



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
TA3-08558

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

February 24, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

February 27, 2004

DATE DE LA DÉCISION

CORAM

Cliff Berry

CORAM

FOR THE CLAIMANT(S)

Vania Campana
Barrister and Solicitor

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

K. Hossain

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 rejecting the refugee claim of . a 26-
year-old male citizen of Malaysia.

ALLEGATIONS

The claimant alleges that he was involved in a gay relationship while he lived in Malaysia. When his lover moved to Toronto the claimant followed, fearful that if he remained in Malaysia his parents or others would inform the authorities as to the claimant's sexual orientation.

The claimant arrived in Canada 2002 and made a refugee claim . 2003.

DETERMINATION

The claimant failed to discharge his burden of proof sufficiently to establish, on a balance of probabilities, he is gay. The claim fails.

ANALYSIS

The evidence is inconsistent in almost every area.

In the Personal Information Form (PIF) the claimant came to Canada to join his lover. In the Immigration Officer (IO) notes the claimant states if he returns home his parents will report him to the authorities. In oral evidence he states he left Malaysia as he was afraid he would be arrested if he had remained. The claimant testified even though he had not had problems in Malaysia he believed he had been reported to the police by some one at work.

s.19(1)

At the interview upon making his refugee claim the claimant states he was fired from his job when it was discovered he was gay. In oral evidence the claimant states he quit in 2002 when he believed he was about to be fired. In the narrative there is no mention as to how the claimant ended his employment, however, in answer to question 18, the claimant indicates he worked until 2002 just before he came to Canada. The claimant explained this was an error and that actually he quit in 2002.

When these inconsistencies were put to the claimant his explanation was always that he told the officer at the interview something that was not recorded or the claimant did not know what was in the Personal Information Form (PIF) but he had told the interpreter different details than those recorded.

I do not accept these explanations. When the PIF was first written the claimant had the assistance of an interpreter used by his first counsel. When the claimant employed his current counsel she had her interpreter again translate the PIF from English to the claimant's native language.

The claimant's explanation he told the second interpreter of the problems makes no sense. It is not reasonable that the claimant's new counsel would go to the trouble of having the narrative translated a second time if she did not want to amend errors. No amendments were submitted although after counsel had examined the CIC documents

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and conferred with her client I was made aware there were problems with parts of the narrative.

After a review of the evidence as a result of inconsistent statements made to the IO, made in the narrative, and made in oral evidence on the core issue of the claim, that is why the claimant left Malaysia and what the claimant feared if he returned to Malaysia. I make a negative credibility inference.

The claimant waited ten months to make a refugee claim. Granted during this time the claim had visitor status in Canada, however, no claim was made. The claimant's explanation was he did not know how to make a refugee claim. I do not accept if the claimant was fearful of serious harm should he return to Malaysia that at some point much earlier than 2003 he would have discovered the refugee process and made his claim. His action of waiting ten months I find to be not those of a person who fears returning to Malaysia. I make a negative credibility inference.

Considering the inconsistent testimony and the claimant's actions inconsistent with a fear of serious harm I find, on a balance of probabilities, the claimant's evidence to be generally not credible and give it insufficient weight to advance the claim.

The claimant presented pictures of his attendance at the gay pride parade. In the photos the claimant is dressed casually unlike the participants of the parade. The claimant testified that he had bystanders take the photos. On a balance of probabilities, these photos while interesting do not establish the claimant is gay or living a gay lifestyle.

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The claimant testified in his narrative his lover went to the UK to avoid Canadian weather. In oral evidence the claimant testified he and his lover quarrelled over a person the claimant picked up in a bar. The claimant went on to testify that he was now in a gay relationship with this new lover. He explained he had not asked the new lover to be present to testify at his hearing.

I accept counsel's submission that the reason for the original lover leaving Canada would not be core to this claim. However, for whatever the reason if there was an original lover he is unable to testify to support this claimant's refugee claim. Likewise, since the claimant did not consider inviting his new lover to the hearing the new lover was unable to testify.

At the end of the hearing I have no credible or trustworthy evidence to support the claim.

Even if I was to find, on a balance of probabilities, the claimant is gay, which I do not, there is insufficient objective evidence to support there would be more than a mere possibility he would face persecution or serious harm should he return.

There is evidence that the [redacted] was convicted of sodomy. I am satisfied this conviction was as more a political vendetta than a serious charge of practicing gay sex.

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The other evidence found in Exhibit R-4 satisfies me that when gays practice their sexuality in a discreet manner, i.e. without taking part in sex in public there is not a serious possibility of persecution or serious harm.

The documents suggest that although there is a law it is rarely enforced and when enforced the penalties are minor. There are reports in Exhibit R-4, MYS41879.E, August 2003, of various states considering more severe penalties but I have no information if these have been enacted or if enacted are being enforced in any manner.

The documents satisfy there are a number of gay communities in Malaysia where gays practice their lifestyle with minimum risk of harm.

SUMMARY

- the claimant's evidence was not credible;
- the claimant's actions of waiting ten months to make a claimant are not those of a person who fears returning to Malaysia;
- there was no independent credible evidence to support the core of the claim;
- the objective documentary evidence does not support that gays in Malaysia are subjected to persecution or serious harm or more than a rare case.

CONCLUSION

For the above reasons the claim fails pursuant to both Section 96 and Section 97 of the Immigration and Refugee Protection Act.

"Cliff Berry"
Cliff Berry

DATED at Toronto this 27th day of February, 2004.