



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
TA3-09565

CLAIMANT(S)		DEMANDEUR(S)	
DATE(S) OF HEARING	March 17, 2004	DATE(S) DE L'AUDIENCE	
DATE OF DECISION	April 7, 2004	DATE DE LA DÉCISION	
CORAM	S. Alidina	CORAM	
FOR THE CLAIMANT(S)		POUR LE(S) DEMANDEUR(S)	
REFUGEE PROTECTION OFFICER		AGENT DE PROTECTION DES RÉFUGIÉS	
DESIGNATED REPRESENTATIVE		REPRÉSENTANT DÉSIGNÉ	
MINISTER'S COUNSEL		CONSEIL DE LA MINISTRE	

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is a 26-year-old citizen of Uruguay. The claimant claims to have a well-founded fear of persecution at the hands of his co-workers in the police force as well as his neighbours by reason of his sexual orientation, that being, a bisexual male.

In addition, he claims to be a person in need of protection, as a person in danger of being tortured or at risk of losing his life or being subjected to cruel and unusual treatment or punishment in Uruguay.

ALLEGATIONS

The claimant alleges that he is a male bisexual. He worked as a police officer in Uruguay. As a result of his sexual orientation, his neighbours and his co-workers in the police force mistreated him. He was physically abused by the police and harassed by his neighbours who also stoned him at times. Often he received prank calls and the callers made derogatory remarks against him.

ANALYSIS

The determinative issue in this case is credibility, whether the evidence adduced is credible and trustworthy. In the alternative, the panel also considered state protection for individuals similarly situated as the claimant in Uruguay. With regard to credibility, the

panel is aware that testimony given under oath is presumed to be true, unless there is a valid reason to doubt its truthfulness.¹

The panel is also aware that the real test of the truth of a story of a witness is that it be in harmony with the preponderance of probabilities which a practical and informed person would readily recognise as reasonable in that place and in those conditions.²

Furthermore, the panel cannot be satisfied that, "the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so".³

In reviewing the evidence, the panel considered the totality of the evidence adduced as well as the documentary evidence entered as exhibits.⁴ Because of the existence of a number of inconsistencies, the panel does not find the claimant to be a credible or a trustworthy witness. For example:

In his oral testimony and in his PIF narrative,⁵ the claimant indicated that he is a male bisexual, but at the Port of Entry,⁶ the claimant indicated that he was a homosexual. When asked to explain this discrepancy, the claimant was not able to provide a reasonable response. He said that he made a mistake at the Port of Entry.

¹ Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.).

² v. , [1952] 2 D.L.R. 354 (B.C.C.A.) at 357 per O'Halloran, J.A.

³ Oreijen v. Canada (Minister of Employment and Immigration) (1991), 15 Imm.L.R. (2nd) 1 (F.C.A.), at 11.

⁴ Exhibit R-1, Toronto Documentation Package – Uruguay, December 2003.

⁵ Exhibit C-1.

⁶ Exhibit R-2, Citizenship and Immigration Canada documents.

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The panel does not accept his explanation to be reasonable. Before signing the forms at the Port of Entry, the claimant declared that the information he had given was truthful, complete and correct. He also attested that he understood all the statements he had made and had obtained explanation on every point that was not clear to him. At the hearing, the claimant swore to the accuracy of his PIF. The panel is of the opinion that information about his sexual orientation is central and material to the claimant's claim. It is expected of him to provide consistent information about his sexual orientation. His failure to provide consistent information about his sexual orientation raises a serious doubt in the panel's mind as to whether the claimant is what he alleges to be.

Based on the evidence adduced, the panel has no persuasive evidence to indicate if the claimant is a male bisexual or a male homosexual. Therefore, the panel does not believe the claimant's allegations that he is a male bisexual or a male homosexual.

Furthermore, in his oral testimony and his PIF narrative, the claimant indicated that he fears his co-workers in the police force. Information given at the Port of Entry indicates that he fears unknown individuals who harassed him and threatened him and threw stones at his home. There was no mention about the claimant being targeted by his fellow police officers. When asked to explain this discrepancy, the claimant could not provide any reasonable response. He was very vague and evasive and avoided giving any reasonable response.

The panel is of the opinion that information about the claimant's agents of persecution is central and material to the claimant's claim, particularly when he testified that he feared his fellow policemen the most. It is expected of him to have mentioned

this information at the Port of Entry. Before signing the forms at the Port of Entry, the claimant declared that the information he had given was truthful, complete and correct. He also attested that he understood all the statements he had made and had obtained explanation on every point that was not clear to him. At the hearing, the claimant swore to the accuracy of his PIF. His failure to provide consistent information about whom he feared in Uruguay, raises a serious doubt in the panel's mind whether the claimant was ever targeted by his fellow policemen as alleged.

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Moreover, his oral testimony and his PIF narrative indicated that he was a policeman. In question 18, under his work history, the claimant does not mention that he ever worked for the police. When questioned to explain why he had not mentioned about working for the police under his work history, the claimant could not provide any reasonable response. He said that he did not know why this information was missed under his work history. When asked if he had any employment letter or any other document to prove that he worked for the police, the claimant indicated that he had a degree from the police academy. This information does appear in section 17, under Education and Skills in his PIF. The panel accepts his allegations that he attended the police academy, but it does not have any persuasive evidence to believe that the claimant worked for the police force in Uruguay.

Based on the evidence adduced, the panel does not believe that the claimant ever worked for the police in Uruguay; as a result, he could not have been mistreated by his fellow policemen.

Based on the totality of the evidence adduced and because of the presence of a number of inconsistencies, the panel finds that the claimant's evidence is not credible or trustworthy in areas central and material to this claim.

Therefore, the panel finds that there is not a serious possibility that the claimant will be persecuted for a Convention ground, should he return to Uruguay. The panel's credibility findings also apply to the claimant's assertion that he faces a risk to life or of being subjected to cruel and unusual treatment or punishment in Uruguay.

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Based on the following documentary evidence, the panel does not find lack of state protection for individuals like the claimant, in Uruguay. In regards to legal protection for sexual minorities, the documentary evidence⁷ also indicates that there is an abundance of legal jurisprudence in the country, and sexual minorities may rely on the appropriate legal safeguards for protection.

In regards to violent acts committed by reason of a victim's sexual orientation, the documentary evidence⁸ indicates that amendments to Penal Code articles 149.2 and 149.3 have been passed by the Parliament of Uruguay on July 10, 2003. The amended Penal Code punishes whosoever incites hatred, contempt or any moral or physical violence against one or more persons on account of their sexual orientation or sexual identity.

In regards to treatment of homosexuals, the documentary evidence⁹ indicates that there were no reports of raids on gay bars in Montevideo since 1997.

⁷ Response to Information Request URY37044.E.

⁸ Response to Information Request URY41914.E.

⁹ Response to Information Request URY39133.E.

The documentary evidence¹⁰ does indicate that Uruguayan society has strong homophobic traits. This contrasts with the liberal and progressive image that the country has projected since the beginning of the century in that the Uruguayan legislature is considered to be "front line" in its day.

Based on the documentary evidence, the panel does not have any persuasive evidence to suggest that the state authorities in Uruguay would not provide protection to the claimant.

It is obligatory upon the claimant, living in a democratic country, to seek protection from state authorities of the country of his nationality prior to seeking international protection. Evidence indicates that the claimant filed one report with his sergeant, and when he failed to obtain help, he did not did not make any effort to seek help from other state agencies. The panel finds, in this case, that the claimant simply did not reasonably exhaust all courses of action open to him in availing himself of state protection in Uruguay.

Based on the aforementioned documentary evidence, the panel finds that the state authorities are making serious efforts to provide protection to victims of violence because of their sexual orientation. Therefore, the panel finds that the claimant has not met the test of providing clear and convincing evidence of the state's inability to provide state protection to him. Accordingly, the panel finds that adequate, if not perfect, state protection is available to the claimant should he return to Uruguay.

¹⁰ Response to Information Request URY37044.E.

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As the material aspects of this claim are not credible, and adequate state protection is available to the claimant, the panel finds that there is not a serious possibility that the claimant would face persecution, a risk to his life, a danger of torture, or a risk of cruel and unusual treatment or punishment should he return to Uruguay.

~~Deleted:~~ the claimant does not face a risk to his life or to being subjected to cruel and unusual treatment or punishment or to being tortured~~Deleted:~~ Colombia~~Deleted:~~ Because the claimant is not a credible and a trustworthy witness, the panel finds that he

Accordingly, the panel determines that

is not a

Convention refugee, and he is not a person in need of protection pursuant to section 97(1)(a) and 97(1)(b) of Immigration and Refugee Protection Act. Therefore, the Refugee Protection Division rejects his claim for refugee protection.

"S. Alidina"

S. Alidina

DATED at Toronto, Ontario this 7th day of April 2004

s.19(1)