



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
TA1-19845
TA1-19846

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

June 19, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

September 16, 2003

DATE DE LA DÉCISION

CORAM

Paul Ariemma

CORAM

FOR THE CLAIMANT(S)

**Peter Ivanyi
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

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s.19(1)

(the male claimant) and his common-law spouse /
(the female claimant) are citizens of Hungary. They claim to have a well-founded fear of persecution by reason of the sexual orientation of the male claimant. He defines himself as bisexual. For the same reason they also claim to be persons in need of protection pursuant to section 97(1) of the Immigration and Refugee Protection Act.

In the narrative part of his Personal Information Form, the male claimant sets out the basis for his claim. In there he relates matters pertaining to his parents and the problematic relationships between members of his dysfunctional family.

He describes his inner sexual feelings and describes a number of alleged incidents, which he maintains, occurred because of his sexual orientation. According to his story the incidents involved assaults that caused injuries. He also alleges that because of his sexual orientation he was discharged from the military and was the cause for the loss of his job.

The male claimant met his common-law spouse, the female claimant, in 1998. She accepted his ambivalent sexual propensity. He maintains that she also faced problems and was injured because of him. The male claimant maintains that no one can protect them in his country and that homosexual groups do not lend support to bisexuals.

The female claimant testified briefly at the hearing. She relies on the evidence of

the male claimant for her claim. The claimants came to Canada on 17 May 2001 and a week later claimed refugee status.

Analysis

The panel finds that the documents on file¹ satisfactorily establish the personal identity of the claimants. With respect to the sexual orientation of the male claimant the panel does not find it necessary to make a definitive finding. The male claimant makes a claim by reason of his sexual orientation and defines himself as bisexual. The male claimant has a spouse of the opposite sex (the female claimant) and his allegations are almost entirely focus on problems he would have experienced because of homosexual relationships.

The panel finds that the male claimant embellished and modified events in his life to create the basis for his claim.

The male claimant alleges that his sexual advances towards male persons were repeatedly met with rejection and that he was mistreated. The panel does not believe that the consequences faced by the male claimant in this regard were as he alleges. The panel finds that the reactions of those who spurned his sexual advances might have been unpleasant to the male claimant, however, in the circumstances of this case, the treatment

¹ Exhibit M-1

the male claimant faced cannot be considered persecution. The panel finds that there is nothing systematic or relentless in the mistreatment alleged by the male claimant because of his unsuccessful attempts to establish homosexual relationships. The panel finds as well that the alleged mistreatment is not sufficient to constitute the basis for his claim. However, as indicated, the panel does not accept that the claimants were in fact the objects of assaults as they allege.

The panel finds that the male claimant might have been faced with instances of intolerance, he might have also been involved in altercations; however, as indicated, the panel finds that such circumstances, singularly or cumulatively, are not sufficient to bring the claimants within the scope of our refugee protection laws.

According to their story the claimants were victims of several attacks and suffered serious injuries requiring medical attention. Other than the claimants' assertions, no medical documents or police reports concerning such assaults were produced by the claimants. It must be noted that several months before the hearing the claimants were instructed to produce medical and police reports that would assist in establishing elements of their claims.

The panel is well aware that corroborating evidence is not a requirement to establish the elements of a claim, however the efforts made by a claimant to obtain such evidence and the explanations given for its absence are legitimate matters of consideration by the panel. In the case at hand the panel is not satisfied with the

explanations given by the claimants.

The male claimant stated that there was no one in his country he could ask to obtain the reports on his behalf. He conveniently testified that he had no friends in his country, that they are not in contact with the female claimant's parents and that he had lost contact with his family. In particular, with respect to this last point the evidence of the male claimant was clearly misleading. He maintained that he had lost contact with his mother in 1995, however in another part of his testimony he stated that although he did not maintain a rapport with his mother he continued to sleep in the garage located on the property where his mother lived.

As well, his evidence about losing contact with his grandparents whom he had visited not long before coming to Canada is also unreliable. Lastly, it was open to the claimants to request the documents directly but they did not make any attempts to do so. The documentary evidence shows that there are provisions for persons outside of the claimants' country to obtain personal documents such as those in question.

The onus to establish a claim rests with the claimants, in this case, beyond telling a story, the claimants made no credible efforts to obtain evidence that could have assisted in the determination of their claims.

It is interesting to note that while the claimants did not produce medical documents or police reports concerning the alleged incidents that are central to their

claims, they provided a letter from the physician of the female claimant in Canada² wherein he describes a medical condition affecting the female claimant.

This document must be viewed in the context of the following evidence of the claimants. According to their story the female claimant would have suffered attacks and injuries on account of the sexual orientation of her common-law spouse. Both claimants attested that if they were to return to Hungary the female claimant would abandon the male claimant. In such circumstances there is no allegation that on her own she would be faced with any harm.

From the medical document in question it would appear that because of her physical condition, that is, the asymmetry and disfiguration of her breasts, the female claimant experienced difficulties in dating. However in her brief testimony at the hearing the female claimant stated that if they were to return she would likely leave the male claimant and therefore she would be faced with the prospect of not being able to establish a relationship with another person because 'men want sex'.

When questioned how such situation would constitute serious harm, the female claimant answered that she did not know. Clearly, the evidence does not support a finding that the female claimant would be faced with a serious possibility of persecution or a serious possibility of risk to life or of cruel and unusual punishment or treatment or

² Exhibit C-4

danger of torture if she were to return to Hungary.

There are also other aspects of the claimants' story that do not stand scrutiny. For example, it is not clear how the unknown men that allegedly attacked the male claimant on 2000 would conclude that the male claimant was bisexual or homosexual for that matter since he was walking home with his female spouse.

Although the male claimant maintained that he experienced problems because rumours spread that he was 'different', the evidence shows that he patronized gay establishments regularly. The male claimant was asked whether he would be safe if he were to move to another city away from his former classmates who, according to him, were responsible for most of his problems. All that the male claimant could offer to support his contention that he would not be safe elsewhere was that: 'They can notice that I am different' and that he had tried to go to another city but could not find a job or an apartment.

He was asked specifically whether he would be safe in Budapest where there is a large active homosexual community. The male claimant replied that he could not give an answer in that regard. He also stated that in the clubs in Budapest, it would not be easy to meet another person because those who frequent the clubs come with their partners.

Furthermore, when asked what he feared if he were to return to his country the male claimant stated that he would be humiliated because his girlfriend would leave him and that there was nothing to keep him in Hungary. Clearly his reasons for not wanting

to return to Hungary have little in common with his alleged fear of persecution or with the alleged need for international protection.

The panel accepts that the Hungarian society is not immune from manifestations of intolerance and bigotry and that there are instances of discrimination and problems affecting homosexuals as shown in the documents filed³ and in the report from the Hatter Society for Gay and Lesbians in Hungary.⁴ However, the documentary evidence with respect to country conditions⁵ shows that Hungary is a parliamentary democracy with a freely elected legislature and with institutions that are common to most free and democratic societies. Human rights and civil liberties are generally respected by the government. The rights of minorities are recognized in the constitution and a number of legislative and institutional measures have been enacted to protect such rights. Hungary is a signatory to a number of international and European instruments concerning the recognition and protection of minority rights.

Specifically with respect to homosexuals and lesbians, since 1996 marriages between members of the same sex are recognized with the same rights as heterosexuals, including pensions and inheritance rights.

These legislative and institutional initiatives are demonstrative of the serious efforts made by the government to protect its citizens, and to provide effective means for

³ Exhibit C-3.

⁴ Exhibit C-5.

remedying problems with respect to sexual orientation.

Numerous organizations and self-help groups operate in co-operation with the government to give assistance to the homosexual and lesbian communities. An annual Gay Pride parade is held in Budapest, as it is in Canada.

While the potential exists for members of minorities to be faced with instances of discrimination and mistreatment from a general perspective, the treatment of homosexuals, lesbians and bisexuals does not rise to the level of persecution or risk to life, or cruel and unusual punishment or treatment or danger of torture.

In the case at hand the credible evidence does not support a finding that the claimants would be at a greater risk than the general homosexual milieu.

In addition, the panel also finds that the credible evidence is not sufficient to rebut the presumption that the state is capable of extending adequate protection to the claimants. As well, the claimants have failed to establish that they could not avail themselves of the protection of the state or that such a protection would not be reasonably forthcoming.

The male claimant maintained that the police would not care to help him because he is different. The credible evidence shows that the male claimant made little efforts to seek the protection of the police. In this regard it must also be noted that since the panel found the alleged incidents not credible, consequently, the allegations of police inaction

⁵ Exhibits R-1 and R-2

with respect to the same incidents are also unreliable and untrustworthy. The panel also notes that the male claimant stated that while there is corruption within the police such corruption had nothing to do with his circumstances.

In conclusion, the panel finds that the claimants would not be faced with a serious possibility of persecution or a serious possibility of risk to life or of cruel and unusual punishment or treatment or danger of torture if they were to return to Hungary.

For these reasons the panel rejects their claims and determines that
and : are not Convention refugees and are not persons in need of protection
pursuant to section 97(1) of the Immigration and Refugee Protection Act.

"Paul Ariemma"
Paul Ariemma

DATED at Toronto this 16th day of September, 2003

s.19(1)