



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
TA1-15272

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

May 19, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

May 21, 2004

DATE DE LA DÉCISION

CORAM

S. Alidina

CORAM

FOR THE CLAIMANT(S)

Ameena Sultan
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

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is a citizen of Uruguay. The claimant claims to have a well-founded fear of persecution at the hands of the Uruguayan society and her colleagues at work by reason of her sexual orientation, that being, a bisexual.

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In addition, she claims to be a person in need of protection, as a person in danger of being tortured or at risk of losing her life or being subjected to cruel and unusual treatment or punishment in Uruguay.

ALLEGATIONS

The claimant alleges that because of her sexual orientation, that being, a bisexual, she was discriminated against and harassed by Uruguayan society and her colleagues at her workplace. She filed a police report when her co-worker grabbed her and made derogatory remarks against her sexual orientation, but the police dismissed her complaints because of lack of evidence.

ANALYSIS

The determinative issue in this claim is whether the claimant has adequate state protection in Uruguay.

In making this assessment, the panel considered the claimant's oral and written testimony, the representations of the counsel and all of the evidence, and, particularly, the documentary evidence pertaining to measures to deal with violence against bisexuals and

gays in Uruguay, as well as evidence about the police, availability of mechanisms for lodging complaints of abuse on account of sexual orientation, and, in general, the level of democracy in Uruguay.

Based on the totality of the evidence adduced, the panel finds that the claimant has not met the burden of establishing "clear and convincing" proof of a lack of state protection in Uruguay.

The law states that there is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing proof of lack of state protection" in Uruguay. The claimant must approach his or her state for protection—providing state protection might be reasonably forthcoming.¹

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Evidence that protection being offered is "adequate though not necessarily perfect" is not clear and convincing proof of the state's inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens, the mere fact it is not always

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¹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689; 67 D.L.R. (4th) 1; 10 Imm. L.R. (2d) 189 (C.A.).

² Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.).

⁴ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.⁴

With respect to the case at bar, the claimant indicated that she went to the police on one occasion after a salesperson at her place of work, mistreated her. The police heard her complaints against but they dismissed them based on lack of evidence. She testified that she did not file a report against the police officers who detained her and her friend in the year 1994. The claimant expressed her dissatisfaction with the police action when she filed complaints against but she admitted that she did not make any further attempts to seek protection from other state agencies in regards to her dissatisfaction of police action. As well she never filed a report to redress the mistreatment she had received from the Uruguayan society. She indicated that she did not initiate a lawsuit with the Uruguayan Judiciary against the police officers for failing to assist her and against for mistreating her because the judicial process takes a long time.

The documentary evidence indicates that Uruguay is a constitutional republic with an elected president, a bicameral legislature, and an independent judiciary.⁵ The government generally respects the human rights of its citizens, and the law and judiciary provides effective means of dealing with individual cases of abuse.⁶ The Public

⁵ Exhibit R/A-1, item 2.1, p. 31, U.S. Department of State Report, Country Reports on Human Rights Practices-Uruguay

⁶ Ibid.

Prosecutor's Office of Police (*Fiscalía Letrada de Policía*) was created by decree on August 22, 1997 to prevent and stamp out irregular actions by police.⁷ The functions of the National Inspection of Police (*Inspección Nacional de Policía*), established as a unit of the Ministry of the Interior on November 1, 1992, were expanded by decree on August 22, 1997 to improve its coordination work with the Public Prosecutor's Office of Police with regards to internal investigations of irregular or illicit police actions.⁸ Although the internal police investigative body is understaffed and can only issue recommendations for disciplinary action, prosecutions have been occurring more frequently.⁹ For instance, at least eight police officers have been jailed for abusing detainees, and over 400 police officers have been indicted in the last three years for violations ranging from corruption to abuse.¹⁰ Ministry of Interior authorities act promptly if accusations of alleged police brutality are reported.¹¹

⁷ Exhibit R/A-1, item 7.1, p. 12 Response to Information Request URY37188.E, 29 May, 2001.

⁸ Ibid.

⁹ Ibid.

¹⁰ Exhibit R/A1, Toronto Documentation Package – Uruguay, December 2003, item 2.1, p. 31, United States Department of State (DOS), Uruguay Country Reports on Human Rights Practices – 2002, March 31, 2003.

¹¹ Ibid.

A Montevideo-based non-government human rights organization, *Servicio de Paz y Justicia*¹² (SERPAJ), published in its annual report a section on the following legal recourses and compensation available in Uruguay: 1) the criminal courts of the judiciary hear in the capital and provinces all matters related to prescribed offences; 2) the civil courts of the judiciary throughout the country which handle all “civil consequences” stemming from offences related to an *amparo* recourse, with such recourse being issued for the protection of a right which cannot be protected through an application of other existing legal provisions; and 3) administration of compensatory justice for government actions that have caused damage. In view of the above, the panel finds that the Government of Uruguay has mechanisms to address police misconduct including corruption within the force. If she has not been satisfied with the police action, it is required of her, living in a democracy, to seek help from other state agencies in Uruguay.

Furthermore, in regards to legal protection for sexual minorities, the documentary evidence¹³ also indicates that there is an abundance of legal jurisprudence in the country, and sexual minorities may rely on the appropriate legal safeguards for protection. In regards to violent acts committed by reason of a victim’s sexual orientation, the documentary evidence¹⁴ indicates that amendments to Penal Code articles 149.2 and

¹² Exhibit R/A-1, item 10.2, p. 132, Response to Information Request URY 40360, January 7, 2003.

¹³ Exhibit R/A-1, item 6.3, Response to Information Request URY37044.E.

¹⁴ Exhibit R/A-1, item 6.1, Response to Information Request URY41914.E.

149.3 have been passed by the Parliament of Uruguay on July 10, 2003 and the amended Penal Code punishes whosoever incites hatred, contempt or any moral or physical violence against one or more persons on account of their sexual orientation or sexual identity.

In regards to treatment of homosexuals, the documentary evidence¹⁵ indicates that there were no reports of raids on gay bars in Montevideo since 1997.

The documentary evidence¹⁶ does indicate that Uruguayan society has strong homophobic traits. This contrasts with the liberal and progressive image that the country has projected since the beginning of the century in that the Uruguayan legislature is considered to be "front line" in its day. Based on the documentary evidence, the panel is not persuaded that there is lack of state protection for sexual minorities in Uruguay.

It is obligatory upon the claimant, living in a democratic country, to seek protection from state authorities in the country of nationality first, prior to seeking international protection. If she was dissatisfied with the police response, she could have filed a complaint against the police with the National Inspection of Police. As well, another avenue to redress the mistreatment she had received from her colleague at work and the police was the Uruguayan Judiciary. Evidence indicates that the claimant filed one police report and when she failed to obtain help, she did not make any effort to seek

¹⁵ Exhibit R/A-1, item 6.2, Response to Information Request URY39133.E.

¹⁶ Exhibit R/A-1, item 6.3, Response to Information Request URY37044.E.

help from other state agencies. In this case, the panel finds that the claimant simply did not reasonably exhaust all courses of action open to her in availing herself of state protection in Uruguay.

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Based on the documentary evidence, the panel does not have any persuasive evidence to believe that the state authorities in Uruguay would not have provided the claimant with protection had she availed herself of it. The panel finds that the Uruguayan authorities are making serious efforts to provide protection to victims of violence as a result of their sexual orientation.

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Therefore, the panel finds that the claimant has not met the test of providing clear and convincing evidence of the state's inability to provide state protection to her. Accordingly, the panel finds that adequate, if not perfect, state protection is available to the claimant should she return to Uruguay.

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CONCLUSION

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Since adequate state protection is available to the claimant in Uruguay, she is neither a Convention refugee nor a person in need of protection within the meaning of section 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act*.

Accordingly, the panel determines that I is neither a
Convention refugee nor a person in need of protection, and therefore, the Refugee
Protection Division rejects her claim for refugee protection.

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"S. Alidina"
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DATED at Toronto, Ontario this 21st day of May 2004

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