

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 : CA4-00680/CA4-00733/CA4-00734

Private Proceeding  
Huis clos

Claimant(s)

Demandeur(e)s d'asile

Date(s) of Hearing

April 26, 2005

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Videoconferencing heard in

Calgary, Alberta

Fait par vidéoconférence à

Date of decision

May 18, 2005

Date de la décision

Panel

Marnie Armstrong

Tribunal

Claimant's Counsel

El-Farouk Khaki

Conseil du demandeur d'asile

Refugee Protection Officer

Not Attending

Agent de la protection des réfugiés

Designated representative

Représentant désigné

Minister's Counsel

NIL

Conseil du ministre

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The claimant, ) is a citizen of Mexico and claims protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act.

Her son, ( and daughter, - - - - , allege a well-founded fear of persecution by reason of their membership in a particular social group defined as family and base their claims on that of their mother.

The principal claimant was confirmed as designated representative for the minor claimants.

### ALLEGATIONS

The claimant alleged she has a well-founded fear of persecution by reason of her membership in a particular social group defined as women fearing gender-based persecution and her sexual orientation.

The claimant was married in 1985 and had two children. Both children were born in France while the claimant and her husband lived there from 1992 until 1996. The panel did not address the possible dual citizenship of the minor claimants as it was not an issue in reaching a decision in this claim. The claimant had her first encounters with women while in France. The claimant began a relationship with a female : when she returned to Mexico. In

2001, the claimant and her friend were physically involved in their car when two police approached. The police were rude and demeaning about the women's sexuality. The claimant was sexually abused while her partner was forcibly restrained. Two weeks later, the claimant received a phone call from one of the police demanding she pay one thousand pesos. She agreed to the demand and met the men who insulted her and took the money. The extortion was repeated two more times.

In 2002 her husband left Mexico to work in Canada and the claimant was to follow with the children, which she did on February 4, 2002.

While in Canada, the claimant told her husband about her relationship with the : . On 2003, her husband and children returned to Mexico. Her husband told the claimant that she would be a bad example for the children.

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The claimant stayed in Canada because she did not want to face the persecution as a result of her lesbianism. She fears police and Mexican society in general. She fears her children will suffer because she is a lesbian and that they possibly could be kidnapped.

The background information taken by immigration officials indicate that the claimant's children came to Canada for a visit on . . . 2003 and their claim were initiated by their mother on August 26, 2003.

#### **DETERMINATION**

The panel finds that the claimants are not Convention refugees. In addition, the panel finds that the claimants are not persons in need of protection in that there are no substantial grounds to believe that their removal to Mexico will subject them personally to a danger of torture or to a risk of cruel and unusual treatment or punishment. There is a viable internal flight alternative in Mexico City, in the Federal District, where there is adequate state protection for them at this time. The availability of an IFA and adequate state protection applies to all three grounds of protection.

#### **ANALYSIS**

The claimants' identities as nationals of Mexico were established by testimony and the supporting documentation filed including their passports.

The panel notes that there was no independent evidence presented concerning the claims of the minor claimants. The principal claimant speculated that they would be persecuted by reason of their relationship to her. There was no evidence of any mistreatment at the hands of their father and the children had been residing in Mexico with their father until their 2003 visit to Canada. The principal claimant indicated in her PIF narrative that she knew her husband could properly provide for the children. The panel finds the following facts problematic. The principal claimant is still married to the minor claimants' father and although she alleged they were separated, there was no reliable documentation confirming her testimony or the custodial arrangements for the children. The minor claimants came to Canada to visit their mother and although the principal claimant testified that her husband knew about their claim, understood the reasons and approved of her actions, there was no documentation obtained from their father confirming his knowledge or approval of their intent to make a refugee claim. The panel finds on a

balance of probabilities that these two minor children can reside without risk of persecution or harm with their father, a custodial parent, in Mexico at this time. They are not Convention refugees or persons in need of protection.

In the alternative, because the children have based their claims on that of their mother, the following analysis applies to all three claimants.

Having concluded through the following analysis that an internal flight alternative (IFA) is available to the claimants, the panel has not made any finding in relation to nexus or the well-foundedness of the claimants' fear of persecution or degree of harm feared in Tamaulipas.<sup>1</sup>

The claimant spent the first fifteen years of her life in Mexico City and her Personal Information Form (PIF)<sup>2</sup> indicates that she lived in Mexico City from 1990 to 1992. Her difficulties with police occurred in Tamaulipas. The panel finds that it would not be unreasonable for the claimant to relocate to Mexico City and also finds that there is adequate state protection for her there as a woman, a woman fearing gender related persecution and as a lesbian.

Mexico is a federal republic composed of thirty-one states and a federal district. The Constitution provides for the right of freedom of movement within the country, and the Government generally respected the right in practice.<sup>3</sup> The country is about three times the size of Texas and has a population of close to one hundred million.<sup>4</sup> A yearbook indicates that there are about ten cities with populations of over one million.<sup>5</sup>

The principal claimant testified that they could not relocate because there are a lot of problems for gay people everywhere. She added that the government cannot control the people and that Mexico is a very dangerous place. She testified that there is a huge difference between Canada and Mexico. In Canada people accept her and in Mexico she could not be "what she was."

The panel consulted the Chairpersons Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.<sup>6</sup>

The panel then applied the two-pronged test.<sup>7</sup>

Is there a serious possibility of the claimant being persecuted or subjected to a danger of torture or to a risk of cruel and unusual treatment or punishment in the IFA location?

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The claimant was abused by two policemen in [redacted] in [redacted] 2001 when discovered with her lover. She left Mexico on [redacted] 4, 2002. Given the passage of time, the panel finds that those who abused the claimant would have no interest in the claimant at this time and therefore would not pursue her to the internal flight alternative location. The claimant acknowledged that if she moved to Mexico City she would not fear the same police who abused her in [redacted]. She explained that it was the police in general that she feared, police with the same "mindset and needs." She also feared anti-gay citizens.

She also fears that once people discovered that she is a lesbian, they would mistreat her children and they may be kidnapped, extorted or generally mistreated. The panel finds the fears expressed by the claimant to be speculation.

The claimant added that she was traumatized by her experience with the police in [redacted] and cannot forget the incident and has nightmares and therefore cannot return to any location in Mexico. The panel acknowledges that the police in [redacted] acted in a horrible and inexcusable manner; however, there was no reliable objective evidence such as a psychological assessment to corroborate the principal claimant's emotional or psychological state.

The panel finds that there is adequate state protection in the internal flight alternative location, Mexico City.

The panel first cites *Villafranca*.<sup>8</sup>

No government that makes any claim to democratic values or protection of human rights can guarantee protection of all of its citizens at all times. Thus, it is not enough for a claimant to merely show that the government has not always been effective at protecting persons in his particular situation.

Terrorism is a scourge afflicting many societies today; its victims do not become Convention refugees simply because their governments have been unable to suppress the evil, where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims are unable to avail themselves of such protection.

The panel consulted the documentary evidence.<sup>9</sup>

Mexico is a federal republic composed of thirty-one states and a federal district, with an elected president and a bicameral legislature. In July 2000, voters elected a president in elections that observers judged to be generally free and fair. In July 2003, the elections were judged

fair and free by observers. Voting is the right and duty of any citizen over the age of eighteen.<sup>10</sup> The judiciary is generally independent; however, on occasion, government authorities, particularly at the state level, influenced it. Corruption, inefficiency, impunity, disregard of the law, and lack of training were major problems. The Government generally respected the human rights of its citizens.<sup>11</sup>

In 2003, the Attorney General's office restructured its organization to elevate the director of the human rights office to a Deputy Attorney General; however, the Under-Secretariat for Human Rights and Democracy was eliminated as of September 2003, which domestic and international human rights organizations viewed as a diminishing interest in a human rights agenda by the Government. The Office of the U.N. High Commissioner for Human Rights presented the President with an analysis of the human rights situation in the country. President Fox then commissioned a study in 2000, and promised to implement all the UNHCR recommendations.<sup>12</sup>

Human Rights Watch<sup>13</sup> states that Mexico's human rights problems derive largely from the shortcomings of its criminal justice system. President Vicente Fox has repeatedly promised to address these problems. Halfway through his six-year term, Fox remains far from this goal. The documentary does state that his two main human rights initiatives—the creation of a special prosecutor's office to investigate past abuses and a cooperative agreement with the United Nations have opened a window of opportunity for progress.

A wide variety of domestic and international human rights groups operate largely without government restriction, investigating allegations of human rights abuses and publishing their findings on human rights cases. Government officials were often cooperative and largely responsive to their views and the documentary evidence indicates that officials have met with NGOs in an effort to become more cooperative and responsive. According to the latest statistics there were 979 human rights NGOs in the country. In 2000, President Fox eased entry requirements for those interested in observing human rights conditions. Reports of harassment, attacks, and detentions against human rights workers have diminished; however, they continued to occur.<sup>14</sup>

The president has promised to more actively promote international human rights and democracy and to increase Mexico's participation in international affairs.<sup>15</sup> Mexico actively participates in several international organizations; it was elected to a seat on the UN Security

Council for the period 2002-03. It is a supporter of the United Nations and Organization of American States systems and also pursues its interests through a number of ad hoc international bodies.

The panel finds that Mexico makes claim to democratic values and protection of human rights. At this time there is no state of civil war, invasion, collapse of order and the government is in control of its territory.

The police forces, which include federal and state judicial police, the Federal Preventive Police (PFP), municipal police, and various police auxiliary forces, have primary responsibility for law enforcement and maintenance of order within the country. The military played a large role in some law enforcement functions. Elected civilian officials maintained effective control over the police and the military; however, corruption was widespread within police ranks and also was a problem in the military. There have also been instances of state and local police involvement in kidnappings and extortion. Military personnel and police officers committed human rights abuses. Impunity remained a problem among the security forces, although the Government continued to sanction public officials, police officers, and members of the military.

A recent report<sup>16</sup> published by the Board describes in detail the function of various forces and agencies. It indicates that there are 325,000 to 350,000 police personnel operating in about three thousand different police forces at various levels of jurisdiction. Police forces can be divided into two main categories of responsibility, judicial and preventive. Documentary evidence indicates that inter-agency cooperation has increased and initiatives to standardize procedures are in place.

Because the claimant and her children will be relocating to Mexico City, the panel consulted the information about the police forces in that specific location.

The Federal District Secretariat of Public Security commands a multifaceted police force. Academics estimate that there are between 90,000 and 100,000 police officers working in the Federal District. The Secretariat is separated into sixteen sub-divisions such as the judicial police corps, expert services, and the deputy Attorney General's office of legal and human rights. It has the state-level Justice Attorney General's office at its disposal. The Federal District is also the testing ground for new initiatives and pilot projects involving police reform in Mexico

The panel also finds that the government of Mexico is making serious efforts to combat corruption. The panel again refers to the above report from the Canadian Immigration and Refugee Board<sup>17</sup> and adds the following documentary evidence.

Constitutional and legal changes have been adopted in recent years to improve the performance and accountability of the Supreme Court and the Office of the Attorney General and the administration of federal courts. The Supreme Court, relieved of administrative duties for lower courts, was given responsibilities for judicial review of certain categories of law and legislation. A variety of laws were passed in 1995-96 to help control organized crime.<sup>18</sup>

According to a recent Response to Information Request<sup>19</sup> various efforts to address corruption within the Justice Attorney General's Office of the Federal District were made. The number of offices were reduced in order to eliminate duplication and wasting of resources, and to open up space for new offices within the Public Ministry. To help eliminate corruption, more police officers have been made available to the Public Ministry and the Direction of Inspection and Supervision. However, the report explained that there are still "rooted practices" of corruption within the system. Judicial police officers of the Federal District were being investigated for various criminal activities. The attorney general stated that since December 2000, many investigations into corruption within governmental departments of the Federal District have been undertaken and charges have been laid. Of the charges brought against these public servants, more than half of the cases involved the abuse and improper use of authority. No reports of investigators encountering difficulties for exposing corruption within the ministry could be found.

Another Response to Information Request<sup>20</sup> discusses the legislative initiatives undertaken to fight corruption. It states that in April 2002 a "sweeping plan to eradicate the corruption that is part of daily life in Mexico" was announced. A presidential decree, to combat corruption and promote transparency plans major reforms.<sup>21</sup> The Federal Law of Transparency and Access to Public Government Information is intended to "open up the government and its records to greater public scrutiny." Under the new law, government officials who refuse to provide information that is deemed public or who destroy or hide documents could be subject to a public reprimand, fines, losing their job, or, in extreme cases, criminal charges.



Mexico signed the Criminal Law Convention on Corruption in May 2002. The Criminal Law Convention on Corruption is aimed at the co-coordinated criminalization of a large number of corrupt practices. It also provides for improved international co-operation in the prosecution of corruption offences. The international Group of States against Corruption (GRECO), which started functioning on 1st May 1999, will monitor its implementation.

The panel finds that the government of Mexico has taken effective measures to address corruption in its security and police agencies but acknowledges that these measures are not always effective. Once again the panel acknowledges that crime and corruption are problems that continue to face all the citizens of Mexico. Mexico is a country in transition. Documentary evidence indicates that the government has taken measures to combat criminality and corruption but is not always successful. The totality of the evidence indicates that progress is being made. The state cannot provide perfect protection for its citizens nor should it be expected.<sup>22</sup>

The panel then went on to consider the laws, initiatives and agencies available to women fearing gender-based persecution in Mexico and particularly Mexico City. The panel acknowledges that violence against women is a problem in Mexico.

A research paper<sup>23</sup> initiated by the Immigration and Refugee Board indicates the following:

Shortly after Vicente Fox was elected President of Mexico in December 2000, the government established the National Institute for Women. The National Program for Equality of Opportunities and Non-Discrimination Against Women establishes the national policy orientations on the status of women and to which all sectors of the federal public service are subjected. Women's institutes have been established in twenty-five Mexican states. Thirty bills regarding women's issues have been introduced in state legislatures since December 2000.

The government created an Institutional Panel to Coordinate Preventive Action and Attention to Domestic Violence and Violence Against Women. The panel's mandate is to establish a national framework for combating the problem of violence in a coordinated manner. The government has also adopted new legislation on violence against women in fifteen states, the implementation of programs in sixteen states to combat such violence and the creation of a national women's health program under the direction of the Ministry of Health. An expert notes that the

government must work, among other things, to reinforce institutional mechanisms so that they better meet the needs of abused women and encourage changes in discriminatory and sexist attitudes.

Awareness campaigns on violence against women exist in the Federal District. Assistance centres for victims of violence and legal orientation services for victims of violence exist in the Federal District.

The government has also signed with the main UN agencies, namely the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP) and the United Nations Development Fund for Women.

The panel acknowledges the concerns of the Women's Institute that protective measures available to women who are victims of violence under the federal penal and civil codes are effective when judges decide to apply them and that few complainants have the support or financial means needed to retain a lawyer to undertake such proceedings. A few universities have legal aid offices that provide legal counsel services free of charge, but those offices are located in cities. The panel notes that the claimant will be in an urban area and that she is well-educated and well able to access these organizations and services.

The claimant believes police are untrustworthy and all the same throughout the nation. She feels intimidated and frightened by them. She does not want authorities to become aware that she is a lesbian. The claimant's personal choices, feelings and opinions do not rebut the presumption of adequate state protection. The panel cites *Karaseva*<sup>24</sup> and finds that police must be given adequate tools to investigate. The panel also cites *Smirnov*<sup>25</sup>, which states that the court should not impose a standard of "effective" protection that police forces in our country sometimes only aspire to. In *Kadenko*,<sup>26</sup> the Federal Court of Appeal held that the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her.

The panel also cites *De Baez*.<sup>27</sup> The criminal actions of some police do not obviate the need to seek protection. Discrimination or harassment by some police officers is not sufficient proof of the state's unwillingness to provide protection or inability on the part of the claimant, to seek protection.

The panel finds that it is not sufficient in the context of Mexico to allege that state protection is not available because some members of the police are corrupt. The panel finds that the claimant has failed to rebut the presumption of adequate state protection with "clear and convincing" evidence.

The panel considered the services and support agencies available to women in the context of the information on state protection and finds that there are adequate laws, initiatives, policies and mechanisms in place in Mexico to provide for the protection of its citizens. However the panel recognizes that many Mexican citizens do not have faith in the system and that many crimes go unreported. The panel finds that the documentary evidence indicates that Mexico is making serious efforts to protect its citizens including women.

The claimant will not be at risk by reason of her membership in a particular social group defined as women fearing gender related persecution in the location of Mexico City. There is adequate state protection for her.

Is the claimant at risk of persecution by reason of her sexual orientation?

The claimant testified that she could not live an open gay life in Mexico as she has been able to do in Canada. The claimant disclosed a significant amount of documentary evidence, some of which was quite outdated,<sup>28</sup> to support her allegations. The panel carefully considered all the documentary evidence. The panel acknowledges that there are problems for lesbians in Mexico as there are in many countries, including Canada.

The claimant and her children will relocate to Mexico City and the documentary evidence indicates that the situation for gays and lesbians has improved not only throughout Mexico, but especially in Mexico City.

The panel consulted the documentary evidence.

A recent report<sup>29</sup> about sexual orientation in the Americas states that the situation in some countries, such as Mexico, shows strong regional contrasts in treatment of sexual minorities. In Mexico gay individuals remain very much at risk in smaller towns and cities and rural areas. But substantial gains have been made in such urban centres as Mexico City. Mexico has adopted a nationwide anti-discrimination law, though it has yet to be tested in practice. Recent years have

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seen substantial political and legal gains for sexual minorities, particularly at the federal level, in major metropolitan areas such as Mexico City. The report goes on to discuss initiatives and avenues of redress for gay citizens particularly in the Federal District described as an established base for gay and lesbian organizations.

The same report discusses the situations for lesbians. It suggests that lesbians are "invisible" and that has made the culture much more permissive towards female partnerships. In general, lesbians are more invisible than gay men in urban and rural areas.

A Response to Information Request<sup>30</sup> discusses the organizations available for lesbians. One group gives support to lesbian mothers in Mexico City. They defend the mothers' rights, provide counselling and legal assistance, organize discussion groups and dispense information for the public on societal problems families headed by lesbian mothers face. The document indicates that there is no shelter for lesbians available in Mexico City nor was there direct help from the government to lesbians. It refers to a website that lists the following organizations and services for lesbians in Mexico City: *Grupo de Madres Lesbianas*, a Lesbian Mother's Group; *Centro de Documentación y Archivo Histórico Lésbico* maintains information on the history of lesbianism; *Fortaleza y Libertad* is a group for anonymous gay and lesbian drug users; *Fortaleza y Libertad* provides counselling for those suffering from depression and solitude, *El Closet de Sor Juana* is an organization of feminist lesbians which promotes the respect of lesbian rights; *Linéa Telefónica Lésbico*, *Gay y Bisexual de la Ciudad de México* provides support for lesbians. Two more groups, which appear to be associated with the national university, are mentioned but not described.

A Response to Information Request<sup>31</sup> published in 2002 indicated that gays in Mexico have made huge strides toward acceptance in the past decade. The article gave examples of positive change such as the fact that two gay-rights campaigners won seats on the Mexico City council. Another initiative is one by police who have set up a unit specializing in dealing with homophobic crimes, and are to get sensitivity training. Dozens of homosexual support groups have "popped up" in the past five years. Gay bars have opened on main avenues. In June 2000, a gay-pride parade drew 30,000 members, by the organizers' count. Vicente Fox's socially conservative

National Action Party appealed to the gay community, the first time a major political party has done so.

Another more recent Response to Information Request<sup>32</sup> states that while the homosexual community has made some progress within the political and legal landscape of Mexico traditional attitudes of intolerance and evidence of mistreatment still persist in certain areas. It goes on to indicate that in 2003, news and human rights sources reported that Mexico became the second country in Latin America to enact a national anti-discrimination law that includes protection for "sexual preference." Along with its other functions, the Federal Law to Prevent and Eliminate Discrimination establishes the National Council to Prevent Discrimination, a federal agency that will investigate acts of discrimination perpetrated by public officials. Another legal initiative is the proposed Law of Society and Coexistence, a law that seeks to legalize same-sex unions in the Federal District. A legal coordinator for the Citizens Commission Against Homophobic Crimes has noted that although the new law is a step in the right direction, the law itself is insufficient to prevent discrimination against homosexuals.

A lesbian political candidate ran for a place in local government and a seat in the National Congress. She campaigned under the banner of the new leftist Mexico Possible party, a political organization that calls for, among other things, the legalization of homosexual marriage. A spokesperson for the party noted that Mexico Possible had thirty-two gay candidates running for the July 2003 midterm congressional and local elections.

Another Response to Information Request<sup>33</sup> discusses the gay elected officials of Mexico City and the legislative initiatives they have undertaken regarding sexual orientation since their election. A draft of a proposed law, described as one that would "legalize homosexual unions and allow stable same-sex couples to adopt children," was reported as being sponsored by the centre-left Party of the Democratic Revolution (PRD), which governs the city.

A document published by the United States Immigration<sup>34</sup> mentions the 1998 publication in Mexico City of a "primer" for homosexuals and enumerates nineteen rights, such as the right to be treated the same as any other person without regard to sexual orientation, to receive education free of stigma or prejudice, to obtain prompt and quality medical care with ethical treatment by medical professionals, to equality in the workplace, to the free expression of ideas, to

freedom of association, to not be molested or subjected to torture, to not be deprived of life, liberty, or property, to equal protection of the laws, and to not be discriminated against or harassed because of sexual orientation. The primer then directs persons to the proper government agencies and human rights organizations to get assistance or file complaints of rights violations.

The panel recognizes that despite these gains, there were reports of homophobic crimes and intolerance continues to surface.

The panel considered the documentary evidence regarding the situation of gays and lesbians in Mexico and particularly, Mexico City. The panel recognizes that the situation for sexual minorities in Mexico is not ideal and legislation does not always result in immediate change of societal attitudes. But the documentary evidence clearly indicates that the government is taking serious measures to improve opportunities to redress discrimination or more serious abuses. Members of the gay and lesbian community are represented in government and members of the gay and lesbian community openly operate economically viable businesses in urban areas. Gay and lesbian citizens can avail themselves of support and advocacy groups. There was no reliable recent documentary evidence to indicate that the situation for gays has deteriorated since the latest research. The situation in Canada may indeed be better than it is in Mexico but that fact does not form the basis for a well-founded fear of persecution.

The panel finds that the principal claimant will not be persecuted or subjected to a danger of torture or to a risk of cruel and unusual treatment or punishment in the IFA location, Mexico City, by reason of her sexual orientation.

The panel also finds that the principal claimant and her children will not be persecuted or subjected to a danger of torture or to a risk of cruel and unusual treatment or punishment in the IFA location, Mexico City.

Would it be unreasonably harsh in all circumstances for the claimants to move to the IFA location?

The principal claimant is well educated and would have no difficulty availing herself and her children of the agencies and organizations established for their protection and support. She has lived in France for a significant period and lived in different areas in Mexico. She has lived and worked in Canada. Her travels illustrate her adaptability, flexibility and resourcefulness. Except for

her bad memories of her problems with police in 2001, she appeared to be in good health and there was no evidence to indicate otherwise.

The children have traveled in the past. They came on their own to Canada in 2003. They have adapted to life in Mexico after living in France and adapted to life and school in Canada. The panel would note that the children's father is living in Mexico and there is no evidence that he would not support them emotionally, socially and financially.

The panel finds that it would not be unreasonably harsh in all circumstances for the claimants to move to the IFA location, Mexico City.

The claimants have not established a reasonable chance of persecution or that their removal would subject them personally to a danger of torture, believed on substantial grounds to exist, or a risk to life or a risk of cruel and unusual treatment or punishment. They have an internal flight alternative in Mexico City.

The panel notes that section 97(1)(b)(ii) of the Act speaks only of a risk faced by the person in every part of the country, it does not explicitly add a reasonableness element to the availability of a safe area in the country, an element that has been extensively interpreted by the Federal Court in the context of Convention refugee cases. In order to find, therefore, that the claimant has an internal flight alternative (IFA), the panel must be satisfied that the IFA is an area of the country which is reasonably accessible to the claimant, and where the claimant would not face a risk to life or a risk of cruel and unusual treatment or punishment. In the alternative, the panel refers to the above analysis regarding the reasonableness of the IFA.

## CONCLUSION

The panel considered all of the evidence. For the foregoing reasons, the panel determines that \_\_\_\_\_ and \_\_\_\_\_ s.19(1) are not Convention refugees and not persons in need of protection and therefore rejects their claim.

"Marnie Armstrong"  
Marnie Armstrong

DATED: May 18, 2005

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- <sup>1</sup> Kanagaratnam, Parameswary v. M.E.I. (F.C.A., no. A356-94) Strayer, Linden, McDonald, January 17 1996
- <sup>2</sup> Exhibit # C-1, Page 11.
- <sup>3</sup> Exhibit # R-2, Item 2.1 United States Department of State Country Report of Human Rights Practices for 2003, 25 February 2004.
- <sup>4</sup> Exhibit # R-2, Item 1.3, United States Department of State *Background Note*, November 2004.
- <sup>5</sup> Exhibit # r-2, Item 1.2, Europa World Year Book 2003.
- <sup>6</sup> Chairpersons Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution (Update), IRB, November 25, 1996
- <sup>7</sup> Rasaratnam, Sivaganthan v. M.E.I. (F.C.A., no. A-232-91), Mahoney, Stone, Linden, December 5, 1991. Reported: Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.)
- <sup>8</sup> *Villafranca: M.E.I. vs. Villafranca, Ignacio* (F.C.A., no A-69-90), Marceau, Hugessen, Decary, December 18, 1992. Reported: Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.)
- <sup>9</sup> Exhibit # R-2, Item 2.1, United States Department of State Country Report of Human Rights Practices for Mexico, February 2004.
- <sup>10</sup> Exhibit # R-2, Item 1.2. Europa World Year Book, 2003.
- <sup>11</sup> Exhibit # R-2, Item 2.1 United States Department of State Country Report of Human Rights Practices for 2003, 25 February 2004.
- <sup>12</sup> *ibid.*
- <sup>13</sup> Exhibit # R-2, Item 2.3, Human Rights Watch, World Report 2003, Mexico, December 2003.
- <sup>14</sup> Exhibit # R-2, Item 2.1, United States Department of State Country Report of Human Rights Practices for Mexico, February 2004.
- <sup>15</sup> Exhibit # R-2, Item 1.3, United States, Department of State, *Background Note: Mexico*, November 2003.



- <sup>16</sup> Exhibit # R-2, Item 10.1, Canadian. May 24, 2004. Immigration and Refugee Board. *Mexico: Police*
- <sup>17</sup> *ibid.*
- <sup>18</sup> Exhibit # R-2, Item 1.3, United States, Department of State, *Background Note: Mexico*, November 2003.
- <sup>19</sup> Exhibit # R-2, Item 7.3, Response to Information Request # MEX39540.E, Mexico: the current situation of investigations into corruption .... September 20, 2002.
- <sup>20</sup> Exhibit # R-2, Item 7.4, Response to Information Request # MEX38312.E, Legislative initiatives undertaken by the Fox Administration to fight Corruption, September 19, 2002.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> *Supra*, Footnote # 8
- <sup>23</sup> Exhibit # R-2, Item 5.1, Canada, March 2003, Immigration and Refugee Board, *Mexico: Domestic Violence and Other Issues related to the Status of Women*.
- <sup>24</sup> *Karaseva, Tatiana v. M.C.I. (F.C.T.D., no. IMM-4683-96)*, Teitelbaum, November 26, 1997
- <sup>25</sup> *Smirnov, Viatcheslav v. S.S.C. (F.C.T.D., no. IMM-657-94)*, Gibson, December 14, 1994. Reported: *Smirnov v. Canada (Secretary of State)*, [1995] 1 F.C. 780 (T.D.)
- <sup>26</sup> *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143, D.L.R. (4<sup>th</sup>) 532 (F.C.A.).
- <sup>27</sup> *De Baez, Maria Beatriz Arguello v. M.C.I.(F.C.T.D., no. IMM-3208-02)*, Dawson, June 26, 2003; 2003 FCT 785.
- <sup>28</sup> Exhibit # C-2.
- <sup>29</sup> Exhibit # R-2, Item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, December 2003.
- <sup>30</sup> Exhibit # R-2, Item 6.6, Response to Information Request # MEX38251.E, Services or Support for lesbians in Mexico City, January 21, 2002.
- <sup>31</sup> Exhibit # R-2, Item 6.5, Response to Information Request # MEX38203.E: Update: ... the treatment of homosexuals in Mexico, January 28, 2002.
- <sup>32</sup> Exhibit # R-2, Item 6.3, Response to Information Request # MEX24621.E. Update to MEX38203.E, April 15, 2004.
- <sup>33</sup> Exhibit # R-2, Item 6.4, Response to Information Request # MEX38313.E: Mexico: Openly gay elected officials of Mexico City and legislative initiatives they have undertaken regarding sexual orientation since their election (2001-2002), June 11, 2002.
- <sup>34</sup> *Ibid.*