



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE
HUIS CLOS
TA3-15691

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

20 January 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

22 January 2004

DATE DE LA DÉCISION

CORAM

E.S. Schlanger

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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is a 23-year-old citizen¹ of Costa Rica who claims to have a well-founded fear of persecution for reasons of his membership in a particular social group, namely bisexuals. He also claims protection as a person in danger of torture and as a person who faces a risk to life or a risk of cruel and unusual treatment or punishment. He alleges that because of his sexual orientation, his family has rejected him and mistreated him, his uncle . has hit him on various occasions, his father has threatened to kill him (the claimant) and people have insulted him. He alleges that state protection is not available to him. He left Costa Rica on 2003 and made a refugee claim on July 28, 2003.

The determinative issue is state protection.

The panel considered² whether the *Jurisprudential Guides*³ decision TA0-15870 applies in this case and determines that the facts and the evidence regarding country conditions in this particular claim are sufficiently close to those before the panel in RPD decision TA0-15870 because 1) they both deal with Costa Rican claimants seeking protection due to their sexual orientation, and 2) the issue in both is the determination of the availability of state protection for sexual minorities. In addition, the panel assessed the April 2003 RPD Information Package⁴ which was not before the *Jurisprudential*

¹ Exhibit M-1-A photocopy of pages of the claimant's Costa Rican passport was certified true by Canada Immigration

² http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

³ RPD no. TA0-15870, , March 31, 2003.

⁴ Exhibit R-1

Guide panel. In reaching its decision, the panel has assessed the claimant's own experiences in the context of the entirety of the evidence.

The panel adopts the reasoning in RPD decision TA0-15870 as that reasoning, which has been comprehensively analyzed, applies to the facts of this claim.

In the case at bar, the claimant testified that when he reported to the police on three occasions (beginning of 2002, mid-2002 and two days later) that his uncle had offended him and beaten him because of his sexual orientation, the police told him that they would investigate but never did anything. He testified that the last time, the police had brought him together to talk with his uncle but nothing resulted and his uncle then left. He testified that he did not report to the Ombudsman the police inaction because he was ashamed. He did not report to the police that his father had beaten him because of his sexual orientation one month before coming to Canada because his father who never lived with the family was ashamed of him and would kill him.

Considering the available recourses to deal with violence against sexual minorities in Costa Rica, the panel finds that the claimant ought to have pursued them rather than taking the extreme measure of seeking protection abroad.

The panel also considered the family rejection that the claimant experienced as well as the insults by society at large. However, the panel finds that the discrimination he experienced did not amount to persecution.

The panel considered that Costa Rica⁵ is a longstanding, stable, constitutional democracy with an independent judiciary providing effective means to deal with individual cases of abuse. In the context of the country of origin, and in the circumstances of this claimant in particular, the panel finds that the claimant has not taken all reasonable steps to seek protection in Costa Rica. Therefore, it finds that he has not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect him.

Having considered all of the evidence, the panel finds that the claimant is not a Convention refugee and that he is not a person in need of protection pursuant to section 97(1)(a) or (b) of the *Immigration and Refugee Protection Act* (IRPA).

s.19(1)

Accordingly, the panel rejects the claim of . for refugee protection.

"E.S. Schlanger"
E.S. Schlanger

DATED at Toronto this 22nd day of January 2004

⁵ Exhibit R-1, item 2.1, p. 32, U.S. Department of State Report, Country Reports on Human Rights Practices, 2002, Costa Rica, March 2003.

