



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
TA2-14149
TA2-14150
TA2-14151
TA2-14152
TA2-00256

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a.

)

s.19(1)

(a.k.a.

)

DATE(S) OF HEARING

29 October 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

7 November 2003

DATE DE LA DÉCISION

CORAM

George A. Griffith

CORAM

FOR THE CLAIMANT(S)

El Farouk Khaki
Barrister and Solicitor

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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, the principal claimant, her spouse

“the male claimant”, and their children

“the female minor”,

“the second female minor”, and

, “the male minor”, are citizens of Costa Rica who

claim to be Convention refugees on a well-founded fear of persecution by reason of their membership in a particular social group. In addition, all claimants allege that they are persons in need of protection, as persons in danger of being tortured or at risk of lives or being subjected to cruel and unusual treatment or punishment in Costa Rica.

The male claimant was designated representative of the minor claimants.

Summary of Allegations

The male claimant is bisexual. He married the principal claimant in 1990 when he was 18 years of age. He continued having homosexual relationships, and now fears harm by a Priest, named Father [redacted] who is obsessed with him and with whom he once had a full-fledged relationship.

The relationship has deteriorated, as Father [redacted] became too controlling and possessive, even wanting the claimant to desert his spouse and family. The rejection of those wishes brought on threats and reprisals from Father [redacted]

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For example, the claimant alleges that he received a gunshot wound from an unidentified shooter and subsequently Father [redacted] called to indicate that it was a warning and a message. They argued during that telephone call.

The male claimant received medical treatment and also made a denunciation to the OIJ. The male claimant then made plans and travelled to Canada in [redacted] 2001. He was detained on arrival and kept for 74 days. While in Canada, he was informed by his spouse that there were calls from persons seeking his whereabouts.

The principal claimant, too, alleges that she was the subject of intimidation and threats. In [redacted] 2002, in Costa Rica, she was stopped, grabbed and pulled into an alleyway and questioned about the whereabouts of her spouse. She was threatened with harm if she did not tell the truth. Thereafter, she received many anonymous calls, and she was asked to communicate with her spouse and have him come back to Costa Rica.

The principal claimant alleges that, while plans were being made for her to come to Canada, in [redacted] 2002 she was accosted by the same person who questioned her in [redacted] 2002. She was asked whether she had conveyed the previous message to her spouse, the male claimant, and she was warned that the next time they would be speaking to one of the minor claimants. She promised to comply, but immediately changed

residence for her safety. With arrangements made by her spouse, she travelled to Canada on June 12, 2002.

Analysis/Decision

I find that the claimants' fear is not linked to their gender or sexual orientation or to any of the other Convention grounds, and that they merely fear criminal activity and a personal vendetta by Father and his accomplices. In several decisions,¹ the Court has held that the threat of assault, the use of violence and private vendettas are crimes and not acts of persecution within the meaning of the Convention unless there is a nexus to one of the Convention grounds.

I also find that the claimants face no serious possibility² or reasonable chance of harm or risk to their lives in Costa Rica, as state protection is available to them in that place. The determinative issue is the availability of state protection to the claimants and I note the following.

¹ Abrego Paz, Apolonio v. M.E.I. (F.C.A., no. A-348-91), Hugessen, Linden, Holland, February 18, 1993; Atwal, Mohinder Singh v. M.C.I. (F.C.T.D., no. IMM-6769-98), Nadon, November 17, 1999; Pierre-Louis, Edy v. M.E.I. (F.C.A., no. A-1264-91), Hugessen, MacGuigan, DéÉp, April 29, 1993

² Adjei v. Canada (Minister of Employment and Immigration), [1989] 2 F.C. 680; (1989), 7 Imm. L.R. (2d) 169 (C.A.)

The Court³ holds that states are presumed to be able to protect their citizens and that a claimant who seeks international protection has the onus of presenting “clear and convincing” proof or confirmation of the state’s inability to protect. In this regard, I note that the availability of state protection in Costa Rica, in the context of criminality and violence has been comprehensively analyzed in RPD Decision/Reasons TA2-14980.⁴ The facts and the evidence regarding country conditions and state protection for claimants fearing criminal violence in that decision are sufficiently close to those before me, and the reasoning applies to the facts in this claim. I adopt that reasoning, and therefore, I conclude that the principal claimant,

and the male claimant,¹ are not Convention refugees, or persons in need of protection, and I reject their claims.

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³ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689 D.L.R. (4th) Imm.L.R. (2nd) 85

⁴ Ibid., item #1, Immigration and Refugee Board, RPD TA2-14980, 2003, a Jurisprudential Guideline identified by the Chairperson pursuant to s. 159(1)(h) of the Immigration and Refugee Protection Act.

I also conclude that the minors,
and are not Convention refugees or
persons in need of protection and I reject their claims.

"George A. Griffith"
George A. Griffith

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DATED at Toronto this 7th day of November, 2003.