



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
TA3-04471

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a.)

DATE(S) OF HEARING

February 4, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

February 10, 2004

DATE DE LA DÉCISION

CORAM

Elke Homsí

CORAM

FOR THE CLAIMANT(S)

Dr.

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Nil

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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s.19(1)

(a.k.a. 1), a citizen of Jamaica, claims refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act.¹ These are the reasons for the negative decision in regards to his claim.

The claimant bases his claim on his sexual orientation, which gives his claim a nexus to a Convention ground. I have taken the Chairperson's Gender Guidelines² into consideration before rendering a decision in this claim.

The claimant declared that on 2003, his girlfriend, the mother of his son, surprised him when he was in bed with his male lover. She accused him of being bisexual, a bad example for their one-year-old son, and sent her male relatives to beat and harass him. He received death threats over the telephone. Fearing for his life, he left Jamaica with the help of an agent and arrived in Canada on 2003 and asked for refugee protection a few days later.

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

² Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1933; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.

Analysis:

Identity:

The claimant submitted a birth certificate³ in support of his identity, he declared that he arrived in Canada with the help of an agent, and therefore does not have a passport. I assigned the benefit of doubt to his identity and nationality.

Credibility:

Even though I was willing to assign the benefit of doubt in regards to his identity and nationality, his accent, for example, supported a Jamaican origin; his further allegations collapsed because of contradictions and omissions and lack of relevant documentation.

Sexual Orientation:

I find that he did not show efforts to establish that he was a bisexual man. I find that just showing an application for a membership of the 519⁴ is not sufficient. The claimant's apparel or demeanour does not reveal any sexual preference. He declared that he had a male lover in Canada, but indicated that the person was working and was unable to come to the hearing. The claimant was represented by experienced and competent counsel, who is known to present gay men before the Refugee Protection Division (RPD), who would have advised the claimant, to at least produce an affidavit from his

³ Exhibit M-1, attachment.

⁴ Exhibit C-2, membership application for the 519 programs.

lover, or pictures of both of them, if indeed a male lover exists. Nothing was forthcoming and the onus is on the claimant to present his claim. He also did not offer to produce anything post hearing, which I gladly would have accepted. The claimant stated that he revealed his sexuality to a pastor in Jamaica, who then helped him flee the country. Even though I would not have expected this pastor to put the reasons for the claimant's departure in writing, as homosexuality is prohibited in Jamaica, however, a short statement to confirm that the claimant visited him between 2003 and his departure 10 days later, would have been helpful, especially, from a claimant with no photo identity. He declared he did not think of it, and did not offer to approach the pastor. Again, I would have gladly granted him some additional time to obtain such a letter, however, he did not ask for it. However, he did submit a letter of support from a senior pastor in Mississauga,⁵ which shows that he finds the claimant to be "conscious, industrious and dependable". However, the letter does not support the claimant's allegation. I find that the claimant did not submit any documentation in support of his allegation, because his claim is not based on the truth. I took into account Rule 7 of the Refugee Protection Division Rules and the "Commentary" to that rule, when coming to this finding.

⁵ Ibid., letter of recommendation from his pastor.

s.19(1)

Contradictions/Omissions

The record of examination⁶ indicates that the claimant stated that his lover in Jamaica threatened to kill him, if he knew that the claimant was sleeping with women and that he went to police to make a report. These statement are not reflected in his Personal Information Form⁷ (PIF) narrative and the claimant declared it to be a mistake, made by the immigration officer. Other statements in this form, such as the lengthy one in regards to his travel arrangements,⁸ to his membership in organizations, were also read to him. He affirmed that they were correct, including the addition in brackets that he belonged to the youth division of the Police Club. Given the accuracy of the other statements, which indicate that the immigration officer listened carefully to the claimant, I cannot give his explanation any weight and find that the different events in that interview indicated that this claim is not built on the truth.

The claimant wrote in his PIF narrative that his girlfriend paid him a surprise visit and discovered that Mr. was sleeping in his bed. Orally he declared that they were caught in the act when she walked in. He explained that he was embarrassed to divulge this fact to his counsel and therefore he did not write this in his narrative. Given that he had no problems divulging other aspects of his sex live to his counsel, I find his explanation not persuasive and trustworthy.

⁶ *Supra*, footnote 3, p. 7.

⁷ Exhibit C-1.

There are other indications that this claim was invented in order to further a refugee claim, such as the oral addition for the motive of his girlfriend's actions, namely, that he would be a bad influence in the upbringing of his son. When asked why this is not included in the narrative, he remarked that this was the truth. I find a motive is relevant information and should have been included in the narrative, especially as he felt compelled to include the story of a Ms. which he explained, had no relevance to his fear of persecution.

Dr. [REDACTED]'s Letter:⁹

I find that I cannot give this letter probative weight as the doctor bases his diagnosis on facts, which for the above reasons I do not believe.

Conclusion:

Based on the above, I find that I have no credible and trustworthy evidence on which I could have made a favourable decision. Therefore after having considered the totality of the evidence, the relevant statutory provisions and jurisprudence, the Refugee Protection Division rejects this claim.

⁸ *Supra*, footnote 3, p. 6.

⁹ *Supra*, footnote 4, Doctor's medical report.

The claimant is not a Convention refugee or a person in need of protection. According to section 107(2) of the Act, I am required to state that there is no credible basis for this claim.

"Elke Homsí"
Elke Homsí

DATED at Toronto this 10th day of February 2004.