

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié
Section de la protection des réfugiés

RPD File # / No. dossier SPR : MA3-10319

Private Proceeding
Huis clos

Claimant(s)		Demandeur(e)s d'asile
Date(s) of Hearing	March 7 th , 2005	Date(s) de l'audience
Place of Hearing	Montréal, Québec	Lieu de l'audience
Date of decision	April 27 th , 2005	Date de la décision
Panel	Paule Robitaille	Tribunal
Claimant's Counsel	Daniel Fine	Conseil du demandeur d'asile
Refugee Protection Officer	Normand Leduc	Agent de la protection des réfugiés
Designated representative	N/A	Représentant désigné
Minister's Counsel	N/A	Conseil du ministre

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The claimant, Mr. [REDACTED], is a citizen of Hungary. He is seeking refugee protection pursuant to sections 96¹ and 97(1)² of the *Immigration and Refugee Protection Act (IRPA)*.

ALLEGATIONS

Mr. [REDACTED] 35 year old, claims that he is persecuted in Hungary because of his origin and of his sexual orientation. He alleges to be Rom and bisexual.

To support his claim, Mr. [REDACTED] tells the tribunal that her family rejected him when they discovered he was bisexual. His wife allegedly threw him out of the house and ultimately divorced him. He was, at that time, allegedly living in the town of [REDACTED] and then moved to Budapest.

His brother, an [REDACTED] for whom the claimant was working, fired him from his job when he allegedly learned that he was bisexual. At the hearing, not in his narrative or immigration documents, Mr. [REDACTED] added that he was allegedly beaten in Budapest because of his Rom origin.

DECISION

The tribunal finds that Mr. [REDACTED] is not a "Convention refugee", nor a person in need of protection" because the allegations exposed to us did not amount to persecution. If he had problem in his town, this tribunal believes he could re-establish in Budapest were he lived for at least a year before he left for Canada. Regarding the credibility aspect of the case, we found that there were also serious omissions and discrepancies that undermined the credibility of the claimant's allegations.

Identity

The tribunal, based on a certified copy of his Hungarian passport, accepts the claimant's identity and citizenship.

Credibility

Although we did not question the ethnic origin of the claimant and his alleged bisexuality, we questioned many facts alleged at the hearing.

Important facts revealed by the claimant the day of the hearing were absent from the documents submitted to the Board and especially in the narrative at question 37 of the Personal Information Form. It is important to note that the claimant even issued an amended narrative and

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corrections to many answers in his PIF just before the hearing but still forgot to mention these important facts.

The day of the hearing, we learned that the claimant had spent at least a year in Budapest before leaving for Canada. It is neither stated at question 22 of the PIF nor in the narrative at question 37. He explained that when he was pushed out of his family's home, he started to live with an alleged boyfriend in Budapest. We tried to find out when exactly he was kick out from his home and moved to Budapest. The answers are numerous. In the narrative, it is said that the claimant left the family residence in () in 1998. At the beginning of the hearing, asked by the Refugee Protection Officer, he said he left home after he was seen by a friend of the family in a gay bar in 1999 or 2000 and, then, moved to Budapest. To the Tribunal, later into the hearing, the claimant said that he left his wife and child in 2000. To his lawyer, he said it was in the middle of 2000. Confronted to all the different versions, he replied that he left his home and moved to Budapest at the end of 2000. Asked why he wrote that he left his home in 1998 in his narrative, he said he did not know. These answers showed no coherence: The claimant gave the tribunal four different versions of a basic fact. Moreover, he never stated in the PIF or any immigration documents that he spent time in Budapest. He had the opportunity to correct it but never did even when he amended his narrative just before the hearing. This omission certainly undermines his credibility. But, even though his testimony on this issue is far from clear, the tribunal can conclude at least one thing; that the claimant was in Budapest for, at least, a period close to one year.

At the hearing, the claimant also tells us that he was beaten at least three times by young racist Hungarians during the period spent in Budapest, an important element, he explained, that contributed to his decision to leave the country. Again, this is absent from the narrative. Why didn't he write it considering that question 37 states clearly that one *should set out all the significant incidents which caused him or her to seek protection?* The claimant said that so many events happened to him that he did not think about these ones specifically. We cannot accept this explanation. It is reasonable to believe that one would remember and mention the most recent events that happened to him before he left, moreover when these events were instrumental in his decision to leave his home country. Furthermore, the question at question 37 is clear, *the claimant has to set out all the significant incidents.* The claimant was advised by experienced lawyers, he even rewrote his narrative amending important allegations and still forgot to mention these facts.

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We, therefore, conclude that claimant did not demonstrate to the satisfaction of the tribunal that he was beaten in Budapest and believe, instead, that he added these allegations at the hearing to embellish his claim. Again, his credibility is greatly weakened.

We also learnt at the hearing that while in Hungary the claimant feared his brother and his father-in-law. He alleged that his brother and his father-in-law promised him that they would make sure he could never find or keep a job in reprisal because he is gay and has humiliated both families. He added that his in-laws could seriously harm him if he would ever come back to the village. Hence, he said he could never see his daughter. He was also afraid that his in-laws could find him and give him a hard time. Again, these allegations are nowhere to be found neither in the narrative nor in the immigration documents. Furthermore, the claimant was never assaulted by these persons from the time he left the family home to when he left his country. While divorcing from his wife, when they met at the courthouse, his enemies could have had the possibility to aggress him or found where he lived, they never did.

We find that the claimant did not demonstrate on a balance of probabilities the existence of these threats. But, even if these allegations were true, the fact that nothing happened to him for a period of more than a year led us to conclude that they were not serious threats.

When we assess the testimony and the facts given, we find that the claimant lived in Budapest for at least a period of a year. During that period, he did not demonstrate to the tribunal that he was neither beaten nor seriously threatened while living in Budapest. Hence, the question: why could not the claimant return to Budapest? The claimant mentioned he feared civil discrimination in general because of his sexual orientation and his origin. The documentation on Hungary submitted to this case shows indeed that there is discrimination against Gays and Roma in that country but it does not amount to persecution.

Discrimination is different from persecution. For it to amount to persecution, it needs to be systematic or very intense to a point that it would go against individual fundamental freedoms. The Handbook on Procedures and Criteria for Determining Refugee Status by the UNHCR at section 54 states the following :

"Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances the discrimination will amount to persecution. This would be so if

measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restriction on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.”

Mr. managed to find a job in the past until his move to Budapest in allegedly 2000. Nothing in the documentary evidence states that the Hungarian government systematically prohibits Roma or homosexual to work. Despite homophobic or racist attitude among the population in general, many gays and Roma do find work in Hungary.

a) Persecution because of the claimant's origin

The claimant said that his Rom origin was not a problem in his village. He was married to a Hungarian and, until they discovered his bisexuality, the claimant did not have specific problems with his in-laws because he was Rom. Why would it be different in a city like Budapest? The tribunal believe the situation of Roma is probably better in Budapest, the capital, than in the province. The claimant argues that he has serious problems to find work in Budapest because he is Rom.

We acknowledge that unemployment is a problem for Roma in Hungary but again they are not systematically excluded from the work force. His brother, for example, does work as an many Roma work in construction and other fields. The Roma situation in Hungary has also economical and societal dimensions. According to the documentary evidence, during the last decade, the Hungarian State has recognized the problem and, according to numerous studies³, did considerable efforts to integrate the Roma population.

Regarding the attitude of racist groups, it states that, already in 1999, Skinheads attacks had considerably diminished⁴. On the issue of protection, institutions created to defend and protect the right of the minorities have solidified. Roma have ways to complain; through the ministry of justice, their own self-government, the Ombudsman's for minorities and a numbers of non-governmental organisations sponsored by the Hungarian State.⁵

Considering all the evidence, we conclude that even though there is discrimination towards Roma in general in Hungary, it does not amount to persecution.

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homosexual, one being also Rom, have return to Hungary on there own free will after experimenting problems integrating to Canadian life. If these two gay men were seriously persecuted in Hungary, it is reasonable to believe that they did not do.

CONCLUSION

In the light of the documentation, the evidence submitted and his testimony, we find that the claimant would not be at risk of persecution or at risk for his life or of cruel or unusual punishment if he were to return to Hungary and re-establish in Budapest.

Therefore, the tribunal finds that Mr. . is not a Convention refugee, nor a person in need of protection. We reject his claim. s.19(1)

Paule Robitaille

Paule Robitaille

April 27th, 2005

Date

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¹ "96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
(a) is outside each of their countries of nationality and is unable or, by reasons of that fear, unwilling to avail themselves of the protection of each of those countries; or
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country."

² "97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if:
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care."

- ³ See among others, Exhibit A-1, Hungary, National Documentation Package, September 17, 2004, Section 1.3 "Commission of the European Communities"; 2.4 "the Operational Guidance Notes: Hungary,"; 2.5 "Hungary Bulletin 1/2002"; 13.5 "Hungary: Government Actions to Improve the situation of Roma"; 13.8 HUN39194E; 2.6, Council of Europe. 19 June 2003. Commissioner for Human Rights. *3rd Annual Report, January to December 2002, to the Committee of Ministers and the Parliamentary Assembly*. "Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Hungary 11-14 June 2002," pp. 125-138.
- ⁴ Exhibit A-1, chap. 13.6, Canada. February 1999. Immigration and Refugee Board, Research Directorate. *Hungary: Views of Several Specialists*. Section 4.
- ⁵ Exhibit A-1, chapter 13.6, Canada. February 1999. Immigration and Refugee Board, Research Directorate, section 7; 13.7 HUN41726.E. 16 July 2003. Location of the National and Local Roma Self Government Offices; and 13.8 HUN39194.E. 16 July 2002. Process by which the National Roma Self-government (NGSG) responds to complaints of skinhead attacks, the event of police failure to investigate complaints and maltreatment by police; whether the NGSG investigates complaints itself or refers them to other organizations; whether the NGSG has issued any directives to Local Roma Self-governments on how to proceed when they receive complaints.
- ⁶ Exhibit A-1, the end notes of chap. 6.5 and HUN38372.E.
- ⁷ Exhibit A-1, chap. 6.6, HUN34728.E.