



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
TA3-11680

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

July 27, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

August 19, 2004

DATE DE LA DÉCISION

CORAM

D. Morrish

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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s.19(1)

is a citizen of Uruguay¹ who claims to be a Convention refugee or person in need of protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*. The claimant fears members of a criminal gang because of his sexual orientation as bisexual. He claims that state protection would not be forthcoming if he were to return to Uruguay.

Allegations

The claimant met _____ in _____ 2000 and they began to have a relationship. _____'s brother was the _____ of a large crime ring in _____. On _____ 2003, the claimant was beaten, raped and threatened with death if he did not keep away from _____.

The claimant reported this incident to police. He received a threatening telephone call on _____. He left Uruguay on _____ 2003 and went to the United States. He arrived in Canada on _____ 2003 and made a refugee claim the same day.

Determination

The panel finds that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution in Uruguay. The panel also finds that the claimant is

¹ Exhibit R-2, Information from Citizenship and Immigration Canada, certified true copy of claimant's Uruguayan passport.

not a person in need of protection in that his removal to Uruguay would not subject him personally to a risk to life or to a risk of cruel and unusual treatment or punishment. My reasons are as follows.

Analysis

The determinative issue is state protection. Even if the panel found the claimant's evidence to be credible, the documentary evidence clearly indicates that state protection would reasonably be available to homosexuals who are also victims of criminality in Uruguay. The panel finds that all of the requirements of section 97(1) of the *IRPA*, which defines a person in need of protection, have not been met. In particular, the presumption of state protection has not been rebutted. In assessing the availability of adequate state protection, the panel has considered the claimant's oral and written testimony, all of the evidence, and particularly perused the documentary evidence² pertaining to the mechanisms for seeking state protection in Uruguay. The panel has reviewed the reasons of the RPD in decision TA3-07587³ and adopts the reasoning with respect to the issue of the availability of state protection for homosexuals and bisexuals in Uruguay. In a nutshell, the above-cited analysis of the documentary evidence indicates that the government of Uruguay is making serious efforts to protect its citizens and does take action against corrupt police officers. Furthermore, there is a gay community in Uruguay

² Exhibit R-1, Toronto Documentation Package, Uruguay, December 2003.

³ TA3-07587, [redacted]

which is not the victim of systemic violence by authorities or by society at large. Furthermore, the panel has reviewed the reasons of the RPD in decision TA2-07031⁴ and adopts the reasoning with respect to the issue of the availability of state protection for victims of crime in Uruguay. That analysis of the documentary evidence indicates that the government of Uruguay is making serious efforts to protect their citizens who are victims of criminality and does take action against corrupt police officers.

The claimant has not rebutted the presumption of state protection. He reported to local police who wrote a report. He did not report the threatening telephone call because he believed that it was police who tipped off the gang members vis-à-vis the first reporting to police. As the claimant left Uruguay shortly thereafter, he did not follow-up on the police investigation. The panel finds that the claimant made insufficient efforts to obtain available state protection. The panel finds that there is not a serious possibility that he would be persecuted if he were to return to Uruguay.

Conclusion

Having considered all of the evidence, the panel finds that there is not a serious possibility that the claimant would be persecuted if he were to return to Uruguay.

⁴ RPD decision no. TA2-07031,

2003.

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As such, the panel determines that the claimant,
is not a Convention refugee, and that he is not a person in need of protection
pursuant to section 97(1) (a) or (b) of the *IRPA*.

"D. Morrish"
D. Morrish

DATED at Toronto, Ontario this 19th day of August 2004.

s.19(1)