



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
TA2-16419

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

October 27, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

November 13, 2003

DATE DE LA DÉCISION

CORAM

Gladys MacPherson

CORAM

FOR THE CLAIMANT(S)

Nil

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

R. Rashid

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

D. Giuliani

CONSEIL DE LA MINISTRE

(by submitting documentary evidence)

"You can obtain, within 72 hours, a translation or a copy of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB, 344 Slater Street, 14th floor, Ottawa, Ontario, K1A 0K1 or by sending a request to the following e-mail address: translation.traduction@irb.gc.ca or to facsimile number (613) 947-3213."

"Vous pouvez obtenir la traduction ou une copie de ces motifs de décision dans l'autre langue officielle dans les 72 heures, en vous adressant par écrit à la Direction des services de révision et de traduction de la CISR, 344, rue Slater, 14^e étage, Ottawa (Ontario) K1A 0K1, par courrier électronique à l'adresse suivante : translation.traduction@cisr.gc.ca ou par télécopieur au (613) 947-3213."

s.19(1)

a citizen of Jamaica claims refugee protection because of his sexual orientation. He alleges that he is bi-sexual and is known as a homosexual in Jamaica. The claimant testified that, in 1998, after word got out about his sexual orientation, he was beaten in a park. In 1999, he was shot at outside a club where he had gone with three homosexual friends. He alleges that Jamaican society is homophobic and this extends to the police who reflect society's view of bisexuals and homosexuals. He testified that he cannot get protection in Jamaica and, using a false passport, he fled and came to Canada in 2000.

The claimant worked illegally in Canada. He did not claim refugee status until 2002, shortly after he had been convicted of conspiracy to commit an indictable offence and obstruction of a police officer. The claimant has three children whose mothers live in Jamaica and the United States. On 2002, he married who has made an undertaking to sponsor him to Canada.

The determinative issues are credibility and state protection. In coming to my decision, I considered the evidence before me, the oral submissions of the claimant and the written submissions of the Minister, as well as the Refugee Protection Officer's (RPO) observations. I did not find the claimant credible and even if I am wrong about his credibility, he has failed to rebut the presumption of state protection. He is, therefore, not a Convention refugee or a person in need of protection.

s.19(1)

With respect to the issue of credibility, I must base my decision on evidence I find to be probably so, not possibly so. I find that there is insufficient credible evidence of his personal identity. Given his ability and willingness to misrepresent his identity (in coming to Canada and later when he committed fraud) and his use of fraudulent documents in the commission of crime, I am not satisfied that the claimant is who he claims to be. Nor has the claimant established his identity as a bi-sexual person. There is evidence that he is heterosexual. He has three children by two different women and is presently married to a woman. The claimant testified that he has not had any homosexual relationships in Canada because he has lost interest. As there is no corroborative evidence of relationships with men, I have considered evidence of his actions and conduct.

The claimant's failure to claim refugee protection when he came to Canada is not consistent with his testimony that he feared for his life because he had been labelled a homosexual. He claimed that he was so frightened that he lived the last year "in hiding" in Jamaica and he left Jamaica specifically because of his problems as an alleged bi-sexual. He bought a passport and fled to Canada. However, once here he did not seek protection. He alleges he did not know the process but he made no attempts to find out. He simply went underground and started to work illegally. This is not consistent with someone in fear for his life.

In 2002, he was charged with various criminal offences involving obtaining bank loans by fraudulent means. An immigration official interviewed him while he was detained in Barrie and the claimant and told him that he left Jamaica because he was unemployed.¹ This is consistent with his Personal Information Form² (PIF), in which he states that he did not work from 1999 onwards. He maintains that it was his sexual preferences that caused him to leave, but he did not feel comfortable talking about it to the immigration officer. However, when he finally did get around to describing his alleged fear, he did not mention his alleged fear of violence.³

With respect to his testimony concerning his sexual activities in Jamaica, I found his testimony vague and lacking the ring of truth. He alleges that he was in hiding, yet he was working until 1999 and was living between his home and his girlfriend's home with their two children. I do not find he was in hiding. He testified that his three friends with whom he alleged he had homosexual experiences/ relationships still live in Jamaica and have not had the problems he experienced because they are rich. In a society that he brands as extremely homophobic, I fail to understand how a wealthy homosexual is somehow more acceptable than a non-wealthy homosexual.

In my opinion, there is insufficient credible or trustworthy evidence that the claimant is bi-sexual or that he has been targeted in the past, or that there is a reasonable

¹ Exhibit M-2.

² Exhibit C-1.

chance that he will be targeted for this reason in the future, if he returns to Jamaica. In coming to this conclusion, I have considered his testimony about what he claims happened to him in Jamaica and his delay in claiming refugee protection. This testimony was not credible. In making this assessment I have also taken into consideration the claimant's conviction that involved deceit. In my opinion, the claimant is not a person who concerns himself with the truth.⁴

If I am wrong about this, I further find that he has failed to rebut the presumption of state protection. He never went to the police to complain about the alleged beating or shooting. He alleges that there is no point because the police would not protect him. However, the documentary evidence does not support his assertion that the police do not protect homosexuals. The Public Defender's office has been very forceful in speaking out against violence against homosexuals. This office can and has investigated the conduct of the police, but there are no reported cases of the Public Defender investigating a failure to protect homosexuals.⁵ I do not accept the claimant's failure to seek protection and find that he has not provided clear and convincing proof of the state's inability or unwillingness to protect.

³ Exhibit M-1.

⁴ Fouladi, Esmail v. M.C.I. (F.C.T.D., no. IMM-1405-94), Recd, December 9, 1994.

⁵ Exhibit R-1, item 2.1, United States Department of State, Country Reports on Human Rights Practices – 2001, March 2002, at 2.1.7.

In conclusion, I find that there is not a serious possibility of persecution for a Convention reason. I further find that there is not a serious possibility that his removal to Jamaica would subject him to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture or to a risk to his life or to a risk of cruel and unusual treatment or punishment.

Accordingly, the Refugee Protection division determines that

is not a Convention refugee and not a person in need of protection.

"Gladys MacPherson"
Gladys MacPherson

DATED at Toronto this 13th day of November 2003.

s.19(1)