



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
TA2-26361

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

27 October 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

27 October 2003

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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s.19(1)

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3 alleges that he is a 39 year-old divorced citizen¹ of Costa Rica. He claims to have a well-founded fear of persecution at the hands of the police and society based on his membership in a particular social group, namely bisexuals.

He alleges that police officers have harassed, beaten, and extorted him. He alleges that he was harassed by co-workers which led to employers to ask him to resign. He alleges that he left Costa Rica on 2002, and remained in the U.S. until 2002, when he came to Canada. He alleges that he made a refugee claim on 1, 2002.

The Chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act*² to identify decisions of the Board as *Jurisprudential Guides* to assist members in carrying out their duties. The Board's *Policy on the Use of Jurisprudential Guides* is available on the Board's website.³ Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as *Jurisprudential Guides*.⁴ Members are to consider and follow these decisions when determining claims in which the availability of state protection in Costa Rica is the determinative issue in claim profiles of risk due to sexual orientation or general

¹ Exhibit M-1-A certified true copy of the claimant's passport was submitted by Immigration.

² S.C. 2001, c. 27

³ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁴ RPD no. TA0-15870, 2003 and RPD no. TA2-14980, 2003.

criminality.⁵ The first question the panel has to determine is whether decision TA0-15870 applies in this case.

The panel determines that the facts and the evidence regarding country conditions in this claim are sufficiently close to those before the panel in RPD decision TA0-15870 because they both deal with Costa Rican claimants seeking protection due to their sexual orientation, and the issue in both is the determination of the availability of state protection for sexual minorities. In addition, the panel assessed the claimant's evidence and the April 2003 RPD Information Package⁶ which were not before the *Jurisprudential 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 determinative issue in this claim is the availability of state protection for this particular claimant. 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 he never reported to any state authorities that he was abused and extorted by the police because he believes that they are the abusers. Considering the recourses available to deal with such abuse, the panel finds that he ought to have reported to the OIJ, the Ombudsman, the Constitutional

⁵ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁶ Exhibit R-1

Court or the Ministry of Security before taking the extreme measure of seeking international protection. Concerning the harassment he experienced at work at the hands of co-workers, the panel finds that it does not amount to persecution. Concerning his employers asking him to resign, he had the option of reporting to the Ministry of Labour.

The panel considered that Costa Rica⁷ 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).

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

"E.S. Schlanger"

E.S. Schlanger

DATED at Toronto this 27th day of October, 2003.

⁷ 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.

