

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Verwaltungsgericht Wiesbaden (Administrative Court Wiesbaden)	
Date of the decision: (2011/03/14)	Case number: ² 3 K 1465/09.WI.A
Parties to the case: Applicant v Federal Republic of Germany	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: http://www.asyl.net/fileadmin/user_upload/dokumente/18384.pdf (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: German	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Nigeria	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Germany	
Any third country of relevance to the case: ³ no	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: Article 1 A(2) of the 1951 Convention
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision Council Directive 2004/83/EC of 29 April 2004	Relevant articles of the EU instruments referred to in the decision: Art. 2 (c), Art. 4 (4), Art. 6, Art. 7, Art. 10 (I) (d)

Topics / Key terms: (see attached ‘Topics’ annex):

Trafficking in persons

Social group persecution

Prostitution

Gender-based persecution

Non-state agents of persecution

SGBV

Key facts (as reflected in the decision): [No more than 200 words]

The minor Nigerian female applicant was found by the local authorities in a brothel in Wiesbaden in Germany in October 2007. She claimed asylum in December 2008.

The German Federal Office for Migration and Refugees (BAMF) rejected the asylum claim. The BAMF found that the applicant could not substantiate her claim that she was persecuted on grounds of membership of a particular group by the “Madame” and her facilitators. She would have been pursued by her traffickers who would have wanted to force her back into prostitution or prevent her from testifying at court. These two possibilities however could not be subsumed to mean membership of a particular social group. But the BAMF granted her subsidiary protection under § 60 (2) of the German Residence Act, recognizing, that the applicant would be at risk of forced prostitution and could even be killed by the ‘Madame’ and her facilitators.

In her appeal, the applicant stated that in Nigeria, she was forced to undergo a “Juju” ritual to put her under pressure. Since she had fled from the traffickers, her family had been threatened. Upon her return she would be at risk of being sexually abused and to be hurt, even killed, because she did not pay back her debts and because she cooperated with the German police.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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The court found that the applicant was under threat on account of her membership of a particular social group upon her return to Nigeria, and therefore fulfilled the statutory requirements of § 60 (1) of the German Residence Act [refugees status in accordance with the 1951 Geneva Convention].

According to the court the applicant risked that the facilitators of the ‘Madame’ would force her into prostitution or would even kill her to make an example, if she returned to Nigeria. When the applicant would get out of the sphere of influence of the ‘Madame’, the latter would be able to put pressure on the applicant’s family. The applicant’s family would then influence the applicant to get back to ‘work’. The applicant could not expect protection from the Nigerian state. This fact was in accordance with the information provided by the Swiss Refugee Council, Nigeria Update, dated March 2010.

The court stated that this risk of persecution was linked to the applicant’s membership of the applicant of a particular social group. “Although there is no persecution solely on account of their sex, in the sense of § 60 (1.3) of the German Residence Act [1.3 says, “when a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group.”]. This is because not all women in Nigeria are at risk of persecution. The applicant is in fact a member of a subset for which gender related aspects in the sense of Art. 10 (1) (b) of the Directive 2004/83/EC [the courts means in fact Art. 10 (1) (d)] play a certain role, but are not characteristic solely for this group. Members of this group are women, returning to Nigeria who had become victims of human trafficking and who escaped or who had been liberated (and who testified against their traffickers). This is a subset of women in the sense of Art. 10 of the Directive 2004/83/EC, which has a distinct identity and which is perceived as being different and is marginalized by the surrounding society. This is result of the report by the Swiss Refugee Council in its Nigeria Update from March 2010, which states that returned victims have to expect discrimination by the family and the social environment and retribution by the trafficker. If they testified against the traffickers, they would be threatened by them and risk to become a victim of human trafficking once again. The group of these women is thus perceived independently. There is no requirement of cohesiveness (see Marx, Handbuch zur Qualifikationsrichtlinie, § 19 RdNr. 23 ff.)” The court presumed that the two conditions of Art. 10 (1) (d) had to be cumulatively fulfilled.

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According to the court, the persecution emanated from non-state agents. In Nigeria victims of human trafficking are in particularly stigmatized as prostitutes. Police authorities are corrupt to a large extend and (even) less willing to protect these groups than other victims of crime. The applicant could under no circumstances live in the Muslim northern part of Nigeria as a single woman. In the south she would be at permanent risk of sexual abuses, which even emanate from state security forces. Additionally the applicant was at risk of a life under the poverty line.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

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