



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
TA3-11540

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 27, 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

July 28, 2006

DATE DE LA DÉCISION

CORAM

Kathleen Freeman

CORAM

FOR THE CLAIMANT(S)

**John M Guoba
Barrister & Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

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)

a 29-year-old citizen of Panama, claims refugee protection under Sections 96 and 97(1) of the *Immigration and Refugee Protection Act*.

INTRODUCTION

This is a de novo hearing. The claim was initially heard on 2004. A negative decision with reasons was issued on 2004. The matter was appealed, and the application for judicial review was granted on 2005.

ALLEGATIONS

The claimant is a young lesbian woman who has had a relationship with a girl named [redacted] since they were students together in 1991. When their sexual activity was discovered, they were suspended from school, and insulted by students and teachers. [redacted] was transferred to a different school. The claimant has been shunned by members of her church. [redacted] s parents blame the claimant for leading their daughter into homosexuality. Because of the continued harassment, she attended [redacted] in Costa Rica from 1994 until 1998. She earned a post-graduate degree in [redacted] in 1999, following that she and a business partner set up a consulting company; however she found ongoing discrimination in the workplace.

In 2001, she re-established contact with [redacted] however [redacted] 's father threatened to kill her if they maintained their relationship. Mr. [redacted] a very

influential businessman, convinced the police that the claimant had tried to force into a sexual relationship. The claimant hid for two weeks until the police questioned , and determined that the claimant had not done anything wrong. Nevertheless, 's father maintained his death threat. She decided to leave the country and came to Canada on . 2002, and made her refugee claim on 2003.

DETERMINATION

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

ANALYSIS

The determinative issues in this claim are credibility, discrimination vs. persecution, and state protection.

s.19(1)

In assessing this claim, the panel has taken into consideration the claimant's Personal Information Form (PIF), documents submitted by the Refugee Protection Division, as well as the Chairperson's Gender Guidelines.¹

Credibility

The panel finds the claimant to be credible, and finds that she testified in a consistent and forthright manner, which reflected her education and professional status in Panama.

However, the panel does not find that the claimant's allegations of previous treatment to equate with cumulative discrimination amounting to persecution.² In addition, the panel finds that state protection would be forthcoming should the claimant return to Panama.

¹ Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act.

² UNHCR Handbook, Paragraph 55: Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, the feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

Discrimination vs. Persecution

The panel finds that the treatment the claimant received in Panama does not constitute discrimination amounting to persecution. The claimant has described being shunned by members of her community and church, being ostracized by her family, and having few friends because of her identity as a lesbian. She stated that she received threats, including death threats from Mr. [REDACTED] however, the panel finds that documentary evidence confirms that state protection would be forthcoming for any criminal activity, and she would not be denied this protection on account of her sexuality.

The claimant described two incidents when she was suspended from school in 1991 and 1993 because of her sexual orientation. However, and she was not expelled from school, she went on to graduate, and was admitted to university in [REDACTED] Costa Rica. She then returned to Panama, in [REDACTED] 1998 and enrolled in a postgraduate program in [REDACTED] at the [REDACTED] graduating in [REDACTED] Consequently, the panel finds that the claimant has not been denied access to normally available educational facilities on account of her sexual orientation.

The claimant stated that upon graduation she and a partner, a heterosexual male, established their own consulting company, and targeted companies that needed to be certified. She stated that they had contracts with large companies such as [REDACTED] and [REDACTED]

Although she stated that Mr. [REDACTED] an [REDACTED]

s.19(1)

in many businesses, had attempted to “badmouth” her to different companies, she also stated that she got contracts with major firms, and had face-to-face interaction with some clients, and that the business was beginning to be successful. Consequently, the panel finds insufficient credible or trustworthy evidence that the claimant had serious restrictions on her right to earn her livelihood on account of her sexual orientation.

Although the claimant stated that she felt discriminated against in Panama, she was afforded an education, including a postgraduate degree, she operated her own business, which in her words was successful, and interacted with other business people in Panama. Although she stated that she was shunned by her family she remained living with them until she left Panama. Consequently, the panel finds that the claimant has not been the victim of cumulative discrimination amounting to persecution.

The claimant stated that she was forced to go to Costa Rica for her education because of the harassment she was experiencing in However, upon completion of her undergraduate degree, she returned to Panama in 1998. She stated that she had never considered claiming refugee status in Costa Rica, and had hoped to return home in peace. The panel finds that her decision to return to Panama not to be indicative of the feeling of apprehension or insecurity regarding her future existence.

s.19(1)

State Protection

The claimant stated that, in 2001, Mr. : had gone to the police after she and had resumed their relationship. He told the police that she was bothering and wanted to have sex with her. Upon further investigation, the police found no basis to Mr. ' complaint. The panel finds insufficient credible or trustworthy evidence that the police did not discharge their duties in an appropriate manner, or that the claimant was discriminated against on the basis of her sexuality.

The claimant stated that she was threatened with death by Mr. , however she did not indicate that she reported these threats to the police, as she believed that the police do not protect gays.

In his submissions, counsel stated that the authorities in Panama are uninterested in pursuing the victimization of gays, that Mr. is an important person in a small place, and that as the claimant had already been warned by the police, she could be charged the next time. However, according to the evidence, the claimant was warned by the police to stay away from during the course of their investigation. Their investigation concluded that the claimant had not done anything wrong, and she received no further sanctions.

A recent document produced by the Research Directorate, Immigration and Refugee Board of Canada,³ entitled *Panama: Treatment of Homosexuals, by the Police in*

³ Exhibit R/A-1, Request for Information PAN43497.FE.

Particular; State Protection provided to Homosexuals (2002 to 2005), states the following:

Gay Times indicated that homosexuality is legal in Panamá. According to the Association of New Men and Women of Panamá, 300,000 Panamanians are homosexual, and that the majority of them are not open about it.

Gay Times grants three stars out of five to Panamá; this indicates that homosexuality is legal, but there is no legal protection of gays... generally gays are tolerated by society and by the state. There is likely to be little or no harassment by the authorities. A small gay scene is likely to exist with at least a few bars, clubs and gay organizations in major population centers.

In June 2004, an Associated Press article reported the beginning of a campaign to collect signatures in favor of recognizing same-sex unions.

Gay Times reported that homosexuals still face discriminatory laws; according to a 1949 decree, gay public sex is punishable by \$500 fine or one year in prison, while no equivalent exists for heterosexuals. Gay Times also indicated that homosexuals are banned from both the police and the armed forces. In addition, there is no legislative protection against discrimination, and a provision in the Constitution that forbids the creation of "companies, associations or foundations" that are contrary to the moral or legal order has been used to refuse registration of gay organizations.

No information concerning police treatment of homosexuals or state protection in Panamá could be found among the sources consulted by the Research Directorate.

According to the United States Department of State, 2005:⁴

Panamá, a representative democracy with an elected executive composed of the president and two vice presidents has a population of approximately 3 million. In 2004 national elections, which were considered by international and domestic observers to be generally free and fair, voters elected as President Martin Torrijos of the Democratic

⁴ Exhibit R/A-3, Country Reports on Human Rights Practices-2005, Panama, United States Department of State, 8 March 2006.

Revolutionary party. The civilian authorities generally maintained effective control of the security forces.

A 1920 law prohibiting homosexuality was not enforced. The law prohibits discrimination against persons with HIV/AIDS in employment and education, but discrimination continued to be common due to ignorance of the law and of HIV/AIDS. The New Men and Women of Panamá, a gay rights group, however, averred that employers discriminated against openly gay people. There were no reported incidents of harassment or other abuse against the approximately 200 persons who participated in a gay pride march on June 24 in Panamá City.

A number of domestic and international human rights organizations operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

The law prohibits discrimination on the basis of race, gender, disability, language, or social status and the government effectively enforce these prohibitions in practice.

The ombudsman's office operated without government or party interference and had adequate resources. The government cooperated with the ombudsman, who was considered effective. During the year, the office received complaints against the government.

There were no reports of societal abuses or discrimination.

The panel finds that this is not a case where the state is unable or unwilling to provide protection, nor is it a situation where a claimant has, on a number of occasions, been denied state protection. The police were not the alleged agents of persecution. The incidents that led to the claimant's departure related to actions by society in general and Mr. [REDACTED] and not by the police. The claimant has stated that because of her personal experience as a lesbian, the conclusion should be reached that it is unreasonable for her to seek out state protection.

s.19(1)

In assessing the availability of state protection, the focus must be on the state's ability to protect. As quoted by Justice LaForest,⁵ Professor Hathaway stated the obligation in these words:

Obviously there cannot be said to be a failure of state protection where a government has not been given an opportunity to respond to a form of harm in circumstances where protection might reasonably have been forthcoming.

While the claimant may find it difficult to approach the police or pursue other avenues of redress available to her, she is not excused from the obligation to do so. The claimant has failed to show that if she or others in similar situations had engaged the authorities in a meaningful way upon receiving death threats, protection would not reasonably have been forthcoming. In these circumstances, it was objectively unreasonable for the claimant not to have sought the protection of her home authorities.

The panel finds that Panama is a representative democracy, where domestic and international rights organizations operate without government restriction, where there are laws in place to prohibit discrimination on the basis of race, gender, disability, language or social status, and where civilian authorities generally maintained effective control of the security forces. In studying the documentary evidence regarding the situation for homosexuals in Panama the panel has found no evidence that would lead to the conclusion that gays would be denied police protection. Consequently, the panel finds

⁵ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, 103 D.L.R. (4th), 1, 20 Imm. L.R. (2d) 85.

insufficient credible or trustworthy evidence that the claimant would be denied state protection in Panama, on account of her sexual orientation.

CONCLUSION

The panel finds that the claimant has not established a well-founded fear of persecution in Panama, as she has not rebutted the presumption of state protection. Consequently the panel determines that is not a Convention refugee, nor a person in need of protection.

"Kathleen Freeman"
Kathleen Freeman

DATED at Toronto, Ontario this 28th day of July 2006.

s.19(1)