



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE
HUIS CLOS
TA4-18080

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

12 January 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

30 May 2006

DATE DE LA DÉCISION

CORAM

Laurel Cropley

CORAM

FOR THE CLAIMANT(S)

**El-Farouk Khaki
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

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AGENT DE PROTECTION DES RÉFUGIÉS

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CONSEIL DE LA MINISTRE

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The claimant, 25-year-old , is a citizen of Mexico who claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)* due to his sexual orientation combined with problems arising from his father's activities.

ALLEGATIONS

The claimant alleged that his father was involved in business dealings with , where together they owned a . I went to the United States (U.S.) in 2001 and his wife became involved in the business in 2002. The claimant began working at the in 2002 and there he met 's nephew. They began a relationship in secret in or 2002, although they went to a known gay bar. On one occasion they were allegedly stopped outside the bar by police officers and extorted. Despite their efforts to keep their relationship secret, found out and fired the claimant and was sent away, eventually to the U.S. Although the claimant complained to his father, he did nothing about it. The claimant later discovered that his father and were having an affair. In 2002, the claimant learned that the was having financial difficulties due to the mismanagement of his father and and in 2003 the claimant was told that his father was beaten up on the street. On 2004 (initially stated as 2003 but amended at the hearing) the claimant alleged that he was stopped by two policemen who indicated that they knew about his secret life. At the same time a

s.19(1)

dark van parked behind the police car and two men approached him, tied him up, kidnapped him and beat him. When he returned home, he told his mother what happened and she told him that his father had been threatened and that he had escaped. In the threat mention had been made of the claimant and his relationship with . After that the claimant's mother allegedly began to receive threatening telephone calls and they went first to Mexico City for three weeks and then to Pacuca, Hidalgo. At this second location the claimant's mother received an anonymous telephone call asking about the claimant and his father. As a result they moved to Matmoros and stayed there for awhile returning to their home in . 2004. The claimant's mother suspected . as being involved. After they returned home, they heard from relatives that they had been receiving anonymous telephone calls from people looking for them. On , 2004 the claimant saw the two men who had abducted him before. They came after him but he ran and told his mother. His mother told him to go to Canada but before doing so he went to the . to make a complaint. They allegedly told him they would expedite their investigation if he paid them. He then left for Canada shortly after that.

DETERMINATION

Based on the certified true copy of the claimant's passport,¹ I am satisfied that he is a citizen of Mexico and that he is who he says he is. I find that the claimant is neither a

¹ Exhibit R/A-2.

Convention refugee nor a person in need of protection pursuant to section 96 or 97(1) of *IRPA*.

ANALYSIS

Credibility

I do not find the claimant's allegations that the problems he experienced stemmed from his sexual orientation to be credible. Although he claimed in the narrative to his Personal Information Form (PIF)² and asserted, when asked, that his sexual orientation was a significant factor in his problems his overall testimony focussed on the problems his father had due to his illicit relationship with his partner's wife and mismanagement of the business and how those problems impacted on him. Moreover, when he initiated his claim,³ the claimant almost exclusively focussed his story on the problems arising from his father's actions. In the last paragraph of his statement, he mentioned that he had a relationship with . which he believed exacerbated his problems. Based on his overall evidence, I find that the claimant's problems relate primarily to the bad relationship and any consequences that flowed from his father's relationship with his partner, which appeared to relate to a personal vendetta . Sr. and his relatives might have had against the claimant's father. It is possible that the father's family might have been drawn into this vendetta, which could only be described as criminal activity. s.19(1)

² Exhibit C-1

³ Exhibit R/A-2, Record of Examination.

In his PIF, the claimant has alleged that he experienced problems with the police due to his sexual orientation. However, none of his problems other than the problem with ., were mentioned when he initiated his claim. He could not explain why he s.19(1) focussed on his father's problems almost to the exclusion of any specific problems he might have experienced as a bi-sexual man. I am therefore not persuaded that the claimant experienced any problems relating to his sexual orientation.

After considering the overall testimony of the claimant, I conclude that state protection of the claimant from the criminal acts of . 's family is the primary s.19(1) issue in determining this claim. In the event that I am mistaken about the extent of the problems the claimant faced from this family and others in his city relating to his sexual orientation, I have also determined that he has a viable Internal Flight Alternative (IFA) in Mexico City.

State Protection

A determinative issue under section 96 or 97(1) is whether adequate state protection is available. If state protection is to be reasonably forthcoming, then the claimant is required to approach the state for protection. There is a presumption that a country that is in control of its own territory is capable of protecting its citizens.⁴ Moreover, the fact that the state does not provide perfect protection is not, in itself, a basis for determining that the state is unwilling or unable to offer reasonable protection in

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

the circumstances of a particular case.⁵ As the Federal Court of Appeal noted in *Villafranca*:⁶

No government that makes any claim to democratic values or protection of human rights can guarantee that protection of all of its citizens at all times. Thus it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation.

... 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 from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection.

The claimant has the burden of rebutting the presumption of state protection by presenting "clear and convincing proof" of the state's inability to protect.⁷ I am also mindful of the principle that international refugee protection is not meant to permit a claimant the opportunity to seek better protection abroad than he would receive at home.⁸

In reaching my decision, I have considered the documentary evidence⁹ adduced in this case, which I find to be persuasive evidence of the current conditions in Mexico, as it is based on extensive research and observation by a variety of governmental and independent non-governmental and humanitarian sources with no interest in the claimant's case.

⁵ *Milev, Dane v. M.C.I.* (F.C.T.D., no. IMM-1125-95), MacKay, June 28, 1996.

⁶ *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.)

⁷ *Ibid.*

⁸ *Manorath, Rahonie v. M.C.I.* (F.C.T.D., no. IMM-2369-94), Cullen, January 26, 1995.

⁹ Exhibit R/A-1, Mexico, National Documentation Package, December 7, 2005 and Exhibit C-2.

After considering the claimant's own experiences in Mexico, I conclude, based on the totality of the evidence before me, that he has failed to establish clear and convincing proof that state protection is not available to him. According to the documentary evidence, Mexico is a federal republic composed of 31 states and a federal district, with an independent judiciary, elected president legislatures at both the federal and state governments, and multi-tiered police forces.¹⁰ Although Mexico has had a reputation for human rights abuses, corruption and a problematic civil justice system, the government in recent years has initiated significant reforms intended to address these shortcomings, including complaints of "a lack of effective judicial oversight of police practises".¹¹ According to this report, the reforms include the restructuring of the Ministry of the Attorney General (PGR) in 2002, the appointment of special prosecutors¹² to investigate abuses by the police and security forces, and other investigative and prosecutorial measures to address human rights violations and police corruption.¹³ Based on the documentary evidence, I find that the presumption of state protection is applicable, and it was incumbent on the claimant to seek that protection.

The claimant testified that he went to the authorities to make a denunciation¹⁴

¹⁰ *Ibid.*, item 2.1.1.

¹¹ *Ibid.*, item 2.3.2.

¹² *Ibid.*, item 2.3.1.

¹³ *Ibid.*, item 2.1.

¹⁴ Exhibit C-3.

following an incident when he was confronted by the same men that allegedly kidnapped and beat him several months earlier. He did not report the first incident to the police despite acknowledging that it was very serious. He explained that he did not want to know anything and thought that it would pass and never happen again. Moreover, he was afraid of the police and did not think that they would do anything. I do not find his explanation for not going to the police to be reasonable. According to his evidence, this incident was an extreme threat relating to a specifically mentioned problem with his father and he was physically assaulted. There was no reasonable basis for him to conclude that it would pass. Nor does the documentary evidence support his supposition that the police would do nothing if he reported such a serious incident to them. Additionally, even when the claimant went to the police after he was approached by these men a second time, he did not wait for them to take any action. Rather, he left the country six days later. He testified that he wanted the police to expedite the matter but they would not unless he paid them. The claimant did not complain to any other body regarding the expectation of bribery. I do not find the claimant's expectations that the police should expedite this matter reasonable in the circumstances in any event. He clearly waited months before reporting an alleged assault to them and reported the second incident two days after it happened. Given the lack of expediency in his own reporting of the incidents, I am not surprised that the police did not respond with alacrity. I do not

find a failure to take action immediately after his complaint to be indicative of a lack of state protection.

The claimant alleged that the police in Mexico are corrupt and that no protection is available. The claimant alleged further that there was a link between the criminals and certain police officers, as they had been present and then left when the men arrived the first time to kidnap him.

I do not find the claimant's experiences sufficient to rebut the presumption of state protection available to him as the documentary evidence establishes that state protection is available to individuals like the claimant, being a victim of criminality.

In this regard, I note that sources have reported that all 31 states in Mexico maintain a preventive and judicial police force. There are approximately 90,000 state-level preventive police and 26,185 judicial police across the country. The judicial police are the law enforcement branch of the state-level military police and the Justice Attorney General's Office is responsible for investigating and prosecuting local criminal offences.¹⁵

According to the International Narcotics Control Strategy Report for 2005,¹⁶ the Government of Mexico is actively addressing the issue of criminal gang activity and drug dealings, including among its police and judicial entities, through mechanisms such as the Attorney General's Office and the Federal Investigative Agency.

¹⁵ Exhibit R/A-1, item 10.1.8.

¹⁶ Exhibit R/A-1, item 7.1.

With respect to corruption generally, this document¹⁷ notes:

The Fox Administration placed high priority on combating police and judicial corruption during 2004. Mexican leaders made significant effort to investigate and punish instances of corruption among federal law enforcement officials and military personnel. President Fox, Attorney General Macedo, and other Cabinet members repeatedly warned that they would punish public servants engaged in corruption. The Organizational Law for the Attorney General's Office, which became effective in August 2003, outlines requirements for employment within the organization, standards of conduct and procedures for dismissal from service or corrupt officials. Provision of better pay and benefits and dismissal and prosecution of corrupt officials have served as deterrents to corrupt behaviour.

Particular efforts have been made to address the issue of police corruption. The Federal Judicial Police were replaced by the Federal Agency of Investigation (AFI) when the Justice Attorney General's Office of the Federal District (PGJDF) was restructured in 2002.¹⁸ According to the documentary evidence, this body is fully prepared to arrest its own commanders. Moreover, the Federal Attorney General (PGR) has taken steps to purge corrupt police officers from its agencies.¹⁹ Statistics indicate the seriousness with which the government has tackled the issue of police corruption, for example, in 2001, the nation's Attorney General fired 1400 of 3500 Federal Police Officers for corruption and prosecuted 357²⁰. This trend continued in later years, with 502 policemen imprisoned for various crimes in 2003, and 140 officers charged in Mexico City alone between January and July 2004.²¹ Initiatives in the Federal District to implement police reforms

¹⁷ *Ibid.*, item 7.1.

¹⁸ *Ibid.*, item 10.1, section 2.1.1.

¹⁹ *Ibid.*, item 10.1, section 4.1.

²⁰ *Ibid.*, item 7.4.2.

²¹ *Ibid.*, item 2.1.8.

include issuing new uniforms to discourage impersonating officer and video surveillance at major street intersections to monitor bribe interactions.²²

Moreover, victims of corruption and organized crimes can report offences directly to the nearest Public Ministry office, when the local police might be involved. When victims are ignored or their claims are not processed, they have recourse to report the offence directly to the Internal Comptroller of the PGR or the PGJDF.²³ Finally, the documentary evidence shows that there are procedures for charging a police officer with assault in Mexico.²⁴

The burden of proof that rests on a claimant is in a way directly proportional to the level of democracy in the state in question. The more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of actions open to him or her.²⁵ Even though the claimant might have been suspicious of the level of involvement of the police, based on the documentary evidence and the particular facts of this case, I find that he did not take all reasonable steps to seek protection in Mexico before seeking protection in Canada.

Based on the documentary evidence, I find that it was not unreasonable for the

²² *Ibid.*, item 10.1, section 2.5.

²³ *Ibid.*, item 9.6.

²⁴ *Ibid.*, item 9.4.

²⁵ *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

claimant to have pursued an action following the kidnapping and to follow up on his denunciation following the second incident, including reporting the possible corrupt actions of the authorities following his denunciation. Additionally, the documentary evidence indicates that if the claimant was dissatisfied with police efforts or concerned that police corruption was a factor, he could seek redress for his situation through the National or State Human Rights Commissions, the Secretariat of Public Administration, the Program Against Impunity, the General Comptroller's Assistance Directorate or through a complaints procedure at the PGR.²⁶

No government can guarantee the protection of its citizens at all times.²⁷ The test is not one of perfect protection, but rather, whether the government is making serious efforts to protect its citizens. I conclude that the state mechanisms were, and continue to be, in place to provide the claimant with adequate protection from the threat posed by criminals, whether they have a connection to the police or not.

Internal Flight Alternative (IFA)

For the purposes of this discussion, I accept that the claimant is bisexual thus falling within the Convention refugee definition under the heading "particular social

²⁶ *Ibid.*, see: items 7.2, 9.5 and 10.1.

²⁷ *Supra*, footnote 4.

group". However, I find that he has a viable IFA in Mexico City, where he will receive state protection if he should encounter any further problems. Moreover, given his education level and a continuous employment history up to 2004, I find that he could establish himself, live reasonably and find employment in that city.

According to the documentary evidence,²⁸ there have been substantial legal gains for sexual minorities, particularly at the federal level in a number of major metropolitan areas, including Mexico City. The above-noted document notes that in 1998, the Mexican Chamber of Deputies voted unanimously to amend the discriminatory language in the Federal District Penal Code, an amendment that was co-sponsored by lesbian Congresswoman, Patria Jimenez. This document also indicates that in April 2003, the Mexican Congress unanimously passed anti-discrimination laws in the Federal District of Mexico City outlawing discrimination based on differences and specifically including sexual orientation. In February 2004, more than 2,700 same sex couples performed mock weddings in Mexico City to promote legalized same-sex marriages.²⁹ In March 2003, about 500 lesbians held their first public pride march and in June 2003, the 25th annual gay pride march was held and attended by between 30,000 and 80,000 people.³⁰ In my view, such an open display by the gay and lesbian community in Mexico City reflects the relative tolerance in that city to non-traditional sexual preferences. Additionally, another

²⁸ Exhibit R/A-1, item 6.1.

²⁹ Exhibit R/A-1, item 6.3.

³⁰ *Ibid.*

document³¹ notes that two gay-rights campaigners are taking up seats on the Mexico City council,³² police have set up a unit specializing in dealing with homophobic crimes and are to get sensitivity training, dozens of homosexual support groups have popped up in the past five years and gay bars have opened up on main avenues.

The above-noted documents and others also note that gays and lesbians continue to experience discrimination by homophobic elements of society and that gays and lesbians have been subjected to abuse as does it state that generalized criminality is a problem in Mexico,³³ however, I am not persuaded after considering the totality of this evidence that the democratic government of Mexico is dysfunctional or that it is such disarray as to be unable to protect its citizens. The claimant is concerned that the authorities themselves would abuse him if he were to go to them with a problem.

Although Mexico has had a reputation for human rights abuses, corruption and a problematic civil justice system, as I noted above, the government, in recent years, has initiated significant reforms intended to address these shortcomings, including complaints of "a lack of effective judicial oversight of police practises".³⁴ According to this report, the reforms include the restructuring of the Ministry of the Attorney General (PGR) in

³¹ Exhibit R/A-1, item 6.5.

³² See also: Exhibit R/A-1, item 6.4 for additional information of gays/lesbians in political life.

³³ Exhibits R/A-1, item 2.1, C-2.

³⁴ *Ibid.*, item 2.3.2.

2002, the appointment of special prosecutors³⁵ to investigate abuses by the police and security forces, and other investigative and prosecutorial measures to address human rights violations and police corruption.³⁶ Additionally, the government has made great strides in addressing police and government corruption.³⁷

Similarly, as noted above, victims of corruption can report offences directly to the nearest Public Ministry office, when the local police might be involved. When victims are ignored or their claims are not processed, they have recourse to report the offence directly to the Internal Comptroller of the PGR or the PGJDF.³⁸ Finally, the documentary evidence shows that there are procedures for charging a police officer with assault in Mexico.³⁹

As I noted above, no government can guarantee the protection of its citizens at all times.⁴⁰ Based on the documentary evidence, the claimant's description of his interaction with the police and his failure to fully engage the protections available through the machinery of the state, I find that the claimant has failed to rebut the presumption of state protection with "clear and convincing" evidence within the "preponderance of probability category" as stated in *Xue*.⁴¹

³⁵ *Ibid.*, item 2.3.1.

³⁶ *Ibid.*, item 2.1.

³⁷ Exhibit R/A-1, items 7.1, 10.1, 7.4, 2.1.

³⁸ *Ibid.*, item 9.6.

³⁹ *Ibid.*, item 9.4.

⁴⁰ *Milev, Dane v. M.C.I.* (F.C.T.D., no. IMM-1125-95), MacKay, June 28, 1996.

⁴¹ *Xue, Jian Fei v. M.C.I.* (F.C.T.D., no. IMM-4477-99), Rothstein, October 23, 2000.

Moreover, based on the claimant's education level and work history in Mexico, his ability to move and relocate in another country, having made the decision to come to Canada, I find that the claimant can reasonably relocate to Mexico City where there is adequate, although not perfect,⁴² state protection available to him if he experiences problems from homophobic elements of that society.

As I have found that state protection is available for this claimant, and that he also has a viable IFA in Mexico City, this claim must also fail on the grounds of a risk to his life or to a risk of cruel and unusual treatment or punishment or to a danger of torture.

CONCLUSION

For these reasons, this claim for refugee protection is rejected.

"Laurel Cropley"
Laurel Cropley

DATED at Toronto this 30th day of May 2006

⁴² *Zalzali v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (F.C.A.); (1001), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.).

