



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: XXXXXX

NOTICE OF DECISION

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

Heidi Worsfold
Member

In the claim for refugee protection of:	Date of birth:	UCI:
XXXXXX	XXXXXX	XXXXXX

The claim was heard on March 19, 2021.

The Refugee Protection Division determines that **the claimant is a Convention refugee and therefore accepts the claim.**

The reasons for the decision are attached.

March 30, 2021

K. Oller, A/Case Management Officer
For the Registrar
Tel: 1-866-787-7472

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IRB Representative
Représentant de la CISR



RPD File / Dossier de la SPR : XXXXXX
UCI / IUC : XXXXXX

Private Proceeding / Huis clos

TRANSCRIPT OF THE REASONS AND DECISION

Claimant(s)	XXXXXXX	Demandeur(e)(s) d'asile
Date(s) of hearing	March 19, 2021	Date(s) de l'audience
Place of hearing	Heard by Virtual Hearing	Lieu de l'audience
Date of decision and reasons	March 19, 2021	Date de la décision et des motifs
Panel	Heidi Worsfold	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	Osakue Monday Ukponrefe	Interprète

Unrevised Transcript
of decision delivered orally

Transcription non révisée d'une
décision rendue de vive voix

DECISION

5 **MEMBER:** This is the decision of the *Refugee Protection Division* in the claim of XXXXXX or XXXXXX, sorry, I'm not pronouncing that correctly as a citizen of Nigeria pursuant to Sections 96 and 97(1) of the *Immigration and Refugee Protection Act*. In coming to this decision, I've considered and applied the Chairperson's Guideline number 4 on Women Refugee Claimants Fearing Gender Based Persecution given that the claimant alleges domestic violence. The specifics of your claim are set out in your Basis of Claim form and attached narrative as well as your oral testimony.

10 In summary, you allege that you met your ex-partner, XXXXXX in 2012 at a mutual friend's party. He was a police officer in Lagos at the time and you were working in the accounting field. You started dating and moved in together that same year, 2012 and after you started living together, his behaviour became more and more abusive and by 2015, he had become physically and sexually violent. He was extremely possessive and controlling to the point that he showed up at your workplace one evening in February 2016 while you were working overtime and accused you of having an inappropriate relationship with a male colleague and threatened him and then threatened you. You left with him to avoid further conflict and asked him not to come to your workplace again under those circumstances to which he responded to by beating and raping you. In April 2017, you took a break away from him and went to your good friend Funmi's place about a five-hour drive outside of Lagos. Within a week, Chinedu showed up with a local police officer and when you told Funmi's husband that you did not want to leave with Chinedu, he asked the officer-, and he asked the officers to leave the residence to which Chinedu responded by punching him in the face, your friend's husband in the face while the other officer stood by and watched and actually told you to be quiet.

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25 Fearing more violence, you left with Chinedu. When you returned home, he beat you and sexually assaulted you and told you that if you ever try to him again, he would kill you. He also said he'd be able to find you anywhere because he was a police officer. In July 2017, you received a call from a wife, her name was Success (ph) of another officer who worked with Chinedu who was also suffering abuse from her husband. She informed you that she had found out that her husband had been having sex with sex trade workers and that he and other officers had done so with those people that they had arrested. She suspect-, you suspected that Chinedu was, was among or sorry, the woman that you talked to. she suspected that Chinedu was among those officers that was doing this type of activity and she wanted to let you know. You confronted Chinedu about this and he denied everything and told you what he did was none of your business and he beat you for even suggesting such a thing. In January 2018, you met another man who-, through, through work who was a client of yours and you became close to and built a friendship and, and he became a confidant. This relationship turned romantic and you continued your relationship secretly.

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40 Pressure to marry Chinedu increased and you agreed to get engaged all the while trying to figure out how to have a break and get away from him. You began making arrangements to visit your brother in Canada as he had previously invited you and so you applied for a visa. It was granted to you on July 2018 but you did not have enough money to pay for the airfare so for the balance of the year, you began saving your money. During this time, Chinedu was away often on assignment with a special forces so in the meantime, you and your now husband were married. This was in December of 2018. In a secret ceremony. In March 2019, you learned that you were pregnant and that you were HIV positive. Your husband was tested, and he was negative, so you were pretty sure you had been infected by Chinedu. The next time he put pressure on you to marry him was march of 2019 and you had a heated argument in

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5 which you told him you never marry him. He began beating you and trying to force you to agree and you ended up sitting in his face telling them-, telling him that you, you had been given HIV from him because he had had sex with prostitutes. He tried to turn this around on you. Accusing you of having an affair however, you ended up leaving Nigeria on May 16th, 2019 and as you were doing so, you sent a letter to the head of the police station informing them of what had happened to you.

10 You fear that if you return to Nigeria, that your ex-partner will find you, harm you or kill you. You also fear persecution because of your status as an HIV positive woman. You feel there is nowhere you can live safely in Nigeria. I find that you are a Convention refugee and that you have a well-founded fear of persecution in Nigeria by reason of membership in a particular social group for the following reasons.

15 With respect to the issue of your personal identity as a national of Nigeria, it's been established by your testimony and Nigerian passport, a copy which was submitted to the Board. I find that your allegations have a Nexus to the Convention ground of membership in a particular social group as a woman fearing domestic violence and a person who is HIV positive. As such, your claim will be analyzed under Section 96 of the *IRPA*.

20 The determinative issue in this case is credibility. I found you to be a credible witness and therefore believe what you alleged in support of your claim. You testified in a straightforward manner and there were no relevant inconsistencies in your testimony or contradictions between your testimony and the other evidence before me. You submitted supporting documentation such as copies of your medical records and lab results of your current medical condition, a letter from your brother Kingsley confirming that you were in an abusive relationship and that you had contracted HIV as a result, a letter from your husband confirming that you met in January 2018 and that you had confided in him about the abuse you were suffering and that you secretly married in December 2018 and then you found that you were pregnant and HIV positive. He supported you in getting a visa and leaving Nigeria to stay with your brother in Canada for fear of retribution from your ex-partner who was a police officer. You have a letter submitted from your father Gregory who confirms that after you left Nigeria. Chinedu has come looking for you several times. The last being in December 2020. During one of the visits, he stated that he will continue to look for you until he finds you. You have a letter submitted from a friend, your best friend from secondary school Funmi who confirms that you confided in her and then stayed with her and her husband at their residence and that Chinedu attended with another local officer and assaulted her husband when he was told to leave you alone.

35 You have a letter from XXXXXXX, a colleague, another accountant that you worked with between 2015 and 2019 and he confirms the incident that happened at your workplace when Chinedu came in unannounced and accused you of having an affair and that he assaulted you. He said he was going to go to the police and decided not to take further action for fear of putting himself and you at further risk. Now, these letters and supporting documents can be found at Exhibits 4 and 5. I find the supporting documentation further corroborates your allegations. I am therefore satisfied that you are a survivor of domestic violence on a balance of probabilities. I find your fear to be well-founded.

45 According to the objective evidence included in the National Documentation Package or NDP. Notably the Social Institutions and Gender Index report 2019 for Nigeria which is at Item 5.1 indicates that when it comes to domestic violence, national legislation against spousal and partner battery is not implemented nationally. The violence against Person prohibit-, Prohibition Act of 2015 would need to be passed in all 36 States in order to become national law. As such, in the north of the country, the State's Penal Code is

5 enforced which allows for husbands to discipline their wives as long as no grievous bodily is inflicted. In the south, where you're from, the criminal code act of southern Nigeria lessens the penalty of assault for a woman which is a misdemeanour versus an assault of a man a felony. Moreover, under customary law, spousal abuse is acceptable for the purpose of the husband correcting his wife. Given such contradictory
10 legislation, domestic violence continues to be a widely practised and socially acceptable and socially acceptable throughout the country. According to the US Department of State report cited in the Gender Index report from Item 5.1, this information is corroborated by a research produced by the Board's research unit Item 5.3 which describes domestic violence as a widespread phenomenon and cites many sources who indicate that rates of domestic violence have been increasing since 2018. In summary, I find that you have established that you face objectively well-founded fear of domestic violence and gender-based persecution at the hands of your ex-partner if you returned to Nigeria.

15 Further, you've described your HIV positive status which is now stabilized after seeing a specialist and being treated with ARV medications. The objective evidence regarding the treatment of persons who are HIV positive indicates and this is at Tab 2.2 called HIV and AIDS in Nigeria. In Nigeria, it is estimated that 58 percent of the people living in-, living with HIV are women. Part of the reason why so many women and girls are affected by HIV is the deep roots that gender equality has in Nigerian society, culture and law. In the most recent rankings, Nigeria was placed a 122nd out of 144 for the size of its
20 gender gap meaning that it has one of the most unequal balances of power between men and women in the world. Gender power and balances mean that women often face barriers and dictating their own sexual partner selection, use of contraception, number and spacing of children and their own healthcare all of which put them at greater risk of HIV. Barriers to land ownership disadvantages women in particular. Although women have land rights, their rights are weaker than men's. This is not only economically disempowering but puts pressure on women to give birth to boys leading to a high fertility rate, a 5.5 children per woman. Women who have girls first are likely to have more children, not use
25 contraceptives, have short periods between pregnancies and be subjected to polygamy. All of these increase a woman's vulnerability to HIV. I can go on and you've also submitted a number of articles regarding HIV and AIDS and the devastating effects of stigma and discrimination impacting on access to housing, employment and health services and that again, can be found at Exhibit 4, pages 26 though 62.

30 The refugee definition of Section 96 of the Act specifically requires that each refugee establish that they are unable or by reason of their fear unwilling to avail-, avail themselves, avail themselves of protection of their country. It is the duty of all States to offer protection to their nationals. Refugee protection only becomes available when a claimant's country of nationality fails in the performance of this duty. You've
35 adduced sufficient credible evidence that demonstrates that this requirement is met in your case as you are unable to avail yourself of the protection of Nigeria. You testified that your relationship with a police officer established early on that you would be unable to go to the police for help. You had several experiences where your ex-partner clearly demonstrated that he could act with impunity such as the time he brought a fellow officer with him to get you from your friend's residence. In the course of doing so, he assaulted another individual, your friend's husband and the fellow officer told you all to shut up unless you wanted worse to happen. Your understanding of inadequate State protection for survivors of domestic violence appears to be broadly shared in Nigeria. According to research produced by the Board's research unit at Item 5.3 of the NDP, only one percent of women fearing domestic violence turn to the police for
40 protection. Sources such as the United Nations report that victims of domestic violence are turned away by police officers who consider domestic violence as a private or family matter. Even though protection orders are said to be available in Lagos, the seriousness with which a case is considered depends on the family support, the education of the victim and the individual police officer that deals with the case.
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5 Your family and friends told you that you needed to bare it, or you should pray or, or that, that he needed to change with your help all messages that it was somehow your responsibility that he. and that he was a police officer so there was nothing anyone could do. The US Department of State report indicates that police officers sometimes blame the victim for provoking abuse and further abuse them. Lastly, the Board's research report that even though police in Nigeria have gender desk or units to receive complaints from survivors of domestic violence, their effectiveness is hampered by a lack of funds to operate. In sum, based on the totality of evidence before me, I find the presumption of adequate State protection has been rebutted with clear and convincing evidence in this case.

10 I've examined whether a viable internal flight alternative or IFA exists for you in Nigeria and based on the evidence on file, I find that you face a serious possibility of persecution throughout Nigeria. In terms of his motivation to find you, your ex-partner, you explained that Nigeria has a patriarchal society where women don't have the same level of rights as men and violence against women is tolerated, men's reputation is tarnished if a woman succeeds in leaving him, they would be perceived as weak. In the past, he's threatened you with death if you tried to leave him and more recently told your parents that he would find you and seek revenge because you had tarnished his reputation by sending a letter to his superiors about his sexual activities with prostitutes. His position as a police officer gives him the ability to locate you through access to your personal information and using his position of authority to do so and as a corruption in the police is widespread in Nigeria. He's already tracked you down once when you went to your friend's place, five hours outside of Lagos not knowing where you had gone or never having been to your friend's residence. And counsel submitted a number of documents regarding the issue of corruption and the use of checkpoints for example and the extortion of, of citizens. You fear that he will kill you if you ever return to Nigeria in retribution for, for leaving him and for tarnishing his reputation. I therefore find that you have established that the agent of persecution has the means and motivation to relo-, to find you if you relocated throughout Nigeria and there's a serious possibility that he would do so if you returned to Nigeria and relocated to any other city for example, Abuja or Ibadan. As the IFA test fails on the first prong of the test, I find there is no viable IFA available to you. As such, I conclude that you face a serious possibility of gender-based persecution throughout the country.

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30 So, for the foregoing reasons, I determine that you are a Convention refugee under Section 96 of the Act and the Board therefore accepts your claim.

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

40 I, *Marta Dziunikowski*, declare that this transcript is accurate.
March 26, 2021

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IBB Representative