

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 : MA4-00132

Private Proceeding
Huis clos

Claimant(s)

Demandeur(e)s d'asile

Date(s) of Hearing

February 22nd, 2005

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Videoconferencing heard in

Montréal, Québec

Fait par vidéoconférence à

Date of decision

June 6th, 2005

Date de la décision

Panel

M^c Luciano G. Del Negro

Tribunal

Claimant's Counsel

N/A

Conseil du demandeur d'asile

Refugee Protection Officer

N/A

Agent de la protection des réfugiés

[Documents Only]

Designated representative

N/A

Représentant désigné

Minister's Counsel

N/A

Conseil du ministre

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ORAL REASONS

The following is the Decision and Oral Reasons of the Refugee Protection Division (RPD). The tribunal has considered all the testimony and documentary evidence presented in these claims. The written Reasons will be completed and edited for syntax, grammar and references in order to ensure clarity and understanding, without altering the thrust or core of these Reasons.

I. INTRODUCTION

Mr. _____ aged thirty years old, is a citizen of Hungary. He initially claimed ^{s.19(1)} "Convention refugee" status by reasons of his Membership in a Particular Social Group. He alleges to fear persecution at the hands of homophobic compatriots and at the hands of his former fiancé because of his sexual orientation. The claimant also stated that he also feared for his life at the hands of people who had been involved in cigarette smuggling.

II. FACTS

The claimant initially stated that he feared for his life because of his sexual orientation at the hands of his homophobic compatriots and also at the hand of the father of his former fiancé. During the hearing, the claimant stated that his narrative as contained in his initial PIF, question 41, was completely fabricated. The claimant stated that the story was untrue. He pointed out that he left Hungary because of personal problems, mainly economic ones, and also because he at one point was somewhat fearful of the fact that he possessed information relating to criminal activities by some compatriots and Serbians involved in cigarette smuggling. The claimant also stated that he was never threatened, was never attacked, there was never any attempt to seek him out while he was in Hungary, nor was there any attempt to seek him out while he was in Canada and, furthermore, that he was not afraid to go back.

The claimant did point out that he has been in Canada for four and a half years, that he has seriously attempted to integrate into Canadian society, that he has never been arrested, that he has worked all of these years, and would like to remain in the country. The claimant points out that if he

were forced to return to Hungary, he would face economic hardship and problems of reintegrating into a society, which he has been absent from for close to five years.

III. DETERMINATION

The Refugee Protection Division (RPD) determines that the claimant is not a "Convention refugee" nor is he "a person in need of protection" according to Sections 96¹ and 97(1)² of the *Immigration and Refugee Protection Act (IRPA)*.

IV. ANALYSIS

The Refugee Protection Division (RPD), from the evidence adduced, has found that the claimant has not met his burden of proof and established that he indeed has a well-founded fear of persecution or is a person in need of protection in the event of his return to Hungary.

The claimant as pointed out in our introduction at the outset of his hearing, categorically stated that the story on which he based his refugee claim was untrue and fabricated. Indeed, he informed his lawyer of this situation a few weeks ago, and his lawyer decided not to represent the claimant during his hearing before the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). Therefore, on this basis, there is no choice whatsoever for the RPD but to deem that the claimant's claim is unfounded on the basis of his initial allegations.

Furthermore, the claimant did point out that one of the reasons why he left Hungary, other than his economic problems, was that he was aware of the illegal activities of certain of his compatriots as well as Serbians. These people had been involved in cigarette smuggling and they feared somehow that he knew too much and might prove to be dangerous for him. However, the claimant did point out that he was never threatened, that he was never assaulted, that there was never any attempt by these individuals to seek him out while he was in Hungary nor was there any attempt by these individuals while he was away to seek him out.

On this basis, and considering the fact that Hungary, as pointed out in the *U.S. Country Reports on Human Rights Practices 2003*,³ is a parliament and democracy, with a freely elected legislative assembly, that the Hungarian national police, under the Ministry of Interior as an oversight, has responsibility for law enforcement and maintenance of order within the country, that the civilian authorities maintained effective control over the security forces, although some

members of the security forces committed human rights abuses. However, the government generally respected the human rights of its citizens, though there were problems in some areas.

With respect to criminality, the Hungarian government seems to have put into place even a witness protection program. According to documentary evidence, though there is some corruption with the lower echelons of the police, the level of corruption is such that it does not undermine their effectiveness in the judicial system. In fact, the law provides for a right to a trial and the judiciary generally enforces this right. Furthermore, as it points out, there are new laws, which give prosecutors more executive powers in the previous regimes.

In short, what this points out is that there seems to be effective control by the state of its territory. Therefore, if the claimant upon his return would meet with some problems with some people whom he alleges might be somehow interested in him, though quite unlikely, given that his information is some five years old, the claimant does have an alternative, and this is to contact the state authorities, to contact the police, and to lay appropriate charges against these individuals. Everything in the documentary evidence does point to the fact that state protection would be available and forthcoming if the claimant were to request it.

As we pointed out above, with respect to the witness protection program, so on and so forth, it does exist. The police are effective. The forces are such that it is feared even though in some cases they use excessive force. Given that there is protection, the claimant's additional allegation does not lead us to believe that he is a person in need of protection. Furthermore, as we pointed out to the claimant, the problem he fears at the hands of some of the former associates is limited to his town.

Certainly these people might be able to locate the claimant elsewhere, if they so desired, but they have not done so in the past and there is nothing which leads us to think that they would do so in the future, and this more so if the claimant, as we pointed out, were to relocate in such a place as Budapest, away from the milieu where he comes from. The claimant is an educated young man. He is a skilled worker. He would have little or no problem relocating himself in Budapest.

V. CONCLUSION

In conclusion, for all of these reasons, the Refugee Protection Division (RPD) concludes that s.19(1) the claimant is not a "Convention refugee" nor is he a person in need of protection according to Sections 96⁴ and 97(1)⁵ of the *Immigration and Refugee Protection Act (IRPA)*.

M^e Luciano G. Del Negro

M^e Luciano G. Del Negro

June 6, 2005

Date

/kd/jcbo

¹ " 96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
(a) is outside each of their countries of nationality and is unable or, by reasons of that fear, unwilling to avail themselves of the protection of each of those countries; or
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country."

² " 97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care."

³ Tab 2.1. U.S. Department of State. 25 February 2004. "*Hungary*".

⁴ *Supra*, note 1.

⁵ *Supra*, note 2.