

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 VA3-02318

Private Proceeding
Huis clos

Claimant(s)

Demandeur(s) d'asile

Date(s) of Hearing

April 2, 2004
May 21, 2004

Date(s) d'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Videoconferencing held in

Vancouver, British Columbia

Fait par vidéoconférence à

Date of Decision

June 10, 2004

Date de la décision

Panel

Fred Hitchcock

Tribunal

Claimant's Counsel

Waikwa Wanyoike
Barrister & Solicitor

Conseil du demandeur d'asile

Refugee Protection Officer

Nil

Agent de la protection des réfugiés

Designated Representative

Nil

Représentant désigné

Minister's Counsel

Nil

Conseil du ministre

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These are the reasons for the decision of the Refugee Protection Division with respect to the refugee protection claim made by I . The hearing for this claim was held pursuant to the *Immigration and Refugee Protection Act* (IRPA)¹ on April 2, 2004 and May 21, 2004. This was a videoconference hearing with the counsel and the claimant in Toronto, Ontario and the presiding member and the interpreter in Vancouver, British Columbia.

The claimant alleges that he is a citizen of Mexico and he claims to have a well-founded fear of persecution by reason of being a member of a particular social group being persecuted due to his sexual orientation. Also, I note on page 17 of the claimant's Personal Information Form (PIF)² that he is claiming protection as a person in danger of torture as defined in Article 1 of the *Convention Against Torture*.

ALLEGATIONS

The claimant states in the narrative of his PIF, paragraph 3:

In 1997 I met . In 1998 we started a relationship. I was 18 years old then and he was 29 years old. The relationship was very effective and intense. We were together two years. Our relationship started to break down. However, as started to become very possessive and he wanted to be with me all the time. He tried to kiss me in public places and many times which upset me as I do not want to be so easily identified. started to become very jealous of me and we finally broke up in 2000.

The claimant states during : 2000 he had a new relationship with an individual by the name of (no relation to). The claimant states he was very discreet with his relationship and that he and also dated girlfriends and the four of them went dancing together and other public places. However, the claimant states found out about this relationship during 2001 and became very jealous.

The claimant states would harass him on the telephone stating that he should go back to him, otherwise he was going to regret it and that he was not going to allow him to have

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit 1.

someone else in his life. The claimant refers to an incident that occurred on 2002 when he was accosted by two men who grabbed him by each arm. He states in paragraph 7 and 8 of his narrative:

They were large men and though they wore civilian clothes they had short haircuts and looked like they were police officers. When I tried to escape they told me the best thing would be to stay quiet or otherwise the whole thing would become worse. I asked them what was going on and said that if it was a matter of money they could take all of my money. They started laughing and they told me to shut up. They took me to a vehicle where [redacted] was sitting. They began to force me into the car. I demanded to know what was going on. [redacted] started laughing, said just get into the car. You will soon find out. At this time one of the men let go of me and I managed to kick the other one and managed to escape from them.

The claimant states that three days later [redacted] telephoned him both on his cell phone and his residence phone number telling him that if he refused to come back to him he was going to kill him. He advised his friend, [redacted] of [redacted] s threats to him and [redacted] recommended that he report it to the police. The claimant states in paragraph 11 of his narrative:

I went to file the [redacted] police station to file a complaint. I told them that he was harassing and threatening him. The police started to ask me if I had any proof of what I was saying and accusing [redacted] of. The police told me that without proof they could not do a thing and that it was better for me not to waste my time and not to waste their time either. They were mocking and dismissive.

The claimant states on 2002 as soon as he was leaving home for work a policeman arrived at his residence. This officer told him that he had to accompany him to the police station. The claimant was resisting but states he was forced to get into the back seat of the police patrol car. The claimant states in paragraph 13 and 14 of his narrative:

Once the car started to move I saw that it was taking a different route to where we were supposed to be going. The car stopped and at that moment I saw [redacted] He came into the car and he told me that I was going to pay for all of what I had done to him. I tried to talk with him but he was not listening. Suddenly the police car stopped once more. The policeman and [redacted] started to speak. [redacted] referred to him as [redacted] Both of them took me to an apartment which was partially furnished. There was not a single trace of anyone living there. [redacted] grabbed me very hard while [redacted] started to take my clothes off. I was raped by both of them consecutively. I fell unconscious when I was being raped.

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When I work up I was partially dressed and I was lying on the ground in a very isolated area of the city. I had to walk for several blocks before I was able to find someone. I finally met a woman who helped me to get into an area where I could grab a taxi. After that I went home. My mother took me to the hospital. I then spoke to my mother and to I decided to come to Canada as I did not need a visa.

ANALYSIS

During the claimant's oral testimony on April 2, 2004 he stated he had attempted to have his mother obtain the copy of the medical report but she was unable to do so in time for the hearing. However, as we had to have a resumption to the April 2, 2004 hearing date so that counsel could give submissions I allowed the claimant to make a further attempt to obtain a medical report.

On May 18, 2004 counsel forwarded a translated copy of a medical report³ that was forwarded by the claimant's mother to his office. This report is dated the 2002 and states:

The young man, 1 22 years of age, comes into the clinic due to multiple injuries as a result of a beating in the abdominal area, the arms and legs, accompanied as well by a sexual assault. He presents bruises on the anal area as a result of the rape. He was taken into the clinic for observation and diagnosis.

This report states that the claimant at 02 hours and at 4:00 p.m.

The patient is released from the hospital and is given an open appointment to go with his family doctor.

On the 2nd hearing date of May 21, 2004 the presiding member asked the claimant prior to seeing a copy of his medical report if he could recall the date that he was hospitalized and he stated he did not remember the date. He states this was because he was nervous and the circumstances of what had occurred to him was very emotional. However, I brought to the claimant's attention that the date of the medical report submitted by his mother revealed that he went to the hospital for treatment on 2002, whereas in the claimant's PIF he states this incident occurred to him on , 2002. He states he went to the clinic in the afternoon.

³ Exhibit 6.

The claimant was asked whether the hospital offered to contact the police on his behalf as is their usual custom when somebody is a victim of an assault. He confirmed, yes, that the staff at the hospital did offer to contact the police and give them details of his assault but he states he refused to accept their offer. I also note that the medical report states:

The patient is released from the hospital and is given an open appointment to go with his family doctor.

The claimant states he did not go to a doctor for any follow-up. As well, he did not go back his place of employment but instead left Mexico for Canada two weeks later. Also with the medical report was a translated letter from the claimant's mother, which states:

I hereby do certify that my son is being forced to leave the country due to an incident that happened to him, incident that is duly reported in the attached medical certificate. I also certify that we are a family made up of my parents, my younger daughter, my son, and me. We have no other relatives here in Mexico.

The claimant states he did not report the sexual assault to the police because a corrupt police officer associated with [redacted] had sexually assaulted him. Therefore he had no confidence that the police would accept his complaint.

Protection

There is a presumption that the state is capable of protecting its citizens. The onus is on the claimant to establish clear and convincing proof of the state's inability to provide protection. The claimants have an obligation to approach the state for protection unless it is objectively reasonable for them not to have sought protection from the authorities.

I believe the claimant in this particular case had an obligation to approach the state for protection in that this opportunity as given to him by staff at the hospital where he alleges he obtained treatment after being raped. He could identify [redacted] who he states, with the assistance of another corrupt police officer, had attempted to attack him previously. The claimant states that the motive for [redacted] and his alleged corrupt police officer friend attacking the claimant appears to be an act of revenge against the claimant for rejecting

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The claimant was asked what would the motivation of be in continuing to seek the claimant's whereabouts if the claimant, in fact, was to return to Mexico months after the claimant was sexually assaulted? It would appear that has obtained his revenge if, in fact, this sexual assault actually occurred. The claimant continued to state if he returned to Mexico, would continue looking for him.

Counsel on behalf of the claimant argued that an internal flight alternative would not be an option for the claimant as objective country documents would indicate there are corrupt police officers throughout Mexico. Again, I do not find it plausible that if the claimant was to return to Mexico that would be seeking his whereabouts throughout the entire country to cause him further punishment by having corrupt police officers and himself to continue to sexually attack him.

Though I am reluctantly accepting that the claimant is a bisexual, I am of the opinion that if he was to return to Mexico, including the city of Vera Cruz where the persecution allegedly occurred, that protection would be available to him. This is because he has very specific details of who the individuals were that attacked him and he had been previously offered assistance from staff at the hospital to contact the police on his behalf. He would also have a copy of the medical report that was made available for his hearing.

To report a crime or offence as a victim or witness in Mexico one must make his or her case before the closest public ministry. In cases where complaints are ignored or not processed by the authorities one has recourse to the office of the Internal Comptroller of the PGR.

According to the documentary evidence the PGR was reorganized in 2001 in order to deal with internal corruption and better cope with drug trafficking and organized crime and that those found to be involved in internal corruption have been suspended, dismissed and in some cases imprisoned.⁴

I am, therefore, satisfied that officials in Mexico are taking measures to deal with corruption of the police and judicial system and that there is no objective basis for the claimant to have refrained from vigorously seeking protection on that basis.

⁴ Exhibit 3, Response to Information Request MEX40139.E: Criminal activities by staff within the office of the Federal Attorney General (Procuraduria General de la Republica, PGR) in Toluca, State of Mexico; current situation of the PGR and measures being taken to address internal problems within the organization (2001-2002), dated 8 October 2002.

As mentioned previously, I had some concerns as to the credibility of the claimant's evidence. I note that in the narrative of his PIF as quoted above he referred to the incident of 2002 that the two men who grabbed him were large men and wore civilian clothes and they had short haircuts and looked like they were police officers.

In is oral testimony he states these were two uniformed policemen that had told him to accompany him and he stated that he had already reported to the police but had not mentioned their intimate relationship. The claimant then changed his oral testimony to state that the police officers did not wear uniforms.

In summary I have had considerable problems with the credibility of the claimant as well as plausibility of his story. However, in the alternative, if I was to believe his story and that he was taken to the hospital for treatment (even though he does not recall the date) the claimant stated that hospital staff provided the opportunity to him for their assistance in reporting the incident to the police and he refused to accept that assistance.

As stated previously, this is why I find that if the claimant were to return to Mexico, including Vera Cruz, that protection would be available to him. Also, I have found that if the claimant chose an internal flight alternative such as Mexico City and Guadalajara that I do not accept his evidence that would continue to seek his whereabouts throughout the entire country of Mexico to seek further revenge or to have corrupt and/or paid corrupt police officers to seek his whereabouts.

DETERMINATION

I find that the claimant, , is not a Convention refugee as he does not have a well-founded fear of persecution for a Convention ground in Mexico. Though I have found that the claimant is possibly a bi-sexual and, therefore, would have a nexus to a Convention ground on that basis, I find that if what he states actually occurred to him, he would be a victim of criminality and that there is no perceived political opinion.

Further, I find that the claimant is not a person in need of protection in that his removal to Mexico would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment. This, again, is because I find protection would be available to him as well as internal flight alternative.

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Fred Hitchcock

Date _____