

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 : MA3-05272

Private Proceeding  
Huis clos

<b>Claimant(s)</b>		<b>Demandeur(s) d'asile</b>
<b>Date(s) of Hearing</b>	July 22, 2004	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Montréal, Québec	<b>Lieu de l'audience</b>
<b>Date of decision</b>	October 26, 2004	<b>Date de la décision</b>
<b>Panel</b>	Hélène Panagakos	<b>Tribunal</b>
<b>Claimant's Counsel</b>	N/A	<b>Conseil du demandeur d'asile</b>
<b>Refugee Protection Officer</b>	Jocelyne Sénécal	<b>Agent de la protection des réfugiés</b>
<b>Designated representative</b>	N/A	<b>Représentant désigné</b>
<b>Minister's Counsel</b>	N/A	<b>Conseil du ministre</b>

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These are the reasons for the decision of the Refugee Protection Division (RPD) with respect to the claim of Mr.

The claimant is a citizen of Costa Rica who claims protection as a "Convention refugee"<sup>1</sup> and also as a "person in need of protection"<sup>2</sup>. The claimant indicated to the tribunal that he wished to proceed without the services of a lawyer. Before commencing with the hearing, the claimant was given the necessary time with the Refugee Protection Officer (RPO) to have his rights explained to him as well as the procedure.

#### ALLEGATIONS

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

He left his country on \_\_\_\_\_, 2002, transited through the United States and arrived in Vancouver on January 25, 2002. The claimant asked for refugee protection in Canada on June 9, 2002, and he submitted his PIF on August 14, 2002. He alleged in his initial narrative, (question 41 of his PIF) P-1, that he was asking for refugee protection in Canada based on his sexual orientation because he is a gay and bisexual man, and in Costa Rica he faces discrimination. In that narrative he describes the harassment and abuse that he was subjected to in Costa Rica because he was gay and bisexual.

On June 30, 2004, the IRB received however in the claimant's list of exhibits, his amended narrative which was labelled under P-1a. In that amended narrative he declares that his narrative written in July 2002 is not correct. The claimant indicates in that amended version of his PIF, that after having consulted an immigration consultant, he was told that he creates stories for people who do not fall into any of the required categories of the Convention definition and he recommended to the claimant to add in his PIF something about sexual orientation. The claimant, afraid that he may be returned back to his country, decided to accept this consultant's recommendation. The claimant alleges that he did not feel good about lying, and after he and his girlfriend moved to Montreal, he went to an Immigration office and was advised that he could amend his PIF himself before his hearing. In his amended narrative, the claimant alleges that he fears returning to Costa Rica because his father will kill him and the authorities cannot protect him. He alleges that his father is an alcoholic who is violent and has abused him, his mother and his siblings. Due to the physical abuse that he was subjected to, in \_\_\_\_\_ 2000, the claimant went to see the police. The claimant succeeded with the help of the authorities and the statement given by his mother and

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sisters, to have a protection order obtained for his mother. He alleges however that despite that protection order, his father did return to the house, and the authorities would have shown up two hours later. The claimant alleges that despite the intervention of the authorities, that was not enough to protect them from his abusive father. He further alleges that despite the protection order, which he did not respect, he breaks the law and the police do not put him in prison. The claimant alleges that his father is trying to kill him because he is protecting his mother and sisters. His mother had to change her residence on four occasions since the claimant came to Canada. The claimant left his country in 2002 and arrived in Canada. He claimed refugee protection in July 2002, and on 2003, he was married to a Canadian citizen.

#### ANALYSIS

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

The claimant testified that he is asking for refugee protection in Canada because he cannot get protection in Costa Rica, based on the abuse that he has been subjected to from his father who is physically and emotionally abusive towards him, his sisters and his mother. The claimant testified that he has been subjected to this abuse from a young age and he decided to leave his country on 2002. He indicated that he chose to come to Canada based on information that he had acquired from tourists that he had met in Costa Rica two years ago.

The claimant testified that when he left his country, his intention was to remain in Canada. However, he did not know how to go about it. He explained that he first heard about the possibility of claiming refugee protection in June 2002, and he finally did so on July 12, 2002. The panel draws a negative inference from this delay to claim, given that the claimant could have attempted to seek information from Immigration Canada with the services of a Spanish-speaking interpreter or through a Spanish NGO here in Canada, if he truly feared for his life. He explained that he submitted his first narrative, found in P-1, on August 14, 2002, indicating that he was gay and bisexual. This story was concocted based on what an immigration consultant by the name of had told him in order to have better chances of being accepted. He finally decided to amend his PIF, indicating that he was neither gay nor bisexual and submitted a new narrative found

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under P-1a on June 30, 2004. The claimant explained that he was confused, fearful and therefore accepted to lie out of fear of being sent back to Costa Rica. The panel draws a negative inference from these adjustments and cannot but question the claimant's credibility.

The claimant testified that he fears his father and the owner of a village bar, because this particular individual along with his father would have beaten him and his mother on January 2002. The claimant explained that he went to the police, he filed a report; however, he stated that he did not have a copy of it. Asked to explain the reasons for the absence of this document, he indicated that his mother would have moved on four or five occasions and it was not easy to obtain it. The panel however underlines that he was able to get other documents. The claimant testified that his father was arrested in 2001, and his mother was able to obtain a protection order based on what the claimant had declared and reported. The claimant did not submit any copy of this protection order that would have been issued in 2001, or a copy of any police report. The panel draws a negative inference from the absence of these documents, and the panel was not satisfied with the claimant's explanations as to why he did not make attempts himself, to either write or call the authorities in order to obtain copies. The claimant, under P-19, filed a protection order issued in 2002. He indicated that his mother would have gone to trial; however, he had nothing to submit in terms of evidence with respect to those court proceedings.

The claimant was questioned at length by the panel and the RPO on his statements that the police in Costa Rica were not able to give him adequate and effective protection. The tribunal stressed that based on his written and oral testimony it appears that the police had taken action. The claimant however then gave as an example when he called 911 and, on one occasion, they took two hours to come. Insofar as state protection is concerned, except in situations where the state is in complete breakdown, the state must be presumed capable of protecting its citizens. This presumption can be rebutted by clear and convincing evidence of the state's inability to protect. Furthermore, jurisprudence stipulates that protection must be adequate and not perfect. In this particular case, given the documentary evidence, the claimant has not rebutted the presumption of protection.

The panel retains from the documentary evidence<sup>3</sup>, and particularly the US Department of State Report, the following:

“Costa Rica is a long standing stable constitutional democracy. The government generally respected the human rights of its citizens and the law and judiciary provided victims means of dealing with individual instances of abuse.”

Furthermore, it states:

“The ombudsman’s office serves as a recourse to citizens who have complaints about violations of their civil and human rights and about deficiencies in public and private infrastructure. It investigates complaints and when appropriate initiate suits against officials. The Costa Rican Commission for Human Rights, the Commission for the Defence of Human Rights in Central America, the family and friends of political prisoners of Costa Rica, monitor and report on human rights, as does the ombudsman’s office. Legislative Assembly elects the ombudsman for a four-year renewable term. The Ombudsman’s office is part of the legislative branch enjoying a high degree of independence from the executive branch. The law provides for the functional, Administrative and judicial independence of the Ombudsman’s office.”

According to the US Department of State Report, it indicates that the 1996 law against domestic violence, established precautionary measures to help victims. The authorities incorporated training on handling domestic violence cases into the basic training course for new police personnel. The Domestic Violence law requires public hospitals to report cases of domestic violence against women. It also denies the perpetrator possession of the family home in favour of the victim. The Public Prosecutor, the police and the Ombudsman, all have offices dedicated to this problem.

According to further documentary evidence<sup>4</sup>, it talks about numerous organizations helping women who have suffered physical, psychological or sexual violence. There are organizations that help victims process complaints, obtain official protection, legal, psychological and medical assistance. In addition, it gives a description of the work that these organizations accomplish and who they are accountable to, for example either the Office of the Public Defence or the Ministry of Justice and Pardon or to the Ministry of Government in coordination with National Women’s Institute. That documentary evidence clearly describes the numerous recourses and the serious work that has been done by the Costa Rican government and the authorities to fight domestic violence and to give protection and recourses to victims of domestic violence.

The burden of proof lies with the claimant. In this particular case, given the documentary evidence on state protection in Costa Rica and the claimant’s lack of credibility, he was not able through his proof and testimony to acquit himself of his burden.

**CONCLUSION**

For all of the abovementioned reasons, the panel determines that the claimant, Mr. . s.19(1)  
 is not a "Convention refugee" as defined in section 96 of the  
*Immigration and Refugee Protection Act*, nor is he a "person in need of protection", in accordance  
 with section 97 (1) a) and b) of the same *Act*.

*Hélène Panagakos*

**Hélène Panagakos**

**October 26, 2004**

**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."
- 3 Exhibit A-1, Montreal Binder on Costa Rica, 26-08-03, section 4.1, Country Report On Human Rights  
 Practices, DOS report, March 2003.
- 4 Exhibit 6.2, Response to an Information Request CRI 132984.E, November 18, 1999.