



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
TA2-15500

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a. .

)

DATE(S) OF HEARING

April 25, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

April 28, 2005

DATE DE LA DÉCISION

CORAM

David Cooke

CORAM

FOR THE CLAIMANT(S)

Ali Naqvi

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

F. Sarwat

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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s.19(1)

These are the reasons for the decision of the Refugee Protection Division (RPD) with respect to the refugee protection claim made by (the claimant), a 23-year-old citizen of Ecuador. The hearing for this claim was held pursuant to section 170(b) of the Immigration and Refugee Protection Act¹ (IRPA).

He crossed the border into Canada from the United States (US) in 2000 and made a refugee claim only after he was picked up by the police on an unrelated matter in 2002.

He bases his claim on being bisexual.

In his Personal Information Form² (PIF), he tells us of two incidents. One occurred when he was seventeen-years-old, which would be between 1998 and 1999. The second one is not dated and involves a man by the name of about whom he tells us he knows very little. is supposed to have confronted the claimant on a court, placed a gun in his mouth, and verbally abused him indicating that he, would be immune from prosecution for any of his actions because his brother was a police officer.

As for the first incident, the claimant indicates he did not go to the police and there is nothing to corroborate his claim.

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

² Exhibit C-2.

As for the second incident, while the claim was made in 2002 and the PIF was signed on 2002, the claimant presented his counsel with a copy of a couple of documents³ which purport to be requests for police investigation prepared by his lawyer only on the Friday before the hearing.

While the documents were presented only at the last minute, the panel admitted them on the basis that they are, or seem to be, material to the claim.

The Refugee Protection Officer (RPO) questioned the claimant on the facts. The claimant told the RPO that the second incident occurred approximately two weeks after the first. He then said, that the first incident occurred in the winter of 1999, perhaps in

The RPO then asked the claimant why the documents he had presented speak of the incidents involving having occurred in 2000. This story involves a gun being placed in the mouth of the claimant at the court and then coming to his home with two police officers who then tortured him. It is an identical story to the one he spoke of in his PIF. But the story in the PIF is supposed to have happened in 1999.

When asked about the discrepancy in the dates, the claimant said that the incident had happened twice. He was asked this repeatedly and he repeatedly indicated that the incident had happened in an exactly identical manner on two separate occasions.

³ Exhibit C-1.

Naturally, this led to the questions as to why in the document prepared by his lawyer there is no mention of the fact that the same incident had apparently occurred in an identical manner fifteen months earlier. His answer was that the matter was not mentioned because a denunciation had not been made the first time.

He was asked why the second incident was not included in his PIF. He indicated that he had told the translator about it. The panel finds this, to be somewhat unusual because the PIF had been sworn to as having been prepared in English by the claimant without need for translation. (He did use a translator during the hearing.)

The panel has to determine whether all this is plausible.

Is it plausible that two incidents so bizarre would have happened with exactly the same people, fifteen months apart, with the claimant not bothering to report the second one in his PIF and not bothering to report the first one in the document prepared by his Ecuadorian lawyer? The tardiness in obtaining a copy of the denunciation (we never saw the original) adds to the suspicion.

In assessing the standard of proof, the Federal Court Of Appeal pointed out in Orelien,⁴ that "one cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so, not just possibly so."

The claimant, who presents a somewhat macho image, may well be a bisexual person. The panel finds that it has not been shown, however, on a balance of

⁴ Orelien v. Canada (Minister of Employment and Immigration) [1992] 1 F.C. 592 (C.A.).

probabilities, that any of the events involving the mysterious or the police officers occurred. The panel comes to this conclusion, in part because it is perplexed by the fact that the claimant tells us that both times the incidents occurred in the Islands, and yet he sought redress in the city of . The panel suspects that the documents were merely prepared to attempt to falsely corroborate the information in the PIF. The claimant's story may have started to unravel when he was questioned by the RPO that he had indicated the events had occurred fifteen months before the dates in the documents.

The claimant is not a Convention refugee.

Having so found, it is still necessary to determine whether or not there is a specific risk to his life or to a risk of cruel and unusual punishment or treatment to him should he return to Ecuador.

The panel finds that the claimant knows absolutely nothing about . and that if he exists, has no particular reason to wish to do anything to the claimant over the long term. The claimant may be bisexual. If he is, the first incident about which he complained is one in which he apparently danced with a female in a gay club, thus indicating that he is quite comfortable, mixing his lifestyles and that he can do so without any serious fear of retribution.

s.19(1)

The claimant is not a person in need of protection.

"David Cooke"

David Cooke

DATED at Toronto this twenty-eighth day of April, 2005.