

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 : MA3-02529

Private Proceeding
Huis clos

Claimant(s)		Demander(e)s d'asile
Date(s) of Hearing	October 27 th , 2003	Date(s) de l'audience
Place of Hearing	Montréal	Lieu de l'audience
Date of decision	December 11 th , 2003	Date de la décision
Panel	M ^e Luciano G. Del Negro	Tribunal
Claimant's Counsel	Abraham Garza	Conseil du demandeur d'asile
Refugee Protection Officer	Maric-Hélène Giroux	Agent de la protection des réfugiés
Designated representative	N/A	Représentant désigné
Minister's Counsel	N/A	Conseil du ministre

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I. INTRODUCTION

Mr. [REDACTED] twenty-three years old, is a citizen of Mexico. He claims Convention refugee status by reason of his membership in a particular social group. The claimant alleges a well-founded fear of persecution at the hands of his friend's father who holds him responsible for his son's homosexual orientation. Furthermore, the claimant alleges to be a person in need of protection.

II. THE FACTS

The claimant, who defines himself as bisexual, was involved in a relationship with Mr. [REDACTED] since the [REDACTED] 2001. On [REDACTED] night of 2002, the claimant and his friend were surprised by his father in a passionate embrace. The man's father hit and kicked the claimant out of his house. Even though they were both afraid the claimant liked [REDACTED] to the extent that he did not wish to end the relationship. The claimant was attacked by [REDACTED]'s father's bodyguards on the [REDACTED] 2002. It was only on the [REDACTED] of 2003 that the claimant received a call from his friend who informed him that his father had sent him to some relatives but that he would be returning on the [REDACTED] 2003 and that they would meet the following day.

On the [REDACTED] 2003 a man arrived at his house and informed the claimant that [REDACTED] was waiting for him at the car. Upon getting into the car the claimant saw two men who had beaten him up a few weeks before. Again the claimant was viciously beaten and threatened with death if he did not stop his relationship with [REDACTED]. Furthermore, it seems that he was taken to a police station and asked if he wanted to file a report. It was apparent to the claimant that the police were somehow friends of these individuals. He was released a short time later and immediately went to a clinic to receive treatment. At the urging of his mother, the claimant fled to Michoacan to hide.

To his surprise, a few days later [REDACTED] arrived to visit him and offered his help. The claimant decided to go back and stay with a friend where [REDACTED] called him a few times. On the [REDACTED] of 2002 the claimant was informed by his friends that two men in a Suburban had come looking for him. When he attempted to reach [REDACTED] the claimant unfortunately fell on his father who answered and told him that his days were numbered. Fearful at the turn of events, and at the

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urging of () the claimant left for Canada on March 19, 2003. The claimant applied for Convention refugee status a few days after his arrival.

III. DETERMINATION

The Refugee Protection Division (RPD) from the evidence adduced determines that the claimant is not a Convention refugee nor is he a person in need of protection.

IV. ANALYSIS

The Refugee Protection Division (RPD) from the evidence adduced has found that the claimant did not meet his burden of proof in establishing that he indeed has a well-founded fear of persecution or that he is a person in need of protection in the event of his return to Mexico.

The claimant's credibility was the central issue of the tribunal's analysis. With respect to testimonial credibility the claimant's testimony was deemed neither credible nor trustworthy. In the course of the hearing, a number of contradictions, inconsistencies, omissions and implausibilities emerged for which no satisfactory explanations were offered. The claimant did not answer all the questions put to him. His testimony was not delivered in a frank, open and aboveboard manner. Rather it appeared to be delivered in a vague, evasive and reticent fashion. In addition, the claimant was adapting his testimony as the hearing went on. His demeanour was such that he certainly did not appear to be endeavouring to tell the truth. Considering the general lack of credibility of the claimant and the incoherence of his testimony, he was not afforded the benefit of the doubt.

The claimant in his written narrative states that he met his friend () on 2001 while he was at () located in () Street in the municipality of ()

Furthermore, from lines 15 to 20 of his PIF it is clear that they began a relationship when they saw each other again the following day. However, during his *vive voce* testimony the claimant stated that he had been with () from the () to the (). Surprised by the claimant's testimony and thinking that perhaps he might have misunderstood, an additional question was put to him as to when they started dating. The claimant's spontaneous answer was that he had done so on the () . Realising he had misspoken he quickly attempted to correct himself and said it was on the () He had met () on the () 2002. When queried as to why his initial *vive voce* testimony as well as his corrected answer was in contradiction with his narrative, the claimant stated that it was the failure of

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his lawyer to correct the mistake and that he had met in 2002 and not in 2001. The claimant also went on to state that he realised that a mistake had slipped in his PIF about a month ago but he had not told his lawyer as he had forgotten to do so. The claimant's explanation was not deemed satisfactory.

The claimant has retained the services of Counsel from the outset of his claim. He has had ample time to write his narrative with the support of Counsel and to ascertain whether or not any oversight has occurred. Furthermore, the fact that the claimant had realised there was a mistake and forgot to mention it to his lawyer seems to us inherently suspect. It is the responsibility of the claimant and Counsel to ensure that a narrative is presented free of errors. Simply put, the RPD is at a loss to understand why such a glaring mistake would have gone unnoticed in the claimant's PIF. The claimant's testimony on this issue was not deemed credible owing to its contradictory nature.

The claimant in his narrative states that he was beaten some three times, once by father on and on two other occasions by his bodyguards on the of 2002. The claimant when asked how many times he had been threatened and beaten said that it had been on two occasions – on the and on the . When asked to recount what transpired on the of the claimant embarked on a long and detailed explanation to the effect that was taken away in a truck and he himself was beaten up. The events described according to the claimant's narrative did not occur on the of but rather on the of 2002. The claimant was therefore asked to explain the inconsistency between his testimony and his narrative.

The claimant apologized and stated that he was mistaken and that indeed the events described did not occur on the but rather on the of . However, when he was asked how many times he was beaten the claimant much to our dismay stated that he had been beaten on the and of . When it was pointed out that according to his narrative and by his own admission earlier he had not been beaten on the , the claimant sought refuge in his nervousness to explain the flagrant inconsistencies in his testimony. The claimant then stated that he was actually beaten twice, on the of and the of . Oddly enough he also added that the first time he was beaten was on the of . When the question again was put to him as to whether this was the first time he had been attacked without any regards to his previous testimony he then stated that he had also been attacked on . When he was

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asked to explain why such hesitation in giving this date, the claimant simply stated that he had spent the night over at his friend's house. The claimant's explanations on these issues were not deemed satisfactory.

The RPD is at a loss to understand why the claimant has offered such a vague, evasive and indeed contradictory testimony with respect to the number of times he was beaten as well as to when these occurred. What the claimant seems to be doing is presenting an evolving testimony when it becomes apparent that his testimony is in contradiction with his own narrative. His testimony on the above issues was not credible due to its contradictory nature. Indeed, according to his narrative, the claimant was beaten three times. Initially, he was beaten on the night of the [redacted] by his boyfriend's father; on the [redacted] of [redacted] 2002 by his boyfriend's father's goons; and, again on [redacted], 2003 by these very people. It is somewhat difficult to understand why the claimant would be unable to correctly recall what he has detailed in his narrative and should be his life experience.

According to his narrative, the claimant saw [redacted] a few days after having fled to [redacted] following the beating received on the [redacted] of [redacted] 2003. However, when the claimant was questioned as to when he saw [redacted] again following the incident on the [redacted] of [redacted] 2002, the claimant embarked on a long and convoluted testimony only to then state that he had been mistaken, that he saw [redacted] on the [redacted] of [redacted] 2002. When the claimant was confronted with line 40 of his narrative where he clearly states that [redacted] did not see him, the claimant readjusted his testimony and stated that on the [redacted] of [redacted] he had not seen [redacted] but rather he had spoken to him on the phone. And when he was confronted with the fact that according to his narrative the call came after the events on the [redacted] of [redacted] and indeed after [redacted] visited him, the claimant not only conceded that he was mistaken but also added that nothing had happened on the [redacted] of [redacted]

The claimant was confronted with lines 46 to 56 of his PIF where it is clearly indicated that the claimant was kidnapped, severely beaten, and threatened with death, on the [redacted] of [redacted]. To extricate himself from this apparent problem he stated that it was not on the [redacted] of [redacted] but rather on the [redacted] of [redacted] when those events occurred. When it was pointed out to him that his narrative states otherwise, the claimant simply stated that no correction had been made to the PIF. Continuing with his new testimony the claimant then stated that he indeed had left for [redacted] on [redacted] of [redacted]

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January and had stayed there for two or three days. However when it was pointed out to him that his medical certificate is dated 2003 the claimant had no explanation whatsoever. Simply put, the claimant's explanation on this issue was not satisfactory.

The claimant as pointed out earlier from the outset of his claim has been counselled by a member of the bar specialising in refugee law and matters. He did not submit any corrections or modification either prior to or at the outset of the hearing. The claimant's omission only came to light when it was apparent that he had erred in his testimony. This new evidence appeared to the RPD but a recent fabrication to offset a fledgling testimony. The claimant's testimony on this issue was not deemed credible owing to its inconsistency and contradictory nature.

With respect to documentary evidence submitted by the claimant and more specifically P-2, that is, the medical note, the RPD did not afford them any probative value. The medical note was found to be self-serving and the object of contradictory testimony with respect to the date when the claimant actually sought and obtained assistance. Furthermore, it is the domain of the RPD's specialised knowledge that the level of corruption in Mexico is such that documents both authentic and otherwise can easily be obtained in exchange for payment. Considering the above and given the general lack of credibility of the claimant, no probative value was afforded to his documentary evidence.

V. CONCLUSION

In conclusion, for all the above reasons, the Refugee Protection Division (RPD) concludes that the claimant is not a Convention refugee nor is he a person in need of protection as contemplated in Articles 96¹ and 97 (1) (a) and (b)² of the *Immigration and Refugee Protection Act*.

Luciano G. Del Negro

M^e Luciano G. Del Negro

December 11, 2003

Date

/kd

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), chap. 27, provides the following definition:

“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.”