



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
TA4-04856

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

2 July 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

7 July 2004

DATE DE LA DÉCISION

CORAM

George A. Griffith

CORAM

FOR THE CLAIMANT(S)

Rev. Daniel Earl McLeod

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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"the claimant", is a 23- year-old citizen of Costa Rica and he claims refugee protection pursuant to ss. 96 and 97 (1) of the Immigration and Refugee Protection Act (IRPA). He claims protection because of his sexual orientation, being homosexual.

ALLEGATIONS

The claimant alleges the following.

When he was growing up, he felt that he was sexually attracted to boys. At the early age of eleven he began a homosexual affair with his friend For that, he experienced problems at his school. He was once expelled, having been caught in an intimate contact with As well, that incident caused him to be verbally and physically abused by his parents when they discovered the cause of the expulsion.

The claimant developed a heterosexual relationship with his friend mainly to please his family, and the relationship produced a daughter. However, the claimant continued having homosexual relations, and he confessed to that he was bi-sexual. did not believe the claimant. Therefore, she was shocked and violently upset when, one day, she found the claimant in a sexual encounter with his lover The relationship between the claimant and became confrontational and there was an incident where she attacked him with a broken bottle. The claimant received a cut on his hand during the attack and he had to obtain medical help.

s.19(1)

When the police were called in by _____'s family, the family tried to have the claimant arrested and taken away for being a homosexual. The claimant alleges that his own family kicked him out of the family home, as his father considered that he had disgraced the family. s.19(1)

The claimant alleges that, in addition, the general situation of discrimination against homosexuals in Costa Rica caused him further distress and psychological tension. He alleges that, on one occasion, while leaving a discotheque, he was attacked and verbally and physically abused by three strangers. He was threatened with death because of his sexual orientation. Therefore, he decided to leave Costa Rica to seek protection in Canada. He had heard that Canada provides protection to gays and lesbians.

DETERMINATION

I find that, on the evidence, and with reference to the relevant statutory provisions and the case law, the claimant is neither a Convention refugee nor a person in need of protection, as adequate¹ protection is available to him in Costa Rica. The determinative issue is state protection. My reasons follow.

ANALYSIS

The claimant's identity as a national of Costa Rica is established by a copy² of his

¹ Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.)

² Exhibit R/A-2

national passport provided by Immigration Canada.

I accept that the claimant is a member of a particular social group on the basis of his sexual orientation. However, on the evidence, in my opinion, he has not established a valid claim, as he has not rebutted the presumption³ that state protection is available to him in Costa Rica.

In *Ward*,⁴ the Court has held that a state is presumed capable of protecting its citizens, and the presumption will only be rebutted by a claimant presenting “clear and convincing” proof or confirmation of the state’s inability to protect.

The Court, in *Kadenko*,⁵ also holds that where there has not been a complete breakdown of the governmental apparatus and where a State has political and judicial institutions capable of protecting its citizens, the refusal of certain police officers to take action does not suffice to establish that the state in question is unable or unwilling to protect its nationals.

The claimant has acknowledged that he neglected to make reasonable efforts to seek help of any police office or any police or judicial authority in Costa Rica. He contends that no help is available and that gays and lesbians are simply not accepted in

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

⁴ Ibid.

⁵ Canada (Minister of Citizenship and Immigration) v. Kadenko (1996), 143 D.L.R. (4th) 532 (F.C.A.)

Costa Rica. He alleges that he was aware that he could have sought help after the incident with the knife that involved . However, he believes that it would have been futile, since it was a woman that attacked him.

He alleges that he made a report to the police after the incident with the strangers outside of the discotheque, but that he made no follow up, when he was asked to provide some information about his attackers. In addition, when he was asked by the police whether he wished to lay charges against following the incident with the knife, he refrained from doing so.

On the evidence, therefore, the police in Costa Rica have not been negligent, and the claimant has failed to make reasonable efforts at seeking national protection in Costa Rica.

The claimant has an obligation that he has not met, as I note the documentary evidence⁶ which states that Costa Rica is a longstanding, stable, constitutional democracy with effective political and judicial systems. It is indicated⁷ that Costa Rican lesbians and gay men have legal protection, and that such a declaration is based on a series of legal rulings, on a judicial as well as administrative level, such as Supreme Court judgments.

s.19(1)

⁶ Exhibit R-1
⁷ Ibid.

As a further guide, I have considered *RPD Decision TA0-15870*⁸ in which there is a comprehensive analysis of the protection that is available to Costa Rican citizens fearing persecution or a risk to their lives because of their sexual orientation. The facts and country conditions in that decision⁹ are similar to those in this claim and I adopt the reasoning.

For these reasons, the claim is rejected.

"George A. Griffith"
George A. Griffith

DATED at Toronto this 7th day of July 2004

⁸ Exhibit R-2, item #1, Immigration and Refugee Board, RPD TA0-15870, [redacted] March 20, 2003, a jurisprudential guideline identified by the Chairperson of the Immigration and Refugee Board, pursuant to s. 159 (1) (h) of the Immigration and Refugee Protection Act (S.C. 2001,c.27)

⁹ Ibid.

s.19(1)