



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
TA2-14365
TA2-14366
TA2-14367

CLAIMANT(S)		DEMANDEUR(S)
DATE(S) OF HEARING	October 23, 2003	DATE(S) DE L'AUDIENCE
DATE OF DECISION	November 20, 2003	DATE DE LA DÉCISION
CORAM	S. Alidina	CORAM
FOR THE CLAIMANT(S)	Richard M. Addinall Barrister and Solicitor	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	R. Winn	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE		REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL		CONSEIL DE LA MINISTRE

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(hereinafter "the claimant"), a 23-year-old;

(hereinafter "the claimant's wife), a 21-year-old; and

(hereinafter "the claimant's daughter"), a 3-year-old, are all citizens of Uruguay.

The claimant claims to have a well-founded fear of persecution at the hands of his father-in-law and the Uruguayan police, by reason of his sexual orientation, that being, a bisexual, his wife's and his daughter's membership in a particular social group, that being, his family.

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In addition, they claim to be persons in need of protection, as persons in danger of being tortured or at risk of losing their lives or being subjected to cruel and unusual treatment or punishment in Chile and Uruguay.

ALLEGATIONS

The claimant alleges that he is bisexual, and as a result of his sexual orientation, his father-in-law and the police targeted him. On 2002, he was arrested and detained at a police station where he was physically abused and raped by two police officers who had arrested him. Because the Uruguayan police are in collusion with his father-in-law, an ex-policeman, they were unable or unwilling to provide him protection.

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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 counsel and the Refugee Protection Officer, and all of the documentary evidence entered as exhibits. The panel particularly considered the documentary evidence pertaining to measures in dealing with violence including rape, as well as evidence about the police, the availability of mechanisms for lodging complaints, and, in general, the level of democracy in Uruguay.

The panel finds that the claimants have 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.³

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³ 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.).

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 successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.⁶

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With respect to the case at bar, the claimant alleged that because of his sexual orientation, he fears his father-in-law, an ex-policeman, and the police in Uruguay. He testified that the police in Uruguay were corrupt. They were in collusion with his father-in-law on whose directions they had raped him.

There were serious discrepancies in regards to the number of times the claimant filed police reports in Uruguay, to complain about the mistreatment he received at the hands of the police and his father-in-law.

⁴ 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.).

⁶ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

In his oral testimony, the claimant indicated that he filed two police reports on 2002. These reports were filed at two different police stations after he was released from the police detention on 2002.

In his PIF narrative, the claimant does not mention about filing any police report to redress the mistreatment he allegedly received from the police and his father-in-law.

In his interview with the Immigration Officer,⁷ the claimant indicated that he went to the police on one occasion when his in-laws had found out that he was a bisexual and had started threatening him.

When asked to explain why he did not mention anything about filing a police report in his PIF narrative, the claimant could not provide a reasonable response. He indicated that at the time of writing his PIF narrative, he was not told to include information about filing police reports in Uruguay. The panel does not accept the claimant's explanation to be reasonable. Prior to entering the claimant's PIF as Exhibit C-1, the claimant swore to the accuracy of his PIF. At the hearing, the claimant was represented by counsel. Question 37 in his PIF clearly instructs the claimant to set out, in chronological order all significant incidents, which caused him to seek protection outside his country of nationality. This question also instructs the claimant to indicate whether he sought protection from the authorities in his country.

⁷ Exhibit M-1.

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The panel is of the opinion that filing a police report after being raped by the police and not obtaining any help from them is central and material to this claim, since the entire claim is based on the claimant's allegation of not receiving police protection in Uruguay. It is expected of the claimant to have indicated about filing police reports and not obtaining police protection in his PIF narrative. Failure to include this in his PIF narrative raises a serious doubt in the panel's mind whether the claimant made any attempt to file a police report as he alleges.

Furthermore, in his oral testimony, the claimant indicated that on 2002, after his release from police detention, he went to the police station in to file a complaint against his father-in-law and the two police officers who had raped him in detention. At the station, the police made fun of him and asked him to go away. As a result of not obtaining any help from the police in the claimant testified that he went to a medical clinic to obtain a medical report.⁸ Using the medical report, the claimant went to the Police Station to file a police report.⁹

The panel notes that the police report in Exhibit C-7 is dated 2002 and stamped but not signed by anybody. The contents of the police report¹⁰ are not consistent

⁸ Exhibit C-7, Counsel's disclosure (4th letter dated : 2003).

⁹ Ibid.

¹⁰ Ibid.

with the evidence before the panel. For example, the claimant's oral testimony indicates that on 2002, he was raped by two police officers who brought the claimant to the cell he was detained in by his father-in-law. The police report in Exhibit C-7 indicates that he was caught off guard by two unknown individuals who beat him and sexually abused him. The police report does not mention anything about the claimant being raped by police officers while in police detention, nor does the report mention anything about his father-in-law accompanying police officers to the cell to rape him. His PIF narrative indicates that while the claimant was in detention, his father-in-law brought two individuals who were detainees to rape him.

In regards to the medical certificate," the police report indicates that the claimant submitted a medical certificate from a local hospital to corroborate his claim, but his testimony indicates that the medical certificate was from a medical clinic since, there were no hospitals in the area.

When asked to explain the discrepancies, the claimant could not provide a reasonable response. He indicated that he had narrated his story to the police at the

Police Station in a similar manner to what he had testified to, but the police did not record the incident accurately.

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" Ibid.

The panel does not accept the claimant's explanation to be reasonable. The police report¹² was issued to the claimant on 2002. The Refugee Protection Division received this report on 2003, prior to the hearing. The claimant had ample time to include this information in his PIF narrative. This information is central and material to this claim and therefore it is reasonable to expect this information to be included in the claimant's Personal Information Form narrative.

Based on the evidence adduced, the panel finds serious discrepancies between the claimant's PIF narrative, his oral testimony, his interview with the Immigration Officer in Exhibit M-1 and the police report in Exhibit C-7.

Because of a number of discrepancies and the fact that the police report in Exhibit C-7 has not been signed, the panel does not have any persuasive evidence to believe that the claimant filed any police report in Uruguay. As well, the panel does not believe that the police report in Exhibit C-7 is authentic.

The claimant also alleged that there was corruption within the police, and the police were in collusion with his father-in-law and that he was not satisfied with police action. When asked by counsel if he had complained about police misconduct to the Public Prosecutor's Office or to any other state authorities in Uruguay, the claimant indicated that he had not because he had no idea about existence of such entity in

¹² Ibid.

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Uruguay. The documentary evidence¹³ indicates the Public Prosecutor's Office of Police was created by a decree on August 22, 1997 to prevent and stamp out irregular or illicit actions by the police.

The documentary evidence¹⁴ indicates that Uruguay is a democracy, that the Interior Ministry administers the country's police and that there were no reports of human rights abuses by the police in the year. Living in a democratic country, it is obligatory upon the claimant to seek protection from state authorities of the country of his nationality prior to seeking international protection. The panel finds, in this case, that the claimant simply did not reasonably exhaust all courses of action by availing himself of state protection in Uruguay.

The latest documentary evidence¹⁵ indicates that the Uruguayan government was considering changes to the penal code to include sexual and gender identity in the list of minorities protected against acts of discrimination, and against moral, physical or psychological violence.

¹³ Exhibit C-4, Counsel's disclosure, Documentary Evidence – Uruguay, 4 items.

¹⁴ Exhibit R-1, CRDD Information Package – Uruguay, General Information, Updated April 2002, item 2.1, U.S. Department of State, Uruguay - Country Reports on Human Rights Practices - 2001, March 4, 2002.

¹⁵ Exhibit R-3, Response to Information Request URY39133.E.

In regards to legal protection for sexual minorities, the documentary evidence¹⁶ indicates that there is an abundance of legal jurisprudence in the country, and sexual minorities may rely on the appropriate legal safeguards for protection.

Based on the documentary evidence, the panel does not have any persuasive evidence to suggest that the state authorities, including the police in Uruguay, would not have provided protection to the claimant had he availed himself of it.

The panel finds that the state authorities are making serious efforts to provide protection to victims of violence because of their sexual orientation.

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 the claimant. Accordingly, the panel finds that adequate state protection is available to the claimant should he return to Uruguay.

Because the claimant's wife's claim and his daughter's claim are derivatives of his claim, their claims must fail too.

CONCLUSION

Since the panel finds that adequate state protection is available to the claimants in Uruguay, they are neither Convention refugees nor persons in need of protection within

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¹⁶ Exhibit C-4, Counsel's disclosure, Documentary Evidence - Uruguay, 4 items.

the meaning of section 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act*.

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Accordingly, the panel determines that

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and [redacted] are neither Convention refugees nor persons in need of protection, and the Refugee Protection Division, therefore, rejects their claims for refugee protection.

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"S. Alidina"
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DATED at Toronto, Ontario this 20th day of November 2003

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