



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
TA1-12359

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CLAIMANT(S)

DEMANDEUR(S)

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DATE(S) OF HEARING

November 25, 2003

DATE(S) DE L'AUDIENCE

Deleted: August 1

DATE OF DECISION

February 2, 2004

DATE DE LA DÉCISION

Deleted: January ??

Deleted: December 11

CORAM

S. Budaci

CORAM

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FOR THE CLAIMANT(S)

No Counsel

POUR LE(S) DEMANDEUR(S)

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REFUGEE PROTECTION OFFICER

D. Baker

AGENT DE PROTECTION DES RÉFUGIÉS

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DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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The Refugee Protection Division heard the claim of (the claimant), a 32 year-old male citizen of Hungary. These are the reasons for his negative decision.

The claimant seeks to be determined as a Convention refugee or a person in need of protection.

The claimant provided the panel with original identity documents, his passport, and furthermore, the panel notes that copy of the claimant's passport is marked as an exhibit.¹ Therefore, the panel is satisfied that the claimant is a citizen of Hungary, and further finds that identity is not an issue in this claim.

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Summary of Alleged Facts:

The claimant alleges in his Personal Information Form² (PIF) that he faced ongoing and escalating acts of persecution in Hungary due to his sexual orientation, being a bisexual.

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The claimant alleges that he faced both physical and verbal abuse by ethnic Hungarians and his father. He further alleges that he was segregated and not allowed to advance his education.

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¹ Exhibit M-1.

² Exhibits C-1.

The claimant determined to leave Hungary, arriving in Canada on June 21, 2001, and applied to be determined as a Convention refugee the same day.

DETERMINATION

The panel finds that the claimant has failed to rebut the presumption of state protection. Therefore, the panel finds that the claimant is deemed to be neither a Convention refugee nor a person in need of protection.

ANALYSIS

The panel explained to the claimant that in order to be determined to be either a Convention refugee or a protected person, 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 him 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 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. Additionally, the panel noted for the claimant that the onus of establishing the claim rests with the claimant.

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Deleted: in the spring of 2001. He further alleges that he sought the assistance of the police and was threatened with an additional beating if he did not leave the police station. The claimant alleges that he was again accosted.
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Deleted: CREDIBILITY¶ The panel finds that the claimant is not credible due to the numerous inconsistencies and omissions between his oral testimony and the evidence in his PIF. Several times during the hearing, the claimant was vague and evasive, he did not testify in a straightforward manner. The claimant testified that he had sought the assistance of the police. When it was noted for the claimant that he had failed to include this information in his PIF, he testified that he had not and could not provide the panel with an reason why he had failed to include any information regarding seeking assistance from the police in Hungary. The panel finds the claimant's testimony regarding seeking protection from the police is a material omission and an inconsistency between the claimant's viva voce evidence and the evidence presented in support of his claim. ¶ The claimant alleges that he was persecuted in Hungary due to his sexual orientation, however, the panel notes that the claimant's knowledge of the gay life in Hungary is superficial at best. The claimant testified to having no knowledge of any gay organization, publications or places of entertainment. Based on the testimony provided at the... [1]

STATE PROTECTION

In this claim, the panel notes that the claimant testified that he did not approach the police nor any other instruments of the state to seek protection.

In this regard, the panel follows the Federal Court of Appeal decision in Villafranca:

A guarantee of protection for all citizens at all times is not to be expected. Nor is perfect protection. 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 that it is not always successful will not justify a claim that the state is not providing protection.³

The panel reviewed the documentary evidence concerning the frequency or likelihood of persecution of gay persons in Hungary.⁴ 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, 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.⁵ Although this was forced more by constitutional rulings rather than public opinion, the panel finds it creates an

Deleted: police, (although this information was not included in his RFP). When the claimant was asked if he had to expand on his interaction with the police, he testified that with respect to the incident in the spring of 2001, the police arrived on the scene and took a report. The claimant alleges that he followed-up with the police, who informed him that the case was still open and that they had no new information. When the claimant was asked if he believed that the police were making serious efforts to protect him, he testified that the police do what they can. The claimant did not seek any assistance from any other instruments of the state. Based on the testimony and additional evidence provided by the claimant, the panel therefore finds that the claimant has failed to provide clear and convincing proof of the state's inability to protect him, since the police in this claim took a report and conducted an investigation.

Deleted: As previously noted, the panel finds, on a balance of probabilities, that the claimant is not gay. However, even if the panel found the claimant to be gay and found the alleged incidents to have taken place, it finds there is not a serious possibility of persecution were he to return to Hungary for the following reasons.¹ First, the panel notes that it is not necessary for the claimant to have suffered past persecution for it to find that there is a serious possibility of persecution were he to return to Hungary. However, the panel finds that the alleged incidents, if they did occur, did not either individually or cumulatively amount to persecution.¹

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

⁴ Exhibit R-1, section 12, various articles.

⁵ Exhibit R-1, item 12.3, Information Request HUN34728.E.

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."⁶ 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."⁷

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.⁸

The panel notes that two homosexual men were reported beaten in Pecs in southern Hungary in January 1999.⁹ 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.

⁶ Exhibit R-1, item 12.5.

⁷ Exhibit R-1, item 12.2, Information Request HUN32462.E.

⁸ Ibid.

⁹ Exhibit R-1, item 12.1, Information Request HUN32142.E.

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Information Request
HUN32462.E.

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."¹⁰

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."

With respect to employment, the Gay Guide to Budapest reports "the state recommends gay men not to become a teacher or a soldier."¹² As well, Hungarian laws also do not allow same-sex couples to adopt children.¹³

The panel finds that the claimant did not avail himself fully of the avenues of complaint and redress available to him.

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CONCLUSION

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Having reviewed all of the evidence, and in light of the testimony provided at the hearing, the panel finds that the claimant does not face a serious possibility of persecution for a Convention ground, or a risk to life, cruel or unusual treatment or punishment, or a risk of torture, if he were to return to Hungary.

¹⁰ Exhibit R-1, section 12, various articles.

¹¹ Ibid.

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

¹³ Ibid.

For these reasons above, the Refugee Protection Division determines that the claimant, _____ is neither a Convention refugee nor a person in need of protection pursuant to subsections 97(1)(a) and 97(1)(b) of the Immigration Refugee Protection Act. The panel therefore rejects his claim for refugee protection.

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DATED at Toronto this 2nd day of February, 2004.

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CREDIBILITY

The panel finds that the claimant is not credible due to the numerous inconsistencies and omissions between his oral testimony and the evidence in his PIF. Several times during the hearing, the claimant was vague and evasive, he did not testify in a straightforward manner.

The claimant testified that he had sought the assistance of the police. When it was noted for the claimant that he had failed to include this information in his PIF, he testified that he had not and could not provide the panel with an reason why he had failed to include any information regarding seeking assistance from the police in Hungary. The panel finds the claimant's testimony regarding seeking protection from the police is a material omission and an inconsistency between the claimant's *viva voce* evidence and the evidence presented in support of his claim.

The claimant alleges that he was persecuted in Hungary due to his sexual orientation, however, the panel notes that the claimant's knowledge of the gay life in Hungary is superficial at best. The claimant testified to having no knowledge of any gay organization, publications or places of entertainment. Based on the testimony provided at the hearing, the panel finds that the claimant, on a balance of probabilities, is not a homosexual.

Furthermore, based on the cited examples, the panel finds that the claimant is not credible with respect to material aspects of his claim.

Even if the panel found that the claimant credible, which it does not, the claimant has failed to rebut the presumption of state protection.