

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié
Section de la protection des réfugiés

RPD File # / No. dossier SPR VA3-02165

Claimant(s)		Private Proceeding Huis clos
		Demandeur(e)s d'asile
Date(s) of Hearing	October 28, 2003	Date(s) de l'audience
Place (s) of Hearing	Vancouver, B.C.	Lieu de l'audience
Date of Decision	October 28, 2003 (rendered orally) January 13, 2004 (written decision)	Date de la décision
Panel	R. Vanderkooy	Tribunal
Claimant's Counsel	Andres Quiroga	Conseil du demandeur d'asile
Refugee Protection Officer	R. Go	Agent de la protection des réfugiés
Designated Representative	Nil	Représentant désignés
Minister's Counsel	Nil	Conseil du ministre

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On October 28, 2003 the Refugee Protection Division (Refugee Division) heard the claim of _____ for refugee protection. On that same day, the panel rendered its oral decision and reasons. This is the written version of that oral decision and reasons.

ORAL DECISION AND REASONS

I am prepared to render reasons. The reasons that I give may be edited in their written form for grammar and reading comprehension.

Mr. _____ is a 23-year-old single gentleman from the city of _____, in the United States of Mexico. He arrived in Canada on January 15, 2002. According to the narrative of his Personal Information Form (PIF) in Exhibit 1.1, he came to Canada for a particular reason, that he is a homosexual/bisexual man and that he so feared persecution if he remained in Mexico that he came to Canada to settle here and be safe.

Now, when he entered Canada, using his passport, a copy of which is filed in Exhibit 1.2, he was permitted to remain as a visitor in Canada. As a Mexican citizen, there is no requirement for obtaining a visa prior to entering Canada. Still, despite that he was coming to this country for protection, he waited ten weeks until he made his refugee claim. He waited until his friend and homosexual lover, _____ also arrived in the country, in his case on February 20, 2002. His friend and partner arrived more than a month after he did. Both of them made refugee claims on March 27, 2002.

Now, the information of the dates concerning his partner's arrival and the making of their refugee claims together I am taking from within the file that is before me. This was to be a joint hearing of two claims, that of the claimant and his partner, now former partner, _____. There is also information in this file that

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withdrew his refugee claim on January 31, 2003. As to where he is, the present and continuing claimant, Mr. [redacted] states that he has not the faintest idea, whether in Mexico, still in Canada or, for that matter, in some other place. In November 2002, or about eight months after they made their refugee claims, they developed relational problems and separated.

I find the claimant has failed to adequately explain why it took him ten weeks to make his refugee claim. I find this to be an inordinate delay, given that he had formed the intention to come to Canada to settle. He must have known, indeed he is imputed to have known, that with the visitor's visa he had obtained, he could not permanently settle in Canada. I do not accept his flaccid explanation that he had not been informed of the possibility of claiming refuge here but had to wait until a female friend happened to tell him about it.

What is missing is the claimant made seemingly no efforts of his own to enquire. Neither do I find it material that he waited about half that time before his friend and partner arrived. The indication of a ten-week delay here is of a lack of seriousness in this gentleman pursuing protection. It shows, I find, that he lacked a subjective fear of persecution. That, in turn, infects his credibility, according to my assessment of it.

It is his allegation that in 2001 he was maintaining two relationships, one with a young lady named [redacted] whose father was a prominent [redacted] in the city of [redacted] and another with [redacted] which was homosexual and sexual. He was having them both.

He alleges that because [redacted] found out he was not being true to his relationship to her, which had included even talk of marriage, she took such an affront that she has brought to bear all the violent power that her father's office can muster through his contacts and has targeted the claimant for death.

I do not believe it. It is not plausible that a woman who has had a short ten-month relationship with a fellow, this when he is only 20 or 21 years of age, and finds

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out that he was two-timing her when she catches him *in flagrante delicto* with
at a Party in 2001 that she might consider her
whole life coming apart, an affront to dignity and pride such that she then takes
these kinds of actions to have him snuffed out.

This scenario, as alleged, is so far from what seems probably real, and I refer here
to the test for plausibility in *Farynav. Chorny*,¹ that it goes against all probability
of what might be usual even in Mexico.

The credibility of interested witnesses, particularly in cases of conflict of
evidence, cannot be gauged solely by the test of whether the personal
demeanour of the particular witness carried conviction of the truth. The
test must reasonably subject his story to an examination of its
consistency with the probabilities that surround the currently existing
conditions. **In short, the real test of the truth of the story of a witness
in such a case must be its harmony with the preponderance of the
probabilities which a practical and informed person would readily
recognize as reasonable in that place and in those conditions.** Only
thus can a Court satisfactorily appraise the testimony of quick-minded,
experienced and confident witnesses, and of those shrewd persons adept
in the half-lie and of long and successful experience in combining skilful
exaggeration with partial suppression of the truth. **[Emphasis Added]**

This is not a case, I find, where because of the differences in cultures between
Canada and Mexico, that it is likely that the panel errs in finding a lack of
plausibility. As it is, the claimant backed away from stating that she was his
fiancée. There was some confusion in interpretation with the word fiancée from
English to Spanish. What I find important is that he made clear her mind was the
same as his. She was not sure if anything was going to come of their relationship.
She, like him, considered that it needed time. Yes, it did. It needed time for her
to discover that he was not integral with her. She found out and it makes most
sense, that it would likely have been the basis for her to consider the relationship
at an end and that it was time for her to look for someone else.

¹ *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).

It simply is not shown by this claimant what serious injury he caused this alleged woman

If this is not shown, then it is not plausible that she used her father's offices and connections to threaten to have him killed and, allegedly on

2002, kidnapped, a gun held to his head, and beaten badly. As it is, he states that he suffered no serious injuries, though he alleges he was beaten badly. I find that suspicious, suggesting that he would rather avoid questions about medical treatment.

He stated he did not report to police. I find that also suspicious. It is a way for him to avoid questions about a police report being filed in this hearing. The Refugee Protection Officer suggested to him that making a report about being so beaten did not have to imply to police that he was a homosexual. He alleged that because of his girlfriend's father's connections it would be found out. Even so, he did not try. It could not have made it worse to try. It shows, I find, that the whole incident likely did not happen. It is an incident built on an implausibility, in any event, the implausible allegation that he had done serious injury to his girlfriend of ten months with whom he was not yet in a fully serious relationship.

In addition to that, the claimant could not adequately explain why he was toying with her and a possible serious relationship. He could not explain why he spoke about marriage with her, given his homosexual interests. It does not make sense.

The first page of the narrative in his PIF shows a confusion and contradiction of dates. He states that in 1995 he realized he was bisexual, then he states that while in secondary school he had a girlfriend. Later he makes clear that he began dating her in 2001, yet above that he states that while he was finding out he was bisexual at a family party in, it must have been 1995, "At this time" he was "still dating" I The dates are all confused. It could not have been the case he was dating in 2001 while he was finding out he was bisexual in 1995.

I give no weight to his evidence today that one month ago, or in September 2003, more than a year and a half after he left Mexico, he learned from his parents that had called his home and she herself, not using any contacts, but exposing

herself in the story, called them and essentially threatened or asked them to pass on her threat that it would be best if the claimant never returned to Mexico.

Again, this allegation, coming from a witness who I find to lack the credit and trustworthiness required for reliable evidence, cannot be accepted. His claim is not credible. It is for that reason that I instructed the Refugee Protection Officer and advised counsel not to deal with Internal Flight Alternative (IFA). IFA is an issue that counts with a credible witness. The claimant is clearly not credible.

I want to deal briefly with the objective basis. The claimant found it easy, I find self-servingly, to indicate and exaggerate the situation for homosexuals in Mexico. He found it easy to say they get no protection from the police, yet he confirmed he has never had any dealings with the police in Mexico.

It was pointed out to him in Exhibit 4 at page 3, the gay pride parade in June of this year drew an estimated 60,000 people in Mexico. He found it easy to state too, I find in a self-serving and embellished fashion, that though 's father is no longer the he would still be able to have influence over him. How did he know this? He drew the information from his knowledge of a friend who had been able to have an ex- clear him of a simple traffic fine. I find that is no sound basis on which to base such a general statement. Clearly the claimant was making it up as he went along.

I refer to *Maldonado*,² the famed and guiding case concerning assessment of credibility in refugee claims. Mr. did give his evidence under oath today. It is to be believed simply because of its being given under oath unless there is good reason to doubt its reliability. Here there is an abundance of reason to consider it unreliable. I have referred to all of them: the lack of subjective fear shown in the claimant by not making his claim at an early opportunity; the exaggerated nature and sheer implausibility of the claim he makes that he was

² *Maldonado v. Canada (Minister of Employment and Immigration)* (1994), 23 Imm. L.R. (2d) 220 (F.C.T.D.).

caught in the vice of the most powerful forces in Mexico simply by having shown his girlfriend that he was not good for their relationship. He gave general and self-serving answers about the situation in Mexico. My reasons shows the basis for this determination.

I must also ask, in line with subsection 107(2) of the *Immigration and Refugee Protection Act*, whether there is any credible or trustworthy evidence on which a favourable decision could have been made in this case. I refer to the decision in *Sadeghi*³ for its guidance in making this kind of assessment at the end of a claim.

Essentially, the panel must determine what are the remaining sound facts and to enquire whether there is a link from them to any documented evidence of problems occurring in the home country. In this case, I have information that the claimant is a 23-year-old young man from Mexico, and that he came to Canada on January 15, 2002.

He was not seriously questioned about his sexual identity. This was not done for the main reason that this hearing lacks the time to do so. Therefore, I am willing to accept, despite the problems otherwise in credibility, that he is a young man of homosexual inclination.

Does that, of itself, cause a link to be drawn to the situation in Mexico? I have to turn to his own allegations, which are part of the basic facts that can be accepted about this claimant. He has never had any contact with the police. His allegations that he has been in trouble because of his homosexuality have been found to be thoroughly lacking in credibility. In my view, a link cannot be drawn from this fact alone, that he is a homosexual young man in Mexico to those events documented in Exhibit 4, showing for example, as counsel referred the panel to the Issue Paper "*Mexico: Treatment of Sexual Minorities*" and its page 11, that police are known to have abused homosexual men.

³ *Sadeghi, Siamek v. M.C.I.* (F.C.T.D., no. IMM-1670-02), Rouleau, October 17, 2002.

At this page number, on the top of the page, the director of a human rights organization states his organization has dealt with about 12 complaints of abuse of homosexual men by police since 1993. The report is dated 1999, so it shows that in six years 12 complaints have been dealt with. It is not that large a number.

There is other information from other sources here showing that problems do occur. On the other hand, as has been referred to, gays and lesbians are able to celebrate their lifestyle in large public displays, such as the gay pride parade. In another article, there is indication that gay couples are making some progress to legalize same-sex unions in Mexico. It seems the situation in that country is fluid.

Because the claimant has in no way established in a credible fashion that he has ever had problems in Mexico; neither has he established that there is more than a mere possibility for a homosexual to, in general, suffer persecution in Mexico, it is my opinion that there is no credible or trustworthy evidence on which a favourable decision could have been made, given my findings on the evidence.

Therefore, I determine the claimant, _____, not to be a Convention refugee and not to be a person in need of protection. There is no credible basis to his refugee claim.

The hearing is concluded. Good day to all.

"R. Vanderkooy"

R. Vanderkooy

January 13, 2004

Date

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