



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  
TA3-07988

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

January 13, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

February 9, 2004

DATE DE LA DÉCISION

CORAM

Anne Venton

CORAM

FOR THE CLAIMANT(S)

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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, a 24 year old Muslim citizen of Pakistan, fears persecution and serious harm pursuant to Sections 96 and 97 of the Immigration and Refugee Protection Act (IRPA) from Muslim clerics and the State of Pakistan because of his sexual orientation, i.e. a bisexual male.

#### **Allegations**

The claimant, a Pakistani citizen, lived in the United Arab Emirates (UAE) until he was 18 years of age under his father's passport. However, after 18 he had no status in the UAE, so his father took him to the U.S. in 1998 to live with his uncle in Florida where he lived, worked and attended a private school which did not require a student visa illegally after his six month visitor's visa expired. His father returned to the U.A.E.

In the Personal Information Form (PIF) narrative addendum submitted at the hearing, the claimant alleges that he met his first gay boyfriend in Florida and had a relationship with him for 2 1/2 years until the boyfriend returned to India and has not heard from him since. He never told his uncle's family about this relationship.

The claimant alleges that he had no problems when he registered with INS in or 2002. However, he heard that he could possibly be deported to Pakistan where he fears the State of Pakistan or Muslim clerics will persecute him if he lives an openly gay lifestyle, and came to Canada and claimed refugee status on , 2003.

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**Determination**

The panel finds that the claimant is not a Convention refugee as he does not have a well-founded fear of persecution for a Convention ground in Pakistan. The panel also finds that he is not a person in need of protection in that his removal to Pakistan 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 not substantial grounds to believe that his removal to Pakistan will subject him personally to danger of torture. My reasons are as follows.

**Analysis****Identity**

The panel accepts the identity of the claimant as a citizen of Pakistan based on the certified true copy of his passport, National Identity Card from Pakistan and his Florida driver's license found in Exhibit R/A-2.

**Credibility**

After careful consideration of all the evidence including the claimant's testimony and PIF and counsel's submissions, the panel concludes that the claim lacks credibility because of omissions in the PIF narrative developed during testimony, the implausibility of some explanations given by the claimant, his failure to seek asylum in the U.S. and the claimant's failure to provide documents relevant to his claim.

The panel finds that the claimant's failure to seek asylum or permanent residence in the U.S. where he lived and worked illegally after his six month visitor's visa expired

between 1998 when he arrived in the U.S. and 2003 when he came to Canada and claimed refugee status, demonstrates a lack of subjective fear which has a negative impact on his credibility.

When asked why he did not seek asylum in the U.S., the claimant said he could not apply for refugee status because his uncle would learn that he was bisexual. The panel finds that it is implausible that the claimant would not apply for asylum in the U.S. because his uncle might find out he was bisexual. Due to the confidential nature of the asylum process, the claimant's sexual identity would remain confidential.

When asked if he consulted anyone regarding applying for permanent residence status, the claimant said a lawyer told him to get married which he did not want to do. The panel finds it is implausible that the claimant who risked deportation while living and working illegally in the U.S. would not have explored other alternatives than marrying a U.S. citizen to gain permanent status in the U.S.

The claimant alleges that he registered with INS as required in or 2002. He has no records to corroborate that he registered; however, he gave a lengthy explanation as to the process involved.

The claimant said that he learned from his community about registration in 2002 and also learned that there was a risk of being put in jail, required to pay bail and possible deportation if he registered in Florida. Further, he alleges that his uncle who lives in Florida put him in touch with a lawyer who told him if he registered in Los Angeles that

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people who registered there were not being put in jail, required to pay bail or deported. Therefore, the claimant met the lawyer in Los Angeles at the INS office with several others who were also registering. He said he paid the lawyer for his help because the lawyer knew what he was doing and helped the claimant fill out the forms. After the registration, the claimant alleges that he returned to Florida to continue living and working illegally for his uncle.

When asked if he had any documents to corroborate that he had in fact registered with INS, he said no. He added that INS took his old passport and, as well, there was something wrong with the form in Los Angeles where he applied and they said they would send a form but it never arrived.

The claimant provided no documentary evidence to support that he, in fact, registered with INS although he alleges that INS was to send him a form which never arrived. The panel finds his explanation unsatisfactory that INS agreed to send a form in 2002 but it never arrived because he lived at the same address from 1998 to 2003 with his uncle, and therefore, the panel draws an adverse credibility inference pursuant to RPD rule 7.

When asked why he made no reference to the alleged fact that he registered with INS in his PIF narrative, the claimant said he did not realize this information was required. Because of the omission in the PIF narrative regarding his efforts to register with INS and a lack of a plausible explanation as mentioned above, the panel draws an

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adverse credibility inference.

When asked why he waited so long to claim refugee status in Canada when he knew he risked possible discovery and deportation in the U.S., the claimant said he could not make up his mind. When asked why he continued to work and live illegally in the U.S., the claimant said he never feared that they would come and catch him; however, he did acknowledge that anything could happen and noted that he was a driver for his uncle's shuttle bus and he did think about the fact that he might be stopped.

In the panel's opinion, if the claimant in fact was facing the dangers he alleges in Pakistan if he returns, he would have made efforts to gain permanent status in the U.S. or come to Canada to make a refugee claim as soon as possible. Therefore, the panel determines that the claimant's behaviour in the U.S. where he lived and worked illegally from 1998 to 2003 risking discovery and deportation is not the behaviour of a person with a subjective fear of returning to Pakistan. The panel draws a significant adverse credibility inference on this basis.

#### **Sexual Identity**

The panel finds that the claimant has failed to establish his identity as a bisexual man who would be at risk of harm today from the State of Pakistan if he returns to Pakistan.

There was no mention of a specific relationship with a gay man in the original PIF narrative.

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The claimant alleged in testimony and in a PIF narrative addendum submitted at the hearing that he is bisexual and had a two-and-a-half year relationship with a gay male during the time he lived in the U.S. between 1998 and 2003. He testified that he met the gay man several times a week to have sex; however, only a few close friends of the gay man knew about this relationship and the claimant alleges that he has lost contact with the gay man who returned to India. At the hearing, the claimant provided photos in Exhibit C-2 of himself and several men attending all male social events.

When asked about the gay community in Toronto, the claimant said he found out about a gay Asian club on the Internet. When asked if he had ever been there he said no but added that the gay Asian club forwarded notices of events via the internet and alleges that he attended a picnic on the island and visited a club on ' ' where he met a guy from the Philippines but at this time they are good friends and do not have a relationship. There was no mention of a friendship with a man who he met at an Asian gay club in the original PIF narrative.

When asked when and where he met the guy from the Philippines in Toronto, the claimant mentioned meeting him at the Macdonald's at the Eaton Center and walking around the area and going to a movie but when asked later to confirm meeting this man at the Macdonald's, he said they met at the gay club on ' '.

When asked when he attended the picnic, he said in the summer but he did not

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know the exact month. When asked how he got to the club on \_\_\_\_\_, he said he went on the subway and turned right but could not give more precise directions.

Because of the vague and general nature of the claimant's testimony regarding activities described in the PIF narrative and the PIF addendum supplied on the day of the hearing, the significant omissions noted in the original PIF narrative, and all the above noted credibility defects, the panel determines that the claimant has failed to sufficiently establish with credible or trustworthy evidence his identity as a bisexual person which is the basis for his claim, and further makes an overall finding of lack of credibility on the part of the claimant.

#### **Summary**

The claimant has failed to show that there is a serious possibility or reasonable chance that he would be subjected personally to persecution, danger of torture or risk to life or a risk of cruel and unusual treatment or punishment if removed to Pakistan.

The panel is satisfied the claimant's fear of returning to Pakistan is not well founded.

#### **Conclusion**

The claim fails pursuant to Sections 96 and 97 of the IRPA. The Refugee Protection Division rejects the claim of

\_\_\_\_\_  
"Anne Venton"  
Anne Venton

DATED at Toronto this 9<sup>th</sup> day of February, 2004.

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