



RPD File No. / N° de dossier de la SPR : MB8-18024
Client ID No. / No ID client : 1115561236

Huis clos / Private Proceeding

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

June 27, 2019

Place of hearing

Lieu de l'audience

Montreal, Quebec

Date of decision
and reasons

Date de la décision
et des motifs

July 29, 2018

Panel

Tribunal

Catherine Solyom

Counsel for the claimant(s)

Conseil(s) du (de la/des)
demandeur(e)(s) d'asile

Armando Javier Machado Rubio

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

[1] **XXXX XXXX XXXX XXXX**, a citizen of Nigeria, claims refugee protection in Canada pursuant to section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (the Act).¹

[2] The Chairperson Guidelines 4: *Women Refugee Claimants Fearing Gender-Related Persecution*² and the Chairperson's Guidelines 9: *Proceedings before the IRB Involving Sexual Orientation and Gender Identity and Expression*³ were considered and applied in the hearing and deciding of this claim.

ALLEGATIONS

[3] The claimant alleges that her husband, who was abusive for years before her departure from Nigeria, vowed to kill her when he found out about her relationship with a woman.

[4] She further alleges that in XXXX 2018, he called the police to denounce her for engaging in a homosexual relationship. As a result, she alleges she would also be at risk of persecution by the State because of her sexual orientation.

[5] The claimant left her home of Warri in XXXX 2018 and went into hiding in Lagos until her departure from Nigeria XXXX XXXX, 2018. She crossed into Canada from the U.S.A. on August 18, 2018.

DETERMINATION

[6] The Tribunal finds that the claimant faces a serious possibility of persecution in Nigeria, on the basis of her membership in two particular social groups, specifically women victims of

¹ *Immigration and Refugee Protection Act*, S.C. 2001.

² *Chairperson's Guideline 4 of the Refugee Protection Division: Guideline issued by the Chairperson pursuant to Section 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution*. Effective date: November 13, 1996.

³ *Chairperson's Guideline 9 of the Refugee Protection Division: Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act: Involving Sexual Orientation and Gender Identity and Expression*. Effective date: May 1, 2017.

domestic abuse and bi-sexual women in Nigeria. Sexual relations between members of the same sex are illegal in Nigeria, subject to prison terms of up to 14 years, therefore there is no state protection available to the claimant, nor the possibility of an internal flight alternative.

ANALYSIS

Identity

[7] The claimant's personal and national identity as a citizen of Nigeria are established, on a balance of probabilities, by her testimony and by the documentary evidence on file, including a copy of her Nigerian passport.⁴

Credibility

[8] The claimant testified in a spontaneous and sincere manner about her relationship with her husband, which turned abusive, shortly after the birth of their first child, in 2009. She provided birth certificates for the two children, now aged eight and nine. She has one other child who is now an adult.

[9] She gave detailed accounts of incidents of abuse with her husband from 2011 to 2018, and efforts she made to stop the violence. These included appealing to the police, her church and her husband's family. She left the family home with her children to live at her aunt's house in Port Harcourt for two months in 2014. She left definitively in XXXX 2018, when her husband threatened to kill her, she testified. She stayed with a friend in Lagos for two months until she flew to the U.S. in XXXX 2018.

[10] The claimant submitted an affidavit from a pastor at a church in a suburb of Warri, which suggested she also took refuge there, in 2014. The Tribunal asked her why she didn't mention taking refuge in the Church in her Basis of Claim or her testimony. She said she never stayed in the church for any length of time, but did stay overnight, or for two or three days at a time during the time she was trying to escape her husband's abuse.

⁴ Document 1 – Package of information from the referring Canada Border Services Agency (CBSA) / Immigration, Refugees and Citizenship Canada (IRCC).

[11] The Tribunal accepts this explanation. The pastor's affidavit is not specific about how long the claimant stayed at the church, or the nature of the refuge she sought. In addition, the claimant had testified credibly about going to church on a regular basis throughout this period.

[12] The claimant also provided affidavits from her sister and her lover about the abuse, as well as both a police report and a medical report attesting to one of the incidents she experienced, in XXXX 2013.

[13] The Tribunal raised concerns over the police report, namely that it states that the claimant's mother was deceased in 2013, even though the claimant testified her mother died in 2017. The police report also suggested the claimant sought police protection more than once, contrary to her own testimony, but that the police did nothing.

[14] Asked to explain this contradiction, the claimant said she went to the police station and spoke to an officer before being sent to a higher ranking officer on the same day – this is why the report suggests she went more than once.

[15] The Tribunal does not accept this explanation. The report clearly states that the claimant went to report the abuse and that as a result the police went looking for her husband. She returned to see the police XXXX XXXX, 2013 after another incident.

[16] Nevertheless, the Tribunal finds the claimant's testimony regarding the abuse by her husband to be credible, and her experience with the police – that they are ineffective in matters of domestic abuse – is consistent with the objective documentation on Nigeria.

[17] In a 2014 Response to Information Request regarding domestic violence in Nigeria, the National Human Rights Commission chairman indicated that domestic violence is “poorly documented” and “hardly investigated”.

[18] Another human rights activist in an interview with Vanguard, a Nigerian newspaper, said that the Nigerian Police does not respond adequately to complaint[s] from women on domestic

violence. The same document also cites an American research document called *Country Reports on Human Rights Practices for 2013* that “police did not intervene in domestic disputes.”⁵

[19] The claimant then testified about the sexual relationship she began to have with a close friend in 2015. There were no serious inconsistencies or contradictions between her BOC and her testimony at the hearing, with regards to her sexual orientation. She testified that when her husband found out she was involved with a woman, he confronted and threatened her, vowing to kill her if he saw her again. That was in XXXX 2018. She testified that he also called the police, but she left the house before the police arrived, going into hiding with a friend in Lagos.

[20] In support of her allegations, she disclosed to the Tribunal an affidavit from her girlfriend, attesting to the fact they are lovers, and on the run from the claimant’s husband. The Tribunal found this affidavit perplexing. The claimant was asked why someone would swear in court to being homosexual if it is illegal in Nigeria, and subject to 14 years in prison.

[21] The claimant testified that her girlfriend made sure not to write “lesbian” in her affidavit – this surely would provoke authorities to react and come after her, she said. But saying that someone is one’s lover did not alert anyone, she testified.

[22] The Tribunal finds this explanation unreasonable – saying a woman is the lover of another woman is the same as saying that she is engaged in a lesbian relationship, even if it doesn’t use the same word.

[23] However, the Tribunal notes that affidavits, stamped by a court in Nigeria and for which a fee has been paid, are regularly submitted as evidence. It is not clear whether anyone at the courthouse ever reads these affidavits.

[24] What is more, the claimant was credible when she testified about her relationship with this woman, and what she feared would happen to her if she returned to Nigeria and tried to live openly as a lesbian. She also provided numerous photos of herself with her girlfriend, as well as

⁵ Document 3 - National Documentation Package, Nigeria, 30 April 2019, tab 5.3: *Response to Information Request NGA104980.E*, Immigration and Refugee Board of Canada, 10 November 2014.

a printout of their recent conversations on *WhatsApp* (a mobile phone App) which attest to the romantic nature of their relationship.

[25] Since arriving in Canada, the claimant has joined the group Agir: Action with LGBTQ Immigrants and Refugees, a support group for newly arrived members of the LGBTQ community.

[26] On the basis of the evidence before it, the Tribunal finds that the claimant has established, on the balance of probabilities, that she is both a victim of domestic violence and a bisexual woman.

State Protection and IFA

[27] The objective country documents establish that in Nigeria homosexuality is not only illegal, it is also considered taboo by both society and the government. The Nigerian Same Sex Marriage (Prohibition) Act of 2013⁶ prohibits same-sex marriage but also “the public show of same sex amorous relationships directly or indirectly.” As such it criminalizes same-sex sexual relations and is reportedly used by agents of the Nigerian state to target LGBT individuals for prosecution, harassment, and extortion.

[28] Other provisions in Nigeria’s criminal code, that also target sexual minorities, include the Gross Indecency provisions (Chapter 21, Section 217 of the Criminal Code) and Carnal Knowledge of Any Person against the Order of Nature provisions (Chapter 21, Section 214)⁷.

[29] According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association,

“Nigeria has been cited as one of the most homophobic countries in the world, not only due to the severity and comprehensiveness of its legislation that criminalises same-sex relations, but also for the discriminatory and violent treatment given to LGBTI people in the form of arbitrary arrests, blackmail, physical and psychological abuse by the police

⁶ Document 3 – National Documentation Package, Nigeria, 29 mars 2019, tab 6.4: *Same Sex Marriage (Prohibition) Act, 2013*, Nigeria, 2013.

⁷ Document 3 – National Documentation Package, Nigeria, 29 March 2019, tab 6.2: *Nigeria. State-Sponsored Homophobia: A world survey of sexual orientation laws: criminalisation, protection and recognition*, International Lesbian, Gay, Bisexual, Trans and Intersex Association, Angus Carroll; Lucas Ramón Mendos, May 2017.

and kidnapping, extortion, harassment, sexual attacks, subjection to conversion therapies, pressure to marry and involuntary outing by family and society members.”⁸

[30] The evidence before the Tribunal is that state protection in Nigeria for bi-sexual women is therefore inadequate, if not non-existent. Given that the agent of persecution is the Nigerian state and that the state controls the entire territory of Nigeria, for bi-sexual women there is no viable internal flight alternative anywhere in the country. Bi-sexual women face a serious possibility of persecution throughout the country.

[31] Having found that the claimant is a bi-sexual woman, the Tribunal finds that her fear of persecution in Nigeria is objectively well-founded, that she has rebutted the presumption of state protection with clear and convincing evidence, and that there is no viable internal flight alternative for her anywhere in Nigeria.

CONCLUSION

[32] Having considered all of the evidence, the Tribunal finds that the claimant faces a serious possibility of persecution in Nigeria on the basis of her membership in a particular social group of bi-sexual Nigerian women.

[33] Therefore, the Tribunal finds that she is a *Convention* refugee pursuant to section 96 of the *Act* and accepts her claim.

Catherine Solyom

Date

//eg

⁸ *Ibid.* p. 3