



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  
TA2-01604

CLAIMANT(S)		DEMANDEUR(S)
	(a.k.a. . . . .)	
DATE(S) OF HEARING	<b>January 16, 2004</b>	DATE(S) DE L'AUDIENCE
DATE OF DECISION	<b>February 3, 2004</b>	DATE DE LA DÉCISION
CORAM	<b>Joel A. Bousfield</b>	CORAM
FOR THE CLAIMANT(S)	<b>Humberto Simao</b>	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	<b>R. Medeiros</b>	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE	<b>Nil</b>	REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL	<b>Nil</b>	CONSEIL DE LA MINISTRE

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s.19(1)

These are my reasons for a decision of the claim of \_\_\_\_\_ (a.k.a. \_\_\_\_\_) to refugee protection. The claimant is a 28-year-old citizen of Brazil from Sao Paulo. The claimant fears persecution in Brazil by reason of her sexual orientation.

I am satisfied that the claimant is who she says she is, and that she is a citizen of Brazil by reason of a certified copy of her Brazilian passport.<sup>1</sup>

The claimant's testimony of past persecution and past efforts to obtain state protection is contained in the narrative to her Personal Information Form<sup>2</sup> (PIF), and was given orally by the claimant during the hearing. For the purposes of these reasons, I do not repeat the contents of all of that here. However, I have considered all of it. I have also considered all of the documents before me, the submissions of counsel, and the observations of the Refugee Protection Officer (RPO).

Brazil is a functioning democracy with a functioning police force.<sup>3</sup> Moreover, same sex relations are not illegal in Brazil.<sup>4</sup> For these reasons, the presumption of state protection applies. For the following reasons, I am not convinced within the

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<sup>1</sup> Exhibit M-1.

<sup>2</sup> Exhibit C-1.

<sup>3</sup> Exhibit R-1, RPD Information Package, revised September 2003, item 2.1, United States Department of State, Country Reports on Human Rights Practices for 2002, October 29, 2003.

<sup>4</sup> Ibid., item 4.1, World Legal Survey, "The International Lesbian and Gay Association", June 23, 2000.

preponderance of probabilities, as I must be,<sup>5</sup> that the Brazilian state would not be reasonably forthcoming with serious efforts to protect the claimant if she were to return to Brazil and make further efforts to seek state protection now. I am aware of the fact that the claimant did attempt to obtain protection from the police once in 1999, and that she was not treated very well at the time. However, from her testimony it is not clear to me that the Brazilian police refused or did not ever act upon that complaint. The claimant admitted that she has not followed up to see whether the police did act on the complaint.

Moreover, it is now 2004, and since the event in 1999, it does not appear that the claimant or anyone else acting on her behalf, has made another effort to obtain protection from the Brazilian authorities. Furthermore, 73 Brazilian cities and towns, three states, and the Federal Capital District of Brazil, all have sexual orientation anti-discrimination laws.<sup>6</sup> Furthermore, according to a Response to Information Request,<sup>7</sup> the police in Brazil have acted on attacks against homosexuals, and have instituted judicial process against attackers. Further still, the justice ministry has an office in Brazil to promote gay rights nation wide.<sup>8</sup>

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<sup>5</sup> Xue, Jian Fei v. M.C.I. (F.C.T.D., no. IMM-4477-99), Rothstein, July 23, 2000.

<sup>6</sup> *Supra*, footnote 3, item 4.1.

<sup>7</sup> *Ibid.*, item 4.2, number BRA39447.E, August 21, 2002.

<sup>8</sup> *Ibid.*

The standard of proof for state protection is high. Not only must I be persuaded on a balance of probabilities, I must be convinced within the preponderance of probabilities, that the Brazilian state would not be reasonably forthcoming with serious efforts at protection.<sup>9</sup> Moreover, a local refusal of police protection does not rebut the presumption of state protection.<sup>10</sup> Finally, states do not have to provide 100 percent effective protection; they merely have to make a serious effort.<sup>11</sup>

For all these reasons, I am not convinced within the preponderance of probabilities, that the Brazilian state would not be reasonably forthcoming with serious efforts to protect the claimant if she were to return to Brazil now and make further efforts to seek protection with respect to the incident that happened to her in the past, and any incident that may happen to her in the future because of her sexual orientation.

For all these reasons, I find that the presumption of state protection has not been rebutted.

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<sup>9</sup> *Supra*, footnote 5.

<sup>10</sup> Zhuravlev v. Canada (Minister of Citizenship and Immigration), [2000] 4 F.C. 3 (T.D.).

<sup>11</sup> Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

For all these reasons the Refugee Protection Division rejects the claimant's claim to refugee protection, determines that she is not a Convention refugee, and not a person in need of protection within the meaning of sections 96 and 97 of the Immigration and Refugee Protection Act.<sup>12</sup>

\_\_\_\_\_  
"Joel A. Bousfield »  
Joel A. Bousfield

DATED at Toronto this 3rd day of February 2004.

<sup>12</sup> Immigration and Refugee Protection Act, S.C. 2001, C. 27.