

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié
Section de la protection des réfugiés

RPD File # / No. dossier SPR VA3-03887

Private Proceeding
Huis clos

Claimant(s)

Demandeur(s) d'asile

Date(s) of Hearing

Date(s) d'audience

October 18, 2005

Place of Hearing

Lieu de l'audience

Toronto, Ontario

Videoconferencing held in

Fait par vidéoconférence à

Vancouver, B.C.

Date of Decision

October 18, 2005 (rendered orally)
October 27, 2005 (written decision)

Date de la décision

Panel

Tribunal

Fred Hitchcock

Claimant's Counsel

Conseil du demandeur d'asile

Rev. Daniel E. Mcleod

Refugee Protection Officer

Agent de la protection des réfugiés

Nil

Designated Representative

Représentant désigné

Nil

Minister's Counsel

Conseil du ministre

Nil

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On October 18, 2005, the Refugee Protection Division (Refugee Division) heard the claim of [REDACTED] for refugee protection. On that same day, the panel rendered its oral decision and reasons. This is the written version of that oral decision and reasons.

ORAL DECISION AND REASONS

These are the reasons for the decision of the Refugee Protection Division with respect to the refugee protection claim made by [REDACTED]. The hearing for this claim was held pursuant to the *Immigration and Refugee Protection Act (IRPA)*¹ on the 18th of October 2005. This was a videoconference hearing with the claimant, his counsel and interpreter in Toronto, Ontario and the presiding member in Vancouver.

The claimant, [REDACTED], is a citizen of Mexico. He claims to have a well-founded fear of persecution due to being a member of a particular social group, individuals who are persecuted due to their sexual orientation.

In addition, he claimed to be a person in need of protection because if he returned to Mexico he would personally be at risk to his life of cruel and unusual treatment or punishment.

ALLEGATIONS

The claimant in his narrative of his Personal Information Form (PIF)² just submitted one very brief paragraph as to why he was seeking refugee asylum in Canada. Basically, he states it was difficult for him when he was working in a gay bar in the town close to where he was living in [REDACTED] in Mexico. The claimant states he met someone at the bar he was working at. [REDACTED] This was a gay establishment. He states that he was in an intimate relationship with this individual for approximately a year although they never at any time lived

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

² Exhibit 1.

together. The claimant was actually living with his parents at this time. He stated this individual's name was _____ and he did not know the last name of this individual nor did he know the employment of this individual that he was having the intimate relationship with. He stated this occurred approximately four and a half years ago.

He states on a couple of occasions he was threatened because he was trying to leave the relationship with this individual but he was never actually physically attacked to the point that he needed any medical attention.

The claimant was asked whether he ever sought protection. He states he asked the assistance of some friends and on a couple of occasions friends accompanied him from the bar to his home in case he was being in any way put in danger by this individual.

I advised the claimant at the beginning of the hearing that for individuals that were seeking refugee asylum in Canada that they would be expected to seek state protection (if reasonable) before leaving their country to seek asylum in another country.

There is a presumption³ that the state is protecting its citizens. The onus is on the claimant to establish clear and convincing proof of the state's inability to provide protection. The claimants have an obligation to approach the state for protection unless it is objectionably reasonable for them not to have sought protection from the authorities.

In the case before us the claimant states at no time was he physically attacked or seriously threatened by any individuals other than _____. He gave some examples of possibly being discriminated against in respect to individuals possibly perceiving he was gay due to what he states was the way he walked or when he was with other gay individuals, including _____, in restaurants but at no time was he actually physically attacked. He states in respect to police, he was never harassed but in a general statement he stated that police often laugh at homosexuals behind their back.

³ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

He was asked if he was to return to Mexico today who did he fear. He said the only individual that he was concerned with was the person that had been his previous intimate boyfriend and that he has had no contact with him since four and a half years ago.

I do not find that the claimant has a well-founded fear if he returns to Mexico. While the claimant was living in [redacted] where the one individual that he feared lived, at no time did he ever seek protection from any authorities, nor was he ever seriously hurt. It was mainly verbal threats.

I note that in the claimant's response to questions from the presiding member that he had made no reference whatsoever to the sentence in his narrative where he states:

I realize that he was a very aggressive person and that someone who had dated him before was found murdered and that really frightened me.

When the claimant was asked by his counsel finally he stated, oh, yes, that there was somebody in the background of his boyfriend that was found dead and he speculated that possibly his boyfriend might have had something to do with it, but there was no evidence that his ex-boyfriend had actually murdered this individual. He speculated that he in some way has been involved.

The claimant was also asked whether he had any Internal Flight Alternative available to him if he were to return to Mexico. The examples given were Mexico City which has a high gay population or Cancun which is a well-known tourist spot and has many gay establishments. I find that the claimant could go to either of these cities and seek employment as he had had previously as a bartender. He has given me no examples other than some general discrimination against homosexuals, of any individuals causing him any serious threat or concern other than his previous boyfriend.

Therefore my determination is that I find that the claimant, [redacted] is not a Convention refugee as he does not have a well-founded fear for a persecution ground in Mexico.

s.19(1)

I note that the claimant has stated in his evidence that he is bi-sexual but he states since arriving in Canada that he feels he is now more attracted to males than to females. I am not debating the issue of whether he might possibly be homosexual but I have not agreed that the evidence put in front of me would reveal that he has been persecuted while living in Mexico due to his sexual orientation, being a homosexual. He was only threatened by one individual and he never sought protection from the state and I believe if he returns to Mexico that he has an internal flight available to him. If he was in any way threatened by anyone due to his sexual orientation he would have an obligation to approach the state for protection.

For those same reasons I do not find that the claimant, if he returns to Mexico, is at risk of cruel and unusual treatment or punishment. There has been no evidence adduced at this hearing that he has been discriminated against or violently attacked or threatened to the degree that I would consider to have been cruel and unusual treatment or punishment.

Also, there are no substantial grounds to believe that if the claimant returned to Mexico that he would be in danger of being tortured.

PROCEEDINGS CONCLUDED

"Fred Hitchcock"

Fred Hitchcock

October 27, 2005

Date