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 VA3-03948

Private Proceeding
Huis clos

Claimant(s)	**Demandeur(s) d'asile**
Date(s) of Hearing	**Date(s) d'audience**
February 1, 2005	
Place of Hearing	**Lieu de l'audience**
Toronto, Ontario	
Videoconferencing held in	**Fait par vidéoconférence à**
Vancouver, BC	
Date of Decision	**Date de la décision**
March 15, 2005	
Panel	**Tribunal**
Susan French	
Claimant's Counsel	**Conseil du demandeur d'asile**
Luis Antonio Monroy Barrister & Solicitor	
Refugee Protection Officer	**Agent de la protection des réfugiés**
Nil	
Designated Representative	**Représentant désigné**
Nil	
Minister's Counsel	**Conseil du ministre**
Nil	

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This is the decision and the reason for the decision on the claim for refugee protection by (the claimant) is citizen of Mexico.

ALLEGATION

The claimant submitted two narratives as to why he needed protection in Canada. The first narrative stated that the claimant was a bi-sexual man who feared return to Mexico because, although married, he had a relationship with someone else who was also married to a woman and this relationship was discovered. As a result, the claimant wrote, he cannot return to Mexico. A few weeks before the hearing a second Personal Information Form[1] with a different narrative was submitted. The claimant testified that he had been advised to write the first one and that none of the narrative was true. The new narrative is, the claimant testified.

In the second narrative, the claimant alleges that he cannot return to Mexico, because he fears that he will not be able to get work because he is over the age of 35 and that he will not be able to support himself, wife and child. He is not eligible for a pension because he has not worked steadily in Mexico for the required number of years to qualify for one. He alleges that he would have no way of providing himself with even a roof over his head let alone of supporting a family or even of providing food and shelter them.

DETERMINATION

I find that the claimant is not a Convention refugee because what the claimant alleges to fear amounts to discrimination and does not amount to persecution. I find that the claimant is not person in need of protection as provided for in Section 97(1)(a) or (b) of *The Immigration and Refugee Protection Act*[2] because there is not a serious reason to believe that he will face cruel and unusual treatment, torture or that his life would be at risk should he return to Mexico.

ANALYSIS

The claimant submitted two narratives. Having two narratives submitted with totally different allegations put the trustworthiness of the claimant's evidence in question. The objective evidence however supports the allegations of problems for older people in seeking

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1 Exhibit 4.2.

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

employment in Mexico generally and the claimant is 48. As there is some credible basis for the claim I have not rejected it out of hand.

There is a copy of the client's passport in Exhibit 3 that has a stamp in it which indicates that the claimant used it to enter Canada on August 7, 2003. I have no evidence that this passport is not a legitimate passport. I am satisfied on a balance of probabilities, that the claimant is who he says he is and that he is a citizen of Mexico. The passport shows that the claimant's date of birth is the 1956. He is 48 years old.

The claimant alleges that he would be persecuted in Mexico, because he needs to work and wants to work but he is over 35 years old and cannot get a job there because hiring practices in Mexico would prevent him from obtaining employment, should he return to Mexico. It was submitted that "people over 35 years old who cannot get a job" constitutes a particular social group. I disagree. The clause "cannot get a job because of his age" describes the alleged persecution. A particular social group cannot be defined by the persecution to which the group is alleged to be subjected. However the claimant is a person wanting to work and he is over the age of thirty-five. "People over 35 wanting to work" may be said, in a loose sense, to constitute a particular social group.

The evidence before me points out that Mexico is struggling with a slowing and changing economy. It reveals that the need for high tech. employees in Mexico is on the rise and the business sector is increasingly concerned it will not be able to support a growing aging workforce; especially if it is responsible for employee pensions. These concerns have resulted often in the screening of applicants in the hiring process of many professionals and other support employees. The claimant testified that these practices are also a reality for those seeking non-skilled labour jobs.

It appears that the government is aware of inequalities in Mexican society and is making serious efforts to put into place mechanisms to address and redress those inequities. A new anti-discrimination law was passed in Mexico in April 23, 2003 that prohibits discrimination, exclusion or restriction based on several grounds, age being one of those grounds. The National Council to Prevent Discrimination was created by Article 16 of that law and its mission is to "formulate and promote public policies for equal opportunity and treatment..." Organisations as well as individuals may submit complaints if they feel affected by discrimination in any form.

s.19(1)

s.19(1)

This council will provide legal advice to victims of discrimination. Complaints can be submitted in person or by phone or email.

Counsel's post hearing disclosures provides more evidence regarding to several events and initiatives of non-profit and government agencies that have taken place or that are planned for the near future to address the impending challenges of a changing demand of labour and an aging population in Mexico. This evidence, although it brings to light the difficulties people over 35 years of age can face while seeking employment, also supports the evidence that the government and society generally is making serious efforts to redress the situation. The evidence as a whole does not establish on a balance of probabilities that all people in Mexico over the age of 35 who want to work are unable to do so, or that the obstacles they may face in finding employment amounts to persecution. I find on a balance of probabilities that it establishes the challenges faced in Mexico by people over 35 who want to work may be discriminatory but they do not amount to persecution.

The claimant, who testified that he was an electrician by trade, stated that he had worked in his field in Mexico prior to coming to Canada. His problems he claimed began after he was thirty-seven. After that time the claimant had periods of unemployment or could only attain work that paid badly. His last contract ended in 2001 after that he applied unsuccessfully for jobs of different kinds; electrical, plumbing, bathroom installation. He subsisted on small jobs. In 2002 the claimant was rejected by companies who openly stated that he was too old for the positions for which he applied. He lost hope and on 07 August 2003 he entered Canada to try to find work and a new life. I conclude that the claimant is an economic migrant. He is not a Convention refugee.

I find that the claimant did not succeed in establishing more than a mere possibility that the labour practices in Mexico would constitute such harm as could be defined as persecutory. It may be submitted that being unable to find work in Mexico constitutes a risk to the claimant's life at worst or at least, cruel and unusual punishment however, while in Mexico, the claimant was able to provide in some manner for himself, his wife and child. No submissions were submitted on this aspect of the claim. The evidence did not lead me to conclude that there would be no work of any kind for the claimant in Mexico. If the claimant fears cruel or unusual punishment or a risk to his life this fear is synonymous to his fear of the results that believes would accrue him from barriers that exist to employment. As I have already concluded that there

is no more than a mere possibility that the harm he may suffer would amount to persecution I must find that the evidence does not lead me to conclude that it is more likely than not that the claimant would face a risk to his life or cruel and unusual treatment. No evidence was lead in regard to a risk of torture. I find none. The claimant is not a person in need of protection.

CONCLUSION

Having considered all the evidence and counsel's written submissions I find that the claimant is not a Convention refugee or a person in need of protection.

"Susan French"

Susan French

March 15, 2005

Date

s.19(1)