



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
TA4-12430

CLAIMANT(S)

DEMANDEUR(S)

s.19(1)

DATE(S) OF HEARING

May 17, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

June 23, 2005

DATE DE LA DÉCISION

CORAM

Steve Ellis

CORAM

FOR THE CLAIMANT(S)

Allan Blott
Barrister and Solicitor

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 with respect to the claim made by .
to be a Convention refugee and a person in need of protection, pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

The claimant is a 24-year-old single female citizen of Mexico. The claimant fears returning to Mexico because she is bisexual and had been in a relationship with a man who has connections with the judicial police and who wants to persecute her because of her sexual identity, because she had decided to leave him.

At the hearing, the panel made a ruling allowing the claimant's counsel to proceed first in questioning the claimant in contradiction of the Chairperson's Guideline 7.² Written reasons with respect to the panel's ruling are attached as "Appendix A".

ALLEGATIONS³

The claimant struggled for many years with her sexual inclination towards women. The claimant was very confused as a teenager because of her mixed feelings. She was reluctant to go out with men who would have wanted to have a relationship with her. The claimant's feelings were focused on women, not men.

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

² Guideline Concerning Preparation and Conduct of a Hearing in the Refugee Protection Division: Guidelines Issued by the Chairperson Pursuant to Section 159(1)(h) of the Immigration and Refugee Protection Act, IRB, Ottawa, December 1, 2003.

³ According to Exhibit C-1, claimant's Personal Information Form (PIF).

On _____, 2000, the claimant met a man by the name of _____

Due to his persistence and the claimant's inner turmoil, she agreed to start a relationship with him.

By _____ 2003, the claimant had decided to end their relationship. The claimant had developed very strong feelings for another woman by the name of _____

On _____ 2003, _____ confronted the claimant with a whole file of information on her, resulting from six months worth of investigation. _____ had paid a private investigator to obtain evidence about the claimant's sexual inclination.

_____ had videotapes, taped conversations and pictures that showed the claimant's relationship with _____

_____ still maintained that he was very much in love with the claimant. Even though she had terminated the relationship with him, he became obsessive and was determined that he wanted the claimant to remain his woman.

_____ told the claimant that, whether by good means or bad means, she would remain his woman. At one point _____ told the claimant that, "You know I have much influence, I can easily make you and _____ disappear."⁴

The claimant believes that _____ was very hurt, not only because he lost her, but also because he is an extremely macho male and he could not comprehend that she

⁴ Exhibit C-1, PIF narrative, lines 19-20.

preferred to be a lesbian than to be in a relationship with him. became determined to get revenge on her.

One day on her way home, the claimant was crossing a pedestrian bridge and two of his male friends attacked her. One of the male friends pushed her as she was running away and she fell into the middle of the street. A vehicle had been approaching, but the driver was able to stop. The driver asked what happened and then he offered to take her home. The pain from her fall was unbearable and the next day she went to see a doctor.

The doctor told the claimant she had damaged some of the discs in her spine. The claimant was told to rest. called her and said, "That was just a warning. You must reconsider your decision to end our relationship."⁵ He also mentioned that this was only the beginning for and the claimant in terms of paying for their sins.

A month later the threats were still coming. The claimant did not answer the phone at times because was harassing her with telephone calls. At this time, the claimant's girlfriend, called her crying. indicated she had been attacked and that the assailants had told her that the reason for the attack was her relationship with the claimant. The claimant recommended that stop seeing her for a while.

The claimant decided to hide out for a while in The claimant had barely been in hiding for a few weeks at her aunt's home in when

⁵ Exhibit C-1, PIF narrative, lines 30-31.

showed up at the house. He hit the claimant and started pulling her by the hair. The claimant's aunt attempted to intervene, but [redacted] told the aunt to mind her own business. At that time the claimant's uncle came home and a fight broke out. The claimant's aunt called the police. When the police arrived, they took [redacted] outside to talk to him and he flashed some identification. The police then asked for forgiveness and left without doing anything.

[redacted] came back to the front door and told the claimant that the police would do nothing for her and that he would come back the next day to pick her up. The claimant's aunt was worried about the problem [redacted] could cause, so she asked the claimant to go stay with the aunt's brother in [redacted] Mexico. [redacted] came back to the claimant's aunt's house to look for her. The claimant's aunt told him that the claimant had left and gone to the United States. [redacted] said that he would check out the story, and if it was not true he would come back to beat her up.

On [redacted] 2003, [redacted] found the claimant in [redacted]. He flashed a gun at the claimant and threatened to kill her or anybody that attempted to intervene in their relationship. The claimant's uncle managed to persuade [redacted] to come back another day. The claimant's uncle told [redacted] that he would try and talk some sense into her, but that he needed some time to do so. [redacted] agreed, but he warned the claimant that no lesbian was going to steal the love of his life.

The claimant's uncle then told her to go to the " " in Mexico to talk to one of his friends at the public minister's office. The claimant went to the public minister's office on 2003 and spoke to Mrs. The claimant explained the situation to her. When the claimant mentioned the last name she was told by Mrs. that unfortunately there was nothing she could do because 's brother has a lot of influence with the judicial police. Mrs. told the claimant that no matter what evidence or proof she had or what witnesses would come forward, nobody would be able to protect her. Her advice to the claimant was that the family is very powerful and that she should leave Mexico.

The claimant felt like a caged animal and could go nowhere for help. The public minister's offices were not able to help her. The claimant was fearful and insecure so she decided to move yet one more time in the hopes of avoiding She moved to to live with another aunt.

On , 2004, when the claimant and her aunt returned home, they found that the house had been ransacked. There, they found a note that said, "No matter where you hide I will find you sooner or later." Terrified, the claimant approached a family friend who is a lawyer. The family friend told the claimant to come to Canada.

On 2004 the claimant made her escape to Canada.

⁶ Exhibit C-1, PIF narrative, lines 73-74.

DETERMINATION

The Refugee Protection Division (RPD) determines that the claimant is a citizen of Mexico. The Refugee Protection Division is willing to accept the claimant's testimony that she is a bisexual woman.

The RPD determines that the claimant is not a credible and trustworthy witness, on a balance of probabilities, and does not believe the claimant's allegations of persecution in Mexico.

The RPD determines that the claimant faces no more than a mere possibility of persecution should she return to Mexico.

The RPD determines that the claimant is not a person in need of protection, in that the claimant faces no more than a mere possibility of being subjected to a risk to her life, to a risk of cruel and unusual treatment or punishment, or to a danger of torture, should she return to Mexico. Accordingly the decision in this claim is negative.

ANALYSIS**Identity**

A copy of the claimant's passport is found in Exhibit M-1.⁷ In addition, the claimant has provided a birth certificate, baptismal letter, diplomas and a national registry

⁷ Exhibit M-1, documents from Citizenship and Immigration Canada (CIC), certified true copy of the claimant's Mexican passport.

office card,⁸ all indicating that the claimant is a citizen of Mexico. Therefore, the RPD is able to make a determination that the claimant is a citizen of Mexico.

The claimant provided photographs⁹ of her and her girlfriend, The claimant indicated that she had a relationship with as a lesbian as well as having a relationship with Accordingly, the RPD is able to accept the claimant's evidence that she is a bisexual woman or a lesbian woman when she is with her girlfriend, The panel has no reason to disbelieve the claimant with respect to her sexual identity.

Credibility

Despite the panel's acceptance that the claimant is a bisexual woman, because she has told us so and because there are photographs¹⁰ of her and this acceptance of the claimant's identity does not necessarily mean that the panel accepts all of the claimant's evidence as being credible and trustworthy. The panel has many difficulties with respect to the claimant's credibility and will outline some of them.

The panel is guided by a number of cases with respect to determining credibility. In assessing the credibility of the evidence presented by the claimant in support of her claim for Convention refugee status and for her claim to be a person in need of protection, the panel is guided by the principles established in the Federal Court of

⁸ Exhibit C-2.

⁹ Exhibit C-3.

¹⁰ Exhibit C-3.

Appeal decision of Maldonado,¹¹ wherein the court states, in part, “When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.”

The panel is also guided by the Federal Court decision in Dan-Ash,¹² wherein it was stated that, “...there must come a point at which a witness’s contradictions will move even the most generous trier of fact to reject his evidence.” The panel also notes the Federal Court decision in Castroman¹³ that:

One of the primary ways that the Board tests a claimant’s credibility is by comparing the PIF with the claimant’s oral testimony.

However, even if the claimant is consistent in his or her evidence, this in itself does not necessarily mean that the claimant is telling the truth. This principle is well elucidated by the British Columbia Court of Appeal in Faryna v. Chorny,¹⁴ wherein O’Halloran, J.A., states, in part, as follows: “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.”

The panel is also guided by the Federal Court decision in Shahamati,¹⁵ wherein Pratte, J.A., writing for the court, states, in part, that: “Contrary to what has sometimes

¹¹ Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.).

¹² Dan-Ash v. Canada (Minister of Employment and Immigration) (1988), 93 N.R. 33 (F.C.A.).

¹³ Castroman v. Canada (Secretary of State) (1994), 27 Imm. L.R. (2d) 129 (F.C.T.D.).

¹⁴ Faryna v. Chorny, [1952] 2 D.L.R. 354 (B.C.C.A.).

¹⁵ Shahamati, Hasan v. M.E.I. (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994.

been said, the Board is entitled, in assessing credibility, to rely on criterion such as rationality and common sense.”

In Sheikh,¹⁶ MacGuigan, J.A., writing for the court, states, in part, that: “In other words a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant information emanating from his testimony.”

The panel now will outline some of its credibility concerns which lead the panel to make a determination on a balance of probabilities that the claimant is not a credible and trustworthy witness.

The panel notes that there were a great many inconsistencies between what the claimant testified to at her hearing and the evidence contained in her PIF. The panel will outline some of the inconsistencies. At her hearing, the claimant indicated that in

s.19(1) 2000, she met [redacted] with whom she went out for three years. However, the panel notes that in line 5 of the claimant’s PIF narrative she indicated that she met [redacted] on [redacted], 2000.

The panel would expect that, at her hearing, the claimant would know at least the month in which she started a relationship with [redacted] who she alleges played a critical role in her deciding to leave Mexico. The panel does make a negative credibility inference with respect to the claimant’s inability to indicate the correct month in which she met [redacted] at her hearing as opposed to what she indicated in her PIF.

¹⁶ Sheikh v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 238 (C.A.) at 244.

At her hearing, the claimant indicated that the next time she saw following their initial confrontation her about her relationship with , she was faced with him and two of his friends, who were judicial police officers, and they attacked her on . 2003. The claimant then indicated that she was walking on the street and they attacked her and kicked her and threw her on the street with the intention of a car hitting her, but that the car stopped in time. The panel notes that, in her PIF narrative, the claimant indicated that two friends accompanied . The panel notes that the claimant did not indicate in her narrative that 's friends were judicial police officers. The panel notes that this is an inconsistency or an omission, that the friends were actually judicial police officers, and makes a negative credibility finding with respect to this inconsistency/omission between the claimant's oral testimony and her PIF narrative.

The panel notes the claimant also indicated at her hearing that : came with his brother. However, in her narrative she only indicated that he came with two friends.

The panel notes that the claimant was also inconsistent between what she testified to at her hearing and what she included in her PIF narrative with respect to the next confrontation she had with . In oral testimony at her hearing, the claimant indicated that her uncle came and her aunt was there, and they did not call the police. She indicated that they did not call the police because showed a badge and identified that he had influence with the police. The panel notes this is inconsistent with

respect to what the claimant indicated in her PIF narrative, namely, that her aunt did call the police. The panel does make a negative credibility finding with respect to this inconsistency.

The panel notes the claimant was also inconsistent with regards to the incident in [redacted], Mexico. This was at the claimant's uncle's residence. At her hearing, the claimant indicated that, one day, [redacted] showed up and threw a rock through the window, and that her uncle saw [redacted] who later showed up with five judicial police officers. The panel notes the claimant did not indicate in her PIF that [redacted] had thrown a rock through a window or showed up with five judicial police officers.

The claimant, at her hearing, indicated that she had told her uncle not to go out because she did not want him to get into trouble. The panel notes this description of events is inconsistent with respect to what was contained in the claimant's PIF. The claimant, in her PIF, indicates that her uncle did go out and did talk to [redacted] and reasoned with him, and that he got [redacted] to agree to come back on another day, to allow her uncle a chance to talk some sense into her. The panel notes the claimant also, in her narrative on line 54, indicated that [redacted] flashed a gun at her and threatened to kill her or anybody that attempted to intervene in their relationship. The claimant did not indicate, at her hearing, that [redacted] had flashed a gun at her during the incident in

The panel does make a negative credibility finding due to these inconsistencies with respect to what the claimant testified to at her hearing about the time found s.19(1) her in at her uncle's place, versus what she included in her PIF with respect to what took place in

The panel notes that the claimant indicated in her PIF narrative that she went and spoke with a Mrs. at the public ministry office, to explain the situation to her, on 2003. The claimant indicated there that when she mentioned the last name of Mrs. told her that unfortunately there was nothing she could do because s brother has a lot of influence with the judicial police.

The panel notes that the claimant, at her hearing, indicated that 's brother was a member of the judicial police. The panel finds this testimony to be inconsistent, because had s brother been a member of the judicial police or a person that had a number of judicial police officers who reported to him, as the claimant had indicated at her hearing, then the narrative in the PIF should have indicated that the brother was a judicial police officer, and not just a person that has a lot of influence with the judicial police. The panel makes a negative credibility finding with respect to this inconsistency and also, as indicated before, the inconsistency/omission in that the claimant nowhere in her PIF narrative indicates that 's brother was a member of the judicial police.

The panel notes that the claimant was also inconsistent in her testimony at her hearing with respect to what was contained in her PIF regarding her visit to her aunt on , 2004, in . At her hearing, the claimant indicated that it was in a town on the Gulf of Mexico, close to . When the claimant was asked at her hearing what happened, she indicated that when she and her aunt returned after being out the whole day, the house was turned over and someone had stolen things; they also found a note which said, "If you continue to participate in providing refuge she would also pay with her life and everyone surrounding her." The claimant explained that everyone surrounding her referred to all her relations.

The panel notes that the claimant clearly indicates, in line 73 of her PIF narrative, that she found a note that said, "No matter where you hide I will find you sooner or later." The panel notes that this is different than what the claimant testified to at her hearing with respect to what the note said. The panel makes a negative credibility finding with respect to this inconsistency.

At the hearing, the panel asked the claimant why she never mentioned that 's brother was a member of the judicial police in her PIF. The claimant provided an evasive reply, which did not directly answer why she did not include in her PIF that 's brother was a member of the judicial police; she said that his brother had influence and that was what she put in her PIF. The panel does not find this to be a

reasonable explanation why she did not include in her PIF narrative that s
brother was a member of the judicial police.

When the claimant finished answering her counsel's question, the panel asked the
claimant about what had transpired in The claimant again confirmed that on
that day her uncle did not talk to and she indicated that she would not allow him
to do so. The panel also notes that, in her PIF, the claimant did not mention the four or
five judicial police officers allegedly present during the confrontation. The
panel asked her why the version of events in her oral testimony at her hearing was
completely different and inconsistent with her PIF. The claimant then attempted to
provide an answer which the panel found to be evasive and not a reasonable answer or
explanation for the inconsistency.

The panel also has credibility concerns with respect to the claimant's medical
reports.¹⁷ The claimant included these documents in support of the injuries she alleges
she sustained when she was thrown down by the men on the roadway and almost got hit
by a car while she was crossing a pedestrian bridge. The summary¹⁸ of the medical
history indicates that the "O.M." indicated he did not know if the claimant's injuries were
"a result of a crash and/or due to the fall". There is an indication that there was one
"accident in , a crash", resulting in "pain in the neck", and one "fall on the side in

¹⁷ Exhibit C-4, medical documents.

¹⁸ Exhibit C-4, page 16.3.

carrying heavy things". When the claimant was confronted with this information at her hearing and told that it did not appear as though her injuries were due to the event on the pedestrian bridge, she did acknowledge that she had a fall at work and a previous accident.

In evaluating the claimant's medical evidence, the panel is unable to conclude that the documents relate to the alleged confrontation on the pedestrian bridge, when the two men that accompanied allegedly injured her. The panel notes there is no specific mention in the medical documentation about the incident. Therefore, the panel does not find that this medical evidence is helpful to the claimant in substantiating her claim, and in fact it appears to be somewhat inconsistent with respect to her testimony at her hearing.

The panel notes that in every incident the claimant alleges, wherein she suffered at the hands of or was threatened by in different locations throughout Mexico, there are many inconsistencies between what she testified to at hearing as compared with what was contained in her PIF. The panel further notes that, in re-examination, the claimant's counsel attempted to get her to provide explanations for the inconsistencies. For the most part, the panel found this exercise in attempting to have the claimant clarify her inconsistencies did not result in the claimant being able to provide reasonable answers for why she was inconsistent.

The panel might be able to understand one or two inconsistencies, or inconsistencies with respect to one event, but cannot understand how a claimant can be inconsistent with respect to almost every event of her persecutor following her and confronting her at different locations throughout Mexico. The panel does not believe that these events took place in Mexico and does not believe that the claimant was facing persecution at the hands of [redacted] in Mexico.

On a balance of probabilities, the panel finds that the claimant is not a credible and trustworthy witness and finds that the presumption of truthfulness on the claimant's part has been rebutted.

Well-Founded Fear of Persecution

Given that the panel does not believe that the claimant has faced persecution at the hands of [redacted] as she alleges, the panel now will examine whether the claimant has a well-founded fear of persecution merely by being a lesbian or bisexual in Mexico.

The panel is of the view that this claimant faces no more than a mere possibility of persecution should she return to Mexico and live in Mexico City, which does have over 20 million people in it, including gays and lesbians. The panel notes that the documentary evidence¹⁹ shows there to be shelters, counselling, support groups and political groups and legal assistance for lesbians in Mexico City.

¹⁹ Exhibit R-1, National Documentation Package, March 7, 2005, item 6.6, Response to Information Request, number MEX38251.E, January 21, 2002.

Further documentary evidence²⁰ shows that Mexico became the second country in Latin America to provide national anti-discrimination protection for lesbian, gay bisexual and transgender people.

The panel is of the view that the claimant does not face more than a mere possibility of persecution should she return to Mexico and Mexico City and carries on a lifestyle in accordance with her lesbian sexuality.

Person In Need Of Protection

The panel considered all of the claimant's evidence to determine whether the claimant was a person in need of protection. For the forgoing reasons, the panel is able to determine that the claimant faces no more than a mere possibility of being subjected to a risk to her life or to a risk of cruel or unusual treatment or punishment, or to a danger of torture, should she return to Mexico.

CONCLUSION

For the foregoing reasons, the Refugee Protection Division determines that the claimant is not a Convention refugee and is not a person in need of protection.

"Steve Ellis"
Steve Ellis

DATED at Toronto this 23rd day of June 2005.

²⁰ Exhibit R-1, item 6.9, International Gay and Lesbian Human Rights Commission, "Mexico: Mexico Becomes the Second Country in Latin America to Provide National Anti-Discrimination Protection for LGBTs," April 23, 2003.