



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
TA1-25926

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 10, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

July 22, 2003

DATE DE LA DÉCISION

CORAM

Andrew M. Rozdilsky

CORAM

FOR THE CLAIMANT(S)

**Robert Moorhouse
Barrister and Solicitor**

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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These are the reasons for the decision by the Refugee Protection Division finding (the claimant), not to be a Convention refugee or person in need of protection.

The claimant is a 27 year-old citizen of Hungary who claims a well-founded fear of persecution for reasons of his membership in a particular social group (gay men in Hungary). The claimant also claims to be a person in need of protection under section 97 of the Immigration and Refugee Protection Act.

ALLEGATIONS

The claimant alleges that he is bisexual. In his oral testimony, he alleged that he is gay. The claimant worked in adult films, as an escort and appeared nude in gay and straight pornographic magazines.

The claimant became interested in other men while bodybuilding. He experimented sexually with girls and found himself attracted to both sexes. In college, the claimant had a relationship with a man but was also seeing a woman at the time. He alleged that his attention to his personal appearance led people to suspect that he is gay. He alleged that he faced discrimination at school for reasons of his sexual orientation.

In the of the claimant became for Hungary in bodybuilding. He contacted : Productions in order to secure work as a model and began working as a male escort. In : 1997, the claimant moved in with whom he alleged was a legend in the adult film industry. The claimant stopped

living with [REDACTED] 1997. [REDACTED] pimped for the claimant. The claimant did twelve pornographic films, nine gay and three straight. He did films and/or gay photo shoots for three companies. In doing this work, he consented to the photographs being distributed and reprinted. During the [REDACTED] [REDACTED] was murdered. The claimant's photographs were in [REDACTED]'s apartment. The murder was widely reported. The claimant alleged that [REDACTED] was stabbed to death by a straight model. The killer was apprehended, charged and convicted. In [REDACTED] 1999, the claimant began work as a roofer. He worked as an escort only once or twice a month. In 1999, the claimant returned to live with his family and agreed to stop his involvement in the gay sex industry. He began doing straight pornography. The claimant alleged that employment at a gas station, factory and mill did not work out for him.

In [REDACTED] a photo layout of the claimant was published in a magazine, [REDACTED]. The claimant alleged that after the magazine was published, his employment prospects dimmed substantially. From [REDACTED] the claimant alleged that he had many problems with people. He was pushed around and was beaten up by groups of straight men. The claimant alleged that he began drinking heavily and taking drugs. In [REDACTED] the claimant went to Greece to do live sex shows. The club where he worked wanted him to sign up for a two-year contract. The claimant did not want to enter into the contract, because of the pressures of performing in front of a crowd. The claimant became depressed. He stopped working out and became more insecure and depressed. In [REDACTED]

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1998, the claimant was arrested for drunk driving. He did LSD, ecstasy and pot. In 1998, the claimant was beaten by five or so people jumping out of a Mercedes. The claimant was unsure whether they knew him or not. Police came to the scene, but the assailants were unknown, so nothing could be done. The claimant was afraid of how he would be treated by the police because of his accident in 1998. In 1999, the claimant was refused for military service because of his sexual orientation. Because he was not accepted, he became depressed. He found a new boyfriend who drank and partied more than did the claimant. The claimant's stepfather told him that if he came around his mother, he would kill him.

The claimant fears for his life if he returns to Hungary. He fears the general populace and fears that his stepfather would kill him.

ANALYSIS

The panel first considered whether the claimant's fear of persecution as a result of his involvement in the sex industry is well-founded in Hungary today.

The panel notes that in relation to the murder of [redacted] an individual was charged and convicted in relation to his death. There is no evidence to suggest that the claimant was suspected of any involvement in his death after the killer was apprehended, or that the killer had any interest in causing harm to the claimant or that the murder involved the claimant in any way.

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The panel notes that the claimant worked in the sex industry in Hungary for some two years from . His photographs were published and he alleged that he was in pornographic movies and he was an escort when he needed the money after this.

The claimant alleged that the magazines he posed in were widely available throughout the country when they were published. The panel accepts this evidence, but finds that given the passage of time, the number of these magazines in circulation would now be greatly diminished. The panel is prepared to accept that the pornographic movies in which he appeared continue to be in existence. The claimant was involved in the sex industry for about two years. He worked as needed after this period as an escort. He was asked what he would have to fear, given that his photos were published three to four years ago. He testified that he did not know if people would remember but that when his photos were published, people came to know about it very fast. The claimant testified that some people just laughed about what he had done. Some insulted him. Some would assault him or attack him. The panel notes that the claimant related one specific incident of assault by a group of individuals in 1998.

The panel notes that the claimant's career in the pornography industry is now remote in time. The claimant's work was published shortly after the photographs were taken. Although his evidence was that his photographs could be republished, there is no evidence to indicate that they have been. The claimant did not identify specific agents of persecution whom he fears as a result of his career in porn. There is no evidence to

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suggest that anyone is seeking him out for reasons of his having been involved in the porn industry. The panel finds that given the passage of time, there is no more than a mere possibility that the claimant would face persecution were he now to return to Hungary, for reasons of his work in the pornographic industry. The panel finds that the claimant's fear of persecution for this reason is not well-founded.

The panel next considered whether the claimant's fear of persecution for reasons of his sexual orientation is well-founded.

The claimant's evidence was that he fears the attitudes of the community at large, and the police were he to seek protection from them. Although homosexual relations may be legal, peoples' attitudes regarding gay people cannot be changed. He fears that his stepfather will kill him. The claimant testified that a far right-wing party made gains in recent elections and that they advocate that gays must get out of Hungary.

The panel next considered the claimant's evidence and the documentary evidence before it regarding the situation of gays and lesbians in Hungary.

The panel finds that although the claimant may have faced discrimination in employment for reasons of his sexual orientation, he never faced serious restrictions on the right to earn a livelihood amounting to persecution under the Convention refugee definition. The panel notes that the claimant has worked variously in a factory, a mill and as a roofer.

The panel reviewed the documentary evidence before it. It notes that the documentary evidence indicates that gay rights organizations are active in Hungary. There is an active and vibrant gay community. Gay marriages were recognized in 1996. Inheritance and pension rights have been extended to same sex partners. The Hungarian Parliament voted by a wide margin in favour of the extension of rights to gays and lesbians.¹ There was an open gay rights parade in Budapest in 2001. There is an absence of evidence to indicate that members of the gay, lesbian, bisexual or members of other sexual minorities are subjected to persecutory measures in Hungary today. Although right wing politicians may have made gains in recent elections in Hungary, there is no evidence to suggest that they have targeted the claimant.

The panel prefers the documentary evidence before it to that of the claimant. It comes from neutral sources and gay advocacy groups in Hungary with no interest in the outcome of these proceedings.

The panel finds that the claimant's fear of persecution is not well-founded in Hungary today.

Having reviewed the documentary evidence, the panel finds that were the claimant to suffer harm for reasons of his sexual orientation, that state and *de facto* protection would be available to him in Hungary from the courts and gay advocacy groups and human rights organizations.

¹ Exhibit R-1, RPD Information Package: Hungary, items 12.1, 12.3, 12.5, and 12.7.

The panel notes that the claimant testified that when he had his motor vehicle accident leading to his impaired driving charge, the first officer he encountered considered the incident not to be a big problem. A second police officer who recognized the claimant was "rougher". The claimant received a two-year suspended sentence and was prohibited from driving for one and a half years as a result of his drunk driving offence. The claimant alleged that friends had only received a warning from a judge in similar circumstances. He did not tell the police he was gay because he was afraid in relation to the assault in 1998. He made a report against unidentified attackers and nothing further happened, even though he gave a description of the car and plate numbers. The claimant alleged that police do not want to help if gays are involved. They laugh and he would be ashamed to tell them that he is gay.

The panel considered the claimant's evidence. It finds that the claimant did not receive a disproportionate sentence for his drunk driving offence amounting to persecution for reasons of his sexual orientation. The claimant did approach the police in relation to the assault in 1998 but "nothing happened". The claimant was unable to identify those who attacked him, although he did identify the vehicle in which they travelled. The panel notes that the claimant did not approach police in relation to incidents of alleged harm faced by him in Hungary before his departure. Although the claimant expressed concerns over approaching the police regarding incidents arising as a result of his sexual orientation, the panel finds that the claimant's concerns are not

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reasonable given the equality rights of gays and lesbians in Hungary, as reported in the documentary evidence.² Under the circumstances, the panel finds that there is not clear and convincing evidence of the state's inability to protect the claimant.

The panel, therefore, finds the claimant not to be a Convention refugee.

The panel next considered whether there is a serious possibility that the claimant would face a danger of torture, a risk to life, or of cruel and unusual treatment or punishment if he were to return to Hungary. The panel finds that there is no serious possibility that the claimant would face a risk to life or cruel and unusual treatment or punishment. The panel finds for the same reasons outlined above, that there is no serious possibility that the claimant would face a risk to life, or torture or cruel and unusual treatment or punishment were he now to return to Hungary. The panel therefore finds the claimant not to be a person in need of protection.

CONCLUSION

For all of these reasons and having considered all of the evidence, the panel finds the claimant, _____, not to be a Convention refugee or person in need of protection and rejects his claim.

"Andrew M. Rozdilsky"
Andrew M. Rozdilsky

DATED at Toronto this 22nd day of July, 2003.

² Exhibit R-1, section 12.