

Immigration and Refugee Board
Refugee Protection Division



Commission de l'immigration et du statut
de réfugié
Section de la protection des réfugiés

RPD File # / No. dossier SPR VA3-02164
VA3-03319

Private Proceeding
Huis clos

Claimant(s)

Demandeur(e)s d'asile

Date(s) of Hearing

Date(s) de l'audience

March 23, 2004

Place of Hearing

Lieu de l'audience

Toronto, Ontario

Videoconferencing held in

Fait par vidéoconférence à

Vancouver, British Columbia

Date of Decision

Date de la décision

March 23, 2004 (rendered orally)
April 2, 2004 (written decision)

Panel

Tribunal

Fred Hitchcock

Claimant's Counsel

Conseil du demandeur d'asile

Refugee Protection Officer

Agent de la protection des réfugiés

Mumtaz Rana

Designated Representative

Représentant désigné

Nil

Minister's Counsel

Conseil du ministre

Nil

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On March 23, 2004, the Refugee Protection Division (Refugee Division) heard the claims of _____ and _____ for refugee protection. On that same day, the panel rendered its oral decision and reasons. This is the written version of that oral decision and reasons.

ORAL DECISION AND REASONS

As was stated before the break I am going to be making an oral decision on both of your claims.

These are the reasons for the decision of the Refugee Protection Division with respect to the refugee protection claims made by _____ and _____.

The hearing for these claims was held pursuant to the *Immigration and Refugee Protection Act (Act)*¹ on March 23, 2004. This was a videoconference hearing with the claimants in Toronto, Ontario without counsel, and the Presiding Member and the interpreter were in Vancouver, British Columbia.

Both claimants allege that they are citizens of Mexico. They claim to have a well-founded fear of persecution due to being a member of a particular social group, homosexuals, sexual orientation. In addition, both claimants, _____ and _____ claim to be in need of protection because they would be subjected personally to a risk to their life or cruel and to a risk of unusual treatment or punishment if they returned to Mexico.

The circumstances of both of the claimants relates to one particular event. _____ and _____ were in an intimate homosexual relationship. _____ stated he realized he was a bi-sexual at the young age of 14. Even though he states he still considers himself bisexual he is in a committed monogamous relationship with the co-claimant, _____.

_____ describes himself as being a homosexual and he also was aware of his sexual orientation starting at about age 14. Both claimants stated they had been dating each other while _____

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

living with their own families separately for about one year without their parents' knowledge of the relationship.

In 2001, states that his parents were out of the town for the weekend but, unfortunately, returned a day early and found both and in an intimate embrace. describes his father as being very masculine and macho and he was extremely upset to find the two young men, the co-claimants, together in intimate circumstances.

s father physically attacked both he and beating them up physically, attempting to choke them. states that his mother tried to separate them from the angry response by s father. This physical confrontation, both claimants state, lasted for approximately ten minutes. They had a mutual friend, who lived close by in the same city and both claimants left directly from s family home to the safety of s house. They stayed with for approximately one month before moving to Canada. They did not leave together. left earlier on 2002, and arrived in Canada approximately two weeks later.

Both claimants state that if they were to return to Mexico they fear persecution from s father and possibly his friends who might assist in this physical threat or abuse towards both claimants.

ANALYSIS

Both claimants were very forthright in their oral testimony during the hearing. I did not find that either one of them embellished their responses. They presented themselves in a very forthright manner, considering that neither claimant had the assistance of a counsel. It was explained to both claimants prior to the hearing starting that two of the most important determinative issues in this hearing, as in most refugee protection hearings, was whether they attempted to find an Internal Flight Alternative (IFA) and whether state protection was available to them.

Both claimants stated that after the incident of being physically attacked by s father that they made no attempt to contact the police for protection. Both claimants state that they did not have confidence in the police in Mexico and they believed that if they had gone to the police that it was doubtful, because they were homosexuals, that the police would have come to their rescue and to give them any assistance.

Both claimants have also testified that if they were to return to Mexico and were physically threatened by [redacted] 's father or any of his friends that, yes, they could go to the police for protection but, again, that they would not have confidence that the police would give them any help.

Though I appreciate both claimant's subjective fear and their explanations as to why they were reluctant to go to the police, I, nevertheless, am left with the Canadian legal jurisprudence in respect to protection for refugee protection claimants. Canadian legal jurisprudence in respect to protection states that there is a presumption that the state is capable of protecting its citizens. The onus is on the claimant to establish "clear and convincing proof"² of the state's inability to provide protection.

The claimants have an obligation to approach the state for protection unless it is objectively reasonable for them not to have sought protection from the authorities.

There is extensive country documentary materials³ pertaining to homosexuality in Mexico that has been distributed through the Immigration and Refugee Protection Division which shows that in Mexico homosexuality is not a criminal act. I agree with both claimants that there have been extensive documentation of homosexuals not being tolerated by most of the macho male society of that country and there also have been examples of corrupt police officers who have extorted money from homosexuals.

However, our country documents on Mexico also reveal that many corrupt police officers who have extorted money or harassed homosexuals have, in fact, been punished for those acts.

Also, in major cities such as Mexico City and Guadalajara there are several human rights and advocacy groups to assist homosexuals in making formal complaints, either in respect to being physically threatened or assaulted or also by being assaulted or extorted by corrupt police officers.

In the case before us, neither claimant made any attempt to seek state protection in respect to the physical attack on them by [redacted] 's father, nor was there any thought by either

² *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th), 1, 20 Imm. L.R. (2d) 85.

³ Exhibit 4.

claimant to seek an IFA. Instead of considering moving to a large city such as Mexico City or Guadalajara where there is more tolerance for homosexuals, as well as stated previously, human right groups and advocacy groups that could provide assistance, the claimants instead made the decision, after staying at a friend's residence for approximately one month, to make their way to Canada.

They state their friend, who they had stayed with while they were waiting to prepare to come to Canada, had, in fact, visited Canada previously. It was that recommended to them that this would be a good solution to their problem and fear of Israel's father. Also, they were advised by that Canada was a country that mainly treated homosexuals with dignity and respect.

CONCLUSIONS

So, unfortunately, even though I am accepting that the claimants are homosexual and are in an intimate, same sex, monogamous relationship, I do not find that they have a well-founded fear of persecution if they returned to Mexico.

This is because I find that both claimants would have an IFA available to them, and also there would be an obligation for them to seek protection if they again were in any way threatened by 's father.

Also, if they were seriously physically threatened by other individuals due to the fact that they were perceived to be homosexuals, they would have an obligation to seek protection from the police. Therefore I have not found either claimants, and as requiring protection in Canada due to there being a risk to their life or risk of cruel and unusual treatment or punishment in Mexico.

I also find that there are no substantial grounds to believe that their removal to Mexico would subject them personally to a danger of torture; and that concludes my hearing.

"Fred Hitchcock"

Fred Hitchcock

April 2, 2004

Date