



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
TA3-09134
TA3-09241

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

12 March 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

April 2, 2004

DATE DE LA DÉCISION

CORAM

S. Alidina

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DU MINISTRE

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(hereinafter "the principal claimant"), a 42-year-old, and (hereinafter "the claimant"), a 42-year-old, are citizens of Uruguay.

The claimants claim to have a well-founded fear of persecution at the hands of their families, the families of their in-laws, their neighbours, their co-workers and the Uruguayan authorities, by reason of their sexual orientation, that being, bisexuals.

In addition, they claim to be persons in need of protection, as persons in danger of being tortured or at risk of losing their lives or being subjected to cruel and unusual treatment or punishment in Uruguay.

ALLEGATIONS

The claimants allege that they are bisexual partners. As a result of their sexual orientation, their families, their in-laws, their co-workers and their neighbours targeted and abused them. The claimants moved in with [redacted]'s mother where they lived together for a period of five months, after which, they returned to their homes to live with their families. Upon returning to their homes in [redacted] of 2002, the claimants started receiving threatening calls. They filed complaints about receiving threatening calls to the police, but the police did nothing for them. At their workplaces, the claimants were harassed by their co-workers and physically abused, and their employment was terminated on account of their sexual orientation.

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ANALYSIS

The determinative issue in this claim is whether the claimants have adequate state protection in Uruguay.

In making this assessment, the panel considered the claimants' oral and written testimony, the representations of counsel and all of the evidence, and, particularly, the documentary evidence pertaining to measures to deal with violence against bisexuals and gays in Uruguay, as well as evidence about the police, availability of mechanisms for lodging complaints of abuse on account of sexual orientation, and, in general, the level of democracy in Uruguay.

Based on the totality of the evidence adduced, the panel finds that the claimants have not met the burden of establishing "clear and convincing" proof of a lack of state protection in Uruguay.

The law states that there is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing proof of lack of state protection" in Uruguay. The claimant must approach his or her state for protection—providing state protection might be reasonably forthcoming.¹

¹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689; 67 D.L.R. (4th) 1; 10 Imm. L.R. (2d) 189 (C.A.).

Evidence that protection being offered is “adequate though not necessarily perfect” is not clear and convincing proof of the state’s inability to protect its citizens² as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of protection.³

With respect to the case at bar, the principal claimant indicated that he went to the police on one occasion after he began receiving threatening calls from unknown individuals. The police took his report but did nothing to provide him protection. The principal claimant indicated his dissatisfaction with police response, but admitted that he did not make any further attempts to seek protection from other state agencies to redress the mistreatment he had received from his family, his in-laws, his neighbours, his co-workers and his employer. He indicated that he did not file any complaint with the Department of Labour for the termination of his employment on account of his sexual orientation.

² Zalzali v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 605 (F.C.A.); (1991), 14 Imm. L.R. (2d) 81; 126 N.R. 126 (F.C.A.).

³ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

His partner, the claimant, indicated that he went to the police after he began receiving threatening calls from unknown individuals. That time the police took his report but did nothing to provide him protection. The claimant testified that he went to the office of Civil Defence to file a report against the police for not providing him any help to redress the threatening calls he had received from unknown individuals. His Personal Information Form (PIF) narrative does not indicate that he ever filed a report against the police with any state agency. When asked, he was not able to provide any reasonable explanation as to why this information was omitted in his PIF narrative. His response in this regard was vague and evasive, and he apologized for having omitted this information in his PIF narrative. The panel does not find his explanation about this omission to be satisfactory.

Furthermore, the claimant also testified that he went to the Ministry of Labour to file complaints against his employers for firing him because of his sexual orientation, but the Ministry could not help him for being fired on account of his sexual orientation. His PIF narrative does not indicate that he ever filed a complaint with the Ministry of Labour. When asked, the claimant could not provide any reasonable explanation as to why he had omitted this information in his PIF narrative. He said that he did not know why he had forgotten to include this information in his PIF narrative. The panel does not find his explanation about this omission to be satisfactory.

At the hearing, the claimant was represented by counsel. Prior to entering his PIF as Exhibit C-2, the claimant swore to the accuracy of the contents of his PIF. Question 41 of his PIF clearly instructs the claimant to provide details of steps taken to obtain protection from authorities of his country of nationality and the results of such attempts to seek protection.

The panel is of the opinion that filing a report with the Civil Defence after not receiving protection from the police and filing a report with the Ministry of Labour after being fired from two jobs and not receiving help from these state agencies is central and material to the claimant's claim, since his entire claim is based on his allegations of lack of state protection for him in Uruguay. It is expected of the claimant to have mentioned in his PIF narrative that he filed a report with the Civil Defence and another report with the Ministry of Labour but received no help from these state agencies. Failure to include this information in his PIF narrative raises a serious doubt in the panel's mind as to whether the claimant made any attempt to file reports with the Civil Defence and the Ministry of Labour as alleged. Based on the evidence adduced, the panel does not have any persuasive evidence to believe the claimant's allegations that he filed a report with the office of Civil Defence and the Ministry of Labour. Therefore, the panel does not believe that the claimant ever filed any reports with the office of Civil Defence and the Ministry of Labour as he alleges.

Uruguay is a constitutional republic with an elected president, a bicameral legislature, and an independent judiciary.⁴ The government generally respected the human rights of its citizens, and the law and judiciary provided effective means of dealing with individual cases of abuse.⁵ The Public Prosecutor's Office of Police (*Fiscalia Letrada de Policia*) was created by decree on August 22, 1997, to prevent and stamp out irregular actions by police.⁶ The functions of the National Inspection of Police (*Inspección Nacional de Policia*), established as a unit of the Ministry of the Interior on November 1, 1992, were expanded by decree on August 22, 1997, to improve its coordination work with the Public Prosecutor's Office of Police with regards to internal investigations of irregular or illicit police actions.⁷ Although the internal police investigative body is understaffed and can only issue recommendations for disciplinary action, prosecutions have been occurring more frequently.⁸ For instance, at least eight police officers have been jailed for abusing detainees, and over 400 police officers have been indicted in the last three years for violations ranging from corruption to abuse.⁹ Ministry of Interior authorities act promptly if accusations of alleged police brutality are

⁴ Exhibit R-1, Toronto Documentation Package – Uruguay, December 2003, item 2.1, p. 31, United States Department of State (DOS), Uruguay Country Reports on Human Rights Practices – 2002, March 31, 2003.

⁵ Ibid.

⁶ Exhibit R-1, item 7.1, p. 121, Response to Information Request URY37188.E, 29 May 2001.

⁷ Ibid.

⁸ Ibid.

⁹ *Supra*, footnote 4, p. 32.

reported.¹⁰ A Montevideo-based non-government human rights organization, *Servicio Paz y Justicia*¹¹ (SERPAJ), published in its annual report a section on the following legal recourse and compensation available in Uruguay: 1) the criminal courts of the judiciary, which hear in the capital and provinces of Uruguay all matters related to prescribed offences; 2) the civil courts of the judiciary throughout the country, which handle all “civil consequences” stemming from offences related to an *amparo* recourse, with such recourse being issued for the protection of a right which cannot be protected through the application of other existing legal provisions; and 3) administration of compensatory justice for government actions that have caused damage. In view of the above, the panel finds that the government of Uruguay is making serious efforts to protect their citizens who are victims of criminality and does take action against corrupt police officers.

In regards to legal protection for sexual minorities, the documentary evidence¹² also indicates that there is an abundance of legal jurisprudence in the country, and sexual minorities may rely on the appropriate legal safeguards for protection. In regards to violent acts committed by reason of a victim’s sexual orientation, the documentary evidence¹³ indicates that amendments to Penal Code articles 149.2 and 149.3 have been passed by the Parliament of Uruguay on July 10, 2003. The amended Penal Code

¹⁰ *Supra*, footnote 4, p. 32.

¹¹ Exhibit R-1, item 10.2, p. 132, Response to Information Request URY40360.E, January 7, 2003.

¹² *Ibid.*, item 6.3, Response to Information Request URY37044.E, May 30, 2001.

¹³ *Ibid.*, item 6.1, Response to Information Request URY41914.E, September 8, 2003.

punishes whosoever incites hatred, contempt or any moral or physical violence against one or more persons on account of their sexual orientation or sexual identity.

In regards to treatment of homosexuals, the documentary evidence¹⁴ indicates that there were no reports of raids on gay bars in Montevideo since 1997.

Documentary evidence¹⁵ does indicate that Uruguayan society has strong homophobic traits. This contrasts with the liberal and progressive image that the country has projected since the beginning of the century in that the Uruguayan legislature is considered to be “front line” in its day.

Based on the documentary evidence, the panel does not have any persuasive evidence to suggest that the state authorities in Uruguay would not have provided protection to the claimants had they availed themselves of it.

It is obligatory upon the claimants, living in a democratic country, to seek protection from state authorities of the country of their nationality prior to seeking international protection. Evidence indicates that each claimant allegedly filed one police report, and when they failed to obtain help, they did not make any effort to seek help from other state agencies. The panel finds, in this case, that the claimants simply did not reasonably exhaust all courses of action open to them in availing themselves of state protection in Uruguay.

¹⁴ Ibid., item 6.2, Response to Information Request URY39133.E, August 14, 2002.

¹⁵ Ibid., item 6.3, Response to Information Request URY37044.E, May 30, 2001.

Based on the documentary evidence, the panel finds that the state authorities are making serious efforts to provide protection to victims of violence because of their sexual orientation. Therefore, the panel finds that the claimants have not met the test of providing clear and convincing evidence of the state's inability to provide state protection to them. Accordingly, the panel finds that adequate, if not perfect, state protection is available to the claimants should they return to Uruguay.

CONCLUSION

Since adequate state protection is available to the claimants in Uruguay, they are neither Convention refugees nor persons in need of protection within the meaning of section 97(1)(a) and 97(1)(b) of the *Immigration and Refugee Protection Act*.

Accordingly, the panel determines that _____ and _____ are neither Convention refugees nor persons in need of protection, and, therefore, the Refugee Protection Division rejects their claims for refugee protection.

"S. Alidina"
S. Alidina

DATED at Toronto this 2nd day of April 2004

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