

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 VA3-02241
VA3-03361
VA3-03362

Private Proceeding
Huis clos
Demandeur(s) d'asile

Claimant(s)

Date(s) of Hearing

June 7, 2005

Date(s) d'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Videoconferencing held in

Vancouver, BC

Fait par vidéoconférence à

Date of Decision

June 7, 2005 (rendered orally)
June 15, 2005 (written decision)

Date de la décision

Panel

Susan French

Tribunal

Claimant's Counsel

Elana Rose
Barrister & Solicitor

Conseil du demandeur d'asile

Refugee Protection Officer

G. Rempel

Agent de la protection des réfugiés

Designated Representative

Représentant désigné

Minister's Counsel

Nil

Conseil du ministre

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s.19(1)

On June 7, 2005, the Refugee Protection Division (Refugee Division) heard the claim 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

PRESIDING MEMBER: So, madam, sir, I have heard your evidence today and I have considered the objective documentary evidence and the evidence submitted prior to the hearing. I have listened to the observations from the refugee protection officer and the submissions of your counsel and I am prepared to make a determination in your claim today.

I do not find you to be Convention refugees nor do I find you to be people in need of protection and that applies to _____. I know this is disappointing to you. I will explain how I came to that conclusion.

Sworn evidence is considered to be truthful unless there is reason to doubt otherwise.¹ In regard to your identity, we have travel documents that are unquestioned, uncontested and there is no evidence before me to suggest that they are not legitimate passports. As the refugee protection officer pointed out, we do not have your marriage certificate before us or the birth certificate of your child. Nevertheless, on a balance of probability I find the evidence establishes that you are who you say you are and that you are citizens of Mexico and no other country.

Now, in regard to the credibility of your allegations I do have some difficulty with the fact that they really do not make sense to me in the face of what is common sense. The male claimant knew at the time that he met and had a relationship with and later married his wife that she was from a family of criminals. At the wedding he was threatened by an uncle and by the claimant's evidence he took seriously the threat from the uncle that if he did not take good care of his wife that he would have to reckon with uncle _____.

Now, uncle _____ works in a suburb of _____. As pointed out by the claimant's counsel, the male claimant is a well-educated, experienced individual and yet he wants me to

¹ *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

believe that he agreed that his name and his face should be published in a publication in that was to be circulated among the gay community. He wants me to believe that he would behave in such a reckless manner irregardless of the fact that he had been extorted several times by police while he was in a gay location, that he had had experienced a friend being stabbed, and that the police did not follow through as far as recognizing the crime as one of a hate crime against a gay person. In spite of being aware of the societal rejection of gay lifestyle he openly agrees to expose himself, not just by name but also by picture in an area that could have resulted in any authority picking up this newspaper and discovering this identity. I just do not find that behaviour reasonable or believable.

This conclusion is supported but the fact that at this point the claimant cannot even remember the name of the publication, does not know anything about it, he states that he did not even read the article and, yet, he said the impetus for doing it was so that he could express himself. He does not have a copy of that article and that adds to my mistrust of the trustworthiness of the allegations.

The claimant has not, in my view, fulfilled his obligation under section rule 7 of making serious efforts to provide the best evidence for the Board. He did not try to get any sworn affidavits by people who had seen this article. Nor did he contact his friend's parents in order to try to locate his friend or any of the gay clubs that are still there, that were there at the time when the publication came out, I draw a negative inference from this lack of action. It goes to confirm my conclusion that, these allegations are more likely than not, not true. If I have erred in my credibility assessment, I do find there is an Internal Flight Alternative for the claimants.

In regard to state protection, certainly Mexico has had and does have its difficulties with corrupt and criminal activity within the police force but the material that I have before me and the material in the standard package in regards to the national commitment to cleaning up police forces and the penalties for police having found to have taken advantage of their positions lead me to conclude, on a balance of probabilities, that the state is making serious efforts to protect its citizens generally, including homosexuals.

As counsel has pointed out, there has been new legislation passed and it is reflected in the documentary evidence that people who are openly homosexual are active members of political organizations, that there are churches that have large congregations of homosexuals in various

cities in Mexico and I am satisfied that the conclusion I have come to about general protection also goes generally to homosexuals in Mexico.

When I look specifically at this family it has been the female claimant's evidence that she has nothing particularly to fear herself and so a move to the Federal District would make sense. She too has a reasonable education. There are good schools in that city to which the child could go and I find that given her work history it would be reasonable to expect that she could find some kind of work in the Federal District.

The same reasoning applies to except for him there is the added difficulty that if true the female claimant's family disapproves of his sexual orientation, but here I pick up on the point that the refugee protection officer made so clearly and succinctly that the evidence does not establish in any way that any of the male members of the female claimant's family is presently looking for the claimants as there have been no attempts to contact existing family members or to make enquiries about them.

Now, it was pointed out that perhaps that was because the family knows where they are and they are unreachable. I reject this possibility. If the female claimant's family is a member of a criminal organization or a broader criminal community and they were intent on killing her husband, I find they could find a way of getting somebody here to do that if they knew he was here.

As far as the male claimant's allegations that people in Mexico who have criminal records cannot get passports and, therefore, specific members of the female claimant's family cannot come to Canada, I find no documentation before me to substantiate that and I find it highly unlikely. I can see if a person has outstanding warrant or a case that is pending or is ongoing, that they would not be allowed out of the country. However, being not allowed a passport because of a past criminal act just does not make sense to me. I do not believe it.

What I have concluded is more likely that nobody is looking for these people or care about where they are. If they return to the Federal District and there is a slight possibility that someone might bump into the male claimant and discover where he is, or the female claimant or the child, I conclude that that is a mere possibility and only a mere possibility in a city the size of the Federal District.

When we ask how anybody in the Federal District would know the sexual orientation of the father, again to the claimant's credit the answer was they would not know and so I find that, as the refugee protection officer pointed out, the discovery of that is in the hands of the family as it is in the hands of the family whether or not the female claimant's family reveal her whereabouts should she reveal that to them.

In regards to the boy, I , and the fear of his mother of the teasing and derision that he might experience in a less open society, again it goes back to how would anybody know the sexual orientation of his father in a new location. However, in the event that somehow in the future that is discovered and the boy is teased, I find that does not amount to persecution. There are good social services from what I can understand in the Federal District. The family would have access to counselling and psychological assistance if needed.

So I have concluded that there is an Internal Flight Alternative (IFA) for the family. As this is the case, I find that none of the three claimants is a Convention refugee and none of them is a person in need of protection.

It was my pleasure meeting you, Counsel.

Sir, who has been observing, I will remind you of the confidentiality conditions.

And to the claimants, I wish you all the very best in the future.

This matter is concluded.

--- PROCEEDINGS CONCLUDED

"Susan French"

Susan French

June 15, 2005

Date