



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
TA5-03780

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

**May 30, 2006
June 29, 2006**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**June 29, 2006 (rendered orally)
August 10, 2006 (written reasons)**

DATE DE LA DÉCISION

CORAM

Patrice C. Valeriano

CORAM

FOR THE CLAIMANT(S)

**Robin Morch
Barrister & Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

I. Kohler

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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These are the reasons for the decision of the Refugee Protection Division in the claim for refugee protection made by (the claimant), a citizen of Ukraine. The hearing for determination was conducted pursuant to section 170 of the *Immigration and Refugee Protection Act*¹ (the *Act*). The hearing was conducted in two parts, the first of which took place on 2006, and the resumption of which was completed on 2006, the date this decision was rendered orally. s.19(1)

The Immigration and Refugee Board (the Board) has had the opportunity to consider the claimant's oral testimony and review the documents on file, and rendered its decision orally. Written reasons have been edited for grammar and syntax, and to add references to appropriate case law or other documentary evidence on which the Board relied. In arriving at the decision, the Board has taken into consideration the observations of the Refugee Protection Officer and counsel's submissions.

DETERMINATION

Having given due consideration to the totality of the evidence before it, the Board finds that the claimant is neither a Convention refugee within the meaning of section 96 of the *Act*, nor person in need of protection pursuant to provisions of section 97 of the *Act*.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

SUMMARY OF THE ALLEGATIONS

The claimant alleges to have a well-founded fear of persecution in Ukraine, based on his membership in a particular social group, namely bisexual males. The claimant alleges that, when he was a teenager, he realized he was attracted to males as well as to females. He alleges that his first homosexual experience occurred in or about 1982 with a fellow male student. He says he was beaten and warned by school authorities of "serious consequences."

The claimant married in 1991 and thereafter had a child. He alleges he hid his bisexuality from his wife during their marriage.

The claimant took employment as a driver in or about 1997, and this allowed him the opportunity to engage in sexual relations with men in other towns. In 2001, his job caused him to relocate to another town and in 2003 he met and began a relationship with a male who he knew from his place of employment. This relationship continued until 2004. The claimant alleges he was beaten in both 2003 and 2004. He alleges that he required medical attention for the injuries he sustained, and when the police were advised, they did nothing to help him.

Later in 2004, the claimant alleges that he disclosed his bisexuality to his wife and she hid him until, together, they made arrangements for the claimant to come to Canada in 2005.

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ANALYSIS

In order for a refugee claim to be accepted, the Board must find that the claimant has a well-founded fear of persecution in his or her country. The claimant must demonstrate not only that he or she has a subjective fear, but that this fear has a valid or objective basis. The Board finds the claimant's fear is not well founded for the following reasons.

Several issues relating to this claim were considered, including the availability of state protection, the viability of an internal flight alternative, credibility, and identity vis-à-vis the profile as described by the claimant. The determinative issue in the Board arriving at its negative decision is the availability of a viable internal flight alternative in Kiev.²

IDENTITY

The claimant's identity was established by the documentation on file, specifically a certified true copy of his passport.³ Based on that information, the Board is satisfied on a balance of probabilities that the claimant is who he claims to be and is a citizen of Ukraine

² Also written "Kyiv."

³ Exhibit R/A-2, documents received from Citizenship and Immigration Canada, certified true copy of the claimant's Ukrainian passport.

CREDIBILITY & THE WELL-FOUNDEDNESS OF THE FEAR

The claimant has alleged that he is bisexual. The Board finds that it is not necessary for it to make a conclusive finding in this regard. There were credibility concerns with the claimant's testimony. Inconsistencies and contradictions were noted, as well as a lack of details about events, people, and places, particularly related to his homosexual relationships, but also related to his employment. The Board notes that the claimant alleges he has not participated in any homosexual activity in Canada for in excess of one year, saying that in Canada he feels "normal." The Board also notes that no medical reports have been produced that might have corroborated responses to questions regarding the assaults which allegedly took place. When the claimant was asked about his efforts to get these reports, his responses were considered quite convoluted and his explanations were unsatisfactory.

At the hearing, counsel submitted a psychological report from Dr. ⁴ That s.19(1) report, in addition to making a diagnosis of Post-Traumatic Stress Disorder and depression, opines that difficulties in giving evidence may be a result of anxiety and depression.⁵ At times, the claimant did have difficulty in providing his evidence, however, for the most part, the Board does not find that this was the case. The Board, of course, accepts the diagnosis with respect to Post-Traumatic Stress Disorder and

⁴ Exhibit C-4, letter from Dr.

C. Psych., . 2006.

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⁵ Exhibit C-4, p. 4.

depression, but makes no finding that the source of this diagnosis relates either to the claimant's alleged persecution or to his alleged bisexuality.

INTERNAL FLIGHT ALTERNATIVE

The claimant alleges that due to his sexual orientation, he will be persecuted if he returns to Ukraine. The Board has considered whether there is an internal flight alternative (IFA) in the claimant's country of origin, where he could safely live as a bisexual without a serious possibility of being persecuted.

The claimant alleges that he has had sexual relations with males before and while he was married to his wife. His work as a driver meant that he traveled to other towns and cities, and there he engaged in sexual relations with men.

The claimant was asked if he could reside in Kiev, and he responded that he could not live there, because he had no job in Kiev, and because he would have to register. He cited these as impediments to living in Kiev. The Board did not find the explanations offered by the claimant to be reasonable. The claimant's work has in the past taken him to other towns in Ukraine, and so mobility is not considered a significant impediment in this case. Counsel raised the issue of registration impeding mobility, but the documentary evidence suggests otherwise.⁶ In fact, in oral testimony, the claimant

⁶ Exhibit R/A-1, *Toronto Documentation Package*, March 2006.

acknowledged that he visited and stayed overnight in Kiev, so, the city is not entirely unfamiliar to him. He states that he did not frequent any of the gay clubs while there.

The Board has made no finding with respect to the claimant's alleged bisexuality. However, it has considered the evidence before it, including the documentary evidence filed as exhibits by the Refugee Protection Division and by counsel,⁷ and despite the claimant's testimony, the Board finds there is an IFA in Kiev.

In assessing whether a viable IFA exists, the Board is guided by the cases of the Federal Courts. 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 that safety before seeking safety in Canada, unless it can be shown that it is objectively unreasonable for them to do so.⁸ The IFA must be realistically attainable and accessible. Barriers to getting to the IFA must be reasonably surmountable, and the claimant cannot be required to encounter great danger or undergo undue hardship either in traveling there or in remaining there. A claimant cannot reject an IFA for minor impediments or frivolous reasons, such as not liking the weather, having no friends there, or not being able to find suitable employment. If a viable IFA exists, the claimant is not a Convention refugee.

The leading case on IFAs, *Rasaratnam*,⁹ directs the Board to use a two-pronged test in considering cases where a potential IFA presents itself. First, the Board must be

⁷ Exhibit R/A-1; Exhibits C-2, C-3, and C-4.

⁸ *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.).

satisfied that there is no serious possibility of persecution in the part of the country in which the IFA is located. If the Board is satisfied with this, then secondly, the Board must further conclude that it would not be unreasonable in all of the circumstances for the claimant to seek refuge there. The claimant always bears the burden of proof to show that there is a reasonable chance that persecution will occur in the entire country, and specifically in the potential IFA area.¹⁰

The Board has applied the principles enunciated from the Federal Courts to the case at hand. The Board finds that the city of Kiev is a viable IFA for the claimant. It is one of many larger cities in Ukraine that has engendered improving tolerance for homosexuality and other alternative sexualities. It is an international destination for tourists, thus creating a diverse atmosphere where many different lifestyles exist. Foreign influences have assisted in fostering a gay culture and community in Kiev. The documentary evidence before the Board supports these findings.¹¹

⁹ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

¹⁰ *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.).

¹¹ Exhibit R/A-1.

The city of Kiev has a substantial gay community from which the claimant can draw support if necessary. The Board does not find it would be unduly harsh to expect the claimant to move to Kiev before seeking refuge in Canada. Although the claimant has cited having to register and not having a job in Kiev as impediments to living there, the Board is not satisfied that these would create a situation that is unduly harsh. In fact, the claimant's relocation to Kiev would, in this Member's view, have been much simpler and less intrusive than moving to Canada, which is an entirely new country with a new culture and language.

The Board has also considered the psychological effects that the claimant might experience if he were returned to Ukraine. The psychological report¹² was reviewed carefully. The Board is satisfied that the claimant could access therapy in the IFA, if he so required.

The claimant states he cannot reside in Kiev because he cannot register there. Counsel has argued that the registration system currently in place is *de facto* the same as *propiska*.¹³ However, the recent documentation that describes the law that replaces *propiska* indicates that, whereas formal permission to change one's address was required under Soviet *propiska*, under this new law only registration is required and permission is

¹² Exhibit C-4.

¹³ *Propiska* was a system of registration and control over internal population movement, originating during the Soviet regime.

not.¹⁴ A person need only notify the authorities of the change of address. There are provisions in law to protect the dissemination of personal information, and “only in exceptional circumstances...or in agreement with the individual himself” will this occur.¹⁵ There are some inconsistencies in the documentation filed by counsel and on behalf of the Refugee Protection Division. However, the preponderance of the documentation before the Board persuades it that the claimant could register as a resident in Kiev without facing unduly harsh circumstances.

The Board is not persuaded that, as counsel has suggested, the new law is an impediment to free movement in Ukraine.

Ukraine decriminalized homosexuality in the early 1990s.¹⁶ Attitudes towards homosexuality and bisexuality have gradually been changing since that time. In fact, recently a homosexual was successful in a lawsuit for damages for being expelled from his educational institution because of his homosexuality.¹⁷ In particular, the city of Kiev is considered relatively more tolerant toward minority groups than many of the rural

¹⁴ Exhibit R/A-1, item 3A.5, *Response to Information Request*, number UKR42598.E, 5 May 2004 [RIR UKR42598.E], p. 1.

¹⁵ Exhibit R/A-1, RIR UKR42598.E, p. 2.

¹⁶ Exhibit R/A-1, item 6.9, “Lesbian and Gay Ukraine,” *Gaytimes* online, updated 7 September 2004 [“Lesbian and Gay Ukraine”], p. 1.

¹⁷ Exhibit R/A-1, item 6.8, “Lawsuit Against Homophobia Successful,” press release from *Nash Mir* (Our World) online, www.gay.org.ua, 12 August 2005, p. 1.

areas of Ukraine, and somewhat more Western in its profile.¹⁸ Kiev is specifically described as a city that is more tolerant toward gays.¹⁹ The Ukrainian Gay and Lesbian organization *Nash Mir* (Our World) is registered in Kiev and works toward its goal of ending discrimination against homosexuals.²⁰ A magazine for gays is published in Kiev.²¹

There are a number of gay clubs there where the claimant could meet others with similar attitudes and sexual orientation.²² *Nash Mir* and the International Gay and Lesbian Association say of Kiev that gays and lesbians “feel quite comfortable living, studying and working” there.²³ There is some evidence that police in Kiev ridicule homosexuals, but there is little reliable and persuasive evidence before this Board to suggest that homosexuals are persecuted because of their sexual orientation.²⁴ Incidents that have been described in the materials are considered to be sporadic, isolated, and

¹⁸ Exhibit R/A-1, “Lesbian and Gay Ukraine,” p. 1.

¹⁹ Exhibit R/A-1, “Lesbian and Gay Ukraine,” p. 1; and item 6.10, *Response to Information Request*, number UKR 100719.E, 23 November 2005 [RIR UKR 100719.E], p. 2.

²⁰ Exhibit R/A-1, RIR UKR 100719.E, p. 2; and item 6.12, *Response to Information Request*, number UKR100978.E, 23 February 2006 [RIR UKR100978.E], p. 1.

²¹ Exhibit R/A-1, RIR UKR100978.E, p. 1.

²² Exhibit R/A-1, item 6.7, “About us,” Ukrainian Gay & Lesbian Association online, www.ugla.odess.ua, 9 December 2005; and RIR UKR100978.E, p. 2.

²³ Exhibit R/A-1, item 6.13, *Response to Information Request*, number UKR100976.E, 27 February 2006 [RIR UKR100976.E], p. 1.

²⁴ Exhibit R/A-1, RIR UKR100976.E, p. 3.

minor in nature. *Nash Mir* offers legal and moral support for those who believe they have been wronged under the new laws.²⁵

The Board concludes that as a bisexual person, the claimant would not face a serious possibility of persecution, of a risk to life, or of a risk of cruel and usual treatment and punishment in Kiev. The Board is satisfied that police protection would be reasonably forthcoming to the claimant in Kiev. Finally, the Board is satisfied that it would not be unreasonable in all of the circumstances, including those particular to the claimant, for the claimant to seek refuge in Kiev.

CONCLUSION

Having given due consideration to all of the evidence before it, to the relevant provisions of the *Act*, and to the jurisprudence on which this Board relies, the Board finds that the claimant does not have a well-founded fear of persecution in Ukraine and therefore is not a Convention refugee within the meaning of section 96 of the *Act*.

²⁵ Exhibit R/A-1, *R/R* UKR100976.E, p. 3.

Having found the claimant is not a Convention refugee, the Board is tasked with considering the applicability of section 97 of the *Act*. For the same reasons, mainly the existence of a viable IFA in the city of Kiev, with respect to a risk life or a risk of cruel and unusual treatment or punishment, the claim must also fail. Accordingly, this claim for refugee protection is hereby rejected.

"Patrice Valeriano"

Patrice C. Valeriano

DATED at Toronto this 10th day of August 2006.