



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  
**TA5-02808**

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a.)

DATE(S) OF HEARING

**October 17, 2005**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**October 26, 2005**

DATE DE LA DÉCISION

CORAM

**M. Freilich**

CORAM

FOR THE CLAIMANT(S)

**Adetayo G Akinyemi  
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

**Nil**

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

**Nil**

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

**Nil**

CONSEIL DE LA MINISTRE

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These are the reasons for the negative decision of the Refugee Protection Division (RPD) with respect to the claim of (the claimant), a 45-year-old s.19(1) citizen of Trinidad and Tobago.<sup>1</sup> The hearing for this claim was held pursuant to subsection 170(b) of the Immigration and Refugee Protection Act<sup>2</sup> (IRPA).

The claimant alleged that he has a well-founded fear of persecution if he were to return to Trinidad and Tobago by reason of his sexual orientation, as a person who is bisexual. In addition, he claims to be a person in need of protection by reason of either, a danger of torture within the meaning of Article 1 of the *Convention Against Torture* or a to risk to his life or to a risk of cruel and unusual treatment or punishment.

#### **ISSUES AND DETERMINATION**

The determinative issue in this claim is credibility and whether the claimant has a well-founded fear of persecution in Trinidad and Tobago by reason of a Convention ground.

Having considered the totality of the evidence, the panel finds that the claimant is not credible and is not Convention refugee nor a person in need of protection.

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<sup>1</sup> Exhibit C-3, copy of the claimant's Trinidad and Tobago passport.

<sup>2</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27.

### **ALLEGATIONS**

The claimant's testimony of past events going to the basis of his fear is contained in his narrative to his Personal Information Form<sup>3</sup> (PIF) and was given orally by the claimant during the hearing. For the purposes of these reasons, the panel will not repeat all of the allegations in these reasons. However, the panel has considered all of the evidence as well as the documents before it and counsel's submissions.

### **ANALYSIS**

#### **Credibility**

The panel finds that the main issue in this claim is that of credibility. The panel considered the claimant's testimony in its entirety and found material aspects of it not to be credible. In reaching this conclusion, the panel is guided by a number of cases with respect to determining credibility of the evidence presented by the claimant in support of his claim for Convention refugee status and for his claim to a person in need of protection. The panel is guided by the principles established in the Federal Court of Appeal in Maldonado,<sup>4</sup> wherein the Court states, in part, "When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness."

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<sup>3</sup> Exhibit C-1.

<sup>4</sup> Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.).

The panel is also guided by the Federal Court decision in Dan-Ash,<sup>5</sup> wherein it was stated that, "The existence of contradictions in the evidence could be a valid basis for a finding of a lack of credibility. However, even when the evidence is un-contradicted, it may be that the evidence does not accord with the known country conditions." This principle is well elucidated by the British Columbia Court of Appeal in Faryna v. Chorny,<sup>6</sup> wherein O'Halloran, J.A., states, in part as follows: "In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place, and in those conditions."

The panel is also guided by the Federal Court decision in Shahamati,<sup>7</sup> wherein Pratte, J.A., writing for the Court, states in part, that: "Contrary to what has sometimes been said, the Board is entitled, in assessing credibility, to rely on criterion such as rationality and common sense."

In Sheikh,<sup>8</sup> MacGjuigan, J.A., writing for the Court, states, in part, that: "In other words a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant information emanating from his testimony." The panel also notes the Federal Court decision in Castroman,<sup>9</sup> that, "A primary way of testing

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<sup>5</sup> Dan-Ash v. Canada (Minister of Employment and Immigration) (1988), 93 N.R. 33 (F.C.A.).  
<sup>6</sup> [1952] 2 D.L.R. 354 (B.C.C.A.).

<sup>7</sup> Shahamati, Hasan v. M.E.I. (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994.

<sup>8</sup> Sheikh v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 238 (C.A.), at 244.

<sup>9</sup> Castroman v. Canada (Secretary of State) (1994), 27 Imm. L.R. (2d) 129 (F.C.T.D.).

credibility is by comparing what is contained in the claimant's PIF narrative and his testimony at his hearing." The panel is further guided by the Federal Court decision in Orelien,<sup>10</sup> stating that "One cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so."

#### Delay

The claimant came to Canada on 1 [redacted], 2004 and was provided with a six-month Canadian Visitor's Visa (CVV), valid until [redacted], 2004. The claimant did not make his claim for refugee protection until [redacted], 2005, one year after he arrived in Canada. The claimant stated in oral evidence that he renewed his CVV until [redacted] 2004. When asked to explain why he was able to go to Citizenship and Immigration Canada (CIC) and apply to extend his CVV, the claimant indicated that he mailed in the application and did not go to CIC. When asked to explain why he waited until [redacted] 2005 to make his application for refugee protection, two more months after his extended CVV expired in [redacted] 2004, the claimant stated that when he originally came to Canada, he thought that the situation in Trinidad and Tobago would quiet down and he could return, but he realized later that was not the case and that between 1 [redacted] 2004 and 1 [redacted] 2005, he was trying to get counsel and put things together.

The panel does not find the claimant's reason for not making his claim for refugee protection for one year after he arrived in Canada satisfactory or credible, particularly

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<sup>10</sup> Orelien v. Canada (Minister of Employment and Immigration) [1992] 1 F.C. 592 (C.A.).

when he was again out of status for another two months after his extended CVV expired, but before he made his claim, particularly, when he had contacted CIC to apply to extend his CVV, even if it was by mail, and should have advised them at that time if he had been persecuted and in fear for his life.

Delay in making a claim for refugee status is not in itself a decisive factor. However, it is a relevant, and potentially important, consideration,<sup>11</sup> where the claimant delayed in making a claim upon arrival in Canada.<sup>12</sup> The panel draws as an adverse inference that the claimant's actions are not consistent with the actions of a person with a subjective fear of persecution. The panel draws a negative inference from the timing of the claimant's refugee claim.

The claimant alleged that he is bi-sexual and that he has had numerous homosexual relationships since he was fifteen or sixteen years old. The claimant left Trinidad and Tobago in 1981 and resided in the United States of America (USA) and was court-marshalled from the USA Marines in 1991. The claimant continued to reside in the USA until he was deported back to Trinidad and Tobago in 2002. The claimant alleged that he met [redacted] in 2002, while driving truck in Trinidad and Tobago and he resided in [redacted]'s father's home. The claimant alleged he and [redacted] became friends and they started a sexual relationship a month after they met. The claimant alleged that

<sup>11</sup> Heer, Karnail Singh v. M.E.I. (F.C.A., no. A-474-87), Hcald, Marceau, Lacombe, April 13, 1988.

<sup>12</sup> Hurt v. Canada (Minister of Manpower and Immigration), [1978] 2 F.C. 340 (C.A.).

's father found them in a compromising position on 2004 and that on , 's father sent a group of men to beat him up. The claimant stated that he went to get pain killers from a doctor when he was beaten but he did not report the situation to the police because homosexuality is illegal in Trinidad and Tobago and he would then have had a problem with the police or been incarcerated for his actions.

The panel found the following areas outlined below of concern. The panel finds that there are a number of implausibilities that were more than sufficient to rebut the presumption that the claimant is telling the truth.

- In oral evidence the claimant stated that after he was beaten by Mr. J 's "thugs", he went to another town about ten to fifteen miles away. The claimant alleged that while he was in the other town, people called him faggot and threw stones at him.
- The panel notes that the claimant did not find this information of enough importance to include it in his narrative to his PIF. The panel takes a negative inference from the claimant not mentioning this information in his PIF.
- The claimant stated in oral evidence that if he were to return to Trinidad and Tobago, he fears Mr. the police and the other individuals in his country. When asked why there was no information his PIF about fearing the police or other individuals in the country, the claimant stated that he probably forgot to put it down but that everyone in the town knew Mr. and

s.19(1)

Mr.                    may have told everyone about his sexual orientation as a bisexual.

- The panel does not find this to be credible. The claimant indicated that the reason for his fear is that Mr.                    hated him and sent men to beat him up because he was allegedly in a homosexual relationship with Mr.                    's son.
- The panel does not find it plausible that Mr.                    would tell anyone in the town or in the next town about the alleged homosexual relationship between the claimant and his son, as his reason for allegedly sending individuals to beat the claimant was due to the fact that he wanted the claimant dead and did not want anyone to know about his son's sexual orientation.
- The claimant came to Canada on                    2005, two months later, on /                    2004, married                    who he has had an ongoing relationship with for the past fifteen years, including her coming to visit him in Trinidad and Tobago. The panel further notes that the claimant is still married to his wife and that the claimant's wife has applied to sponsor the claimant.
- The panel does not find it credible that the claimant came to Canada to escape from the persecution from Mr.                    but believes that the claimant came to Canada to marry his girlfriend who he had known for fifteen years.

s.19(1)

- The claimant alleged that he sent Mr. a letter telling him that he wanted to apologize for the relationship with Mr. 's son, hoping that Mr. would forgive him and he could return to Trinidad and Tobago.
- The claimant provided the panel with a letter<sup>13</sup> allegedly from Mr. dated 2004, whereby the writer of the letter states that he would "finish" the claimant if he were to return to Trinidad and Tobago, after what the claimant allegedly did to his son.
- The panel does not find it credible that the claimant would send a letter to Mr. the alleged agent of persecution in Trinidad and Tobago, providing the agent of persecution the claimant's address in Toronto, where he could find the claimant.
- The claimant provided the panel with a late disclosure from Dr. dated : 2005.<sup>14</sup> In her report, Dr. stated that the claimant suffers from symptoms of depression and anxiety.

For the above-mentioned reasons, I find the claimant is not a credible and trustworthy witness. Because of this finding, I do not place any weight on Dr. psychiatric report. As stated in Rokni,<sup>15</sup> a psychiatric report submitted as evidence

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<sup>13</sup> Exhibit C-2, item 1.

<sup>14</sup> Exhibit C-3.

<sup>15</sup> Rokni, Mohammad Mehdi v. M.C.I. (F.C.T.D., no. IMM-6068-93), Muldoon, January 27, 1995, at 10-11.

“cannot possibly serve as a cure-all for any and all deficiencies in a claimant’s testimony”. The Federal Court reiterated its position in Danailov,<sup>16</sup> where with respect to the assessment of a physician’s evidence and the question of the assessment of credibility, it was stated, “that opinion evidence is only as valid as the truth of the facts on which it is based”.

The panel finds that the claimant’s evidence regarding the alleged abuse he feared is not credible and therefore does not believe that the incidents ever occurred but have been fabricated to bolster his claim for refugee protection.

After careful consideration of all the evidence and because of the reasons set out above, the panel finds that the claimant is not credible and does not have a well-founded fear of persecution by reason of any of the enumerated grounds. Given that the panel finds that the claimant is not credible, the panel therefore finds that the claimant is not a Convention refugee.

Having found that the claimant is not a Convention refugee, the panel also considered the applicability of sections 97(1)(a) and 97(1)(b) of the Act, and finds that no evidence was adduced that would support a finding that the claimant faces a danger of torture. With respect to a risk to his life or to a risk of cruel and unusual treatment, the panel’s finding with respect to credibility applies to this ground as well. Having found

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<sup>16</sup> Danailov (Danailoff), Vasco (Vassil) Valdimirov v. M.E.I. (F.C.T.D., no. T-273-93), Reed, October, 6, 1993, at 2.

that the claimant is not credible, the claim fails under section 97 of the Act.

**CONCLUSION**

For these reasons, the Refugee Protection Division determines that the claimant is not a Convention refugee nor is he a person in need of protection and therefore, rejects his claim for refugee protection.

\_\_\_\_\_  
"M. Freilich"

M. Freilich

DATED at Toronto this 26<sup>th</sup> day of October 2005.