IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ

IN PRIVATE
HUIS CLOS
TA2-07989

CLAIMANT(S)		DEMANDEUR(S)
DATE(S) OF HEARING	**March 12, 2004**	DATE(S) DE L'AUDIENCE
DATE OF DECISION	**March 17, 2004**	DATE DE LA DÉCISION
CORAM	**R. Dawson**	CORAM
FOR THE CLAIMANT(S)	**Nil**	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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s.19(1)

a citizen of Brazil, seeks refugee protection pursuant to subsections 96 and 97(1) of the Immigration and Refugee Protection Act[1] (IRPA).

Allegations

The claimant, in his Personal Information Form[2] (PIF), states that he had faced discrimination and persecution because of his sexual orientation.

The panel member asked and was duly informed that the claimant intended to proceed without counsel. As the claimant was not represented by counsel, the refugee protection officer (RPO) explained the Convention refugee definition and the new consolidated grounds found in section 97 of the IRPA. The panel member then confirmed with the claimant that he understood.

Issues and Determination

The determinative issues before the panel are state protection in the matter related to the sexual orientation. In addition, the issue before the panel is if the risk feared by the claimant is generalized to all citizens of Brazil, or if the claimant was targeted because of any one of the grounds in the definition.

The Refugee Protection Division (RPD), having considered the testimony of the claimant, the documentary evidence,[3] the submissions of claimant, and the observations

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1 Immigration and Refugee Protection Act, S.C.2001, c.27.
2 Exhibit C-1.
3 Exhibit R-1, RPD Information Package, Brazil, revised September 2003.

of the refugee protection officer, rejects the claim and determines the claimant not to be a Convention refugee or a person in need in protection.

Analysis

The panel accepts the claimant's personal identity and his sexual identity as bi-sexual. The claimant testified that wife and children were harassed as a result of his sexual orientation. The claimant also testified that he had problems with some fellow employees, as a result of his sexual orientation. The claimant also testified that he received numerous phone calls from unknown person who made comments about his sexual orientation. There is no persuasive evidence before the panel that the societal discrimination faced by the claimant because of his sexual orientation, amounts to persecution.

With respect to general conditions for homosexuals in Brazil, the panel has considered all of the evidence before it. The documentary evidence[4] indicates that human rights abuses continue to occur in Brazil, most often committed by state police forces. Those harmed by the police were street people, including children, landless peasants, and those suspected of criminality. Violence against homosexuals was also reported. In the last few years, neo-fascist groups have sprung up which have made threats against homosexuals, blacks and Jews. The attacks on homosexuals are reported to have been

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[4] Ibid., item 2.1, United States Department of State. 31 March 2003, Country Reports on Human Rights Practices for 2002.

committed by neo-fascist, skinhead and "machista" gangs, which have sometime included police officers.

While the panel accepts that in Brazil, deeply ingrained attitudes against homosexuality continue to exist, there are numerous examples in the documentary evidence that the situation for sexual minorities is improving.[5] The government passed a law in which provides prison sentences or fines for racist acts and discrimination based on sex and ethnic origin. In 2000, the government extended the right to inherit pensions and social security benefits to same sex couples, the first such recognition of the rights of same sex couples in Latin America, according to the director of one of the gay rights groups in Brazil. Seventy-seven municipalities have enacted laws prohibiting various forms of discrimination against homosexuals and lesbians. The state of Rio de Janeiro has also enacted state legislation against individuals or institutions found to discriminate against homosexuals. That states also operates a hotline that is run in conjunction by the police and non-governmental organizations, which receives complaints of violence or other crimes against homosexuals and offers professional counselling to the victims of these abuses. The state of Sao Paolo has set up a special police force to investigate neo-fascist activity in the state.

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[5] Exhibits R-1 and R-2, inclusive.

Documentary evidence[6] states that as early as 1994, the political candidates endorsed gay equality, supported gay publications. In the same year, the number of gay organizations jumped from 13 in 1991 to 52. Brazilian gay activist was awarded an honour recognizing his work for the human rights of gays and other sexual minorities.

In Brazil, homosexual behaviour between consenting adults is not a criminal offence, except with regard to the armed forces. Brazil decriminalized most homosexual acts in 1823, itself. In 1994, seventy-three Brazilian cities and towns, three states and the federal capital now protects gays and lesbians from discrimination. Among them are cities of Sao Paulo, Rio de Janeiro and the states of Bahia, Sergipe and Matto Grosso. The state of Rio de Janeiro has also enacted state legislation against individuals or institutions found to discriminate against homosexuals. That states also operates a hotline that is run in conjunction by the police and non-governmental organizations, which receives complaints of violence or other crimes against homosexuals and offers professional counselling to the victims of these abuses. The state of Sao Paolo has set up a special police force to investigate neo-fascist activity in the state. In December 1996, the Special Committee voted in favour a bill, modifying the name to "Civil Registered Partnership", which assured the gays the right to heritage, succession, welfare benefits, joint income declaration, the right to nationality in case of a foreign partner and joint

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[6] Exhibit R-1, item 4.1, World Legal Survey, The International Lesbian and Gay Association. 23 June 2000.

income, in order to buy a house. This bill has not yet been fully voted in the Parliament however, in the interim period the Justice Ministry opened an office in Brasilia to promote gay rights nationwide. This office consisted of representatives of Gay rights groups and government and legislative offices. In October 2001, a Non-Governmental organization (NGO) opened Brazil's first gay ombudsman office with financial support from the Justice Ministry. The three attorneys who run the office offer free advice to homosexuals who are victims of discrimination and violence.[7]

State Protection

All states are presumed capable of protecting their citizens. This is a presumption that must be rebutted by a claimant. For the following reasons, the panel has not been convinced by the claimant within the preponderance of probabilities, as it must be, that the state in Brazil would not be reasonably forthcoming with serious efforts to protect the claimants if he were to return.

In the case of the claimant he went to the police in 1999 to complain about being attacked as a result of his sexual orientation. The claimant submitted a police report[8] which indicates that the claimant was assaulted and that the police searched the area but could not locate his attacker. The claimant testified that he went to the police in 2000 to complain about threatening phone calls that he was receiving but the police

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[7] Exhibit R-1, item 4.2, BRA39447.E, 21 2002.
[8] Exhibit C-2.

would not do anything, as the claimant did not know who was making the phone calls. The police told the claimant to come back if he suffered any further problems. The claimant testified that he was assaulted by unknown persons in 2001, as he was coming out of a bar in . The claimant testified that he did not go to the police as they did not do anything for him previously. The panel notes that in Fainshtain,[9] the court held that "the police offered assistance. It was the principal (claimant) who either did not avail herself of those offers of assistance, or prevented the State from according her its protection by either not giving State authorities details of her plight, or by not reporting her plight to State authorities."

There is evidence before the panel that the government is making serious efforts to address the situation of the homosexuals in Brazil. However, the effectiveness of state protection is not the issue here.[10] For all these reasons, I find that the presumption of state protection has not been rebutted by the claimant.

Findings

The panel finds that the societal attitude directed against him does not amount to persecution even considered cumulatively. In addition, there is no more than a mere possibility that the claimant would be subject to serious harm amounting to persecution

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9 Fainshtain, Galina v. M.C.I. (F.C.T.D., no. IMM-1012-95), Muldoon, June 17, 1996.

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

should he return to Brazil. He failed to rebut the presumption of state protection with clear and convincing evidence.

Conclusion

The Refugee Protection Division finds that the claimant is not a Convention refugee and not a person in need of protection within the meaning of sections 96 and 97 (1) of IRPA. His claim is rejected.

"R. Dawson"
R. Dawson

DATED at Toronto this 17th day of March 2004.