



NOTICE OF DECISION

[*Immigration and Refugee Protection Act*, subsection 107(1)]
[*Refugee Protection Division Rules*, rule 67]

Cindy Wong
Member

In the claims for refugee protection of:	Date of birth:	UCI:
Claudia Chiamaka EMEGA	October 25, 1996	92496001
Joy Eyimofe FUTUGHE	July 19, 1997	91668719

The claims were heard on March 24, 2021.

The Refugee Protection Division determines that **the claimants are Convention refugees and therefore accepts the claims.**

The reasons for the decision are attached.

April 6, 2021

HF, Case Management Officer
For the Registrar
Tel: 1-866-787-7472

Certified True Copy
Copie Certifiée Conforme

H.F.

IRB Representative
Représentant de la CISR

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 / Dossier de la SPR : VB9-07228
VB9-07226
UCI / IUC: 92496001
91668719

Private Proceeding / Huis clos

TRANSCRIPT OF THE REASONS AND DECISION

Claimant(s)	Claudia Chiamaka EMEGA Joy Eyimofe FUTUGHE	Demandeur(e)(s) d'asile
Date(s) of hearing	March 24, 2021	Date(s) de l'audience
Place of hearing	Heard by Virtual Hearing	Lieu de l'audience
Date of decision and reasons	March 24, 2021	Date de la décision et des motifs
Panel	Cindy Wong	Tribunal
Counsel for the claimant(s)	Massood Joomratty	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative	N/A	Représentant(e) désigné(e)
Counsel for the Minister	N/A	Conseil du (de la) ministre
Interpreter	N/A	Interprète

DECISION

5 **MEMBER:** This is a decision of the Refugee Protection Division of the Immigration and Refugee Board in the claims for protection made by Claudia Chiamaka EMEGA, the principal claimant, and Joy Eyimofe FUTUGHE, the associate claimant who claimed to be citizens of Nigeria and who are seeking protection pursuant to Section 96 and 97(1) of the Immigration and Refugee Protection Act.

10 In assessing these cases, I have considered and applied the Chairperson's Guidelines on Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression herein referred to as the SOGIE Guidelines. This Guideline addresses the particular challenges individuals with diverse SOGIE may face in presenting their cases before the Board and I was mindful of these issues both at the hearing and in coming to a decision in these claims.

15 **DETERMINATION**

I find that the claimants face a serious possibility of persecution if they return to Nigeria as a result of their membership in a particular social group namely as a lesbian woman and as a lesbian couple in Nigeria. I find that the claimants are Convention refugees pursuant to Section 96 of IRPA.

20 **ALLEGATIONS**

25 The allegations of the claimants as set out in their Basis of Claim forms and during their testimony at the hearing can be summarized as follows. The claimants fear persecution from their families, Nigerian authorities and society as a result of their membership in a particular social group namely their sexual orientation as lesbian women and as a lesbian couple in Nigeria.

30 The claimants were born in Nigeria and come from a religious Catholic family. They both discovered their lesbian orientation in high school while in Nigeria. The claimants kept their sexual orientation to themselves while growing up in Nigeria as they understood that being lesbian was a sin not accepted by God, it's disgusting and associated with negative connotations. The associate claimant came to Canada in August of 2014 and the principal claimant came to Canada on March 4th, 2015, both as students on student visas.

35 The claimants met each other in approximately June of 2015 while attending Fraser International College. In July of 2016, the claimants saw each other at a nightclub frequented by LGBTI people and discovered each other's sexual orientation. Shortly thereafter they began a relationship. The associate claimant moved in with the principal claimant in October of 2016. The claimants' intentions were to complete their studies, obtain work authorizations, and apply for permanent residence in Canada. However, due to pressure from both families to return to Nigeria and the inability for the claimants' families to continue to financially support them, the claimants feared for the safety should they return to Nigeria. The claimants made refugee claims in Canada on August of 2019.

40 **ANALYSIS**

Identity

45 I find that the claimants have established on a balance of probabilities that they are citizens of Nigeria as established by their testimony and identification documentation before me namely a copy of their Nigerian passports which can be found at Exhibit 1.

Nexus

5 I find that there is a Nexus between the harms that the claimants fear on the Convention ground of their membership in a particular social group as a lesbian woman and as a lesbian couple. These claims will therefore be assessed pursuant to Section 96 of IRPA.

Credibility

10 The claimants testified in a straightforward manner that was consistent with all of the other documents on file including their Basis of Claim forms and narratives and they were able to answer all of my questions fully and provided all details that were requested of them. There were no relevant inconsistencies in their testimony or contradictions between their testimony and the other evidence before me which have not been satisfactorily explained. I find that the claimants did not fabricate or exaggerate their testimony and responded where they were able. With respect to the claimants' delay in claiming refugee status, given that 15 they entered Canada in 2014 and 2015 and made refugee claims in August of 2019 the claimants did not immediately fear returning to Nigeria due to their valid student status in Canada. It was not until they were pressured to return to Nigeria due to their families' lack of financial resources did they consider making refugee claims and began learning about the refugee claim process in 2019. I accept their explanations as reasonable and their delay in claim is not indicative of their lack of subjective fear. I do not draw a negative 20 credibility inference from their delay in claiming refugee protection.

25 The claimants also spoke to how they discovered their sexuality and how they have kept their sexual orientation hidden in Nigeria. The associate claimant testified that she would blend in with the crowd when her friends talked about being attracted to members of the opposite sex, she would echo what they were saying to fit in and not seem different. They both cited their conflicting feelings when they discovered that they were lesbian as they understood that being a homosexual in Nigeria was associated with being stigmatized by family, society, and just being discriminated against. When I questioned them on their relationship, they were able to spontaneously and candidly detail their relationship, how their relationship came about, and about their typical activities with each other including watching movies, trying out new 30 recipes together, and being dragged by the associate claimant to do fun activities outdoor. They describe themselves as being an openly lesbian couple in Canada with many friends, work colleagues, and Rainbow Refugee Society members aware of their relationship.

35 The claimants have also provided a number of documents to support their allegations that can be found in Exhibits 4 and 5. For example, they provided copies of their tenancy agreement and utility bill to demonstrate that they are cohabiting together. In addition, there is a support letter from the Rainbow Refugee Society that confirms the claimants' regular participation as a lesbian couple and their active involvement with the organization. Finally, the claimants have provided various photographs of them together depicting their relationship. I find that the claimants have established on a balance of probabilities 40 the central elements of their claims for protection. I find the claimants to be credible witnesses and therefore believe what they have alleged in support of their claim. I accept on a balance of probabilities that the claimants have established their identities as a lesbian woman and as a lesbian couple.

45 **Well-Founded Fear of Persecution**

When assessing a claim for refugee protection, we look at whether claimants have a well-founded fear of persecution which involves both a subjective fear element and forward-facing objective basis for that fear.

5 Based on all the evidence before me, I find on a balance of probabilities that the claimants have a well-founded fear of persecution should they return to Nigeria. The objective evidence found in the National Documentation Package NDP 2.1 states that the government committed significant human rights issues including unlawful and arbitrary killings, extrajudicial killings, forced disappearances, torture, arbitrary

10 detention, substantial inference with rights of peaceful assembly and freedom of association in particular for lesbian, gay, bisexual, transgender, and intersex LGBTI persons and crimes involving violence targeting LGBTI persons.

15 Found in NDP 2.8, Nigerian law criminalizes same-sex conduct as well as a public show of same-sex amorous relationships, same-sex marriages, and the registration of gay clubs, societies, and organizations. According to Nigerian law, the 2014 Same-Sex Marriage Prohibition Act is a law prohibiting marriages and civil unions among persons of the same sex, criminalizes the free association of any persons through so-called gay organizations. Citizens suspected of same-sex activities were frequently harassed intimidated and arrested. This law effectively renders illegal all forms of activities supporting or promoting LGBTQ rights. According to this law, anyone convicted of entering into a same-sex marriage or civil union may be sentenced up to 14 years' imprisonment. Following passage of this law, LGBTI persons reported increased harassment and threats against them based on their perceived sexual orientation or gender identity. News reports on LGBT advocates reported numerous arrests. According to Human Rights Watch, the law had become a tool used by police and members of the public to legitimize human rights violations against

20 LGBTI persons such as torture, sexual violence, arbitrary detention, extortion, and violations of due process rights.

25 With respect to societal treatment of LGBTI persons, NDP 6.2 documents that Nigeria has been cited as one of the worst homophobic countries in the world. Not only due to the severity and comprehensiveness of its legislation that criminalizes same-sex relationships 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 and kidnapping, extortion, harassment, sexual attacks, subjection to conversion therapies, pressure to marry and involuntary outing by family and society members' 6.1 further indicates that LGBTI persons have suffered violence from many angles from society, most of these attacks are identified as vigilante group attacks and mob justice. In 2019, there has been a significant spike in the number of cases of mass blackmail, mob violence, and unlawful detentions often fueled by homophobia, hate, and discrimination against the LGBT community. There's an obsession to eradicate and suppress members of the LGBT community.

35 I also note that under the SOGIE Guidelines, Section 5.1.1 that being compelled to conceal one's SOGIE constitutes a serious interference with fundamental human rights that may therefore amount to persecution. When a claimant cannot be expected to conceal their SOGIE as a way to avoid persecution in their country of reference. The claimants have testified to this extent citing concealment of their sexual orientation as a lesbian woman while living in Nigeria. In summary, I am satisfied that based on the claimants' identity as

40 lesbian women and as a lesbian couple if they were to openly express their sexual orientation upon return to Nigeria, there's a serious possibility that they would be subjected to hate crimes, mob violence, imprisonment, torture, and even death amounting to persecution. They would either have the choice of succumbing to persecution and continue to the lesbians in secret or risk their lives to openly express themselves as a lesbian woman in Nigeria. Based on all the evidence before me, I find that the claimants

45 have established a well-founded fear of persecution on account of their identities as a lesbian woman and as a lesbian couple in Nigeria.

State Protection

5 I am satisfied that the presumption of state protection has been rebutted. In reviewing the country conditions
on state protection in Nigeria, there is objective evidence to demonstrate that police have outright failed in
their responsibility to protect LGBT people. According to NDP 6.1, homophobic violence is occurring
without fear of consequences. A UN Special Rapporteur who visited Nigeria in 2019 states that three (3)
10 alleged killings of individuals because of their perceived sexual orientation were reported with the
individuals beaten to death for belonging to the LGBTI community. In general, victims and families do not
file complaints for these cases. Law enforcement agents considered the vigilante attacks as an intervention
to ease their work to enforce peace in the community. Therefore, the victims are the ones who get arrested
15 on the basis of homosexuality and face more stigma, discrimination, unlawful arrest and detention,
extortion, and rape.

20 Also, some law enforcement agents are part of the vigilante groups. They lure real or perceived
homosexuals into lonely spaces and rob them of their valuables, harass them sexually, blackmail them, and
in some cases, victims don't make it out alive. There are many cases where police officers arbitrarily arrest
people perceived to be LGBTQ. Finally, found in NDP 2.8 in January Lagos state police spokesperson
Delapo Badmus (ph) through her private Instagram account warned gay people to leave Nigeria or risk
25 prosecution under the Same-Sex Marriage Prohibition Act. Considering the state's laws criminalizing same-
sex relationships, the lack of any positive respect for the rights of LGBT persons, and reports of
mistreatment of those persons with diverse SOGIE by law enforcement, I find that the state is unable or
unwilling to provide adequate protection for the claimants. I find that the claimants have rebutted the
presumption of state protection.

25 **Internal Flight Alternative**

I have also considered whether the claimants have an internal flight alternative in Nigeria, and I have
concluded that they do not. The situation for individuals with diverse SOGIE is prevalent throughout
Nigeria. I do not find that the claimants could live safely elsewhere in Nigeria as the treatment of sexual
30 minorities is similar across the country and the law criminalizing same-sex sexual relationships applies
throughout the country. I find that the claimants face a serious possibility of persecution throughout Nigeria.

CONCLUSION

35 In conclusion, I find that the claimants are Convention refugees and I, therefore, accept their claims.

40 ----- **REASONS CONCLUDED** -----

I, *Ruun Adde*, declare that this transcript is accurate.
March 31, 2021

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H.F.

IRB Representative
Représentant de la CISR