

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 : MA2-03920

Private Proceeding
Huis clos

Claimant(s)

Demandeur(e)s d'asile

Date(s) of Hearing

December 19, 2002

Date(s) de l'audience

Place of Hearing

Montréal

Lieu de l'audience

Date of decision

January 30, 2003

Date de la décision

Panel

Hélène Panagakos

Tribunal

Claimant's Counsel

M^cJack Y. Hendler

Conseil du demandeur d'asile

Refugee Protection Officer

Gerard Therrien

Agent de la protection des réfugiés

Designated representative

N/A

Représentant désigné

Minister's Counsel

N/A

Conseil du ministre

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These are the reasons for the decision of the Refugee Protection Division (RPD) with respect to the claim of Miss . The claimant is a citizen of Mexico who claims refugee protection as a "Convention refugee" on the grounds of her membership in a particular social group as a bisexual woman and also as a person who faces a risk to life or risk of cruel and unusual treatment.

ALLEGATIONS

The claimant alleges the following facts in her Personal Information Form (PIF).

She was born on . in , Mexico and she is single. She has fourteen years of education and has worked as a . since October 1993. The claimant came to Canada for the first time, as a student, from ! 2001 to 2001 and then returned back to Mexico.

The claimant alleges that after having studied at and returning back to Mexico, her problems began. The claimant had a relationship with a man by the name of

The claimant alleges was bisexual and she ran into problems when his partner, threatened to disclose on 2002, the claimant's bisexual tendencies. She further alleges that her bisexual tendencies became known to her co-workers and they in turn started to insult her and look at her in a diminutive manner. In ! 2002, she received an anonymous letter and then realized that her boyfriend's partner had been spying on her and had seen her with another woman (also her partner) on several occasions. She further alleges that started to visit her younger brother and told him that the claimant was bisexual. The claimant's brother would have then informed her parents. Furthermore, she alleges that would have also informed her employer, of the claimant's sexual orientation, who then fired her. Her family relationship deteriorated because they could not accept her sexual orientation. She further alleges that she was harassed and also received an anonymous letter. Knowing from her first trip to Canada that people with different sexual orientations have rights and are respected, she decided to leave her country for a second time on 2002, she arrived in Canada the ! day and claimed refugee protection on May 13, 2002.

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DETERMINATION

The panel determines that as the claimant did not provide credible and trustworthy evidence, she is not a "Convention refugee"¹ nor is she a "Person in need of protection"² for risk to life or unusual treatment or punishment.

ANALYSIS

The panel reviewed and examined all the evidence adduced at the hearing. It included the claimant's PIF, her oral testimony and the documentary evidence submitted by counsel and the Refugee Protection Officer (RPO).

The panel assessed the issue of credibility and found the claimant's testimony to be marked with contradictions, inconsistencies, omissions and discrepancies. The panel determines that the claimant was not a credible witness.

The claimant testified that if she were to return Mexico, she fears because her family would not accept her because of her sexual orientation and she would not be able to get a job. She testified that she started to fear for her safety in 2002. She testified that she took the decision to leave her country in 2002 after being told by her employer that her services were no longer needed because they did not want people like her. The claimant testified that she worked as a [redacted] since 1998, however she was confronted with her PIF (question 18) where she states that she would have started working as a [redacted] in 1993. Asked to explain this discrepancy, she could not give any satisfactory explanation and then adjusted her testimony to state that she did work as a [redacted] since 1993. Further discrepancies followed with respect to the [redacted] where she would have worked between 1993 to 1999. According to her oral testimony, she last worked for [redacted] and was fired. She testified that she worked at [redacted] from 1998. However in her PIF, she writes that she worked in that school as of [redacted] 2000. Confronted with these discrepancies, the claimant responded that she was confused. The panel draws a negative inference from the above discrepancies and inconsistencies, and does not find her statements trustworthy.

Questioned on the conversation that she alleges to have had with the director of [redacted] which led him to fire her, the claimant's testimony was extremely hesitant. She was

asked repeatedly to describe and give details on the content of that conversation and the type of insults that were made to her, according to her allegations, but the claimant could only state hesitantly that he told her that he did not know how people like that existed. She testified that in

2002, she discovered that her boyfriend's partner, had taken pictures of her and her female partner and had shown them to the director of where she worked, and this would have led to her getting fired. The panel notes that there is absolutely no mention made in her narrative (response to question 37 of her PIF) that her male partner's boyfriend showed any pictures to her employer. Confronted with this omission, the claimant was unable to give any reasonable explanation and the panel does not find her statements trustworthy. Questioned if she had any letter or evidence to submit with respect to her employment at the claimant responded that she did not have anything. The panel does not believe that it was unreasonable for her to have obtained such a document for the purpose of her hearing and draws a negative inference from her total lack of diligence to have obtained any such proof. In addition, the panel also draws a negative inference from the claimant's hesitant and evasive testimony on this central element and does not find her credible with respect to the issue of her employment.

The claimant testified that she would have discovered her bisexuality when she was sixteen years old. She testified that until 2002 she had never encountered any problems in Mexico due to her sexual orientation because nobody was aware of it. The claimant's testimony with respect to her relationship with her boyfriend was hesitant and not forthcoming. She testified hesitantly that she would have met him at unable to be precise with respect to when she would have met him, stating that she thought it was in 2001, unsure if it was in the month of She stated that she has had no news on since 2002. Later however, she adjusted her testimony stating that all she knew was that he was not ; at but he was still The claimant's hesitant and laborious testimony on this alleged relationship casts serious doubts in the panel's mind and does not find her statements trustworthy.

She testified that the person who would have provoked these problems for her would have been her partner's boyfriend, When questioned by the tribunal on this individual, the claimant's responses were not forthcoming and her knowledge on this man, who would have provoked her problems, was minimal. When asked about family name, the claimant

responded that she did not know it. When further questioned on this issue she testified that she had not asked her boyfriend about this man's family name because she did not want any more problems. The panel rejects her explanation, and does not find it satisfactory, particularly when she alleges that he was the reason that she had problems in her country. When questioned further on the plausibility of that statement, she simply stated that he had not harmed her physically. Confronted with her earlier testimony that [redacted] was the source of all her problems in Mexico, she then adjusted her testimony stating that that was not really so. When asked by the panel: "Would you have left Mexico if [redacted] had not done what he did to you?" The claimant clearly responded "No". Confronted then with her inconsistent and confusing testimony on this central element of her claim she then stated that [redacted] was part of the reason that she left her country and the other part was her family and job. The panel draws a negative inference from all these inconsistencies as well as from the claimant's hesitant and laborious testimony on this issue and does not find her statements trustworthy.

Questioned about the anonymous letter that she alleges to have received, she first testified that it was in Mexico, and then she adjusted her testimony to state that she had thrown it out. Asked what was the content of that anonymous letter, her testimony on that issue was not forthcoming, and laborious, stating simply that she could not remember exactly what was written in it. Then hesitantly, unable to be precise and direct, the claimant responded that it mentioned something to the effect that she better leave now that everyone knows. The claimant testified that she did not denounce or complain to the authorities about this letter. The panel draws a negative inference from the claimant's hesitant and laborious testimony on this central element of her claim and furthermore cannot but seriously question her subjective fear with respect to her allegations of fear for her life when she does not take the minutest step to bring this letter to the attention of the authorities. All of the above undermines her credibility.

The claimant testified that she had relationship with a woman by the name of [redacted] from 2001 to [redacted] 2001. Then she arrived in Canada for the first time and took English courses at [redacted]. The claimant testified that after returning back to Mexico, [redacted] was threatening to reveal to people her relationship with [redacted]. Questioned on why would he want to do that since she had ended that relationship a year ago, she then adjusted her testimony to state that after returning to Mexico from Canada in 2002, she resumed her relationship with [redacted]. The panel

draws a negative inference with respect to these inconsistencies and adjustments and does not find her statements trustworthy.

The claimant was confronted with exhibit A-13, her front end interview, conducted on May 23, 2002, where she states that her problems began in 2001 and that she would have received personal threats from her former boyfriend. When asked in that interview about the type of threats she received, she responded that her boyfriend was going to disclose her sexual orientation and this way she would not be able to find a job in Mexico. Confronted with these statements that are contradictory to her oral testimony, the claimant was unable to give any reasonable explanation. The panel draws a negative inference from these contradictions which undermine her credibility.

Questioned with respect to her delay to claim refugee status, the claimant testified that she first heard of the possibility of asking for refugee protection when she first came to Canada in May 2001. Asked then to explain when she returned to Canada for a second time on April 22, 2002, why did she wait until May 13, 2002 before claiming refugee protection, the claimant responded that she was not a hundred percent sure that she wanted to claim refugee protection. The panel draws a negative inference from this delay and does not find the claimant's allegations of fear for her life compatible with her actions.

The burden of proof lies with the claimant. In this particular case, the claimant was not able through her testimony and proof to acquit herself of her burden of proof. Given all of the above-mentioned reasons the panel did not believe her story.

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CONCLUSION

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For all of the above mentioned reasons, the panel determines that the claimant Miss _____, is not a "Convention refugee", as defined in section 96 of the *Immigration and Refugee Protection Act*, nor is she a "Person in need of protection" in accordance with section 97 (1) a) and b) of the same Act. The panel equally determines that pursuant to article 107 (2) of the same Act there was no credible basis.

*Hélène Panagakos***Hélène Panagakos****January 30, 2003****Date**

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- 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."