



IMMIGRATION AND REFUGEE BOARD  
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION  
ET DU STATUT DE RÉFUGIÉ  
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE  
HUIS CLOS  
**TA1-28558**  
**TA1-28559**

CLAIMANT(S)		DEMANDEUR(S)	
DATE(S) OF HEARING	<b>February 25, 2003</b>	DATE(S) DE L'AUDIENCE	
DATE OF DECISION	<b>June 17, 2003</b>	DATE DE LA DÉCISION	
CORAM	<b>Paul Ariemma</b>	CORAM	
FOR THE CLAIMANT(S)	<b>Robert Moores</b>	POUR LE(S) DEMANDEUR(S)	
REFUGEE PROTECTION OFFICER	<b>M. Carty</b>	AGENT DE PROTECTION DES RÉFUGIÉS	
DESIGNATED REPRESENTATIVE	<b>N/A</b>	REPRÉSENTANT DÉSIGNÉ	
MINISTER'S COUNSEL	<b>N/A</b>	CONSEIL DE LA MINISTRE	

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s.19(1)

(the claimant), 27, and her 9 year-old daughter are citizens of Bulgaria. They claim to have a well-founded fear of persecution and that they are persons in need of protection pursuant to subsections 97(1)(a) and 97(1)(b) of the Immigration and Refugee Protection Act.

In the narrative part of her Personal Information Form (PIF) the claimant sets out the basis for their claims. The claim of the minor claimant is based on the evidence of her mother.

The claimant alleges that because she is bisexual she was persecuted in Bulgaria. She maintains that the Bulgarian society is conservative and bisexual and gay persons are considered perverts and sick people who threaten the moral foundation of society. She alleges that she was mocked and humiliated.

According to her story although she was in a lesbian relationship in 1995 she married her husband who was also bisexual and in of the following year she gave birth to their daughter

In the narrative the claimant states that in 1999 she and her husband began receiving threatening telephone calls. Anti-gay graffiti and swastikas appeared on their apartment. She maintains that her husband went to the police but subsequently when he followed up on his complaint he was treated rudely.

The narrative continues describing that On 1999, the claimant's husband was severely beaten by a group of young skinheads after which on the of 2000 he left Bulgaria. The claimant and her daughter moved to live with the

s.19(1)

claimant's parents. The claimant continued her relationship with her lesbian friend

At the end of 2001, and a few other gay friends, were arrested at a party to which the claimant did not attend. They were detained overnight and questioned about their homosexual activities. Allegedly they were insulted and physically abused.

According to her story soon after she received a summons to appear at the police station on the 2001. At the police station she was detained for about four hours. She was questioned about her and her husband's, homosexual activities. Apparently the police had learned about their sexual orientation and her husband's departure from Bulgarian from one of the gay friends who had been detained at the party. She was physically abused during the detention.

The claimant maintains that she was summoned again to the police station on 2001. On this occasion, she was interrogated by a who suggested that she should have sex with him to prove that she had been cured of her shameful lesbian disease. She refused and consequently she was detained overnight. During detention she was beaten and gang raped by and another police officer.

The claimant and her daughter left Bulgaria on 2001 on false Canadian Visas. At the port of entry they claimed refugee status.

s.19(1)

The claimant maintains that since coming to Canada she learned that her lesbian partner was also detained, beaten and sexually assaulted by the police in 2002.

#### Analysis

With respect to the identity the panel finds that the documents on file establish satisfactorily the identity of the claimant.

There are two principal aspects to the claim in this case. The first concerns the alleged problems and treatment of the claimant at the hands of intolerant members of the Bulgarian society and the second deals with the action of the police including the alleged rape.

In support of her claim the claimant adduced in evidence two medical documents<sup>1</sup> and three police summons.<sup>2</sup>

One of the medical documents pertains to the claimant's husband

The document describes the injuries suffered as a consequence of an alleged attack by three unknown assailants.

Concerning the claimant's husband, it must be noted that he came to Canada, claimed refugee status but was unsuccessful.<sup>3</sup>

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<sup>1</sup> Exhibit C3 -Items 6 and 7.

<sup>2</sup> Exhibit C3 - Items 8, 9 and 10.

<sup>3</sup> Exhibit R-2.

s.19(1)

The other medical document<sup>4</sup> shows that the claimant was admitted as an emergency case on 2001 due to beating and forced sexual contact carried out by two persons.

With respect to the above medical document and summons, on the basis of a simple physical examination of the documents, there are no reasons to question the authenticity of the documents. Therefore the panel must accept them as genuine. However the panel does not accept as credible the events connected to the documents as adduced by the claimant. It may very well be that the claimant was summoned to the police station but not for the reasons alleged by the claimant. Similarly, however may have happened that the claimant suffered a sexual assault, the panel is of the view that did not happen in the manner alleged by the claimant.

With respect to the sexual orientation of the claimant the panel adopts the same reasoning found in the decision pertaining to the husband of the claimant.<sup>5</sup> The panel is not satisfied that the claimant is or is perceived as bisexual. As well, the panel finds that the documentary evidence is insufficient to support a finding that the claimant would be faced with a serious possibility of persecution or a serious possibility of risk to life or of cruel and unusual punishment or treatment or danger of torture if she and her daughter were to return to Bulgaria.

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<sup>4</sup> Exhibit C-3 7.

<sup>5</sup> Exhibit R-2.

s.19(1)

The documentary<sup>6</sup> evidence shows that still do exist some human right problems in Bulgaria. There is also some evidence of intolerance and discrimination towards homosexuals, however even if we were to accept that the claimant is bisexual these circumstances do not rise to the level of persecution and are not sufficient to form the basis for a claim for refugee protection.

According to her story, the claimant was summoned twice to the police station for questioning about her sexual orientation and that of her husband. On the second occasion, she would have been detained overnight and while in detention beaten and gang raped by the interviewing [redacted] and another police officer. She also maintains that upon release the police threatened to detain beat and rape her again in order to cure her of her lesbianism. The claimant also provided a third summons that would have been issued in [redacted] 2002 after the claimant left her country.

The panel finds that the documentary evidence does not support the contentions of the claimant with respect to the behaviour of the police. There is simply nothing in the documentary evidence that would directly or indirectly suggest that the police engage in such criminal behaviour. And as indicated earlier, the panel finds that the summons are unrelated to the claimant's contentions.

It must also be noted that there is no evidence that the claimant pursued or attempted to find out about, any avenue of redress for the alleged sexual assault. She

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<sup>6</sup> Exhibits R1, R2, C3A.

simply stated that she could not go anywhere for help. Even if we were to believe the claimant's story and the panel does not, the panel would find that the inaction of the claimant is not consistent with the action of a person who would truly be in the circumstances of the claimant.

Abandoning ones own country, severing relationships and leaving behind loved ones is a profound life-changing undertaking. It seem reasonable to expect that before taking such momentous step the claimant would attempt to seek redress through any available avenue of recourse.

Even though, according to the claimant the perpetrators were two police officers, and again the panel reiterates that does not find credible the claimant's allegations in this regard, this does not exonerate the claimant from seeking the protection of her country. The claimant could have reported the incident to a superior officer or to another police station or to the office of the Public Prosecutor.

There is an obligation on a person seeking international protection to show that state protection could not be obtained in person's own country. The credible evidence is not sufficient to rebut the presumption a state that is in control of its territory, as is the case in the claimants' country, is capable of protecting its citizens. As well the claimant has failed to establish that she could not avail herself of the protection of the state or that such protection would not be reasonably forthcoming.

On the basis of the documentary evidence<sup>7</sup> the panel concludes that Bulgaria is a democratic state possessing political and judicial institutions capable of protecting its citizens. Although it can not be said that the efforts of the state to protect its citizens are unfailingly effective, in consideration of Villafranca<sup>8</sup> it is sufficient that the State makes serious efforts to protect its citizens. In this regard I find that the state is willing and the able to afford adequate protection to the claimants.

In addition to the concerns with the claimant's evidence noted thus far, the panel also found not credible several other parts of the claimant's story, including her evidence concerning the alleged threatening telephone calls in respect to which the claimant gave unreliable explanations as to why she did not change her telephone number. Her explanation concerning why she and her husband did not move elsewhere was also untrustworthy. It must be noted that at times the claimant gave deficient and unresponsive answers and in other instances she would disclose numerous minute details in order to give her testimony an air of credibility.

In conclusion the panel finds that the claimants would not be faced with a serious possibility of persecution or a serious possibility of risk to life or of cruel and unusual

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<sup>7</sup> Exhibits R1, R2, C3A.

<sup>8</sup> Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm.L.R. (2) 130 (F.C.A.).

punishment or treatment or danger of torture if she and her daughter were to return to Bulgaria.

For these reasons the panel rejects her claim and determine that  
and are not Convention refugees and  
are not persons in need of protection pursuant to subsections 97(1)(a) and 97(1)(b) of the  
Immigration and Refugee Protection Act.

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"Paul Ariemma"  
Paul Ariemma

DATED at Toronto this 17<sup>th</sup> day of June, 2003.

s.19(1)