



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
TA4-03989

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

November 2, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

February 20, 2006

DATE DE LA DÉCISION

CORAM

Joanna Bedard

CORAM

FOR THE CLAIMANT(S)

**Robin Morch
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

I. Kohler

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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Introduction

, a citizen of Moldova,¹ seeks refuge protection under subsections 96 and 97(1) of the Immigration and Refugee Protection Act² (IRPA).

Allegations

The following is a summary of the claimant's allegations, the full account of which can be found in the claimant's Personal Information Form³ (PIF) narrative. The claimant alleged that he was a gay male who experienced persecution because of this. He described an attraction to an older boy in university whose authorities told his parents. The claimant married a girl he did not love but with whom he had a good relationship and with whom he had two children.

The claimant met and had a relationship with with whom he also had a business partnership in the city of Kishinev. The claimant described two occasions in which he was beaten in of 2002, he and his wife were beaten and suffered attempted rape in : 2003. His wife was told to leave the claimant. The claimant suffered a beating in of 2003.

¹ Exhibit R-2, true copy of Moldovan passport, with claimant's photograph; Exhibit C-2, #2, claimant's birth certificate; #4, military book with claimant's photograph.

² Immigration and Refugee Protection Act, S.C. 2001, c. 27.

³ Exhibit C-1.

Decision

I find that the claimant is not a Convention refugee as he does not have a well-founded fear of persecution for a Convention ground in Moldova. I also find that the claimant is not a person in need of protection in that his removal to Moldova would not subject him personally to a risk to his life or to cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that his removal to Moldova will subject him personally to a danger of torture.

Analysis

At the beginning of the hearing, the claimant was told that credibility and his sexual orientation were issues. The onus to establish his claim is on the claimant. There are incidents of lack of credibility, implausibilities and omissions which led the panel to find the claimant had failed in this responsibility. The following, while examples, are not exhaustive. The panel notes the following:

- Where a claimant swears that certain facts are true, this creates a presumption of truthfulness unless there is reason to doubt their truthfulness.⁴
- The existence of contradictions and inconsistencies in the evidence of a claimant is a well accepted basis for a finding of lack of credibility.⁵

⁴ Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.).

⁵ Dan-Ash v. Canada (Minister of Employment and Immigration) (1988), 93 N.R. 33 (F.C.A.).

- These considerations apply to omissions in the claimant's previous statements whether made to Canadian Immigration Officials (at the port of entry or inland) in a previous examination or hearing of the claim, or in the claimant's PIF.⁶
- The Board does not have to accept a witness's testimony simply because it was not contradicted at the hearing.⁷
- The Board is entitled to make reasonable findings based on implausibilities, common sense and rationality⁸

The panel prefers the evidence of the country documents to that of the claimant because it is gathered from a number of internationally recognized human rights organizations considered to be independent, objective sources with no interest in this or any refugee hearing.⁹ In this instance, the only legal gay organization is in Moldova.

The panel notes that homosexual and bisexual people have the right to live their lives in a manner in which they can express their entire personality, including their sexual orientation. The claimant agreed in oral testimony that he knew that Moldova was homophobic. In relating his first homosexual relationship, he explained that when he was seventeen in 1978, he met an older student, [REDACTED] with whom he had intimate

⁶ Dehghani v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 587 C.A.).

⁷ Tanase v. Canada (Minister of Citizenship and Immigration) (2000), 3 Imm. L.R. (3d) 308 (F.C.T.D.).

⁸ Alizadeh, Satar v. M.E.I. (F.C.A., no. A-26-90), Stone, Desjardins, Décary, January 11, 1993.

⁹ Zhou, Ting Yu v. M.E.I. (F.C.A., no. A-492-91), Heald, Desjardins, Linden, July 18, 1994.

relations. The claimant was asked how he was found out. He replied that he was found out in 1979 when the superintendent of the hostel noticed that he went to _____'s room often. They forgot to close the door and were seen by her undressed. I do not accept this as credible. Although the claimant was young, at that time, homosexuality was against the law, subject to two to five years in prison and condemned by society.¹⁰ On a balance of probabilities, given the place and the time, it is unreasonable for the claimant and his older lover not to have been extremely careful and not to have carelessly forgotten to close the door. On a balance of probabilities, I find the claimant not to be a credible or a trustworthy witness. s.19(1)

The claimant was asked why he was not "kicked out" of school because the dean was told. The claimant testified that he was young and was told that he should stop doing it or he would be expelled. I do not accept this as credible. Homosexual acts were forbidden by law. It is not reasonable that a university dean would risk his or her career by not having both parties expelled and the police notified. It was not only the dean who allegedly knew about the homosexual act, but also the hostel superintendent. On a balance of probabilities, I find that the event of homosexual relations with _____ did not occur and the claimant not to be a credible or a trustworthy witness. s.19(1)

¹⁰ Exhibit R-1, RPD Information Package, March 2005, item 18.1, Response to Information Request, number MDA37623.E, August 3, 2001, p. 18.1.1.

The claimant alleged that he had a homosexual relationship with " , beginning in 2000, after concealing his homosexuality and marrying in 1984. In describing how he became involved with . the claimant testified that helped him to find merchandise for his business and the claimant took him out for lunch. During the course of the conversation, told the claimant that he was gay and the claimant then told . his story. I do not accept this as credible. Society was still homophobic in 2000 and hatred persisted of homosexuals, who, if they were known, could be beaten, dismissed from their jobs and denied state protection. It was not until 2003 that the state authorities would amend legislation to protect the human rights of gays and bisexual people." Therefore, on a balance of probabilities, I find that would not disclose that he was gay during the course of one lunch because it meant taking a very large risk of being publicly exposed and thus bring on himself the persecution which the claimant is alleging. On a balance of probabilities, I find the claimant lacks credibility.

The claimant alleged that he and were attacked by nationalists in of 2002 near 's apartment. When asked how the nationalists had found out they were gay, the claimant stated that he did not know. When asked if he and had walked in public holding hands, the claimant stated, "yes". When asked

" Exhibit R-1, item 18.9, p. 18.9.1; and item 18.1, Response to Information Request, number MDA37623.E, August 3, 2001, pp. 18.1.1-18.1.2.

why he would do this in a society that he knew was homophobic, the claimant replied that it was not always and that they did not think about it. I do not accept this as reasonable or credible. The claimant alleged that he was trying to hide his bisexuality from his wife. He acknowledged that his society was homophobic. At the time, he was forty nine and an educated business man who was working for a collective and had his own business.¹² On a balance of probabilities, given the above, the claimant had too much to lose to be publicly careless. On a balance of probabilities, I find the claimant lacks credibility and did not suffer the harm alleged. s.19(1)

In a written statement made in the claimant's handwriting, he stated that he had been threatened in Moldova by individuals who demanded a bribe, threatened his wife and family and burned his business. He and his wife decided that he would leave the country and she would hide with her parents. There was no mention of the claimant's problems due to his bisexuality.¹³ In the claimant's PIF, he claimed that his wife was attacked by unknown people due to his sexual orientation and that she was so afraid that she left him.

The claimant was asked about his wife's attack in 2003. He replied that it had to do with his sexual orientation and that he was asked for a large amount of money which he alleged that he could not pay. In oral testimony, he alleged that it was at the end of

¹² Exhibit C-1, q. 6 and 7.

¹³ Exhibit C-2, pp. 17 – 18.

or the beginning of . and that he was given one month to pay. He alleged that his wife was attacked on . He testified that his wife was attacked and the attackers attempted to rape her. It was pointed out to the claimant that in his written statement, he s.19(1) alleged that the attacks took place much later, after . The claimant testified that the person who provided the false Israeli passport told him not to write everything about who he is, that if he says that he is bisexual, he will be put in jail. I do not accept this as credible. The claimant travelled on a false passport, destroyed it and claimed refugee protection as a person from Moldova seeking protection.

During his interview, the claimant told the Immigration Officer (IO) that he was afraid of gangs.¹⁴ He wrote his claim in his own handwriting.¹⁵ The claimant had an interpreter who signed that he believed the claimant understood the nature and effect of the forms and made the declaration with the understanding that it is the same force as if made under oath. The claimant signed that his statement made to the IO was truthful, complete and correct and that he made the declaration conscientiously believing it to be true, and that it is the same force and effect as if made under oath.¹⁶ I do not accept as credible that the only thing the claimant was told not to put in his statement was the

¹⁴ Exhibit R-2, Immigration Officer Interview Notes, dated March 5, 2004.

¹⁵ Exhibit R-2, interpretation; Exhibit C-2, pp. 17, 18.

¹⁶ Exhibit R-2, p. 4.

allegedly real reason he was seeking protection. On a balance of probabilities, the claimant has, by his own testimony, stated that he was willing to lie under oath. On a balance of probabilities, I find the claimant not to be a credible or a trustworthy witness. On a balance of probabilities, I find the claimant added sexual orientation and the harm he suffered because of it as an embellishment to bolster his claim. On a balance of probabilities, I find the claimant lacks credibility and did not suffer the harm alleged.

The claimant was asked why he did not put the attempted rape of his wife in his written statement. He replied that he was stressed after being put in handcuffs and just wrote to write something. It was pointed out to the claimant that his statement was lengthy and detailed. In his PIF, the claimant stated that although he did not love his wife, they had a good relationship. Therefore on a balance of probabilities, an attempted rape would have been foremost in his mind when describing an attack on her. On a balance of probabilities, I find the claimant added the attempted rape as an embellishment to bolster his claim, and that he lacks credibility.

The claimant submitted a divorce decree, indicating that he and his wife were divorced on . of 2003.¹⁷ The claimant and his wife were living as husband and wife until her alleged assault in of 2003. Even if the claimant's wife began divorce proceedings immediately and under the best of circumstances, the divorce could not have

¹⁷ Exhibit C-2, p. 25.

taken place so soon.¹⁸ Therefore, on a balance of probabilities, I find the claimant lacks credibility and give the divorce no weight. On a balance of probabilities, I find the claimant submitted a false document in a deliberate attempt to mislead the Board. According to the Federal court, when a claimant is shown to have impeached his credibility by tendering a false document to the Board, this act alone is sufficient to impeach his entire evidence.¹⁹

Because I find the claimant lacks credibility, has submitted one false document, and because fraudulent documents are readily available from Moldova,²⁰ I give the claimant's medical reports no weight.²¹

The claimant submitted a psychological report.²² In it the doctor's opinion is that if the claimant had to return to Moldova, his current psychological functioning would deteriorate, that he suffers from symptoms of post-traumatic stress disorder and symptoms of depression. While I accept the doctor's diagnosis, I do not accept as credible the underlying facts upon which it was made. Therefore, on a balance of probabilities, I give the report no weight with respect to the claim.

¹⁸ Exhibit R-1, item 17.3, Response to Information Request, p. 17.3.39.

¹⁹ Osayande, Maxwell v. M.C.I. (F.C.T.D., no. IMM-3780-01), Kelen, April 3, 2002.

²⁰ Exhibit R-1, items 5.2, 5.3.

²¹ Exhibit C-2, pp. 30, 35.

²² Exhibit C-3, item 1.

Based on the above analysis, I find that there is not a serious possibility or reasonable chance that the claimant would face persecution for a Convention ground if he returns to Moldova. Therefore, the claimant is not a Convention refugee.

The panel then turned its mind to whether the claimant would be subject personally to a risk to his life or to cruel and unusual treatment or punishment or whether there are substantial grounds to believe that he would be subject personally to a danger of torture if he returns to Moldova. Based on the claimant's lack of credibility, the above analysis and the country documents, I find that on a balance of probabilities that there is no such risk. There is no evidence before the panel upon which a finding could be made of a risk of the danger of torture could be found.

Conclusion

Based on the above analysis and having considered all the evidence, I find the claimant, _____ not to be a Convention refugee and not to be a person in need of s.19(1) protection, and I reject his claim.

"Joanna Bedard"

Joanna Bedard

DATED at Toronto this 20th day of February, 2006.