



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA2-00417

CLAIMANT(S)

DEMANDEUR(S)

XXXXXXXXXXXXXXXXXX
(a.k.a. XXXXXXXXXXXXXXXXXXXX)

DATE(S) OF HEARING

DATE(S) DE L'AUDIENCE

25 September 2002

DATE OF DECISION

DATE DE LA DÉCISION

13 November 2002

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S.E. Kitchener

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

Kingsley I. Jesuorobo
Barrister and Solicitor

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

A. Lin

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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XXXXXXXXXXXXXXXXXX, the claimant, alleges that she is a 27 year-old citizen of Nigeria. She claims to have a well-founded fear of persecution at the hands of her deceased husband's son and of her own family members by reason of her membership in a particular social group, namely women subject to forced levirate marriage.

Summary of Personal Information Form allegations

The claimant alleges that the death of her father in 1985 resulted in her XXXXX 2000 forced marriage in a traditional ceremony to XXXXX, a much older man, to whom her father had promised her in compensation for a loan. In XXXX 2001, her husband died and his son, XXXX, an influential man, insisted that the claimant marry him since the loan was not re-paid.

Mr. XXXXX insistence that she undergo circumcision, his physical mistreatment of her and threat of death if she did not comply with his wishes and her realization that he had the support of her family led her to flee into hiding in XXXX City. There she found assistance at a church whose pastor reported her difficulties to police. They, however, refused to intervene on the basis that her problems were domestic and cultural matters. The claimant remained in hiding until arrangements were completed for her to leave Nigeria.

Determination

I find the claimant to be a Convention refugee because she has a well-founded fear of persecution in Nigeria on a Convention ground.

Analysis

The issues in this matter which were identified at the outset of the hearing are credibility, personal identity and the objective basis for a well-founded fear of persecution, including state protection and internal flight alternative. In considering this claim, I have borne in mind the Chairperson's guidelines on female refugee claimants.¹

Credibility

In my opinion, the claimant was a credible witness. While she was very reserved in answering questions, often giving monosyllabic or short responses, even to questions posed by her own counsel, I find that her manner of testimony may reasonably be explained by an observable natural reticence rather than an attempt to evade or dissemble.

The claimant was able to explain to my satisfaction her possession of certain identity documents that raised both credibility and identity concerns. Documentary

¹ Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159 (1)(b) of the Immigration and Refugee Protection Act.

evidence² shows that documents found on the claimant at the port of entry included a Canadian Certificate of Landing, a Canadian social assistance card and a TD Access bankcard.³ The three documents are all in the name of XXXXXXXXXXXXXXXX.⁴ I accept, on a balance of probabilities, the claimant's explanation that these documents were furnished by the contact person in Canada of the agent who accompanied her to Canada and upon whose advice she depended in matters relating to her departure from Nigeria, travel to and arrival in this country. I accept that she has no other knowledge of their origin. The claimant carried her own birth certificate⁵ and identified herself to the examining immigration officer in her own name.⁶ I accept that the false documents were provided by the agent's Canadian contact and that their sole utilization on the claimant's behalf was as travel documents.

At the port of entry, the claimant was in possession of education documents⁷ and a birth certificate⁸ in the name of XXXXXXXX. As is indicated below, she provided post-hearing documentary evidence⁹ of her own graduation from the same university as her brother. I find reasonable her explanation that, in her rush to leave, she inadvertently grabbed the education documents of her twin brother instead of her own.

² Exhibit M-1, Canada Immigration package, pp. 1- 29.

³ Ibid., p. 4.

⁴ Ibid., pp. 2, 17.

⁵ Ibid., Certificate of Birth, XXXX Hospital, dated p. 14.

⁶ Ibid., p. 7.

⁷ Ibid., pp. 19-22 and pp. 24-25.

⁸ Ibid., p. 23.

⁹ Exhibit C-5, Letter, Registrar, XXXXXX University, dated XXXXX/02, p. 3.

I find the claimant's evidence regarding treatment by her family and by Mr. XXXXXX to force her levirate marriage to him to be internally consistent. In my view, her evidence is consistent as well with her signed, written statement to the interviewing immigration officer.¹⁰ I believe her story that members of her own family and her deceased husband's son were intent on forcing her to submit to a levirate marriage to him, following Edo cultural norms in Ewu, Edo State.

Identity

The identity documents tendered by the claimant at the hearing had certain apparent deficiencies. Her student photo identity card¹¹ was unsigned by the registrar. The date given in the university letter of her graduation¹² differs from that given in her Personal Information Form (PIF) as does the name of the university.¹³ For that reason, the hearing was reserved pending the receipt of further documents that were received post-hearing.¹⁴

I find the claimant to be who she says she is. I am satisfied that the claimant is a citizen of Nigeria and an indigene of Edo state, based on a balance of probabilities, having considered her testimony and the documentary support of her certificate of

¹⁰ Ibid., p. 13.

¹¹ Exhibit C-3, XXXXXXXX University, issued XXXXXX 2001.

¹² Ibid., Letter, XXXXXXXXXXXX University, dated XXXXXX, 2001, p. 4.

¹³ Exhibit C-1, p. 4.

¹⁴ Exhibit C-5.

national origin.¹⁵ Furthermore, I am satisfied, for the same reasons, that the claimant's tribal affiliation is Edo from the Ewu area¹⁶ of that state.

I accept that XXXXXX University, where the claimant began her university studies in 1998, was re-named XXXXXXXX University and that she graduated from that institution in 2001, based on the letter received post-hearing from the university.¹⁷

Objective basis for a well-founded fear of persecution

For the following reasons, I find the claimant's fear of persecution to be objectively well-founded.

She described to me scars she bears as a result of Mr. XXXXXXXX beatings. Her testimony in that regard is supported by a doctor's letter¹⁸ in which he confirms that the scars he observed are consistent with her story of having been beaten.

The documentary evidence is in my view supportive of her evidence of levirate marriage in Nigeria. It shows that marriage in Nigeria is governed by customary law, by Islamic law and statutory law.¹⁹ I have accepted that levirate marriage is a traditional Edo practice in the home area of her family and of Mr. XXXXXX, namely Ewu in Edo State. There is no evidence before me of laws proscribing forced or levirate marriage in Edo

¹⁵ Ibid., Esan Local Government, Edo State, Nigeria, issued 19/08/97, p. 2.

¹⁶ Ibid.

¹⁷ Ibid., Letter, Registrar, XXXXXX University, dated 30/10/02, p. 3.

¹⁸ Exhibit C-2, Letter, Dr. XXXXXXXX, dated 2002 .09 .11, p. 5.

¹⁹ Exhibit R-2, NGA32707, p. 27.

State. The documentary evidence²⁰ quotes a representative of the Widow's Development Organization who states that she cannot provide information specific to Edo widows as her work is focused in Enugu State. However, she offered the general comment that there are no federal or state laws prohibiting leviration in cultures where forced marriage is practiced. The documentary evidence reports that police and government authorities do not get involved when a woman refuses since they treat it as a family matter.²¹ I find the documentary evidence²² to be supportive of her claim that even when the assisting church pastor reported the claimant's situation to police in XXXXX City, Edo State, police cited family matters as the reason for refusing assistance to her. I accept that state protection is not available to her in XXXXX City.

Lagos was canvassed as a possible internal flight alternative. While the city's sheer size might make it difficult for the claimant's family or Mr. XXXXXX to find her, the claimant's testimony, which I have found credible, was that she has no friends there to whom she might turn for emotional or financial support. The church, whose members afforded her brief protection in XXXXXXXX City and arranged for her departure to Canada, has no branch in Lagos. Moreover, although the claimant has a university degree, she has no work experience. Given the above, internal flight to Lagos is not, in my opinion, a reasonable option open to the claimant.

²⁰ Exhibit R-2, NGA34452.E, dated 18.05.00, p. 25.

²¹ Ibid.

²² Ibid.

In light of the evidence before me, I find on a balance of probabilities that the claimant has established an objectively well-founded fear of persecution. I conclude that there is a serious possibility of persecution were she to return to Nigeria.

I find XXXXXXXXXXXXXXXX to be a Convention refugee because she has a well-founded fear of persecution on a Convention ground.

“S.E. Kitchener”

S.E. Kitchener

DATED at Toronto this 13th day of November, 2002.

KEYWORDS - REFUGEE PROTECTION DIVISION – WOMEN REFUGEES – GENDER - PARTICULAR SOCIAL GROUP - GENDER-RELATED PERSECUTION - FORCED MARRIAGE - STATE PROTECTION - FEMALE - POSITIVE - NIGERIA