



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  
**TA2-26377**

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

**June 24, 2003**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**July 10, 2003**

DATE DE LA DÉCISION

CORAM

**D. Morrish**

CORAM

FOR THE CLAIMANT(S)

**No Counsel**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

**No RPO**

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 for the decision that [redacted] is not a Convention refugee or person in need of protection as defined in sections 96 and 97 of the Immigration and Refugee Protection Act (IRPA).

### ***Basis of the Claim***

The evidence reveals that the claimant, a 32-year-old citizen of Costa Rica, claims to have a well-founded fear of persecution by police and homophobic members of society at large because of his membership in a particular social group, that being, homosexuals. In addition, he claims to be a person in need of protection in that he claims to be at risk of losing his life or being subjected to cruel and unusual treatment or punishment in Costa Rica.

### ***Synopsis of the Story and Allegations***

The claimant was married to a woman when he met "[redacted]" and developed a sexual relationship with him. In [redacted] 1995, she discovered this relationship and the couple separated and later divorced. The claimant's ex-wife's brothers began to harass the claimant from [redacted] 1996. As a result, he lost every job he got, was threatened and beaten up several times. After the last beating, the claimant decided to leave Costa Rica and come to Canada. He did so on [redacted] 2002. He made a claim for refugee status on [redacted] 2002.

### *Analysis and Finding*

The panel finds that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution in Costa Rica. The panel also finds that the claimant is not a person in need of protection in that his removal to Costa Rica would not subject him personally to a risk to life or to a risk of cruel and unusual treatment or punishment. My reasons are as follows.

### State Protection

The determinative issue in this claim is whether state protection would be forthcoming. Even if the panel found the claimant's evidence to be credible, the documentary evidence clearly indicates that state protection would reasonably be available to homosexuals in Costa Rica. The panel finds that all of the requirements of section 97(1) of the IRPA, which defines a person in need of protection, have not been met. In particular, the presumption of state protection has not been rebutted. In assessing the availability of adequate state protection, the panel has perused the extensive documentary evidence<sup>1</sup> pertaining to the situation for gays in Costa Rica, the police mechanisms for lodging complaints of police abuse and the level of democracy in Costa Rica. The panel has reviewed the reasons of the RPD in decision TA0-15870<sup>2</sup> and adopts

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<sup>1</sup> Exhibit R-1, RPD Information Package, Costa Rica, Updated April 2003;  
Exhibit R-2, RPD Information Package, Costa Rica, December 2002.

<sup>2</sup> 2003.

the reasoning with respect to the issue of the availability of state protection for homosexuals in Costa Rica. In a nutshell, the above-cited analysis of the documentary evidence indicates that the thriving gay community in Costa Rica is not victim of systemic persecution by the authorities or by society at large. The claimant did not go to the police to report any of the incidents because he believed that the police would not pay attention to a family situation. The claimant did not approach any other NGO's, Human Rights groups, Gay rights groups or the Office of the Ombudsman. The panel finds that the claimant made no effort to avail himself of state protection.

The panel finds that the claimant has not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect him. Accordingly, the panel finds that he does not have a well-founded fear of persecution in Costa Rica based on his sexual orientation.

***Conclusion***

Based on the foregoing analysis, the Refugee Protection Division determines that the claimant, \_\_\_\_\_ is neither a Convention refugee nor a person in need of protection.

\_\_\_\_\_  
"D. Morrish"

D. Morrish

DATED at Toronto, Ontario this 10<sup>th</sup> day of July 2003

s.19(1)