



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
TA5-16547

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

27 July 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

1 September 2006

DATE DE LA DÉCISION

CORAM

Chimbo P. Mutuma

CORAM

FOR THE CLAIMANT(S)

**Joel Etienne
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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the claimant, is a 30-year-old citizen of Mexico who claims refugee protection pursuant to ss. 96 and 97 (1) of the Immigration and Refugee Protection Act (IRPA).¹

ALLEGATIONS

The claimant alleges as follows.

The claimant testified that he fled from Mexico because his stepbrother denied him share of the father's inheritance because he is bi-sexual. In addition to denying the claimant share of the father's property, the stepbrother threatened the claimant with death. The claimant was told by his stepbrother that if anything was left for him by their father, the claimant would be a dead man. On 2004, the claimant made a denunciation in Mexico City, Federal District, after receiving a threat from his stepbrother over the phone. The claimant decided to come to Canada, on vacation, in 2005, hoping that the situation would improve while away. He called his mother while in Canada, and his mother told him that he would have to be careful because his stepbrother was serious. The claimant decided to stay and make a refugee claim.

DETERMINATION

I find that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution for a Convention ground in Mexico. I also find that the claimant is not a person in need of protection, in that his removal to Mexico would not

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

subject him personally to a risk to life, or risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Mexico will subject him to a danger of torture.

ANALYSIS

Identity

The panel accepts the claimant's identity as a national of Mexico.²

Determinative Issues to be Resolved

- Whether there is a serious possibility of a serious harm;
- Whether the claimant would avail himself of state protection;
- Credibility

The claimant alleges that he fled from Mexico because his stepbrother threatened him with death because the stepbrother does not want to share the father's property with the claimant, because the claimant is bisexual. I find, on a balance of probabilities, that the claimant, even if he is bisexual, was never subjected to what he alleges.

Credibility

The claimant stated that he has documents to show that he has property, as part of the share given to him by his father, that the stepbrother does not want the claimant to acquire because the claimant is bisexual. He said that those documents are with his

² The claimant submitted his true certified copy of his passport and other identity documents sent by the CIC.

father's lawyer. He added that after his stepbrother threatened him with death on

2004, he went to the police and made a denunciation. The claimant was asked if he had a copy of his denunciation and he said that his mother, who visited him in Canada after his arrival and returned to Mexico, went to ask for the copy from the police and the police told her that there was no denunciation. However, the claimant was asked, if he were to be given time, if he could obtain a copy of his denunciation and, also, a copy of the will, since he said that the father's lawyer was keeping it. The claimant agreed that he would provide those documents if given time. However, having heard all the evidence, the member adjourned the hearing on 2006, and gave the claimant until 2006, to submit the documents. On 2006, the claimant was unable to provide any documents to show that he was on his father's will and the ownership of property. Given that the alleged ownership of property is central to the claimant's claim, and that the claimant was unable to provide documentary evidence to that effect, after he had been given time to do so, and never communicated with the IRB to explain why he was unable to obtain those documents, I draw an adverse inference as to the claimant's credibility, as a witness, with respect to his allegations about ownership of property and the will.

The claimant submitted pictures³ of what he alleges is his home and property, but there was nothing to show that he owned the property in the pictures he showed. When

s.19(1)

³ Exhibit C-1

asked how anyone could tell from the picture that the claimant owned the property, the claimant said that those pictures were the only thing he could show. Given that there was no name of the building corresponding to the address the claimant stated in his PIF narrative as his residence, I find that there is no evidence to show that the claimant lived or owned the property that he showed in the picture; also, given that his father's lawyer did not send him a letter to confirm that he owned the property; as such, I draw an adverse inference as to the claimant's credibility, as a witness, with respect to the pictures he showed as his property.

The claimant stated that as a bi-sexual man, he was discriminated against in Mexico. However, the claimant was never attacked by anyone or denied employment because of his being bisexual. The claimant said he always worked as an artist and he submitted a DVD of movie called ' ' directed by in which the claimant played the part of a Furthermore, the claimant stated that he currently appears in a very popular series called "V

' which, according to the claimant, is seen in central Mexico states, such as Guatlahuala, Queretero, Monterrey and the federal district of Mexico. Given that the claimant has always had a job and has never been attacked in public, or anywhere, has never been arrested and beaten by police, nor denied employment by anybody because of his being bisexual, I find that whatever treatment he may have experienced, as a bisexual,

* Exhibit C-3

does not amount to persecution. As such, I find the claimant's allegations about being discriminated against not truthful.

Psychological Assessment Report

The claimant submitted a psychological assessment report;⁵ given my lack of credibility finding, and since that report is based on what the claimant told the doctor, the claimant whose allegations I found not to be credible, I put no weight on the report.

State Protection

The claimant stated that he reported to the police twice about the alleged threats made against him by his stepbrother on . 2004. He said that when he went to report to the police, the police laughed at him. He said he did not make a denunciation because the police only laughed at him. He said his mother went to the police to ask for a copy of the report he made, but the police told her that they did not have any report about the claimant. The claimant was asked, given that his father had some of the documents with the lawyer, why did he not go to the lawyer so that the lawyer could have conducted family mediation about the distribution of the property and, also, resolve the alleged dispute. The claimant said that he went to a lawyer and the lawyer said those were family problems and that he would not be involved in their family problems. The claimant added that the lawyer refused to be involved because the claimant is not liked by many people because he is bisexual. However, given that the claimant did not provide the IRB with s.19(1)

⁵ Exhibit C-2

any corroborative documents, such as the police report, or denunciation, or his will, I find it not plausible that he ever contacted a lawyer or reported to the police.

Although the claimant said he went to the police twice to report, the threshold is high in terms of requirements to take steps to seek state protection in Mexico. Documentation attest to the fact that Mexico is a functioning democracy with a Constitution that provides for a federal republic with powers separated into independent executive, legislative and judicial branches.⁶ In addition, documentation also states that Mexico has non-police government-funded non-governmental organisations, such as the Human Rights Commission,⁷ or lawyers who could have assisted the claimant with state protection, but the claimant chose to leave for Canada. I find that the claimant did not make enough efforts to seek state protection, by relying on local police, and decided to come to Canada.

Having considered all of the evidence and the fact that state protection was available, and it would have been reasonable for the claimant, in his particular circumstances, to have sought state protection, plus the lack of credibility, the panel determines that the claimant has not satisfied his burden of establishing a serious possibility of persecution on a Convention ground, under s. 96. The panel also finds it is not more likely than not he would personally be subjected to a danger of torture, or face a

⁶ U.S Department of State, Background Note: Mexico, September 2004, p.1.3.3

⁷ Exhibit R/A-1, National Documentation Package Mexico, June, 26, 2006, p. 9.1.1

risk to life, or a risk of cruel and unusual treatment or punishment, upon return to Mexico, under s. 97.

CONCLUSION

For these reasons, the claim of

is rejected.

s.19(1)

"Chimbo P. Mutuma"

Chimbo P. Mutuma

DATED at Toronto this 1st day of September , 2006.