

Immigration and Refugee Board  
Refugee Protection Division



Commission de l'immigration et du statut  
de réfugié

Section de la protection des réfugiés

RPD File # / No. dossier SPR : MA5-02659

Private Proceeding  
Huis clos

Claimant(s)

Demandeur(s) d'asile

Date(s) of Hearing

August 21<sup>st</sup>, 2006

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Videoconferencing heard in

Montréal, Québec

Fait par vidéoconférence à

Date of decision

October 2<sup>nd</sup>, 2006

Date de la décision

Panel

Louise Robic

Tribunal

Claimant's Counsel

M<sup>re</sup> John Guoba

Conseil du demandeur d'asile

Refugee Protection Officer

[deposit of documents]

Agent de la protection des réfugiés

Designated representative

N/A

Représentant désigné

Minister's Counsel

N/A

Conseil du ministre

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s.19(1)

The following are the reasons for the decision in the refugee protection claim of a citizen of Peru who claims a well-founded fear of persecution in his country because he is bisexual. For the same reason, he claims to be a person in need of protection.

#### **THE FACTS ALLEGED**

The claimant alleged that he was persecuted and discriminated against by the authorities and the general population of his neighbourhood, who humiliated and physically mistreated him while walking on the street.

On 2004, the claimant was abducted by three police officers who forced him to perform oral sex after which they beat him and threatened to kill him if they saw him again. They also told the claimant that they were paid by the neighbourhood to get rid of people like him.

Afraid for his life, the claimant lived in hiding before leaving for Canada aboard a ship on 2004. He arrived in Vancouver on January 30<sup>th</sup>, 2005. He claimed refugee protection in Etobicoke on February 22<sup>nd</sup>, 2005.

#### **Identity**

The claimant, who alleged that he travelled without any identification documents, obtained a passport from the Consulate General of Peru in Toronto. This passport was seized by the Immigration officer, copy of which is in file (A-2<sup>1</sup>). The panel accepts this document as proof of his identity.

#### **ANALYSIS**

After assessing the claimant's testimony and weighing the documentary evidence adduced in this file, the panel finds that the claimant is not a "Convention refugee"<sup>2</sup> nor a "person in need of protection"<sup>3</sup>.

The panel finds that the claimant's allegations are not credible.

The claimant was asked to explain how the general population of his neighbourhood, a district of five million people in Lima, would know he was bisexual. He explained that most districts of Lima (10 out of 12 or 14 districts) had a group of individuals dressed as policemen and armed, who were paid by the different neighbourhood to rid them of homosexuals, bisexuals,

lesbians, thieves, bums etc. They not only harassed and attacked these people but informed the neighbourhood population who these people were so that they could in turn abuse these undesirable elements.

Firstly, the panel does not believe that the State and the police force would allow vigilante type groups to patrol the different districts of Lima, the capital city, and terrorize the people. This makes no sense.

Secondly, if these groups did exist in such an important numbers, the documentary evidence would reflect this reality. However, although many organizations and internet sites that represent homosexuals, bisexuals and lesbians who report on the discrimination and persecution suffered by them, none report that groups such as described by the claimant exist<sup>4</sup>.

Thirdly, in his answer to question 31 of his amended Personal Information Form (PIF), the claimant indicated four times that he and his friends were involved with the police and five times with police officers. Whereas during his testimony these encounters happened with members of a group dressed similarly to policemen and were armed but were not policemen, which contradiction greatly damaged his credibility.

Moreover, the panel gives no probative value to the police reports (P-2A)<sup>5</sup> that it considers false documents, as in his amended PIF the claimant wrote that when he went to complain on [redacted], 2003, he was told: "that I could not do any denunciation because I was a street vendor without a permit" and when he and his friends went to complain on [redacted] 2004, they were also told: "that [it] would be better if we forgot about the denounce because we did not have any proof that what happened to us was done for (by) police officers", as for the police report dated [redacted] 2004. The claimant did not indicate that he went to the police station following the assault of the [redacted] 2004. However, he did go to the hospital. If the claimant was discouraged from filing a complain, how then could he obtain copies of complains that were never filed?

As the panel finds that these documents are false, it also concluded that the medical certificates are also false.

Finally, as the vigilante group allegedly informed the neighbourhood about the claimant and his friends' preference, the panel asked him how his family that consists of his mother (his father is separated from his mother), his sister and his three brothers, who lived all their lives in this

neighbourhood, could have been unaware that he was bisexual until he disclosed this to them in 2004.

He answered that maybe they had heard and added that "many people don't believe what they are told". The panel finds these explanations lack credibility, as the claimant testified that when his family learned about his bisexuality, they did not want to have anything to do with him, under such conditions, it is fair to say that if they had heard rumours to that effect, they would have confronted the claimant. Moreover, as all the neighbourhood knew about the claimant's preference, it would have been impossible for his family not to have known about the claimant.

Finally, the panel took into consideration a medical certificate (P-5<sup>6</sup>) in which the doctor indicates that the claimant suffers from post-traumatic stress disorder.

### CONCLUSION

For the above reasons, the panel rejects the refugee protection claim of

Furthermore, pursuant to section 69.1(9.1) of the *Immigration Act*, we find that the claim lacks any credible basis.

*Louise Robic*

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Louise Robic

October 2<sup>nd</sup>, 2006

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Date

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s.19(1)

1 A-2: Immigration documents.

2 “ 96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reasons of that fear, unwilling to avail himself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.”

3 “ 97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(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 their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail himself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.”

4 A-1 : Peru National Documentation Package, March 16, 2005, Section 6 : Sexual Orientation, Para 6.1: PER43413.FE. 3 March 2005. Situation of homosexuals and protection available to people who are ill-treated because of their sexual orientation (August 2003-March 2005).

5 P-2A : Police reports.

6 P-5 : Medical certificate.