



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  
**TA1-28696**

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

**April 27, 2004  
July 7, 2004  
September 20, 2004  
November 17, 2004**

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**December 16, 2004**

DATE DE LA DÉCISION

CORAM

**George Z. Wang**

CORAM

FOR THE CLAIMANT(S)

**Michael Kishinevsky  
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

**I. Kohler**

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

**N/A**

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

**N/A**

CONSEIL DE LA MINISTRE

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s.19(1)

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is a citizen of Lithuania and claims refugee protection pursuant to s.96 and s.97(1) of the Immigration and Refugee Protection Act (IRPA).<sup>1</sup>

### **Allegations**

The claimant alleged as follows in his amended Personal Information Form (PIF)<sup>2</sup> narrative:

The claimant went to the US in 1993 and was put into prison in 1995. While in prison, the claimant met a man by the name of , felt sorry for him as he was ridiculed by everyone in the prison for his feminine tendencies, became friends and started to have sex with him. After being released from prison in 1997, the claimant shared his prison experience with his wife and later regretted doing so because she began to distance herself from him. Finally they divorced and the claimant returned to Lithuania in 1999. In Lithuania, the claimant developed a relationship with a young man and in the summer of 2000 the claimant and his friend were fired and were told that it was because of their sexual orientation. The claimant and his friend were also beaten twice: once as they were leaving a in 2000 and once while they were camping at their cottage in 2000. The claimant decided to come to Canada, arrived at Toronto in October 2000 and made a claim for refugee protection based on his sexual

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<sup>1</sup> Immigration and Refugee Protection Act, S.C. 2001, c.27.

<sup>2</sup> Exhibit C-1, Personal Information Form (PIF), Client ID Number

orientation. The claimant lived in a basement, became very close with his landlady and fell in love with her. The claimant did not hide his lifestyle with his gay friend from his landlady and decided to marry her in 2001 because she understood him really well and put no conditions on their relationship. The claimant and his wife trusted and had excellent relations with each other. If the claimant wished to be alone sometimes, his wife did not object. He felt lucky as he had a friend and wife.<sup>3</sup> s.19(1)

#### **Determination**

The panel finds that the claimant is neither a Convention refugee nor a person in need of protection because he failed to establish with credible or trustworthy evidence his homosexuality or bi-sexuality, a well-founded fear on any of the Refugee Convention grounds, a danger of torture, or a risk identifiable and distinguished from that faced by the general population in Lithuania.

#### **Analysis**

The panel accepts the claimant's identity as a citizen of Lithuania on the basis of his testimony and passport.<sup>4</sup>

The determinative issue in his claim is the lack of credibility.

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<sup>3</sup> Exhibit C-5, Amended PIF narrative.

<sup>4</sup> Exhibit R/A-2, Certified true copies of passport and other documents on file with CIC.

The claimant based his claim on the ground of membership in a particular social group, i.e. homosexuals. The claimant alleged in his original PIF narrative<sup>5</sup> that: he went to the US with a work visa in 1993 and was sent to prison in 1995; while in prison, he learned that his wife cheated on him; he was angry at the whole world and disappointed with his life, especially with women because he trusted his wife and spent days and nights working and trying to provide for his family; at that point in prison, it seemed to him that life was over and he withdrew into himself and began to do sports in order not to go crazy; during his workouts, he met a guy named [REDACTED] became good friends and eventually had sexual contacts with him; after he left prison he divorced his wife; he went back to Lithuania in 1999, met his neighbor named [REDACTED] and started to have sex with him; in [REDACTED] 2000 he and [REDACTED] were beaten in a disco club; in [REDACTED] 2000 they were fired and the reason was their incompatibility with co-workers; in [REDACTED] 2000 they were beaten again at home; in October 2000 he came to Canada and made a claim for refugee protection based on being persecuted as a homosexual; while living in a rented room, he fell in love with his landlady, [REDACTED] he married her in [REDACTED] 2001; and until the present moment they feel so happy to be together and he could not explain how thankful he is to [REDACTED] for her love and care.<sup>6</sup>

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<sup>5</sup> Exhibit C-1.

<sup>6</sup> Exhibit C-1, Original PIF narrative.

The claimant's alleged gay friend, \_\_\_\_\_ came to Canada together with the claimant and made a claim for refugee protection on the same ground – homosexuality. However, \_\_\_\_\_ did not make any reference to the claimant or the incidents that allegedly happened to the claimant and \_\_\_\_\_ in 1 \_\_\_\_\_ narrative,<sup>7</sup> which was disclosed to the claimant. At the previous sittings of the hearing, when asked why no reference was made to him or the incidents that allegedly happened to him and \_\_\_\_\_ the claimant replied that he could not tell \_\_\_\_\_ what to write or not to write in \_\_\_\_\_ ' PIF narrative, or maybe \_\_\_\_\_ was mad at him because of his relationship with his wife,

Further, at the previous sittings of the hearing, numerous discrepancies were identified between the claimant's testimony and his original PIF narrative, e.g.: the claimant alleged in his original PIF narrative that he had a couple of sexual contacts with women when he returned to Lithuania from the US, whereas he testified at the hearing that he never had sex with or dated women after he returned from the US. The claimant alleged in his original PIF narrative that he had his first gay sex in Lithuania on the \_\_\_\_\_ in 1999 in a country house, whereas he testified at the hearing that he had his first gay sex in Lithuania in a tent in the summer of 1999 while camping near a lake; the claimant alleged in his original PIF narrative that he was attacked because of his homosexuality in Lithuania in a disco club in \_\_\_\_\_ 2000, whereas he testified at the

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<sup>7</sup> Exhibit R/A-4, PIF of 1

hearing that he was first assaulted in Lithuania when he was leaving a restaurant after a meal in 2000.

When asked about the inconsistencies, the claimant replied, in spite of his swearing on the PIF, that the discrepancies occurred because the original PIF was not translated into his native language - Lithuanian and instead it was translated into Russian for him. At the RPO's suggestion, it was decided that the hearing be adjourned to give the claimant time to have the PIF translated into Lithuanian. An amended PIF was submitted before the resumption on November 17, 2004. Although the Interpreter's Declaration indicated that the amended PIF was still translated from English to Russian,<sup>8</sup> the claimant testified and it was confirmed by his counsel that it was translated into Lithuanian for him.

At the resumption on November 17, 2004, the claimant was sworn and questioned on his amended PIF and further examined on his sexual orientation. However, it was found that the claimant was not a credible witness regarding his sexuality and his persecution because of his alleged homosexuality, nor did he establish his homosexuality or bi-sexuality with credible or trustworthy evidence due to the omissions and discrepancies in his amended PIF narrative and his testimony.

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<sup>8</sup> Exhibit C-5, Amended PIF - Interpreter's Declaration, p. 16.

The claimant went to the US in 1993 and was removed to Lithuania in 1999. While in the US the claimant was sentenced to imprisonment for exportation of stolen vehicles in 1995 and served his sentence. In his amended PIF narrative the claimant alleged that he was assaulted in Lithuania on [redacted] and J [redacted], 2000 and then he decided to come to Canada. However, at the hearing, the claimant testified that he never wanted to live in Lithuania and while still in the US he started to look for agencies and called friends trying to find a way to leave Lithuania. According to his testimony the claimant made his decision to leave Lithuania even before he was removed from the US in 1999 and that decision could not be related to anything that happened after his removal to Lithuania.

Regarding the 2000 incident, the claimant wrote: "As it happened, the knife wounds I received missed any vital organs and hit me in the legs," and "I had some loss of blood and I could not remember anything that happened for the next two days." [sic]<sup>9</sup> However, in spite of his alleged serious injuries, the claimant went to Poland twice and Sweden once for sporting events in 2000 and to Finland for sporting events in [redacted] and 2000. In addition, the claimant went to Germany and Denmark for sporting events numerous times before the 2000 incident. After those frequent overseas trips, the claimant repeatedly returned to Lithuania before he finally left for Canada in October 2000.

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<sup>9</sup> Exhibit C-5, Amended PIF narrative.

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When asked why he did not make a refugee claim in those countries, the claimant replied that he would never get a refugee status and he would be found by his agents of persecution in those countries. However, the claimant did not establish with credible or trustworthy evidence that his alleged agent of persecution would be able to find him in any of those countries or that his claim for refugee protection would not be accepted by one of those countries if he had a genuine fear for one of the Refugee Convention grounds. When further asked why he waited so long to leave Lithuania since the last alleged assault occurred in 2000, the claimant responded that he was interested in sport. If the claimant repeatedly returned to Lithuania merely because of his interest and intention to participate in events, his delay in leaving Lithuania indicated that he did not have a genuine fear for his life or safety in his home country.

At the hearing, the claimant testified that the assaulters in the two beating incidents were the same group of people who were in prison with him in the US. The claimant further testified that another incident occurred before these two beatings, about after he returned to Lithuania from the US in 1999 and in that incident he was locked up by the same people imprisoned with him in the US and was told to give them \$. When asked whether he was assaulted because he was gay or because the perpetrators demanded money from him, the claimant replied that it all started because he was gay. The panel did not find the response credible.

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At the hearing when asked what the people said to him when they locked him up and demanded money from him, the claimant answered that they told him to pay \$ if he wanted peace. No reference to his sexual orientation was made in his response. Only when questioned how a demand for \$ related to his homosexuality, the claimant added that they used some derogative name for gay when they demanded money. The claimant did not provide any further detail as to how the people were motivated by his homosexuality in locking him up and demanding money from him. In the panel's opinion, using a derogative term for gay, by itself, was not credible or trustworthy evidence to establish the people's motivation in locking him up and demanding money from him. Due to the lack of detail as to why those who were in prison with him in the US locked him up and demanded money from him, the panel finds, on a balance of probabilities, the people locked up the claimant for money rather than persecution of him because of his sexual orientation.

At the hearing, the claimant further testified that after the incident in 1999 wherein he was locked up and money was demanded from him, the same group of people called and came to his home to seek him. When asked what they wanted from him, the claimant answered that they wanted money from him. This response supported the panel's previous finding that the perpetrators were motivated by money rather than by his homosexuality.

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The claimant did not refer to his being locked up and being sought for money in his original PIF narrative or his amended PIF narrative. Since those incidents were allegedly perpetrated by the same group of people who assaulted the claimant later, their omissions in the amended PIF narrative was significant and caused the panel to draw a further negative inference regarding the claimant's credibility in his allegations about his sexual orientation and his persecution because of his sexual orientation. In the panel's opinion, even if the claimant could have shown that he was beaten in . . . and . . . 2000, he did not establish with credible or trustworthy evidence that he was assaulted because of his homosexuality if he was locked up and sought for money before those two beating incidents.

In the panel's opinion, neither did the claimant establish his homosexuality or bisexuality with credible or trustworthy evidence. The claimant came to Canada in October 2000 together with . . . Both made a claim for refugee protection on the basis of their homosexuality at their arrival in Canada. At the previous sitting of the hearing, the claimant alleged that he stayed with . . . until the claimant moved to marry and live with his wife, . . . and after his marriage he continued to maintain his homosexual life style. When asked when he had sex with a man most recently, the claimant answered that most recently he had sex with a man a couple months ago in their basement and it was with . . . who now lived in the basement of the house owned by the claimant and . . . However, when asked when he had sex with a man most recently

at the last sitting of the hearing on [REDACTED] 2004, as the amended PIF narrative was examined the claimant replied that it was three years ago that he last had sex with a man and the partner was [REDACTED] who came from the US and he never had sex with [REDACTED] in Canada, which obviously contradicted the claimant's previous testimony that he had sex with [REDACTED] most recently a couple of months ago in his basement. When confronted with the discrepancy, the claimant replied that he misunderstood the question at the previous sitting and he just had a kiss with [REDACTED]. The panel did not find the explanation satisfactory. At the previous sitting, the claimant was clearly asked when he had had sex with a man most recently and to that question he responded that it was a couple months ago and it was with [REDACTED]. It was implausible for the claimant to misunderstand the question.

Moreover, no reference was ever made to [REDACTED] by the claimant at the previous sitting. The claimant did not even mention his only homosexual encounter in Canada in his amended PIF narrative, where he emphasized his wife's acceptance of his gay relationships with his male friend by stating that "We did not hide our lifestyle from her and she was understanding" and "...if I wish to be alone sometimes, she does not object."<sup>10</sup> When questioned why [REDACTED] as well as his sexual experience with [REDACTED] was omitted in his amended PIF narrative, the claimant answered that he did not feel comfortable writing about sex with men. The panel found the explanation incredible.

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<sup>10</sup> Exhibit C-5, Amended PIF narrative.

The claimant based his claim for refugee protection on his sexual orientation, either homosexuality or bisexuality. In his amended PIF narrative, the claimant described in some detail his alleged homosexual experience in the US and Lithuania. The claimant wrote that while in the prison in the US, "We began having sex and became very much attached to each other, even though I had a wife..." and when he returned to Lithuania, "I began having a relationship with one of the young men."<sup>11</sup> Since the claimant wrote about his alleged homosexual experience in the US and Lithuania in his amended PIF narrative, it would be reasonable to expect him to write about his homosexual activity in Canada as well. It was not credible that his homosexual encounter in Canada was omitted in his amended PIF narrative because he did not feel comfortable writing about it.

As the claimant did not satisfactorily explain the omission of his only gay sexual activity in Canada in his amended PIF narrative and the discrepancy between his previous testimony that he had sex with [redacted] as recently as a couple months ago and his testimony at the last sitting of [redacted] 2004 that he never had sex with [redacted] in Canada but he had sex with [redacted] once about three years ago, the panel concludes that the claimant was not a credible witness regarding his sexual orientation and he did not have any homosexual activity in Canada.

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<sup>11</sup> Exhibit C-5, Amended PIF narrative.

At the last sitting of the hearing when asked why he never had sex with [redacted] in Canada, the claimant answered that they did not have time for sex, as sex was not a priority for them. The panel did not find the response credible. First, if the claimant had time for sex with [redacted] who came to Canada for a visit, there would be no reason why the claimant could not find time to have sex with [redacted]. Second, if the claimant was homosexual or bisexual and his wife understood his lifestyle without any objection to his wish to be alone sometimes, it was difficult for the panel to comprehend why the claimant did not find time in four years to engage sexual activity with any male, especially [redacted] since [redacted] allegedly was his homosexual partner in Lithuania, the claimant and [redacted] came to Canada together, both claimed refugee protection on the same basis of their homosexuality at the time of their arrival in Canada, they lived together until the claimant got married with [redacted] and after the claimant's marriage [redacted] moved in to live in the basement of the house owned by the claimant and [redacted]. In the panel's opinion, the claimant's behaviour was not consistent with that of a genuine homosexual or bisexual.

The claimant submitted some photos to the RPD. One of them showed him kissing another man.<sup>12</sup> In the panel's opinion, those photos were not conclusive evidence as to his sexuality. Some other photos showed scars on the claimant.<sup>13</sup> As the panel finds

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<sup>12</sup> Exhibit C-4, Photos.

<sup>13</sup> Exhibit C-2, Photos.

that the claimant did not establish with credible or trustworthy evidence that he was assaulted because of his homosexuality, those scars could be caused by reasons other than those allegedly related to his sexual orientation. The claimant testified that since he came to Canada he went to a gay bar once with his friends and went to see the gay pride parade once because it was interesting and he had never seen that kind of parade before. In the panel's opinion, the visit to a gay bar or watching the gay pride parade in Toronto, by themselves, could not be considered homosexual activity. In view of the omissions and discrepancies discussed above, the panel concludes that the claimant did not provide credible or trustworthy evidence to establish his homosexuality or bisexuality.

At the hearing, the claimant testified that he loved his wife and believed in women again, his wife did everything he wanted, and they had a variety of sexual activities, satisfied each other, and lived together as a family. When asked whether he saw himself as a man having a need for sex only with his wife, the claimant answered that it was the case at the moment. When asked whether he desired for sex with men, the claimant replied that he did not desire for sex with men right now. When further asked whether he would have a desire for sex with men in the future, the claimant responded that he did not know what would happen in the future. The claimant's testimony further supported the panel's conclusion that he did not establish his homosexuality or bisexuality with persuasive evidence.

When asked why he could not return to Lithuania and live safely with as a husband and wife, the claimant insisted that he would still be persecuted. When asked how, the claimant replied that, as Lithuania was such a small country and criminals talked to each other, even if he went to a place other than his hometown, the information that he used to be gay before would be spread quickly.

However, no reference was made to the involvement of the organized crime in his circumstances before. Although the claimant explained that he would be killed if he wrote about the organized crime in his PIF narrative, the panel did not find the explanation credible.

First, all the omissions and discrepancies discussed above caused the panel to draw a negative inference regarding the claimant's credibility of his allegations about his sexual orientation and persecution because of his sexual orientation.

Second, the onus was on the claimant to tell the truth in his PIF and he swore that the content of his PIF was complete, true and correct.

Third, although the claimant did not have to write out the names of the organized criminals involved in persecuting him, it would be reasonable to expect him to refer to the fact that he was persecuted by organized crime elements, if they were involved as alleged.

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Fourth, with assistance from professional counsel, it would also be reasonable to expect the claimant to be aware that his PIF narrative was kept in strict confidentiality and would not be released without his personal consent.

For these reasons, the panel concludes that the claimant did not provide credible or trustworthy evidence to establish that organized crime elements were or would be involved in persecuting him, word would be spread about his alleged homosexuality wherever he went with his family in Lithuania, or he would be persecuted because of his alleged previous homosexuality if he returned to Lithuania.

The panel notes the documentary evidence regarding the situation faced by homosexuals in Lithuania.<sup>14</sup> However, as the claimant did not establish with credible or trustworthy evidence that he was a homosexual or bisexual, that he was persecuted in Lithuania previously due to his homosexuality, or he would be perceived as a homosexual or bisexual, the panel concludes that the claimant would not face a serious possibility of persecution because of his sexual orientation or any other Refugee Convention ground if he returns to his home country. Therefore, the claimant is not a convention refugee.

The panel then considered whether the claimant is a person in need of protection as defined under s.97(1) of IRPA. First, no credible or trustworthy evidence was adduced

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<sup>14</sup> Exhibit R/A-1, Item 16.1, Response to Information Request LTU34173.E, 04 April 2000, p. 16.1.1.

to support a finding that the claimant would be subjected personally to a danger, believed on substantial grounds to exist, of torture within the meaning of the Convention Against Torture.<sup>15</sup>

With respect to a risk to his life or a risk of cruel and unusual treatment or punishment, the panel finds that the claimant did not establish with persuasive evidence that if he returns to Lithuania he would face a risk distinguished from that faced generally by other individuals in or from that country.<sup>16</sup> Therefore, after a review of all the evidence, the panel finds that, given the lack of credibility and failure to establish an identifiable risk in his testimony, his claim for refugee protection under s.97(1) of IRPA fails as well.

For these reasons, the claimant is determined to be not a Convention refugee or a person in need of protection and, accordingly, his claim is rejected.

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"George Z. Wang"

George Z. Wang

DATED at Toronto this 16<sup>th</sup> day of December, 2004

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<sup>15</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, and entered into force 26 June 1987, in accordance with Article 27(1).

<sup>16</sup> Immigration and Refugee Protection Act, s.97(1)(b)(ii)