



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
TA2-20675

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

3 May 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

17 May 2004

DATE DE LA DÉCISION

CORAM

George A. Griffith

CORAM

FOR THE CLAIMANT(S)

**Paul Vandervennen
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

n/a

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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s.19(1)

the claimant, is a 29 year-old citizen of Uruguay and he claims refugee protection pursuant to ss. 96, and 97 (1) of the Immigration and Refugee Protection Act.

ALLEGATIONS

The claimant alleges the following. He has been victimized by the father of his ex-fiancée, because he was caught in a homosexual encounter. The father believes that the claimant's behaviour has been an insult to the family.

In 2002, the claimant and his girlfriend/fiancée, attended a nightclub together. Sometime during the evening, the claimant engaged in sexual activities with a man whom he met at the club. On hearing of the incident, the father allegedly verbally abused and threatened the claimant.

The claimant alleges that, in addition to the verbal abuse and threats, he was the victim of assault by unknown persons. On 2002 he was attacked and beaten by a group of men, and he had to receive medical treatment¹ as a result. Further, his family home was sprayed with graffiti² and the family received threatening telephone calls.

The claimant alleges that, on several occasions, he was stopped and asked for identification by police officers. He believes that, generally, he was being intimidated by persons acting on behalf of 's father, a military man.

¹ Exhibit C-2

² Ibid.

In 2002 the claimant was forced into a car by two masked men, and he was physically beaten and raped by one of the men. A gun was put to his head and he was allegedly told that he should leave the country. He sought and received medical³ attention.

The claimant discussed his situation with his family, he decided to seek protection in Canada. He believes that his ex-fiancée's father would harm in Uruguay and that no protection is available to him in that country.

DETERMINATION

I find that the claimant is neither a Convention refugee nor a person in need of protection, as adequate⁴, though not necessarily perfect, protection is available to him in Uruguay.

ANALYSIS

The claimant's identity as a citizen of Uruguay is established on the basis of a certified true copy of his Uruguayan Passport submitted by Immigration.⁵

The claimant is a member of a particular social group as contemplated in *Ward*⁶ on the basis of his sexual orientation, and there was no credibility issue in this area. However, in my opinion, he has not rebutted the presumption⁷ that state protection is

³ Exhibit C-2

⁴ *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.)

⁵ Exhibit R/A-2

⁶ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 D.L.R. (4th) Imm.L.R. (2nd) 85

⁷ Ibid.

available to him in Uruguay. My reasons follow.

I note that, in the documentary evidence,⁸ it is stated that Uruguay is a constitutional republic with an independent judiciary, and that "...the government generally respected the human rights of its citizens, and the law and judiciary generally provide effective means of dealing with individual instances of abuse..."⁹

In his submissions, Counsel has argued that the claimant is entitled to "effective" protection, and that he is not assured of "effective" protection in Uruguay. Counsel has referred to several excerpts¹⁰ of the documentary evidence on the situation of gays and lesbians in Uruguay, and these indicate that, indeed, in Uruguay, there are strong homophobic traits, and that gays and lesbians face discrimination.

I have considered the evidence¹¹ cited by Counsel, and I note that homophobia continues to be a societal problem in Uruguay, as the documents indicate. However, it is also concluded that "the attitudes towards homosexuals are changing, especially in Montevideo. Montevideo's first gay pride parade was held in 1993. Since then, the parades have expanded to the point where sympathetic heterosexual participants outnumber homosexuals..."¹²

⁸ Exhibit R/A-1, item 2.1, US Department of State Report on Human Rights Practices for 2002, March 2003

⁹ Ibid.

¹⁰ Exhibit R/A-1, items, 6.3; 6.4 ; Exhibit C-3 and C-4

¹¹ Ibid.

¹² Exhibit C-3

In addition, the documentary evidence¹³ cites recent amendments to the Penal Code (Law 17677) with provisions for punishing violent acts committed by reason of a victim's sexual orientation, passed by the Parliament of Uruguay on 10 July, 2003. Another document says, "... there is an abundance of legal jurisprudence in the country and sexual minorities may rely on the appropriate legal safeguards for protection..."¹⁴ The claimant, therefore, has a viable recourse if he considers that he has good grounds to fear persecution or a risk to his life solely on the grounds of his sexual orientation.

What remains to be determined is the well-foundedness of the claimant's specific fear of potential criminal violence from his ex-girl friend's father, or his accomplices. In my opinion, the claimant has an obligation to make more serious efforts, and to exhaust all of the options¹⁵ available to him in Uruguay.

The claimant visited the police on three occasions, and he alleges that by having to wait for long periods of time in a waiting room, he was being rebuffed by the police. On one occasion he was allegedly told that he had to be accompanied by a lawyer. However, I note that on the evidence, reports were properly recorded by the police during those visits. Rather than making adequate follow up with the police, the claimant traveled to Canada.

Except for his own speculation of police collusion with the father of his ex-

¹³ Exhibit R/A-1, item 5.1

¹⁴ Exhibit R/A-1, item 6.3

¹⁵ Kadenko v. Canada (Solicitor General) (1995), 32 Imm. L.R. (2d) 275 (F.C.T.D.)

fiancée, therefore, he is not in a position to know what actions have been taken by the police in Uruguay or whether or not protection would be forthcoming to him. In this regard, I note other documentary evidence which states that "... the judicial and parliamentary branches of government are responsible for investigating specific allegations of abuse..."¹⁶, and, though it is said to be understaffed and can only issue recommendations for disciplinary action, "an internal police investigative unit receives complaints from any person concerning possible non-criminal police abuse..."¹⁷

In my opinion, the above reveals that the government of Uruguay is making serious efforts to provide protection to its citizens. The test in *Villafranca*¹⁸ is met, and, for these reasons, the claim is rejected.

"George A. Griffith"
George A. Griffith

DATED at Toronto this 17th day of May 2004

¹⁶ Exhibit R/A-1, *Supra*, footnote 8

¹⁷ Ibid.

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