



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
TA1-09214
TA1-09215

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

14 July 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

12 August 2004

DATE DE LA DÉCISION

CORAM

William T. Short

CORAM

FOR THE CLAIMANT(S)

**Ameena Sultan
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

n/a

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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and her minor son,

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are citizens of Uruguay, who claim to be Convention refugees and persons in need of protection within the meaning of sections 96 and 97(1) respectively of the Immigration and Refugee Protection Act.

ALLEGATIONS

The adult claimant alleges that she is a bisexual woman and that one night she and her female lover were discovered on a beach by a policeman. The policeman, took their names and thereafter presented himself at the claimant's house. When he found out that the claimant was a single mother with a son, he blackmailed the claimant to have sex with him on a regular basis, otherwise he threatened to contact the authorities and have the claimant's son taken away from her because she was a degenerate.

Although the claimant had sexual relations with on a regular basis, she kept up her relationship with her female lover. One night she and her female lover were found out by who became so enraged, that he tore the earring from the claimant's ear and threatened her with his service revolver and sexually assaulted her. She further alleges that when she attempted to report the matter to the police, they did not believe her and she was told that a police officer was not capable of doing such things.

The claimant further alleged that she moved her residence and moved into a small rear apartment of a friend's house in another suburb of . It is further alleged that the claimant, who worked for a supermarket chain, applied for and was transferred to

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another store close to her new residence. However, tracked her down to the new location and told the claimant that he wanted her to live with him. He further threatened her not to try to hide from him, as he would kill her. s.19(1)

DETERMINATION

The panel accepts the valid Uruguayan passports taken into evidence and finds that the claimants are citizens of Uruguay.¹ The panel further finds that the claimants are Convention refugees.

ANALYSIS

The panel is of the view, therefore, that the claimant, as a woman, is a member of a particular social group and has established a connection to one of the grounds, which describe a Convention refugee.² In considering this matter, the panel has applied the Chairperson's Guidelines On Women Refugee Claimants.³

The hearing proceeded after the principal claimant had been appointed the Designated Representative for the minor claimant. Because the claimant alleged that she was the victim of sexual assaults and because she appeared to be in a somewhat delicate emotional condition at the hearing, the panel consented to counsel's application to waive

¹ Exhibit R/A-1

² Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689

³ Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

Guideline 7 and the hearing proceeded with counsel taking the lead in questioning the claimant.

The panel has concluded that the claimants are Convention refugees for the reasons set out below.

The panel firstly wishes to comment on the credibility of the female claimant (the claimant). Throughout her testimony, the claimant was on the verge of becoming emotional, especially when she explained how she had been forced to have sex with s.19(1) who had essentially blackmailed her with the threat of her losing her son. The panel had the opportunity to observe the claimant as she was giving her testimony and had the opportunity to observe her demeanour is of the opinion that she was a truthful witness. Although the claimant's statement in the Port Of Entry Notes⁴ bears no substantive resemblance to the narrative in her Personal Information Form (PIF), or to her testimony, she explained that when she made her declaration to Immigration Officials, she was accompanied by her young son and she did not want him to know about her sex life. The panel accepts this explanation as plausible and having considered the claimant's evidence in its entirety finds that the allegations made by the claimant in her PIF narrative and her oral testimony are true. The panel is accordingly persuaded that the claimant is a bisexual woman and the facts which she alleges did indeed occur.

⁴ Exhibit R/A-2 supra

Moreover, the panel is of the view that although the evidence discloses that used physical violence on the claimant on one occasion to force her to have sex with him, he used coercion and the threats about her son to force her to have sexual relations two or three times per week over a period of about one year. The panel, therefore, is of the view that the claimant is the victim of multiple sexual assaults which took place over the period of about one year.

It is necessary, however, for the panel to examine what, if anything, the claimant could have done about this unhappy state of affairs without fleeing her country and whether she could have been afforded protection of her own state without coming to Canada.

It is, therefore, necessary to examine what protection, if any, is afforded to women, who are the victims of male violence and the recourse available to citizens of Uruguay, who claim to be the victims of police malfeasance. Because of the panel's findings with respect to these two issues, it is unnecessary to examine the issue of the general situation of sexual minorities in Uruguay. The panel has concluded that the claimant would not be protected under any of these heads of potential state protection.

On July 2, 2002, the Uruguayan Parliament adopted a new law, which brought

about a substantial improvement to women, who are the victims of domestic violence.⁵ However, according to the domestic violence coordinator at the Women's Plenary Foundation Uruguay (PLEMUU) the protection available to victims of domestic violence is still insufficient particularly with respect to the authorities' follow up with victims. Furthermore a PLEMUU representative stated that a woman would have trouble filing a domestic violence complaint if her husband were a police officer.⁶

This last statement certainly resonates, given the claimant's evidence, that when she attempted to report the incident when [redacted] had torn the earring from her ear, had s.19(1) threatened her with his revolver and forced her to have sex, she was not believed and told that no police officer would do such a thing. In the circumstances, the panel is satisfied that there would be no effective means of protection for the claimant as a woman, who is the victim of male violence in Uruguay.

Country documents indicate that the general situation with the police in Uruguay is far from ideal. Uruguay is a constitutional republic with a president and legislature, elected in free and fair elections.⁷ The Interior Ministry has charge of the police.⁸ Although the Minister of the Interior has attempted to reform the police by creating a service mentality and moving toward a community-policing model, low salaries result in

⁵ Exhibit R/A-1, page 69 URY42050.FE, October 16, 2003

⁶ Ibid.

⁷ Exhibit C-3, at page 14 U.S. DOS Country Reports On Human Rights Practices-2003 Uruguay, Feb. 25, 2004

⁸ Ibid., page 14

petty corruption and officers taking second jobs to support their families. Although an internal police investigation unit receives complaints concerning non-criminal police abuse of power, it is understaffed and can only offer recommendations for disciplinary action.⁹ The authorities indicted more than 400 police officers in the last four years for violations ranging from corruption to abuse.¹⁰

The Public Prosecutor's Office of Police (Fiscalia) was created by decree in 1997 to "prevent and stamp out irregular actions" by police. The National Inspection of Police was established by the Ministry of the Interior in 1992. Its functions expanded in 1997 to improve its coordination with the Fiscalia. No information, however, is available as to the effectiveness of the Fiscalia.¹¹

In 1999, the Secretary General of the Latin American Association of Railroads expressed the view that the principal contributor to public insecurity in Uruguay was police corruption. He further stated that this corruption was present throughout the police apparatus including the higher echelons of the Ministry of the Interior and the various units of the Police Headquarters in Montevideo.¹²

There is, accordingly, no persuasive evidence before the panel that there exists in Uruguay an effective means for a citizen to seek redress or protection in situations where

⁹ Ibid., page 16

¹⁰ Ibid., page 14

¹¹ Exhibit R/A-1, page 121, Response to Information Request URY37188.E

¹² Ibid., page 121

the police are engaging in activities, which are illicit, serious and covert. The panel is accordingly satisfied that the claimant would not have any effective means of redress or protection from a renegade police officer.

Because of the panel's findings above, it is not necessary to discuss the situation of sexual minorities in Uruguay to any great extent. The panel is, however, aware of the comments, which President Jorge Batlle made in an interview with the *New York Times* that "homosexuality is a 'pathology,' which could be corrected."¹³ Given the president's public statement, the panel is of the view that, although the law of Uruguay may protect sexual minorities, societal attitudes, as evidenced by the president's statement still demonstrate a homophobic sentiment.

Taking all of the factors together, that is to say, that the claimant is a victim of male or female violence, the victim of corrupt policeman and a member of a sexual minority, the panel is persuaded that if she were to return to her country, there would be a serious possibility that she would again be victimized and perhaps even severely injured or killed.¹⁴ Furthermore, given the circumstances, the panel is persuaded that the minor claimant would be at risk also.

¹³ Ibid., page 108

¹⁴ Adjei v. Canada (Minister of Employment and Immigration) [1989] 2 F.C. 680

CONCLUSION

The Refugee Protection Division determines that the claimants are Convention refugees.

Their claims for refugee protection are accordingly accepted.

"William T. Short"
William T. Short

DATED at Toronto this 12th day of August 2004