



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
TA3-03447

CLAIMANT(S)

1

DEMANDEUR(S)

DATE(S) OF HEARING

29 September 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

1 October 2003

DATE DE LA DÉCISION

CORAM

H. Aulach

CORAM

FOR THE CLAIMANT(S)

n/a

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

n/a

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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s.19(1)

While working as a _____ in _____ 1997, the claimant began an affair with _____ a woman, the end product of which was a daughter. Shortly after the birth of his daughter, the claimant met one _____ a man. The end product of that was grief. After a particularly trying evening, where the police detained them briefly and mistreated them, the claimant wanted to leave _____. The latter was, however, not prepared to leave him. He accosted the claimant, threatening him and his family with harm if they did not get back together. Moving his family to the capital, the claimant came to Canada for protection.

The main issue is that of protection. The Supreme Court of Canada has stated in *Ward*¹ that a presumption of state protection exists in every claim unless there is "clear and convincing evidence" to the contrary. In this claim, there is no "clear and convincing" evidence to the contrary. Rather, the evidence points to the claimant not fully exploring avenues of protection reasonably open to him in Costa Rica.

He did not, for example, go to the police. No persuasive reason was given for that.² In *Kadenko*,³ the Federal Court of Appeal has held that:

¹ *Canada (Attorney General) v. Ward*, [1990] 2 F.C. 667; 67 D.L.R. (4th) 1; 10 Imm. L.R. (2d) 189 (C.A.).

² When asked why he did not do so, he said that he did not want to admit his bisexuality to the police. The police, in any case, he said would do nothing. In Costa Rica, the police protect the criminals and punish the innocent.

³ *M.C.I. v. Kadenko, Ninal* (FCA, no. A-388-95), Hugessen, Decary, Chevalier, October 15, 1996. Reported: *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (FCA)

When the state in question is a democratic state...the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the sources of action open to him or her.

Costa Rica is a functioning democracy with a freely chosen government where "the law and judiciary provide effective means of dealing with individual instances of abuse."⁴ The claimant fell far short of what is required by *Kadenko*. His efforts at securing state protection were non-existent. The claimant has not adequately explored avenues of protection reasonably available to him in his own country respecting his threat from his former lover. It is thus premature for him to turn to Canada for surrogate protection.

With reference to the claimant's complaint of discrimination, instances of discrimination can and do occur. Occasionally gays are physically mistreated. The Ombudsman still regards them to constitute a vulnerable group.⁵ Nevertheless, this is a far cry from concluding that gays are persecuted or face persecution in Costa Rica, or even a serious possibility thereof. There is a general preference amongst gays to stay in the closet not because of the threat of persecution but because of a reluctance to bring shame to their families⁶ or risk losing their jobs. The claimant may have suffered

⁴ Exhibit R-1, U.S. DOS Country Reports on Human Rights Practices (2002).

⁵ Exhibit R-1, page 180, Response to Information Request CRI38683.E, 7 June 2002

⁶ Exhibit R-1, page 184

discrimination with respect to his work place. I do not however find this discrimination to be persecution, even on a cumulative basis.

Accordingly, the claim for refugee protection is rejected.

"H. Aulach"
H. Aulach

DATED at Toronto this 1st day of October, 2003.