



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
TA4-06537

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a. _____)

DATE(S) OF HEARING

January 12, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

February 10, 2005

DATE DE LA DÉCISION

CORAM

V. Rangan

CORAM

FOR THE CLAIMANT(S)

**Maureen Silcoff
Barrister and Solicitor**

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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These are the reasons for the decision of the Refugee Protection Division (RPD) with respect to the refugee protection claim made by [REDACTED], a citizen of Mexico. The hearing for this claim was held pursuant to section 170(b) of the Immigration and Refugee Protection Act¹ (IRPA).

Allegations

The claimant, in her Personal Information Form² (PIF), alleges that while still a student at the university, she terminated her relationship with her female partner. On [REDACTED] 2002 the claimant met [REDACTED] a wealthy [REDACTED] from [REDACTED] and started dating him and later moved in with him. On [REDACTED] 2003, her boyfriend came to the house angry and physically assaulted her, resulting in injuries to her body. On the advice of her mother, to whom she ran for shelter, she went to the police station to make a complaint about her boyfriend.

At the police station, she was laughed at for being "gay". She then went to the doctor to have the injuries attended to. Her brother ostracized her and forced her mother to send her out of the house. Not having a place of her own, the claimant went to stay with her friend, [REDACTED]. After two days, her boyfriend came to her house with a firearm. She managed to escape to Cancun and stayed at her friend [REDACTED]'s place. The claimant worked while staying at [REDACTED]'s place in Cancun. On [REDACTED] 2003 her

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

² Exhibit C-1.

boyfriend followed her to Cancun, entered her friends house and assaulted . and the s.19(1)
claimant. When the neighbors came to help, he threatened them with a gun. Fearing for
her life, the claimant left Mexico for Canada.

Issues and Determination:

The determinative issues are state protection, credibility and internal flight
alternative (IFA). The panel determines the claimant not to be a Convention refugee or a
person in need of protection. Her claim therefore fails.

Analysis:

The claimant has identified her ex-boyfriend, as the agent of
persecution. The basis of his anger against the claimant is her past relationship with a
female partner. Counsel claims that although the claimant is not seeking Canada's
protection exclusively because of her sexual orientation, it is the origin of her problem.

The question then to be asked is whether a female Mexican citizen subject to
violence at the hands of her partner would be able to get state protection, in spite of her
sexual orientation. What sort of protection can the claimant expect from a country as an
abused woman? I have reviewed the documentary evidence presented for this claim and
find that the claimant was in a lesbian relationship for a brief period of seven months and
terminated that relationship. She then resumed a relationship with whom she
has identified as the agent of persecution.

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State Protection in Mexico for a Lesbian:

As a lesbian in Mexico, the claimant would have the protection of the state. Recent years have seen substantial political and legal gains for sexual minorities, particularly at the Federal level, in major metropolitan cities such as Mexico City and around tourist destinations such as Acapulco and Cancun. Although the society is highly homophobic, significant gains have recently been made in legislation at the national level and in several states and municipalities. In April 2003, the Mexican Congress approved the Law to Prevent and Eliminate Discrimination, which explicitly includes sexual orientation.³ The National Counsel Against Discrimination is charged with investigating discrimination.

Human Rights activists welcomed the legislation but voiced concerns about effectiveness. Gay magazine and photography are easily available for sale in kiosks and the authorities generally permit open displays of political activism, including protests and “gay” parades, and allow service organizations and “gay” bars to operate relatively unhindered in larger cities. Gays and lesbians are also invited to take part in educational programs and debates on television.⁴ The PRD control of the Federal District has brought a marked change in official attitude towards sexual minorities. The Human Rights

³ Exhibit R-1, National Documentation Package, November 26, 2004, item 6.1, Sexual Orientation and Human Rights in the Americas, December 2003, pp. 6.1.25 and 6.1.26.

⁴ Ibid., item 6.2, Question and Answer Series – Update on Treatment of Homosexuals, section V, Political and Legal Gains, p. 6.2.29.

Primer to Prevent Discrimination Based on Sexual Orientation begins by emphasizing that being homosexual, lesbian or trans-sexual is in no way an infraction of the law. It also acknowledges that these groups have been traditionally stigmatised, marginalized, even though from a legal standpoint, they enjoy the same rights as anyone else.⁵ The claimant can lead the life of a lesbian in Mexico City.

While the panel has determined that state protection would be available to the claimant as a homosexual, the issue before the panel is the abuse and problems she had faced as a result of her relationship with

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State Protection for the claimant abused by her ex-boyfriend in Mexico:

The claimant is alleging the need for refugee protection because she is a victim of domestic violence, which gives her claim a nexus to a Convention ground. I have taken the Chairperson's Gender Guidelines⁶ into consideration before rendering a decision in this claim. The claimant fears that she will be subject to serious harm at the hands of her ex-boyfriend, should she return to Mexico.

In order to be determined a Convention refugee or a person in need of protection, the evidence must establish that the claimant would face a serious possibility of persecution for a Convention ground or must establish that her removal to her country of

⁵ Ibid., at p. 6.2.30.

⁶ Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

nationality would subject her personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention Against Torture*; or (b) to a risk to her life or to a risk of cruel and unusual treatment or punishment.

The claimant has based her claim on her membership in a particular social group, that is, women who are abused by their spouses, partners or common-law spouses.

Counsel, in her submission states, that [redacted] is obsessed with her because he felt cheated. It was unacceptable to him that he had a relationship with a person who was also a lesbian. She also states that the origin of her problem is her sexual orientation. Of concern to the claimant is the absence of anti-stalking legislation.

[redacted] as per her allegations, stalked and followed her even when she moved away to Cancun to stay with friends. It has to be noted that during the course of the incident, her neighbors were witness to the assault. Her friend and her family were also at home and [redacted] threatened to seriously harm her friend with whom the claimant was staying. Yet none of them, neither the neighbors, the family nor the friend called the police for help. When questioned about it, the claimant stated that they did not complain because they suspected that the previous report made by the claimant had not been accepted and hence any further complaint would also be ignored. When the panel pointed out that this was a different matter, since they were witnesses and innocent bystanders were victims, she then stated that her friend's father had threatened to complain and [redacted] just laughed at him. It was an incident of magnitude and, therefore,

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it is only reasonable that help should have been sought. It does not seem reasonable that neither the claimant nor her friends and neighbors called for help. It does not also seem plausible that [redacted] who felt insulted, belittled and cheated for having a relationship with a lesbian would make it so public by openly attacking her in her friend's home. s.19(1)

The panel did not find the claimant's testimony that he followed her to Cancun to be credible. Even if he did follow her there, her testimony about her neighbors and friend not seeking assistance is not credible. In this case, it was a case of assault against her friend and her family who were a very well-established business family in Cancun.

Internal Flight Alternative:

The issue of IFA was addressed before and at the hearing. The claimant was questioned about it. The claimant stated that she could not relocate to any place in Mexico because her ex-boy friend was powerful and would therefore be able to find her. She testified that if she moves to Mexico City, he would follow her there also and hence did not perceive Mexico City as a viable IFA.

Mexico City is accessible to the claimant and there is no possibility of her suffering persecution there. In terms of reasonableness, the claimant, who travelled abroad to a country where she could not speak the language, should be able to relocate to Mexico City in her own country. According to a report, by early 2000, Mexico City had 50 centers dealing with domestic abuse cases and they handled 700 cases each day. To

quote a local activist, "the women who report abuse receive a guarantee that the authorities will investigate and follow through".⁷

Further, considering the possibility of her abuser persecuting her in Mexico City, the panel finds, on a balance of probabilities, that there is no serious possibility that he would do so. Further, the probability of the claimant being located in Mexico City, a city of 26 million people, where he would not even know she was there, is extremely low. It has to be noted that the panel did not find credible her statement that the perpetrator had followed her to Cancun. Nevertheless, if he were to locate her in Mexico City, the documents indicate that there is reasonable state protection available to her. Moreover, even assuming, without deciding, that state protection would not be reasonably forthcoming in Mexico City due to the presence and influence of the corrupt police officers pursuing and harassing the claimant, I am not convinced, within the preponderance of probability category,⁸ that the Mexican state would not be reasonably forthcoming with serious efforts to protect the claimant, if she were to contact the police in Mexico City now or at some time in the future, for relief from the corrupt police officers who would be influenced by her ex-boyfriend - a i The s.19(1) claimant has not yet done so, and there is nothing before me to convince me within the

⁷ *Supra*, footnote 3, item 5.11, Response to Information Request, number MEX36237.E, Domestic Violence and Remedies Available, March 20, 2001.

⁸ Xue, Jian Fei v. M.C.I. (F.C.T.D., no. IMM-4477-99), Rothstein, October 23, 2000, per Rothstein J.

preponderance of probability category that her ex-boyfriend would be able to influence any police response in Mexico City, which is quite obviously an entirely different police jurisdiction.

The PGR, which is the Federal Attorney General's Office, has extremely broad powers under Mexican Law.⁹ To report a crime or offence, as a victim or witness, in Mexico, one must make his/her case before the closest Public Ministry. In cases where complaints are ignored or processed by the authorities, one has recourse to the office of the Internal Comptroller of the PGR or the Attorney General of the Federal District (PGJDF).¹⁰

Further, given the extensive measures in place to deal with PGR misconduct, and the general "shake up" climate of the PGR, they would not at this time of serious introspection, grant him immunity from prosecution, if he were to assault the claimant.

There was no additional evidence regarding section 97 (1)(a)(b) of the IRPA, and hence the claimant's removal to Mexico would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment or even to a danger of torture.

⁹ *Supra*, footnote 3, item 7.5, Response to Information Request, number MEX36728.E, Criminality and Corruption, March 20, 2001.

¹⁰ *Ibid*.

Conclusion:

The panel determines the claimant not to be a Convention refugee or a person in need of protection. Her claim is therefore rejected.

"V. Rangan"
V. Rangan

DATED at Toronto this 10th day of February, 2005.