



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
TA4-07000

CLAIMANT(S)		DEMANDEUR(S)
DATE(S) OF HEARING	September 27, 2004	DATE(S) DE L'AUDIENCE
DATE OF DECISION	January 31, 2005	DATE DE LA DÉCISION
CORAM	Don Collison	CORAM
FOR THE CLAIMANT(S)		POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	R. Henderson	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE	Nil	REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL	Nil	CONSEIL DE LA MINISTRE

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These are the reasons for the decision of the Refugee Protection Division (RPD) with respect to the refugee protection claim made by , a 30-year-old s.19(1) citizen of Saint Lucia, who claims refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

Allegations

The claimant's allegations of persecution and other events going to the basis of his claim for protection are contained in the narrative portion of his Personal Information Form² (PIF) and his oral testimony under oath. I will not repeat all that evidence here, but I have considered all of it including the claimant's PIF, his oral testimony, all the documentary evidence and the refugee protection officer's (RPO) and counsel's representations.

Determination

I find the claimant is not a Convention refugee as he does not have a well-founded fear of persecution for a Convention ground in Saint Lucia. I also find the claimant is not a person in need of protection in that his removal to Saint Lucia would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment and there are no substantial grounds to believe that his removal to Saint Lucia will subject him personally to a danger of torture believed on substantial grounds to exist.

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

² Exhibit C-1.

Issues

The determinative issues are credibility and delay. My reasons follow.

Analysis

Identity

There are on file certified true copies of the claimant's Saint Lucian passport, birth certificate, identity card and driver's licence which satisfy me as to the identity of the claimant and that he is a national of Saint Lucia.³

Credibility

The Federal Court of Appeal pointed out in *Orelien*:⁴

...one cannot be satisfied that the evidence is credible and trustworthy, unless satisfied that it is probably so, not just possibly so.

Therefore, findings of fact, as well as the determination as to whether the claimant's evidence is credible, are made on a balance of probabilities. A witness' testimony does not have to be accepted simply because it was not contradicted at the hearing. The RPD is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole.⁵

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ *Orelien v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 592 (C.A.), at 605, per Mahoney J.A.

⁵ *Alizadeh, Satar v. M.E.I.* (F.C.A., no. A-26-90), Stone, Desjardins, Decary, January 11, 1993; *Aquebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.); and *Shahamati, Hasan v. M.E.I.* (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994.

The British Columbia Court of Appeal stated in *Faryna v. Chorny*:⁶

... In short, the real test of the truth of the story of a witness...must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize in that place and in those conditions.

It is possible to make a finding that overall a claimant's testimony is not credible.

The Federal Court of Appeal stated in *Sheikh*:⁷

Even without disbelieving every word (a claimant) has uttered, a panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim...In other words, a general finding of a lack of credibility on the part of the (claimant) may conceivably extend to all relevant evidence emanating from his testimony.

In some cases, the claimant's contradictory testimony can cast doubt upon the totality of his oral evidence. The existence of contradictions or inconsistencies in the evidence of a claimant or witness is a well-accepted basis for a finding of lack of credibility.⁸ Of course, the discrepancies must be sufficiently serious and must concern matters that are relevant to the issues being adjudicated in order to warrant an adverse finding on the merits of the case.

I found the claimant's evidence to be lacking in credibility for a number of reasons.

⁶ *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), at 357, per O'Halloran J.A.

⁷ *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.), at 244, per MacGuigan, J.A.

⁸ *Dan-Ash v. Canada (Minister of Employment and Immigration)*(1988), 93 N.R. 33 F.C.A.

1. Contradictions or inconsistencies and omissions between his PIF and oral testimony

With respect to the content and level of detail of the PIF narrative, the Federal Court stated in *Basseghi*:⁹

It is not incorrect to say that answers given in a PIF should be brief but it is incorrect to say that the answers should not be complete with all of the relevant details. It is not enough (for a claimant) to say that what he said in oral testimony was an elaboration. All relevant and important facts should be included in one's PIF. The oral evidence should go on to explain the information contained in the PIF.

It is important to understand the chronology of events in assessing the credibility of the claimant's assertions. As a young boy growing up, about age 11, he was sexually molested by one of his cousins. In 2000, he met [redacted] with whom he had a sexual relationship, which he kept secret from his family. He later met a young lady, [redacted]. He was not in love with her, but was fond of her. They went to Barbados on [redacted] 2001 and got married on [redacted] 2001. He continued to meet Mr. [redacted], now in the Barbados, behind his wife's back. On [redacted] 2002, he was caught by his wife while having sexual relations with Mr. [redacted]. He ran out of the house because his wife was shouting "homo", "homo", and soon all the neighbours gathered around the house. One of the neighbours went to his house to get a machete to cut the claimant. The claimant ran away and soon found out that his wife and her family had reported him to the police in St. Lucia. The claimant stayed on in Barbados until [redacted]

⁹ *Basseghi, Kourosh v. M.C.I.* (F.C.T.D., no. IMM-2227-94), Teitelbaum, December 6, 1994.

2002, before returning to St. Lucia. He last saw his wife in the Barbados two weeks before he left to return to St. Lucia and is not sure where she is now. On his return to St. Lucia, he went to visit his wife's family to make peace with them. They were furious, threatened to kill him and make an example out of him; her brothers wanted to beat him up; they rushed at him and he had to run away. He then went to a church where he was helped by Pastor [redacted]. The Pastor gave him money and helped him to buy a ticket to leave the country. The claimant left St. Lucia on [redacted] 2002, arrived in Canada on the same day, was granted visitor status for a month at the airport and eventually made a refugee claim on [redacted] 2004, approximately 17 months after his arrival.

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In his PIF, the claimant makes no mention of going to the police. In his oral evidence, he claims to have attended at the police station on three occasions. His explanation was that he only put basic information in his PIF. Although his oral evidence made it clear his wife's family are the primary agents of persecution whom he fears, the most serious incident, the confrontation with his wife's family in St. Lucia after his discovery as a homosexual in Barbados, is missing from the PIF. He had no reasonable answer for why this had been omitted. In fact, when the chronology of events is understood, the PIF narrative relates largely to events in Barbados where he is not making a claim. Nor is there anything in his PIF or in the Refugee Intake documents¹⁰ to

¹⁰ *Supra*, footnote 3.

indicate that he was hiding in St. Lucia, on his return there, as indicated in his oral evidence. His explanation for omitting the information about moving around in Saint Lucia on his return was that he did not think it was an issue. There is no evidence that anything happened to the claimant in St. Lucia beyond some threats from his wife's angry family. I find these omissions and contradictions create doubt as to the credible and trustworthy nature of the claimant's evidence.

2. The claimant is still married to his wife. Neither has taken any action to dissolve the marriage, which is puzzling given his wife's and her family's apparently virulent anti-gay sentiments.

3. There is a dearth of documentation to help establish this claim and I draw a negative inference as to the credibility of the claimant as a result. There is no letter from the helpful pastor in Saint Lucia. When asked why he did not get a letter, he said that he did not think it would be useful. When asked for details of his gay lifestyle in Canada, the claimant spoke of a partner, called _____ who had left for the United Kingdom (U.K.) two months prior to the hearing. Although the claimant indicated he could provide pictures of them together, these were never forthcoming. He also knew s.19(1) almost nothing about Mr. _____ because, as he testified, he never asked. He knew that he was black, his date of birth, his height and that they met at _____ in Mississauga over coffee. Details of how he lived, whether he was at school or working, were unknown to the claimant. _____ the lover who set off this chain of events

in Barbados and St. Lucia, has not been seen by the claimant since 2002, when the claimant's wife allegedly discovered them in bed together. The claimant said they had lost contact after the claimant left Barbados. He has no idea where he is and there have been no attempts to contact him. Even here the claimant's story was not consistent. When asked why there would be no effort to contact such an important person in his life, we learned they did have contact twice on the phone after the claimant returned to St. Lucia. The claimant did produce a membership card at () on

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in Toronto. The card does not tell us anything about the claimant's sexual orientation and was brought forward at the last moment during a break on the day of the actual hearing. Counsel for the claimant had not even been apprised of the card's existence until it was produced. I give the card no weight in establishing any of the essential elements of this claim.

While it is not a requirement that the claimant be able to corroborate his claim with documentary evidence, I am guided by Rule 7 of the RPD Rules which states that a claimant must provide acceptable documents establishing identity and other elements of their claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them. I find that his documentation is not acceptable in establishing key elements of his claim and that he took no steps to obtain documents that could have been reasonably obtained from the pastor in St. Lucia or his boyfriend from Canada (now in the U.K) with whom he

indicated he still talks on the phone occasionally. His answer, that he did not know he would be asked for details or think it would be useful, is not an acceptable explanation. I also note that he was represented by competent and experienced counsel.

Delay and Subjective Fear

It is expected that, absent a good reason, a person with a genuine fear of persecution whose intention it is to seek refuge in Canada, will do so immediately upon arrival." The claimant's explanation for a 17-month delay in advancing his refugee claim in Canada was that he found out about refugee status after several months in Canada and paid someone called Mr. \$ to take care of matters, but Mr. did not follow through with the paperwork. When asked if he had a receipt for the \$ or any documentation to prove he had retained Mr. he did not have anything nor has anything been forthcoming post-hearing. Counsel for the claimant then provided the information that Mr. had died of a heart-attack unbeknownst to the claimant and had never acted on the refugee claim. While I understand counsel may have a desire to fill in the gaps for the claimant, his intervention denied the claimant the opportunity to clear up this area of concern. I cannot accept counsel's unsworn assertions in lieu of the claimant's own sworn testimony. I find, based on the evidence before me, as opposed to counsel's submissions, the claimant was not diligent in pursuing his claim and this indicates a lack of a subjective fear of persecution.

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" *Hurt v. Canada (Minister of Manpower and Immigration)*, [1978] 2 F.C. 340 (C.A.).

I am further persuaded to the view that the claimant lacks a subjective fear of persecution by the fact that he chose to return to St. Lucia for a period of almost a month in 2002, from Barbados, where he had remained safely for 3 months after the incident in Barbados with Mr. Given the reaction of his wife and her family to the claimant's actions, i.e., they wanted to kill him and make an example of him, this seems like an ill-advised course of action which causes me to further doubt whether the claimant actually had a subjective fear of harm in Saint Lucia.

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Conclusion

Overall, I find the omissions and inconsistencies and contradictions in the claimant's evidence lead to a finding of a lack of credibility. The findings are sufficiently serious and concern relevant matters in determining this claim, and therefore warrant an adverse finding on the merits of the case. I am unable to find the claimant has established, on a balance of probabilities, that there are "good grounds" for fearing persecution.¹² I do not find there is a "reasonable" or "serious" possibility, as opposed to a "mere" possibility, that the claimant will face persecution if he returns to St. Lucia.¹³

For all the foregoing reasons, I find that the claimant has failed to establish a well-founded fear of persecution in Saint Lucia for any Convention reason. He is, therefore,

¹² *Seifu, Eshetu v. M.E.I.* (F.C.A., no. A-277-82), Pratte, Le Dain, Hyde, January 12, 1983.

¹³ *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680 (C.A.), at 683.

not a Convention refugee. Based on this reasoning, I also conclude that the claimant is not a person in need of protection pursuant to subsections 97(1)(a) and (b) of the IRPA. Accordingly, I reject his claim.

"Don Collison"
Don Collison

DATED at Toronto this 31st day of January, 2005.