the panel’s questions regarding the fabrication of the narrative, testified that her first lawyer had encouraged her into fabricating the narrative, as the Board would not grant her status if she told the truth. The principal claimant testified that she had consulted a second lawyer, who advised her that she could not help her due to her submission of the PIF to the Board. The principal claimant testified that she had just retained her present counsel and was prepared to tell the truth. The principal claimant advised she was feeling ill, and the matter was

¹⁹ *Maldonado, Pedro Enrique Juarez v. M.C.I.* (F.C.A., no. A-450-79), Heald, Ryan, MacKay, November 19, 1979. **Reported:** *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

adjourned to January 23, 2018 for a continuation. The panel at this time reminded counsel and the principal claimant that identity was an issue and that they should procure identity documents prior to the continuation.

[23] The panel, prior to the commencement of the second sitting on January 23, 2018, was in receipt of exhibits 10-12. The exhibits contained numerous documents from numerous government agencies in Italy, Municipalities, Prosecutor's office and police. There were also two letters from the counsels who the principal claimant alleges had encouraged her to file a false/fabricated PIF and narrative and went so far as to also allege that the first counsel had counselled the principal claimant's husband who showed up in Canada to file a claim under a false name so as not to interfere with the principal claimant's claim. The letters from counsel also clearly indicate that she had advised them that she had residency in Italy and was a permanent of Italy.

[24] The panel finds this omission of her residency in Italy was deliberate to mislead Canadian Immigration authorities and this Board, and further finds this omission to be a major credibility concern. The panel further finds the submission of the new documents clearly contradict the principal claimant's allegations. As a result, the panel draws a negative inference regarding the principal claimant's testimony and documentation.

[25] The panel asked the claimant when she was in Italy and in the XXXX trade, why she did not report the traffickers to the authorities. The principal claimant testified that she did, when she was arrested and confessed to what she had been doing. She testified that she gave the police a fake name, XXXX XXXX as it was the easiest to spell. When asked why she didn't correct her name after she was married and birth of her children, she testified that she could not explain why she did not correct her identification to bear the proper name. She further testified that she did not try to correct her identity with the Italian authorities. The principal claimant did testify that she did possess a residence card and she also had a Permesso di Soggiorno, which she obtained when she got married. The principal claimant also testified, when questioned by the panel, that she did not have the same rights as those nationals of Italy. The right to education, work, health and social benefits. The panel rejects those answers as they are not credible and are directly in conflict with

the documentary evidence which clearly outlines the rights of those who possess a Permesso di Soggiorno. As such, the panel draws a negative inference against the principal claimant.

[26] The principal claimant further testified that the residency cards were still valid in 2012 and that the cards were good for five (5) years, knew she had to renew the cards, but didn't.

[27] The panel asked the principal claimant why it took her so long to come forth and tell the truth. She had many opportunities, why now? The principal claimant testified that her life is at risk and she had been searching for someone to help her. She further testified that her second lawyer told her that her biometrics would give away, if no biometrics then she would have to produce documents to support her identity. The principal claimant went on to testify that she had come to a point in her life, she wants to be here (in Canada). The principal claimant blamed her first counsel for the mess she is in.

[28] The principal claimant at the first sitting of her hearing before the panel, swore to tell the truth and further swore that her PIF was true and correct. Later in hearing about 45 minutes into it, said that her name was correct, but the narrative was fabricated by her counsel XXXX XXXX, in XXXX, 2012. The principal claimant testified that she cannot read or write but has been learning during the past two years. The principal claimant testified that she was told by Mr. XXXX just to sign her PIF and he would write out her narrative, as her real story as a victim of XXXX would not be accepted by the Board and her claim would be denied. The principal claimant in her amended PIF narrative²⁰ indicates that she read the narrative to the best of her ability and signed it and submitted to the Board.

[29] The principal claimant states in her amended narrative that her spouse arrived in Canada without her knowledge in XXXX of 2012, and that, once again, counsel XXXX counselled him to file a separate claim under a different name so as not betray her claim.²¹ However, the panel notes that in Exhibit 12, pages 80-82 there is a report by L. Hofer, Inland Enforcement Officer#19999 which was furnished by the claimant's present counsel, this report clearly contradicts the principal

²⁰ Exhibit 12, Claimant's supporting documents, dated January 12, 2018, at p. 10, paras 77-78.

²¹ Ibid., paras. 80-82.

claimant's account of her spouse's arrival. The report states that the spouse arrived on XXXX XXXX, 2013, at Pearson International Airport using the name XXXX XXXX XXXX XXXX with a date of birth of XXXX XXXX, 1973. On XXXX XXXX, 2013 is identified through fingerprints as XXXX XXXX XXXX, with a date of birth of XXXX, 1973. The panel finds this report to be credible and contradicts the principal claimant's allegations that Mr. XXXX counselled the principal claimant's spouse to file a claim under a false name. The spouse upon arrival in Canada offered the immigration authorities a false name, and it wasn't until later that his true identity was discovered. Thus, the panel draws a negative inference from this portion of the principal claimant's testimony, and finds her not to be credible.

[30] The letter of fairness dated January 13, 2018, from XXXX XXXX, Barrister and Solicitor, states that the principal claimant brought a male party who identified as XXXX XXXX XXXX to his office. Counsel further states that at no time did the principal claimant or the male party identify themselves to him as husband and wife or lovers. Counsel also states that the principal claimant had told him that she was fleeing Nigeria from her abusive common law spouse XXXX XXXX.²²

[31] The panel draws a negative inference to the principal claimant's credibility and finds that her testimony concerning the events that occurred involving counsel XXXX are not credible. The panel finds the letter from counsel to be credible as he is an "officer of the court" as per the definition of the criminal code of Canada and a member in good standing of the Law Society of Upper Canada and is subject to its code of conduct as a lawyer.

[32] The panel also considered a Procedural Fairness Response from XXXX XXXX XXXX, Barrister and Solicitor, dated January 18, 2018.²³ The contents of the letter from counsel further contradict the principal claimant's account of the allegation of counsel encouraging the principal claimant to fabricate her narrative and her claim as a whole. Counsel, in her letter, goes so far as to state that the principal claimant requested counsel to procure false documents to bolster her claim and when refused by counsel, inquired on how documents should be written to support her

²² Exhibit 11, Claimant's supporting documents, dated January 16, 2018, at pp. 28-34.

²³ Exhibit 10, Procedural Fairness Response from XXXX XXXX XXXX, dated January 23, 2018, at pp. 1-5.

claim. Counsel in her letter states her concern about the authenticity of the birth certificates of the children and other documentation, as they were issued all on the same date, and one day prior to the departure from Nigeria. Counsel also addressed the concern that they were copies and not originals which had been presented to Immigration authorities and the Board.

[33] The panel draws a negative inference to the principal claimant's credibility and finds that her testimony concerning the events that occurred involving counsel XXXX are not credible. The panel finds the letter from counsel to credible as she is an "officer of the court" as per the definition criminal code of Canada and a member in good standing of the Law Society of Upper Canada and is subject to its code of conduct as a lawyer.

[34] The panel asked the principal claimant if the documents from Nigeria were fraudulent, and she testified that they were fake and had been procured to support her claim. She had realized that everything had fallen apart and her spouse, who had rescued her in Italy, had now left her due to the false story she had created.

[35] The panel draws a negative inference to the principal claimant's credibility and finds that her testimony concerning the events that occurred in Italy regarding her fears of the madam are not credible, nor any portion of her claim. The principal claimant has shown that she has the ability to procure fake/fraudulent documents to support a claim. She is able to concoct a story that is simply beyond belief and riddled with untruths. Although she testified she can't read or write, she was able to procure false documents in Nigeria and navigate her way to the USA where she resided by her own account for approximately XXXX weeks. She was able to make her into Canada with the three minor claimants, and once here in Canada she was able use two separate counsels to make a false claim.

[36] The principal claimant's fear in Italy was that she would be found by the madam as she still owes money and that when she walks down the street she is stereotyped by the males as a prostitute.

[37] Counsel's submissions were directed at her risk if she was to return to Nigeria, however due to the principal claimant's lack of credibility in its entirety, the panel does not accept her story regarding Nigeria, nevertheless she has permanent residency in Italy.

State Protection

[38] The panel does not accept that the claimant was being targeted by the madam from Nigeria, and the panel does not accept any portions of her allegations due to major credibility concerns which have been stated above. However, the panel finds that there is adequate state protection in Italy. For the reasons that follow the panel finds that there is such adequate state protection available for the principal claimant in Italy if she requires it.

[39] The principal claimant stated that she does not know how she was found by the madam and her thugs, but that she was further threatened by the madam in various locations throughout Italy. She explained that she arrested by the police in Italy. The principal claimant cooperated with the police and they assisted her by providing her documentation to allow assist her with obtaining an Italian permit and a passport. The police investigated the "madam" and invited the principal claimant to attend the station to identify her. The principal claimant was shown some mug shots at the police station and she identified the madam. The police sent her on her way and advised they were continuing their investigation.

[40] There is a presumption that countries are capable of protecting their citizens, and this underscores the principle that international protection should be sought only when a refugee claimant has no other recourse available.

[41] The panel is not obliged to prove that Italy can offer the claimants adequate state protection; rather, the claimants bear the legal burden of rebutting the presumption that adequate state protection exists, by adducing clear and convincing evidence which satisfies the Board, on a balance of probabilities.²⁴

²⁴ *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C., no. IMM-822-06), O'Reilly, March 26, 2007, 2007 FC 320.
Reported: *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 1 F.C.R. 3 (F.C.); *Flores*

[42] The onus on claimants coming from a democratic country is heavy, and the panel notes that the objective evidence confirms that Italy is a functioning, multi-party democracy with free and fair elections. It has a functioning security force to uphold the laws and constitution of the country. It remains in effective control of its territory and there is no evidence of a complete state breakdown.²⁵

[43] The documentary evidence portrays some incidents of xenophobia and racially motivated crimes towards migrants of African descent. The Italian criminal justice system discriminates against foreigners and people of African descent, the discrimination faced by people of African descent in access to education, health, employment and housing in Italy.

[44] The documentary evidence also discusses the legal framework in place in Italy to deal with such incidences of racism and discrimination such as the ratification of international and European human rights instruments prohibiting racial discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination. The Italian Constitution guarantees fundamental rights and freedoms and its laws prohibit discrimination on a number of grounds. The Italian legal system aims to ensure an effective framework to guarantee the fundamental rights of individuals, providing them with a range of provisions that have, at their core, the principle of non-discrimination, as set out in article 3 of the Constitution. Furthermore, Italy has strong anti-discrimination legislation. Even more comprehensive legislation was adopted in 2003. The legal framework includes a range of criminal, civil and administrative provisions to combat racism and incitement to racial hatred, which is severely punished by the Criminal Code.

[45] The panel notes that the principal claimant has now brought forward allegations in her testimony that she suffered instances of prejudice or intolerance in Italy.

[46] The panel finds the principal claimant not credible in her allegations of her fear of harm in Italy. Further, the evidence before the panel shows there is operationally effective state protection in Italy.

Carrillo, Maria Del Rosario v. M.C.I. (F.C.A., no. A-225-07), Létourneau, Nadon, Sharlow, March 12, 2008, 2008 FCA 94. **Reported:** *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

²⁵ Exhibit 8, NDP for Italy (May 31, 2017), Item 2.1, at p. 1.

CONCLUSION

[47] Having considered all of the evidence, the panel finds that the claimant is a permanent resident of Italy, with substantially the same rights as Italian nationals. There is no evidence before the panel that the claimant's permanent resident status in Italy has been revoked.

[48] In the alternative, the panel further determines there is insufficient credible evidence to find that there is a serious possibility that the claimants would be persecuted in Italy, or that, on a balance of probabilities, the claimants would be personally subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment there.

[49] The panel determines that the claimant is excluded from refugee protection pursuant to article 1E of the Convention and section 98 of the IRPA. Or in the alternative I conclude, in accordance with section 107(2) of the *IRPA*, that there was no credible or trustworthy evidence upon which the Board could have determined that the claimants are Convention refugees or persons in need of protection. The Federal Court has found that the onus to produce independent and credible evidence to support a claim remains solely on the claimant.²⁶ Therefore, there is no credible basis for the claim.

²⁶ *Sellan, Thayaseelan v. M.C.I.* (F.C., no. IMM-6516-06), Phelan, January 14, 2008, 2008 FC 44; *Sellan: M.C.I. v. Sellan, Thayaseelan* (F.C.A., no. A-116-08), Desjardins, Nodon, Blais, December 3, 2008, 2008 FCA 381.

[50] The panel concludes that the claimants are not Convention refugees nor persons in need of protection and, therefore, the panel rejects their claims.

(signed)

“Luis F. Agostinho”

Luis F. Agostinho

February 9, 2018

Date