

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 VA3-02554

Private Proceeding
Huis clos

Claimant(s)

Demandeur(s) d'asile

Date(s) of Hearing

January 7, 2004

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

January 12, 2004

Date de la décision

Panel

Fay Sims

Tribunal

Claimant's Counsel

Paul Vandervennen
Barrister & Solicitor

Conseil du demandeur d'asile

Refugee Protection Officer

M. Babcock

Agent de la protection des réfugiés

Designated Representative

Nil

Représentant désigné

Minister's Counsel

Nil

Conseil du ministre

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These are the reasons of the Refugee Protection Division with respect to the claim of a twenty-eight year old citizen of Mexico.¹ His claim for refugee protection is based on his alleged fear of the cousin of his former girlfriend. The claimant alleges that the cousin is a police officer and intends to seriously harm or kill him because the claimant revealed to his former girlfriend that he is bisexual or homosexual. The claimant alleges that the cousin wishes to harm him because the revelation of his sexual orientation has brought shame to the family of his former girlfriend.

BASIS OF THE CLAIM

The claimant alleges that in early 2002, he informed his girlfriend of some three or four years, that he was bisexual and had had some homosexual encounters. He alleges that she became angry and threatened him saying that he would regret his behaviour. The claimant alleges that subsequent to this revelation to his girlfriend, her cousin assaulted him, shot at him, threatened him, and followed him on four occasions between late 2002 and early 2003. The claimant left Mexico on 2003. There was no further contact with the cousin or incidents or reports of sighting of him between and , 2003. When asked if he has heard anything from his family with respect to further contact by the cousin, the claimant added that he has been told that someone telephones his brother's home but does not speak and that he believes that it is the cousin continuing to look for him. He alleges that he fears further harm from the girlfriend's family as represented by the cousin and that there is no internal flight alternative available to him in Mexico because of the family's connections with the police and narco traffickers and because the cousin is a federal police officer.

The claimant stated that his claim is based on these alleged experiences and threats of the cousin of his former girlfriend and that he had not experienced any other problems in Mexico due to his alleged sexual orientation. Counsel also indicated that the claim is based on these particular alleged experiences and not based on a general claim of a fear of persecution based solely on sexual orientation.

¹ The claimant's identity is established by his passport and electoral card which are found in Exhibits 1.1 and 3.

ANALYSIS

I find that the claimant provided insufficient credible and trustworthy testimony to establish the salient aspects of his claim for refugee protection. I find that his testimony was fraught with inconsistencies and implausibilities.

The oral testimony of the claimant at the hearing and the evidence he submitted in support of his claim in the form of an alleged denunciation he made to the police² are inconsistent with the narrative of his Personal Information Form (PIF).³ He alleges that in late [redacted], the cousin first appeared at his home. In the PIF he says he was shot at by the cousin while in the denunciation and oral testimony, he said that he was beaten and kicked by the men and threatened with a gun but no shots were fired. The PIF does not mention the threatening telephone call allegedly made to him at his brother's house on [redacted] which frightened him so much that he went immediately to the Public Ministry to file the denunciation. Nor does the PIF mention that he was followed by a police vehicle to the Public Ministry. When asked to explain why these important elements had been left out of the PIF, the claimant stated that the person who assisted him to fill out the PIF had left them out and had said that they were not important because nothing had happened to him and that he could tell these things at the hearing. Given that he attempted to explain why they had not been stated in the amendments to his narrative,⁴ he was asked why he had not asked this person to come to the hearing to explain why he had advised the claimant not to include these incidents. The claimant said that he had no way to contact this person as he only knew him by his first name, [redacted]. He said that he had met [redacted] at the CIC office in Etobicoke when he went there to first state his intention to make this claim and that this person had subsequently met him and assisted him both at his interview with CIC in early April 2003 when he filed the immigration documents⁵ and in filling out his PIF. He said that when they met to fill out the PIF, they met at a subway station and went to a coffee shop. He said that he had never asked [redacted] for his last name or a telephone number or address where he could contact him in case he needed further help or had not been able to meet him at either the subway station or the CIC office. Given that the claimant is twenty-eight years old, University educated and fairly sophisticated, and given the importance of the documents that this

² Exhibit 6.

³ Exhibit 1

⁴ Exhibit 1.2.

⁵ Exhibit 2, Schedule 1 and Record of Examination.

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person assisted the claimant in completing. I find it implausible that he would not have asked for this information. I also note that the claimant indicated that appeared to be experienced in assisting people in making their refugee claims and that he had met him at the CIC office. Given that the issues of state protection and internal flight alternative are significant issues in refugee claims, I find it implausible that this allegedly experienced person would have told the claimant that it was not important that he had reported the assaults and the threatening telephone call to the police in Mexico City and that he had been both found and followed by the alleged agent of persecution in Mexico City. I find that the claimant's explanation regarding these omissions and the person he alleges is responsible is not plausible or credible.

There are other inconsistencies between the immigration forms and the subsequent allegations. In the immigration forms he indicates that he fears the family of his sexual partner and they are threatening to kill him because he is a gay man. He does not state that he fears the cousin of his former girlfriend who is a police officer and that he had already assaulted him and threatened to kill him even though the cousin is the only family member who ever approached him and who he had any contact with after the breakup with his girlfriend. His reference to his sexual partner is an unlikely way to refer to his former girlfriend who he had not had any contact with for several months at the time of writing. The claimant's explanation for not mentioning the cousin is that he was told to only make a brief statement. As well, the claimant stated that he had been a student until March 2003 in the immigration documents but stated at the hearing, when asked why he had not mentioned this in his PIF, that he had stopped attending classes in January. Given these discrepancies in the different documents and statements made by the claimant, I find that the claimant changed his story from what he first intended to state as the basis for his claim and embellished it with the addition of the information regarding reporting to the police and being followed in Mexico City.

The claimant's testimony with respect to returning to Puebla on , 2003 is not plausible. He alleges that he was so frightened at receiving a telephone call at his brother's home on . 2003 and being followed on the street by a police vehicle until he reached the office of the Public Ministry that he decided he was no longer safe in Mexico City. He said that he feared that he might bring danger to his brother and sister-in-law if he remained with them. However, he could not provide a reasonable explanation as to why he would then return to Puebla, the place where the family of his former girlfriend lived including the cousin and where he had already been assaulted and shot at just two weeks earlier. The claimant was asked to

explain if he had left his brother's home in order not to bring him into danger, why would he then return to his father's home where his father and sister live and would presumably be confronted with the same degree of danger for harbouring him as the brother was. He said he had not thought of any of these things but instead he had only wanted to leave Mexico City. I find it implausible that the claimant, a former sales representative and a person with financial resources, would return to the very place where he had been previously harmed and threatened and which is just one hundred and twenty kilometres from Mexico City. It belies common sense. He could have gone to another city or town in Mexico. When he was asked why he had not done so, he stated that he had not because he knew that his former girlfriend's father had contacts in other cities in Mexico and he feared that he could be found. He did not offer any testimony to establish that the father is so powerful that he has the ability to find the claimant in any town or city in Mexico. Regardless of what the claimant alleges he believes, it does not reasonably explain why he would return to the very place where he was known, where the alleged agents of persecution lived and where he had already been assaulted and shot at. Puebla is the last place one would reasonably expect the claimant to go despite his alleged fears he could be found elsewhere. The claimant alleges that when he stepped off the bus in Puebla at 2:00 a.m., the cousin happened to be passing the bus station and assaulted the claimant again. I find that this coincidence is highly unlikely given that the claimant was not expected at the bus station at that particular time and there is no reason for the cousin to have been at the bus station. I find that the claimant's testimony with respect to the assault and return to Puebla on [redacted] 2003 is not plausible or credible.

I find that the claimant's testimony with respect to how much time he spent in Puebla after fleeing to Mexico City on [redacted] 2003, was inconsistent. This is a fairly simple area of testimony and it is reasonable to expect that the claimant would provide straightforward and consistent testimony. He did not. He stated that he spent one week in Puebla after fleeing Mexico City and returned on one more occasion, on [redacted] or [redacted], to pick up his passport. He referred to one week in Puebla at least three times. His testimony had been a little unclear so I had confirmed with him that these two occasions were the only time spent in Puebla. However, he later indicated that he returned to speak to someone at the human rights organization in [redacted] which is inconsistent with only having returned on the two occasions. At the end of the hearing when counsel was making submissions, he indicated that the claimant had only spent one or two weeks in Mexico City. I stated that this was not my understanding of the claimant's

testimony and asked the claimant again when he had had been in Puebla after fleeing to Mexico City on [redacted] This time the claimant indicated that he had been in Puebla from [redacted] until some time before [redacted] when he returned to Mexico City as he had an appointment with a psychologist on the seventh. When I said that he had previously stated he had remained in Puebla for a week, he then indicated that he returned to Puebla after [redacted] for one week. This was clearly inconsistent with his previous testimony. I find that the claimant's testimony regarding when he returned to Puebla and when he was allegedly in hiding in Mexico City was unclear, inconsistent and not credible for these reasons.

The claimant could not explain how the police officer who responded to his call in [redacted] after being assaulted by the cousin for the first time, knew that the claimant was homosexual. The claimant did not tell the police officer. His alleged homosexuality was a secret and not known to his family or his neighbours. There is no reasonable explanation as to how the police officer would have known that this was the reason for the assault by the cousin. Therefore there is no reasonable explanation for the police officer to have made the disparaging remarks about homosexuals that the claimant alleges were made and to have suggested to the claimant that he could not receive protection because of his sexual orientation. I find that the claimant's testimony regarding the remarks of the police officer are not credible.

The claimant's testimony regarding the second incident which allegedly occurred in [redacted] when he was chased down his street by the cousin and another man who were shooting at him from their police car was not plausible. He stated that several shots were fired hitting walls abutting on the street and the walls and windows of his house. However, the local police did not come when the claimant telephoned them and reported the shooting. Nor did any neighbour appear and speak to him although they had come to his defense when he had been assaulted a few weeks earlier. I find it implausible that the police did not respond to his call given that this incident allegedly occurred mid-afternoon in a residential neighbourhood and given that the police had responded on the previous occasion.

I also find it implausible that the cousin would have used a police vehicle to shoot from and attempt to kill the claimant. The claimant's earlier testimony had been that the cousin and the men accompanying him had stopped assaulting him and fled when his neighbours approached. The claimant indicated that he thought that they had not wanted to be able to be identified by his neighbours. The documentary evidence indicates that there have been serious

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attempts in Mexico to clean up the federal police force and many police officers have been investigated, dismissed and charged.⁶ I find it implausible that the cousin would have been so brazen as to use a federal police car to pursue the claimant and fire several shots at him in broad daylight in a residential neighbourhood as the vehicle could have been readily seen and identified by the neighbours or any passers by and lead to the cousin's identification. I find that the claimant's testimony is not plausible or credible with respect to this attempt on his life.

With respect to the documents that the claimant submitted in support of his claim, I give them little weight given the credibility findings I have made and given the following hesitations about each document or letter. Concerns about the documents were stated to the claimant at the hearing. Counsel stated in his submissions that if the Board had concerns about the documents, it was up to the Board to investigate the legitimacy of the documents. I disagree with counsel. I note that such an obligation for the Board is not found in the *Immigration and Refugee Protection Act* or in the Refugee Protection Division Rules. I am not aware of any such case law. The onus is on the claimant to make his case. I indicated to the claimant some of the concerns that I had with the documents presented by him providing him with the opportunity to provide an explanation.

The first document is an alleged denunciation made to the Public Ministry or office of the Procurador or Attorney General. This document appears to be a computer generated document. It contains no signatures with respect to who provided the testimony and who took the testimony for the Public Ministry. Given that the preamble of the document is fairly lengthy referring to penalties which will be imposed on any person providing false testimony, it is only plausible to expect that both the complainant and the officer or lawyer taking the statement would have signed and dated the document. I raised specialized knowledge at the hearing regarding the absence of such signatures and stated that I have seen many denunciations over the years from Mexico and that they all contained at the end of the document the names and signatures of both parties. When given an opportunity to respond, the claimant stated only that he had not been asked to sign the document other than along the side of each page and that the police officer had not signed it either. Regardless of whether the document would have been signed by both parties, I note that it is not proof of what allegedly occurred nor is the Public Ministry supporting the claimant's allegations. It is simply a statement of allegations made by a person which is to

⁶ Exhibit 5, National Documentation Package Mexico November 2004, sections 2, 7, 9, and 10.

be forwarded to the appropriate department for investigation or follow-up. I give the document little weight for these reasons.

The second document is a letter from a physician referring to injuries sustained by the claimant on 2003 in Puebla. I have already stated above that I find the claimant's account of returning to Puebla on this date and the cousin coincidentally seeing him descend from the bus and then assaulting him not to be credible or plausible. I note that the doctor does not state that he was assaulted. She states that the injuries were caused by "contact with pavement". The claimant may have suffered the injuries as described by the doctor but I find that they were not caused for the reason the claimant has stated they were.

The third document is a letter from a human rights association, the Mexican Association of Human Rights Advisors. However, it does not contain an address or telephone number for the organization which I find to be unusual to say the least. The letter states that the claimant did not permit the association to carry out the necessary investigation or represent him legally. The claimant's account is inconsistent with this as he stated he did not refuse to allow them to proceed with their investigation and legal steps but instead told them he wanted to think about it but did not return to the association. I find it unlikely that the association would have not stated this but instead stated he refused. I also note that the letter does not confirm any part of the claimant's story but instead only refers to his human rights having been violated. I give this letter little weight for these reasons.

The fourth document is a letter from a psychologist who the claimant stated he saw on three occasions. I have no reason to doubt that the claimant did see this psychologist on three occasions. I note that the psychologist refers to the claimant demonstrating "permanent and uncontrollable preoccupation" which I find to be a rather hasty diagnosis given that she only saw him on three occasions over a period of one month or so. When asked how his life differed in Canada from his life in Mexico, the claimant first referred to the weather and the language and only when asked were there any other differences did he refer to being able to be more open about his sexual orientation. He did not refer to any permanent psychological problems or any changes in his mental status since coming to Canada. He has not sought psychological treatment in Canada nor did he indicate that he intends to or needs to. This letter does not alter my credibility findings with respect to the claimant's testimony.

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The Refugee Division determines that the claimant provided insufficient credible and trustworthy testimony to establish his claim for protection. The claimant has not established that he would face persecution or a risk to his life or a risk of cruel or unusual treatment or punishment or a danger of torture were he to return to Mexico. The claimant

is not a Convention refugee or a person in need of protection. His claim for refugee protection is rejected.

“Fay Sims”

Fay Sims

January 12, 2004

Date

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