

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 : MA3-08577

Private Proceeding
Huis clos

Claimant(s)		Demandeur(e)s d'asile s.19(1)
Date(s) of Hearing	April 2 nd , 2004	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	May 11 th , 2004	Date de la décision
Panel	Jeannine Beaubien-Duque	Tribunal
Claimant's Counsel	M ^c Hart A. Kaminker	Conseil du demandeur d'asile
Refugee Protection Officer	Deposited Documents	Agent de la protection des réfugiés
Designated representative	N/A	Représentant désigné
Minister's Counsel	N/A	Conseil du ministre

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The claimant, _____ a citizen of Peru, claims protection on the grounds of her sexual orientation and her fear of return to her country. She bases her claim on Sections 96¹ and 97²(1) a) and b) of the *Immigration and Refugee Protection Act (IRPA)*.

THE FACTS ALLEGED

The claimant who is thirty years of age, was born on _____ in the city of Trujillo, La Libertad. Her parents and one sister live in Peru and one brother is a permanent resident in Canada. The claimant boasts eighteen years of education, six of which were spent at the University _____ in _____. The claimant is specialized in _____ and _____ her _____ from _____. _____ as a part time _____ From _____, she worked at the same institution as an _____. She left her country on _____ and arrived in Canada the same day. She claimed refugee status _____ months later, on November 26, 2002.

The claimant alleges she is bisexual and a lesbian. At the beginning of 1997, when she was _____ at the _____, she met a young woman called _____ one of her _____, with whom she developed an intimate relationship. They were together all the time and their romance was not a secret. Their relationship lasted for three years. However, one day in _____ r 1999, the claimant caught her in bed with a man. The claimant threw them both out of her apartment. Her girlfriend fell down the stairs as she fled and injured her face in the process. The following day, her friend's boyfriend went to the _____ where the claimant worked and threatened her with disclosing her homosexual past. The claimant alleges that she would have lost her job and her reputation.

In _____ 1999, the claimant was visited at _____ by two men from the secret services who told her they came from Lima and had received a complaint from _____, her ex girlfriend, accusing her of having beaten her with a stone. They asked her for 1000\$ US and gave her twenty-four hours to pay. The claimant paid the men and soon found herself caught paying extortion on a regular basis because of the threats she was receiving.

In _____ 2000, one year later, the claimant was still paying the men some 400\$ US every second month. One day, they attacked her with a sharp knife to her throat and threatened to kill her

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and asked her to pay them 5000\$ US. After beating her up on the arms and legs, she finally accepted to gather the money. She went to the bank to ask for a loan on The bank manager was her friend and became her lover. Their relationship lasted until , 2001.

Two days later (.) the claimant alleges that the security police picked her up on the street and told her she had forty-eight hours to give them 8000\$ US or she and her family would suffer the consequences. When the claimant found out that she could apply for a visa to participate in the World Youth Day in Toronto and see the Pope, she decided she would take some holidays for a while and return to Peru after. The claimant alleges that if she returns to her country, her life would be in danger.

ANALYSIS

The tribunal examined the claimant's story as presented in her PIF, her testimony at the hearing as well as her declarations made to Immigration agents when she claimed refugee status. The tribunal took into consideration the documentary evidence on the socio political situation in Peru as well as the situation concerning homosexuals and lesbians in the country. It has concluded that the claimant is not a "Convention refugee"³ nor is she a "person in need of protection"⁴ for the following reasons:

Identity:

The claimant entered the country with a passport⁵ she obtained from the authorities of her country a few days prior to her departure. Her passport also contained a Canadian visa issued to her on 2002. The tribunal has no reasons not to consider the documents as authentic and, therefore, accepts that the claimant is a citizen of Peru.

Credibility:

On the other hand, the tribunal found many contradictions, implausibilities and important omissions between the claimant's written story and her testimony at the hearing which considerably affected her credibility. The answers she gave were not deemed satisfactory and her testimony on the whole was not found to be trustworthy. At the hearing, the claimant gave quite a different version of her story than in her PIF frequently adding important details which should have been mentioned in her narrative as well as mentioned to Immigration officers when she claimed refugee status. The claimant was not found credible on a general basis.

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Asked when she decided to leave the country, the claimant said her life was in danger since 1999. But, she explained, she could not leave earlier because she did not have any opportunity to come to Canada. The tribunal underlined that if her life was in danger, Canada was not the only place she could go. The claimant repeated that she did not have any opportunity to find a new life elsewhere. The tribunal considers that her delay in leaving the country for two and a half years, if indeed her life was in danger during that time, undermines her subjective fear and her credibility.

When asked whom she feared exactly, the claimant said she feared the Secret police at the

The tribunal noted that in her narrative, the claimant alleged that the two men from the secret police that went to her office at the came from Lima. The claimant did not clarify this point. She added she was persecuted because she was a lesbian and that her life was threatened. Pressed for more details about the threats, she added that her friend was the daughter. The tribunal noted that this important detail was not indicated in her narrative. The claimant continued adding more details saying that the and his daughter were behind the blackmail. Pressed again for more details about the behaviour regarding her work and her contracts, the claimant said that he often summoned her to his office and threatened to terminate her contracts. However, she admitted he never did so and that she continued working until her departure in 2003.

Asked why she would be blackmailed if the relationship was over, the claimant repeated that it was because she was a lesbian and that they were going to inform everyone. The tribunal noted that, in her story, the claimant wrote that all her at were aware that she and her girlfriend were lesbians because they lived together and went everywhere together. Asked to explain, if this was the case, why would the expose his daughter as well by blackmailing the claimant and threatening to reveal her homosexuality. The claimant was at a loss for any satisfactory explanation and repeated she was being persecuted because she was a lesbian. The claimant's vague answers and the important additions at the hearing concerning her girlfriend's father, the of the where she was seriously undermined her credibility and shed doubt on her story as a whole.

On the question of State protection, when asked whether she reported the extortion to anyone, the claimant said she tried to file a complaint to the police but that they would not take it. Again, the tribunal noted that the claimant omitted to mention this in her narrative. Asked who and

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what she denounced to the police, she answered the blackmail and those who were behind it. Again, the claimant avoided answering the question directly and gave vague and unconvincing replies. The omission and the vague explanations further undermined her credibility. At the hearing, the tribunal accepted one document⁶ presented in English from the claimant's employer, the [redacted], which lists the claimant's uninterrupted periods of [redacted] during 5 ½ years, from 1996 to [redacted] 2002. Had the claimant truly been persecuted by the [redacted] of the [redacted] for 2 ½ years, from 1999 until her departure in [redacted] 2002 because of her sexual orientation, and had her life and safety been at risk because of the blackmail and the extortion, she could have left and sought refuge elsewhere. Her explanation that she could not find work in another [redacted] is not sufficient considering her allegations that her life was threatened. Her behaviour is not compatible with that of someone whose safety is truly at risk. The tribunal does not believe her story and does not find her credible.

Moreover, when asked whether she had ever thought of contacting any gay/lesbian help groups in Lima, for example, the claimant said she did not know of any. Here again, the claimant's ignorance on this matter further marred her credibility, especially given her personal situation as a [redacted] and a [redacted] specialist. Documentary evidence shows that in Peru, and in Lima its capital, there are active gay and lesbian groups which are also reachable on their websites⁷. The gay/lesbian scene in Lima is small but active. Although the country is staunchly conservative on these issues, homosexuality is not illegal in Peru. Homosexual acts, in private and between consenting adults, are not illegal. The city of Lima has gay/lesbian bars and club as well as gay hotels. The city held its first gay parade in 1997 and there are several LGBT organisations including the Homosexual Movement of Lima (MHOL), founded in 1983⁸. The claimant's ignorance and inability to comment about this information as well as the other points mentioned above leads the tribunal to conclude it finds no credible basis to believe that the claimant is a lesbian and that she was persecuted for this reason.

Finally, questioned as to how the claimant managed to obtain a Canadian visa from Canadian authorities in Lima⁹ who verified her earnings and her savings, if, as she alleges, the blackmailers made her empty her account constantly leaving her without a penny, the claimant was at a loss for an answer. The tribunal concludes that the claimant presented the tribunal with a fabricated story and finds her testimony on the whole to be completely untrustworthy.

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CONCLUSION

For these reasons, and having found that the claimant was not credible on a general basis, the tribunal concludes that she is not a "Convention refugee" nor a "person in need of protection".

Having found the claimant not credible on a general basis, the tribunal does not believe that she would be subjected to any cruel and unusual treatment should she return to her country.

The tribunal, consequently, rejects her claim.

Jeannine Beaubien-Duque

Jeannine Beaubien-Duque

May 11th, 2004

Date

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¹ The Immigration and Refugee Protection Act, S.C. (2001), chap. 27, provides the following definition:

“ 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 The *Immigration and Refugee Protection Act*, S.C. (2001), ch. 27, reads in part as follows:

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 *Supra*, Note 1.

⁴ *Supra*, Note 2

⁵ Exhibit -A-2 : Immigration Documents, Passport issued in Lima on

⁶ Exhibit P-1 : List of contracts at the Trujillo, 18.02.04.

⁷ Exhibit A-3 : Peru National Documentation Package, March 2004. PER38917.F, 13.05.02. PER41826.E, 05.08.03.

⁸ *Idem*.

⁹ Exhibit A-2 : Immigration documents, Claimant's Visitor's Visa Application, 2002.

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