



RPD File No. / N° de dossier de la SPR : TB8-07212  
TB8-07213

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	March 13, 2019	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision and reasons</b>	April 16, 2019	<b>Date de la décision et des motifs</b>
<b>Panel</b>	Lynda Gagnard	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Sunday Adeyemi	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>	XXXX XXXX XXXX	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

2019 CanLII 135492 (CA IRB)

## REASONS FOR DECISION

[1] The claimant, XXXX XXXX XXXX, and the minor claimant, XXXX XXXX XXXX XXXX XXXX, claim to be citizens of Nigeria and request protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup> The minor claimant, XXXX XXXX XXXX XXXX XXXX, has dual citizenship, USA and Nigeria.

[2] These claims were joined according to Rule 55 of the *Refugee Protection Division Rules*.<sup>2</sup>

### DESIGNATED REPRESENTATIVE

[3] The claimant was appointed the designated representative for the minor claimant in accordance to section 167(2) of *IRPA*.<sup>3</sup>

### GUIDELINES

[4] In assessing these claims, the panel considered the Chairperson's Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution*<sup>4</sup> to ensure that necessary accommodations were made in questioning the female claimant in the overall hearing process and in substantively assessing the claims. The panel, further, considered the Chairperson's Guideline 3: *Child Refugee Claimants: Procedural and Evidentiary Issues*.<sup>5</sup>

### DETERMINATION

[5] The panel finds that the claimants are neither Convention refugees nor persons in need of protection. The reasons are as follows.

---

<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> *Refugee Protection Division Rules* SOR/2012-256 made under *Immigration and Refugee Protection Act*.

<sup>3</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>4</sup> Guidelines issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*.

<sup>5</sup> Guidelines issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*.

## THE USA BORN CHILD

[6] The minor claimant, XXXX XXXX XXXX XXXX XXXX, a USA citizen, also claims refugee protection pursuant to section 96 and 97 (1) of the *Immigration and Refugee Protection Act*.<sup>6</sup> Her claim was joined to the above noted family member. Her USA citizenship was established by a true copy of her passport.<sup>7</sup> The panel asked the claimant what was her claim against the USA on behalf of the minor USA claimant. She indicated that she did not have a claim against the USA. Given that no evidence was adduced as against the USA and the fact that the USA is a democratic country with police force able to provide effective and adequate protection for its citizens, the panel finds that the USA minor claimant is neither a convention refugee nor a person in need of protection pursuant to section 96 and subsection 91(1) of the *Immigration Refugee Protection Act*.<sup>8</sup> Her claim is dismissed.

## ANALYSIS

### Identity

[7] Based on the claimant's testimony and a copy of the claimants' passports found in Exhibit 1, the panel finds, on a balance of probabilities, that the claimants' personal and national identity as nationals of Nigeria has been established. XXXX XXXX XXXX XXXX XXXX has established, on a balance of probabilities, her dual citizenship as a citizen of the USA and Nigeria.

## ALLEGATION

[8] The claimant alleges that her in-laws want to force her daughter (minor claimant) to undergo circumcision and that she (the claimant) will be forced to have sexual intercourse with the masquerade to complete the traditional rite. The claimant further alleges that her problems began in XXXX 2016, and that she left Nigeria to claim asylum in the USA on XXXX XXXX, 2018.

---

<sup>6</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>7</sup> Exhibit 1.

<sup>8</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[9] She arrived in the USA on XXXX XXXX, 2018, however, she did not file asylum in the USA. Instead, she decided to come to Canada through irregular border crossing on XXXX XXXX, 2018, and file her BOC February 8, 2018.

## ISSUES

[10] Central to this claim is credibility, failure to claim elsewhere and subjective fear.

### Credibility

[11] “When a claimant swears that certain facts are true, this creates a presumption that they are indeed true unless there is valid reason to doubt their veracity.”<sup>9</sup> The determination as to whether a claimants’ evidence is credible is made on a balance of probabilities. The panel took into consideration that the claimant is well educated with 5 years of college and three years of work experience as a XXXX XXXX.

[12] In assessing credibility, the panel is mindful of the many difficulties faced by the claimants in establishing a claim including nervousness, cultural factors and the setting of the hearing room. The hearing was conducted in English without the assistance of an interpreter as requested by the claimant.

[13] Taking into account the claimant’s testimony, supporting documents disclosed by the claimant including counsel’s submission, the panel is not persuaded, on a balance of probabilities, that the events took place as described by the claimant. The claimant demonstrated great difficulty providing details with respect to incidents she experienced in Nigeria, even when asked specifically to provide details. Of further concern for the panel is the claimant’s failure to provide a reasonable explanation for the omissions and discrepancies between her testimony, the supporting documents she provided, her narrative and her interview with CBSA, when given ample opportunity to do so. The claimant also demonstrated a lack of subjective fear which will have a negative impact on her credibility.

---

<sup>9</sup> *Maldonado v. Canada (Citizenship and Immigration)*, 2008 CanLII 75430 (CA IRB).

[14] For example, the claimant testified that her problems began in XXXX 2016, when she returned to Nigeria from the USA after giving birth to her daughter. She indicated that her in-laws want to subject her daughter to FGM and that, as her mother, she would be forced to have intercourse with the head of the masquerade as per her in-laws family tradition. The panel asked the claimant what was the consequence of her refusal. The claimant indicated that people from her in-laws family will die. The panel asked how they would die. The claimant indicated that she did not know, but that is what she is being told by the head of her in-laws family. The panel asked the claimant what was the consequence to “her” for refusing to comply with her husband’s family tradition. The claimant said that there was no consequences to her because she has to do it. Later in her testimony, she indicated that she will be killed for refusing to comply with her in-law’s tradition. Given this evidence, the panel asked the claimant to explain why earlier in her testimony she indicated that there was no consequence to her for refusing to comply with her in-law’s family tradition and now she is giving evidence that she will be killed. With no answer forthcoming, the panel asked the claimant again why she said earlier there was no consequence to her refusal to comply with the in-law’s family tradition and now she states that they threatened to kill her if she did not comply with their tradition. After a very long pause and the panel waiting for a response the claimant did not answer. This raised several concerns for the panel.

[15] The first, being that the panel finds it reasonable to expect a reasonable person given the same circumstances to be consistent with respect to the consequences of her refusal to comply with her husband’s family tradition. The second concern is the fact that the claimant was unable to provide an explanation for the inconsistencies within her testimony on that issue. Taking into account the above noted analysis, the panel finds that had the threats to follow family tradition of the claimant’s daughter to undergo FGM and the claimant being forced to have intercourse with the head of the masquerade been genuine, it is reasonable for the panel to expect the claimant to be consistent with respect to the consequences of her refusal to comply.

[16] The panel asked the claimant what would be the consequence to “her husband” for refusing to produce them to her in-laws. The claimant replied that they would not do anything to him because it is her that they are after. Later in her testimony, the claimant indicated that her husband is threatened to produce her and her daughter. In light of this evidence the panel asked the claimant to explain the “threats” to her husband and asked to provide as much details as possible with respect to the alleged threats. The claimant indicated that her in-laws tell her

husband that he wants to destroy the family and that if something happens, he will pay for it. The claimant testified that her in-laws came to their house on XXXX XXXX XXXX 2017. The claimant and her husband were beaten and the neighbours intervened. The claimant further testified that in XXXX 2018, almost 10 months after she left Nigeria for the USA, the head of the shrine came to their house and “almost” beat her husband. They said that he has to provide the claimant because “something deadly is about to happen.” The panel finds the claimant’s description of the threats to her husband to be vague leaving the panel not knowing what the threats to her husband are if he refuses to produce the claimant to his family. The panel also takes into account that the claimant was asked specifically to provide as much details as possible with respect to the threats against her husband and her failure to do so will have a negative impact on the claimant’s credibility.

[17] The panel asked the claimant to describe the first incident with her in-laws with respect to her refusal to comply with their family tradition. The claimant testified that on XXXX XXXX, 2017, she was invited by her in-laws to go to their house where they planned on settling their family issues. However, when she got there, four of her in-laws attacked her. The attack resulted in her sustaining bruises and a cut to her stomach. The claimant further testified that, with the help of her husband, they managed to fight them off and escape. In support of her testimony the claimant submitted an affidavit<sup>10</sup> from her husband which states that, “immediately he was informed” of this terrible act and asked the claimant to go to the police and file a complaint. This implies that he was not there. There is no mention in the husband’s affidavit that he was present during the XXXX XXXX, 2017 incident. When asked to explain, the claimant explained that her husband was outside. This defies logic as the claimant testified that she, with the help of her husband, managed to fight off the in-laws and escape. Further, the claimant’s explanation that her husband was outside does not explain the inconsistency between her husband’s affidavit which states that he was informed of the incident and the fact that the affidavit makes no mention of him being there and the claimant’s evidence that he was there and helped her fight off her in-laws.

[18] The panel asked the claimant if she had anything to add with respect to the incident of XXXX XXXX, 2017. The claimant said she had nothing to add. Given this evidence, the panel asked the claimant to explain why, when asked on several occasions to provide details of the

---

<sup>10</sup> Exhibit 5.

XXXX 2017 attack, she never mentioned that her in-laws “almost succeeded in raping her” as described in her narrative. The claimant explained that she forgot and confirmed that she did almost get raped. The panel does not accept this explanation as reasonable and here are the reasons why. The panel finds that it is reasonable to believe that a reasonable person given the same circumstances would not have forgotten to mention this traumatic event. Further, considering the fact that the panel asked the claimant to provide details of the XXXX 2017 event, it is reasonable to expect the claimant to have provided details surrounding the circumstances of how she was almost raped when she confirmed that she was almost raped. The claimant’s failure to provide a reasonable explanation for omitting to mention that she was almost raped in combination to her failure to provide details surrounding the alleged incident leads the panel to find, on a balance of probabilities, that the event did not take place.

[19] Of further concern for the panel is the claimant’s evidence that she went to the family meeting on XXXX XXXX, 2017, with her husband and no one else. She never mentioned that her daughter was with her and that, “her daughter was almost circumcised on that day” as described in her narrative. When asked to explain the discrepancy, the claimant explained that she thought the panel was asking about relatives and that “of course” her daughter was with her. The panel put to the claimant that her explanation does not explain why she omitted to mention that her daughter was with her and almost circumcised as mentioned in her narrative. The claimant indicated that she did not understand the question and again stated that she thought the panel was asking about relatives.

[20] The panel rejects this explanation as the question was straight forward when she was asked if she had anything to add to her description of the XXXX XXXX, 2017 incident. Further, there was no mention of relatives in the question at hand. Given the claimant’s evidence that this incident is what caused her to go live in hiding at her mother’s house in combination to the claimant’s failure to provide a reasonable explanation for omissions with respect to this event, central to her claim, leads the panel to find, on a balance of probabilities, that the event did not take place as described by the claimant.

[21] In support of her testimony, the claimant submitted a copy of the police report<sup>11</sup> with respect to the XXXX XXXX, 2017 incident. The police report states that the claimant's in-laws almost succeeded in raping her and having her daughter circumcised. In light of the credibility finding with respect to the XXXX XXXX, 2017 incident in combination with the fact that the claimant failed to mention the above during testimony and failed to provide a reasonable explanation for this omission, the panel will give the police report no weight.

[22] The claimant gave evidence that her husband's parents threaten to kill him for not producing the claimant and her daughter and that he was almost beat by her in-laws for not producing them. This took place XXXX 2018, 10 months after she left for the USA. The claimant gave further evidence that her husband has lived and continues to live at the same address where the alleged attacks took place. According to the claimant, her husband continues to work and go about his daily routine. Given this evidence, the panel finds the claimant's husband's action to be inconsistent with the action of someone whose life is being threatened. If her husband's life was in danger for refusing to produce the claimant and her daughter, it is reasonable to expect the claimant's husband to take some action to minimize his risk of being subjected to further attacks and the possibility of being killed. However, from the evidence, the claimant's husband clearly did not take any action to protect himself from the threats from his parents. For example, he made no attempts to go in hiding as one would expect from a reasonable person who genuinely fears for his life. As a result, the panel finds that the claimant's husband's actions support a finding that his life is not in danger for the reasons as alleged.

[23] In support of her claim the claimant submitted affidavits from her mother, neighbor, relative and friend, all of which can be found at Exhibit 5. The panel finds that the affidavits do not add anything to the claimant's story which was found not credible. As a result, the panel will give the above noted affidavits no weight.

[24] The claimant also submitted photographs she allegedly took when she went to meet her in-laws on XXXX XXXX, 2017. The claimant indicated that she took photos of the ceremony and circumcision rituals that others were going through at the hands of her in-laws before it was her turn because she wanted evidence of what happened that day. The photographs show the

---

<sup>11</sup> Exhibit 5.



circumcision ceremony, her sister in-law at the shrine smiling for the camera, a women being prepared for initiation, a pot of blood before the shrine and a photo of the masquerade amongst other photographs which the panel will give no weight for several reason. The first, being the credibility finding with respect to the XXXX XXXX XXXX 2017 incident. The second is that, given the above noted circumstances, it defies logic that the claimant's main concern at the time was to stick around and take photos as evidence as opposed to trying to escape to prevent her and her daughter to be subjected to the family ritual which she claims caused her to leave Nigeria and seek protection.

### **Failure to claim elsewhere; subjective fear**

[25] The claimant testified that her intention when she went to the USA was to claim asylum. However, a few days after her arrival in the USA, she went to live with a friend who referred her to a lawyer. After meeting with the lawyer, she was informed that the legal fees to file asylum in the USA was \$4,000, she had no money and neither was she allowed to work. That is when she decided to look for an alternative. She went online and did research about Canada. She found out that Canada provided shelter as opposed to USA where she would have to pay for everything to support herself and her daughter and would not be able to obtain a work permit. That is when she decided to come to Canada. Given this evidence, the panel asked the claimant if she did any research about Canada before leaving Nigeria. The claimant testified that she knew nothing about Canada and that she only did research about Canada after she experienced financial difficulties in the USA. The panel reminded the claimant of her interview with CBSA<sup>12</sup> when she was asked the following questions, "Why are you coming to Canada." Her reply was, "I come to Canada to seek asylum. Because that's my dream country in the whole world. I believe Canada will give me a new life and will accept me so we can live a great life here me and my daughter." The CBSA Officer asked, "Does anyone or a group of persons told you how to cross illegally into Canada." To which she replied, "No, not at all. I searched it online." The CBSA Officer asked, "Did you know how to come "illegally" to Canada "before" leaving Nigeria." To which she replied, "I googled it." The panel read the transcript of her interview with CBSA and asked the claimant to explain the discrepancy between her testimony that she knew nothing about Canada before she left Nigeria and that she never had in mind coming to Canada until she found herself experiencing

---

<sup>12</sup> Exhibit 1.

financial difficulties in the USA and the evidence during her interview with CBSA where she clearly states that she googled about coming to Canada to claim refugee status here before leaving Nigeria. The claimant explained that the CBSA Officer made a mistake. The panel put to the claimant that, from the evidence, the CBSA Officer did not make a mistake, he asked her the questions and recorded her answers. The claimant insisted that the CBSA Officer made a mistake, she did not know anything about Canada before leaving Nigeria and that it was never her intention to come to Canada. However, contrary to the claimant's evidence, her responses during the interview with CBSA clearly demonstrate that she did research about Canada and what Canada had to offer as opposed to the USA before leaving Nigeria. This strongly suggests that the claimant's intention, when she left Nigeria with no money, was to come to Canada and claim refugee status because she knew that Canada would provide for her and that in the USA she would have to provide for herself, including paying legal fees. Therefore, the claimant's attempt to mislead the panel with respect to her intentions when she left Nigeria and her reason for her failure to claim in the USA fails.

[26] Given the claimant's personal situation, leads the panel to find, on a balance of probabilities, that the claimant came to Canada because in this country she could get financial support, a better life and better work opportunities than the USA had to offer. Economic hardship is not a protected right freedom or basic right specified under s. 96 or 97 of the *IRPA*,<sup>13</sup> therefore it is not within the panel's jurisdiction. This leads the panel to find that the claimant is an economical migrant.

[27] Of further concern for the panel is the fact that the claimant arrived in the USA on XXXX XXXX, 2018, and came to Canada on XXXX XXXX, 2018, only three days after her arrival in the USA. She had \$44.00 and her USA Visa was about to expire on XXXX XXXX XXXX 2018. In the case at hand, the panel finds that, on a balance of probabilities, the claimant simply preferred asylum in Canada over the USA and fabricated her story to seek status in Canada by way of filing for a refugee claim because her USA visa was about to expire and she was facing possible deportation.

---

<sup>13</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[28] The panel takes judicial notice of the fact that the USA is a signatory of the 1951 Convention and the 1967 Protocol on the status of refugees, and offers a refugee determination system that complies with international obligations.

[29] In the decision of *Hibo Farah Mohamed and Ardo Abdi Omer v. MCI*, the Court held:

The Geneva Convention exists for persons who require protection and not to assist persons who simply prefer asylum in one country over another. The Convention and the Immigration Act should be interpreted with the correct purpose in mind.<sup>14</sup>

[30] Justice Roger Hughes held, in *Stojmenovic*,<sup>15</sup> that, "a refugee claim should not be looked at simply as one of many choices as to how best to seek status in Canada."

[31] Given the above noted analysis, the panel does not accept the claimant's evidence that her inability to pay for a lawyer caused her not to file asylum in the USA. The evidence clearly demonstrates that the claimant did not file asylum in the USA because the USA would not provide for her as Canada would. The evidence also clearly demonstrates that the claimant came to Canada to gain status which she was about to lose in the USA and possibly face deportation.

## CONCLUSION

[32] As a result of the above noted analysis and pursuant to subsection 107(2) of the *IRPA*,<sup>16</sup> the panel finds that there was no credible basis for this claim.

[33] The panel finds that the claimants do not have a well-founded fear of persecution by virtue of any of the 5 Convention grounds; therefore, they have failed to meet the requirement of section 96 of the Convention definition. Having found that the claimants are not Convention refugees, the panel needs to determine if they are persons in need of protection.

---

<sup>14</sup> *Mohamed, Hibo Farah v. M.C.I.* (F.C.T.D., no. IMM-2248-96), Rothstein, April 9, 1997, para 9.

<sup>15</sup> *Stojmenovic v. Canada (Minister of Citizenship and Immigration)* 2010 FC 873 (CanLII) at para 5.

<sup>16</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[34] In light of the credibility finding the claimants have not established that they would be subjected personally, on a balance of probabilities, to a risk to life, a risk of cruel and unusual treatment or punishment, or a danger of torture, in Nigeria.

[35] Therefore, the panel finds that the claimants are not persons in need of protection and their claim under section 97 of the *IRPA*<sup>17</sup> fails.

[36] As a result, their claims are rejected.

(signed)

**“Lynda Gagnard”**

---

**Lynda Gagnard**

---

**April 16, 2019**

---

**Date**

---

<sup>17</sup> Ibid.