



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
TA5-10217

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 7, 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

June 14, 2006

DATE DE LA DÉCISION

CORAM

V. Rangan

CORAM

FOR THE CLAIMANT(S)

**No Counsel
(counsel dismissed from hearing)**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

H. Adamidis

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 Jamaica, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA). These are the reasons for the negative decision in his claim.

The claimant's counsel was dismissed from the hearing since he had charged the claimant a fee when he was not a member of the Canadian Society of Immigration Consultants. Therefore, as there was no counsel to represent the claimant, a Refugee Protection Officer (RPO) reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process. He indicated he was confident in proceeding without the help of counsel.

Allegations:

The claimant in his Personal Information Form² (PIF) alleges that when he was young his father abused him. He later developed a liking for men and had sexual relationships with three men when he lived in Jamaica. At the same time he also had relationships with two women and had fathered three children by them. In 2005, s.19(1) when he came to Canada, his sister told him that one of the men he had relationship with was arrested and had told the police that this claimant was his sexual partner. The

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

² Exhibit C-1.

community, when they heard about the claimant's sexual orientation, burnt his car and threatened to kill him if he ever returned to Jamaica.

Issues and determination:

The claimant is alleging the need for refugee protection because of his sexual orientation. The determinative issue in this claim is credibility. The panel did not find the claimant's testimony to be credible and he is therefore, neither a Convention refugee nor a person in need of protection.

Analysis:

Credibility:

The panel did not find the claimant's testimony to be credible. His testimony was garbled, confused, uncertain and puzzling. His incredible answers and explanations indicate to the panel that, on a balance of probabilities, all his actions, including his relationship with the two women to cover his sexual orientation, and his refugee claim based on his alleged sexual orientation, have been designed to accomplish his goal of staying in Canada. His purported fear of returning to Jamaica on account of his alleged bi-sexuality has nothing to do with it.

The panel finds his circular, uncertain, and inconsistent evidence at various stages of his claim illustrate that, he has fabricated an account based on his alleged bi-sexuality or homosexuality, which is further substantiated below.

At the claimant's Expedited Interview held on [redacted] 2004, he identified [redacted] s.19(1) himself as being bisexual. In his PIF, he relates about his affairs with the two women in Jamaica. He states, "I grew up to love men and women". At the hearing of his claim he stated that there was a point in his life when he was attracted to women. He later changed his testimony stating that he was only attracted to men. He gave no clear explanation for this contradiction.

The claimant stated that he had relationships with the two women, [redacted] and [redacted] s.19(1) " [redacted] " in order to cover the fact that he was a homosexual. The panel does not accept this to be credible for the following reason.

Evidence reveals that these relationships with the two women extended over a period of time and he had even fathered three children as a result these relationships. The claimant testified that after he met [redacted] in 1995, he found he was attracted to men only. However, he continued his relationship with [redacted] and [redacted] respectively, s.19(1) and later had two other children born in 1999 and 2002. If he was having a relationship with the person of the opposite sex as a cover up for his homosexuality, then surely his second relationship and two other children in 1999 and 2002 seem to be overkill.

In his PIF and in his oral testimony, he states that he terminated his relationship with [redacted] because she did not want to have anal sex with him. Whereas, the second lover, [redacted] was comfortable with it and he continued his relationship with her. It s.19(1)

appears as if his relationship was not for covering up his sexual orientation. The panel did not find his testimony to be credible.

The claimant's alleged male partner, ("I"), in Jamaica, was arrested since was caught having an affair with another man. , his other male partner was stabbed to death. The claimant provided no evidence of these incidents although they were in the media reports according to his testimony. The claimant had been in Canada since 2005, speaks the English language well, and had the benefit of a counsel. Yet he failed to adduce any documents.

The claimant met a man named " " at a barbeque in . 2005, in Canada. He later renewed this friendship when he met him once again at

Since that time he has had two sexual encounters with him. This friend was to testify on the claimant's behalf at the hearing of his claim today. However, his witness, was nowhere to be found when it was time for him to testify. Dr.

the claimant's counsel was earlier dismissed from the hearing since he had charged the claimant a fee when he was not a member of the Canadian Society of Immigration Consultants. The claimant stated that he later found out that the witness, was a client of Dr. and was determined to be a Convention refugee. Since did not appear before the Immigration and Refugee Board, the panel was unable to corroborate their testimony.

s.19(1)

Prior to being dismissed from the hearing, counsel had submitted pictures³ of the claimant with the witness. The claimant stated that these pictures were taken two weeks prior to the date of the hearing at the request of counsel. The approximate date is 2006. The claimant stated that his partner, the witness had these pictures and these were dropped off at the counsel's office the week before the hearing date of 2006. The approximate date then would be 2006. However, the date on the document is marked as 2006. In the panel's view, pictures of two men in a seemingly intimate situation are not conclusive of the claimant's sexual orientation. Similarly mere membership at is also not conclusive of his homosexuality. The letter⁴ merely confirms his membership in the organization and does not confirm, either directly or even vaguely that the claimant is a homosexual. The panel gives no weight to these documents.

The onus is on the claimant to establish the case. The above analysis shows that he chose to present testimony that was not persuasive or trustworthy. As his credibility is impugned, I find that providing information in regard to is insufficient (so to say), as there is no evidence before the panel that the Centre would be closed to heterosexuals.

s.19(1)

³ Exhibit C-3.

⁴ Exhibit C-2.

The claimant testified that the community members in Jamaica burnt down his car when they found out that he was gay. He provided no proof of the same. In addition his family members made no report to the police. He stated that he had no insurance on the car. He neither produced the expired insurance papers, nor any ownership documents for the car. In the absence of any credible document to substantiate his testimony, the panel gives no weight to his testimony and also finds it not credible.

Findings:

I find the nature and significance of these inconsistencies and discrepancies are so fundamental to his claim as to irreparably taint the credibility of his testimony as a whole.⁵ I do not find that the claimant has provided reasonable explanations for these. The panel did not find his evidence to be credible or trustworthy.

Conclusion:

As I have no persuasive and trustworthy evidence to base a favourable decision on, this claim has to fail both under sections 96 and 97(1)(a) and (b) of the *Act*. Therefore, after having considered the totality of the evidence, the relevant statutory provisions and jurisprudence, the Refugee Protection Division rejects this claim.

⁵ *Neame, Nora Cathia v. M.C.I.* (F.C.T.D., no. IMM-847-99), Lemicux, March 23, 2000.

The claimant is not a Convention refugee or a person in need of protection and therefore, according to section 107(2) of the *Act*, I am required to state that therefore, there is no credible basis for the claim.

"V. Rangan"

V. Rangan

DATED at Toronto this 14th day of June 2006.