



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
TA3-24241

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 11, 2004

DATE(S) DE L'AUDIENCE

DATE OF DECISION

August 5, 2004

DATE DE LA DÉCISION

CORAM

Bonnie E. Milliner

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Nil

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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a thirty-four year old citizen of Grenada, claims refugee protection pursuant to sections 96 and 97(1)(b) of the Immigration and Refugee Protection Act¹ (IRPA). The claimant did not claim under section 97, subsection (1)(a) of the IRPA but I have considered that section. The claimant alleges that he fears for his life at the hands of a former sexual partner and the partner's two brothers.

Oral representations were received from Counsel at the conclusion of the hearing and were considered in the preparation of these reasons.

Summary of the Claimant's Allegations

In an extremely short Personal Information Form (PIF) narrative,² the claimant alleges that he was bisexual in Grenada and had a fight with his male partner and the man's two brothers at the time when the claimant ended the relationship. He received a severe beating and took the men to court but was threatened with death if he attended court. He had to leave Grenada, never to return, and when he calls his mother, she cries and tells him not to come back because he will be killed.

Determination

I find that the claimant is not a Convention refugee, as he does not have a well-founded fear of persecution for a Convention ground in Grenada. I also find that the claimant is not a person in need of protection in that his removal to Grenada would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or

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

² Exhibit C-1, PIF Narrative, p. 18.

punishment, and in that there are no substantial grounds to believe that his removal to Grenada will subject him personally to a danger of torture.

Issues

The issues identified at the outset of the hearing were identity, credibility, delay, state protection, and changes in circumstance. The determinative issue was credibility.

Analysis

Identity

The claimant's expired Grenadian passport is with Citizenship and Immigration Canada (CIC). However, there is a certified copy on file.³ On the basis of this document, I am satisfied as to the claimant's personal and national identity. His allegation of a bisexual orientation proved to be more problematic however, and in the end was not resolved in his favour.

Credibility

In making a credibility assessment, I considered the claimant's evidence in its entirety, taking into account his age, his level of sophistication and cultural differences, and hearing room nervousness, any of which may affect the manner in which testimony is delivered. I also considered his level of education, a difficult area to assess because he wrote different figures in the various documents and testified even differently again. For example, in his PIF, he says he attended school from 1970 to 1990, i.e. twenty years.⁴ At

³ Exhibit R-2, Passport, Date of Issue, I

Date of Expiry,

⁴ Exhibit C-1, PIF, p. 8, q. 17.

his intake interview with the Immigration Officer, he told the Immigration Officer he had seven years of primary school.⁵ Orally, he said that he did have twenty years of schooling, sixteen years of primary school and the remainder at a technical school called New Life Construction. When reminded the Immigration Officer's notes indicated he only had seven years of education, he denied such a figure, mentioning again the twenty years. However, when asked by his Counsel about his education, he said that in Grenada, one begins school at age five and goes on until about eighteen or nineteen. When it was brought to his attention that according to his PIF, he started school at eight months of age, he then said that maybe there was a mistake. When asked by Counsel why he had said he had twenty years education, he stated that it was a mistake, but then again said he had fifteen to sixteen years of primary school plus the training. I had occasion to observe the claimant over the course of the hearing and do not believe that he has achieved twenty years of education. I believe the seven-year figure he gave to the Immigration Officer is closer to the truth, and I have considered that level in assessing credibility.

Despite all considerations, I found that the claimant was not a credible or trustworthy witness due to inconsistencies, implausibilities, omissions, and behaviour that belies his allegations.

⁵ Exhibit R-2, Immigration Officer Interview Notes, p. 1, q. 5A).

Sexual Orientation

The claimant alleged that he was bisexual as a teenager while living in Grenada, had a relationship with “ ”, and that it was when he ended the relationship that he was beaten by ‘ and ’s two brothers. The claimant broke off the relationship because he (the claimant) had a girlfriend who had a child from him. The claimant alleged that death threats followed the beating. When asked if the brothers were gay, the claimant said that he did not know, but noted that they had girlfriends. When asked why the brothers would care that the claimant had broken up with he said that the brothers did not want him to go around telling people. Then he said that they beat him to make him stay with who did not want him to leave the relationship. This statement makes no sense - if the brothers did not want ’s homosexuality or his bisexuality to be known, why would they beat the claimant in order to make him stay in the relationship? When asked to confirm one statement or the other, the claimant agreed when asked if the brothers were trying to conceal that was gay. Thus, the inconsistency remained unresolved. In the absence of a satisfactory explanation, I find that on a balance of probabilities there was no beating to make him stay in the relationship or to conceal a relationship.

The claimant testified that from his early twenties, he became involved with a girl and fathered her child who was born 1993.⁶ It was in 1992 that he alleged he

⁶ Exhibit C-1, PIF p. 7., q. 15.

ended the relationship with For six more years, he lived in Grenada as a heterosexual male. He told the Canadian Immigration Officer that he is not bisexual anymore, that he is heterosexual, and that he likes only girls.⁷ He testified that he was intimidated into a sexual relationship with and his brothers who were older than him, and he said he had to follow their orders. He said that if he returned to Grenada, he would resume living with his mother, along with his common-law wife and his children. The claimant stated that in Canada, he has not been sleeping with other men, that he just goes out with them sometimes as friends, but then he said that he might sleep with other men if he returned to Grenada, even if his common-law wife were there which again does not make sense. Here in Canada, he is free to sleep with whatever gender of partner he chooses, and he chooses female, yet in Grenada, where homosexual activity is illegal, he contemplates homosexual activity. I reject the latter statement because of his consistent heterosexual activity for the past twelve years at least, both in Grenada and in Canada, and because of his statement to the Immigration Officer that he is heterosexual and prefers girls. I find that on a balance of probabilities, the claimant is heterosexual, and would be perceived by all as heterosexual.

Police Report

The claimant produced a police report purporting to show that he had taken his alleged former partner to court, and that the police knew the claimant was bisexual. I

⁷ Exhibit R-2, Minister's Delegate Review, p. 2.

have several concerns with this letter, the original of which is on file.⁸ There is no reference number, and the letter itself indicates a number should be in place. If a case had been registered by the claimant, then there would reasonably be a reference number. Without it, one cannot pursue research of the letter. In addition, it is apparent from the letterhead that the letter is a photocopy, even though there is an original stamp and signature. The letter is rife with spelling and grammar errors. Furthermore, the implied dates are inconsistent with those given by the claimant. For example, no actual date is given for the alleged arrests, and/or court date, which the claimant testified was set for 1992, but the letter says that a week after the claimant purportedly did not show up for court, he allegedly called the police and told them he was going to leave the country the next day. The letter says that as a result, the claimant migrated to Canada. The problem is that the claimant situates the beating incident in 1992 and the court date in 1992, but the claimant never left Grenada until 1998. In addition, the letter shows the knowledge of its author that the claimant had allegedly been engaging in homosexual activity, but such activity is illegal in Grenada.⁹ All of these concerns were brought to the claimant's attention with the following explanations offered. The claimant said that the police never tried to arrest him even though he allegedly told the police of his sexual orientation. He acknowledged that there is a law against homosexual activity but alleged

⁸ Exhibit C-2, Letter from Criminal Records Office.

⁹ Exhibit R-1, RPD Information Package, September 2003, Section 5.1, Response to Information Request GRD25243.E, May 5, 1997.

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that nothing is ever done about it. When asked if the Government of Grenada tolerated homosexual activity, he stated that the Government does not tolerate homosexual activity, but does not bother about it. This is inconsistent testimony. The documentary evidence states that entrance to Grenada can be barred on the basis of sexual orientation, that same-sex relations are illegal, that the government is not tolerant of same-sex relationships. Because of this attitude, Grenadians are unable to be open about their sexual orientation and people do not report such activities to the police.¹⁰ I prefer the documentary evidence to that of the claimant because it comes from an independent reliable source with no interest in the outcome of this claim. Given the strength of the documentary evidence, I find it implausible that the claimant would be disclosing to the police that he had been engaging in illegal activity for five years. The claimant suggested that the police would only deal with murders, yet was producing a document that ostensibly charges the brothers with the illegal beating but ignores the claimant's illegal activity. When asked how he obtained that report, the claimant said that he wrote to the police, gave them the information, and paid \$1.00 Grenadian, as a "fee," denying it was a bribe. The "fee," at \$1.00 Canadian to \$1.60 Grenadian, is approximately \$1.00 Canadian, rather expensive for a letter, and highly suggestive of a bribe for writing what the claimant wanted and told to them in the telephone call he says he made. He was not asked to explain why at first he said he wrote to the police, and then said he called them,

¹⁰ Ibid.

but he was asked to explain his statement that he gave the police the information. However, he then denied he had told the police what to say, only saying that he needed a letter for his case. The claimant alleged that his mother had been calling the police each time the "guys" passed by and threatened her, but there is no mention in the purported police report of any such calls. The claimant had no explanation. When all the evidence and unsatisfactory explanations about the police report are taken into consideration, I find that the police report is not a reliable document and I give it no weight. The Refugee Protection Division (RPD) is not required to have expert evidence to examine documents.¹¹ It may discount a document if there is sufficient evidentiary basis for doubting its authenticity.¹² I believe on a balance of probabilities that the claimant produced a fabricated document.

Immigration Officer Interview

The claimant told the Immigration Officer and the individual who did his detention review that his purported former boyfriend was one , age thirty or forty something.¹³ Orally, he gave the names and the same names given in the impugned police report. When asked who was the mentioned in the Immigration Officer's notes, he said that it was When it

¹¹ Culinescu, Rodica-Luciana v. M.C.I. (F.C.T.D., no. IMM-3395-96), Joyal, September 17, 1997; Mohanarajan, Sriahilandtharanathan v. M.C.I. (F.C.T.D., no. IMM-5482-99), Simpson, November 6, 2000.

¹² v. S.S.C. (F.C.T.D., no. IMM-761-93), February 16, 1994.

¹³ Exhibit R-2, Immigration Officer Interview Notes and Minister's Delegate Review.

was put to the claimant that he was alleging was his problem, he stated, "His two brothers too." When reminded that the (impugned) police report said that not was the main assailant, the claimant was silent, giving no explanation at all. That he was unable to be consistent with the names of his alleged assailants impugns his credibility.

The claimant alleged that he was beaten so badly that he had a gash on his head, was unconscious, and woke up in a clinic. When asked if he had a letter from the clinic, he stated that he called his mother four months ago to try and get it, but that they could not find it. Then he speculated that maybe they destroyed it. Hospitals do destroy records after a time, and it has been twelve years. Therefore I was prepared to accept the explanation until later in the hearing, the claimant stated that he could not get a medical report because the place is not there anymore. His changing answers negatively affect his credibility. I find that on a balance of probabilities, there was no medical treatment because there was no beating.

Threats to Mother

The claimant alleged that the three men were continuing to issue threats about him to his mother and that she was calling the police. This information does not appear in the claimant's narrative. When asked why this information was omitted from his PIF, the claimant replied that he did not know. In his representations, Counsel submitted that the claimant's narrative is very short and that they had tried to discuss with the claimant the

need to amend the PIF, but that the claimant did not take it seriously. The PIF instructs the claimant to indicate measures taken against himself or members of his family.¹⁴ He swore that his PIF was complete and true and accurate. The panel draws a negative inference from the omission of such important information as continued threats and his apparent cavalier attitude towards his PIF.¹⁵ I find that on a balance of probabilities, there have never been any ongoing threats from any source.

Delay

The claimant alleges the precipitating incident occurred in 1992, but he stayed in Grenada until 1998. His explanation for the delay in leaving was that his parents were poor, they had no one to help them, and he had nowhere to go. I do not accept his explanation. He had a brother in Canada prior to 1992, and if his life were truly in peril and his mother were truly begging him to go, he would not have remained for six more years. He stated that his brother in Canada would have been unable to support him, but it was put to him that in 1992, he was already twenty-two and could support himself. His explanation was that he would need to get a job, which he did when he ultimately came anyway, and he admitted working in Canada illegally.

The claimant arrived in Canada 1998, allegedly fearful and planning never to return. He says he was given six months to stay as a visitor but according to the

¹⁴ Exhibit C-1, PIF, q. 41.

¹⁵ Basseghi, Kourosh v. M.C.I. (F.C.T.D., no. IMM-2227-94), Teitelbaum, December 6, 1994, at 12; Bakare, Abeni v. Canada (Minister of Employment and Immigration) (F.C.T.D., no. IMM-1603-93), Reed, January 19, 1994.

Immigration Officer's notes, he was only given to 1998. He did not make a refugee claim until 2003, and only then because he was detained by the

Police. He admitted he had taken no steps to regularize his status and that he had never asked his brother, here legally, for assistance in regularizing his status. Therefore, I do not believe that he did not know what to do. He admitted claiming only because he was caught (a departure notice was issued¹⁶), and admitted that he would not have claimed had he not been caught. He admitted to knowing he was subject to deportation for overstay, but intended to follow his brother's alleged advice to get a girl and get married, and that would take a lot of money. He acknowledges that he has a Humanitarian and Compassionate application pending, but Humanitarian and Compassionate considerations and family unification are not within the mandate of the RPD. When his Counsel asked him who made the decision to apply for refugee protection, the claimant said that he himself made the decision because he needed protection. I cannot accept his explanations as satisfactory. I find that on a balance of probabilities, he knew exactly what he was doing, and that he had the means and resources through his brother and/or his common-law wife to deal with his status in Canada.

In making the determination that the claimant's evidence was not credible or trustworthy, I was guided by the words of Mahoney J. A. in Orelien:

¹⁶ Exhibit R-2, Minister's Delegate Review, p. 2.

One cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so not just possibly so.¹⁷

In addition I find the words of MacGuigan, J. A. in Sheikh applicable to the claim for refugee status before me:

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.¹⁸

In summary, I find that on a balance of probabilities, the claimant is heterosexual and would be perceived as heterosexual. I find that on a balance of probabilities, he was not beaten in Grenada as alleged, that there was no clinic treatment or court action, and that the police report is not a reliable document. I find he does not have a well-founded fear persecution in Grenada based on his sexual orientation and he is not a Convention refugee.

Additional Grounds

The claimant was not a credible or trustworthy witness. I find that there is insufficient credible evidence to found a claim under section 97(1)(a) or (b).

Conclusion

For all of the above reasons, I find that the claimant before me is not Convention refugee, and is not a person in need of protection as defined in sections 96 and 97, subsections (1)(a) and (b) of the IRPA.

¹⁷ Orellien v. Canada (Minister of Employment and Immigration) [1992] 1 F.C. 592 (C.A.); (1991), 15 Imm. L.R. (2d) 1 (F.C.A.).

¹⁸ Sheikh v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 238 (C.A.); 11 Imm. L.R. (2d) 81 (F.C.A.).

Therefore the RPD rejects the claim of _____ to refugee protection. The RPD is of opinion that there was no credible or trustworthy evidence on which it could have made a favourable decision and states that there is no credible basis for the claim.

"Bonnie E. Milliner"
Bonnie E. Milliner

DATED at Toronto this 5th day of August, 2004.

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