



Immigration and
Refugee Board

Commission de l'immigration
et du statut de réfugié

Refugee Protection
Division

Section de la protection
des réfugiés

RPD File No.: TA3-22388
TA3-22389
TA3-22390
TA3-22391
TA3-22392

NOTICE OF DECISION
[Immigration and Refugee Protection Act, ss.107(1)]
[Refugee Protection Division Rules, Rule 61]

S. ELLIS
Member

s.19(1)

In the claims for refugee protection of:

DOB:	ID:
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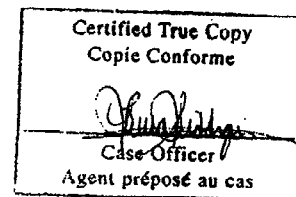
The Refugee Protection Division determines that the claimants

ARE NOT CONVENTION REFUGEES AND ARE NOT PERSONS IN NEED OF PROTECTION. THEREFORE THE REFUGEE PROTECTION DIVISION REJECTS THE CLAIMS.

May 2, 2005


fo: Registrar

Under section 72 of the Immigration and Refugee Protection Act, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.



RPD - 15.4 (April 2002)
Disponible en français

Page(s) 001315 to\à 001315

**Is(are) not relevant
n'est(ne sont) pas pertinente(s)**

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**Is(are) duplicate(s)
est(sont) (des) duplicata(s)**



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

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

IN PRIVATE
HUIS CLOS
TA3-22388
TA3-22389
TA3-22390
TA3-22391
TA3-22392

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

March 16, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

April 26, 2005

DATE DE LA DÉCISION

CORAM

Steve Ellis

CORAM

FOR THE CLAIMANT(S)

Dale Jean-Pierre
Barrister and Solicitor

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

No RPO

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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"Vous pouvez obtenir la traduction ou une copie de ces motifs de décision dans l'autre langue officielle dans les 72 heures, en vous adressant par écrit à la Direction des services de révision et de traduction de la CISR, 344, rue Slater, 14^e étage, Ottawa (Ontario) K1A 0K1, par courrier électronique à l'adresse suivante : translation.traduction@cisr.gc.ca ou par télécopieur au (613) 947-3213."

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These are the reasons for the decision of the Refugee Protection Division (RPD) with respect to the refugee protection claim made by (the principal claimant), a 35-year-old, married citizen of Mexico. His claim is joined with that of his wife, (the female claimant), a 31-year-old citizen of Mexico and their children, (the youngest female minor claimant), a 3-year-old citizen of Mexico, (the male minor claimant), a 9-year-old citizen of Mexico and (the oldest female minor claimant), 4-year-old citizen of Mexico to be Convention refugees and persons in need of protection. The hearing for these claims was held pursuant to section 170(b) of the Immigration and Refugee Protection Act¹ (IRPA).

The claimants fear returning to Mexico due to the fear they have of the Catholic Church and extremists groups within the Catholic Church due to the principal claimant being bisexual and having been found out as a bisexual.

ALLEGATIONS:

The principal claimant was born and resided in Mexico City. The principal claimant fled Mexico because he fears persecution at the hands of the powerful Catholic

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

Church and its followers and brought along his family.

At the age of fourteen or fifteen, the principal claimant found out that he was different than other fellows in his class. The principal claimant was attracted to both boys and girls. The principal claimant came to know that there were people who were bisexual.

The principal claimant met . in his class and they became good friends. was a homosexual man and the principal claimant started a relationship with him but he also liked girls and met the female claimant, his wife, at a party in 1992. The principal claimant fell in love with the female claimant. The principal claimant and the female claimant discussed his sexuality and she showed no objection and was comfortable with his relationship with at the same time.

The female claimant became pregnant at the end of 1994. On , 1995, the two adult claimants got married and started living together. The claimants had a happy life in Mexico and the principal claimant was working for in Mexico City.

The principal claimant used to go to . ' house to spend time together and have sex at his place of residence. was also living in Mexico City.

was renting a portion of a house and the landlord of his house was Catholic and was practising the religion to the extreme.

On May 17, 2003, the principal claimant met with _____ at his place and was having sex when the landlord of the house saw them and started shouting at them. The landlord told the other fellow worshippers in the Catholic Church about their relationship. The priest in the church announced that a married man should not have a relationship with another man when he was already married. The people in the church practise Catholic religion to the extreme and when they heard the news through _____' landlord, they became the principal claimant's enemy and started threatening _____ and the principal claimant. _____ eventually left for the United States (US) and is now living in the US.

The principal claimant was not willing to leave the country because of his family. Some members of the Catholic Church in the principal claimant's community approached the female claimant and told her about the principal claimant's relationship but she already knew. The principal claimant and his wife started getting threats. When the principal claimant saw that they were not safe in their country anymore, they decided to come to Canada to save their lives.

The principal claimant alleges that it is difficult in Mexico to get help from the police or any other authorities because the police can be bribed so easily and usually police do not get involved in homosexual cases.

DETERMINATION

The Refugee Protection Division determines that the claimants are all citizens of Mexico. The RPD determines that the principal claimant is a bisexual man as he alleges.

The RPD determines that the claimants face no more than a mere possibility of persecution should they return to Mexico City.

The RPD determines that the claimants face no more than a mere possibility of a risk to their lives or to a risk of cruel and unusual treatment or punishment, or face the danger of torture should they return to Mexico City.

In the alternative, if the claimants do face more than a mere possibility of persecution or do face more than a mere possibility of a risk to their lives or to risk of cruel and unusual treatment or punishment or face a danger torture in Mexico City, the RPD determines that the claimants have another internal flight alternative (IFA) to Mexicali in the northwest of Mexico or to Monteray in the northeast of Mexico or to Cancun in the southeast of Mexico.

The RPD notes the claimants may have humanitarian and compassionate (H&C) grounds, which they can advance to stay in Canada although the Immigration and Refugee Board (the "Board") does not have jurisdiction to consider such grounds.

Accordingly, the decision in this claim is negative.

ANALYSIS

Identity

The panel notes that the claimants all have Mexican passports,² copies of which are found in the Citizenship and Immigration Canada (CIC) documents. The principal claimant at the hearing indicated that the claimants are all citizens of Mexico. Accordingly, the panel is able to make a determination that the claimants are all citizens of Mexico.

With respect to the principal claimant's identity as a bisexual man, the panel found the claimant to be credible at the hearing. The panel believes the claimant's testimony that he is a bisexual man.

WELL-FOUNDED FEAR OF PERSECUTION

The panel notes that the claimants fear of persecution at the hands of the Catholic Church and/or the community members who are extreme practitioners of the Catholic religion.

The panel accepts that the principal claimant was found out in his relationship s.19(1) with _____, which led the local priest in the Catholic Church to make denunciations from the pulpit and drew attention to their sins to the parishioners.

² Exhibit M-1.

The panel notes that the claimants appear to have received threats or death threats over the telephone. However, it does not appear that the claimants faced any physical violence prior to leaving. It does not appear that the claimants' home was vandalized. The principal claimant testified that he did not wait around Mexico for these events to occur.

The panel is of the belief that should the claimants return to Mexico City, they would face no more than a mere possibility of persecution due to the principal claimant's sexual identity of being a bisexual man.

The panel feels that the treatment of the family may be discriminatory in nature and they may be harassed and perhaps the male minor claimant may face difficulties in the schoolyard should it become public knowledge or common knowledge that his father is bisexual.

However, the panel does not believe the claimants face more than a mere possibility of persecution should they return to another area in Mexico.

PERSONS IN NEED OF PROTECTION:

The RPD considered all the claimants' evidence to determine whether the claimants faced more than a mere possibility of a risk to their lives or to a risk of cruel and unusual treatment or punishment or face a danger of torture should they return to Mexico City.

The panel believes that these risks could be minimized if the claimants moved to a different part of Mexico City, which is a metropolis in the order of thirty million people.

Accordingly, should the claimants return to the Mexico City area and live in a different suburb or a different area across the town from where they resided, the possibility of receiving persecution and/or a risk to their lives or to a risk of cruel and unusual treatment or punishment, or face the danger of torture would definitely be minimized.

The panel is of the view that the principal claimant faces no more than a mere possibility of a risk to his life or to a risk of cruel and unusual treatment or punishment, or face the danger of torture along with the rest of the claimants should they return to Mexico City.

INTERNAL FLIGHT ALTERNATIVE:

Should the claimants face more than a mere possibility of persecution in their native area of Mexico City in Mexico or should they face more than a mere possibility of a risk to their lives or to a risk of cruel and unusual treatment or punishment, or face the danger of torture, which the panel acknowledges could be the case given the hostility to bisexuals in Mexico City by the Catholic Church and their extreme followers of the Catholic Church, the panel is of the view that the claimants do have an IFA.

The panel notes that if the principal claimant hid his lifestyle from the public and his children, then he could carry on his relationship with as a separate part of his life, from his married life with his wife and his children.

Therefore, the panel is of the view that the claimants could reside in another area or another city such as Mexicali in the northwest or Monteray in the northeast or Cancun in southeast of Mexico and carry on as a regular family. Then the principal claimant, if he wanted to pursue his lifestyle or due to the fact that he may have no choice but to follow his lifestyle due to his inherent sexuality and needs and desires could practice in Mexico City or another location his bisexuality and therefore will not endanger his wife and family. Therefore, the panel is of the view that the claimants do have an IFA within Mexico.

The principal claimant at the hearing indicated that he could be found out at other locations or followed by the extremists Catholics. The principal claimant pointed out that there are Catholic Churches throughout all of Mexico since the country is ninety nine percent Catholic.

The panel does note this, but is of the belief that if the principal claimant faced persecution and if the claimants face more than a mere possibility of a risk to their lives, it would be restricted to their home area in Mexico. The panel is of the view that there would not be coordination throughout all the Catholic Churches throughout Mexico or

the Catholic community in general to search out the principal claimant in other locations than cause him harm or persecute him.

HUMANITARIAN AND COMPASSIONATE (H&C) GROUNDS:

The panel is of the view that there may be many H&C grounds why the claimants should be allowed to stay in Canada. Although, the panel notes that the RPD does not have the jurisdiction to consider H&C grounds while the Immigration Appeals Division (IAD) does have such grounds. Accordingly, this panel is unable to consider such grounds.

This panel is hopeful any future decision maker will not view this negative decision in this claim to be a Convention refugee and persons in need of protection to be rationale for turning down any future application the claimants may make.

CONCLUSION:

For the foregoing reasons, the RPD determines that the claimants are not Convention refugees and are not persons in need of protection.

"Steve Ellis"
Steve Ellis

DATED at Toronto this 26th day of April 2005.