

Program helps ‘unaccompanied minors’ navigate Canada’s refugee process

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Keary Grace, a litigator with McCarthy Tétrault who has represented unaccompanied minors

When Ivie Okaro was 16 and still lived in a rural area 240 kilometres northwest of Lagos, Nigeria, she dreamed of going to university, of becoming a doctor or a nurse. But she had to drop out of school because her father, a farmer who sold palm oil, fell into financial trouble and couldn't afford the fees. He borrowed from a tribal elder and when he was unable to repay the loan, the elder demanded, as compensation, one of the man's daughters as a wife.

So Ivie's father told the elder he could have Ivie. Aside from marriage to this old man, which Ivie didn't want, she would also have to be publicly circumcised, a painful and sometimes fatal procedure. Ivie's father had already thrown her mother out of the home so, in desperation, Ivie ran away. Her mother and an aunt knew she couldn't hide from her father and the elder forever so they managed to raise enough money for her to escape.

On May 5, 2006, her aunt took her to Lagos. A man she only saw once provided forged documents and a few days later, a second man, who Ivie knew only as “Jerry,” got on a plane with her, although he sat in a seat far away. When the flight arrived at Pearson airport, Ivie disembarked and realized “Jerry” had disappeared.

She looked confused and unsure where to go, so soon a pair of immigration officers, a man and a woman, demanded to see her passport and took the terrified girl away to a small room. After questioning her for most of the afternoon, she was sent to the Immigration Holding Centre on Rexdale Blvd., where she was detained for two weeks.

Recently, she sat in a meeting room in the downtown offices of McCarthy Tétrault, the fourth largest law firm in Canada, reflecting on the experience. “Oh my goodness, I was so scared,” she says. “They said, ‘we don’t know how you got into the country but we’re going to put you in jail.’”

Visibly shaking, she added an expression from her homeland: “I thought, ‘There’s a pot cooking in the fire now.’”

Ivie Okaro, whose name has been changed in this story for fear of reprisals back home, is a pretty young woman, with shoulder-length wavy hair, wire-frame glasses and red lipstick. Smiling warmly, she looks at Keary Grace, a litigator with McCarthy Tétrault who acted as her designated representative, a role that is more like a guardian — ensuring the safety and well-being of minors as they navigate their way through the immigration system — than a lawyer.

“To think at first I wasn’t sure about Keary,” she says. “I didn’t know if she was working for the government, or something, and might be against me.” Smiling warmly at Grace, she says, “You told me to relax, calm down. Everything would be fine.”

Turning to me, she adds, “Keary was there, supporting me all through this.”

Stranded in the West

According to Citizenship and Immigration Canada, an unaccompanied minor is an “individual, under the age of 18, who is without both parents or an adult who is legally responsible for them.” When immigration officers identified Ivie as an unaccompanied minor (in Canada, the majority arrive at Pearson airport), she became one of tens of thousands of children from developing countries who end up stranded in the West and in need of help.

The Unaccompanied Minors Project at McCarthy Tétrault is a partnership with the Immigration and Refugee Review Board of Canada and Pro Bono Law Ontario, a non-profit that matches lawyers willing to provide free services with people of limited means who need legal help. Every unaccompanied minor, like Ivie, is entitled to an immigration lawyer and a designated representative. Sometimes a relative or community leader plays that role but the lucky ones end up with a volunteer lawyer who happens to be a highly skilled litigator from a blue-chip Bay Street firm.

The designated representative’s duties include retaining and instructing an immigration lawyer, helping the minor understand the process that is ahead, gathering additional information that might help the case and generally protecting the interests of the young person. They can sometimes mean the difference between a successful and unsuccessful refugee claim.

The children arrive in Canada from developing countries where parents, extended family members, neighbours, religious leaders or international aid workers have hired human smugglers to send children from danger or other hardships. In some cases, through ingenuity, determination and desperation, older children make their own way across continents to safety.

Why? The list is long: genocide in the Sudan, discrimination against the Roma in Hungary, starvation in India, poverty in Ukraine. Some are going to be recruited as child soldiers in countries like Sierra Leone; others face persecution, imprisonment or death because they're gay in Uganda or because of the perceived political crimes of relatives in countries like Afghanistan and Iraq. Any child might be a victim of ongoing sexual abuse in a country where the legal system offers little protection.

Sometimes, rather than paid smugglers, children fall into the hands of traffickers. According to a 2008 report issued by the U.S. State Department, Canada is both a transit point and a destination for children intended for prostitution, forced labour or drug smuggling. For the lucky ones, plans go awry and they find themselves in the hands of authorities as unaccompanied minors.

It's not possible to accurately quantify the number of unaccompanied minors because statistics aren't consistently gathered. An unknown number enter countries undetected, either via smugglers or by successfully presenting false documents (if they haven't followed the instructions often given by smugglers to flush them down an airplane's toilet). Sometimes age itself is hard to determine because of forged paperwork and the fact that some countries don't officially record births. Some children appear to be "accompanied" although not necessarily by a legitimate caregiver.

At the end of 2008, the United Nations High Commissioner for Refugees (UNHCR) estimated the number of refugees and asylum seekers globally at 16 million, roughly 44 per cent of these under 18 (although not all were necessarily unaccompanied). According to another UNHCR report, in 2007 as many as 13,000 unaccompanied minors applied for asylum in the EU alone.

It's no easier confirming figures for Canada. One estimate suggests the number of unaccompanied minors arriving could be as high as 3,000 a year. After approaching officials at the Immigration and Refugee Board, Canada Border Services Agency and Citizenship and Immigration Canada, I was referred to a 2007 report in which the author concedes that reliable data is scarce and notes a distinction between minors who are unaccompanied (arriving without an adult) and separated (arriving with an adult who isn't a parent or primary caregiver; who either can't provide for the child in Canada or may be "a person of concern").

Combining the most recent statistics for both, the report estimates that 2,770 children arrived in Canada between 2000 and 2004.

The refugee process

With difficulty, Ivie was able to contact her mother in Nigeria, who put her in touch with an aunt who lives in Toronto. She says her mother was afraid to give her this contact information in advance and, like many minors and their caregivers, they remain afraid that agents from their country could still abduct them or wreak revenge on family members at home if their identities are public.

When Ivie's case was circulated at McCarthy, Keary Grace, an associate in the firm's litigation group specializing in medical malpractice, professional liability and commercial cases, accepted the file.

Law is her second career. She graduated in the late '80s from the University of Ottawa with a Bachelor of Social Services and worked for years in community mental health programming. A tall, striking woman with a dramatic frosted afro, she says her choices in life and work are often influenced by that "inner social work person." When she learned about McCarthy's Unaccompanied Minors Project, she says her first thought was, "Good God, this strikes me as an unimaginably awful position for a young person to be in. If anybody needs a voice, it's some poor kid from thousands of kilometres away."

In midsummer of 2006, Grace met with Ivie and a refugee lawyer, Elvira Mbong Akinyemi, who received Legal Aid funding to represent Ivie. By then, the process was underway. Ivie had appeared at her admissibility hearing, which can be a frightening experience. Like most unaccompanied minors, she had arrived illegally so the Immigration and Refugee Board (IRB) found her inadmissible and issued a removal order. (Many children, not understanding Canada's legal system, assume this means they'll be instantly sent back to their country of origin.)

At the same time, Akinyemi had compiled a Personal Information Form — a necessary prerequisite to presenting a claim for refugee protection — and filed the claim on Ivie's behalf, which delays the removal order until after a hearing.

The PIF is the "official story" that the Immigration and Refugee Board relies on but as months pass, children often remember additional details or volunteer information they were afraid to disclose when they first arrived. "The board understands that," says Grace. "But still, any deviations need to be well explained. That's why I will help a child rehearse telling their story. They're often very nervous in front of the board."

Ivie's case proceeded relatively smoothly, although this isn't always true. Sometimes Grace gets involved before an immigration lawyer has been retained, a Personal Information Form created or a refugee claim filed. In that case, a designated representative, like Grace, might end up taking the child to Toronto's main Dundas St. W. Immigration office to make a claim, file an application for Legal Aid to get an immigration lawyer on board, prepare the Personal Information Form, set up medical appointments and begin gathering the rest of the necessary paperwork.

By the time Grace had a preparatory meeting with Ivie at the end of November, she and the immigration lawyer had obtained identity documents and letters of support from Ivie's aunt and her brother — retaining all postmarked envelopes to prove they had really come from Nigeria — corroborating the family's circumstances. On the IRB's website, Grace had downloaded the country package for Nigeria, containing political, socio-economic and other data. (One value of a McCarthy lawyer is that the firm's research department often updates information about a country and expands upon specific areas relevant to an individual case.) Grace also arranged for Ivie to have a physical exam proving that she hadn't been circumcised, since that was an important reason why she had fled Nigeria and was afraid to return.

"I had my auntie here in Toronto," says Ivie. "But I don't think she could have done anything to help me. That's why I was so happy to have Keary. I could confide in her about everything that

had happened to me. Even though I learned to speak English at home, I was scared, really scared and didn't know how to present myself. She could help me put my story out using the right words.”

By the time of her hearing, everything had been covered. But while Grace and Ivie's immigration lawyer can support her, ultimately minors still have to present themselves to the IRB as credible and forthright claimants.

Subject of stigma

A 2012 submission to the Committee on the Rights of the Child by the Ontario Council of Agencies Serving Immigrants highlights some of the challenges facing unaccompanied minors.

Some are labelled “bullet” or “anchor” children, sent ahead to help the rest of their family migrate to Canada. This stigma persists even though minors who are granted asylum can't include parents or siblings when they eventually fill out Permanent Residency applications and can't sponsor them while still minors. (Even when they're adults, they have to show they're earning enough income to support family members when they first arrive.)

Their stories may also change, which can be perceived as dishonesty. But a 2008 Belgian study found that unaccompanied refugee minors are five times more likely to show severe, or very severe, symptoms of post-traumatic stress disorder, anxiety or depression. Many at first withhold details because they're afraid of authorities — in many countries, any involvement with authority figures, especially in uniforms, often leads to imprisonment, physical abuse or death — or because the dislocation they experience, arriving in an alien country separated from their family, results in blocked memories.

Grace tells me about one 14-year-old client, also from Nigeria, who had been abused by a guardian until family members arranged his escape to Canada. He was tiny and handsome, Grace recalls, and at the hearing he sat with his head bowed, his face wet with tears, clearly traumatized. “Was he making it up that he left a brutal situation in his home country?” asks Grace. “He didn't even have to open his mouth.”

Still, it's reasonable to ask whether all unaccompanied minors are legitimate refugees.

“I think there can be no question that there are kids who come to Canada who are not on the up-and-up,” says Grace. “But they're certainly not among the kids I've seen or any of my colleagues here have dealt with.”

‘You can stay’

Ivie's Immigration and Refugee Board hearing was held in a chamber on the fourth floor of the IRB's Toronto office at 74 Victoria St. It's a quasi-judicial proceeding presided over by a judge-like figure called a “member” (They're members of the Immigration and Refugee Board's Refugee Appeals Division.) Although the idea of the hearing is to be non-adversarial, especially when children and youth are involved, on the day of her hearing Ivie saw a regal-looking woman sit down on a raised dais and thought: “Oh my goodness, I'm sitting in front of a judge. I'm scared.”

Remembering this moment while sitting in the meeting room at McCarthy Tétrault, Ivie looks at Grace, her eyes wide.

Leaning forward, Grace pats her hand. “We went through your whole story, from start to finish beforehand,” she says, in a soothing voice that she uses with all of her unaccompanied minors. “And this kind of situation is one that the board is reluctant to send young people back to. But, still, it was up to you to tell your own story and you were stellar at the hearing.”

At the end of the hearing, the member said to Ivie, “You can stay in Canada. Welcome to Canada.”

A stunned Ivie was so surprised and excited that she jumped to her feet in tears, thanking the member and her lawyers profusely.

Grace felt emotional about it as well. No matter how sure you are about your client or the process, there’s still the chance a member might not believe critical parts of the story or doubt that Ivie’s well-being would really be in danger if she was sent back to Nigeria.

“Sometimes members reserve their decisions because they want to think about the case further or because they feel the need to write reasons for it,” says Grace. “But if they know right away that they’re going to grant refugee status and aren’t concerned about an appeal, they’ll deliver their decision right from the bench. Like me, in this member’s mind I don’t think there was any question about Ivie.”

Today, Ivie lives on her own and has two small children. While she and their father separated, he’s still involved with the family. She finished high school, went on to a community college and is a nurse. One day she would like to return to Nigeria, perhaps set up a clinic.

“Nursing is caring for people, helping people in pain, in need,” she says. “If I go back, it will be to help people the way people here in Canada, like Keary, helped me.”