



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
TA2-06479
TA2-18248
TA2-18249

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

December 11, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

January 8, 2004

DATE DE LA DÉCISION

CORAM

S. Alidina

CORAM

FOR THE CLAIMANT(S)

**Richard M. Addinall
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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(hereinafter "the claimant"), a 31-year-old,
(hereinafter "the claimant's wife"), a 32-year-old, and their
8-year-old son, , are citizens of Costa Rica.

The claimant claims to have a well-founded fear of persecution at the hands of his father-in-law, the police and the homophobic society of Costa Rica by reason of his membership in a particular social group – bisexual male.

In addition, he claims to be a person in need of protection as a person in danger of being tortured or at risk of losing his life or being subjected to cruel and unusual treatment or punishment in Costa Rica.

ALLEGATIONS

The claimant alleges that he fears his father-in-law, an ex- of the police in Heredia, the Costa Rican police and the homophobic society of Costa Rica.

After six years of marriage with his wife, his father-in-law,

found out that he was bisexual. As a result of his sexual orientation, on a number of occasions, starting on 2001, the claimant was physically abused by police officers sent by his father-in-law. Every time he had an encounter with these police officers, he was told to divorce his wife otherwise he would suffer the consequences.

On one occasion, on 2001, he was arrested by two police officers and taken to a police station where he was beaten and detained in a cell with two other individuals, who threatened him with a knife and raped him. He did not wish to divorce his wife because he loved her. On two occasions, the claimant went to the police to seek protection, but the police did not provide him any help.

The claimant's wife alleges that she fears her father and his accomplice, who started harassing and threatening her as soon as her husband, the claimant, left Costa Rica. Starting in 2002, her father and made threatening calls to her, warning her to separate from her husband, take her son and move in with .

On 2002, when she arrived to pick up her son from school, she saw talking to her son trying to abduct him.

ANALYSIS

The determinative issue in this case is the availability of state protection to the claimants in Costa Rica.

Based on the evidence adduced and for the following reasons, the panel finds that there is adequate state protection for the claimants in Costa Rica.

The panel finds that the claimants have not met the burden of establishing "clear and convincing" proof of lack of state protection in Costa Rica.

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The law states that there is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing proof of lack of state protection" in the country of origin. The claimant must approach his or her state for protection, providing state protection might be reasonably forthcoming.¹

Evidence that protection being offered is "adequate though not necessarily perfect"² is not clear and convincing proof of the state's inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authority in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.³

When the state in question is a democratic state, the claimant must do more than simply show that he or she went to see some member of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way,

¹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, 10 Imm. L.R. (2d) 189 (C.A.).

² Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.).

³ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

directly proportional to the level of the democracy of the state in question: the more democratic the state's institution, the more the claimant must have done to exhaust all courses of action open to him or her.⁴

The chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act*⁵ to identify decisions of the Board as jurisprudential guides to assist members in carrying out their duties. The Board's *Policy on the Use of Jurisprudential Guides* is available on the Board's website.⁶ Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as jurisprudential guides.⁷ Members are to consider and follow these decisions when determining claims in which the availability of state protection in Costa Rica is the determinative issue in claim profiles of risk due to sexual orientation or general criminality.⁸

⁴ *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

⁵ S.C. 2001, c.27.

⁶ <http://www.irb.gc.ca/en/about/policies/jurisguides-e.htm>

⁷ Exhibit R-1, Section "A" - RPD TA2-14980, March 20, 2003.

⁸ <http://www.irb.gc.ca/en/about/policies/jurisguides-e.htm>

The panel determines that the facts in this claim are sufficiently close to RPD decision TA2-14980.⁹ This is because the harm the claimant fears on account of his sexual orientation allegedly emanates from his father-in-law, a retired

of the police force, the Costa Rican police, and the homophobic society of Costa Rica who target individuals like him because of their sexual orientation. Also, the documentary evidence entered in this claim is the same as that entered in the jurisprudence guide. In addition, the panel also considered the RPD Information Package of April 2003.¹¹

In this case, the claimant testified that he went to the police on two occasions. The first time he went to the police was in the morning on the following day of the incident of

2001. The police, he testified, did not take a report of his complaint. They laughed at him and dismissed his complaints for lack of evidence. He indicated that the second time he went to see the police was on the following day of the incident of

17, 2001. This time too the police did not take a report of the claimant's complaints. They laughed at him and told him that they did not wish to see faggots or gay persons at the police station.

⁹ Exhibit R-1, Section "A" - RPD TA2-14980, ; March 20, 2003.

¹⁰ Exhibit C-5.

¹¹ Exhibit R-1.

In his testimony, the claimant indicated that he did seek legal help from a lawyer by the name of . His lawyer could not provide any help against his father-in-law because of lack of evidence, and, therefore, he advised the claimant to leave the country.

When asked to explain why he had not mentioned about seeking legal help in his PIF narrative, the claimant stated that he had forgotten. The panel does find the claimant's explanation to be reasonable. At the hearing, the claimant was represented by counsel, and he swore to the accuracy of his PIF. Question 37 clearly instructs the claimant to provide information regarding what efforts he made to seek state protection from the authorities in his country of origin. The panel is of the opinion that making attempts to obtain legal help and not obtaining it is central and material to this claim. Therefore, it is expected of the claimant to have mentioned information about seeking legal help and not obtaining that help in his PIF narrative. Omission of this information creates a serious doubt in the panel's mind whether the claimant did make an attempt to obtain legal help as he alleges. There is no persuasive evidence before the panel to believe that the claimant did make an attempt to seek legal help in Costa Rica. Therefore, the panel does not believe the claimant's allegations that he sought legal help and failed to obtain it.

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In regards to seeking help from the Ombudsman's office, the claimant testified that he never sought help from that office because to his knowledge the Ombudsman's office provides assistance only to businesses when attacked by the police. Moreover, he said that the Ombudsman's office does not provide help to individuals like him who had no evidence to support their claims, and, furthermore, there was a lot of corruption within the police and the authorities in Costa Rica.

The documentary evidence entered as exhibits in this hearing contrasts markedly with the claimant's allegations of lack of state protection in Costa Rica for persons in situations similar to his. In this case, the panel prefers to give more weight to the documentary evidence, which describes the country conditions, than to the written evidence and the oral testimony given by the claimant. Based on the documentary evidence, the panel does not have any persuasive evidence to believe that the claimant, being a bisexual, would not have received protection from the state protection mechanisms in Costa Rica.

The documentary evidence indicates that Costa Rica¹² is a longstanding, stable, constitutional democracy. The Ministry of Public Security and the Ministry of the Presidency share responsibility for law enforcement and national security. The claimant,

¹² Exhibit R-1, item 2.1, p. 32, Costa Rica: Country Reports on Human Rights Practices for 2002, US Department of State, March 31, 2003.

living in a democratic country, is obliged to seek help from the state agencies of the country of his nationality before seeking international protection.

In this case, the panel finds that the claimant simply did not reasonably exhaust all courses of action open to him in attempting to avail himself of state protection in Costa Rica. Based on the documentary evidence, the panel does not find lack of state protection for individuals in similar situations as the claimant in Costa Rica.

In regards to the claimant's allegation about the existence of corruption within the police in Costa Rica, the documentary evidence indicates that:

The commitment to combat public corruption reaches the highest levels of the Government of Costa Rica. President Pacheco has worked aggressively to deter corruption among public officials. Vice President Saborio leads the National Council on Citizen Security and Participation that changed with implementation of initiatives that encourage good governance and public sector transparency. The National Commission for improvement of Justice Administration is an umbrella organisation responsible for promoting anticorruption awareness and transparency principles in the government and private sections. Its work encompasses projects addressing judicial training and civic education, including instruction on fundamental rights for Costa Rica's indigenous population, human rights, and training programs in prisons.¹³

Based on the documentary evidence, the panel finds that the state is making serious efforts to fight corruption within the ranks of government employees, including the police in Costa Rica.

¹³ Exhibit R-1, item 2.2, US Department of State, International Narcotics Control Strategy Report – 2002, March 2003.

The availability of state protection for individuals like the claimant has been comprehensively analysed in the jurisprudential guide, TA0-15870¹⁴ and the reasoning applies to the facts of this claim. As a result, the panel adopts the reasoning with respect to the availability of state protection as stated in TA2-14980 and finds that, in this case, adequate state protection is available to the claimant should he return to Costa Rica.¹⁵

In regards to the threats the claimant's wife received from her father and after her husband left Costa Rica, the claimant's wife admitted that she did not make any attempt to avail herself of state protection in Costa Rica at all. She testified that she did not attempt to seek any redress regarding the threats she had received at the hands of her father and by lodging a formal complaint with the police or other state agencies in Costa Rica. It is obligatory upon her, living in a democratic country, to seek state protection from her country of origin prior to seeking international protection in Canada. The panel finds that the claimant simply did not reasonably exhaust all courses of action open to her in attempting to avail herself of state protection in Costa Rica. Based on the documentary evidence, the panel does not find lack of state protection for individuals in similar situations as the claimant's wife, in Costa Rica.

¹⁴ Exhibit R-1, Section "A" - RPD TA0-15870, , March 31, 2003.

¹⁵ Ibid.

The panel determines that the facts, situation and the evidence regarding country conditions in the claimant's wife's claim are sufficiently close to RPD decision number TA2-14980. What the claimant fears is purely criminal in nature in that the harm she fears emanates from the threats she had received from her father and forcing her to divorce her husband and to start a new relationship with another individual in Costa Rica. The profile of the claimant and the alleged agents of persecution in this claim are substantially similar to those described in the jurisprudence guides entered as exhibits. Also, the documentary evidence entered in this claim is the same as entered in the jurisprudence guide. In addition, the panel also considered the RPD Information Package of April 2003 in Exhibit R-1.

The availability of state protection for individuals like the claimant's wife, being a victim of criminality, has been comprehensively analysed in the Jurisprudential Guide, number TA2-14980,¹⁶ and the reasoning applies to the facts of this claim. As a result, the panel adopts the reasoning as well with respect to state protection as stated in TA2-14980.

Based on the reasoning and availability of state protection as stated in TA2-14980, the panel finds that adequate state protection is available to the claimant's wife should she return to Costa Rica.

¹⁶ Exhibit R-1.

CONCLUSION

Since the panel finds that adequate state protection is available to the claimant and his wife, there is not a serious possibility that they would face persecution, a risk to their lives, a danger of torture, or a risk of cruel and unusual treatment or punishment should they return to Costa Rica. Since the claimant's son's claim is based on his parent's claims, his claim must fail too.

Accordingly, the panel determines that
and are neither Convention refugees
nor persons in need of protection. The Refugee Protection Division, therefore, rejects
their claims for refugee protection.

"S. Alidina"
S. Alidina

DATED at Toronto, Ontario this 8th day of January 2004

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