



IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)

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

IN PRIVATE
HUIS CLOS
TA1-18093
TA1-18328

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

May 14, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

September 10, 2003

DATE DE LA DÉCISION

CORAM

S. Budaci

CORAM

FOR THE CLAIMANT(S)

Andrew Kadar

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

D. Cooper

AGENT CHARGÉ DE LA REVENDEICATION

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

"You can obtain, within 72 hours, a translation or a copy of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB, 344 Slater Street, 14th floor, Ottawa, Ontario, K1A 0K1 or by sending a request to the following e-mail address: translation.traduction@irb.gc.ca or to facsimile number (613) 947-3213."

"Vous pouvez obtenir la traduction ou une copie de ces motifs de décision dans l'autre langue officielle dans les 72 heures, en vous adressant par écrit à la Direction des services de révision et de traduction de la CISR, 344, rue Slater, 14e étage, Ottawa (Ontario) K1A 0K1, par courrier électronique à l'adresse suivante : translation.traduction@cisr.gc.ca ou par télécopieur au (613) 947-3213."

s.19(1)

000387

These are the reasons for the negative decisions of the Refugee Protection Division with respect to the claims of (the male claimant), 23 years-old, and his spouse, (the female claimant), 24 years-old, both claimants are citizens of Hungary. They are seeking to be determined as Convention refugees/protected persons based on the male claimant's membership in a particular social group, Hungarian bisexuals. The hearing into the claim took place on May 14, 2003 at 74 Victoria Street, in Toronto.

The claimants were informed that their respective claims were adjoined.

The claimants provided the panel with their respective passports as identity documents. Additionally, the panel noted that certified true copies of the claimant's passports were provided.¹ Therefore, the panel finds that identity is not an issue in this claim and that the claimants are citizens of Hungary.

Summary of Alleged Facts:

The male claimant alleges that he is attracted to both men and women and is therefore bisexual. He alleges that he and his common-law spouse are victims of persecution in Hungary due to his sexual orientation. He alleges that both he and the female claimant, who was a professional athlete, faced constant harassment and ridicule from her teammates, team officials and the community. The female claimant alleges that

¹ Exhibit M-1.

she was sexually assaulted by her trainer due to the male claimant's sexual orientation which required her to be hospitalized. The female claimant alleges that she did not seek redress from the authorities in Hungary, since she alleged that her trainer was a well-connected individual in the community. Furthermore, the claimants allege that the police in their community harboured deep anti-gay resentment and had failed to accept complaints lodged by the male claimant on previous occasions when the male claimant alleges that he was beaten.

Additionally, the claimants allege that the female claimant was discriminated and humiliated at work all due to the male claimant's sexual orientation.

The claimants determined to leave Hungary for Canada arriving on December 1, 2000 and claiming for refugee protection on December 12, 2000.

Determination:

The panel finds that the claimants are not credible with respect to material aspects of their claim. Furthermore, both the male claimant and the female claimant have failed to rebut the presumption of state protection. Therefore, the panel finds that the claimants are not deemed to be neither Convention refugees nor persons in need of protection.

Analysis:

The panel explained to the claimants that in order to be determined to be either a Convention refugee or a protected persons, the evidence must establish that the claimant would face a serious possibility of persecution for a Convention ground or must establish that their removal to their country of nationality would subject them personally either, (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.

The panel member outlined the issues and the process that would be followed at the outset of the hearing.

It is important to note that the onus of establishing the claim for refugee status lies with the claimants therefore the burden of proof rests with them.²

Credibility:

There were numerous omissions, inconsistencies and implausibilities, between the claimants' documentary evidence and the *viva voce* evidence presented at the hearing in support of their claims. At times during the hearing, the claimants did not testify in a straightforward manner.

² Exhibit C-1, Response to Question #37.

The male claimant alleges that he was assaulted on numerous occasions testifying that there were too many such occasions to count over the last five years, all due to his sexual orientation. The panel did not accept this response as reasonable in light of the preamble to Question #37 in the claimant's PIF. When the male claimant was asked if he ever required medical attention due to these assaults, he testified that he never required any medical attention. When the male claimant was asked if he had ever sought the protection of the police regarding these numerous assaults, he testified that he had reported two incidents to the police the first in early 1999 and then later on in the hearing testified that he had made a previous report on 1998. The panel noted the inconsistency between these respective dates and drew a negative inference from this testimony. The male claimant testified that on both of these occasions, the police took a report, however, the male claimant never followed-up on these reports, to determine what if any, actions the police took to investigate his allegations. The panel further noted that neither of these two specific incidents of reporting to the police had been included in the male claimant's Personal Information Form (PIF). When the male claimant was asked during the hearing why he had failed to include these incidents and to comment on the inconsistency in the reporting dates, he testified that he did not know why this had occurred. The panel therefore finds that these police reports are material omissions. Based on the omission and inconsistencies between the oral evidence and the

s.19(1)

documentary evidence presented in support of these claimants, the panel finds that the claimants are not credible.

State Protection:

Even if the panel were to find that the claimants were credible, which it does not, the panel reviewed the documentary evidence about the frequency or likelihood of persecution of gays or bisexual persons in Hungary.³

The panel was guided by the jurisprudence in Adu,⁴ which states:

...the "presumption" that a claimant's sworn testimony is true is always rebuttable, and, in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention.

Therefore, the panel placed a great deal of weight on the documentary evidence since this evidence was taken from a variety of sources with no interest in the outcome of this claim.

The panel reviewed the documentary evidence concerning the frequency or likelihood of persecution of gay persons in Hungary.⁵ With respect to historical context, Hungarian legislation on homosexuality was relatively liberal, even in the Communist era. While some other Communist countries punished consenting adult homosexuals,

³ Exhibit R-1, item 6.6.

⁴ Adu, Peter v. M.E.I. (F.C.A., no. A-194-92), Hugessen, Strayer, Robertson, January 24, 1995.

⁵ Exhibit R-1, section 12, various articles.

Hungary only did where one partner was under age 20 after 1961 and age 18 after 1978. Gay marriages have been legal since 1996. Common-law same-sex partners are recognized in law and they have property and pension rights.⁶ Although this was forced more by constitutional rulings rather than public opinion, the panel finds it creates an atmosphere conducive to the pursuit of protection of redress if gay and lesbian rights are violated.

The panel finds that street violence against gays is not a significant or widespread problem in Hungary. In an ILGA report, there is no entry under the heading "Street Violence."⁷ In 1997, Mr. Juhasz, described as the head of the Habeas Corpus Organization which also provides legal aid to homosexuals. He indicated in a 1997 letter that "incidents of persons threatened with violence and victims of violence have been quite rare in the past two years."⁸

Mr. Juhasz further states that Habeas Corpus, as well as the majority of homosexual organizations believe there is no danger situation in Hungary that would constitute well-founded grounds for granting refugee status and that they had also presented this opinion before the U.S. embassy in Budapest some years ago.⁹

⁶ Exhibit R-1, item 12.3, Information Request HUN34728.E.

⁷ Exhibit R-1, item 12.5.

⁸ Exhibit R-1, item 12.2, Information Request HUN32462.E.

⁹ Exhibit R-1, item 12.2, Information Request HUN32462.E.

The panel notes that two homosexual men were reported beaten in Pecs in southern Hungary in January 1999.¹⁰ In the absence of any details of the circumstances, the panel does not put significant weight on this information as indicative of potential violence, generally, for homosexuals.

With respect to official distinctions between gays and non-gays, the ILGA report states, "Hungary is a country that violates the human rights of lesbians and gay men."¹¹

The panel finds this is a reference to the fact that there is a different age of consensual sex for heterosexuals (age 14) and homosexuals and lesbians (age 18) in Hungary.¹²

With respect to employment, the Gay Guide to Budapest reports "the state recommends gay men not to become a teacher or a soldier."¹³ As well, Hungarian laws also do not allow same-sex couples to adopt children.¹⁴

The panel does not find these differentiations, on the basis of age, employment and adoption restrictions, to be sufficiently serious violations of human rights to amount to persecution. The panel also finds there are numerous organizations, many state

¹⁰ Exhibit R-1, item 12.1, Information Request HUN32142.E.

¹¹ Exhibit R-1, section 12, various articles.

¹² Ibid.

¹³ Exhibit R-1, section 12, various articles.

¹⁴ Ibid.

funded, from Ombudspersons to human rights organizations to the courts in a democratic country such as Hungary, where rights, redress and assistance with protection can be pursued.¹⁵

For all of the reasons cited above and in light of the evidence including counsel's submissions and testimony, the panel is not satisfied that the claimants have established, on a balance of probabilities, that there is a serious possibility that they would be persecuted for a Convention ground, or persons in need of protection, if they were to return to Hungary.

For these reasons, the Refugee Protection Division determines that the claimants, and are neither Convention refugees nor are they persons in need of protection. The panel therefore, rejects their claims for refugee protection.

"S. Budaci"

S. Budaci

DATED at Toronto this 10th day of September, 2003.

¹⁵ Exhibit R-1, item 2.1, Country Reports on Human Rights for 2000, U.S. Department of State, February 2001, pp. 2.1.1., 2.1.6. and 2.1.8.