



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
TA5-15406

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

September 20, 2006

DATE(S) DE L'AUDIENCE

DATE OF DECISION

September 21, 2006

DATE DE LA DÉCISION

CORAM

M.J. Weir

CORAM

FOR THE CLAIMANT(S)

Anwar Lewin

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)

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These are the negative reasons for the claim filed by :

(a.k.a.

, the claimant, a citizen of Jamaica,¹ who claimed refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

The claimant bases his claim on fear of persecution based on his identity as a bisexual and the lack of adequate state protection in Jamaica.

ISSUES

The determinative issue in this claim is if the claimant has provided credible and trustworthy evidence in support of the material aspects of his claim.

DETERMINATION

Having considered the totality of the evidence, I find that the claimant is neither a Convention refugee nor a person in need of protection.

ALLEGATIONS

The claimant testified that he was afraid to return to Jamaica because he had been identified as a bisexual and there would be no state protection for him in Jamaica from the population who do not tolerate homosexuality. The claimant travelled to Canada on July 12, 2001 and when he came to the attention of the Canadian authorities he filed his claim for refugee protection on November 30, 2005. The claimant said that he did not

¹ Exhibit R/A-2, certified true copy passport.

² *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

socialize extensively after he arrived in Canada, but he would go downtown to Church Street and walk on the street, but he did not go into any of the clubs. He testified that he was usually picked up by a friend and the friend drove them by car, but he was unable to describe the route that the car took except to say that the car traveled on Highway 401 and exited at Yonge Street. He was asked to describe Church Street by its architecture, mix of businesses or cross streets. He said that there were a lot of buildings and many people on the street and some of the people were members of the same-sex holding hands. The claimant explained his lack of knowledge by saying he does not know many street names.

The claimant was asked when he first ran into problems in Jamaica. He said it was in 1999, after he was seen holding hands with a man at a resort. He explained in his Personal Information Form³ (PIF) that the rumour of his sexual orientation spread within a few days. Approximately a week later, his pastor took him aside and discussed the claimant's problems with his reputation and sexual orientation. The claimant provided a letter from the Rev. [REDACTED], dated [REDACTED] 2006,⁴ that states the rumours came to the attention of the pastor in [REDACTED] 2001 and at that time they had a conversation. It was not 1999 as stated by the claimant. The claimant explained this discrepancy by saying he was not very good with dates.

³ Exhibit C-1, PIF narrative.

⁴ Exhibit C-2.

The claimant was asked why he had delayed for almost 4-1/2 years before he sought refugee protection in Canada, and only claimed when he was detained by the Canadian authorities. He testified that his sister had taken his papers when he arrived in Canada and it was his understanding that she was making efforts on his behalf to regularize his status. He explained that his sister was not diligent in acting on his behalf because she did not approve of his lifestyle or sexual orientation; however, she did provide the bail to have him removed from detention and she now expects to be repaid by the claimant. The claimant had lived with his sister from the time of his arrival in Canada in July 2001 until sometime in 2004. He stated that he does not have a good relationship with any members of his family, including his uncle who refused to appear as a witness at this hearing after permission had been granted on September 18, 2006.

The claimant was asked to explain why on November 30, 2005, he told the senior immigration officer that he was afraid to return to his country because there are no jobs and he cannot take care of his children.⁵ The claimant testified that although he had already been in Canada for 4-1/2 years, he was afraid to be returned to Jamaica and he was afraid to reveal his sexual orientation. He signed his PIF on December 30, 2005, and in it there is no reference to unemployment or supporting his children. He explained the change in his claim is because he is bisexual and that he does not want to return to

⁵ Exhibit R/A2, Citizenship and Immigration Canada, Schedule 1, "Background Information", question 3C and Canada Border Services Agency, "Minister's Delegate Review".

Jamaica. He again stated that he is estranged from all members of his family, both in Canada and in Jamaica.

The claimant explained that because he had been politically active in Jamaica in support of the People's National Party (PNP), he was able to get their support to travel to Canada in the farm worker program in 2001. After his arrival in Canada, he only participated in farm work for a period of about two weeks and he left to live with his sister.

Counsel submitted that the claimant is a relatively unsophisticated person; his inability to respond consistently and directly during examination was related to his lack of experience and education.

ANALYSIS

I find that the claimant's testimony was neither credible nor trustworthy. I am not persuaded by counsel's submissions that the serious contradictions and lack of specificity in the claimant's evidence are excused because of the claimant's lack of sophistication.

The claimant has been in Canada for more than five years and he allegedly travelled to the Church Street area in Toronto to mingle with other homosexuals; however, he was unable to describe the route he would take to get there; and unable to describe any of the locations he visited, or any characteristics of the area. Based on his lack of information and familiarity with an area that he said he frequented, I am not

persuaded that he has the knowledge of the Church Street area that would be expected of a regular visitor. His evidence about frequenting Church Street was not credible.

The claimant was also unable to describe the pivotal series of events that occurred prior to his departure from Jamaica in 2001. The claimant explained that he did not have a good memory for dates, but despite several opportunities, he was unable to explain what happened first, his exposure as a homosexual at a resort in Jamaica, his discussion with his pastor, generalized knowledge about his sexual orientation, and what events happened shortly before his travel to Canada. I find the claimant's inability to explain the sequence of events that caused him to leave his family and his homeland reflects negatively on his credibility.

The claimant testified that his sexual orientation has caused him to be rejected by all the members of his family, including his sister with whom he lived when he originally came to Canada. The claimant said he relied on her totally to arrange for him to regularize his status in Canada; however, if he was aware that his family rejected him, this is not an adequate explanation as to why he did not diligently personally pursue his refugee claim and his failure to do this reflects negatively on the credibility of his well-founded fear.

On November 30, 2005, one month before signing his PIF on December 30, 2005, the claimant told a senior immigration officer that he was in Canada because there are no jobs in Jamaica and he cannot support his children. It was not until one month later that

he signed his PIF in which he relies on his sexual orientation as the basis of his refugee claim. He explained that this was because he was afraid when being interviewed by the senior immigration officer. I am not persuaded by this explanation and I find, on a balance of probabilities, that the claimant fabricated his sexual orientation to bolster his refugee claim when he was writing his PIF narrative.

The claimant had come to Canada on the farm worker program and he explained that he had the support of the PNP. The fact that he was given this, a sought after work opportunity, reflects negatively on the credibility of his allegations that his sexual orientation was used against him by people in Jamaica and that his bisexuality was well known.

Based on this evidence, I find that the claimant has not provided credible evidence in support of his claim and therefore, he is not a Convention refugee.

CONSOLIDATED GROUNDS

As I find there was no credible evidence in support of this claim, it must also fail on the grounds of a risk to life or to a risk of cruel and unusual treatment or punishment or to a danger of torture.

CONCLUSION

For these reasons, the panel finds that the claimant is not a Convention refugee under section 96 of the *Act* or a person in need of protection within the meaning of section 97(1)(a) or (b) of the *Act*, and rejects his claim for refugee protection.

Furthermore, I am of the opinion that there was no credible or trustworthy evidence upon which I could have reached a favourable determination. Accordingly, the Refugee Protection Division finds, pursuant to section 107(2) of the *Immigration and Refugee Protection Act*, that there was no credible basis for the claim.

"M.J. Weir"
M.J. Weir

DATED at Toronto this 21st day of September 2006.