



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
TA5-01198

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

May 3, 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

May 11, 2006

DATE DE LA DÉCISION

CORAM

Patrice C. Valeriano

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Nil

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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These are the reasons for the decision of the Refugee Protection Division in the claim for Refugee protection made by (a.k.a. (the claimant), a citizen of Saint Vincent and the Grenadines (Saint s.19(1) Vincent). The hearing for determination was conducted pursuant to section 170 of the *Immigration and Refugee Protection Act*¹ (IRPA).

The Immigration and Refugee Board (the Board) has had the opportunity to consider the claimant's oral testimony and review the documents on file, and rendered its decision orally. Written reasons have been edited for grammar and syntax, and to add references to appropriate case law or other documentary evidence on which the Board relied. In arriving at the decision, the Board has taken into consideration counsel's submissions.

DETERMINATION

Having given due consideration to the totality of the evidence before it, the Board finds that the claimant is neither a Convention Refugee within the meaning of section 96 of IRPA, nor a person in need of protection pursuant to the provisions of section 97 of IRPA.

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

SUMMARY OF THE ALLEGATIONS

The claimant alleges to have a well-founded fear of persecution in Saint Vincent and in Trinidad and Tobago (Trinidad), based on his membership in a particular social group, namely bisexual men. The claimant identified the parents of his alleged lover in Saint Vincent, the police, and the general public as the agents of persecution.

The claimant alleges that he became aware he was attracted to men when he was a teenager. He claims to have had sexual relations with two sailors when he was 18 years of age, in or about 1975. He says he was hurt by the termination of these relationships and does not relate a further sexual encounter with men until 1997. The claimant was born in Saint Vincent, but lived in Trinidad to work from about 1978 to 1980. While in Trinidad he met and married his wife. They had one child and then the claimant left Trinidad and returned to Saint Vincent. His wife followed him from Trinidad to Saint Vincent and they attempted to reconcile. The claimant's wife became pregnant and the couple decided to separate again in or about 1981, and she returned to Trinidad. The claimant alleges he did not see his wife again until 1997.

In or about 1981 or 1982, while in Saint Vincent, the claimant says he met and had sexual relations with), but that the relationship ended soon after. He went to Trinidad again in 1995 and moved in with his wife. He says in 1997, on the only occasion he had sex with a new male partner, his wife caught him in bed. She chased him out of the house and shouted to the neighbours, who the claimant alleges

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chased him, pelted him with stones and beat him. He fled Trinidad and claims never to have returned since 1997.

The claimant alleges that in 2004, he met [redacted] again at carnival in [redacted] and they had a relationship. He alleges [redacted]'s parents caught the two in bed in [redacted] 2004, and that they threatened the claimant and reported him to the police. The claimant fled Saint Vincent and came to Canada in [redacted] 2005. He made a claim for Refugee protection soon after his arrival in this country. The claimant had travelled to Canada once before in 2003 then returned to Saint Vincent.

ANALYSIS

Several issues relating to this claim were considered. The determinative issues in the Board arriving at its negative decision were credibility and the risk of harm if the claimant returned to Trinidad.

IDENTITY

The Board had significant concerns with the identity of the claimant. He traveled to Canada on a false passport, saying he had a passport from Saint Vincent but could not retrieve it from his home. The false passport was apparently returned to the smuggler who facilitated his most recent trip to Canada. He has made no attempts to get a new

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passport from Saint Vincent since he came to Canada. He was, however able, to get a friend to retrieve his birth certificate,² and his Trinidadian Residency Certificate.³

The birth certificate is *prima facie* evidence of his citizenship in Saint Vincent. Based on that document, the Board is satisfied, on the balance of probabilities, that the claimant is a citizen of Saint Vincent. The Board is also satisfied the claimant is a permanent resident of Trinidad. Accordingly, his claim for protection is against both countries.

CREDIBILITY AND SUBJECTIVE FEAR

The Board has considered the credibility of the claimant in order to assess his subjective fear and the well foundedness of that fear. Having considered the claimant's testimony, the Board finds material aspects of it to be lacking in credibility. The Board finds the claimant's fear is not well founded, and that there is insufficient credible and trustworthy evidence to support the Refugee claim advanced.

The main issue is whether or not the claimant is bi-sexual and would be perceived as such in Saint Vincent and in Trinidad. In reviewing the claimant's oral and written evidence, the Board found that the testimony of the claimant was replete with inconsistencies, contradictions and omissions that were material to the claim. The

² Exhibit R/A-2, documents received from Citizenship and Immigration Canada (CIC), certified true copy of claimant's birth certificate.

³ *Ibid.*, certified true copy of claimant's "Certificate of Registration as a Resident of Trinidad and Tobago".

claimant was vague in his responses, and when pressed for specifics often got the facts wrong or mixed up. He reconsidered material aspects of his testimony and then changed it, saying he had misunderstood the question or was not good with dates. This persuades the Board that at least some of the claimant's evidence of has been fabricated and that the incidents outlined in the Personal Information Form⁴ (PIF) did not occur as described, or in the alternative, did not occur at all. Specifically, the Board is not persuaded that the claimant had a lover, , in Trinidad that he was caught with while he was engaging in sexual relations. Further, the Board is not persuaded that the claimant had a sexual relationship with . in Saint Vincent. Finally, the Board is not satisfied, as it must be,⁵ on the balance of probabilities that the claimant is bi-sexual or is perceived as such in either country. Having made findings that the incidents did not occur, or occurred differently than described by the claimant, the Board concludes there is a lack of genuine subjective fear of being returned to Saint Vincent or to Trinidad.

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⁴ Exhibit C-1.

⁵ *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680; (1989), 7 Imm. L.R. (2d) 169 (C.A.).

The Board offers the following as examples from evidence where credibility was lacking:

- 1) The claimant stated in his PIF that he began a relationship with [redacted] in 2004 during carnival.⁶ He describes [redacted] as "much younger".⁷ However, in oral evidence the claimant stated he first met [redacted] when his wife left to go back to Trinidad, in or about 1982, and that he had a short relationship with [redacted] at that time. He also said in his oral evidence that he then did not see [redacted] again from 1982 until 2004 at carnival. This was considered a material inconsistency. Later in the hearing, when questioned about [redacted] again, the claimant said he did not meet [redacted] for the first time until 2004. When asked to explain his change in testimony, he said he was mixed up and misunderstood the question. The claimant could provide no corroborating evidence of his relationship with [redacted].
- 2) When the claimant was giving evidence earlier in the hearing regarding his relationship with [redacted] in 2004, the claimant was asked [redacted] s age in 2004. He said he believed [redacted] was around 19 years of age and that [redacted] was about 23 years of age today. When asked to explain how he could have known [redacted] in 1982, the claimant reiterated he did know [redacted] then. However, the

⁶ Exhibit C-1, Appendix "A", narrative, paragraph 7.

⁷ *Ibid.*

ages given would have made [redacted]'s date of birth sometime in 1982. When it was put to the claimant that [redacted] would have been only about one year old in 1982, at which time the claimant alleges he knew [redacted] and had sexual relations with him, the claimant retracted his earlier testimony, saying he did not know [redacted] in 1982.

3) The claimant was asked if he had any male partners in Saint Vincent after [redacted] in 1982 and before 2004 when he met [redacted] again. He said he did not have male partners, only female ones. Later in the hearing, he contradicted that evidence and said he had had seven or eight male partners during this period of time and that he met them at clubs and had sex with them. The Board found this to be a material contradiction.

4) The claimant was asked about male partners in Trinidad, from 1995 to 1997 when he returned to Saint Vincent. He said he had only one male partner,

When asked how often he had had sexual relations with this man, the claimant said only once, and on the single occasion he had sex with

he was caught by his wife. The Board finds it to be unlikely or implausible that the only time he had sexual relations with a man in Trinidad, his wife caught him. The Board does not accept that the claimant had sexual relations with someone named [redacted]. The claimant could

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provide no corroboration of this relationship with nor did the claimant provide any evidence of his marriage to a woman named

- 5) When giving his testimony as to dates, the claimant consistently either confused dates or reported them in a manner that suggested he had memorized them. For example, on at least two occasions, he referred to months by their numerical value, rather than by the month's name (i.e. he referred to ' '97", rather than of 1997, and he referred to ' /04", rather than of 2004). His counsel suggested the claimant had memory difficulties and certainly the psychiatrist's report makes reference to memory deficiencies.⁸ Still, the Board finds his recollection of dates by numerical reference rather than month to suggest he had memorized the dates rather than lived and recalled the events.
- 6) The claimant said he travelled to Canada on a false passport. He alleges he has a valid passport from Saint Vincent, but that it could not be retrieved from his home. The claimant stated he asked his friend to get his birth certificate and Trinidad Residency Certificate,⁹ and he says he asked this

⁸ Exhibit C-2, counsel's disclosure package of November 9, 2005, item 1, letter from (Ph.D., C.Psych., 2005, pp. 2-3.

⁹ *Supra*, footnotes 2 and 3.

friend to also get his passport. In the Record of Examination,¹⁰ however, he says that he asked [redacted] to get his birth certificate and Trinidadian residency certificate. He says [redacted] tried to find his passport, but could not. However, the claimant stated in his expedited interview¹¹ that he sent [redacted] to get his passport but that [redacted] saw the house had been stoned and did not attempt to enter. In oral evidence, he told the Board that [redacted] went to his home and did enter to obtain his birth certificate and his Trinidadian certificate of residence, which is clearly contradictory. The claimant could offer no satisfactory explanation of contradictions. The Board finds the testimony relating to the claimant's passport and the existence of the same to be contradictory. He maintained [redacted] did go into his home but could only find a birth certificate and Trinidadian residency certificate.

- 7) The claimant was asked if he had any male partners since coming to Canada. He said that he had met male partners at clubs and had seen one of these men on more than one occasion. The claimant provided no proof of the existence of this male sexual partner. In the expedited interview

¹⁰ Exhibit R/A-2, documents received from CIC, CIC Etobicoke In-person Refugee Intake, "Record of Examination", Part A.

¹¹ Exhibit R/A-3, *Immigration and Refugee Board*, Refugee Protection Division, Expedited Report, Part A, question 2.

conducted in 2005,¹² the claimant stated he did not have a current partner and had not had any partner in Toronto since he had arrived in 2005. He said his last partner was in Saint Vincent. The Board considered this to be a material inconsistency. When asked for an explanation, the claimant stated that the interview occurred in 2005 and he had no partners until then, but had all his male partners since the expedited interview. The Board found this explanation to be unsatisfactory and concluded the evidence regarding current partners and his homosexuality or bisexuality since coming to Canada, to be lacking in credibility.

- 8) The claimant travelled to Canada in 2003, following the alleged incident in Trinidad with where the claimant states that his bisexuality became known. He made no claim for protection at that time. He says the view toward homosexuality and bi-sexuality is the same on all of the islands and that he was at risk everywhere. His return to Saint Vincent after travelling to Canada in 2003 suggests a lack of subjective fear of being discovered as a homosexual and the Board draws an adverse inference from his re-availment to Saint Vincent.

¹² *Ibid.*

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In arriving at this conclusion, the Board is guided by a number of Federal Court cases dealing with credibility. As a starting point, testimony given under oath, such as that given at this Hearing, must be presumed to be true, unless there are valid reasons to doubt its truthfulness.¹³ However, the existence of contradictions in the evidence could be a valid basis for a finding of a lack of credibility.¹⁴ In a claim for Refugee status, a primary way of testing credibility is by comparing what is contained in the claimant's PIF narrative with his testimony at the hearing.¹⁵ Even without disbelieving every word a claimant has uttered, the Board may reasonably find the claimant so lacking in credibility that it concludes there is no credible evidence relevant to the claim.¹⁶ Contradictions and/or omissions in the evidence given to Citizenship and Immigration Canada officials at the time the claimant made their Refugee claim,¹⁷ when previously examined under

¹³ *Maldonado v. Canada* (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.), at 305.

¹⁴ *Dan-Ash v. Canada* (Minister of Employment and Immigration) (1988), 93 N.R. (F.C.A.).

¹⁵ *Castroman v. Canada* (Secretary of State) (1994), 27 Imm. L.R. (2d) 129 (F.C.T.D.).

¹⁶ *Sheikh, Abdulhakim Ali v. Canada* (Minister of Employment and Immigration), [1990] 3 F.C. 238 (C.A.).

¹⁷ *Dehghani v. Canada* (Minister of Employment and Immigration), [1990] 3 F.C. 587 C.A.).

oath,¹⁸ or evidence given at the Hearing,¹⁹ all provide a well-established basis for a finding of a lack of credibility.

The Board has applied the principles enunciated in these cases and concludes that the claimant has not provided sufficient credible and trustworthy evidence to support his claim. The inconsistencies and contradictions, together with the lack of documentation to substantiate the allegations, persuade the Board that the claimant lacks the subjective element of a well-founded fear, necessary to advance a claim for protection.

RISK OF HARM IN RETURNING TO TRINIDAD

The claimant alleges that his sexual intimacy with _____ in Trinidad was s.19(1) discovered in 1997. Since that time, the claimant has never been back to that island, although he continues to have resident status there. He says he kept his residency certificate for work purposes, but without a passport or other documentation it is unclear if he has ever returned to Trinidad since 1997. Even if the Board believed the claimant was discovered in a sexual situation with a male in Trinidad, and it does not, this was over nine years ago. The Board is satisfied that the claimant could safely return to Trinidad, despite his claims to the contrary, and would not face a serious possibility of persecution.

¹⁸ *Owusu-Ansah v. Canada* (Minister of Employment and Immigration), (1989), 8 Imm. L.R. (2d) 106; 98 N.R. 312 (F.C.A.).

¹⁹ *Rahnema v. Canada* (Solicitor General) (1993), 22 Imm. L.R. (2d) 127 (F.C.T.D.).

CONCLUSION

Having given due consideration to all of the evidence before, to the relevant provisions of *IRPA*, and to the jurisprudence on which this Board relies, the Board finds the claimant does not have a well-founded fear of persecution and therefore is not a Convention refugee, within the meaning of section 96 of *IRPA*.

Having found that the claimant is not a Convention Refugee, the Board is tasked with considering the applicability of section 97 of *IRPA*. The Board, for the same reasons, concludes that the claimant lacks credibility. Therefore, with respect to a risk to life or to a risk of cruel and unusual punishment or treatment or a danger of torture, the claim must also fail. Accordingly, the claim for refugee protection is rejected. The claimant is determined to be neither a Convention Refugee, nor a person in need of protection.

"Patrice C. Valeriano"
Patrice C. Valeriano

DATED at Toronto this 11th day of May 2006.