

Commission de l'immigration et du  
statut de réfugié

Section de la protection des réfugiés



Immigration and Refugee Board

Refugee Protection Division

No. dossier SPR / RPD file #: MA3-08209

Huis clos  
Private Proceeding

<b>Demandeur(e)s d'asile</b>		<b>Claimant(s)</b>
<b>Date(s) de l'audience</b>	March 12 <sup>th</sup> , 2004	<b>Date(s) of Hearing</b>
<b>Lieu de l'audience</b>	Montréal, Québec	<b>Place of Hearing</b>
<b>Date de la décision</b>	September 9 <sup>th</sup> , 2004	<b>Date of decision</b>
<b>Tribunal</b>	Jean Paul Pelletier	<b>Panel</b>
<b>Conseil du demandeur d'asile</b>	M <sup>c</sup> Anthony Karkar	<b>Claimant's Counsel</b>
<b>Agent de la protection des réfugiés</b>	Lyne Gauthier	<b>Refugee Protection Officer</b>
<b>Représentant désigné</b>	N/A	<b>Designated representative</b>
<b>Conseil du ministre</b>	N/A	<b>Minister's Counsel</b>

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## I. INTRODUCTION

Mr. [REDACTED] is a citizen of Mexico. His request for refugee protection is based on section 96 and 97 (1) (b) of the *Immigration and Refugee Protection Act of Canada (the Act)*.

## II. ALLEGATIONS

The claimant testified and wrote in his Personal Information Form (PIF) how he was abused by his acquaintances and his father because of his bisexuality. He explained having struck a relationship with a girl, but when her fiancé-boyfriend found out about his bisexuality, he was beaten and threatened with serious consequences should he continue seeing the girl.

In his narrative, the claimant stated that he was shunned by classmates in high-school due to his alleged sexual tendencies. This caused him to change schools on at least four occasions between 2000 and 2003. Finally, the decision was taken to leave Mexico, along with his two cousins, to come visit Canada. It was when his cousins met another Mexican on the street, who is said to have informed them of the refugee protection possibilities, that they all three decided to seek Canada's protection.

## III. ANALYSIS

The claimant submitted a valid passport in support of his identity. The tribunal is satisfied that he is indeed whom he contends to be as regards his name and country of origin.

The hearing for this claim was held on March 12, 2004. During testimony, the claimant explained in detail how his father, a citizen of the United States of America (USA), went to Mexico when he was approximately thirty years of age, and married the claimant's mother, a Mexican national, sometime thereafter. It was then important to establish whether or not this claimant could seek and obtain access to the American citizenship by mere formality based on his father's citizenship to that country. The claimant was asked whether or not he could obtain USA citizenship for the reasons mentioned. His answer was that he believed it was possible. Because of the said possibility, the Refugee Protection Officer (RPO) discussed the information found in exhibits A-3

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and A-4. The latter is explicit as regards possibilities for the claimant to live and obtain protection in the USA.

- a) At section 1401 (US Code Collection) – **Nationals and citizens of United States at birth**, the opening statement is: “The following *shall be* (emphasis added) nationals and citizens of the United States at birth: (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than five years, at least two of which were after attaining the age of fourteen years . . .etc.
- b) Testimony offered by the claimant confirmed that his father was indeed born in the USA; his father had not lost his citizenship to that country and had only left the USA as a thirty year old adult. Moreover, he was only a resident as opposed to a citizen of Mexico.
- c) Explanations were given to the claimant that it is his burden to demonstrate that no other country, to which he has legal and citizenship or residency access, could reasonably offer him the protection he seeks.
- d) A three month delay was granted the claimant so that he may initiate the procedure to gain access to the USA. Both exhibits A-3 and A-4 show that it is a mere formality for this claimant to live in the USA, but that formality must nonetheless be made by himself or someone on his behalf. During his testimony, he was clearly asked if he believed he could obtain USA citizenship because of his father’s birthrights. His answer was: “Oui, je crois que oui” (Translation: Yes, I do believe I can).

The grounds of persecution based on section 96 of the *Act* were not further discussed in the hearing, mainly because the claimant admitted to know he could gain citizenship in the USA by following a mere formality. Consequently, he could dispel his fear of living in Mexico by going to the USA. He testified that he had no fear of living in the USA. The same conclusion is reached with regard to his fear under section 97 (1) (b) of the *Act*.

The tribunal wished to give this claimant every opportunity to clarify his citizenship issue with USA authorities. The three-month delay which was granted to him was extended to add an additional month so that he may inform this tribunal of problems encountered, or to request that his

claim be pursued against Mexico because he could not obtain the USA citizenship. Should that be the case, his burden would have been to give the tribunal the reasons why he had been refused. This procedure was explained to him at the hearing. The tribunal has not received any information from this claimant since the date of the one and only hearing. The information on file, and the testimony he delivered at his hearing in March 2004, all show that this claimant is aware of his possibilities to gain access to the USA. He has not shown, with any evidence, that he could not access the USA or that he fears to live in that country.

#### IV. CONCLUSION

For these reasons, the claim is rejected.

*Jean-Paul Pelletier*

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Jean Paul Pelletier

September 9<sup>th</sup>, 2004

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Date

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