



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
TA3-02486

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

September 16, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

November 19, 2003

DATE DE LA DÉCISION

CORAM

E. W. A. Townshend

CORAM

FOR THE CLAIMANT(S)

**Mordechai Wasserman
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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These are the reasons for the decision on a claim for refugee protection made by a national of Mexico, on the grounds of membership in a particular social group.

In the narrative portion of her Personal Information Form¹ the claimant set out the details of the matters that caused her to come to Canada:

I am a citizen of Mexico and of no other country.

I am from the city of [redacted] In [redacted] 2001, I began studying at the University of [redacted] I had a boyfriend named [redacted] but also felt attracted by women.

On [redacted] 2002, at the birthday party of a friend named [redacted] I met a woman named [redacted], and subsequently started going out with her. I told [redacted] that I was going out with her, and he said this did not bother him.

In [redacted] 2002, the three of us, [redacted] and I decided to move in together – or, rather, each of them decided to move in with me. All three of us were students at the University of [redacted]

Although [redacted] is a city of about four million people, people know each other and word gets around. Our neighbours, friends, families and fellow students all soon found out that I was bisexual and involved with both a woman and a man. I was blamed for the situation much more than either of the other two.

I began to encounter insults and hostility. The neighbours complained that we were a bad influence on their children and that we should move. Men would call out to me on the street that they would teach me what a real man was. Male students at the university would grab me as I passed and insult me. Discotheques stopped letting me in. Eventually, almost all my friends stopped having anything to do with me.

[redacted] has several relatives in the state police, including two uncles who have high ranks in the police. They threatened that, unless I left [redacted] they would cause problems that would get me locked up. At night when I went out, I was followed by cars without licence plates. I knew that these were police cars, and the only reason they would be following me is because [redacted]'s uncles told them to.

I also started getting threatening phone calls on my cell phone. The callers, always men, called me dirty names. They told me to leave [redacted] They threatened to rape me. (I also received one rape threat by e-mail.)

Exhibit C-1.

There was no point in reporting the harassment and the threats to the police. First of all, I was sure that some of the threats were coming from [redacted]'s relatives in the police force. Second, this is not the kind of complaint that police in Mexico pay any attention to.

The police don't provide much protection to women. I have a woman friend in [redacted] who was raped by a man in his car. She flagged down a police car. Despite the fact that she had been raped and was bleeding, the police would not do anything. They said that she had gotten into his car, so it was not rape.

In [redacted], 2002, I received about 6 threatening phone calls. I decided that I could not be safe anywhere in [redacted] and that I had to leave. There was no point in moving to another city in Mexico. Mexican society is very macho and attitudes toward me would be the same throughout the country. Even if social attitudes in Mexico City might be a little better, I could not live there for medical reasons. I have a nose problem, and cannot breathe in Mexico City.

I finished my semester at the university, moved back in with my mother and sister, and made plans to leave Mexico. During those last two weeks in Mexico, I received calls threatening that, if I went near [redacted] again, the callers would cause problems for me. They also called me "whore" (*zorra* or *putta*).

I knew that there was an international agreement that Canada had signed that allowed people in danger in their own countries to ask for refugee status in Canada. However, I was not certain where one asked for refugee status, so I entered Canada as a tourist. One week later, I went to CIC Etobicoke and made a refugee claim.

I am afraid that, if I return to Mexico, I will suffer cruel and unusual treatment at the hands of other Mexicans. They will shun and isolate me, or actively threaten me because of my sexual orientation. I am afraid that I might be raped or beaten up by men who wanted to show me what "real men" were like.

[typed as per original with errors and/or omissions]

The sole issue to be determined is whether a viable internal flight alternative exists for this claimant in Mexico City.

The applicable law on an internal flight alternative is the two-prong test set out in Rasaratnam² and Thirunavukkarasu.³

The panel must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

Moreover, the condition in the part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

The documentary evidence with respect to country conditions before the panel paints an overall picture of Mexico as a country intolerant of homosexuality.⁴

However, the changing attitude of society (including police) towards homosexuality in Mexico City, which is not replicated elsewhere in the country, is gleaned from even more recent reports before this panel. These reports indicate that Mexico City seems to be increasingly accepting of persons with the sexual orientation of this claimant.⁵

² Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.), at 709-710.

³ Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.), at 597-599.

⁴ Exhibits R-1, C-5.

⁵ Exhibit C-5, p. 80: "According to Rosa Maria Ortiz Martinez, the Coordinator of the Lesbian Mothers Group in DF, quarterly newsletter called Las Virreinas (ECSJ n.d.)".

In June 2003, President Vincente Fox signed a law banning all forms of discrimination, including discrimination based on sexual orientation.⁶

A Gay Pride march in Mexico City in the same month attracted crowds filling four traffic lanes. The previous year's march drew crowds of about 35,000 and involved more than 70 organizations without incident.⁷

June 21, 2003, 10:10 PM

Thousands openly mark gay pride in Mexico parade

Associated Press

MEXICO CITY – Thousands of men and women crowded Mexico City's central avenue Saturday afternoon, opening celebrating gay pride in a capital city that is showing new signs of tolerance for homosexuals.

The parade that started small in the 1970s on Saturday filled four traffic lanes with mostly young men and plenty of curious bystanders.

This is a valuable way to show people that there are more of us than they think," said Javier Picaso, 45, of Mexico City, who marched shrouded in a gay-pride rainbow flag. "Mexico likes to guard its traditions – and its myths."

Marchers, some dressed in drag or next to nothing, gathered at the base of The Angel, a well-recognized monument to Mexico's independence.

Organizers expected the 25th annual march to attract more than 60,000 people, which would make it one of the biggest gay parades in Latin America.

The first gay marches were met with surprise and incomprehension by the public, according to parade coordinator Francisco Javier Lagunes.

"The march is an indicator of the level of tolerance and democracy in Mexico," Lagunes said. "But in political terms the movement still is in a very early stage of its development."

⁶ Exhibit R-1, p. 83 (July 2003 package).

⁷ Exhibit R-1, p. 81 (July 2003 package).

Two weeks ago, President Vicente Fox signed an anti-discrimination law that provides protection for groups including homosexuals. The law has drawn criticism for lacking teeth, but gay activists said it's a step in the right direction.

Enoc Uranga, a lawmaker in Mexico City's legislative assembly, said her life in politics as a lesbian has been hampered by stereotypes and stigmas.

"In political life you're always faced with finger pointing because of your sexuality," Uranga said. "It's commonplace to be dismissed just for being a lesbian and not for your political stance."

An openly lesbian legislator (referred to above) was elected to the Mexico City local assembly in July 2000.⁸

On Valentine's Day, 2002, an estimated 400 gay and lesbian couples exchanged vows at a symbolic wedding ceremony in the centre of Mexico City. Under heart-shaped balloons and banners reading "for a right to difference" and "love in a time of change", couples exchanged kisses and called for tolerance and respect from society at large. According to organizers, some 8,000 well-wishers came to watch couples swear eternal love. "As anyone can see, our movement is victorious", Mexico City legislator Enoc Uranga told the festive crowd.⁹

Another report noted the counseling and support services for lesbians in Mexico City.¹⁰

It is against this background of growing acceptance of homosexuality in Mexico City that this claimant's chances of living there safely must be considered.

⁸ Exhibit R-1, Item 1, p. 1.1, Response to Information Request #MEX38313.E, June 11, 2002, DIRB, IRB (January 2003 package).

⁹ Exhibit R-1, Item 3 (January 2003 package).

¹⁰ Exhibit R-1, Section 4.7, MEX3851.E, January 21, 2002 (October 2002 package).

The claimant is 21, single and a graduate of _____ in

_____ She has two years experience working at a _____ agency. She stated that she has been to Mexico City five times in two years but she did not feel she could live there because of the air pollution. She suffers from sinusitis. A letter from Dr. _____ dated _____, 2003 confirms that she was treated for hay fever at the Regional Hospital in _____.¹¹ The polluted air causes sneezing, coughing, eye irritation and rhinitis. She stated that pills brought her only partial relief.

When asked how the 26 million inhabitants of Mexico City managed to survive there, the claimant stated that she did not know. She assumed that those born there had become accustomed to the air conditions.

While the panel empathizes with the claimant's concerns about living in an air-polluted city, the question the panel is required to ask itself is whether asking her to do so before seeking Canada's refugee protection would impose undue hardship on her and thus render the internal flight alternative unreasonable in her particular circumstances.

The panel answers that question in the negative.

Sinusitis, rhinitis, hay fever and dry-throat coughing are unpleasant medical conditions but there is no persuasive evidence before the panel that they present a threat to the life of the claimant, or any serious impairment of her health. Air pollution is a health hazard common to many large cities around the world where automobiles and

¹¹ Exhibit C-2, Item 6.

industries proliferate. The claimant's objection to moving there, if life in has become so unbearable, amounts to a matter of objecting to a diminished enjoyment of life. That is not enough to negate Mexico City as a viable internal flight alternative for her.

Accordingly, the panel rejects her claim for refugee protection on all grounds.

"E. W. A. Townshend"
E. W. A. Townshend

DATED at Toronto this 19th day of November 2003.