



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE
HUIS CLOS
TA2-04171

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

April 3, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

April 9, 2003

DATE DE LA DÉCISION

CORAM

J. Cunningham

CORAM

FOR THE CLAIMANT(S)

Robert Moorhouse

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

M. Carty

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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These are the reasons for the negative decision of the Refugee Protection Division in the claim for protection made by (the claimant). The claimant bases his claim on the ground of membership in a particular social group, namely his gay sexual orientation.

Summary of the Claimant's Allegations

The claimant makes no allegations in his Personal Information Form (PIF) relating to persecution, a risk to his life or danger of torture in his native country, Hungary.

Despite the fact that no allegations were made in the claimant's PIF, counsel was invited to question the claimant in order to identify any previously omitted allegations that would form either a subjective basis or an objective basis to this claim. The claimant alleges that while enrolled in high school and college in Hungary, he experienced some discrimination in the form of name calling and taunting. The claimant stated that he has not experienced persecution in Hungary, nor would he if he returned to Hungary. The claimant stated that he was never assaulted, nor required any medical attention due to his sexual orientation – homosexual. The claimant testified that he never encountered any difficulties with agents of the state due to his sexual orientation. The claimant alleges that he was able to graduate from college with an eighty percent average and alleges that

Exhibit C-1.

he fears no one in Hungary, but simply feels more comfortable in Canada. The claimant alleges that he would like to live with his stepsister and stepbrother in Canada, attend university, start a new career and life in Canada. The Board invited the claimant to provide any testimony that would be useful in determining this claim. The claimant stated that he had made frequent trips to Austria for shopping and visited Bulgaria in 1996, Spain in 1997, Greece in 1998, and two trips to Canada in 1999 and in 2000. When asked why he did not seek Convention refugee status in Europe, he alleged that he had not considered claiming, as he did not have a relative in those countries. The claimant testified that he returned to Hungary to complete his college education and at no time did he investigate the possibility of completing his studies in Canada.

The Port of Entry (POE) notes² allege that the reason for the claimant coming to Canada was related to his sexual orientation, causing him "much hardship" and that he faced persecution at school and in his ability to find work. The claimant finished his college studies in 2001 and came to Canada in 2001, without seeking employment in Hungary. He allegedly was able to secure a work placement experience in order to graduate. The claimant also completed a successful four-month contract prior to leaving Hungary. The claimant alleges that his persecution amounted to insults and having other students occasionally throwing paper at him. The claimant filed for Convention refugee status in 2001, five months after arriving back in Canada.

² Exhibit M-1

The claimant alleges that the delay was so that he could find the right lawyer with whom he could talk about his sexual orientation.

IDENTITY

The panel accepts that the claimant is a 26 year old citizen of Hungary, born on 1976.

DETERMINATION

The panel finds that the claimant is not Convention refugee as he does not have a well-founded fear of persecution for a Convention ground in Hungary. The panel also finds that the claimant is not a person in need of protection in that his removal to Hungary would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment. There are no substantial grounds to believe that his removal to Hungary will subject him personally to a danger of torture.

ANALYSIS

The issue is whether the claimant is a Convention refugee or a person in need of protection within the meanings contained in the Immigration and Refugee Protection Act. The standard of proof to be applied in assessing whether good grounds exist for fearing persecution, a risk to life or a fear of torture are set out in Adjei.³

³ Adjei v. Canada (Minister of Employment and Immigration), [1989] 2 F.C. 680 (C.A.) at 683.

The concept of a well-founded fear, to which this definition refers, includes not only the claimant's subjective perception of the fear of persecution to which he testifies, but also requires an objective basis for that fear to be found in the facts pertaining to his situation.⁴

In the panel's view, there is neither a subjective basis nor an objective basis to his claim. There is insufficient objective evidence to support a claim of an alleged fear of persecution based on sexual orientation.

Refugee law deals primarily with needs; immigration law deals primarily with desires. That the claimant wants to live in Canada is obvious and understandable. However, the panel does not find that the claimant has a well-founded fear of persecution for any Convention reason in Hungary. Similarly, the panel finds that he has no fear of a risk to his life, a risk of cruel and unusual treatment or punishment. There is also not more than a mere possibility that his return to Hungary would expose him to a fear resulting from the danger of torture. Accordingly, the panel finds that the claimant's desire to live in Canada must be addressed under immigration law and not refugee law.

To use the refugee determination process as an alternative procedure for immigration is an abuse of the system and runs afoul of the jurisprudence. The claimant's position is based on a fundamental misconception of Canada's refugee determination system; the purpose of that system is to provide safe haven to those who

⁴ Rajudeen v. Canada (Minister of Employment and Immigration) (1984), 55 N.R. 129 (F.C.A.)

genuinely need it, not to give a quick and convenient route to landed status for immigrants who cannot or will not obtain it in the usual way.⁵

State Protection:

The panel finds that based on documentary evidence, the state of Hungary has taken serious measures to protect its citizens. With regard to protection for homosexuals, the panel notes that documentary evidence indicates that homosexuality was decriminalized in Hungary in 1996.⁶

The legislative changes have modified the definition of cohabitation in a way that the cohabitation of homosexual couples is equal to that of heterosexuals. The article states that Hungary "...passed a law in 1996 granting gay couples inheritance rights, but doesn't allow adoptions." The court ruled as unconstitutional the definition that common law marriages were those formed between adult men and women. The court stated that "it is arbitrary and contrary to human dignity...that the law (on common law marriages) withholds recognition from couples living in an economic and emotional union simply because they are same-sex." The constitutional court wants the legislature

⁵ Urbanek, Kristian v. M.E.I. (F.C.A., no. A-222-90), Hugessen, MacGuigan, Desjardins, June 19, 1992, p. 2.

⁶ Exhibit R-1, RPD Information Package: Hungary, item 12.7, RIR HUN 38283.E.

⁷ Ibid.

to give gays the same economic rights, such as access to social benefits, heterosexual couples now enjoy.⁸

The document states:

“.....According to Geza Juhasz, head of the Habeas Corpus organisation which provides legal aid also to homosexuals, such violence and threats have been quite rare in the past few years. Juhasz stated that the Habeas Corpus, as well as the majority of homosexual organisations believe, that there is not a danger situation in Hungary which would constitute well-founded grounds for granting refugee status and they have also presented the opinion before the US embassy in Budapest some years ago.”⁹

The panel also concludes that if violence against gays was a very serious and widespread problem, it would be mentioned in the United States Department of State Report on Human Rights for 2001,¹⁰ the Human Rights Watch World Report 2002,¹¹ or the Amnesty International 2002 Report.¹² The panel finds that violence against gays, lesbians and bisexuals is not a very serious problem because it is not mentioned in any of these three reports.

⁸ Exhibit R-1, RPD Information Package: Hungary, item 12.7, RIR HUN 38283.E.

⁹ Ibid.

¹⁰ Exhibit R-1, item 2.1.

¹¹ Exhibit R-1, item 2.5.

¹² Exhibit R-1, item 2.3.

DETERMINATION

Based on all of the foregoing analysis, the Refugee Protection Division determines that the claimant, . is not a Convention refugee and has not shown that there is a serious possibility that he would be subjected personally to persecution, a risk to life or risk of cruel or unusual treatment or punishment or a danger of torture should he return to Hungary. Therefore, his claim is rejected pursuant to subsections 97(1)(a) and 97(1)(b) of the Immigration and Refugee Protection Act.

"J. Cunningham"
J. Cunningham

DATED at Toronto this 9th day of April, 2003.

s.19(1)