



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  
TA3-18779

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

**April 20, 2004**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**May 13, 2004**

DATE DE LA DÉCISION

CORAM

**M. Freilich**

CORAM

FOR THE CLAIMANT(S)

**No Counsel**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

**Douglas Baker**

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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These are the reasons for the negative decision of the Refugee Protection Division (RPD) with respect to the claim of (the claimant), a 19 year-old citizen of the Poland. The hearing for this claim was held pursuant to section 170(b) of the Immigration and Refugee Protection Act<sup>1</sup> (IRPA).

The claimant alleged that she has a well-founded fear of persecution if she were to return to Poland by reason of her sexual orientation as a bi-sexual.

The claimant appeared without counsel. Accordingly, the panel confirmed that the claimant was aware that she was entitled to be represented by counsel. The claimant advised the panel that he was prepared to represent him/herself at the hearing.

The claimant asked to have her friend, attend the hearing as an observer, which the panel allowed. During the hearing, the observer became agitated and indicated that she was unhappy with the interpretation and angrily left the hearing room. Upon the observer's departure, the panel inquired as to whether the claimant felt that she was being understood and that she had understood the questions that were being translated to her. The claimant stated that she did understand and felt that she had no difficulty in continuing with the interpreter that the Board had provided.

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<sup>1</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27.

**DETERMINATION**

The determinative issues in this claim is whether the claimant has rebutted the availability of adequate state protection in Poland and whether the claimant is a Convention refugee or a person in need of protection.

Having considered the totality of the evidence, the panel finds that the claimant has not rebutted the presumption of state protection and is neither a Convention refugee nor a person in need of refugee protection.

**ANALYSIS**

The panel accepts the claimant's identity as a national of Poland, which was established by her testimony and the supporting documentation filed, namely a certified true copy of the claimant's Poland passport submitted by CIC<sup>2</sup> (Citizenship and Immigration Canada). s.19(1)

In the claimant's Personal Information Form (PIF),<sup>3</sup> she stated that she was a bisexual and that she had boyfriends and girlfriends and experimented with her sexuality upon entering high school. The claimant stated that she lived in a small town of approximately 1 individual, called , near the

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<sup>2</sup> Exhibit R/A-2.

<sup>3</sup> Exhibit C-1.

In oral evidence, the claimant stated that at the age of 13 or 14, she began to notice that she was interested in woman as well as men. The claimant stated that in Poland, most of the people are Catholic fanatics who are intolerant of other people or other opinions.

The claimant alleged that her friends in school knew that she was different from the way she dressed, which was more like a man, and that she did not follow women's fashions. The claimant alleged that she had a three-month relationship with a twenty s.19(1) year-old girl named but they never lived together and as far as she knew, her schoolmates did not know about the relationship.

Before coming to its determination, the panel has taken into consideration the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution<sup>4</sup> issued by the Chairperson.

The claimant alleged that in 2003, while returning from school, she was attacked by a group of six young individuals, two of whom she knew from school, who pulled her into the stairway, held her hand down, and humiliated her by cutting off her hair to make her look more like a man because of her alleged gay tendencies. The claimant stated that she did not require any medical attention as a result of this incident.

<sup>4</sup> Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to Section 159 (1)(h) of the Immigration and Refugee Protection Act.

The panel finds that the one incident where the claimant had her hair cut off by neighbours falls under the category of discrimination and does not reach the level of persecution.

The panel looked at the test of what constitutes persecution, and was guided by a very helpful section in the UNHCR Handbook that helps us distinguish between persecution and discrimination:

54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination leads to consequences of a substantially prejudicial nature for the person concerned. For example, serious restrictions on his right to earn his living, his rights to practice his religion or his access to normally available educational facilities.<sup>5</sup>

To be considered persecution, the mistreatment suffered or anticipated must be serious and in order to determine whether particular mistreatment would qualify as serious, one must examine what interest of the claimant might be harmed and to what extent the subsistence, enjoyment, expression or exercise of that interest might be compromised. The dominant view is that refugee law ought to concern itself with actions which deny human dignity in any key way and that the sustained or systemic denial of

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<sup>5</sup> Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva 1992, paragraph 54.

core human rights is the appropriate standard, which the panel finds does not exist in this particular case at bar.

The claimant stated that after the incident she went home. The claimant stated that she did not want to go to the police because she knew that the police would not do anything about the incident. However, her mother insisted and two or three hours later, she went to the police with her mother and filed a report. The claimant stated in oral evidence that the police were nice enough to take the report but that he told her that there was nothing in Polish law to allow him to help her.

The panel notes that the claimant's oral evidence that the police were very nice to her and took a report from her regarding the incident, contradicts the evidence in her PIF where she stated that when she went to the police, they simply laughed at her and told her that gays have no rights in Poland. When asked what she told the police when they inquired why she thought the incident occurred, the claimant stated that the police did not ask her why the incident happened but that her mother told the police that she had been attacked because she was a bi-sexual. When asked to explain the discrepancy, the claimant stated that she may have misunderstood and that what she meant was that the policeman nicely took the report but he did not want to help her because she was a bi-sexual.

### STATE PROTECTION

The panel finds that the main determinative issue is whether the Polish Government is making serious efforts to provide adequate protection individuals to individuals who suffer from spousal abuse in Poland. There is an expectation that individuals will first seek national protection before seeking international protection. The claimant has the burden of rebutting the presumption of state protection...the claimant must present "clear and convincing proof" of the state's inability to protect.<sup>6</sup> The Federal Court of Appeal in Villafranca<sup>7</sup> states:

No government that makes any claim to democratic values or protection of human rights can guarantee that protection of all of its citizens at all times. Thus, it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation.

... where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection. [emphasis added]

The panel does not find that the claimant has rebutted the presumption of state protection. The panel finds that when the claimant and her mother went to the authorities to report that a group of young individuals had held her down and cut her hair, they were

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<sup>6</sup> Canada (Attorney General) v. Ward [1993] 2 S.C.R. 689.

<sup>7</sup> Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.)

not dismissed by the police. The panel finds that the police did take her report, even though they indicated to her that the episode of her having her hair cut, in connection with the fact that, as the claimant stated in oral evidence, sustained no injuries, was not of sufficient seriousness for the authorities to peruse the perpetrators.

The panel accepts that Poland has experienced difficulties in regard to homosexuals in Poland in the past. However, the panel finds that Poland is a multiparty parliamentary democracy in which the Prime Minister, the Council of Ministers, shares executive power and, to a lesser extent, the President...Internal security forces consist of local police, a national office of investigation, and city guards, who are uniformed, unarmed officers. The armed forces were subject to effective civilian control.<sup>8</sup>

The panel takes guidance from the International Lesbian and Gay Association World Legal Survey<sup>9</sup> that homosexuality was decriminalized in 1932, establishing an equal age of consent of 15 years regardless of the sexual orientation. The panel finds that in April 1995, the Constitutional Committee of the Polish Parliament proposed that the anti-discrimination clause of the constitution include protection from discrimination on the grounds sexual orientation. This proposal met with strong opposition and was finally approved by Parliament in March 1997. As well, a gay and lesbian magazine called *Filo* published since 1986. *Lamda*, an association of groups, obtained legal registration in

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<sup>8</sup> Exhibit R/A-3.

<sup>9</sup> Exhibit R/A-1, item 3.1, p. 3.1.1.

February 1990. The Gay State of the World 1997 ranks Poland in the category of states where homosexuals relations are legal.<sup>10</sup>

The panel finds that if the claimant was in fact involved in a bisexual life-style, there was sufficient opportunity for her to find associations in Poland that would be of assistance and/or supportive her and that the Polish Government has passed ample legislation that provides for protection for citizens of Poland who are either homosexual, lesbian or bi-sexual individuals.

After careful consideration of the totality of the evidence and because of the reasons set out above, the panel finds that the availability of state protection in Poland has not been rebutted and that the claimant does not have a well-founded fear of persecution by reason of any of the Enumerated Grounds. The panel finds that the claimant is not a Convention refugee.

Having found that the claimant is not a Convention refugee, the panel also considered the applicability of subsections 97(1)(a) and 97(1)(b) of the Immigration and Refugee Protection Act (IRPA), and finds that the claimant has failed to establish that she meets the higher threshold of harm or a risk to her life or a risk of cruel and unusual treatment or punishment or that the evidence would support a finding that the claimant faces a danger of torture. Therefore, the claim also fails under section 97 of the Immigration and Refugee Protection Act (IRPA).

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<sup>10</sup> Exhibit R/A-1, item 3.2, Information Request POL29628.E, p. 3.2-1.

**CONCLUSION**

For these reasons, the Refugee Protection Division determines that the claimant,  
is not a Convention refugee nor is she a person in need of  
protection. The Refugee Protection Division rejects her claim for refugee protection.

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"M. Freilich"  
M. Freilich

DATED at Toronto this 13<sup>th</sup> day of May, 2004.