



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
TA4-12429

CLAIMANT(S)	s.19(1)	DEMANDEUR(S)
	(a.k.a. I	
DATE(S) OF HEARING	May 19, 2005	DATE(S) DE L'AUDIENCE
DATE OF DECISION	May 31, 2005	DATE DE LA DÉCISION
CORAM	B. Wong	CORAM
FOR THE CLAIMANT(S)	Allan Blott Barrister and Solicitor	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	Nil	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE	Nil	REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL	Nil	CONSEIL DE LA MINISTRE

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Aviles, a 31-year-old citizen of Mexico, is seeking refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

Allegations

The claimant alleges as follows:

He fears [redacted] by reason of his membership in a particular social group, namely, victims of a personal vendetta. In addition, he claims to be a person in need of protection because he would be subjected personally to a risk to his life or to a risk of cruel and unusual treatment or punishment or to a danger of torture in Mexico.

[redacted], an [redacted] of the [redacted] ([redacted]), was persecuting the claimant because he was having an affair with [redacted]'s son [redacted]. The claimant was dating [redacted] after [redacted]'s daughter, [redacted] broke up with him. [redacted] was outraged and assaulted his son and the claimant when he saw them kissing passionately, parked in a car on his driveway in [redacted] 2003. [redacted] also threatened the claimant. The claimant called the police for help, but the police did nothing to help him. The claimant fled Mexico City and went into hiding in [redacted] at his sister's house, but they were able to track him. He

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

went back to Mexico City. Two state judicial police officers picked him and his friend out at a traffic spot check in 2004. They abducted and sexually assaulted him and his friend upon learning the claimant's identity. The claimant fled Mexico in 2004. He made a claim for refugee protection in 2004. s.19(1)

Determination

The determinative issue in this claim case is whether the claimant's fear is well-founded, credibility and state protection.

I am satisfied by reason of a certified copy of his passport² that the claimant is who he claims to be and that he is a citizen of Mexico.

I find that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution for a Convention ground in Mexico. I also find that the claimant is not a person in need of protection in that his removal to Mexico would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Mexico will subject him personally to a danger of torture. My reasons follow.

Analysis

To demonstrate a well-founded fear of persecution, the claimant must establish that his fear is reasonable, i.e., is justified considering the objective situation.³ In other

² Exhibit R-2, copy of passport in Citizenship and Immigration Canada (CIC) documents.

³ Naredo v. Canada (Minister of Employment and Immigration) (2000), 7 Imm. L.R. (3d) 291 (F.C.T.D.).

words, he must establish that his fear of persecution has a valid basis.⁴ The subjective fear relates to the existence of a fear of persecution in the mind of the claimant. The objective basis requires that there be a valid basis for the fear.⁵

I find that the claimant has a subjective fear. An objective analysis of that fear, in light of the situation in Mexico, persuades me that his fear is not well-founded, i.e., that it lacks an objective basis. Credible and trustworthy documentary evidence that I refer to below satisfies me that state protection is available in Mexico for victims of a personal vendetta. Accordingly, I find that there is no objective basis for his fear.

Credibility

I find the claimant not to be a generally credible witness. He answered questions in a glib manner befitting of a person trying to show his confidence. He volunteered more information than was requested. There were embellishments in his oral testimony that were not consistent with the written narrative in his Personal Information Form (PIF) and the notes taken during his record of examination at the Citizenship and Immigration (CIC) Etobicoke In-person Refugee Intake.⁶ As a result, there were significant omissions and inconsistencies in his written testimony that I did not find satisfactorily explained.

In oral testimony, he testified that [redacted] took out a pistol from his car and fired s.19(1) it twice when he tried to stop [redacted] from beating his son. He said that he was not sure

⁴ Lai v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 245 (F.C.A.).

⁵ Rajudeen v. Canada (Minister of Employment and Immigration) (1984), 55 N.R. 129 (F.C.A.).

⁶ Exhibit C-1, PIF narrative and Exhibit R-2 Citizenship and Immigration Canada (CIC) documents.

whether fired it at him or into the air. The panel asked the claimant why he did not mentioned firing his gun in his PIF. He explained that it must be due to a problem with the translation. The panel would find his explanation reasonable normally if it were the only omission in his written testimony. However, there were other omissions and inconsistencies between his oral and written testimony. The claimant also testified that tried to have him arrested after the claimant called the police for help. He did not mention this in his PIF. He further testified that told the police that the claimant was at his house to rob him. He said he saw trying to bribe the policemen who were on the scene to investigate his complaint. He testified that the police did not believe his story because of 's persuasion and influence. As a result, the police did not take his report. When the panel asked the claimant why he did not mentioned any of this in his PIF, the claimant explained again that it could be due to the translation.

The panel finds his explanation objectively unreasonable. He was reminded that he had affirmed earlier that the information was translated to him before he completed and signed his PIF. He was reminded that he signed a declaration that confirmed the information that he has provided in his PIF were complete, true and correct.⁷ Thus, I do

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⁷ Exhibit C-1, PIF, Declaration B, at page 13.

not believe the claimant and his oral testimony that [redacted] had fired his gun, or that he s.19(1) tried to bribe the policeman, or that the police refused to take his report. If the policemen had been bribed as alleged, the claimant might want to ask the policemen why it was he, supposedly a would-be robber, who called the police. I find his explanations unsatisfactory, especially in light of the preamble to question 31 (PIF narrative), where the claimant is clearly advised to set out all the significant events and reasons that led him to claim for refugee status. The panel was guided by the words of Reed, J., in Bakare:⁸

It's not credible in my view and (b) that she would not include a reference to that event in her Personal Information Form, as part of her claim for refugee status, particularly when she was receiving professional advice with ... respect to the completion of that form.

Hence, I do not believe the claimant's story and find his fear to be not well-founded, not only because he is not credible, but also because state protection is available.

State Protection

Reliable documentary evidence satisfies me that state protection was and is available in Mexico for the claimant. Mexico is a functioning democracy,⁹ and thus the presumption of state protection applies. The claimant can rebut this presumption by providing "clear and convincing" evidence that the state of Mexico is unable or unwilling

⁸ Bakare, Abeni v. M.E.I. (F.C.T.D., no. IMM-1603-93), Reed, January 19, 1994.

⁹ Exhibit R-1, tab 1.2, Europa World Year Book 2003.