



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
TA5-14771

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

May 4, 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

May 4, 2006

DATE DE LA DÉCISION

CORAM

William T. Short

CORAM

FOR THE CLAIMANT(S)

Tanis Bolt
Barrister and Solicitor

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

"You can obtain, within 72 hours, a translation or a copy of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB, 344 Slater Street, 14th floor, Ottawa, Ontario, K1A 0K1 or by sending a request to the following e-mail address: translation.traduction@irb.gc.ca or to facsimile number (613) 947-3213."

"Vous pouvez obtenir la traduction ou une copie de ces motifs de décision dans l'autre langue officielle dans les 72 heures, en vous adressant par écrit à la Direction des services de révision et de traduction de la CISR, 344, rue Slater, 14^e étage, Ottawa (Ontario) K1A 0K1, par courrier électronique à l'adresse suivante : translation.traduction@cisr.gc.ca ou par télécopieur au (613) 947-3213."

is a citizen of Mexico, who claims to be a Convention refugee and a person in need of protection within the meaning of sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).

ALLEGATIONS

The claimant alleges that her life and security would be in danger from her former landlord, should she return to Mexico, because she is a bisexual, or asexual woman.

DETERMINATION

The panel accepts the valid Mexican passport as tendered into evidence¹ and finds that the claimant is a citizen of Mexico. The panel finds that the claimant is neither a Convention refugee, nor a person in need of protection.

ANALYSIS

As a woman, who alleges that she is fleeing sexual based persecution, the claimant has established a linkage to a particular social group, one of the grounds, which define a

s.19(1)

¹ Exhibit R/A-2.

Convention refugee.² The panel has also applied the Chairperson's Guidelines on Women Refugee Claimants Fleeing Sexual Persecution.³

The panel has found that the claimant is not, however, a Convention refugee, because she failed to give any credible evidence that she would face any real threat from anyone, should she return to Mexico.

It was the claimant's testimony that she had moved into the house of the agent of persecution in of 2002. She rented a room in this house from its owner, who was a celebrated chef, who had a housekeeper and other domestic staff. The claimant testified that at first everything was all right. The landlord travelled a lot and brought back presents for everyone in the house including the claimant. Soon however, the landlord's mood changed and he often yelled and slammed doors. The claimant was of the opinion, that the change of mood could be attributed to the fact that the landlord had wanted to have sex with the claimant and that she wouldn't have it.

When pressed, however, the claimant said that the landlord had actually never directly approached her, but that he had observed her through a window. She also said that the landlord and his guests smoked and drank and that she was afraid that she could have been raped by the landlord while he was drinking. She also appeared to be upset by

² Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

³ Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act.

the fact that the landlord eats meat and she does not. The claimant asserted that one night she was sure that someone had peeked under her covers while she was asleep, but she couldn't be sure who it was. She also claimed that the landlord's female housekeeper had once shown her a photograph of him naked.

The claimant further testified that when she came home on one occasion, at the end of 2003, she was not allowed back into the house. The landlord, through the open front door was verbally abusive and refused to let the claimant back in, even to get her things including her personal papers. The claimant was left on the street at 2:00 o'clock in the morning and had to spend the night in a florist shop.

After spending awhile at the house of a friend, the claimant moved to in of 2003 because she thought that she was being followed on the street by her former landlord's employees. She moved back to Mexico City, however in of 2004 because she became convinced that she was being tracked by her former landlord in that city as well. The claimant testified that young men, who were dressed like waiters parked their car outside the house in and played loud music.

The claimant then appears to have resided in Mexico City from 2004 until 2005, when she left Mexico. During this time there was a brief hiatus in when the claimant went to that city in the belief that she could retrieve her personal papers from her former landlord's sister, who lives there.

s.19(1)

The panel may add that at times the claimant's testimony was very muddled and it was somewhat difficult for the panel to ascertain with any exactitude the chronology of the claimant's movements.

The claimant testified that she was afraid that her former landlord would be able to rape or kill her in Mexico City. She testified that she decided to leave for Canada after two people had been found dead in a car in her neighbourhood, although this incident appears to have no connection to her perceived problem.

Unfortunately, as sympathetic as the panel may be to this troubled individual, there is no probative or trustworthy evidence upon which the panel could found a positive finding in favour of the claimant. Although she was given many opportunities to do so under the gentle probing of counsel, this claimant did not relate any event that any reasonable person might have perceived as an assault or a threat.

The fact that the claimant might have been thrown out of her lodgings without notice is truly sad, but it does not make her a refugee. The claimant denied that her former landlord had actually made any physical approach to her or had actually made any threats. She said that her landlord and his employees were attacking her psychologically. Although the panel acknowledges the psychological report of Dr. _____ the report cannot make up for a lack of evidence of any actual or threatened harm to the claimant's person. The panel must, therefore, conclude that the claimant's former landlord did not

⁴ Exhibit C-2.

attempt to rape her or to force her to have sex with him. Moreover, the panel finds that the claimant's former landlord did not have her followed. In fact the claimant encountered no actual risk to her physical well being in Mexico and would not in the future, should she return to that country.

The panel, accordingly, finds that the claimant is not a Convention refugee.

The panel has also considered whether the claimant is a person in need of protection because of a risk to her life or a risk of cruel and unusual treatment or punishment or because she faces a danger of torture. No evidence was adduced that would support a finding that the claimant faces a danger of torture. With respect to risk to life or cruel and unusual treatment or punishment, the panel's finding of lack of risk in Mexico applies to this ground as well.

CONCLUSION

The Refugee Protection Division determines that

s.19(1)

is not a Convention refugee and further finds that the claimant would not face a danger believed on substantial grounds to exist of torture, nor would she face a serious possibility of risk to life, cruel and unusual treatments or punishments if she were returned to Mexico and she is, therefore, not a person in need of protection within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act.

Her claim for refugee protection is hereby rejected.

Pursuant to the provisions of subsection 107(2) of the Immigration and Refugee Protection Act, the panel must state that there was before it no credible or trustworthy evidence upon which a favourable decision could have been made and declares that there is no credible basis for the claim

"William T. Short"
William T. Short

DATED at Toronto, Ontario this 4th day of May 2006.