



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

s.19(1)

IN PRIVATE
HUIS CLOS
TA3-20966

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

March 1, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

March 12, 2004

DATE DE LA DÉCISION

CORAM

S. Alidina

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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is a citizen of Costa Rica. He claims refugee protection pursuant to sections 96 and 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act*.

ALLEGATIONS

The claimant alleges that:

- He is a bisexual, that he fears his ex-wife . her family and her accomplices who targeted him because of his sexual preference.
- He made one attempt to file a police report against his wife and her accomplices. The police told him that they would investigate but did nothing.

ANALYSIS

The determinative issue in this case is the availability of state protection to the claimant in Cost Rica.

Based on the evidence adduced and for the following reasons, the panel finds that there is adequate state protection for the claimant in Costa Rica.

The panel finds that the claimant has not met the burden of establishing “clear and convincing” proof of lack of state protection in the country of origin.

The law states that there is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing

proof of lack of state protection” in the country of origin. The claimant must approach his or her state for protection, providing state protection might be reasonably forthcoming.¹

Evidence that protection being offered is “adequate though not necessarily perfect”² is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authority in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.³

When the state in question is a democratic state, the claimant must do more than simply show that he or she went to see some member of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of the democracy of the state in question: the more

¹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, 10 Imm. L.R. (2d) 189 (C.A.).

² Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.).

³ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

democratic the state's institution, the more the claimant must have done to exhaust all courses of action open to him or her.⁴

The Chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act* to identify decisions of the Board as *Jurisprudential Guides* to assist members in carrying out their duties. The Board's *Policy on the Use of Jurisprudential Guides* is available on the Board's website.⁶ Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as *Jurisprudential Guides*.⁷ Members are to consider and follow these decisions when determining claims in which the availability of state protection in Costa Rica is the determinative issue in claim profiles of risk due to sexual orientation or general criminality.⁸ The first question the panel has to determine is whether decision TA0-15870 applies in this case.

The panel determines that the facts and the evidence regarding country conditions in this claim are sufficiently close to RPD decision TA2-14980.⁹ This is because the

⁴ Canada (Minister of Citizenship and Immigration) v. Kadenko (1996), 143 D.L.R. (4th) 532 (F.C.A.).

⁵ S.C. 2001, c. 27.

⁶ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁷ RPD TA0-15870, Schlanger, March 31, 2003 and RPD TA2-14980, Schlanger, March 20, 2003.

⁸ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁹ Exhibit R/A-1, Jurisprudence Guidelines Documentary Package, May 2003, Costa Rica – Criminality, item A, Schlanger, 20 March 2003.

harm the claimant fears on account of his sexuality allegedly emanates from his ex-wife, her family and her accomplices, who target individuals like the claimant because of their sexual orientation. The profile of the claimant based on his sexual orientation and the alleged agents of persecution, in this claim, are substantially similar to that described in the *Jurisprudence Guide*. Also, the documentary evidence entered in this claim is the same as that entered in the *Jurisprudence Guide*. In addition, the panel also considered the RPD Information Package of April 2003.

In this case, the claimant testified that he filed one police report after the incident that took place on the weekend of _____, 2003. The police took his report and told him that they would investigate his complaints, but they did nothing. The claimant admitted that he did not make any attempt to seek assistance from agencies like the Ombudsman's office, the Office of Judicial Investigations and the courts. He admitted that he had no knowledge about the existence of the Ombudsman's office in Costa Rica.

The documentary evidence indicates that Costa Rica¹⁰ is a longstanding, stable constitutional democracy. The Ministry of Public Security and the Ministry of the Presidency share responsibility for law enforcement and national security. There are other state agencies the claimant could have sought assistance from, if he felt that police did not provide protection to him. The claimant, living in a democratic country, is

¹⁰ Exhibit R/A-1, item 2.1, p. 32, Costa Rica: Country Reports on Human Rights Practices for 2002, US Department of State, March 31, 2003.

obliged to seek help from the state agencies of the country of his nationality prior to seeking international protection. In this case, the panel finds that the claimant had the ability to, but elected not to, avail himself of state protection by making formal complaints against the police, his ex-wife, her family and her accomplices with state agencies other than the police. The panel finds that the claimant simply did not reasonably exhaust all courses of action open to him in attempting to avail himself of state protection in Costa Rica.

The availability of state protection for individuals like the claimant has been comprehensively analysed in the *Jurisprudential Guide*, RPD decision TA0-15870,¹¹ and the reasoning applies to the facts of this claim. As a result, in this case, the panel adopts the reasoning as well state protection in TA0-15870.

Based on the reasoning and availability of state protection in TA0-15870, the panel finds that adequate state protection is available to the claimant should he return to Costa Rica.

CONCLUSION

Since the panel finds that adequate state protection is available to the claimant, there is not a serious possibility that the claimant would face persecution, a risk to his

¹¹ Exhibit R/A-1, Jurisprudence Guidelines Documentary Package, May 2003, Costa Rica - Sexual Orientation, item A, Schlanger, 31 March 2003.

life, a danger of torture, or a risk of cruel and unusual treatment or punishment should he return to Costa Rica. s.19(1)

Accordingly, the panel determines that is neither a Convention refugee nor a person in need of protection. The Refugee Protection Division, therefore, rejects his claim for refugee protection.

“S. Alidina”
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DATED at Toronto this 12th day of March 2004