



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE
HUIS CLOS
TA3-10510
TA3-10511
TA3-10512

CLAIMANT(S)		DEMANDEUR(S)
DATE(S) OF HEARING	29 September 2003	DATE(S) DE L'AUDIENCE
DATE OF DECISION	9 October 2003	DATE DE LA DÉCISION
CORAM	E.S. Schlanger	CORAM
FOR THE CLAIMANT(S)	John Grant Barrister and Solicitor	POUR LE(S) DEMANDEUR(S)
REFUGEE PROTECTION OFFICER	n/a	AGENT DE PROTECTION DES RÉFUGIÉS
DESIGNATED REPRESENTATIVE		REPRÉSENTANT DÉSIGNÉ
MINISTER'S COUNSEL		CONSEIL DE LA MINISTRE

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, the principal claimant, 24 years old, his wife,
, 23 years old, and their minor son,

one year old, claim to be Costa Rican citizens¹ who have a well-founded of
persecution at the hands of _____ and _____ the female
claimant's rich and powerful parents and their associates based on the principal
claimant's membership in a particular social group, namely bisexual men. The male
claimant does not claim persecution from society in general, as he keeps his sexual
orientation secret.

They allege that on _____ 2002, the male claimant was physically
assaulted and threatened at gunpoint by two unknown men telling him that he should
leave his wife and child if he loves them. They allege that on _____ 2003, three
masked men at gunpoint took the principal claimant's car and told him that this was
happening because he had not allowed their instructions and then threatened to kill him,
his wife and their child. They allege that on _____ 2003, two men again threatened
to kill them and hit the female claimant with a gun.

They claim that if they return to Costa Rica state protection would not be
forthcoming because of the male claimant's sexual orientation and because of the female
claimant's parents' wealth. The principal claimant left Costa Rica on _____ 2003,

¹ Exhibit M-1, certified true copies of the claimant's Costa Rican passports were submitted by

and the female claimant and the minor left on 2003. They all made their refugee claims on 2003.

The Chairperson has the authority under s. 159(1)(h) of the *Immigration and Refugee Protection Act*² to identify decisions of the Board as *Jurisprudential Guides* to assist members in carrying out their duties. The Board's *Policy on the Use of Jurisprudential Guides* is available on the Board's website.³ Effective May 15, 2003, the Chairperson identified two decisions of the Refugee Protection Division as *Jurisprudential Guides*.⁴ Members are to consider and follow these decisions when determining claims in which the availability of state protection in Costa Rica is the determinative issue in claim profiles of risk due to sexual orientation or general criminality.⁵ The first question the panel has to determine is whether decision TA0-15870 applies in these cases.

The panel determines that the facts and the evidence regarding country conditions in these claims are sufficiently close to those before the panel in RPD decision TA0-15870 because they both deal with Costa Rican claimants seeking protection due to their

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² S.C. 2001, c. 27

³ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

⁴ RPD no. TA0-15870, 2003 and RPD no. TA2-14980, 2003.

⁵ http://www.irb.gc.ca/en/about/policies/jurisguides_e.htm

sexual orientation, and the issue in both is the determination of the availability of state protection for sexual minorities. In addition, the panel assessed the claimants' documentary evidence and the April 2003 RPD Information Package⁶ which were not before the *Jurisprudential Guide* panel. In reaching its decision, the panel has assessed the claimants' own experiences in the context of the entirety of the evidence.

The determinative issue in these claims is the availability of state protection for these particular claimants and the credibility of their attempts to obtain state protection. The panel adopts the reasoning in RPD decision TA0-15870 as that reasoning, which has been comprehensively analyzed, applies to the facts of these claims.

In the cases at bar, the male claimant stated that on _____ 2002 and on _____, 2003, he reported to the police the assaults, the car theft, and the threats that he suffered at the hands of unknown men. He claimed that the police took his declaration, and told him that they would see what they could do. The female claimant testified that on _____ 2003, she accompanied by her husband, reported to the police that she had been hit with a gun and threatened by unknown men. She provided the police with descriptions of the men and they told her that they would investigate. On their lawyer's advice, the claimants did not provide the police with information regarding the cause of these assaults being related to the parents'/in-laws' strong insistence that they separate

⁶ Exhibit R-1

because of the male claimant's bisexuality. In fact, they never reported the direct death threat from the parents/in-laws due to fear. The panel finds that the claimants' did not provide the police with all of the available information to enable them to conduct a full and proper investigation. Why go to the police for help if one is not prepared to provide all the available information. Further, if the family context of the assaults and threats would have been provided, they may have been able to be referred to the Family Court⁷ ("Juzgados de familia"), which have multi-disciplinary teams of staff judges, psychologists and social workers to deal with such matters of family violence. The claimants also stated that because of the parents/in-laws being wealthy, they could pay off the police. However, the Ombudsman's office exists to deal with reported police abuse of power when reported.

The male claimant testified that he went to denounce the lack of protection to the Inter-American Court of Human Rights and the Ombudsman the week following the 2003 incident. He claimed that after he told the Ombudsman's office that he had already made a report to the police, they told him that they could not help him. He claimed that he tried to provide them with information but they were not interested. He also testified that the Inter-American Court of Human Rights told him that he had to make his complaint in Washington. The panel finds that that is not a Costa Rican state

⁷ Exhibit R-1, p. 112, CRI38268.E, December 6, 2001, DIRB, IRB

authority that could provide the claimant with protection. When questioned about the omission from the Personal Information Form⁸ (PIF) of any reference to the Ombudsman, the claimant's response was that the interpreter who interpreted the PIF, had told them that they could not mention the Ombudsman unless they had documented proof, which they did not. The panel does not accept this explanation as credible, as the PIF was prepared with the assistance of legal counsel and the claimants had ample opportunity to submit PIF amendments, even at the time a second legal counsel became involved in the case, and would have discussed the case details in preparation for the hearing. Further, question 41 of the PIF clearly asks claimants to provide details of any steps taken to obtain protection from the authorities. The panel finds that the added testimony of the Ombudsman was fabricated in an attempt to bolster the claim.

The panel considered the letters⁹ that the claimant's submitted from their lawyer in Costa Rica, their OIJ policeman friend, their journalist friend, and their friend who is a delegate of the National Liberation Party, all advising them to leave the country because of lack of state protection for them. However, the panel has accorded more weight to the documentary evidence indicating that Costa Rica is making serious efforts to protect

⁸ Exhibit C-1
⁹ Exhibit C-4

sexual minorities, and victims of criminality, because these sources are independent and not specifically interested in the outcome of a particular claim.

The panel considered that Costa Rica¹⁰ is a longstanding, stable, constitutional democracy with an independent judiciary providing effective means to deal with individual cases of abuse. In the context of the country of origin, and in the circumstances of these claimants in particular, the panel finds the claimants have not taken all reasonable steps to seek protection in Costa Rica. Therefore, it finds that they have not discharged the onus of showing clear and convincing proof of the state's inability or unwillingness to protect them.

Having considered all of the evidence and counsel's submissions, the panel finds that these claimants are not Convention refugees and that they are not persons in need of protection pursuant to section 97(1)(a) or (b) of the Immigration and Refugee Protection Act (IRPA).

¹⁰ Exhibit R-1, item 2.1, p. 32, U.S. Department of State Report, Country Reports on Human Rights Practices, 2002, Costa Rica, March 2003.

Accordingly, the panel rejects the claims of his
wife, and their minor son,
for refugee protection.

“E.S. Schlanger”
E.S. Schlanger

DATED at Toronto this 9th day of October, 2003.

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