



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE
HUIS CLOS
TA1-25035
TA1-25036
TA1-25037
TA1-25038
TA2-08366

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

17 November 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

17 November 2003

DATE DE LA DÉCISION

CORAM

E.S. Schlanger

CORAM

FOR THE CLAIMANT(S)

Richard 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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(the principal claimant), 33 years old, his estranged wife
30 years old, (separated since 2003) and their minor
children, 11 years old, nine years old, and
three years old, allege that they are citizens¹ of Costa Rica. The principal claimant
alleges a well-founded fear of persecution at the hands of two police officers

the whole national police force, and the homophobic
society for reasons of his membership in a particular social group, namely bisexuals. The
female claimant and the children base their claims on their membership in a particular
social group, namely family. They all also claim protection as persons at risk to life or
cruel and unusual treatment or punishment. The principal claimant alleges that two
policemen have subjected him to mockery, physical assaults, and when taken to the
police station, rape and physical abuse. He alleges that he left Costa Rica for Canada on
September 6, 2001 and made a refugee claim on October 29, 2001. The female claimant
alleges that after the principal claimant left Costa Rica, she was insulted on the street,
received threatening calls and had stones thrown at her house breaking windows. She

¹ Exhibit M-1 – Certified true copies of the claimants' Costa Rican passports were submitted by
Immigration

alleges that she and their children left Costa Rica for Canada on December 12, 2001 and made their refugee claims upon arrival.

The Chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act*² 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.³ Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as *Jurisprudential Guides*.⁴ 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.⁵ The first question the panel has to determine is whether decision TA0-15870 applies in these cases.

The panel determines that the facts and the evidence regarding country conditions in these claims are sufficiently close to those before the panel in RPD decision TA0-

² S.C. 2001, c. 27

³ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁴ RPD no. TA0-15870, Schlanger, March 31, 2003 and RPD no. TA2-14980, March 20, 2003.

⁵ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

15870 because they both deal with Costa Rican claimants seeking protection due to their sexual orientation, and the issue in both is the determination of the availability of state protection for sexual minorities. In addition, the panel assessed the April 2003 RPD Information Package⁶ which was not before the *Jurisprudential Guide* panel. In reaching its decision, the panel has assessed the claimants' own experiences in the context of the entirety of the evidence.

The determinative issue in these claims is the availability of state protection for these particular claimants. The panel adopts the reasoning in RPD decision TA0-15870 as that reasoning, which has been comprehensively analyzed, applies to the facts of these claims.

In the cases at bar, the principal claimant testified that he never reported any of the aggression against him to any state of the authorities because he was afraid to do so. He testified that the Ombudsman's Office was far from his town and he also feared that reporting to them would result in more harm against him. He consulted a lawyer who told him it was safer for him to leave the country and go to Panama. Considering the available recourses in Costa Rica, the panel finds that the claimant ought to have reported

⁶ Exhibit R-1

the aggression against him, which included rape in a police cell, to the Ministry of Security, the Constitutional Court or the Ombudsman.

In the case of the female adult claimant, she testified that she called the police at night when her house was stoned, but they did not come. She also testified that one can only get protection if one has money or police friends. Considering that the claimant knew where the culprits who were neighbours lived, and the alias of one of these, the panel finds that it was not reasonable for her not to pursue the matter by going to the police station to provide the information the following day. When asked why she did not go to the police station, she said that it was because the police would not act and the reported neighbours would become angry. The panel does not find this explanation reasonable because if that was the case, then she would have expected the same from calling the police. The panel does not find it reasonable for the female claimant to simply leave the country one month later to join her husband from whom she is now separated because she cannot accept his sexual orientation and he has not changed as promised.

The panel considered that Costa Rica⁷ is a longstanding, stable, constitutional

⁷ Exhibit R-1, item 2.1, p. 32, U.S. Department of State Report, Country Reports on Human Rights Practices, 2002, Costa Rica, March 2003.

democracy with an independent judiciary providing effective means to deal with individual cases of abuse. In the context of the country of origin, and in the circumstances of these claimants in particular, the panel finds that the claimants have not taken all reasonable steps to seek protection in Costa Rica. Therefore, it finds that they have not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect them.

Having considered all of the evidence and counsel's submissions, the panel finds that these claimants are not Convention refugees and that they are not persons in need of protection pursuant to section 97(1)(a) or (b) of the Immigration and Refugee Protection Act (IRPA).

Accordingly, the panel rejects the claims of _____, her estranged husband _____ and their minor children, _____ and _____ for refugee protection.

"E.S. Schlanger"
E.S. Schlanger

DATED at Toronto this 17th day of November, 2003.

s.19(1)

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