



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
TA3-03081

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

8 August 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

26 August 2003

DATE DE LA DÉCISION

CORAM

George A. Griffith

CORAM

FOR THE CLAIMANT(S)

n/a

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

n/a

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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s.19(1)

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“the claimant”, is a 22-year-old citizen of Costa Rica who claims to be a Convention Refugee by reason of a well-founded fear of persecution because of his membership in a particular social group, being homosexual. He also claims protection as a person who faces a risk to life or a risk of cruel and unusual treatment or punishment in Costa Rica.

Summary of Allegations

The claimant is bisexual, and he alleges that he has faced discrimination and has been harassed by members of the society in Costa Rica including by members of the police. He realized his preference for a homosexual relationship at a young age. He began homosexual relationships at age 14, but, in order to hide his activity from his parents, he began to go out with girls.

At age 18, the claimant started to visit gay bars and when that activity was reported to his parents by someone who had seen him, he was physically hit by his parents. He also lived under duress at home because of resentment from his brother.

The claimant alleges that, on several occasions, the police detained him, ill-treated him, and took money from him as a payment for his release. On his job, too, he faced discrimination, insults and harassment from his work colleagues.

s.19(1)

Decision

I find that, on the evidence, and with reference to the relevant statutory provisions and the case law, the claimant is not a Convention refugee. I also find that he is not in need of protection in that his removal to Costa Rica would not subject him personally to a risk to his life or a risk to cruel and unusual treatment or punishment, and that there are no substantial grounds to believe that his removal will subject him personally to a danger of torture. My reasons follow.

Analysis

The claimant's identity as a national of Costa Rica is established by a copy of his national passport provided by Immigration Canada. He testified in a straightforward manner and there were no inconsistencies.

On the merits of the claim, I find that the claimant has established a nexus to the Convention, and can claim to be a Convention refugee on the basis of his sexual orientation, as per the case law in *Ward*,¹ and in other decisions. However, I find that the claimant has not established a genuine subjective fear of persecution or risk to his life in Costa Rica, nor a genuine objective basis for a fear of persecution or harm in that country. The claimant expresses a concern that life for gays and lesbians in Costa Rica is not as free as he would expect. And, for example, when he was asked whom does he fear in Costa Rica, his response as interpreted at the hearing, was that, in reality, he fears no

¹ Canada (Attorney General) v. Ward [1993] 2 S.C.R. 689 D.L.R. (4th) Imm.L.R. (2nd) 85

one in particular, as no one is seeking to kill or physically harm him in Costa Rica. His concern is that he is not being given a chance to develop in the society; and to live in peace and quiet. He gave details of incidents of harassment from the police when he attended gay bars.

When he was told about the documentary evidence² that showed the freedom of movement and activity of gays and lesbians in Costa Rica, the claimant replied that he had no doubt that the information was true, except that the society does not treat everyone in the same way. He stated that he is from the middle class in Costa Rica, unlike persons who belong to the upper class. When he was asked if he ever sought help of the authorities in Costa Rica or ever attempted to make a denunciation, he said that he had not, and that he had not done so because it would be futile. He is aware of the Ombudsman's office and its role. However, he claims that the process there is too lengthy. He stated that he could live in Costa Rica, but that he could not live comfortably among people who rejected his sexual preference.

I find that the claimant has not established a genuine subjective fear of persecution or risk to his life in Costa Rica.. The Court, in *Rajudeen*,³ has said that a claimant's fear must be assessed objectively in light of the situation in the country of which the claimant

² Exhibit R-1

³ Rajudeen v. Canada (Minister of Employment and Immigration)(1984), 55 N.R. 129 (F.C.A.)

is a national to determine whether it is well founded. Even if I had a different conclusion, and determined that he has a genuine subjective fear of persecution or risk to his life in Costa Rica, notwithstanding his response that he fears no one, I note that the claimant has made no effort to seek state protection in Costa Rica.

The Court, in *Ward*,⁴ the court has held that a state is presumed capable of protecting its citizens, and the presumption will only be rebutted by a claimant presenting "clear and convincing" proof or confirmation of the state's inability to protect. The Court⁵ goes on to say that the claimant has an obligation to approach the state for protection and "will not meet the definition of a Convention refugee where it is objectively unreasonable for the claimant not to have sought the protection of his home authorities". The evidence does not show that the claimant has fulfilled that obligation, and I note, further the Court's ruling in *Letshou-Olembo*⁶ on this issue. In that claim, the claimant failed to seek help of the authorities and, therefore, was not in a position to say whether the authorities had taken or were prepared to take steps to provide him with adequate protection.

In addition to the law, I considered the documentary evidence⁷ which states that Costa Rica is a longstanding, stable, constitutional democracy with effective political and

⁴ *Supra*, Ward

⁵ *Ibid.*

⁶ Canada (Minister of Employment and Immigration) v. Letshou-Olembo, [1990] 3 F.C. 45 (C.A.); 11 Imm. L.R. (2d) 225 (F.C.A.)

⁷ Exhibit R-1

judicial systems, including the Ombudsman's Office. It is further stated⁸ that the Ombudsman's Office includes persons with a "distinct sexual preference", and that its Special Protection Directorate, with a team of eight lawyers assists vulnerable groups to achieve full enjoyment of their rights before state institutions and within society. Further, the documentary evidence⁹ indicates that Costa Rican lesbians and gay men have legal protection, and that such a declaration is based on a series of legal rulings, on a judicial as well as administrative level, such as Supreme Court judgments which have supported many gay rights.

For these reasons, I conclude that the claimant, is
not a Convention refugee and not a person in need of protection, and, therefore, I reject
his claim.

"George A. Griffith"
George A. Griffith

DATED at Toronto this 26th day of August, 2003.

s.19(1)

⁸ Ibid.
⁹ Ibid.