



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
TA2-10890
TA2-10891

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

October 19, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

December 21, 2004

DATE DE LA DÉCISION

CORAM

D. J. Forsey

CORAM

FOR THE CLAIMANT(S)

El-Farouk Khaki
Barrister & 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 claimants before me have alleged that they have a well-founded fear of persecution at the hands of the Revolutionary Armed Forces of Colombia (FARC) guerrilla organization, due to their perceived political opinion. The principal claimant, the male claimant, alleged that he also has a well-founded fear of persecution in Colombia because of his sexual orientation.

In making my assessment, I have considered the claimant's oral and written evidence, all of the documentary evidence, and in particular, in this particular case, about the police, the FARC, and the situation for homosexuals in Colombia, and the availability mechanisms for lodging complaints about police abuse and misconduct and, in general, the situation in Colombia with respect to the FARC movement and the efforts of the Colombian government to curb the actions of the FARC guerrilla movement. I have also considered the Chairperson's Guidelines on gender violence.¹

In this particular case, of course, the claimant's allege that they have a well-founded fear of persecution at the hands of the FARC and with the male claimant, of course, a well-founded fear of persecution because of his sexual orientation. The determinative issues, however, were identity, agents of persecution, credibility and state protection.

¹ Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act.

The identity of both claimants has been established to my satisfaction. In this respect, I make reference to the supporting documentation, namely, the certified copy of both claimant's passports, filed as part of the documents from Citizenship and Immigration Canada (CIC)² and also personal documents filed by counsel.³

The principal claimant's testimony has established to my satisfaction that he is a homosexual male, and, therefore, I accept his evidence in that regard.

I found both claimants to be credible witnesses. I found that their testimony was generally straightforward and trustworthy, and, therefore, I believe the allegations in support of their claims. There were no inconsistencies or contradictions that were central to the claim.

The principal claimant alleged that being a homosexual person, he would be subject to serious discrimination, leading to persecution, should he return to Colombia. The claimant could not live openly as a homosexual person, and his allegations in this respect are consistent with the documentary evidence before me.

Both claimants testified that they became targeted by the FARC because the FARC believed that they were in collusion with the female claimant's deceased husband, and, therefore, they would have access to guns, money and documents that they allegedly

² Exhibit R-2.

³ Exhibits C-4 and C-6.

expected to receive from her deceased husband. It is clear from the evidence that the FARC perceive the claimants to be against their political objectives by their refusal to hand over their perceived supply of arms and money. Their evidence in this regard is consistent with the documentary evidence with respect to how the FARC deal with persons who they perceive to be against their political objectives.

Further, with respect to the police and the targeting of homosexuals, the documentary evidence indicates that hundreds of people who have been allegedly killed by death squads and pursuant to be done so by the paramilitaries, who in turn are believed to have support from the security forces in Colombia, to rid towns and cities of homosexuals who are considered disposable. Recent reports, that are also within the documentation,⁴ state that social cleansing of street prostitutes and homosexuals, who are also sometimes referred to as disposables, continues today.

Based on the evidence today and the narrative in his Personal Information Form (PIF),⁵ I find that the principal claimant's testimony concurs with the documentary evidence before me.

With respect to state protection, the Colombian government authorities have failed to provide adequate state protection to their citizens. The principal claimant testified that

⁴ Exhibit C-3.

⁵ Exhibits C-1.

being a homosexual male, he does not have state protection in Colombia. Both claimants testified that, as victims being targeted by the FARC, they could not get protection from any state authority in Colombia, and the documentary evidence is consistent with what the claimants allege. In fact, some of the documents indicate that the government continued to face serious challenges to its control over the national territories, as both longstanding and widespread internal armed conflict and rampant violence, both political and criminal, persisted.

With regards to the availability of state protection for homosexual and gays in Colombia, the documentary evidence is consistent also with what the claimant alleges.

With respect to human rights abuses by the police, the documentary evidence again concurs with regards to the human rights abuses by the police. The documentary evidence indicates that members of the armed forces and the police commit serious violations of human rights. And as found in the United States Department of State Report,⁶ as well as the country reports on human rights practices, the same document indicates that impunity remains a problem and that, despite some prosecutions and convictions, the authorities rarely brought higher ranking officials of the security forces or the police to charges with human rights offences to justice. Documents further

⁶ Exhibit R-1, RPD Information Package - Colombia, Updated September 2003, item 2.1, US Department of State, Colombia: Country Reports on Human Rights Practices - 2002, March 31, 2003.

indicate that guerrilla movements and the paramilitary forces still find support among the military and police.

I would like to also comment that with respect to guerrillas such as the FARC targeting the gay population of Colombia, the documentary evidence indicates that guerrilla groups such as the FARC have forced residents of certain towns and controls to take HIV tests and those that were found to have tested positive were ejected from their rebel controlled territories.

With regard to the social cleaning campaigns, the documentary evidence indicates that the resulting social cleansing campaigns are often tacitly supported by some segments of the local communities. Notwithstanding that it is not against the Colombian law to be homosexual, the documentary evidence indicates that homosexuals are occasionally attacked by vigilante groups who excuse their actions by social cleansing. Hundreds of people have been allegedly killed by death squads, presumably paramilitaries who are believed to have the support of security forces. The documentary evidence also indicates that police collaborate with paramilitary groups with respect to these activities. Therefore, it would not be possible to expect the same police authority to protect individuals such as the principal claimant.

Therefore, based on the documentary evidence and the evidence of the claimants, which I found credible, I find that the police and the security forces of Colombia collaborate with anti-gay groups and gangs and the paramilitary groups against civilians,

such as the principal claimant. I also find that, at times, the police are unable to protect themselves from guerrillas and, therefore, unable to protect citizens from similar situations such as the claimants before me.

Further, the panel finds that based on the documentary evidence, which did not contradict the evidence of either claimant, the FARC would consider the claimants to be military targets and against their political objectives. The panel finds that, based on the documentary evidence, the Colombian government at this time cannot protect citizens in similar situations as the claimants.

Having considered all of the evidence, I find that the claimants are Convention refugees and are persons in need of protection pursuant to Section 97(1)(a) and/or (b) of the *Immigration Refugee Protection Act*. Accordingly, I accept their claim for refugee protection.

"D. J. Forsey"

D. J. Forsey

DATED at Toronto, Ontario this 21st day of December 2004.