



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
TA3-10653

CLAIMANT(S)	-----	DEMANDEUR(S)
DATE(S) OF HEARING	March 3, 2004	DATE(S) DE L'AUDIENCE
DATE OF DECISION	March 31, 2004	DATE DE LA DÉCISION
CORAM	S. Budaci	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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The Refugee Protection Division heard the claim of (a.k.a.) (the claimant), a 28 year-old male citizen of Romania. These are the reasons for his negative decision. The claimant seeks to be determined as a Convention refugee or a person in need of protection.

The panel notes that copy of the claimant's passport is marked as an exhibit.¹ Therefore, the panel is satisfied that the claimant is a citizen of Romania, and furthermore, the panel finds that identity is not an issue in this claim.

Summary of Alleged Facts:

The claimant alleges in his Personal Information Form² (PIF) that he has a well-founded fear of persecution in Romania due to his sexual orientation, that of being a bi-sexual. The claimant alleges that he cannot openly be a bi-sexual in Romania, since doing so would subject him to acts of persecution. The claimant determined to leave Romania, arriving in Canada in April 2003 and applied to be determined as a Convention refugee on May 9, 2003.

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¹ Exhibit M-1.

² Exhibit C-1.

DETERMINATION

The panel finds that the claimant is not credible and has failed to establish a well-founded fear of persecution and has failed to rebut the presumption of state protection. Therefore, the panel finds that the claimant is deemed to be neither a Convention refugee nor a person in need of protection.

ANALYSIS

The panel explained to the claimant that in order to be determined to be either a Convention refugee or a protected person, the evidence must establish that the claimant would face a serious possibility of persecution for a Convention ground or must establish that their removal to their country of nationality would subject him/her personally either (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 life or to a risk of cruel and unusual treatment or punishment.

The panel member outlined the issues and the process that would be followed at the outset of the hearing. Additionally, the panel noted for the claimant that the onus of establishing the claim rests with the claimant.

WELL-FOUNDED FEAR & CREDIBILITY:

The panel finds that the claimant has failed to establish a well-founded fear of persecution and is not credible. Although delay in making a claim is not a determinative

factor, it is an important factor in determining a claimant's subjective fear. The panel notes that the claimant left Romania in 1997, travelling and working for lengthy periods of time in both Germany and the United States. When the claimant was asked if he had investigated the possibility of remaining in either country or making a claim for refugee status in either Germany or the United States, the claimant's testimony was vague and evasive. At first, the claimant testified that he had not made any enquires but later on the hearing, he testified that he had approached an attorney in the United States who had provided him with information. The panel drew a negative inference from this testimony, since the claimant was not forthcoming. The panel notes that from 1997 to 2004, the claimant returned to Romania on two occasions, in 1999 for nine months and in 2000 for approximately one month, therefore re-availing himself. When the claimant was asked why he would return to Romania where he alleges to have a well-founded fear of persecution, he testified that his working contracts had expired and therefore he was required to return. The panel therefore finds that the claimant has failed to establish a well-founded fear based on his inaction of making a claim at an earlier opportunity.

Additionally, the panel notes that the claimant alleged during testimony to an incident occurring in 1999 while he was in Romania. When it was noted for the claimant that he had failed to include this information or any information of any acts of alleged persecution in Romania, the claimant testified that he believed he would be able to

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elaborate on his evidence at the hearing. The panel did not accept this explanation as adequate, in light of the requirements outlined in the PIF and furthermore, finds this to be a material omission. Finally, the panel therefore finds that the actions or inactions taken by the claimant are not credible with respect to someone who alleges to have a well-founded fear of persecution.

STATE PROTECTION

Even if the panel finds that the claimant is credible and has established a well-founded fear of persecution, which it does not, the panel finds that the claimant has failed to rebut the presumption of state protection. The claimant in this claim makes no allegations in his Personal Information Form that he faced any acts of persecution or discrimination due to his alleged sexual orientation. Therefore, the claimant never approached the state to seek protection. The panel therefore finds that the claimant has failed to provide clear and convincing proof of the state's inability to protect him.

In this regard, the panel follows the Federal Court of Appeal decision in Villafranca:

A guarantee of protection for all citizens at all times is not to be expected. Nor is perfect protection. Where a state is in effective control of its territory, has military, police and civil authority in place and makes serious efforts to protect its citizens, the mere fact that it is not always successful will not justify a claim that the state is not providing protection.³

³ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

In making this determination, the panel reviewed the documentary evidence regarding the state of Romania's efforts to protect its homosexual and bi-sexual minority.

The panel further notes that recent changes in Romanian law have significantly altered the status of homosexuals in Romania with the repeal of Article 200 and the adoption of an anti-discrimination law.⁴

In January 2002, the notorious Article 200...which criminalizes same-sex relations, was finally repealed and Romania's criminal law was freed from discriminatory provisions against lesbian, gay, bisexual and transgendered (LGBT) people. At the time of repeal, an anti-discrimination based on various grounds, including sexual orientation. A law banning discrimination based on gender was adopted as well, but legal interpretation inclusive of transgendered people is yet to be established (Al n.d.).⁵

Additionally, the claimant testified that with the repeal of Article 200 of the Romanian Penal Code,⁶ he believed he would be treated differently by the authorities in Romania, however, he went on to testify that he believed he would not be protected. The panel notes that the claimant testified to having no knowledge of the effects in Romania regarding the repealing of Article 200.

There is no evidence to indicate that there are barriers in the claimant's circumstances to prevent him from utilizing the police and other instruments of the state. Although the panel recognizes that societal discrimination and harassment by some

⁴ Exhibit R-1, item 14.13, Information Request ROM40840.E, p. 14.13.1.

⁵ Exhibit R-1, item 14.13, Information Request ROM40840.E, p. 14.13.1.

⁶ Ibid.

police may still be a concern for the claimant in Romania, the panel finds that the state of Romania is making serious efforts to provide protection.

The panel therefore finds that the claimant failed to provide clear and convincing confirmation of Romania's inability to protect him should such protection be required in the future.

The panel finds that the claimant may have face discrimination, the panel finds that the state of Romania is making serious efforts to protect its sexual minority. Additionally, the panel finds that the claimant has failed to provide clear and convincing confirmation of Romania's inability to protect him should such protection be required in the future. The panel finds that the claimant did not avail himself fully of the avenues of complaint and redress available to him. There is no evidence to indicate that there are barriers in his circumstances to prevent him from utilizing the various avenues available.

CONCLUSION

Having reviewed all of the evidence and in light of the testimony provided at the hearing, the panel finds that the claimant does not face a serious possibility of persecution for a Convention ground, or a risk to life, cruel or unusual treatment or punishment, or a risk of torture, if he were to return to Romania.

For these reasons above, the Refugee Protection Division determines that the claimant, (a.k.a.), is neither a Convention refugee nor a person in need of protection pursuant to subsections 97(1)(a) and 97(1)(b) of the Immigration Refugee Protection Act. The panel therefore rejects his claim for refugee protection.

"S. Budaci"
S. Budaci

DATED at Toronto this 31st day of March, 2004.

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