

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 : MA5-04358

Private Proceeding
Huis clos

Claimant(s)		Demandeur(e)s d'asile
Date(s) of Hearing	December 12 th , 2005	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Videoconferencing heard in	Montréal, Québec	Fait par vidéoconférence à
Date of decision	January 19, 2006	Date de la décision
Panel	Denis Arvanitakis	Tribunal
Claimant's Counsel	M ^c Diana S. Willard	Conseil du demandeur d'asile
Refugee Protection Officer	Documents Deposited	Agent de la protection des réfugiés
Designated representative	N/A	Représentant désigné
Minister's Counsel	N/A	Conseil du ministre

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Mr. _____ a thirty-nine-year old citizen of Chile, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (the *Act*)¹.

ALLEGATIONS

The claimant alleged in his Personal Information Form (PIF)², that he left from Chile because he is a bisexual. Given the alleged fact that the Chilean society is very conservative, the claimant had to face daily a continuous psychological burden from his social environment, mainly his family, friends and at his workplaces. The claimant became aware of his sexual preferences at the age of approximately thirteen years, but he would not act on them.

At the age of fifteen, he spoke of his sexual preferences to his best friend, but in a short period of time, "the whole school found out about my problem". His schoolmates humiliated him. One of his teachers, _____ showed compassion towards him with encouraging words. The following year the claimant changed school and moved to the city of Temuco at a distance of approximately 500 km. The claimant repressed his feelings and attraction for men. Instead, he dated women, because he "decided to act only towards women".

In _____ 1987, when he was nineteen years old, he married _____ and had two children with her. In _____ 1996, his wife found out about his bisexual tendencies probably from one of his schoolmates. His wife became upset and distant.

In _____ 1996, they separated. The claimant became alienated from his family and friends. He felt seriously affected psychologically.

In _____ 2000, he moved to Puerto Montt.

In _____ 2002, he obtained a Canadian visitor visa valid until _____, 2003.

On _____ 2002, his companion, _____ gave birth to their daughter _____. The claimant arrived in Canada on January 2, 2003. He claimed refugee protection on February 4, 2003.

s.19(1)

DETERMINATION

The tribunal concludes that the claimant is neither a "Convention refugee" nor a "person in need of protection" and that pursuant to section 107(2) of the *Act*, there is no credible basis.

ANALYSIS**Identity**

The claimant submitted documents of education³. Citizenship and Immigration Canada (CIC) seized the claimant's passport and a national identity card⁴. Based on these documents the tribunal is of the opinion that the claimant presented acceptable identity documents.

Credibility

The claimant alleges to be a bisexual. However, up to now, he did not have any sexual encounter with a male partner. He was only involved in heterosexual relationships. He said that he was married from 1987 to 1996, and had two children from this marriage. His marriage was dissolved in 2000⁵.

From 2000 to 2001, he was engaged to another woman and had a third child. The claimant said that so far, he succeeded to suppress his homosexuality and found comfort in his heterosexual relationships. He said that he decided not to have any intimate relationships with men because he was hiding his bisexuality, as well as because he was afraid of Aids. Moreover, the claimant said that since he arrived in Canada, he did not get involved in any intimate relationship with men because he feels at peace the way he is. Asked how he expressed his bisexuality, he responded that he only wanted to live in peace and that in Chile, he felt "internal psychological pain, inner fight". He did not offer any other details. The tribunal concludes that the claimant is not an active bisexual by choice. The claimant did not act upon his alleged bisexuality in Chile nor in Canada. As well, there was no indication that he will practise it in the future.

The claimant did not mention any specific personal incidents of physical abuse due to his alleged bisexuality. He said, at the outset of the hearing, that he was not afraid of any particular person, organization or agency in Chile, but in general of the Chilean society. Asked specifically why he was afraid to return to Chile today, he responded that he felt "internally" insecure because Chileans "bother" the people with his sexual orientation. However, asked what made him feel

insecure, he mentioned an incident that occurred in 1982, approximately twenty-three years ago. Allegedly, when he was attending High School, he told one of his school friends that he felt an attraction towards men and women. This schoolmate spread the rumour in the school and the students in his class started bothering him and making fun of him. The claimant felt psychologically affected, as he said, and from there on, he felt a "psychological weight" that did not allow him to live normally in his country. He claimed that he spoke to one of his teachers about his sexual preferences. This teacher showed understanding and tried to comfort him telling him that it was not his fault but the people would always bother him because they lived in a conservative society. Two years later, the claimant moved to Temuco, which was located at a distance of 500 kilometres from his town. There, the claimant continued his studies without any particular problems. In all, he studied for over twenty years and graduated from University.

The tribunal does not believe that his wife separated him just because she accidentally learned that he was a bisexual, as the claimant said. For example, he alleged that his wife learned about his bisexuality in 1996 at a party with family and friends. He did not know who had spoken to his wife against him because she did not want to tell him. However, they were already married for nine years and had two children together.

Before 1996, the issue of his bisexuality was never raised with his wife. It seems rather implausible that his wife would decide to separate from him just because someone told her that her husband was a bisexual, without giving him a chance to confront the person who accused him, as the claimant said.

As well, the claimant said at the hearing, that in 2000, he moved to Puerto Montt from Temuco because he had already separated from his wife and he did not want his daughters to be affected by his bisexuality. However, he alleged that he lived separate from his wife since 1996. Asked why it took him approximately four years to realize that his sexual preferences may affect his children, he responded that earlier, he was trying to recover his family. The tribunal is of the opinion that the claimant's explanation for moving to Puerto Montt, at a distance of 500 kilometres from Temuco, made no sense because he would have moved earlier if he was concerned about his children. However, even if I were to believe that he moved to Puerto Montt for the alleged reason, the claimant did not mention that he had faced any particular problem amounting to persecution in Puerto Montt. He claimed that he held two occupations as an

in a company, and a in a High School. He said that he did not have any particular problems at his workplace because of his sexual orientation. He also said that he "felt" his relatives in Puerto Montt mistrusted him because they knew he was a bisexual. Asked however if he considered moving to Santiago, away from his relatives, he responded in the negative alleging that his solution was not to move to another city in Chile, but to another country. He did not explain satisfactorily why he did not move to Santiago if he feared for his life in Puerto Montt. The claimant was expected to have made all reasonable efforts to relocate in his country before traveling to Canada. The tribunal is of the opinion that the claimant was not credible when he alleged that he feared to return to Chile for the alleged reasons.

The claimant submitted a declaration⁶ confirming the alleged incident in 1982. The claimant was asked whether he ever confronted his alleged friend for revealing to others of his liking of men. He responded in the negative, claiming that he chose to remain silent. Allegedly, this incident in 1982 has affected the claimant's life until today. It seems implausible that he would still be in contact with his alleged friend without ever confronting him. His alleged friend did not show any regret in his declaration for the alleged psychological damage he caused to the claimant. As well, this declaration was neither signed nor dated. For these reasons, there was no weight given to this declaration and the tribunal does not believe that the incident ever occurred. However, in the tribunal's opinion, even if the alleged harassment of his peers in High School happened, there was no evidence presented to support that this incident, that occurred over twenty years ago, amounted to anything more than an isolated incident.

Moreover, the claimant submitted a declaration⁷, allegedly from his wife, dated , 2005. This declaration was not signed. The claimant said that he received it by the Internet and that he was expecting to receive the original. This declaration states that his wife decided to separate from him because of his bisexuality. However, the claimant alleged at the hearing that one of the reasons he was feeling alienated from his relatives was because his ex-wife had told them about his bisexuality. It seems rather implausible that despite her anger towards him leading her to divorce him, his wife would be sending a declaration in support of her ex-husband's claim for protection. The tribunal is of the opinion that this declaration is fabricated and gave it no weight.

s.19(1)

With regard to the objective component of the claim, the documentary evidence⁸ filed states that:

"The Government generally respected the human rights of its citizens; however, problems remained in some areas [...]. There were no reports of arbitrary or unlawful deprivation of life committed by the Government or its agents".

Section 5 of the same report on Human Rights Practices states that:

" The Constitution provides for equality before the law, and the Government generally respected these provisions. The Labour Code prohibits discrimination based on race, color, sex, age, nationality, national origin, or social status; however, such =discrimination occurred in practice".

" On 2 August 1995 the lower house of parliament voted to amend the Penal Code so that same-sex relations involving persons aged 18 and over would no longer be illegal. The Senate will vote on the amendment in 1996. The International Gay and Lesbian Human Rights Commission reported that in reaction to news of the amendment, transvestite "sex workers" in Santiago were physically abused by groups of Neo-Nazi youths"⁹.

At the hearing, the claimant said that he had heard something about the amendment to the Penal Code, but he was not sure. With regard to the Gay and Lesbian population, the documentation¹⁰ states that:

"While Chile is striving towards increasing freedoms, it is still conservative and also strongly Catholic. Yet, like most Catholic countries, it maintains a double standard.

It's okay to do what you do as long as you don't talk about it. To that end, Chile might not be described as gay friendly, but rather gay-tolerant. With a population in which roughly 40% are under 30, however, things are quickly changing for the better. This is especially true in Santiago, where the gay scene has exploded in the last four years, creating venues rivalling those of medium sized U.S. cities.

A "Gay Guide to Santiago" published on the Gay Santiago Website states that "the scene in Santiago is fairly open and similar to most developed countries". According to another guide posted on the Chicago-based GLBT Events Website, while Santiago's gay scene is "developing" this city "has the best gay and lesbian life in the country"...

[...] A 17 March 2002 article from La Tercera states that in the last five years, more than a dozen bars, discotheques and restaurants catering to homosexuals had opened around Forestal Park in Santiago.

[...] On 16 September 2001, a Gay Pride march was held in Santiago's Plaza Italia with over 2,000 participants."

In 2002, the Movement of Homosexual Integration and Liberation (MOVILH) published its first annual report on sexual minorities in Chile¹¹. This report

"[...] listed institutions that committed or supported, by action or omission, acts of discrimination or aggression against gays and lesbians".

"The 21-page report also listed around 200 other actions, many of which had positive connotations for sexual minorities, in the legislative, judicial, social, cultural and academic spheres in 2002".

In the case at bar, the claimant was able to study, work and create a family without any particular persecutory problems. He did not establish with credible or trustworthy evidence that he would face any problems if he decided to live as a bisexual.

Having assessed the entire evidence presented, the panel concludes that the claimant did not meet his burden to establish that he would have a well-founded fear of persecution in Chile. Moreover, no credible evidence was presented to support that it is more likely than not that the claimant would face a risk of torture or a risk to his life or cruel and unusual treatment or punishment should he return to Chile. In addition, there was no credible basis on which the panel could have determined that the claimant is a "person in need of protection".

CONCLUSION

For the foregoing reasons the claim for protection is rejected and there is no credible basis.

Denis Arvanitakis

Denis Arvanitakis

January 19, 2006

Date

/np

" 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."

“ 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.”

2 Exhibit P-1 : Personal Information Form, question 41.

3 Exhibit C-2: Items 6, 7 and 8.

4 Exhibit A-7 : Claimant's passport and a national identity card.

5 Supra note 3 : Item 2.

6 Ibid, Item 10.

7 Ibid, Item 9.

8 Exhibit A-2: CRDD Information Package July 2000, section 2.1, *Chile Country Reports on Human Rights Practices-2000*.

9 Ibid, , section 3.6, CHL25126.EX, 31 May 1996.

10 Ibid, section 4.2, CHL39413.E.

11 Exhibit A-4.4, CHL40645.E, *Rights-Chile: First Annual Report on discrimination Against Gays*.