



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
TA4-12704

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

February 25, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

April 1, 2005

DATE DE LA DÉCISION

CORAM

Ken Sandhu

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

R. Tiwari

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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s.19(1)

The claimant, I, a 47-year-old citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

ALLEGATIONS

She bases her claim to a well-founded fear of persecution on her membership in a particular social group, namely victims of domestic violence. Specifically, the claimant fears her same-sex common law spouse, She further alleges that the state is unwilling or unable to protect her.

The claimant was married in 1977 to . They have one son. Her husband eventually found someone else and they separated in 1985. She met in 1990 and they moved into an apartment in 1992. At first the relationship was friendly and non sexual but it eventually turned intimate. In 2000, the relationship started to develop problems resulting in quarrels and fights. was never employed and had access to the claimant's bankcard and was spending excessive amounts of money. They quarrelled over s spending habits. The claimant attempted to break off their relationship. The claimant also alleged that ' would physically beat her during their domestic quarrels and she would leave for periods of days when she would be "womanising".

In 2004, the claimant realized that was using illicit drugs at their apartment with her friends. She threatened to call the police but got the telephone and almost strangled the claimant with the cord. before leaving with her friends, warned

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

her that if she reported the matter to the police, she and her son, who is now 25 and living away at a University, would be killed. She testified that she went to the local police but they laughed at her for having a relationship with a woman. She ran out of the police station.

The claimant vacated the apartment, changed the locks, moved all the furniture and moved her bank accounts. She telephoned and threatened to kill her and demanded part of the money. A neighbour from the apartment building called to tell her that gunshots had been heard the night before and that he could see gunshot holes in the windows. Her employer advised her to resign and seek personal safety. She resigned on 2004 to avoid "humiliation, embarrassment and scandal" and came to Canada on 2004 to join her mother, three brothers and one sister. She did not attempt to report any other incidents of domestic violence to the police.

The claimant fears violence from her ex common law spouse if she returns to the Philippines and alleges a lack of state protection.

DETERMINATION

The Refugee Protection Division (RPD) determines that the claimant is not a Convention refugee and not a person in need of protection. The panel is not persuaded that the claimant has established good grounds for fearing persecution by reason of her membership in a particular social group or any other Convention ground. Furthermore,

² Exhibit C-1, Personal Information Form, (PIF) narrative line 64.

the panel concludes that the claimant is not a person in need of protection, pursuant to section 97, subsection (1)(a) or (b) of the IRPA.

ANALYSIS

The determinative issue in this claim is state protection.

Based on the claimant's passport,³ the panel is persuaded that the claimant is a citizen of the Philippines and that she is who she says she is.

The panel considered the claimant's written PIF⁴ narrative and oral testimony and the documentary evidence filed. The panel also considered submissions of counsel and those of the Refugee Protection Officer (RPO) and the Chairperson's Gender Guidelines.⁵

The Philippines is a functioning democracy with a functioning police service.⁶ For that reason, the standard of proof with respect to rebutting the presumption of state protection is high. For the following reasons, the claimant has not persuaded the panel within the preponderance of probability category, as it must be,⁷ that the state of the Philippines would not be reasonably forthcoming with serious efforts to protect the claimant if she were to return to the Philippines and seek protection now.

³ Exhibit R/A-2, Information received from CIC - claimant's passport.

⁴ Exhibit C-1.

⁵ Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

⁶ Exhibit R/A-1, RPD Information Package, Section 2.1, United States Department of State, Country Reports on Human Rights Practices - 2002.

⁷ Xue, Jian Fei v. M.C.I. (F.C.T.D., no. IMM-4477-99), Rothstein, October 23, 2000.

According to the claimant's oral testimony, she attempted to complain to the local police only once, in 2004, after the telephone cord incident. She did not seek any other assistance from any other state authority. She also neglected to mention any contacts with the police in her PIF. s.19(1)

The panel is guided by the Court of Appeal decision of Kadenko:⁸

Where there has not been a complete breakdown of the government apparatus and where a State has political and judicial institutions capable of protecting its citizens, does the refusal by certain police officers to take action suffice to establish that that State in question is unable or unwilling to protect its nationals?

The court answered the question in negative:

Once it is assumed that the state (Israel in this case) has political and judicial institutions capable of protecting its citizens, it is clear that the refusal by certain police officers to take action cannot in itself make the state incapable of doing so....

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 members of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state: the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.

The panel examined the extensive information contained in the country documents on the subject of domestic violence in Philippines.

Women's Crisis Centres have been established in government hospitals, which are jointly operated, by government and non-governmental organizations.⁹ One document

⁸ Canada (Minister of Citizenship and Immigration) v. Kadenko (1996), 143 D.L.R. (4th) 532 (F.C.A.).

⁹ *Supra*, footnote 6, Section 9.3, Response to Information Request, number: PHL21932.E, September 21, 1995.

dated June 23, 2003 lists twenty-eight women's organizations operating in Philippines dedicated to empowering, developing and advocating for women in all aspects of their lives.¹⁰ There are photocopies of pamphlets issued to the public on the harmful effects of domestic violence and on how to make a complaint and where to go to get help.

Documentary evidence¹¹ states the following:

The PNP (Philippine National Police) and the DSWD (Department of Social Welfare and Development) both maintained women's help desks to assist victims of violence against women and to encourage the reporting of crimes. With the assistance of NGOs, (nongovernmental organizations) officers received gender sensitivity training to deal with victims of sexual crimes and domestic violence. Many PNP stations included female officers. Overall the Government spent an estimated \$814,000 (P45 million) during the year for medical and psychiatric facilities and shelters for women who are victims of violence."

The panel is guided by the Federal Court of Canada decision in Villafranca that states do not have to provide 100 percent effective protection; they need only make a serious effort.¹²

The panel is persuaded by the documents referred to above that the Philippines is making a serious effort to address the problem of domestic violence. The panel finds that her one report to the police was an inadequate effort to inform the state of her plight and avail herself of sources of protection that were and are available. She did not make a reasonable effort to avail herself of available state protection. Her lack of reasonable

¹⁰ *Supra*, footnote 6, Section 2.1, Country Reports on Human Rights Practices – 2002, Women's Organizations, Philippines.

¹¹ *Supra*, footnote 6, Section 2.1. United States Department of State, Country Reports on Human Rights Practices – 2002.

¹² Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

effort prevented state authorities from according her protection. The documentary evidence persuades the panel that she could have and can avail herself of state protection.

CONCLUSION

The panel finds that there is not a serious possibility of persecution should the claimant return to the Philippines. In addition, the panel finds that the claimant is not a person in need of protection pursuant to section 97, subsection (1)(a) and (b) of the IRPA.

"Ken Sandhu"

Ken Sandhu

DATED at Toronto this 1st day of April 2005.