

Federal Court



Cour fédérale

**Date: 20170621**

**Docket: IMM-5109-16**

**Citation: 2017 FC 611**

**Ottawa, Ontario, June 21, 2017**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**LINDA ERUNWON GARRICK**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

[1] If Ms. Garrick is, as she says, bisexual and known to the Nigerian police to be such, surely she would be at risk of persecution were she to be returned there, as homosexuality is a crime in Nigeria. However, the Member of the Refugee Protection Division of the Immigration and Refugee Board of Canada who heard her case did not believe her; did not believe she was bisexual; did not believe she had any fear of returning to Nigeria. The whole story was made up to gain status in Canada. This is the judicial review of that decision.

[2] In 1995, when Ms. Garrick was 13 years old, she began to realise that she was interested in girls. Over the next several years, she had both heterosexual and homosexual relationships.

[3] She became involved with a group of women known as the “Sunshine Sisters” who were closet lesbians. She obtained a visa and accompanied them on a trip to the United States from October 2014 to April 2015.

[4] While in the United States, she met a woman by the name of Queen, a Canadian citizen, who was visiting her relatives in the United States. They were attracted to each other, but Ms. Garrick’s visa was expiring, and she had to return to Nigeria.

[5] They carried on a long distance telephone romance. Queen encouraged Ms. Garrick to visit her. She did not have a Canadian visa, but was able to visit the United States again. Queen paid her way, met her there, and they spent some time together.

[6] In May 2016, while still in the United States, she received a call from a Nigerian ex-partner, Maureen, who informed her that another Nigerian ex-partner, Adesuwa, had been caught in a same-sex relationship and forced to give up the names of former partners.

[7] Queen encouraged her to come to Canada. She presented herself at the border and claimed refugee protection. However, Queen is now said to be married and ended the relationship.

[8] Ms. Garrick was entitled to make her refugee claim in Canada as an exception to the Safe Third Country Agreement with the United States because she had family in Canada (s 101(1)(e) of the *Immigration and Refugee Protection Act (IRPA)* and r 159.5 of the *Immigration and Refugee Protection Regulations (IRPR)*).

[9] That being said, having come to Canada via the United States, she was not entitled to an appeal before the Refugee Appeal Division (ss 102(1) and 110(2)(d), as well as rr 159.1 and 159.3 *IRPR*). Her only recourse, thus, was an application for leave and judicial review, pursuant to s 72(1) *IRPA*.

#### I. Analysis

[10] The issue is not whether Ms. Garrick is bisexual. The issue is whether it was reasonable for the Member to decide that she was not and, in any event, to hold that she did not fear returning to Nigeria. The standard against which I must analyse the decision is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[11] As regards Ms. Garrick's sexuality, the Member's analysis began with Queen. She was not called as a witness, although she was said to live in Brampton, Ontario. No evidence was adduced that she had paid Ms. Garrick's way to the United States.

[12] It was open to the Member to find that there was no relationship between Ms. Garrick and Queen, and perhaps even to find that Queen did not exist.

[13] Although it was determined that Ms. Garrick was not credible, it could also have been found that she had not met the burden of proof which is on the balance of probabilities (*F. H. v McDougall*, 2008 SCC 53, [2008] 3 SCR 41; see also *Parshottam v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 355; or *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118).

[14] There were letters of support from Ms. Garrick's mother, brother, and sister. No weight was given to them on the basis that they were self-serving. That is an incorrect characterisation. But the fact remains that they added nothing to the story, as they were not aware of Ms. Garrick's sexuality until recently. Evidence from a family member cannot be automatically discounted simply because it might be self-serving. One must make one's case (see *Islam v Canada (Citizenship and Immigration)*, 2015 FC 1246 at para 25 and cases cited therein).

[15] Likewise, letters from organisations which are friendly to the LGBTQ+ community do not in themselves establish Ms. Garrick's sexual orientation.

[16] However, it is in the Member's analysis of events in Nigeria that his zealotry in justifying his decision rendered the decision unreasonable.

[17] A refugee applicant is presumed to be telling the truth (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA); see also *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 29). The Member was aware of *Maldonado* as he cited it in his decision. Reasons must be given for disbelieving the claimant

*(Punniamoorthy v Canada (Minister of Employment and Immigration)*, (1994) 113 DLR (4th) 663 at paras 10 and 17 (FCA)). The reasons given are simply unacceptable (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

[18] Maureen was said to be a schoolmate. No evidence was produced that Maureen attended the same school. How would Ms. Garrick prove that fact, other than by the letter she produced from Maureen? Should she have anticipated the demand and asked Maureen to obtain her school records? If the situation in Nigeria is the same as here, surely Ms. Garrick could not have obtained such evidence directly. A copy of Maureen's identity card was produced. Ms. Garrick was chastised because it had not been certified by an independent, reliable source. Furthermore, the original identity document was not produced at the hearing. The Member was not satisfied that the identity document was authentic and is of Maureen.

[19] All I can say is that no one in her right mind would give up her original identity card. While it is possible that the copy is fraudulent, there is a presumption that a document purportedly issued by a foreign government is authentic (see *Masongo v Canada (Citizenship and Immigration)*, 2008 FC 39 at para 12 and cases cited therein). It is not enough to say, as the Member did, that forged documents are easily available in Nigeria. That may be so, but it does not automatically follow that this document was fraudulent (*Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at para 7).

[20] As regards Adesuwa, a photograph of her was produced. The Member noted “the photograph contains the claimant and another female”. However, it was not dated, nor was Adesuwa identified by a Notary Public, and there was no indication that the photograph was taken in Nigeria. If Ms. Garrick was lying at the hearing, she could just as easily have lied before a Notary Public.

[21] I can only conclude that the Member was of the view that Ms. Garrick had to prove her case beyond a reasonable doubt. That is an error in law. That is not the burden she had to meet. There is simply no way of knowing what the outcome would have been had the proper burden of proof been applied. Accordingly, his decision is unreasonable and must be set aside.

**JUDGMENT IN IMM-5109-16**

**THIS COURT'S JUDGMENT is that,** for the reasons given, the application for judicial review is granted. The matter is referred back to another Member of the Refugee Protection Division of the Immigration and Refugee Board of Canada for redetermination. There is no question to certify for the Court of Appeal.

"Sean Harrington"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5109-16

**STYLE OF CAUSE:** LINDA ERUNWON GARRICK v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 8, 2017

**JUDGMENT AND REASONS:** HARRINGTON J.

**DATED:** JUNE 21, 2017

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