



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
TA6-01450

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

4 August 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

15 August 2006

DATE DE LA DÉCISION

CORAM

Harvey Savage

CORAM

FOR THE CLAIMANT(S)

**Yiadam-Atuobi-Danso
Barrister & Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

N/A

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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a citizen of Ghana, claims refugee protection on the Convention refugee ground of membership in a particular social group, a bisexual woman in Ghana and unable to obtain adequate state protection. She further claims protection under section 97 of the Immigration and Refugee Protection Act (IRPA), if she returns to Ghana.

Allegations

The claimant is a 34 year old successful businesswoman living in the city of Kumasi, Ghana, where she operated a Her parents are staunch Christian Pentecostals. She has a fifteen-year-old daughter from a relationship with a male that ended a number of years ago. Following that she had several other unsuccessful heterosexual relationships. She alleges that she was more comfortable with women. In 2000, she had her first lesbian relationship with one which ended in 2004 when Ms. was killed in a car accident. In 2005, she began another lesbian relationship with a customer, Ms. had a boyfriend with whom she resided. On 2005 he returned unexpectedly early from a business trip and looked for Ms. at the claimant's place of business when he did not find her at home. He knocked on the door of the claimant's store entrance when the claimant and her lover were in the middle of their lovemaking. When the claimant opened the door, he administered a sound beating to Ms. while the claimant escaped. The next

morning the claimant's father came to the claimant's store along with Ms. . s partner who saw them in their lovemaking. The claimant denied that she had engaged in any affair. The claimant's father pronounced the claimant as evil and said he would be consulting with the Church of . at . to determine whether she had engaged in any homosexual activities. In essence, he threatened her that if it was so confirmed, she was as good as dead. Later that morning she was contacted by the police and questioned about her sexuality. She denied any affair or that she was a lesbian. The police released her but asked her to report in three days.

She decided the next day to go to . to her friend, who made arrangements for her to leave Ghana, which she did on . 2005, through an agent. She arrived in Canada on . 2005, and several days later she made an in-land claim.

Determination

The panel finds that the claimant is neither a Convention refugee nor a person in need of protection for the reasons that follow.

ANALYSIS

The claimant's identity as a national of Ghana is established by her birth certificate.¹ She also testified through a Twi Interpreter. Twi is one of the major languages spoken in Ghana.

¹ Ex. R/A-2.

The determinative issue is state protection. The panel has also considered the possibility of an internal flight alternative in Ghana. In rendering its decision, the panel has taken into consideration the Chairperson's Guidelines for Women Refugee Claimants Fearing Gender-Related Persecution.²

State Protection

The claimant alleged that she was released by the police after three hours of questioning, and they asked her to return in three days so that they could complete their investigation. She left for , and did not return as required. s.19(1)

Even assuming that the claimant would have eventually been charged, it is important to consider what charge she might have faced and what nature of punishment, if convicted. The relevant section of the Criminal Code with respect to homosexuals in Ghana is Criminal Code, Chapter 6, Sexual Offenses, Article 105³. The law, which criminalizes certain homosexual activity, is as follows: "Whoever is guilty of unnatural carnal knowledge – (a) of any person without his consent, is guilty of first degree felony; or, (b) of any person with his consent, or of any animal, is guilty of a misdemeanour (Emphasis added).

Given that what the claimant described was a consensual act, the most likely

² Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act, Women Refugee Claimants Fearing Gender-Related Persecution, Immigration and Refugee Board, Ottawa, March 9, 1993; Update, November 25, 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.

³ As referred to in R/A-1, U.K. Home Office Report on Ghana, September 2005, 6.56.

conviction that the claimant faced if she were convicted would be for a misdemeanour, which is conventionally understood as a lesser offence, the possible analogy in the Criminal Code of Canada being a summary offense as opposed to the more serious indictable offense⁴. The targeting of homosexuals in the Ghanaian law has been described as being discriminatory towards homosexuals⁵.

However, at the time she was contacted by the Ghanaian police for questioning, the claimant was not charged with anything. The police were presumably acting on a filed complaint, possibly at the behest of the claimant's alleged lover's boyfriend or the claimant's father. By then she had already allegedly received a death threat from her father, reported as follows in her narrative: "He (claimant's father) threatened that if confirmed to be a homosexual, I should count myself dead as he preferred a dead daughter to a living lesbian."⁶

Yet, the claimant did not report this threat to the police. The fact that the police were questioning without charging her under a law that the panel concedes may be discriminatory, but not inherently persecutory, was a completely separate issue from the claimant herself seeking police protection against a death threat. It is as reasonable to infer that they would have as much acted on her complaint as they apparently acted on another person's complaint, which triggered her being contacted for questioning.

⁴ 2006 Martins Annual Criminal Code of Canada, Emond-Montgomery Publishers, Toronto.

⁵ Exhibit R/A-1, 2.2.42.

⁶ Exhibit C-1, Narrative, paragraph 7.

Ghana is a constitutional democracy, with legislative power vested in a single chamber Parliament, whereby members are elected for a four –year term. The Ministry of the Interior has overall responsibility for the maintenance and enforcement of internal law and order, and in this hierarchy the police, under the jurisdiction of an eight member Police Council are responsible for maintaining law and order.⁷ In other words, there is in Ghana a fully functioning police force, which is accountable to a government Ministry within a Parliamentary democracy.

Case law establishes that a claimant will not succeed in establishing that State protection is unavailable or unwilling to help without providing “clear and convincing proof” as set out in Ward.⁸ The requirement remains for the claimant to provide evidence of the absence of state protection and to rebut the presumption of a state protection. It is assumed that a state will protect its nationals from criminals absent a total breakdown. Moreover, the claimant’s failure to even approach the police concerning the death threat made by her father has not shown that she made reasonable efforts to seek protection, which was not forthcoming or adequate.⁹

In view of the above the panel therefore finds that the claimant has failed to rebut the presumption that the Ghanaian police could have provided her adequate protection

⁷ Exhibit R/A-1: 5.01, 5.02, 5.03, 5.34 and 5.35.

⁸ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

⁹ Surujpal v. Canada (Minister of Employment and Immigration) (1985), 60 N.R. 73 (F.C.A.).

against the threat she had received had she sought their protection. As such her claim must fail on the basis of state protection available to her.

Internal Flight Alternative (IFA)

Alternatively, the panel has assessed the possibility of an IFA in Ghana for the claimant.

The applicable test to determine whether an IFA exists has been set out by the Federal Court of Appeal in Rasaratnam v. Canada,¹⁰ which states as follows at paragraphs 4, 6 and 7:

The appellant submits the following propositions as prerequisites to a finding that a claimant is not a Convention refugee because of an IFA.

First, the Board must be satisfied on the evidence before it that the circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that the appellant would be able "to enjoy the basic and fundamental human rights".

Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

In my opinion, the IFA concept is inherent in the Convention refugee definition. That definition requires the claimant to be outside the country of nationality or former habitual residence and unable, or unwilling, to return to it by reason of a well-founded fear of persecution for one of the stated reasons: race, religion, nationality, membership in a particular social group or political opinion. I see no need to reach a concluded opinion that fear of persecution so circumscribed is necessarily co-extensive with deprivation of the enjoyment of "the basic and fundamental human rights". I would, accordingly, restate the first proposition:

¹⁰ [1992] 1 F.C. 706 ("Rasaratnam"). Court of Appeal.

the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

I find no fault with the second proposition.

¶ 7 The Court in *Thirunavukkarasu v. Canada (Minister of Employment & Immigration)*, [1994] 1 F.C. 589 ("Thirunavukkarasu") also stated:

... Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. This test is a flexible one that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.

... Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

Regarding the first issue, whether there exists a serious possibility of the claimant being persecuted in other parts of Ghana, the panel asked the claimant whether she could locate safely in other parts of Ghana, for instance . . . where she had spent ten days s.19(1) prior to leaving Ghana. She replied that there was no place in all of Ghana where she could be safe. She was asked why. She replied that the laws against homosexuality applied to the whole country, and that homosexuality is taboo in Ghana. She claimed that

if she rented a lodging she would need to reveal personal details about herself and as soon as anyone in the general population would discover that she was a lesbian, they would kill her.

The panel finds these explanations not reasonable. The laws against certain homosexual activities may be discriminatory towards homosexuals, but the panel does not thereby conclude that they are inherently persecutory. Arguably, at its worst, the claimant if charged and convicted of a consensual homosexual act (and this is purely speculative since she was never charged) could be punished on the basis of a misdemeanor offence. The panel does not find such possible outcome as an act of persecution, such that the claimant would not feel safe in . or other parts of Ghana. s.19(1)

Further, the weight of reliable documentary evidence does not support the claimant's fears that members of the general population would kill her if it became known that she was a lesbian. Although there is some conflict in the evidence regarding societal attitudes and enforcement of the law vis a vis gays, and particularly lesbians in Ghana, the panel prefers the following:

- A September 1999 country assessment study by the Immigration and Nationality Directorate (IND) of the UK Home Office stated "the practice of homosexual acts is illegal in Ghana though the law is not strictly

enforced and homosexuality is generally regarded with tolerance.

(emphasis added).¹¹

- In there are two openly gay venues, Strawberry's and Chester's, which gays frequent without restraints and where they are out of the closet at least in these two venues.¹² s.19(1)
- A source in an article in the RPD Index stated that lesbian relationships were more acceptable to the heterosexual community than gay relationships between males.¹³
- The following two paragraphs from a Ghanaian study of gays in Ghana in 2003, are germane:

"A country of 20 million people, Ghana is an unusually tolerant place.....(It) witnessed a peaceful transfer of power from one popularly elected government to the next.

Human rights are widely discussed and increasingly taken seriously. There are major campaigns to protect the rights of women and children.Homosexuality remains a taboo, but gays seem to be safe. Physical attacks against them are rare."¹⁴

¹¹ Exhibit R/A-1, RIR#GHA36100.E.

¹² Exhibit R/A-1, "A Peek into the gay Ghanaian closet", Behind the Mask, July 20, 2003

¹³ Ibid.

¹⁴ Exhibit R/A-1, "Ghana, Ready for Gay Rights,?"

http://www.mask.org.za/SECTIONSAfricaPerCountry/ghana/ghana_11.htmghana.

In view of the above, the panel does not believe that the attitudes of the general population throughout Ghana would be such that people in the general population would kill her if it became known that she was a lesbian. The panel finds that the claimant could live safely in as a lesbian, where she also has a friend who hid her. The claimant's friend did swear an affidavit¹⁵ stating that the claimant's father came to and enquired about her whereabouts after she had left Ghana. However, the panel has already found that there is adequate state protection to access if the claimant fears harm from anyone in or elsewhere in Ghana.

The claimant is a proven successful businesswoman who would not have difficulty in earning her livelihood wherever she resided in Ghana.

The panel therefore finds that the claimant has an IFA either in or other parts of Ghana if she does not feel safe in

In view of all of the above the panel finds that the claimant does not have a well-founded fear of persecution by reason of any of the enumerated Convention grounds. For the same reasons as outlined above, the panel also finds the claimant's return to Ghana would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment, or to a danger of torture, believed on substantial grounds to exist.

¹⁵ Exhibit C-3.

The panel therefore concludes that [redacted] is not a Convention s.19(1)
refugee or a person in need of protection and the RPD rejects her claim.

"Harvey Savage"
Harvey Savage

DATED at Toronto this 15th day of August, 2006.