



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
TA2-24078
TA3-15388

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

10 November 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

13 November 2003

DATE DE LA DÉCISION

CORAM

E.S. Schlanger

CORAM

FOR THE CLAIMANT(S)

Ricardo Aguirre
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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, 27 years old, and

24 years

old, allege that they are citizens¹ of Costa Rica. They claim to have a well-founded fear of persecution for reasons of their membership in a particular social group, namely bisexuals. They also claim protection as persons who face a risk to life or a risk of cruel and unusual treatment or punishment. claims to fear and

the brothers of his common-law spouse

because they have subjected him to insults and beatings because of his sexual orientation.

claims to fear his neighbours who have subjected him to physical and verbal insults because of his sexual orientation. They alleged that if they return to Costa Rica state protection would not be forthcoming.

The Chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act*² to identify decisions of the Board as *Jurisprudential Guides* to assist members in carrying out their duties. The Board's *Policy on the Use of Jurisprudential Guides* is available on the Board's website.³ Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as *Jurisprudential Guides*.⁴ Members are to consider and follow these decisions when determining claims in which the availability of state protection in Costa Rica is the

¹ Exhibit M-1-Certified True Copies of the claimants' passports were submitted by Immigration.

² S.C. 2001, c. 27

³ http://www.irb.gc.ca/en/about/policies/jurisguides_c.htm

⁴ RPD no. TA0-15870, , 2003 and RPD no. TA2-14980, 2003.

determinative issue in claim profiles of risk due to sexual orientation or general criminality.⁵ The first question the panel has to determine is whether decision TA0-15870 applies in these cases.

The panel determines that the facts and the evidence regarding country conditions in these claims are sufficiently close to those before the panel in RPD decision TA0-15870 because they both deal with Costa Rican claimants seeking protection due to their sexual orientation, and the issue in both is the determination of the availability of state protection for sexual minorities. In addition, the panel assessed the April 2003 RPD Information Package⁶ which were not before the *Jurisprudential Guide* panel. In reaching its decision, the panel has assessed the claimants' own experiences in the context of the entirety of the evidence.

The determinative issue in these claims is the availability of state protection for these particular claimants. The panel adopts the reasoning in RPD decision TA0-15870 as that reasoning, which has been comprehensively analyzed, applies to the facts of these claims.

In the cases at bar, [redacted] testified that he reported to the Rural Police at the beginning of [redacted] 2002 that his common-law spouse's two brothers beat him because of his sexual orientation, but the sole officer at the village station laughed at him,

⁵ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁶ Exhibit R-1

and told him to leave. He also testified that he did not go to the Ombudsman's Office because he was not aware of their role and because there is so much discrimination in Costa Rica. The panel finds that the claimant ought to have resorted to the available recourses of protection by going to the OIJ or the Ombudsman. One cannot simply not pursue what is available in one's country and seek international protection instead. In the case of he testified that he did not seek any state protection because of his brother's experience with the Rural Police. Again, the panel finds that he ought to have resorted to the available recourses.

The panel considered that Costa Rica⁷ is a longstanding, stable, constitutional democracy with an independent judiciary providing effective means to deal with individual cases of abuse. In the context of the country of origin, and in the circumstances of these claimants in particular, the panel finds that the claimants have not taken all reasonable steps to seek protection in Costa Rica. Therefore, it finds that they have not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect them.

Having considered all of the evidence and counsel's submissions, the panel finds that these claimants are not Convention refugees and that they are not persons in need of

⁷ Exhibit R-1, item 2.1, p. 32, U.S. Department of State Report, Country Reports on Human Rights Practices, 2002, Costa Rica, March 2003.

protection pursuant to section 97(1)(a) or (b) of the Immigration and Refugee Protection Act (IRPA).

Accordingly, the panel rejects the claims of . and
for refugee protection.

"E.S. Schlanger"
E.S. Schlanger

DATED at Toronto this 13th day of November, 2003.

s.19(1)