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. / N° de dossier de la SPR : TB2-11723
TB2-11746
TB2-11747

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXXXXXXXXXX XXXX XXXX XXXXXXXXXXXX XXXX XXXX	**Demandeur(e)(s) d'asile**
Date(s) of Hearing	June 6, 2018 July 18, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision and reasons	August 7, 2018	**Date de la décision et des motifs**
Panel	Roslyn Ahara	**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	Andrew Wong	**Conseil du (de la) ministre**

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Canada

REASONS FOR DECISION

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[1] XXXX XXXX (the principal claimant, hereinafter referred to as the P.C.), and her children, XXXX XXXX XXXX and XXXX XXXX XXXX, all citizens of Nigeria, are seeking refugee protection pursuant to ss. 96 and 97(1) of *the Immigration and Refugee Protection Act* (IRPA).

[2] The P.C. was appointed by the RPD to act as designated representative on behalf of her minor children.

ALLEGATIONS

[3] The P.C.'s allegations are described in full in her Personal Information Form (PIF).[1] They can be summarized as follows.

[4] Her claim is based on being taken to work as a prostitute in Italy in 2004. She began working for XXXX. The Madam informed the claimant that she would have to pay her XXXX XXXX XXXX XXXX XXXX XXXX prior to her release. She was assigned a certain rate of income, and if she did not meet the demands, she alleges she was beaten and raped by some of the boys.

[5] The P.C. met her husband who was a regular client in 2007, and in XXXX of that year he decided that he would pay off the Madam to allow the claimant to be released and marry him. However, after paying XXXX XXXX XXXX XXXX XXXX XXXX, he lost his job in XXXX 2009, and during this period the claimant was living with him and had two sons.

[6] The P.C.'s husband explained the employment situation to the Madam, promising to pay when he obtained employment and he did not hear anything from XXXX 2009 until XXXX 2012. The claimant was at home with her husband and children when Madam came with her thugs and beat her up, and when her husband attempted to stop them, he, too, was beaten. Given the standing oath which the claimant had signed, she could not call the police. The claimant's

[1] Exhibit 2.

husband pleaded with her promising to pay her following the initiation of a new business. He then decided that the best option was to take his family to visit his sister in the United States (US).

[7] The P.C.'s husband returned to Italy and she was left in the US. On August 13, 2012, the claimant learned from her husband that Madam had discovered that she was in the US and had threatened the claimant's life if she did not return. As a result, the claimant decided to come to Canada.

Updated PIF

[8] The P.C. alleges that she has learned from her mother that XXXX and her thugs came to her home in approximately XXXX 2013 in pursuit of her. Her husband had agreed to pay XXXX XXXX XXXX XXXX XXXX out of the remaining XXXX XXXX XXXX by XXXX. However, fearful that he would be unable to pay this money, he returned to the US. The claimant's husband attempted on two occasions to come to Canada, however, the claimant alleges that he was duped by the agent.

[9] In XXXX 2014, the claimant discovered that she was pregnant as she had been unfaithful to her husband, causing estrangement when she told him. She believes that he remains in the US, but she has not spoken to him and he only calls occasionally to speak to his children.

[10] The claimant allegedly learned from her mother that XXXX returned to her home approximately the end of XXXX, 2015 with further threats. Her mother told her that she went to the police.

MINISTER'S INTERVENTION

[11] Pursuant to subsection 170(e) of *the Immigration and Refugee Protection Act*, the Minister intervened in person.

[12] The Minister submits that the principal claimant travelled to Canada with her two minor children in the absence of permission from their father to permanently relocate them to Canada. If committed in Canada, the Minister submits that the P.C. could be subject to section 283 of the *Criminal Code of Canada*, namely, Abduction.

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[13] The Minister further submits that the claimants stated that they held the status of "residence" in Italy. Moreover, the P.C. stated in her PIF that she resided in Italy from XXXX 2004 until 2012; however, in her narrative, she states her date of arrival in Italy as XXXX XXXX, 2012, her US visa applications states that the entire family has resided in Italy since 2002, and another US visitor's visa stated 2001.

[14] The Minister also submits that the P.C.'s Nigerian birth certificate is possibly fraudulent. Furthermore, it is argued that in her PIF she stated that they travelled from Italy to the US, via Amsterdam on XXXX XXXX, 2012, resided in the US from XXXX XXXX, 2012 to XXXX XXXX, 2012 and entered Canada by road on XXXX XXXX, 2012. However, on the claimants' refugee claim screening forms, dated August 17, 2012, the claimants stated that their last country of Permanent Residence was Nigeria, they did not enter Canada from the US, XXXX XXXX was born in XXXX, and the name XXXX XXXX was replaced with the name XXXX XXXX XXXX.

REPLY FROM COUNSEL FOR THE CLAIMANT

[15] The P. C. has submitted a Consent Letter[2] from XXXX XXXX, dated May 18, 2018, indicating that he is aware that his children are seeking relocation in Canada.

DETERMINATION

[16] The RPD finds that the claimants would not face a serious possibility of persecution on a Convention ground, and that, on a balance of probabilities, they would not personally be subjected to a risk to their lives or a danger of torture.

CREDIBILITY

[17] In considering credibility, the RPD is aware of the difficulties that may be faced by the P.C. in establishing her claim, namely, the setting of the hearing room, and the stress inherent in responding to questions, as well as her lack of education and sophistication. The panel has also considered the Chairperson's Guidelines with respect to women and children fearing persecution.

[2] Exhibit 8, pp. 1-3.

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Moreover, the RPD considered the passage of time of approximately 6 years when examining the issue of credibility, and the ability to recall precise details of what has transpired over a lengthy period of time.

[18] The panel has also considered the contents of the medical report[3] from Dr. XXXX XXXX, a Family Physician, an analysis of which follows.

[19] The Minister raised a number of credibility issues, however, the RPD concurs that a number of these concerns do not go to the heart of the claim, namely, the conflicting dates of the P.C.'s arrival in Italy, the number of passports issued in her name. Nevertheless, the RPD wishes to address the issue of the P.C.'s failure to claim in the US and her entry into Canada illegally.

[20] The P.C. acknowledged that the visa that she and her family travelled on to the US contained erroneous information, i.e. employment, salary. She stated that she had not made a refugee claim in the US as she was afraid. Furthermore, she described her trip from the US as having taken 9/10 hours when it appears that she travelled from Vancouver to Scarborough.

[21] The P.C. acknowledged that she had valid status in the US, and was visiting her husband's family. The RPD rejects the P.C.'s explanation that she was afraid that XXXX (the Madam) would locate her in the U.S. and that she would not call the police should she have encountered any problems from the Madam there. The RPD finds that this entire portion of the P.C.'s testimony is lacking in credibility, and while not determinative, demonstrates a lack of subjective fear, and undermines her credibility.

DETERMINATIVE ISSUES

[22] The determinative issues are identity, credibility, Exclusion 1E and internal flight alternative.

IDENTITY

[23] There was much questioning with respect to the P.C. and her children having established their identities. Much of the testimony in this regard revolved around the documents used to

[3] Exhibit 8, pp. 4-7.

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procure identity documents and the number of passports issued, as there was conflicting evidence in this regard.

[24] The P.C.'s children were born in Italy, however, they are citizens of Nigeria. At the first sitting, the Minister was contesting the citizenship of the minor claimants, based on his concerns surrounding the identity of their mother. However, at the second sitting, the Minister conceded that based on the fact that the US visa post in Italy had found all three claimants to be Nigerian citizens, he would not contest this. With respect to the residency in Italy, the Minister submits that at the time all three claimants left Italy, they held a Residence permit,[4] which included the children and was issued in 2011, with an expiry date as "INDEFINITE". The Minister questions the absence of any corroborative evidence with respect to contact with the Italian Consulate by the P.C. In addition, the Minister submits that the P.C. has taken no steps whatsoever, including legal recourse, to determine her status following her departure from Italy.

[25] The RPD concurs with the Minister that although there was much questioning surrounding documents used and conflicting evidence, at the end of the day, the claimants are, on a balance of probabilities, citizens of Nigeria. The issue of exclusion pursuant to Article 1E of the Convention follows.

Exclusion pursuant to Article 1F(b) of the Convention

[26] The Minister submits that there is a prima facie case of abduction of the P.C's two children pursuant to section 283(1) of the *Criminal Code*, in that the P.C. entered Canada without the prior consent of her husband and further, that given this assertion, the P.C. would be excluded as this is a serious non-political crime committed outside of Canada.[5] He argues that the P.C.'s husband has legal custody of their children along with his wife (as per her testimony). He further argues that the letter sent for the purpose of the hearing after the Minister submitted his Notice to Intervene[6] is lacking in credibility, firstly given its vagueness and timing, no name of the P.C. and her children and the word "consent" being absent, and secondly the fact that it is not a sworn statement and it has not been notarized.

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[4] Exhibit 9, at pp. 3-5.
[5] *Jayasekara, Ruwan Chandima* v. *M.C.I.* (F.C., no. IMM-1603-07), Strayer, February 21, 2008, 2008 FC 238; *Jayasekara, Ruwan Chandima* v. *M.C.I.* (F.C.A, no. A-140-08), Létourneau, Sharlow, Pelletier, December 17, 2008, 2008 FCA 404; **Reported**: *Jayasekara* v. *Canada (Minister of Citizenship and Immigration)*, [2009] 4 F.C.R. 164 (F.C.A.)
[6] Exhibit 7.

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[27] Counsel argues that the P.C.'s testimony ought to be taken as truthful when she stated that she does not speak to her husband as he hangs up on her and this request of her husband had been carried out through her 10 year old son. Counsel questions that if a crime did in fact occur, did it occur in the U.S. or Canada? On the latter point, the RPD categorically rejects this argument. The crime would have taken place in the U.S. and might have continued in Canada given the allegation. The P.C. testified that she had told her husband the day before she entered Canada and he asked if the children would be taken care of, to which she responded "yes". Counsel submits that there was no "mens rea" on the part of the P.C. when she entered Canada and moreover, there was no evidence to suggest that the P.C.'s husband has or is attempting to gain access to the children, after 6 years in Canada.

[28] The RPD cannot accept the Minister's position on the foregoing. The panel concurs with counsel that there is no evidence to suggest any fault on the part of the P.C. in this regard. The P.C's husband had an opportunity to submit a Hague Application or any other documentation suggesting he was objecting to the children's residency in Canada. Finally, while the panel agrees that the letter provided by the P.C's husband is somewhat vague, it is reasonable to expect that when a 10 year old provides the instructions, the response might not contain as detailed information had there been direct contact between the P.C. and her former husband. Accordingly, the RPD finds that the P.C. is not excluded pursuant to Article 1F(b) of the Convention.

Family physician's report

[29] The claimant has recounted the reason for making a refugee claim to her family physician, and her fears if she returns to Nigeria. According to this physician, she was noted to be depressed and having flashbacks, however, she did not report any delusional or hallucinatory features.

[30] Dr. XXXX indicated that the claimant is diagnosed with:

- XXXX XXXX XXXX XXXX XXXX XXXX
- XXXX XXXX
- XXXX XXXX XXXX XXXX XXXX

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- XXXX XXXX XXXX XXXX XXXX

- XXXX XXXXof being returned to Nigeria with the belief that if she is to be returned she will be killed.

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[31] "As a general rule, an expert is characterized as a person possessed of the special skill and knowledge acquired through study or practical observation that entitles him [or her] to give opinion evidence or speak authoritatively concerning his or her area of expertise."[7] The panel considered the credentials of Dr. XXXX who labelled himself as a "Family Physician" with Certification and Fellowship status with the College of Family Physicians of Canada. The report does not provide any details related to Dr. XXXX credentials, specialized training, or licensing to administer the psychological tests to arrive at the diagnoses listed above. The report does not indicate that this physician was a member of any college of regulated health professionals in Ontario such as the College of Psychologists of Ontario or has similar credentials issued in any other province, which has provided him with the jurisdiction to make medical or psychiatric diagnoses, such as his diagnosis of an adjustment or a post-traumatic stress disorder.

[32] The *Regulated Health Professions Act of Ontario* (Act)[8] sets out the requirements for controlled acts that a person is legally able to perform. The Act also specifies acts that are controlled which include:

> Controlled acts
>
> (2) A "controlled act" is any one of the following done with respect to an individual:
>
> > 1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.

[33] Moreover, as stated in *Rokni*,[9] a psychiatric report submitted as evidence "cannot possibly serve as a cure-all for any and all deficiencies in a claimant's testimony." The court reiterated its position in *Danailov*,[10] with respect to the assessment of a physician's evidence and the question

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[7] XXXX XXXX XXXX., *Expert Evidence*, I.R.B. Legal Services, July 11, 1989, p. 3
[8] *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18.
[9] *Rokni, Mohammad Mehdi* v. *M.C.I.* (F.C.T.D., no. IMM-6068-93), Muldoon, January 27, 1995.
[10] *Danailov (Danailoff), Vasco (Vassil) Valdimirov* v. *M.E.I.* (F.C.T.D., no. T-273-93), Reed, October 6, 1993.

of the assessment of credibility, it was stated "that opinion evidence in only as valid as the truth of the facts on which it is based." The panel finds that, although the P.C. may be suffering from XXXX or XXXX XXXX this may or may not be related to the causes described by the P.C. in her evidence. This is particularly noteworthy, as the entire report is based on statements given to the physician by the P.C. Furthermore, when questioned by the panel, the P.C. had not sought counselling prior to 2018. Finally, the RPD concurs with the Minister that this doctor has crossed the line into advocacy with respect to the P.C's refugee status.[11] Accordingly, the panel gives the medical report little, if any, weight.

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Exclusion Article 1E

[34] Article 1E of the Refugee Convention states:

> 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.

[35] That article is reflected in section 98 of the 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.

[36] 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.[12]

[37] In the present case, the P.C. left Nigeria for Italy in 2004, bore two children while residing there, and departed from Italy to the U.S. and then to Canada to make her refugee claim. She has submitted a Residence Permit which indicates that she has **indefinite** status in support of her residency.**[**emphasis added] The Permesso di Soggiorno was issued on XXXX XXXX, 2011

[11] *Molefe, Nana Joy* v. *M.C.I.* (F.C., no. IMM-8071-13), Mosley, March 12, 2015, 2015 FC 317
[12] *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.).

and is valid until "indefinite".[13] The type of permit is described as LONG-TERM – EU, valid in the European Union.

[38] It is clear that the claimants had status "substantially similar to nationals of Italy," as set out in the test from *Shamlou*[14] 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. The purpose of Article 1E is to exclude persons who do not require the protection of refugee status. It therefore supports the purposes of the Act by limiting refugee claims to those who clearly face the threat of persecution.[15] There are four criteria that the Board should follow in undertaking an analysis of whether a claimant enjoys the "basic rights" attached to the possession of nationality in the country of residence: (i) the right to return to the country of residence; (ii) the right to work freely without restrictions; (iii) the right to study; and (iv) full access to social services in the country of residence.[16]

[39] Temporary status which must be renewed or which could be cancelled can be sufficient for the application of the Article 1E exclusion. In this regard, it should be noted that even a Canadian permanent resident can have her status revoked if she resides outside of Canada for more than six months.

[40] Furthermore, a claimant has a duty to renew status if it is renewable. The fact that a claimant has allowed her permanent residence status to expire by the time of the hearing of her claim cannot avail to her benefit. Therefore, the onus shifts to the claimant to demonstrate why, having caused her permanent resident status in the country of former residence to expire, she could not have renewed her status by applying to the government of that country.[17] Actions taken by a claimant that are intended to result in her not being able to return to a country that has granted her protection (such as, for example, allowing one's permanent resident status to lapse),

[13] Exhibit 9, Claimant's Disclosure dated November 27, 3.17, pp. 3-5.
[14] *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.).
[15] *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.), para. 10.
[16] *Shamlou, supra,* footnote 13, at para. 35.
[17] *Shahpari v. Canada* (M.C.I.), (1998), 44 Imm. L.R. (2d) 139 (F.C.T.D.); *Nepete v. Canada* (M.C.I.), (F.C.T.D., No. IMM-4471-99), Heneghan, October 11, 2000; *M.C.I.* v. *Choovak, Mehmaz* (F.C.T.D., no. IMM-3080-01), Rouleau, May 17, 2002, (2002) F.C.T. 573

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may well be evidence of an absence of subjective fear of persecution.[18] Article 1E will be interpreted broadly where the claimant is attempting to "asylum shop" or "queue jump." Asylum shopping and queue jumping means that a refugee claimant uses the refugee protection system to enter a preferred country so as to by-pass the regular immigration process in that country. Further, "it does not assist the application that she allowed her exit visa to expire."[19]

[41] A refugee claimant should not be allowed to reject the protection of one country by unilaterally abandoning it for another. The *Refugee Convention* exists for persons who require protection and not to assist persons who simply prefer residence in one country over another. The *Refugee Convention* and the *Immigration and Refugee Protection Act* should be interpreted with this purpose in mind.

[42] The Minister requests an exclusion pursuant to Article 1E of the Convention for the following reasons. The P.C., although providing internally inconsistent testimony with respect to when she entered Italy, stated that she resided in Italy from 2004 until 2012. Initially she had temporary status, however, she testified that she attained permanent residency after one or two years for employment purposes, and later her children were also named on this card. She acknowledged that this card permitted employment, schooling, medical care, i.e. the birth of her two children.

[43] The P.C. testified that she had, however, a few weeks prior to the hearing, visited the Italian Consulate in Canada, and was told that her residency card was no longer valid and the consulate could not do anything about it. The P.C. was unable to provide an explanation as to why she waited until March 2018 to question the validity of this document and insisted that it was not at the request of her counsel that she attended. The P.C. provided no documentation to corroborate her attendance at the Consulate and could not provide an explanation as to why she could not at least have provided something to corroborate her testimony in this regard. Her response was that she did not know that this would be necessary. Moreover, she had not asked how to validate her residency.

[18] Ibid., at para 14.
[19] Ibid., at para. 9.

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[44] The Minister submits that the claimants had permanent residency in Italy when they arrived in Canada. As such, they were entitled to all of the benefits of nationals and they voluntarily allowed this status to expire, making no reasonable effort to renew this status. The Minister cites *Shamlou*[20] in support of his argument.

[45] The Minister further argues that the Federal Court in *Zeng*[21] indicates a 3 step process in assessing whether or not Exclusion applies:

- Consider all factors to the date of the hearing
- Does the P.C. have status similar to that of its nationals in the third country?
- If the answer is "yes", the P.C. is exluded.
- If the answer is "no", the next question is whether the P.C. had such status and lost it, or had access but failed to acquire it.

[46] The Minister submits that such was the case with this P.C. that she lost her status as she failed to explore her options to reacquire this status for the past 6 years since residing in Canada. He further submits that the P.C. failed to provide an explanation for not doing so, simply saying "I do not know why." The Minister submits that it is unreasonable that the P.C. would have waited almost six years before addressing the possibility that she and her children might have to return to Italy. Furthermore, he submits that once the P.C. was aware that her Resident Card was no longer valid, she took no steps to inquire as to how to renew or if she could renew it. The Minister further argues that the P.C. has been represented by competent legal counsel for 6 years and in this regard cites *Choovak.*[22] The Minister submits that when the P.C. filed her refugee claim against Nigeria, she held permanent residency in Italy, and therefore enjoyed the rights and protection of that country.

[47] Counsel for the P.C. argues that once the P.C. left Italy for a period of 12 months, she would have lost her status in Italy. He further submits that it is speculative that she could have

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[20] *Shamlou, supre,* Footnote 13, at para. 36.
[21] *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.), at para. 28.
[22] *Choovak*: *M.C.I.* v. *Choovak, Mehrnaz* (F.C.T.D., no. IMM-3080-01), Rouleau, May 17, 2002.

done something about this status from inside of Canada. Counsel argues that the P.C. is not in fact sophisticated and the fact that she had the services of counsel for 6 years, ought not to be considered. He argues that where conditions are attached to a permanent residency, i.e. a residency requirement, and the fact that the Consulate has advised her that she has lost her permanent residency status, exclusion ought not to apply. Counsel briefly mentioned the P.C's marital status, however, the panel disclosed a document[23] which would eliminate this condition. Counsel referred to income level requirements, and the fact that the P.C. did or does not have an absolute right to permanent residency.

[48] The RPD finds that the onus is on the claimant to establish that her permanent residency has been revoked. The RPD has considered the following.

[49] The legal test to be applied in an Article 1E determination, per *Zeng*,[24] is as follows:

- Considering all of the relevant factors to the date of the hearing, does the claimant have status, substantially similar, to that of other nationals, in the 1E country? If the answer is yes, then the claimant is excluded.
- If the answer is no, did the claimant previously have such status and lose it, or have access to that status and failed to acquire it? If the answer is no, then the claimant is not excluded. If the answer is yes, the panel must consider and balance the following non-exhaustive list of factors when deciding whether to exclude the claimant:
    - the reasons for the loss of status (voluntary or not);
    - whether the claimant can return to the 1E country;
    - the risk the claimant would face in the home country;
    - Canada's international obligations, and any other relevant factors.

[50] In this particular case, the answer is "no" as at the date of the hearing. Has she lost it voluntarily? The answer is "yes". Moreover, as stated above she has failed to establish that she cannot return to the 1E country. The RPD's analysis follows with respect to her return to both the 1E country and her home country.

[23] Exhibit 11.
[24] *Zeng, supra,* Footnote 20.

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[51] 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.[25] 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.[26] In this context, the panel proceeded to hear evidence regarding the P.C.'s alleged fear of persecution in Italy.

[52] The panel asked the P.C. why she did not report the traffickers to the authorities when she was in Italy and in the sex trade. The P.C. responded that she feared the madam as she still owes money, and further that when she walks down the street she is stereotyped by the males as a prostitute.

[53] The RPD finds that it is important to reiterate some of the state protection principles as set out by the courts. To rebut the presumption of state protection, a refugee claimant must provide "clear and convincing" evidence of the state's inability to protect its citizens.[27] A refugee claimant who alleges that state protection is inadequate must persuade the Board that the evidence establishes that the state protection is, in fact, inadequate. The evidence that state protection is inadequate must not only be reliable and probative, it must also satisfy the Board, on a balance of probabilities, that state protection is inadequate.[28] Where a state is in effective control of its territory, has military, police and civil authority in place and makes serious efforts to protect its citizens, the mere fact that the state's efforts are not always successful will not rebut the presumption of state protection.[29] A refugee claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the

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[25] *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.

[26] 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.

[27] *Canada (Attorney General*) v. *Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

[28] *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 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 Carillo* v. *Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

[29] *Villafranca*: *M.E.I.* v. *Villafranca, Ignacio* (F.C.A., no. A-69-90), Marceau, Hugessen, Décary, December 18, 1992. **Reported:** *Canada (Minister of Employment and Immigration*) v. *Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

state.[30] Doubting the effectiveness of the protection offered by the state when one has not really tested it does not rebut the existence of a presumption of state protection.[31]

[54] Refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee claimant has unsuccessfully sought the protection of their home state. The onus is on the refugee claimant to approach the state for protection in situations where state protection might be reasonably forthcoming.[32] In the absence of a compelling explanation, a failure to pursue state protection opportunities within the home state will usually be fatal to a refugee claim, at least where the state is a functioning democracy with a willingness and the apparatus necessary to provide a measure of protection to its citizens.[33]

[55] The refugee claimant's burden of proof is directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the refugee claimant must have done to exhaust all courses of action open to them.[34] In a functioning democracy, a refugee claimant will have a heavy burden when attempting to show that they should not have been required to exhaust all of the recourses available to them domestically before claiming refugee status.[35]

[56] A refugee claimant must show that they have taken all reasonable steps in the circumstances to seek protection, taking into account the context of the country of origin, the steps taken and the refugee claimant's interactions with the authorities.[36] Local failures by authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of the state's inability or refusal to provide protection.[37] No government is expected to guarantee perfect protection to all of its citizens at all times, and the fact that a state is not always successful in protecting its citizens is not enough to

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[30] *Camacho, Jane Egre Sonia* v. *M.C.I.* (F.C., no. IMM-4300-06), Barnes, August 10, 2007, 2007 FC 830.
[31] *Rio Ramirez, Leticia Lizet Del* v. *M.C.I.* (F.C., no. IMM-1301-08), Lagacé, October 31, 2008, 2008 FC 1214, para. 28.
[32] *Ward*, *supra*, footnote 22.
[33] *Camacho*, *supra*, footnote 25, para.10.
[34] *M.C.I.* v. *Kadenko, Ninal* (F.C.A., no. A-388-95), Hugessen, Décary, Chevalier, October 15, 1996. **Reported:** *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
[35] *Hinzman, Jeremy v. M.C.I.* and *Hughey, Brandon David v. M.C.I.* (F.C.A., nos. A-182-06; A-185-06), Décary, Sexton, Evans, April 30, 2007, 2007 FCA 171, para. 57.
[36] *Peralta, Gloria Del Carmen v. M.C.I.* (F.C.T.D., no. IMM-5451-01), Heneghan, September 20, 2002, 2002 FCT 989 .
[37] *Zhuravlvev, Anatoliy* v. *M.C.I.* (F.C.T.D., no. IMM-3603-99), Pelletier, April 14, 2000. **Reported:** *Zhuravlvev* v. *Canada (Minister of Citizenship and Immigration*), [2000] 4 F.C. 3 (T.D.).

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justify a claim, especially where a state is in effective control of its territory, has military, police and civil authorities in place and is making serious efforts to protect its citizens.[38] Less than perfect protection is not a basis to determine that a state is either unwilling or unable to offer reasonable protection.[39]

[57] 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*.[40]

[58] At no time, did the P.C. attempt to approach the state while in Italy, and given the level of democracy, the RPD rejects her explanation for not doing so. Accordingly, she has not rebutted the presumption of state protection.

Summary

[59] Having considered all of the evidence, the panel finds that the P.C. is a permanent resident of Italy, with substantially the same rights as Italian nationals. There is no evidence before the panel that the P.C.'s permanent resident status in Italy cannot be re-instated, if it has, in fact, been revoked. Since the minor claimants' were included on the P.C's residency card, this finding applies to them as well.

[60] 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.

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[38] *Villafranca, supra,* footnote 24.
[39] *Milev, Dane* v. *M.C.I.* (F.C.T.D., no. IMM-1125-95), MacKay, June 28, 1996, para. 19.
[40] Exhibit 14, NDP for Italy (May 31, 2018), item 2.1.

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[61] In the alternative, the panel has considered the viability of an internal flight alternative (IFA) in Nigeria.

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INTERNAL FLIGHT ALTERNATIVE

[62] Firstly, the RPD has not applied the Jurisprudential Guide with respect to this issue, as the facts with respect to the second prong are not the same.

[63] The RPD identified three cities, Abuja,Port Harcourt and Ibadan, as potential viable internal flight alternatives for the claimants in Nigeria.

[64] The issue of an IFA is a question of mixed law and fact that involves the correct interpretation and application of a legal test to the facts of the case. The question of whether an IFA exists is an integral part of the refugee definition. If the claimants can find safety from persecution by fleeing within Nigeria, then he or she is not entitled to Canada's surrogate protection. The IFA analysis is based on the premise that the subjective fear of the refugee claimant is not objectively well founded if a viable IFA exists.

[65] The Federal Court has clearly stated that:[41]

> …the IFA is determined by the Board and, thereafter, it is incumbent upon the applicant to establish, on the balance of probabilities, that there is a serious possibility that he or she will be persecuted in the location proposed as an IFA.

[66] The burden thus falls upon the P.C. to establish, on a balance of probabilities, that there is a serious possibility that she would be persecuted in the named IFA's, Abuja, Ibadan, or Port Harcourt.

[67] In *Kamburona*, the Court also stated the two tier test for an IFA and stated:[42]

> It is correct that the following two-part disjunctive test for determining whether there is not an IFA is well-settled and continues to be applied:

[41] *Kamburona, Kavijenene* v. *M.C.I.* (F.C., no. IMM-10060-12), Strickland, October 18, 2013, 2013 FC 1052, at. Para. 21.
[42] Ibid., at para. 25.

> (1) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; or,
>
> (2) Conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[68] The documentary evidence[43] shows that there are no restrictions on internal movement within Nigeria, and the P.C. did not identify any.

[69] The P.C. was asked if she could reside safely in any of the named IFAs, to which she responded that XXXX would locate her. When asked to explain how XXXX would find her, she stated that she has a network of thugs who would search her out. With respect to the allegation that the P.C.'s mother had been targeted, the P.C. acknowledged that XXXX was aware of her mother's residency. However, the P.C. insisted that XXXX could find her anywhere in Nigeria, notwithstanding the size of the country. The panel questioned the P.C. as to why she would have the motivation to seek her out after all these years. The P.C. responded that it would be the remaining owed money, as her former husband had not paid her.

[70] The UK Home Office *Country Information and Guidance* for Nigeria states that:[44]

> Where the person's fear is of persecution or serious harm at the hands of non-state agents… relocation to another area of Nigeria is likely to be generally viable depending on the nature of the threat from non-state agents and individual circumstances of the person, and as long as it would not be unduly harsh to expect them to do so.

[71] The documentation indicates that there are several very large, multilingual, multiethnic cities in south and central Nigeria, such as: Ibadan (3.16 million), the capital of Abuja (2.44 million),un Port Harcourt (2.343 million) where persons fleeing non-state actors may be able to safely establish themselves, depending on their own particular circumstances. While it is trite to say that each claim is dependent upon the claimants' arguments, the individual facts and the assessment of the claimant's personal risk, I would note that from an objective perspective, grounded in the jurisprudence and country information available in the National Documentation

[43] Exhibit 5, National Documentation Package (NDP) for Nigeria (April 30, 2018), item 2.1, section 2(d).
[44] Exhibit 5, NDP for Nigeria (April 30, 2018), item 1.7, section 2.2.2.

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Package, internal flight alternatives in these large cities are likely to be widely available to many whose stated fear is of non-state actors including, but not limited to, single women such as the P.C.

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[72] As a starting point, the Federal Court of Appeal has held that there is

> [a] very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.[45]

[73] The Court has reiterated the importance of not lowering that threshold.[46]

[74] Nigeria is a large country with an area of over 900,000 square kilometres in 36 states, and a population of over 170 million people. Nigerians have the right to reside in any part of the country.[47] The documentary evidence shows that all main centres are linked by road; in addition, many of the large urban centres boast international airports,[48] which mitigate in favour of viability of the proposed IFA in terms of transit and travel for a given claimant without facing undue hardship.

Language

[75] English is the official language in Nigeria, and a large percentage of the population speak Hausa, Yoruba, Igbo (Ibo), and Fulani in the major centres, in addition to over 500 indigenous languages.[49] Although the P.C.'s first language is Edo, she also speaks English and in fact the

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[45] *M.C.I.* v. *Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000. Reported: *Ranganathan* v. *Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.), at para. 15, citing *Thirunavukkarasu* v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 F.C. 589.
[46] Ibid., at para. 16.
[47] Exhibit 5, NDP for Nigeria (April 30, 2018), item 1.7, section 2.2.3.
[48] Ibid., section 6.3.1.
[49] Ibid., item 1.6; see also item 1.15.

second sitting of this claim was conducted in English, because the P.C. herself felt more comfortable in English.

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Education and Employment

[76] The documentary evidence indicates that there is a high rate of unemployment in Nigeria generally, and that obtaining employment can be difficult. However, the same document also indicates that there are more female-headed households in the South, and that it is generally easier for women in the South to obtain work than in the North, although they often end up doing difficult work.[50]

[77] It is acknowledged that the P.C. has a mere 5 years of formal education. However, according to her testimony, she works in Canada as a Personal Support Worker (PSW) and she has upgraded her education, her reading and writing skills. The panel also notes that she has adapted to a life in Canada without her husband and now as a mother of three children, one having been born in Canada. The panel further notes that in Nigeria, the P.C. was employed as a hairdresser, having undertaken a course which was at least one year following her primary school education, which she did not complete.

Accommodation

[78] The documentary evidence indicates that rent can be steep in locations like Ibadan and Port Harcourt where the cost of living is high, increasing the challenges for female-headed households without male support to obtain housing.[51] A review of the NDP indicates that the picture for females living alone in the south is mixed, although notably more positive than would be the case in the north, with the south offering greater opportunities for women of higher educational and socio-economic status.[52] It is also worthwhile to note that, while women may face obstacles in obtaining loans to purchase property, there is no statutory law in Nigeria against women owning land.[53] The personal circumstances of any particular claimant may make accommodation more or less viable, for instance, where they are able to access support of

[50] Exhibit 5, NDP for Nigeria (April 30, 2018), item 5.9.
[51] Ibid.
[52] Ibid.
[53] Ibid.

immediate or extended family or other social networks in or near the IFA who are sympathetic to the claimant's situation, as established by the evidence in any particular case. Access to accommodation is but one factor of several for decision-makers to consider in assessing the reasonableness of a proposed IFA in light of a claimant's individual circumstances. The burden remains on the claimant to demonstrate that the proposed IFA is unreasonable or unduly harsh in their particular case.

[79] In this regard, the panel has considered the evidence contained in the NDP, items 5.2, 5.8, 5.29 and 5.34. The evidence contained therein indicates services which are available for victims like the P.C., which facilitate re-integration into the community.

[80] The Report from Finland, from the Finnish Immigration Service on Human Trafficking of Nigerian Women to Europe, states:[54]

> Victims of human trafficking are not victims of violent persecution or killings by traffickers in Nigeria. None of the victims assisted by Rev. Ejeh and Agbogun's organization have expressed fear of reprisals from traffickers or received threats from them, and Rev. Ejeh and Agbogun have no records from the media of violent reprisals or killings of victims. On the other hand, the Danish Immigration Service considers it possible that the media in Nigeria might not record such incidents as the media has shown no particular interest in human trafficking.
>
> According to two women interviewed by Plambech in her study, traffickers do not need to resort to violence to collect unpaid debt from women deported from Europe as they have so many women going to Europe.
>
> Local traffickers in Nigeria do not occupy a strong position in society and they cannot do much else than recruit new victims. According to Rev. Ejeh and Agbogun (Catholic Secretariat of Nigeria/Caritas Nigeria), local traffickers are not in a position to persecute victims. These local traffickers are not necessarily fully loyal to madams or traffickers abroad. Traffickers have no interest in being exposed and imprisoned for acts of revenge on behalf of a madam or trafficker living abroad. According to Sister Florence (COSUDOW), traffickers do not have a strong network in Nigeria and they normally keep a low profile. Consequently, they do not take the risk of being exposed in order to take revenge against their victims who testify against them.

[81] The documentary evidence[55] indicates that the Federal Executive Council (FEC) approved the National Policy on Protection Assistance to Trafficked Persons in Nigeria which was amended

[54] Exhibit 5, NDP for Nigeria (April 30, 2018), item 5.2, section 4.5.1.

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in 2003 as well as the National Strategic Plan on TIP was approved in November 2008. This policy offers protection to victims as well as assistance in rehabilitation and re-integration into their various communities. Its services include zonal offices and shelters, and the provision of counselling and training, integration, empowerment and follow-up. As well a number of non-governmental organizations assist in the reintegration of trafficking victims. This coalition includes many women's organizations throughout Nigeria, including:[56]

- Committee for the Support of the Dignity of Women (CUSUDOW)
- Girls' Power Initiative (GPI)
- Idia Renaissance
- International Reproductive Rights Research Action Group (IRRRAG)
- Women's Aid Collective (WACOL)
- Women's Consortium of Nigeria (WOCON)
- Women trafficking and Child Labour Eradication Foundation.

[82] It is noted that some of these organizations offer legal assistance, clothing, shelter and vocational training.[57]

[83] The shelters also offer legal, medical and psychological services, short-term care.[58]

[84] The panel has considered the medical report and has assigned it little probative value. Nevertheless, should the P.C. require medical intervention, the above demonstrates that such services would be available to her.

CONCLUSION

[85] As stated above, the RPD finds that all claimants are excluded pursuant to Article 1E of the Convention. However, in the alternative, the RPD finds that the claimants have a viable IFA to any of the above named cities. The RPD is satisfied, on a balance of probabilities, that there is no serious possibility of the claimants being persecuted in the proposed IFA's. The panel finds that after six years the motivation and the ability to seek out the claimant has not been established.

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[55] Exhibit 5, NDP for Nigeria (April 30, 2018), item 5.34.
[56] Ibid., items 5.2 and 5.8.
[57] Ibid., item 5.8, section 4.4.
[58] Ibid., item 5.8, section 4.5.1.

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Secondly, the RPD finds that it would not be unreasonable, upon consideration of all the circumstances, including the claimants' personal circumstances, for them to seek refuge in one of the named IFAs.

[86] Accordingly, these claims are rejected.

(signed) **"Roslyn Ahara"**

Roslyn Ahara

August 7, 2018

Date

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