



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
TA4-07134

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

November 19, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

November 25, 2004

DATE DE LA DÉCISION

CORAM

S. Alidina

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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is a citizen of Costa Rica. He claims refugee protection pursuant to sections 96, 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act*.

ALLEGATIONS

The claimant alleges that:

- He is a bisexual male. He fears [redacted], his brother-in-law, who targeted him because, when he lived with [redacted]'s sister, [redacted] his sexual orientation became evident, and, as a result, he had to separate from her and his son.
- On [redacted] 2004, when he was celebrating his birthday with other gay friends, he was verbally and physically abused by [redacted] who also threatened to kill him. The police were called, but they did nothing because they do not understand what it is like to be gay.

ANALYSIS

The determinative issue in this case is the availability of state protection to the claimant in Cost Rica.

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

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The panel finds that the claimant has not met the burden of establishing “clear and convincing” proof of lack of state protection in the country of origin.

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

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.).

her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, 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 The first question the panel has to determine is whether decision TA0-15870 applies in this case.

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 RPD TA0-15870, 2003 and RPD TA2-14980, 2003.

⁸ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

The panel determines that the facts and the evidence regarding country conditions in this claim are sufficiently close to RPD decision TA2-14980.⁹ The harm the claimant fears, on account of his sexuality, allegedly emanates from his ex-brother-in-law, who was targeting the claimant because the claimant humiliated his in-laws as a result of his sexual orientation. The profile of the claimant based on his sexual orientation and the alleged agents of persecution in this claim are substantially similar to that described in the *Jurisprudence Guide*. 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 and the US Department of State Report 2003 in Exhibit R/A-1.

In this case, the claimant testified that, when the incident of [redacted] 2004 occurred, police were called. One police officer arrived but did nothing because the police in Costa Rica do nothing to protect gays, as they do not understand what it is like to be gay. The claimant admitted that, failing to obtain assistance from the police, he did not make any attempt to seek assistance from other state agencies like the Ombudsman's office, the Office of Judicial Investigations and the courts to redress the mistreatment received from [redacted]. He admitted that he had knowledge about the existence of these agencies, but because of fear of further reprisals from [redacted] he did not file any report

⁹ Exhibit R/A-1, *Jurisprudence Guidelines Documentary Package, May 2003, Costa Rica - Criminality, item A*, 2003:

with them. In addition, he felt that, because of his sexuality, these state agencies would not provide any assistance to obtain protection against

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The documentary evidence indicates that Costa Rica¹⁰ 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. There are other state agencies the claimant could have sought assistance from, if he felt that the police did not provide any protection to him. The claimant, living in a democratic country, is obliged to seek help from the state agencies of the country of his nationality first prior to seeking international protection. In this case, the panel finds that the claimant had the knowledge and ability to, but elected not to, avail himself of state protection with state agencies other than the police. The panel finds that the claimant simply did not reasonably exhaust all courses of action open to him in availing himself of state protection in Costa Rica. Therefore, the panel finds that the claimant has not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect him.

¹⁰ Exhibit R/A-1, item 2.1, p. 32, Costa Rica: Country Reports on Human Rights Practices for 2002, US Department of State, March 31, 2003.

The availability of state protection for individuals like the claimant has been comprehensively analysed in the *Jurisprudential Guide*, RPD decision TA0-15870,¹¹ and the reasoning applies to the facts of this claim. As a result, in this case, the panel adopts the reasoning as well for state protection stated in TA0-15870.

Based on the reasoning and availability of state protection in TA0-15870, the panel finds that adequate state protection is available to the claimant should he return to Costa Rica.

CONCLUSION

Since the panel finds that adequate state protection is available to the claimant, there is not a serious possibility that the claimant would face persecution, a risk to his life, a danger of torture, or a risk of cruel and unusual treatment or punishment should he return to Costa Rica.

¹¹ Exhibit R/A-1, Jurisprudence Guidelines Documentary Package, May 2003, Costa Rica - Sexual Orientation, item 2003.

Accordingly, the panel determines that is neither a Convention refugee nor a person in need of protection. The Refugee Protection Division, therefore, rejects his claim for refugee protection.

"S. Alidina"
S. Alidina

DATED at Toronto, Ontario this 25th day of November 2004.