



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
TA2-09607

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

September 12, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

October 31, 2003

DATE DE LA DÉCISION

CORAM

Michael Somers

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 DE LA MINISTRE

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INTRODUCTION

(the claimant) is a 30-year-old citizen of Costa Rica. He claims to have a well-founded fear of persecution at the hands of based on his membership in a particular social group, namely, being, a bisexual man. He also claims to be in need of protection as a person who faces a risk to life or a risk of cruel and unusual treatment or punishment.

ALLEGATIONS

The claimant alleges the following:

He met his wife in 1995, and they got married in of 1998. His wife had a previous marriage before to did not accept his former wife marrying, and has caused trouble for the claimant. In of 2000, the claimant returned home from work to find outside arguing with the claimant's wife. The claimant asked to leave at which time assaulted him and threatened to kill him. In 2000, the claimant came home after work to find again having an argument with his wife. The claimant asked to leave and again assaulted him. This time, the claimant went to the police to make a complaint. The police did nothing, as the claimant had no evidence.

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In 2001, the claimant left work and was assaulted by and another man. The claimant went to the police to make a complaint; however, the police informed him that they needed evidence, and without it, the police could do nothing.

The claimant states that he is bi-sexual and in of 2000, he met at work and become romantically involved with him. In of 2001, the claimant left a restaurant with and when the two got into the car, they found and his friend in a car beside them. and the other man started to shout obscenities at the claimant from their car. The claimant and tried to escape by driving away.

followed the claimant in his car. The claimant drove to the police station for safety and to make a complaint. stopped a block away from the police station while the claimant and went into the station to make the complaint. In the station, the police made fun of the claimant and as the police realized that they were gay. The next day, the claimant went to complain about the actions and service he received at the police station.

Due to the harassment of (and 's friends, the claimant was unable to work and felt desperate, and on , 2001, he left Costa Rica to come to Canada.

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DETERMINATION

The panel finds that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution in Costa Rica. The panel also finds that the claimant is not a person in need of protection in that his removal to Costa Rica would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Costa Rica will subject him personally to a danger of torture. The panel's reasons are as follows.

ANALYSIS

The identity of the claimant was established to the satisfaction of the panel. In this respect, reference is made to the testimony of the claimant, as well as the supporting documentation, namely, a certified copy of his passport filed as part of Exhibit M-1.¹

The determinative issue in this claim is whether state protection would be forthcoming and the credibility of the claimant's use of the police and/or other public authorities in Costa Rica.

In the case at bar, the claimant testified that he went to the police on three different occasions:

- 1) the assault by outside his house in of 2000;

¹ Port of Entry documents submitted by Citizenship and Immigration Canada.

- 2) the assault by [redacted] and [redacted]'s friend in [redacted] 2001 after work; and
- 3) after leaving the restaurant with [redacted]

However, in each case, the claimant did not follow up the complaint or take it any further. The panel notes that the claimant testified that he went to the Judicial Investigative Organization ("the OIJ") to complain about the way he and [redacted] were treated when they made a complaint. The claimant testified that the police made fun and mocked [redacted] and himself, as [redacted] had mannerisms that indicated that he was gay/bisexual. When the panel asked the claimant whether he informed the person who took the complaint at the OIJ as to whether he was bi-sexual and that the officers at the station were mocking [redacted] the claimant said no. The panel asked why he did not inform the OIJ. The claimant said it would have been no use to inform the police officer at the OIJ, as all officers are homophobic and would not have helped him. The panel finds the claimant's testimony about going to the OIJ to complain about his prior treatment at the police station not credible. He testified that when he went to complain about the service he received from the police officers at the station, he did not indicate to the OIJ the very reason why the officers were mocking him and his friend.

The panel also notes that when the claimant informed the police officer at the police station of the car chase with [redacted] the claimant asked the police officer to go outside to see if [redacted] was still parked outside. The claimant testified that the police officer followed him outside to see if [redacted] was still there for the purpose of arresting

him. The claimant testified that he thought the police officer would have arrested if he had still been waiting for him. The panel finds that the police did take the claimant's allegations seriously.

The panel finds that the claimant should have pursued his complaints and find out what the status of the investigation was. There is no persuasive evidence that indicates that if the claimant had pursued the available recourses through the Ministry of Security, the courts or the Ombudsman, with respect to the incidents, which he alleged caused him to have a well-founded fear of persecution, that the state would have been unable or unwilling to protect him. Costa Rica is a longstanding, stable, constitutional democracy, with an independent judiciary providing effective means to deal with individual cases of abuse. The more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him.

The panel has reviewed the reasons of the RPD in decision TA0-15870² and adopts the reasoning with respect to the efforts of the Costa Rican government authorities in protecting sexual minorities. A review of the documentary evidence cited in decision TA0-15870 reasons indicates that the thriving gay community in Costa Rica is not the target of systemic persecution by the authorities or by the population at large, and that the Costa Rican government is making serious efforts to protect sexual minorities. In rendering its decision, the panel notes that the documentary evidence used in the case at

² Schlanger, 31 March 2003.

bar is the same as that used in decision TA2-15870 and considered that as well as the April 2003 RPD Information Package on Costa Rica³ and the documentary evidence provided by the claimant.⁴

In addition, the panel also considered the claimant's allegation of persecution at the hands of because of his membership in a particular social group, namely, a victim of crime. The panel has reviewed the reasons of the RPD in decision TA2-14980⁵ and adopts the reasoning with respect to the efforts of the Costa Rican government in protecting victims of crime. A review of the documentary evidence cited in decision TA2-14980 indicates that the Costa Rican government is making serious efforts to deal with criminality and to protect victims of crime. In rendering its decision, the panel notes that the documentary evidence used in the case at bar is the same as that used in decision TA2-14980 and considered that as well as the April 2003 RPD Information Package on Costa Rica⁶ and the documentary evidence provided by the claimant.⁷

³ Exhibit R-1, RPD Information Package – Costa Rica, Updated April 2003, item 2.1, Costa Rica: Country Reports on Human Rights Practices for 2002, US Department of State, March 31, 2003.

⁴ Exhibit C-2, 18 items, dated September 8, 2003.

⁵ 20 March 2003.

⁶ *Supra*, footnote 3.

⁷ Exhibit C-2, 18 items, dated September 8, 2003.

There are a number of recourses available in Costa Rica for the assessment, prosecution, and the granting of remedies resulting from the failure of the law enforcement agencies to conduct their work.

The panel finds that the claimant has not rebutted the presumption of state protection in that he has not provided clear and convincing evidence of the state's inability or unwillingness to protect him. Therefore, the panel finds that the claimant does not have a well-founded fear of persecution, a fear of a risk to life, a danger of torture, or a risk of cruel or unusual treatment or punishment due to the availability of state protection.

Further, the panel finds that there was no evidence adduced to support a finding that the claimant faces a danger of torture.

CONCLUSION

For the foregoing reasons, the panel finds that _____ is neither a Convention refugee nor a person in need of protection, and, therefore, the Refugee Protection Division rejects his claim.

"Michael Somers"
Michael Somers

DATED at Toronto, Ontario this 31st day of October 2003

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