



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
TA3-15820

CLAIMANT(S)	s.19(1)	DEMANDEUR(S)
DATE(S) OF HEARING	21 February 2006	DATE(S) DE L'AUDIENCE
DATE OF DECISION	21 March 2006	DATE DE LA DÉCISION
CORAM	Patrice C. Valeriano	CORAM
FOR THE CLAIMANT(S)	n/a	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	D. Rose	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 in the claim for Refugee protection made by (the claimant), a citizen of Jamaica. The hearing for determination was conducted pursuant to section 170 of the Immigration and Refugee Protection Act.¹

The claimant was not represented by counsel. In the weeks preceding the hearing, he had sought an adjournment, through unretained counsel, to allow time for counsel to be properly retained. That request had been denied by the Coordinating Member. When Mr. appeared before the Board on the day of his hearing, he reiterated his desire not to proceed without counsel. The Board considered the fact that the claimant had been in Canada since the year 2000 and that he had made his claim in January 2004. The Personal Information Form had been sworn in October 2005. Given that the date of the hearing was February 2006, and the claimant had been aware for several days that his previous request for adjournment had been denied, the Board believed it was fair to proceed without further delay, and denied the request for an adjournment.

Because Mr. was unrepresented, the Board ensured that the following procedural safeguards were in place. The claimant was given ample time before the commencement of the hearing to confer with a Refugee Protection Officer (RPO), who explained to him the procedures at the hearing and what onus he had to meet. The Convention grounds and the meaning of the consolidated grounds were explained to him.

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

He was given an opportunity to review his Personal Information Form² (PIF) and to make the Board aware of any amendments before affirming the accuracy of the PIF. He indicated that, for the most part, he understood the explanations and instructions provided by the RPO. The Member then again reviewed the legal test to be met and the procedures for the hearing.

During the course of the hearing, the claimant, after much consideration, decided to call his wife as a witness to the proceeding. She had been waiting in the reception area. The witness was duly affirmed, had not been present during the first part of the hearing to hear Mr. 's evidence, and the Board ensured there was no contact between Mr. and Mrs. prior to her participation in the proceedings.

DETERMINATION

Having given due consideration to the totality of the evidence before it, the Immigration and Refugee Board (the "Board") finds that the claimant is neither a Convention refugee within the meaning of section 96 of the Immigration and Refugee Protection Act, nor a person in need of protection, pursuant to the provisions of section 97 of the Act.

SUMMARY OF THE ALLEGATIONS

The claimant alleges to have a well-founded fear of persecution in Jamaica, based on his membership in a particular social group, namely a male who is bi-sexual and who

² Exhibit C-1.

has participated in homosexuality in Jamaica. The agents of persecution identified by the claimant were his former male partner in Jamaica, the police and the Jamaican population more generally. Mr. [redacted] alleges that prior to coming to Canada the first time, he was homosexually active, mostly with one male partner, a Mr. [redacted]. The claimant was 15 or 16 years of age when the relationship commenced and Mr. [redacted] was one or two years his senior. The claimant came to Canada, then returned to Jamaica.

He states that Mr. [redacted] was angry with him for leaving Jamaica and for having a new male sex partner in Canada. He says he received threats from Mr. [redacted]. The claimant also alleges that he was beaten and detained by two police officers while in Jamaica, and he attributes this to his homosexuality. He links the beating to his discontented lover, who the claimant alleges was "putting the heat on me" and was "with the cops" suggesting Mr. [redacted] was connected to the police. Since returning to Canada in 2000, he says his former lover has told others that the claimant is homosexual and that as a result, the claimant's family has disowned him and his homosexuality is known. Since coming to Canada, he has married a Canadian female citizen and also alleges he has had a male partner in Canada.

ANALYSIS

Several issues relating to this claim were considered including delay in claiming, re-availment, credibility of the claimant with respect to his sexual orientation and state protection. The Board is satisfied that if the claimant were a homosexual and known as

such in Jamaica, that state protection would not be available to him. The determinative issues in the Board arriving at its negative decision were delay in claiming and credibility.

The claimant's identity was established by the documentation on file,³ specifically a certified true copy of his passport. Based on that information, the Board is satisfied, on the balance of probabilities, that the claimant is who he claims to be and that he is a citizen of Jamaica.

DELAY IN CLAIMING

The first issue addressed is whether the claimant's delay in claiming refugee protection once in Canada, indicates a lack of subjective fear. Despite his claim to the contrary, the Board finds that the claimant's delay in claiming protection once in Canada is inconsistent with a subjective fear of persecution.

The claimant arrived in Canada in June 2000, after having been here prior to that and having returned to Canada again. He failed to make a claim for refugee protection until January 2004. It is noted that the claimant commenced a claim for refugee protection, following his being charged for Possession for the Purposes of Trafficking in cocaine. He was later convicted of this charge in 2005 and served his sentence in a Canadian jail.

³ Exhibit R/A-2.

In the interim, there were known attempts by the claimant to seek or normalize status. The claimant's present wife commenced a sponsorship application in or about the year 2002 after they were married. The claimant's wife, who he called as a witness to the proceedings, indicated the application was denied. The claimant stated he believed it was denied based on his criminal conviction. It appears as though a Humanitarian and Compassionate (H and C) application was also commenced. No attempts to normalize status were made between 2000 and 2002.

The Board questioned the claimant about the reason for his delay in claiming refugee protection. He stated that he had no money to commence a claim for refugee protection and that he did not know he could make a claim. He also said his lawyer told him to wait to see the outcome of the other applications. The Board finds the explanations offered by the claimant to be unsatisfactory and his lack of efforts to seek protection or make inquiries unreasonable. The claimant stated he had no money to make a claim. Yet, his Personal Information Form clearly indicated he was employed and he had confirmed the accuracy of the information of the Personal Information Form at the commencement of the hearing. When questioned about this, he reconsidered and then said he could not recall whether or not he was ever employed, even in the most recent position in 2005. The Board found the claimant's responses with respect to employment to be lacking in credibility. When the claimant's wife was called as a witness, she answered that the claimant had been employed and confirmed the names of the

employers in her husband's Personal Information Form. In fact, the costs of making a claim for refugee protection, with or without employment, are not prohibitive. The Board is satisfied the claimant was employed and that he had access to sufficient funds to make a claim with the assistance of counsel, had he believed he required counsel to do so.

The claimant also alleged he did not know about the process for refugee protection. However, the Board is persuaded that even if the claimant was initially ignorant of the opportunity to claim refugee protection, if the claimant were fearful of returning to Jamaica, he would have taken some steps to normalize his status by way of a refugee claim, so as to avoid removal from Canada. He acknowledged that he had the assistance of counsel in completing the application for his sponsorship in 2002, with his then new wife. Given his acknowledged contact with counsel and with Citizenship and Immigration Canada (CIC) during the sponsorship process, and possibly during the H and C process, the Board believes the claimant should have advised them that he had been persecuted and was in fear for his life.

This aspect of the claimant's conduct is inconsistent with a person living in fear of persecution in their country. It is to be expected that genuine Convention refugees would seek protection as soon as is practical, once out of reach of their oppressors. The Board is mindful then that one of the significant factors, which speaks to subjective fear and credibility, is the element of delay. Delay in and of itself is not normally a decisive factor

in refugee determination.⁴ However, it can be relevant and a potentially important consideration to the Board,⁵ where the claimant has delayed in making a claim upon their arrival to Canada and failed to offer a reasonable explanation for the delay. In certain circumstances, however, the Federal Court has held that delay can be a determinative and decisive factor.⁶ In the case at hand, given the egregious nature of the delay, the Board draws an adverse inference and finds as a result of that delay that the claimant lacks credibility and the subjective fear necessary to support his claim. The making of the claim for refugee protection coincides with the claimant being arrested for criminal behaviour in Canada and the claimant in fact confirms he made his claim while in detention. This suggests to the Board that, rather than fear, the claimant in claiming refugee protection was making a final attempt at remaining in Canada following a failed sponsorship application, a possibly failed H and C application and a removal order made as a result of his criminal conviction.

CREDIBILITY

The Board has considered the credibility of the claimant in order to assess the claimant's subjective fear and the well-foundedness of that fear. Having considered the

⁴ Huerta v. Canada (Minister of Employment and Immigration) (1993), 157 N.R. 225 (F.C.A.).

⁵ Heer, Karnail Singh v. M.E.I. (F.C.A., no. A-474-87), Heald, Marceau, Lacombe, April 13, 1988.

⁶ Espinosa, Roberto Pablo Hernandez v. M.C.I. (F.C., no. IMM-5667-02), Rouleau, November 12, 2003, 2003 FC 1324; Ghasemian, Marjan v. M.C.I. (F.C., no. IMM-5462-02), Gauthier, October 30, 2003, 2003 FC 1266.

claimant's testimony, the Board found material aspects of it to be lacking in credibility. The Board finds the claimant's fear is not well-founded and that there is insufficient credible and trustworthy evidence to support the refugee claim advanced.

In reviewing the oral and written evidence of the claimant, the Board found that the testimony of the claimant was replete with inconsistencies, contradictions and omissions which were material to the claim. This persuades the Board that at least some of the evidence of the claimant has been fabricated and that the incidents outlined in the Personal Information Form did not occur as described, or in the alternative, did not occur at all. Specifically, the claimant alleges that he was sexually active as a homosexual in Jamaica and that his former lover and other Jamaicans would persecute him upon his return. Based on the evidence before it, the Board makes a global finding of lack of credibility. The Board does not accept that the claimant was involved in homosexual or bisexual behaviour in Jamaica, nor does it accept that the claimant is perceived as a homosexual or bisexual in Jamaica presently.

Having made a finding that the claimant is not bisexual or homosexual or perceived as such in Jamaica, the Board concludes there is not a serious possibility that he will be persecuted if returned to his country of origin. Examples of these inconsistencies, contradictions and omissions include, but are not limited, to the following:

- 1) The claimant alleges in his Personal Information Form that he bases his claim on his homosexuality and bisexuality. In his POE notes, however, he makes no

mention of his sexual orientation and instead cites fear of the reprisal due to family involvement with politics and the Peoples' National Party. The claimant was asked about this omission in his Port of Entry notes. He stated he is not proud of his homosexuality and therefore did not tell the Immigration Officer that this was why he was claiming refugee protection. The Board found this response to lack credibility because the entire claim is based on the claimant's sexual orientation and there is not even a fleeting reference to this in his Record of Examination.⁷ The Board considers this to be a material omission.

- s.19(1) 2) The claimant alleges that he has remained homosexually active in Canada. He stated he has had a lover, that they have been sexual partners since 2000. The claimant stated however, that he does not frequent gay bars, clubs, does not belong to any gay organizations and does not participate in any activities in Toronto, in which gay men might be expected to participate. His wife, in her testimony, confirmed he does not attend gay bars or clubs. He states the relationship with his male lover is currently active. Yet, the claimant provided no proof of his relationship with no photos, no notes. In fact, the claimant could have brought with him to the hearing, but he did not.

More importantly, the claimant is presently married and has been since 2002. His wife, who appeared as his witness, believes the claimant is presently

⁷ Exhibit R/A-2

heterosexual and probably monogamous. She stated that she believes the claimant has not been with a male partner since they were married in 2002. She says the claimant told her he had a male lover and she says prior to the marriage she saw him with men. Clearly, if there is presently a male partner, and the Board finds there is not, the claimant has not been honest with his wife and has kept it from her or in the alternative, there is no male lover. Based on the totality of the evidence before it, the Board finds that there is no male lover in Canada and that the claimant is not bisexually or homosexually active.

- 3) The claimant gave evidence during the hearing, that he told his wife he was homosexual for the first time by telephone, when he was incarcerated in Canada. The Board finds disclosure of one's homosexuality to loved ones to be an important event for homosexuals and one would expect a bisexual or homosexual to recall the details of such a conversation. His Personal Information Form however states that when he came to Canada in 2000, his wife "accepted me for what I am," suggesting she knew of his homosexuality then. The claimant was unable to provide a reasonable explanation for this inconsistency, stating he must not have heard properly the question posed by the RPO.

The claimant's wife, in her evidence told the Board that the claimant told her several years before and certainly before they were married, that he was homosexual. She states the claimant told her he had a male partner in Jamaica.

Even though the Board found the claimant's wife to be a credible and trustworthy witness, this was only insofar as she related to the Board what Mr. had told her. The Board is not satisfied that everything Mr. has told his wife relating to his homosexuality, bisexuality and lovers has been true. The Board finds Mr. told his wife he was homosexual to suit his own purposes.

- 4) With respect to whether there was a lover in Jamaica, the claimant alleges he was in the relationship with a Mr. from age 15 until he left. He provided no documentary proof of the relationship. He also stated that after he left Jamaica, his former lover called him in Canada and threatened him when he found out the claimant had a new male lover. The claimant also alleges that his former lover wrote him threatening notes. The claimant states he also received threats from "other people back home..." The claimant provided no documentation to corroborate these allegations, including the threatening notes from his lover, the threats made by others, or any proof whatsoever that a male homosexual relationship existed in Jamaica. This is despite the fact that he was advised in advance of the hearing that such corroborating documentation would be required.⁸ The Board finds the absence of proof of the homosexual relationship in Jamaica and the one alleged in Canada to be material omissions of evidence. They speak

⁸ Rule 7 of the Refugee Protection Division Rules and Screening Notice.

directly to the sexual orientation of the claimant, which is the basis of his claim. Moreover, the absence of documentation of threats from his former lover and others back home also causes the Board to find the claimant has failed to discharge the onus upon him to prove his claim. Even though corroborating evidence is not necessarily required, it can be necessary where the Board has reason to doubt the truthfulness of the claimant⁹ as is the case in this instance.

- 5) The claimant also alleges that others in Jamaica now believe he is homosexual because his former lover has told them this. He says his former lover has “put it out there” and for this reason he fears for his life. He says his family has disowned him. He says “only in Canada has been my support.” Later in the hearing however, when asked how he knew his family believed he was homosexual, he stated that his brother and he have contact and his brother related threats made by his friends in Jamaica. This is inconsistent with his earlier statement that his family is not in contact with him and does not support him. The Board finds that the claimant does have contact with his family in Jamaica and that they have not “disowned” him.
- 6) The claimant alleged that when he returned to Jamaica in 1998 or 1999, two police officers beat him, tortured him and detained him for two days. However, his wife, in her evidence, told the Board that the claimant told her it was his lover, together

⁹ Simmathamby, Nageswararajah v. M.C.I. (F.C.T.D., no. IMM-4086-00), Blanchard, May 14, 2001

with the police who had tortured, detained him and 'made him do things he did not want to do.' This is considered a material inconsistency because the beating by the police officers alone is the only evidence before the Board that the claimant has been targeted by others in Jamaica because of his homosexuality and that anyone in Jamaica is aware he is homosexual. If it is his lover that beat him and detained him or caused it, then his claim would then be characterized as a personal vendetta by a former lover, and not as a member in a particular social group targeted by others. This is considered by the Board to be a material inconsistency in the evidence.

- 7) During the course of the claimant's wife giving evidence, the claimant repeatedly attempted to interact with his wife, providing visual cues, moving his feet to hers under the table after a question had been asked of her and making movements with his hands. The record will reflect that the Member requested Mr. [redacted] move away from his wife and later that he place his hands above the table in the hearing room. These visual cues were so blatant at times that the Member eventually relocated to another microphone in the room where the actions of Mr. and Mrs. [redacted] could be better observed. The record reflects this. The claimant's wife was clearly confused and was not sure how to respond in some instances as a result of Mr. [redacted] s prompting. The Board finds as a result of the claimant's conduct
- s.19(1)

during the hearing and his clear efforts to sway his wife's evidence, that he lacks credibility.

In conclusion, the Board, having given consideration to the totality of the evidence before it, does not believe that the claimant is a homosexual or bisexual, nor does the Board accept that he is perceived as such in Jamaica.

In arriving at this conclusion, the Board is guided by a number of Federal Court cases dealing with credibility. As a starting point, testimony given under oath, such as that given at this hearing, must be presumed to be true, unless there are valid reasons to doubt its truthfulness.¹⁰ However, the existence of contradictions in the evidence could be a valid basis for a finding of a lack of credibility.¹¹ In a claim for refugee status, a primary way of testing credibility is by comparing what is contained in the claimant's PIF narrative with his testimony at the hearing.¹² Even without disbelieving every word a claimant has uttered, the Board may reasonably find the claimant so lacking in credibility

¹⁰ Maldonado v. Canada (M.E.I.), [1980] 2 F.C. 302 (C.A.).

¹¹ Dan-Ash v. Canada (Minister of Employment and Immigration) (1988), 93 N.R. 33 (F.C.A.).

¹² Castroman v. Canada (Secretary of State) (1994), 27 Imm. L.R. (2d) 129 (F.C.T.D.).

that it concludes there is no credible evidence relevant to the claim.¹³ Contradictions and/or omissions in the evidence given to Citizenship and Immigration Canada officials at the time the claimant made their refugee claim,¹⁴ when previously examined under oath¹⁵ or evidence given at the hearing¹⁶ all provide a well-established basis for a finding of a lack of credibility.

The Board has applied the principles enunciated in these cases and concludes that the claimant has not provided sufficient credible and trustworthy evidence to support his claim. The inconsistencies, omissions and contradictions, together with the lack of documentation to substantiate the allegations, persuade the Board that the claimant lacks credibility and the subjective element of a well-founded fear, necessary to advance a claim for protection.

CONCLUSION

Having given due consideration to all of the evidence before it and to the relevant provisions of the Act and to the jurisprudence on which this Board relies, the Board finds the claimant does not have a well-founded fear of persecution and therefore is not a Convention refugee, within the meaning of section 96 of the Immigration and Refugee Protection Act.

¹³ Sheikh v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 238 (C.A.); 11 Imm. L.R. (2d) 81 (F.C.A.).

¹⁴ Dehghani v. Canada (M.E.I.), 1990, 3 F.C. 587 (C.A.).

¹⁵ Owusu-Ansah v. Canada (M.E.I.), 1989 8 Imm. L.R. (2d) 106 (F.C.A.).

¹⁶ Rahnema v. Canada (Solicitor General) (1993), Imm. L.R. (2d) 127 (F.C.T.D.).

Having found that the claimant is not a Convention refugee, the Board is tasked with considering the applicability of section 97 of the Act. The Board, for the same reasons, concludes that there is insufficient credible and trustworthy evidence on which to base a claim. Therefore with respect to a risk to life or to a risk of cruel and unusual punishment or treatment or a danger of torture that the claim must also fail. The claimant is determined not to be a Convention refugee, nor a person in need of protection. Accordingly, the claim for refugee protection of is s.19(1) rejected.

"Patrice C. Valeriano"
Patrice C. Valeriano

DATED at Toronto this 21st day of March 2006.