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Private Proceeding / Huis Clos

Reasons and Decision – Motifs et décision

Claimant(s)	Patrick Frederick INYANG Henrietta Obianuju ABIAGOM	Demandeur(e)(s) d'asile
Date(s) of hearing	April 20, 2021	Date(s) de l'audience
Place of hearing	Heard by Virtual Hearing	Lieu de l'audience
Date of decision and reasons	April 22, 2021	Date de la décision et des motifs
Panel	Kristy Sim	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

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IRB Representative
Représentant de la CISR

REASONS FOR DECISION

INTRODUCTION

[1] This is the decision of the Refugee Protection Division (RPD) in the claim of Patrick Frederick INYANG (principal claimant) and Henrietta Obianuju ABIAGOM (associate claimant) as citizens of Nigeria who are claiming refugee protection pursuant to section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (the “IPRA”).¹

[2] I heard these claims jointly pursuant to rule 55 of the *Refugee Protection Division Rules*.² In rendering my decision, I considered the *Chairperson’s Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*³ as it relates to the social and cultural context in which the allegations arise and state protection.

[3] On November 3, 2020, the Minister advised the Board of its intention to intervene on the issues of credibility and inclusion in person and in writing, which was withdrawn on February 23, 2021.

[4] The claimants have triplet sons who were born on July 26, 2019 in Canada. They are not claimants; however, the claimants testified about the risks their sons would face in Nigeria.

DETERMINATION

[5] I find the associate claimant faces a serious possibility of persecution on a Convention ground. I find the principal claimant is neither a Convention refugee nor a person in need of protection.

ALLEGATIONS

[6] The specifics of these claims are set out in the claimants' Basis of Claim (BOC) forms.⁴ The principal claimant is a 41-year-old Yakurr man from Ugep in Cross Rivers State. The associated claimant is a 36-year-old Igbo woman from Ugboodu in Delta State. The principal claimant comes from a chiefly family and, as the eldest son, was meant to succeed his father as chief in Ugep. The principal claimant's father's health began to suffer in early 2015 and, along with the tribal elders, he began to pressure the principal claimant to return to Ugep and assume the chieftaincy. In the middle of 2015, the claimants decided to get married as the associate claimant was pregnant. The principal claimant's family and the tribal elders did not approve of the marriage as they wanted him to marry someone from their tribe; however, they accepted the marriage because of the pregnancy. The claimants were married in a traditional ceremony on September 16, 2015 in the associate claimant's native village in Delta State, which also displeased the principal claimant's family who wanted the marriage to take place in Ugep. The principal claimant's parents did not attend, partly due to his father's ill health, but also because they did not approve. The claimants also had a Christian wedding on November 14, 2015, which his parents also did not attend. The associate claimant suffered three miscarriages in October 2015, in June 2016 and in June 2017. The principal claimant's tribal elders were told about each of these miscarriages as there was a great interest in his offspring given the principal claimant's lineage. The tribal elders and the principal claimant's father became increasingly adamant that he return to Ugep and assume his role as chief, which the principal claimant was not interested in doing as he disagreed with many of the traditional practices of his tribe. The associate claimant also did not want to live in Ugep as she was not accepted by them and because she feared the traditional rituals she would have to undergo.

[7] After the associate claimant's second miscarriage, rumours began to circulate within the Ugep tribe that she was unable to have children because she is a witch. These rumours intensified after her third miscarriage in June 2017, such that they were also circulating amongst members of the principal claimant's tribe living in Lagos. In December 2017, the principal claimant's sister came to advise the claimants' that she had overheard that the elders – with the

blessing of their father – intended to perform female genital mutilation (FGM) on the associate claimant to cure her of her inability to have children and to remove the spell put on her. The elders were planning to come to Lagos, where the claimants’ lived, to confront them and, if they did not agree, to forcefully take her and perform a cleansing that included FGM.

[8] The principal claimant reported the threat to the police in Lagos, who refused to file a report on the basis that it was a tribal matter and that he should go to the police in Ugep. Fearful for their safety, the claimants made plans to leave Nigeria for the United States as they already had visitor visas. To avoid detection, they stayed with different friends in Lagos until they departed Nigeria on January 17, 2018. In the United State, they learned from the principal claimant’s sister that the elders had enlisted the police to look for the claimants and decided it was not safe of them to return. They did not claim asylum in the United States fearing anti-refugee policies of the previous administration. The claimants crossed into Canada on May 6, 2018 and filed for refugee protection on June 8, 2018.

[9] Since the claimants fled Nigeria, the tribal elders have continued to search for them. The principal claimant’s sister (the only member of his family with whom he remains in contact) has continued to receive phone calls from the tribal elders asking if she knows where the claimants are. A chief, Eno Bassey, also visited her at her residence in Lagos looking for the claimants. The claimants fear that if they return to Nigeria, the principal claimant will be at risk for disrespecting tradition by refusing to subject his wife to FGM and assume his chieftaincy, and that the associate claimant will be harmed and subjected to FGM. The claimants also fear that their infant sons will have their faces scarred with ‘chieftain marks’.

ANALYSIS

Identity

[10] I find that the claimants’ identities as nationals of Nigeria are established through their testimony and the copy of each of their passports containing visas for the United States of America and the United Kingdom.⁵

Credibility

[11] When a claimant swears to the truth of their allegations, this creates a presumption that those allegations are true, unless there is reason to doubt their truthfulness. The principal claimant testified in a straightforward and detailed manner. He did not exaggerate or tailor his evidence, and there were no material omissions or inconsistencies. The associate claimant also testified, and I found her testimony to be candid and clear, with no material inconsistencies, contradictions or omissions.

[12] The claimants provided documents to corroborate aspects of their allegations, including:⁶

- Certificate from the claimants' traditional marriage and photographs of both their traditional marriage and the Christian ceremony.
- Birth registration and certificate of origin document for each claimant.
- Certificates related to the claimants' education.
- Certificates from the Redeemed Christian Church of God for the principal claimant, including a baptism certificate.
- Business incorporation record for Patorichie Global Resources Limited.
- Medical reports about two of the associate claimant's three miscarriages.
- Affidavit of Mary Chinwe Abiagom (the associate claimant's mother) attesting to the danger the claimants face from the principal claimant's family.
- Affidavit of Bridget Nandke Patrick (principal claimant's sister) attesting to her knowledge of her sister-in-law's three miscarriages and the suspicion by the elders and members of the tribe that she is a witch, to telling her brother in December 2017 that the tribal elders decided to perform FGM on the associate claimant to break the spell on her and the continued inquiries from them about the whereabouts of the claimants, and about a personal visit by Chief Eno Bassey to her residence on October 3, 2019 who vowed to continue the search and enlist the assistance of the police in Ugep.⁷

[13] The claimants also provided objective evidence about the persistence of FGM in Nigeria,⁸ a 2005 Response to Information Request (RIR) about the treatment of people accused of being

witches in Nigeria,⁹ and a November 2019 media article about the continued practice of FGM in Ugep and specifically about the threats that the claimants are facing.¹⁰

[14] The claimants initially fled to the United States, where they remained from January 18 until May 6, 2018 on their visitor visas. They testified that through speaking with members of the Nigerian community there, they concluded that they were not likely to have a fair process or a successful asylum claim under the previous administration. I find their explanation for the failure to claim in the United States reasonable and do not find it indicates a lack of subjective fear or negatively reflects on their overall credibility.

[15] Based on the presumption of truthfulness and the corroborating evidence provided, I find that claimants to be credible. I accept that the principal claimant comes from a chiefly family in Ugep and that the claimants married contrary to the wishes of his family and the tribal elders. I accept that the principal claimant was opposed to the traditional practices of his people and that he made this opposition known, including his refusal to subject his wife to FGM. I accept that as a result of the associate claimant's miscarriages, the principal claimant's father and the elders decided to subject her to ritualistic cleansing, which included subjecting her to FGM.

Forward Looking Risk – The Principal Claimant

[16] The claimants allege that they are unable to return to Nigeria because the principal claimant's family and tribal elders intend to harm and subject the associate claimant to FGM and to harm and punish the principal claimant for opposing their traditional practices (including FGM) and rejecting the chieftaincy. I find that there is insufficient evidence to support a finding that the principal claimant faces a serious possibility of persecution under s. 96 of the IRPA or a risk of harm under s. 97 of the IRPA. Consequently, his claim must fail.

[17] When asked what risk he faced, the principal claimant testified that he is looked upon with shame for not respecting tradition and for marrying outside of their tribe; however, he was unable to articulate any specific risk that he faces, focusing on the risks to his wife as a result of his position against FGM and on not assuming the chieftaincy. There is insufficient evidence

before me that the principal claimant's family threatened or tried to harm him; rather, their demands are centered on the associate claimant.

[18] There is also insufficient objective evidence in the National Documentation Package (NDP)¹¹ for Nigeria to show a risk of harm to male family members when traditional families demanding that female family members undergo FGM and associated rituals. The claimants also did not provide any supporting objective evidence in this regard.

[19] On this basis, I find that there is insufficient evidence to conclude that there are serious reasons for considering that the principal claimant has a forward-looking risk of persecution under s. 96 of the IRPA, or, on a balance of probabilities, a forward-looking risk of harm under s. 97 of the IRPA. Accordingly, I reject his claim. The remainder of the analysis relates to the associate claimant.

Well-Founded Fear of Persecution – The Associate Claimant

[20] In order to be found a Convention refugee under section 96 of the IRPA, a claimant must show that she or he has a well-founded fear of persecution by reason of race, religion, nationality, membership in a particular social group, or political opinion. I find that the associate claimant has a well-founded fear of persecution due to her membership in the particular social group of women at risk of forced FGM. As such, her allegations form a nexus to the Convention.

[21] The claimants credibly testified that the tribal elders and the principal claimant's father have decided that she must be subjected to FGM as part of a cleansing ritual and traditional practice. The principal claimant testified that his sister was subjected to FGM when she was an infant. He also testified to having witnessed young girls being forced to undergo FGM in his village on the insistence of the tribal elders. The principal claimant credibly testified about his opposition to this procedure and how he refuses to subject his wife to it because he loves her and does not want her to be harmed.

[22] The NDP corroborates that FGM is widespread in Nigeria. Estimates are that the procedure has been performed on 20 million women and girls in Nigeria, with indications that 24.8 percent of women and girls between the ages of 15 and 49 have undergone FGM.¹² FGM is

more common amongst southern ethnic groups.¹³ While girls are usually subjected to FGM before the age of 5, it can also be performed as part of an initiation ritual for womanhood around the age of 15 or prior to marriage or during her first pregnancy.¹⁴

[23] Despite the existence of federal legislation that criminalizes FGM, it continues to thrive in Nigeria.¹⁵ There are also no reported instances of any prosecutions brought under federal legislation since its introduction in 2015¹⁶ and few reports of the government taking action to curb the practice.¹⁷ Police tend to treat the practice as a family or community issue and as many police respect the tradition, they are unlikely to intervene at all.¹⁸

[24] Given the high rate at which FGM is performed and the failure of the state to implement anti-FGM legislation, it appears that FGM continues to be a widespread practice and is often socially accepted, including by local authorities. I find that the prevalence of FGM in Nigeria, the broad social support for the practice, and persistent threats by the principal claimant's family members and tribal elders put the associate claimant at significant risk in Nigeria. Based on all the evidence before me, I find that the associate claimant faces a serious possibility of persecution by the tribal elders if they were to return to Nigeria.

State Protection

[25] In all refugee claims, a state is presumed to be capable of protecting its citizens unless there is clear and convincing evidence to the contrary. I find that this presumption has been rebutted in this case.

[26] The claimants went to the police in Lagos for protection out of fear that the principal claimant's father and tribal elders would abduct and harm the associate claimant. The police refused to file a report on the basis that it was a family or tribal issue. As set out above, the NDP corroborates that while laws against FGM exist in Nigeria, the practice remains widespread with low rates reported and prosecution. Even in states such as the federal capital territory of Abuja, where the legislation criminalizing FGM has been enacted, the laws are weak, poorly understood, and often not implemented.¹⁹ The US Department of State Report similarly notes that, "while 13 or 26 states banned FGM, NGOs found that they had to convince local authorities

that state laws applied in their districts.”²⁰ This same report also indicates that that the police lack resources and training and that widespread corruption exists, and that they are unlikely to intervene on domestic matters.²¹

[27] I find that the evidence before me demonstrates that, on a balance of probabilities, the state will be unable or unwilling to provide adequate protection to the associate claimant. As such, the presumption of state protection has been rebutted.

Internal Flight Alternative

[28] For an internal flight alternative (or IFA) to be viable, it must satisfy both prongs of a two-prong test. On the first prong, I must be satisfied, on a balance of probabilities, that the claimant would not face a serious possibility of persecution or be personally subjected, on a balance of probabilities, to a risk to life, of cruel and unusual treatment or punishment, or to a danger of torture (“section 97 harm”) in the IFA location. On the second prong, I must be satisfied that conditions in the IFA are such that it would be reasonable, in all the circumstances, including those particular to the claimant, for her to seek refuge there. At the beginning of the hearing, the claimants were given notice of Abuja and Ibadan as potential IFA locations. Once an IFA has been proposed, the onus is on the claimant to show that the IFA location is unreasonable.²² In this case, I find that the associate claimant does not possess a safe IFA. As I am not satisfied on the first prong of the test, I do not find it necessary to examine the second prong, the reasonableness of the IFA.

[29] The associate claimant fears she will be harmed by the tribal elders because the principal claimant has shown a lack of respect for traditions and beliefs of his tribe by refused to submit her for cleansing rituals that includes subjecting her to FGM. The claimants fear that the tribal elders may kidnap the associate claimant or use their powers to hypnotize her and take her forcefully without her knowing in order to subject her to these cleansing rituals. The claimants also fear that people from the principal claimant’s tribe living across Nigeria may identify them and report their location to the tribal elders. Finally, the claimants fear they are at risk from the police on the basis that the tribal elders have reported the matter to the police in Ugep, who are now looking for them throughout Nigeria.

[30] In assessing whether the associate claimant would be safe in either IFA location, I considered whether there was evidence that the agents of persecution have the motivation to pursue the claimants elsewhere in Nigeria, including in Ibadan or Abuja. In this regard, the claimants testified that the elders have continued to search for them, including continuing to regularly call the principal claimant's sister to ask about the claimants' whereabouts and sending a chief to her residence in Lagos in October 2019. The claimants testified that even though the associate claimant has now had children, she is still at risk of having these cleansing rituals performed on her and being subjected to FGM as this something that all women in the tribe must undergo and because of concern that she continues to bewitch her husband into refusing the chieftaincy. On this basis, I accept that the agents of persecution remain motivated to pursue the associate claimant.

[31] I also considered whether the agents of persecution have the means or capacity to pursue the associate claimant in either IFA location. Both Abuja and Ibadan are reasonably large cities with sizable populations of 2.44 million (Abuja) and 3.16 million (Ibadan).²³ Nigeria is reported to have more than 200 ethnic groups and even more linguistic groups, the largest of which are the Yoruba, the Igbo and the Hausa-Fulani, which together make up approximately 70 percent of the population.²⁴ Abuja, in particular, has a diverse population attracting people from all over Nigeria.²⁵ The claimant testified that through their accents and their native language, they would be identifiable in both IFA locations. The associate claimant is a member of the Igbo people, an ethno-linguistic group with over 20 million speakers throughout the country. However, the principal claimant speaks Yakurr, a much smaller ethno-linguistic group. Moreover, given his family name and his connection to the chieftaincy, he is far more easily identifiable especially to people of his tribal group and state. People from his tribal group know him and his family, and about the problems that he and the associate claimant have experienced as is evident by the article provided.²⁶ While I do not find the principal claimant is himself at risk of harm, the associate claimant could be found and located through him. While it may be sensible for the claimants to take precautions, it is not reasonable to expect them to go into hiding to avoid being located by the agents of persecution and I find that is what would be required in this case.

[32] There is freedom on movement by law in Nigeria and internal migration is common.²⁷ Nevertheless, indigeneship can play a role in accessing housing, employment, and government services and one can be required to provide a certificate of origin (or Indigene Certificate) that speaks to one's paternal ancestry,²⁸ which is a further way the principal claimant may be identified and located. In addition, the claimants testified about internal networks across Nigeria that would allow them to being identified and located by members of the principal claimant's tribal group and the tribal elders. I find that in their particular circumstances, it would be difficult to avoid contact and possible discovery by the other Yakurr people, which creates the potential that this information will be shared and reach the agents of persecution. On this basis, I am satisfied that the associate claimant does not have a viable internal flight alternative.

CONCLUSION

[33] Having considered all of the evidence, I find that the associate claimant is a Convention refugees pursuant to section 96 of the IRPA and I accept her claim. I find that the principal claimant is neither a Convention refugee nor a person in need of protection and accordingly, I must reject his claim.

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AK
IRB Representative
Représentant de la CIOR

(signed)

Kristy Sim

April 22, 2021

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Refugee Protection Division Rules*, SOR/2012-256.

³ Immigration and Refugee Board of Canada (IRB) *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, November 1996.

⁴ Exhibits 2.1 and 2.2, with amendments contained in Exhibit 4, pages 1 and 2.

⁵ Exhibit 1.

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 4.

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- ⁹ Exhibit 5.
- ¹⁰ Exhibit 6.
- ¹¹ Exhibit 3, National Documentation Package for Nigeria, 16 April 2021 version.
- ¹² Exhibit 3, NDP, item 1.4: EASO Country of Origin Information Report: Nigeria, European Asylum Support Office (June 2017); and item 5.22: Country Profile: FGM in Nigeria, 28 Too Many (November 2017).
- ¹³ Exhibit 3, NDP, item 1.4: EASO Country of Origin Information Report: Nigeria, European Asylum Support Office (June 2017).
- ¹⁴ Exhibit 3, NDP, item 1.4: EASO Country of Origin Information Report: Nigeria, European Asylum Support Office (June 2017).
- ¹⁵ Exhibit 3, NDP, item 5.21: Application and enforcement of the May 2015 ban on female genital mutilation (FGM), NGA105404.E (January 2016)
- ¹⁶ Exhibit 3, NDP, item 5.2: Nigeria: The Law and FGM, 28 Too Many (June 2018).
- ¹⁷ Exhibit 3, NDP, item 2.1: Nigeria: Country Reports on Human Rights Practices, US Department of State Report (March 2021).
- ¹⁸ Exhibit 3, NDP, item 5.16: Country Policy and Information Note, Nigeria: Female Genital Mutilation, UK Home Office (August 2019).
- ¹⁹ Exhibit 3, NDP, item 5.2: Nigeria: The Law and FGM, 28 Too Many (June 2018).
- ²⁰ Exhibit 3, NDP, item 2.1: Nigeria: Country Reports on Human Rights Practices, US Department of State Report (March 2021).
- ²¹ Exhibit 3, NDP, item 2.1: Nigeria: Country Reports on Human Rights Practices, US Department of State Report (March 2021).
- ²² *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, Court of Appeal.
- ²³ Exhibit 3, NDP, item 1.4: EASO Country of Origin Information Report: Nigeria, European Asylum Support Office (June 2017).
- ²⁴ Exhibit 3, NDP, item 1.4: EASO Country of Origin Information Report: Nigeria, European Asylum Support Office (June 2017); and item 13.1: Role of indigeneship in obtaining employment, housing and social services [...], NGA106361.E (October 2019).
- ²⁵ Exhibit 3, NDP, item 13.1: Role of indigeneship in obtaining employment, housing and social services [...], NGA106361.E (October 2019).
- ²⁶ Exhibit 6.
- ²⁷ Exhibit 3, NDP, item 13.1: Role of indigeneship in obtaining employment, housing and social services [...], NGA106361.E (October 2019).
- ²⁸ Exhibit 3, NDP, item 13.1: Role of indigeneship in obtaining employment, housing and social services [...], NGA106361.E (October 2019); and item 3.13: Information on a Certificate of State of Origin [...], NGA105727.E (January 2017).