



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
TA2-09333

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

November 24, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

December 15, 2003

DATE DE LA DÉCISION

CORAM

William T. Short

CORAM

FOR THE CLAIMANT(S)

Robert Moorhouse

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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s.19(1)

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On 2003, the Refugee Protection Division (RPD) heard the claim of
(the claimant), 29 years old, a citizen of Romania to be a Convention
refugee on account of a well-founded fear of persecution in that country on the alleged
grounds that he is a homosexual or bisexual man. He also claims to be a person in need
of protection within the meaning of subsection 97(1) of the Immigration and Refugee
Protection Act.

ALLEGATIONS

The claimant alleges that as a homosexual or bisexual man, he has endured
hardship all of his adult life, because of his sexual orientation.

DETERMINATION

The panel accepts the valid Romanian passport submitted into evidence¹ and finds
that the claimant is a citizen of Romania and is a homosexual or bisexual man. The panel
further finds that the claimant is not a Convention refugee and is not a person in need of
protection within the meaning of subsection 97(1) of the Immigration and Refugee
Protection Act.

¹ Exhibit M-1.

ANALYSIS

The panel notes that the claimant, although a citizen of Romania, is an ethnic Hungarian. No allegation of persecution was made by the claimant arising from his ethnicity and the claim proceeded on the issue of the claimant's sexual orientation only.

In claiming to be a Convention refugee because of his sexual orientation, the claimant has established a linkage to one of the five grounds, which describe a Convention refugee. The panel finds, however, that the claimant does not have a well-founded fear of persecution in Romania due to his sexual orientation because the facts as related by the claimant are acts of discrimination, which do not rise to the level of persecution and he is, accordingly not a Convention refugee.

The evidence of the claimant was to the effect that his sexual orientation had caused him difficulties since he discovered that he was attracted to men in his teenage years. The claimant cited the fact that his father had told friends and neighbours about his sexual orientation and that as a result, society at large looked at him askance. He could no longer take part in the life of his church because of the traditionalist view of the Roman Catholic Church in Romania. The claimant was forced out of the family business by his father. Old school friends would tell him to change his ways and revert to a more traditional lifestyle. On one occasion, the claimant and a male friend had to leave a disco quickly because some drunken patrons threatened them. The exactitude of the threats was not made clear, although the claimant was given ample opportunity to do so. On

another occasion, the claimant was attending a private party of about ten homosexual acquaintances when the police arrived and all were taken into custody, because a complaint had been lodged about the party they were attending. After a while, all were released without charges being laid. No allegation was made of mistreatment while in custody, although the claimant did state that the police were unresponsive when he complained to them about the incident in the disco.

The panel is of the view that the facts reported by the claimant, although regrettable and unjust do not rise to the level of persecution. The UNHCR Handbook reads as follows:²

54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities.

The panel notes that although his homosexual lifestyle was not accepted by the Roman Catholic Church in Romania, it likely would not be accepted by the Roman Catholic Church anywhere. The claimant has twelve years of formal education, which is at or above the average for Romania. There was no evidence before the panel that would

² Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, January, 1992, paragraph 54.

suggest that if the claimant were to return to Romania, he would face substantial prejudice in finding gainful employment.

In discussing the definition of persecution, the UNHCR Handbook indicates that Article 33 of the 1953 Convention³ infers that persecution involves a threat to life or freedom. The panel is of the view that none of the facts related by the claimant was serious enough to constitute a threat to life. The panel is further of the view that the claimant's brief detention did not constitute a threat to his freedom.

Accordingly, none of the facts as alleged by the claimant rise to the level of persecution.

Although there is some ambiguity in the new legislation, the panel notes that the Romanian parliament has rescinded the notorious Article 200 of the Penal Code which stigmatized homosexual acts.⁴ In September 2000, the Romanian Government passed a tough law that will fine those who discriminate because of race, ethnicity, age sexual orientation or gender.⁵ Notwithstanding the fact that the position of gays and lesbians in Romania is still problematic, the Romanian Government is taking steps to move toward a more tolerant and inclusive position concerning members of sexual minorities as evidenced by the legislative initiatives noted above.

³ Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, January, 1992, paragraph 51.

⁴ Exhibit R-1, item 14.2, Information Request ROM36223.E., p. 14.2-1.

⁵ *Ibid.*, page 14.2-1.

Furthermore, nothing that the claimant has alleged indicates that he was subjected to serious harm in the past. Nothing that the claimant alleged would suggest that he would be subjected to serious harm in the future. In assessing the risk faced by the claimant, should he return to Romania, the panel is mindful of the test laid down by the Federal Court of Appeal in Adjei⁶ and finds that in that circumstance, the claimant would not face a serious risk to life or physical well being should he return to Romania. For that reason, the claimant does not have a well-founded fear of persecution in Romania and accordingly, he is not a Convention refugee, nor is he a person in need of protection.

CONCLUSION

The Refugee Protection Division determines that the claimant, . is not a Convention refugee and does not have a well-founded fear of persecution should he return to Romania. The panel further finds that the claimant would not face a danger believed on substantial grounds to exist of torture, nor would he face a serious possibility of risk to life, cruel and unusual treatments or punishments, if he were to return to Romania.

⁶ Adjei v. Canada (Minister of Employment and Immigration) [1989] 2 F.C. 680.

Therefore, the claimant is not a person in need of protection within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act and accordingly, rejects his claim for refugee protection.

"William T. Short"

William T. Short

DATED at Toronto this 15th day of December, 2003.