



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
TA2-08810
TA2-08842
TA2-08843
TA2-08844

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

April 9, 2003
January 7, 2003
October 17, 2002

DATE(S) DE L'AUDIENCE

DATE OF DECISION

April 17, 2003

DATE DE LA DÉCISION

CORAM

Paul Ariemma

CORAM

FOR THE CLAIMANT(S)

Sam Nagendra

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

B. MacLean

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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58 (the male claimant), his 46 year-old wife (the female claimant) and their minor daughters 10 year-old and 8 year-old are citizens of Hungary. They claim to have a well-founded fear of persecution in Hungary by reason of the male claimant's perceived political opinion and his sexual orientation. For the same reasons, they also claim to be persons in need of protection pursuant to sub-sections 97(1)(a) and 97(1)(b) of the Immigration and Refugee Protection Act.

Although the female claimant gave a brief testimony, she and the children rely on the evidence of the male claimant.

The male claimant alleges that they are persecuted because his father was an army officer and a of the communist party. He also alleges persecution because he is homosexual. The male claimant sets out the basis for their claims in two narratives.¹ In these two documents, the male claimant relates events that led him and his family to leave their country. The claimants arrived in Canada on 2001 and the following day claimed refugee status.

s.19(1)

¹ Exhibit C-1 and C-5.

ANALYSIS:

Regarding identity, the panel finds that the documents on file² establish satisfactorily the identity of the claimants. With respect to the sexual orientation of the male claimant, the panel finds that he is not homosexual.

The panel finds that the male claimant has failed to establish the basis of his claim by reason of his perceived political opinion and by reason of his sexual orientation. The panel is of the view that the male claimant's story is a total fabrication.

At the hearing, the male claimant was not able to give any substantive evidence to support his allegations. When asked about particulars of his story, the male claimant gave evasive, convoluted and obscure answers. He stated that he feared a politician but was unable to give the name of the political party of that person. He stated that the party was part of the third party which was split into three parts according to where "they" lived.

As convoluted as this answer may appear to be, it was not atypical of the claimants' testimony.

"They" was a term used frequently by the male claimant. "They" are against the communists, he said. It must be noted that the claimant stated also that he is not a communist but he is perceived as such because of his father. However, in her brief

testimony, the female claimant was asked who she feared if she were to return to Hungary. Her answer was: "The communists". This, of course, is diametrically opposite to her husband's contention. Also, when asked further who would harm her, she stated that she did not remember the exact name. Eventually, she just remained silent when asked additional questions in this regard.

The evidence of the male claimant with respect to his sexual orientation was no less convoluted and untrustworthy. He simply had no idea of any establishment for homosexuals in his country.

Setting aside the fact that since their marriage in 1990, the male claimant and his wife have lived together and have two young children, it is possible that he might harbour some homosexual tendencies. Although the panel does not believe that the claimant is homosexual, even if we were to accept that perhaps he is bi-sexual, clearly he could have not been the victim of assaults on account of his sexual orientation, as he alleges, because he maintained that his homosexual inclination was kept secret.

Before concluding, the panel notes that notwithstanding all the alleged problems, the male claimant stated that only once he went to the police to complain and that was in 1990.

² Exhibit M-1.

Clearly in view of this, the male claimant also fails in establishing that he and his family could not avail themselves of the protection of the State in their country. His evidence is insufficient to rebut the presumption that the State would be able to provide adequate protection to them.

In conclusion, the panel finds that the claimants would not be faced with a serious possibility of persecution or a serious possibility of risk to life or of cruel and unusual treatment or punishment or danger of torture if they were to return to Hungary.

For these reasons, the panel rejects their claims and determines that _____ and _____ are not Convention refugees and are not persons in need of protection pursuant to sub-sections 97(1)(a) and (7)(1)(b) of the Immigration and Refugee Protection Act.

“Paul Ariemma”
Paul Ariemma

DATED at Toronto this 17th day of April, 2003.

s.19(1)