



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
TA2-12141

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a.)

DATE(S) OF HEARING

09 July 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

05 September 2003

DATE DE LA DÉCISION

CORAM

J.M. Thibodeau

CORAM

FOR THE CLAIMANT(S)

nil

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

A. Cedrez

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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a 31-year-old citizen of Mexico, claims to be a protected person pursuant to the provisions of the Immigration and Refugee Protection Act (IRPA).¹ He reputedly fears persecution at the hands of Mexican police authorities acting under the direction of the father of his estranged girlfriend, The panel considered whether he was a Convention refugee by reason of his membership in a particular social group, namely, persons considered as having unacceptable sexual preferences such as homosexuals or bisexuals. The panel also considered whether the claimant is a person in need of protection pursuant to Sections 97(1)(a) and 97(1)(b) of the IRPA as a victim of a criminal vendetta. These are the reasons for rejecting the claim on all grounds.

The panel was not persuaded, on a balance of probabilities, that there exists a serious possibility that the claimant would be persecuted by Mexican police forces at the instance of his estranged girlfriend or her agents, should he return to Mexico.

The claimant purports to be a bisexual. He recounted that he had suffered some difficulty prompting him to quit high school in 1989 when he was discovered with a male student. Thereafter, he also recounted having been laid off from work at a bank when his homosexual relationship with a fellow employee was discovered in 1991. The claimant encountered no further difficulty until 2001 when his girlfriend discovered him "*in flagrante delicto*" with his male lover, She threatened

¹ As enacted by S.C. 2001, c.27, sections 96, 97(1)a and 97(1)b.

them. Thereafter, numerous threatening telephone calls were received. At his hearing the claimant revealed that he recognized the caller to be [redacted]'s father although this information is not contained in the Personal Information Form (PIF). The claimant also noticed that he was under surveillance by police in vehicles. He took no evasive or protective action. In oral evidence, he attributed his lack of evasive action or precaution to the fact that he did not take the threats seriously. This explanation contradicted the declaration in his PIF that "I became very frightened as I realized that [redacted] meant to carry out her threats against me". The claimant's failure to consider any protective measures for his personal security during the two months during which he received serious threats from a reputedly powerful agent of the judicial police, which he admittedly took seriously, coupled with the contradictory nature of his explanation, casts doubt upon his credibility.

On [redacted], 2002, some [redacted] months after the New Year's Eve incident, the claimant was reputedly abducted, beaten and left for dead by several men who approached him in a vehicle similar to those used by the judicial police. He alleges that they were police officers sent by [redacted]'s powerful father. The claimant departed for Canada on [redacted] 2002 to visit his father who was terminally ill and near death. He instituted his claim for international protection approximately one month later on [redacted].

2002. The claimant has not pursued an active homosexual or bisexual relationship since he has been in Canada, although he occasionally attends gay nightclubs.

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The claimant explained that he did not report the threats or the assault to authorities, given his belief that police would not be sympathetic given the climate of strong discrimination against homosexuals in Mexico. The claimant could offer very few details regarding the actual position of [REDACTED]'s father. He was unable to provide very cogent detail regarding his actual seniority or rank apart from gratuitously maintaining that he was a powerful authority within the judicial police whose station was in

[REDACTED] Mexico City. The claimant has made no effort to ascertain whether there continues to be any interest in him by [REDACTED], her family or their agents, despite the fact that the claimant has relatives and friends in Mexico City who might have such information. He has made no effort to ascertain the fate of [REDACTED], his friend and lover, who was also reputedly threatened as a result of their illicit affair. The claimant's indifference in updating his own situation and the fate of his friend [REDACTED] casts doubt upon the credibility of his evidence. His seeming disregard and inaction reflect negatively on the veracity of his assertions. The claimant did not even bother to ascertain his would-be persecutor's rank. Indeed, there was no evidence of any efforts to locate the claimant after his departure from Mexico. The claimant has made no particular effort to ascertain this information in support of his claim and his explanation, therefore, was not persuasive. The panel concludes that the claimant greatly embellished any difficulty encountered at the instance of his allegedly vengeful girlfriend in the hopes of bolstering his refugee claim.

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The claimant submitted a medical report in support of his claim². This indicates that he suffered facial and body contortions shortly before his departure for Canada. While these injuries may be consistent with having received a beating, they do not appear to be of such a serious degree to cause death as had been reputedly threatened. Furthermore, it is unlikely that assailants bearing firearms who were intent on killing the claimant would merely inflict such non-life-threatening injuries. This casts further doubt on the claimant's assertions of fearing deadly consequences upon his return.

Internal Flight Alternative (IFA)

Even if it was accepted that the claimant could reasonably suffer harm at the instance of agents of a vengeful former lover, his claim must fail because an IFA is reasonably available for him in other parts of Mexico whether he has a nexus to the Convention refugee definition by virtue of his being a member of a particular social group, homosexual males (Section 96 of the IRPA) and whether he would face a risk to his life or a risk of torture as the victim of a criminal vendetta perpetrated with the assistance of police (Section 97 of the IRPA).

Mexico is a large country. The onus of proof that there is no IFA rests on the claimant. To this end, the claimant's problems were limited to a few suspected police officers in Mexico City who reputedly acted under instructions from a higher ranking

² Exhibit C-2.

officer who bore a particular vendetta against him. He expressed resistance to the idea of living elsewhere in Mexico because his abuse was reputedly ordered by a powerful police agent and authorities in Mexico abuse homosexuals everywhere. However, he advanced no personal or specific evidence to persuade the panel that there exists more than a mere possibility that he would risk persecution or difficulty of the type contemplated in Section 97 of the IRPA or anything other than a generalized risk of harassment at places other than the areas where his girlfriend's father was posted. There was no persuasive evidence to believe that the father, supposedly a powerful official with the judicial police in [redacted] wields such vengeance and authority to pursue him throughout the country or indeed that there is any ongoing interest in the claimant.

There is ample reason to believe the claimant could establish himself safely elsewhere in Mexico, given particularly the measures intended at rooting out corruption amongst security forces and the successful prosecution of corrupt police in several areas as mentioned further herein.

Although in general, the situation for sexual minorities tends to be better in the Federal District, there exist other areas where there is tolerance of homosexuals.³ According to the documentary evidence,⁴ there are three groups for whom an IFA is not possible: effeminate men, HIV-positive men, and political activists and whistleblowers.

³ Exhibit R-1, item 3.3 at 3.3.4, Mexico Treatment of Sexual Minorities, April 1999.

⁴ Exhibit R-1, item 4.3 at p 4.3.33 (Question and Answer Series Mexico at p. 30), Mexico - Basic Disclosure Package, October 2002.

The claimant had no previous problems in Mexico, apart from his being discovered in homosexual relationships in 1989 and 1991. There was no evidence that his problems stemmed from an effeminate appearance, nor did he manifestly exhibit effeminate mannerisms at his hearing. Hence, the claimant does not fall into any one of these three groups. For gay men who do not fall into any of the three groups, the documentary evidence states that:

In most other cases, the improving climate towards homosexuals in many big cities means that gays, lesbians, and bisexuals who live in the more intolerant areas and smaller urban areas do have internal relocation options.⁵

Specific references are made to Guadalajara, as well as areas with a high degree of exposure to foreign tourists such as Puerto Vallarta, Cancun and Acapulco.⁶

According to Joseph Carrier, who has been studying the process firsthand,

The accommodation continues at present and there appears to be more rights now for gay people in Guadalajara and other cities in Jalisco ...And in Puerto Vallarta, an internationally known beach resort in Jalisco, gay foreign tourists and residents are now being informed about the gay scene by a 16-page "Gay Community" newspaper in English (*El Reportaje*) and a 52-page free gay guidebook (*South Side PV Guide*). One can find complete descriptions of the gay world in Puerto Vallarta on the world wide web (<http://www.discoveryvallarta.com>).⁷

Accordingly, I find that there is no serious possibility that the claimant will

⁵ Ibid.

⁶ Ibid., item 3.3 (Question and Answer Series 4.3); Exhibit R-1, Additional Disclosure Package # 2, items 4-5.

⁷ Ibid.

be harmed, should he return to Mexico and live in places, such as tourist meccas, Guadalajara or Puerto Vallarta. There is no serious possibility of the claimant being persecuted nor are there substantial grounds to believe the claimant would face a danger of torture or be subjected to a risk to life or a risk of cruel and unusual treatment or punishment in other parts of Mexico in accordance with the first prong of the test of an IFA.⁸ Section 97(1)(b)(ii) of the IRPA does not require the reasonableness element to the availability of a safe area in the country.

Having found that there is no serious possibility of persecution throughout Mexico, the issue then becomes whether it would be unreasonable for the claimant to seek refuge internally⁹ in light of conditions in Mexico and the circumstances particular to the claimant. I find that it is not objectively unreasonable for the claimant to seek refuge elsewhere in Mexico which is a large and diverse country with many social services and institutions available for the claimant. It has a well-developed structure and economy, with a vibrant demography that includes change and growth. The claimant is intelligent, articulate and university educated. He is apparently healthy and resourceful. He has work experience within a financial institution in Mexico and has supported himself through his artistic endeavours, including skills as a musician, for many years.

⁸ Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.).

⁹ Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.).

Given these qualities and abilities as an able-bodied and resourceful individual, it does not appear to be unreasonable for him to relocate elsewhere in Mexico. He appears to be highly employable, particularly in tourist areas such as Puerto Vallarta, Cancun and Acapulco, where openly gay nightclubs flourish.

While it is true that the claimant's family resides entirely in Canada at the present time, this is insufficient to make the potential IFA unreasonable, given the claimant's age and station in life. Even though the claimant might be better off in Canada, physically, economically and emotionally, than in Mexico, that is not an issue to consider in assessing the reasonableness of the IFA.¹⁰ The claimant has not discharged his onus of showing that he does not have an IFA in Mexico.

State Protection

There is a presumption that a state is able to protect its citizen except during a state of total breakdown.¹¹ Despite the claimant's expressed concerns and indications in the documentary evidence of police harassment and homophobia, the conclusion that the Mexican state would be unwilling or unable to protect the claimant is not warranted. The claimant referred to his fear of his girlfriend's father, allegedly a high ranking official with the judicial police, police corruption and the futility of reporting violence against

¹⁰ Ranganathan v. Canada (Minister of Citizenship and Immigration) (1999), 1 Imm. L.R. (3d) 245 (F.C.T.D.).

¹¹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

gays in Mexico's homophobic society in explanation of his inability to seek state protection in Mexico. He has not provided "clear and convincing" evidence to rebut the presumption of state protection.

Although human rights documents and international reports do indicate that within Mexican society, traditionally Machista and homophobic, violence and bias against homosexuals have, at times, presented serious concerns. Such documents confirm that police corruption and violence against homosexuals continue to present problems in Mexico.¹² There is also an indication that great strides are being made relative to the situation for homosexuals. Various improvements have been observed in recent years, including the election of openly gay public officials, legislative initiatives, the flourishing of gay amenities such as baths, nightclubs, activist organizations and publications and Christian churches.¹³

Whereas even police and security forces have been suspected of involvement in abusing the rights of homosexuals, there have been serious efforts by the current regime to root out police corruption, including several important convictions.

The PGR, which is the Federal Attorney General's office, has extremely broad

¹² Exhibit C-3, United States Department of State, Mexico – Country Reports on Human Rights Practice - 2002; Exhibit R-1, item 2, Additional Disclosure Package # 2, MEX38313.E, DIRB, IRB, 11 June 2002.

¹³ Exhibit R-1, items 1-5, Additional Disclosure Package #2.

powers under Mexican law.¹⁴ To report a crime or offence, as a victim or witness, in Mexico, one must make his/her case before the closest Public Ministry.¹⁵ 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 (PGJDF).¹⁶ Given the enormous amount of corruption that existed in the PGR office, the Deputy Attorney General of the PGR announced in 2001 the reorganization of the entire structure of the institution in order to better cope with drug trafficking and organized crime.¹⁷ A new internal comptroller of the PGR was then appointed to process complaints and reports on public servants who fail their duty, and evaluates their behaviour.¹⁸ An August 2002 report indicates that in an effort to "purify" the PGR, the PGR has initiated 400 investigations involving over 1000 public servants of all levels of the Judicial System and the Public Ministry.¹⁹ In the ongoing attempt to rid the PGR of corrupt workers, those found guilty were being suspended, dismissed and, in some cases, sent to jail. The National Public Safety System maintains a national police registry to prevent police officials dismissed for corruption from being hired by another law enforcement entity.²⁰ The PGR expanded its vetting

¹⁴ Exhibit R-2, item 2.9, Response to Information Request, Number: MEX36728.E, DIRB, IRB, 30 March 2001.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Exhibit R-2, item 2.3, Response to Information Request, Number: MEX40139.E, DIRB, IRB, 8 October 2002.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Exhibit R-2, item 2.5, Response to Information Request, Number: MEX38312.E, DIRB, IRB, 19 September 2002.

process in 2001 to track employees throughout their careers.²¹ In 2001, the PGR conducted suitability reviews of approximately 14,000 employees, including federal prosecutors, police agents, forensic experts, and pilots assigned to counter narcotic duties.²² Of these, over 1,100 employees were dismissed for irregularities discovered during reviews that included polygraphs, toxicological tests for drug use, and questionable financial holdings.²³ Employees removed after failing the screening, or who are found to be corrupt or incompetent, have no right to reinstatement.²⁴

Based on the above documentary evidence, the panel finds that the Mexican government is making serious efforts to protect homosexuals and that such protection would be available for the claimant despite possible police corruption and residual homophobia.

The claimant specified no reason other than his fear of his ex-girlfriend (and police agents enlisted to exact revenge) for not wanting to return to Mexico. His suspicions of untiring pursuit and continuing malevolent interest by judicial police in Mexico several years after their separation were not persuasive. The totality of the evidence did not persuade the panel, on a balance of probabilities, that there exists a serious possibility that he would be persecuted, nor do there exist substantial grounds to

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

believe that the claimant would be subjected personally to a danger of torture, nor is there a serious possibility that he will be subjected personally to a risk to life or to cruel and unusual treatment or punishment at the hands of his estranged girlfriend or her agents upon return to Mexico.

CONCLUSION

Consequently, the Refugee Protection Division determines that
is not a Convention refugee or a person in need of protection. His claim is,
therefore, rejected.

"J.M. Thibodeau"
J.M. Thibodeau

DATED at Toronto, Ontario, this 5th day of September, 2003.

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