



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  
TA2-27406

CLAIMANT(S)	-----	DEMANDEUR(S)
DATE(S) OF HEARING	<b>23 September 2003</b>	DATE(S) DE L'AUDIENCE
DATE OF DECISION	<b>29 September 2003</b>	DATE DE LA DÉCISION
CORAM	<b>E.S. Schlanger</b>	CORAM
FOR THE CLAIMANT(S)	<b>Juan Segura</b>	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	<b>n/a</b>	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE		REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL		CONSEIL DE LA MINISTRE

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alleges that he is a 43 year-old divorced citizen<sup>1</sup> of Costa Rica who has five children (ages 20, 17, 13, 10 and 8) living in Costa Rica. He alleges a well-founded fear of persecution at the hands of co-workers and neighbours, more specifically his neighbour for reasons of his membership in a particular social group, namely homosexuals. He also claims protection as a person who faces a risk to life or a risk of cruel and unusual treatment or punishment. He alleges that because of his sexual orientation he has been subjected to threats, assaults and blackmail. He claims that if he returns to Costa Rica state protection would not be forthcoming. He alleges that he left Costa Rica for Canada on 2002 and made his refugee claim upon arrival.

The Chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act*<sup>2</sup> to identify decisions of the Board as *Jurisprudential Guides* to assist members in carrying out their duties. The Board's *Policy on the Use of Jurisprudential Guides* is available on the Board's website.<sup>3</sup> Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as *Jurisprudential Guides*.<sup>4</sup> Members are to consider and follow these decisions when determining claims in which the availability of state protection in Costa Rica is the

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<sup>1</sup> Exhibit M-1-Certified True Copy of the claimant's Costa Rican passport issued on September 20, 2002 was submitted by Immigration

<sup>2</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27

<sup>3</sup> [http://www.irb.gc.ca/en/about/policies/jurisguides\\_e.htm](http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm)

<sup>4</sup> RPD no. TA0-15870, 2003 and RPD no. TA2-14980, 2003.

determinative issue in claim profiles of risk due to sexual orientation or general criminality.<sup>5</sup> The first question the panel has to determine is whether decision TA0-15870 applies in this case.

The panel determines that the facts and the evidence regarding country conditions in this claim are sufficiently close to those before the panel in RPD decision TA0-15870 because they both deal with Costa Rican claimants seeking protection due to their sexual orientation, and the issue in both is the determination of the availability of state protection for sexual minorities. In addition, the panel assessed the claimant's documentary evidence and the April 2003 RPD Information Package<sup>6</sup> which were not before the *Jurisprudential Guide* panel. In reaching its decision, the panel has assessed the claimant's own experiences in the context of the entirety of the evidence.

The determinative issue in this claim is the availability of state protection for this particular claimant. The panel adopts the reasoning in RPD decision TA0-15870 as that reasoning, which has been comprehensively analyzed, applies to the facts of this claim.

In the case at bar, the claimant testified that on three occasions he reported to the police incidents of violence against him related to his sexual orientation. He stated that the first time was in 1986 when he was attacked by two co-workers, and

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<sup>5</sup> [http://www.irb.gc.ca/en/about/policies/jurisguides\\_e.htm](http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm)  
<sup>6</sup> Exhibit R-1

He stated that the police went to check things out, but they did not do anything about it. He claims he did not report an incident of sexual assault against him by a co-worker because he was afraid to do so. He alleged that the second report to the police was in 1990, when he reported that three men, and had burned down his bar because they were against having a gay bar in their area. He claimed that the police never took a report, and although they tried to find out from neighbours what had happened, the neighbours did not cooperate with the police. He believes that they did not pursue the investigation because they did not consider the matter important. Although the panel does not condone the dismissive police attitude at the time, in 1986 and 1990, the documentary evidence,<sup>7</sup> cited in the Jurisprudential Guidelines, indicates that the years of repression against sexual minorities were from the late 1980's to the early 1990's, and that had motivated many bar owners catering to sexual minorities to organize for political action against repression of their clientele. The third report he made to the police was in 2002, when he reported that his neighbour, was stoning his house, insulting, extorting and blackmailing him because of his sexual orientation. He claims that the police took a report and summoned Mr. and the claimant to appear at the police station a few days later, but Mr. J did not report. According to the Personal Information Form<sup>8</sup>

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<sup>7</sup> Exhibit R-2, item 12, pg. 61, Response to Information Request CRI38683.E, June 2, 2002, DIRB, IRB

<sup>8</sup> Exhibit C-1

(PIF) Mr. [redacted] was taken in for questioning and released for lack of proof. When asked to explain the apparent contradiction regarding whether Mr. [redacted] was questioned or not, the claimant replied that Mr. [redacted] never went. The claimant stated that the police told him that they would issue a warrant for Mr. [redacted]'s arrest. The panel finds that in contrast to the police attitudes in 1986 and 1990, the police were in fact responding and pursuing the matter reported in 2002. The claimant did not report to the police the retaliatory assault and robbery that he suffered on [redacted] 2002 at the hands of Mr. [redacted] and two of his friends, because he was tired of being persecuted and his boss was helping him leave the country. The panel finds that in this case, there was every indication that the police were taking action with regards to Mr. [redacted]'s criminal behaviour, yet the claimant did not follow up to find out anything about the warrant for arrest or bother reporting the associated aggression against him. One cannot expect protection if one does not seek it seriously and instead, immediately leaves the country seeking international protection.

The panel considered that Costa Rica<sup>9</sup> is a longstanding, stable, constitutional democracy with an independent judiciary providing effective means to deal with individual cases of abuse. In the context of the country of origin, and in the

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<sup>9</sup> Exhibit R-1, item 2.1, p. 32, U.S. Department of State Report, Country Reports on Human Rights Practices, 2002, Costa Rica, March 2003.

circumstances of this claimant in particular, the panel finds that the claimant has not taken all reasonable steps to seek protection in Costa Rica. Therefore, it finds that he has not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect him.

Having considered all of the evidence and counsel's submissions, the panel finds that the claimant is not a Convention refugee and that he is not a person in need of protection pursuant to section 97(1)(a) or (b) of the Immigration and Refugee Protection Act (IRPA).

Accordingly, the panel rejects the claim of . for  
refugee protection.

"E.S. Schlanger"  
E.S. Schlanger

DATED at Toronto this 29th day of September, 2003.

s.19(1)