



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
TA2-14097

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

March 3, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

March 15, 2004

DATE DE LA DÉCISION

CORAM

William T. Short

CORAM

FOR THE CLAIMANT(S)

Hilry Neale

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Doug Baker

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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The Refugee Protection Division heard the claim of (the claimant), a citizen of Romania, who claims to be a Convention refugee and a person in need of protection within the meaning of sections 96 and 97 respectively of the Immigration and Refugee Protection Act.

ALLEGATIONS

The claimant alleges that he faces persecution in Romania on account of the fact that he is a bisexual male and that state protection is unavailable to him in Romania.

DETERMINATION

The panel has considered the claimant's Romanian national identity card¹ taken into evidence and finds that the claimant is a citizen of Romania. The panel has considered the claimant's oral testimony and finds that the claimant is a bisexual man. The panel further finds that the claimant is a Convention refugee.

ANALYSIS

By alleging that he was the victim of persecution on account of his sexual orientation, the claimant has established a linkage to one of the five grounds, which describe a Convention refugee.²

¹ Exhibit R/A-2.

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

The claimant presented himself as a candid and truthful witness, who gave his oral testimony in a straightforward and matter-of-fact way with no discernable attempt at embellishment or exaggeration. There were no implausibilities or internal inconsistencies in his oral testimony or the narrative contained in his Personal Information Form (PIF).³ The panel can, therefore, see no reason to disbelieve the claimant⁴ and finds that the allegations made by the claimant in his PIF narrative and his oral testimony did in fact occur.

The panel accordingly finds that the claimant is a bisexual.

The claimant testified that he and a male friend were beaten up at a seaside resort in 1995 because they were seen holding hands. The police were called but the police only laughed and sided with their attackers, who were still present when the police arrived.

The claimant gave further evidence of an incident that occurred in a nightclub in 1997 when he ran into an old schoolmate, who knew that he was gay. This individual berated the claimant for being gay and spat in his face. The claimant felt that it was pointless to call the police or seek assistance.

³ Exhibit C-1.

⁴ Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.).

This account is not inconsistent with documentary evidence for Romania. Moreover, the documents reveal that although the notorious Article 200 of the Romanian Penal Code has finally been repealed, societal attitudes toward members of sexual minorities remains negative. Although both houses of the Romanian parliament passed the necessary legislation in December 2001, that fact was not publicly announced until the end of January 2002 for fear of an anticipated highly negative reaction from the Orthodox Church.⁵ As a general rule, gays and lesbians are unable to live openly in Romania.⁶ The panel is not aware of any material, which would indicate that the attitude of society at large or of the police toward members of sexual minorities in Romania has improved. The panel finds that such attitudes would be pervasive throughout Romania and no viable internal flight alternative would be available to the claimant in his home country.

From 1997 to 2000, the claimant _____ of Miami. He testified that he did not seek asylum in the United States, or in any of the ports of call, because the cruise lines give an undertaking to the United States Government that none of their international crew will attempt to claim asylum in the U.S. and post a U.S. \$20,000 bond to that effect. The cruise lines keep the crew's passports and the crew are issued passes, which allow them to go ashore. Anyone making a claim

⁵ Exhibit R/A-1, item 14.7, p. 1.

⁶ Exhibit R/A-1, item 14.4, Information Request ROM36759.E, p. 1.

for refugee protection within the United States will be returned by U.S. authorities to the ship. The bond would be forfeited and the offending individual would be returned to his home country and black listed from working on another cruise ship.

The panel believes that the claimant's testimony on this point was believable and plausible and finds that the claimant has furnished a satisfactory explanation as to why he did not claim in the United States, or any of the other countries, he visited while working on cruise ships.

The claimant testified that every few months he would be allowed four weeks at home. He said that during these furloughs he would mainly stay at home in his parents' house. In 2000 in Romania, the claimant married a Canadian woman, whom he had met onboard ship. In 2001, the claimant left his ship in Miami, travelled through the United States and came into Canada on a Minister's permit because he was married to a Canadian.⁷

The claimant testified that shortly after arriving in Canada, his new wife became aware of his sexual orientation and the couple broke up. Divorce proceedings were commenced by the claimant's wife in 2002. The Minister's permit was withdrawn. In 2002, the claimant applied for refugee protection. He testified that he took this action as soon as he discovered that he could make a claim for refugee protection. Once

⁷ Exhibit R/A-2, "Remarks".

more, the panel accepts the claimant's explanation as both reasonable and plausible and finds that the claimant was not guilty of any undue delay in asking for refugee protection.

In summary, the panel finds that the claimant is a bisexual man, who would face persecution in Romania and his credible testimony has provided clear and convincing proof that state protection is not available to him in Romania and he has accordingly rebutted the presumption of state protection as set out by the Supreme Court in Ward.^s Furthermore, the claimant has provided plausible explanations as to why he did not claim refugee protection in the United States or other countries. The claimant was not guilty of any undue delay in claiming refugee protection in this country.

CONCLUSION

The Refugee Protection Division determines that the claimant,
] is a Convention refugee and a person in need of protection. Therefore, his claim is accordingly accepted.

"William T. Short"
William T. Short

DATED at Toronto this 15th day of March, 2004.

^s Canada (Minister of Employment and Immigration) v. Ward [1993] 2 S.C.R. 689.