



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE
HUIS CLOS
TA2-17112

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

August 29, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

September 8, 2003

DATE DE LA DÉCISION

CORAM

Hazelyn Ross

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

A. Weldrick

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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These are the reasons for the decision of the Refugee Protection Division with respect to the claim of (the claimant) to refugee protection. The claimant is a 40-year-old citizen of Yugoslavia. He claims that due to his particular sexual orientation, he has a well-founded fear of persecution in Yugoslavia at the hands of Yugoslavians generally.

He also claims that he would personally face a risk to his life or to cruel and unusual treatment or punishment or a danger of torture if he were to return to Yugoslavia.

In addition, he claims that the state is unwilling or is unable to protect him.

ALLEGATIONS

The claimant alleged that both he and his wife are bisexual. The claimant married his wife, , on the 1987. In his Personal Information Form (PIF),¹ he stated that, while they received a number of threatening telephone calls over the years, they did not suffer any physical harm until they attended a "Pride Parade" in Belgrade on the 2001.

The claimant alleged that they were injured when a crowd of nationalists attacked the parade participants and that while they managed to escape the scene and return home, they began to receive targeted and abusive telephone calls a week later.

¹ Exhibit C-1

On the 1, three men attacked and beat the claimant. after first identifying him as a homosexual. This attack prompted the claimant to leave Yugoslavia and to come to Canada where he made a claim for refugee protection.

DECISION

I find that the claimant is a Convention refugee in that he does have a well-founded fear of persecution in Yugoslavia by reason of his perceived membership in a particular social group, namely, homosexuals, for the following reasons.

Sexual Orientation as a basis for protection

The Federal Court and the Board have found that homosexual persons constitute a particular social group, in particular, countries, in particular circumstances, claimants who have been found:

- (a) to be bona fide homosexual;
- (b) to have been persecuted because of their sexual orientation; and
- (c) who have been unable to obtain State Protection from harm have been accepted as Convention refugees.

Identity

As required by s.106 of the Immigration and Refugee Protection Act ("IRPA"), the claimant's identity as a national of Yugoslavia was established to the satisfaction of

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the panel by means of his Yugoslav international passport which is included as part of Exhibit M-1.

The claimant's identity as a bi-sexual individual

The claimant provided candid testimony about his sexual life, including his first sexual encounter with a male when he was a boy of 13 or 14 and his later relationship with a schoolmate. He also testified about the break-up of that relationship which ended when he met his wife in 1981.

The panel found that the claimant's testimony about his initial sexual activities to be credible and trustworthy.

However, the panel had concerns over the claimant's allegations that he and his wife had a sexual relationship with another bisexual couple. The claimant testified that from about 1984 or 1985, he and his wife had regular sexual relationships with and . When the claimant was questioned about the manner in which they managed to maintain this long-term relationship, despite living in a small town and despite both couples being the parents of young children, the claimant explained that the families were close, socialising often. He stated that on the one or two nights a month that they had sex, he and his wife would send the children to their grandparents for the night.

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The panel considered the claimant's explanation, and the panel rejected it, as the panel did not find it plausible that such a relationship could have been maintained and successfully kept quiet for such a long period of time.

The panel concluded that, on a balance of probabilities, the claimant and his wife did not have a bisexual relationship with the [redacted] and the panel rejected his testimony in this regard. Indeed, for the reasons set out below, the panel concluded that the claimant's wife was not bisexual.

The claimant was asked when he first realised that his wife was bisexual. He stated that he learned his wife was bisexual when they opened up to each other some time in 1984 or 1985. He claimed that while he was certain that his wife did not know his sexual orientation when they met that upon "opening up" to each other, she confessed that she had been initially suspicious that he was a homosexual and changed her mind only after they had sexual intercourse. The claimant admitted that there were rumours in his town concerning his sexuality.

The panel considered the claimant's allegations, and the panel concluded that, given that there were these rumours about the claimant's homosexuality, it was unlikely that it would take the claimant and his wife a full four years before they explored this area. The panel also found that, once they had opened up to each other in this manner, it was unlikely that it would take the claimant's wife a further two years before she would tell him that she had a sexual relationship with [redacted]

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Therefore, the panel rejected the claimant's allegations that his wife was bisexual and that the two had a similar relationship with the

The panel also had concerns about the claimant's allegations that they attended the Pride Parade in Belgrade. Upon assessing all of the claimant's evidence, including his testimony about escaping the nationalists and returning to their home city, the panel concluded that there was valid reason to doubt and to reject his allegation that he and his wife attended the Pride Parade.

The panel had the opportunity to observe the claimant as he gave his testimony. He was aware of the way in which homosexuals were perceived in his community and in Yugoslavia generally. He did not impress the panel as being the type of person who would make such a bold statement as attending the parade, particularly when one considers that he had spent his entire life essentially avoiding such identification.

Therefore, the panel rejected his allegation that he attended the Pride Parade on the 2001 as not being plausible in the circumstances.

Having come to this conclusion, the panel rejected the claimant's allegations that a week after the parade, he received a telephone call in which the caller told him that he knew he and his wife had attended the parade and threatened them with death.

The panel also had concerns about the claimant's allegations that he received threatening telephone calls for more than ten years. The claimant testified that he received such calls on a regular basis, at least twice a month. He claimed that until the

pride parade he ignored the calls. He did not report them to the police or otherwise seek state protection because neither he nor his wife was harmed.

The panel considered his explanation, and the panel rejected it, as the panel did not find it plausible that someone would receive threatening telephone calls for such a prolonged period and continue to dismiss them. Accordingly, the panel rejected his allegation that he and his wife were subjected to a prolonged series of threatening telephone calls.

However, the panel considered the claimant's allegation that three men beat him on the 1991. The panel was concerned because the alleged attack did not occur until after some six months had elapsed. The panel also did not find it plausible that he would not have been attacked sooner. When these concerns were put to the claimant, he stated that after the parade, he took precautions and was careful not to make himself vulnerable to attack.

While the panel does not believe that the claimant was attacked as a result of his attending the Pride parade as he alleged, noting that outside of his sworn testimony, there is no independent corroboration of the alleged attack, the panel did conclude that in the context of heightened awareness of homosexuality and the rumours surrounding the claimant, as attested to by the witness, it was not only possible, but it was probable that the claimant would be perceived as a homosexual and be vulnerable to attack for this reason.

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The documentary evidence indicates that, while homosexuality has been decriminalised, homosexuals are still widely stigmatised and that this attitude is particularly prevalent in the smaller centres of Yugoslavia.² Based on the documentary evidence, the panel concluded that there is more than a mere possibility that the claimant would be persecuted in his community should he return to Yugoslavia.

State Protection

Also relevant to the issue of well-foundedness of the claim is the issue of state protection. The onus is on the claimant to rebut the general presumption that a state is capable of protecting its citizens.

The claimant testified that he was unwilling to obtain state protection. He explained the attitude of the police to homosexuals and for this reason did not dare to make reports to the police. While I have found that the claimant was not credible with respect to most of the incidents he related, I find that the documentary evidence does support him that once identified as homosexual, police assistance would not readily be forthcoming. General country conditions documentation supports the claimant's contention that there would be no state protection available to him as a homosexual person in Yugoslavia. The attitude of the police towards homosexuals appears to be captured by the statement of the Chief of Police of Belgrade who in commenting on the aborted parade of the 2001 stated, "As a society, we are not mature enough to

² Exhibit R-1,

accept such demonstrations of perversity.”³ The panel notes that the same indicates that there is only one bar catering to homosexuals in all of Yugoslavia, and the panel infers that this is a reflection of the general societal intolerance of homosexuality.

Therefore, based on the above analysis, the panel concluded that there is more than a mere possibility that the claimant would be persecuted in Yugoslavia because of his perceived homosexual orientation.

CONCLUSION

For the above reasons and having considered all of the evidence, the panel concludes that the claimant, is a Convention refugee and therefore accepts his claim for refugee protection.

“Hazelyn Ross”
Hazelyn Ross

DATED at Toronto this 8th day of September, 2003

³ Exhibit R-1.