



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
TA3-01282

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

January 23, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

February 4, 2004

DATE DE LA DÉCISION

CORAM

Hazelyn Ross

CORAM

FOR THE CLAIMANT(S)

**M. Steven Beiles
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Not present

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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s.19(1)

These are the reasons of the Refugee Protection Division with respect to the claim for refugee protection made by Mr. [redacted] claims refugee protection pursuant to ss. 96 and 97(1)(a) and (b) of the Immigration and Refugee Protection Act referred to in the remainder of these reasons as "the Act". He is a 26-year-old citizen of Ukraine and his claim for refugee protection is based on his membership in a particular social group, to wit, homosexuals. He claims that in Ukraine, there is a serious possibility that he would be persecuted because of his sexual orientation. He also claims that he would be at risk to his life or of cruel or unusual treatment or punishment in Ukraine because of his sexual orientation.

The panel had to make decisions about the claimant's personal identification and identification as a national of Ukraine. In addition, the panel had to make determinations about the claimant's profile as a homosexual, as well as the overall credibility and trustworthiness of his evidence. With respect to the claimant's personal identity as a national of Ukraine, on the basis of the certified true copy of the claimant's international passport in Exhibit M-1, the panel concluded that the requirements of s. 106 of the Act had been met and this his personal identity and his identity as a national of Ukraine had been satisfactorily established.

With respect to his sexual orientation, the claimant alleged that he came to a full realization of and acceptance of his sexual orientation after a sexual encounter with his then supervisor, Mr. [redacted]. While the claimant ended this relationship after their first

encounter, he went on to have two full-blown sexual relationships with other young men in Ukraine.

In Canada, he is in a same-sex relationship with Mr. [REDACTED] is himself a successful refugee claimant. The two share an apartment situated at [REDACTED] Street in Toronto.

Based on the claimant's oral testimony and other evidence, the panel found that, on a balance of probabilities, the claimant was a homosexual and would be so perceived in Ukraine. The evidence before the panel included the claimant's oral testimony and written narrative, the testimony of [REDACTED], and the rental information sheet tendered in Exhibit C-3.

In his oral testimony, the claimant gave a graphic account of his first sexual encounter when Mr. [REDACTED] brought him, in his words, to the "powerful climax". He described the conflicting emotions he felt – satisfaction as well as guilt, and self-loathing at realizing that he was a homosexual, as well as his progress towards self-acceptance.

His partner, [REDACTED] provided details about their relationship that was consistent with the claimant's testimony about how they met and their current living relationship. The witness also provided the panel with additional details about their daily lives that afforded the panel insight into the relationship. The panel found that the witness provided his testimony in a straightforward and spontaneous manner, and therefore accepted his testimony as credible and trustworthy.

s.19(1)

For all the above reasons, the panel found that the claimant had established his identity and profile as a homosexual.

Credibility

The claimant alleged that due to his homosexual sexual orientation he was persecuted in Ukraine. His evidence was that he suffered two severe beatings at the hands of fellow students at his university. In addition to the beatings, the university authorities became involved in his personal life, warning him that he would be expelled from the university if he engaged in homosexual activities. These warnings caused his then partner, [REDACTED] to end their relationship. However, they were reunited after the claimant found him employment at his own place of work. [REDACTED]'s employment and their close proximity soon ignited the suspicion of co-workers, ultimately leading to his employer warning the claimant that he would lose his job if he were a homosexual. The developments at his workplace caused the claimant to re-assess the situation and ultimately to leave Ukraine.

The panel had a number of credibility concerns arising from certain aspects of the claimant's testimony, primarily his testimony that indicates that although he was aware of the risks involved and the possible consequence of having his relationship with [REDACTED] discovered, the two had engaged in sexual relations in a public place.

s.19(1)

When he was asked, the claimant explained that neither he nor [REDACTED] had an apartment of their own, but they usually lingered in the gymnasium where they were ultimately discovered after the other students left. He also stated that the gymnasium was cleaned only once a week and was usually deserted, and that on the evening in question, they believed themselves to be alone. The panel considered the claimant's explanations and found that it would give him the benefit of the doubt, as the panel concluded that it was possible that events unfolded in the manner described by the claimant.

Other aspects of his testimony giving rising to credibility concerns included his testimony of the discussion he had with the [REDACTED] of the university, as well as his testimony about the identities of his assailants.

The claimant's oral testimony about his talk with the [REDACTED] was inconsistent with his written narrative. In his Personal Information Form (PIF),¹ he stated that this talk came after the first beating and his release from hospital. However, he testified that the [REDACTED] did not speak to him until after the second beating which occurred outside a classroom. While counsel argued that the claimant's written narrative could equally relate to the second beating and that there was no inconsistency, the panel was of the view that the statements in his narrative, respecting the sequence of events are clear and unambiguous and that his oral testimony contradicted his written narrative in this regard.

s.19(1) Exhibit C-1

s.19(1)

The claimant was given an opportunity to explain the inconsistency. However, his only explanation was that it was a mistake and that the talk with the did not happen until after the second beating. On considering the claimant's explanation, the panel rejected it, as it concluded that the sequence of events as set out in his PIF flowed logically and did not admit of the claimant's oral testimony. Also, in light of the fact that he acknowledged that the PIF was translated to him before he signed it, the panel found that it was reasonable to expect that the claimant would have pointed out the inconsistency to the translator, a point to which he responded with stony silence, thereby reinforcing the panel's view of the evidence.

The panel also had concerns about his testimony that he did not know the names of his attackers and that he took no steps to find out their names because he was afraid. The panel found that this did not accord with common sense or his testimony that he had seen them at least twice a month in the gym prior to the beating. The panel found that in these circumstances, it was reasonable to expect that he would know the names of some, if not all, of his alleged assailants.

In assessing the claimant's testimony overall, the panel found that there were numerous instances where the claimant gave inconsistent testimony, added to his narrative, or was either non-responsive or evasive in his responses, or was unable to provide a satisfactory explanation for the inconsistency or omission. This led the panel to conclude that the claimant had embellished his testimony significantly.

Nonetheless, in assessing the totality of its findings, in light of its earlier finding that the claimant was a homosexual, the panel concluded that, given the documentary evidence on the treatment of homosexuals in Ukraine, there was a serious possibility that the claimant would suffer persecution in Ukraine.

While the documentary evidence indicates that there is a fledgling homosexual community in Ukraine, particularly in Kiev and Kharkov, it also indicates that public attitudes towards homosexuals are less than tolerant in western Ukraine where the claimant lived.²

The claimant testified that on one occasion when he sought police protection, he was refused assistance, as the police had already spoken with his assailants and preferred their version of events. The panel finds this to be in keeping with the documentary evidence³ which indicates that police assisting harassed gays and lesbians is almost unheard of. For these reasons, the panel concluded that state protection would not be available to the claimant.

² Exhibit R-1, 2.8, 28.5.1

³ Exhibit R-1, 28.5.1

Based on the above analysis, the panel concluded that the claimant had successfully discharged the onus upon him to establish that there is a serious possibility that he would be persecuted should he return to Ukraine because of his sexual orientation. For these reasons, the Refugee Protection Division accepts this claim for refugee protection.

"Hazelyn Ross"

Hazelyn Ross

DATED at Toronto this 4th day of February, 2004