

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 #: MA3-08210

Huis clos  
Private Proceeding

**Demandeur(e)s d'asile**

**Claimant(s)**

**Date(s) de l'audience**

July 6<sup>th</sup>, 2004

**Date(s) of Hearing**

**Lieu de l'audience**

Montréal, Québec

**Place of Hearing**

**Date de la décision**

July 19<sup>th</sup>, 2004

**Date of decision**

**Tribunal**

Jean Paul Pelletier

**Panel**

**Conseil du demandeur d'asile**

M<sup>c</sup> Anthony Karkar

**Claimant's Counsel**

**Agent de la protection des réfugiés**

Claude Whalen

**Refugee Protection Officer**

**Représentant désigné**

N/A

**Designated representative**

**Conseil du ministre**

N/A

**Minister's Counsel**

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## I. INTRODUCTION

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

## II. ALLEGATIONS

The claimant alleges fear from the general Mexican population due to his bisexuality. The experience he has lived has shown him that the general population in his homeland is intolerant towards bisexuals. He submits having been discriminated against in restaurants, bars, and discotheques. He submits that people laughed at him because of his bisexuality.

One year after his [REDACTED] 1995 marriage he uncovered his penchant for men. In both his oral and written testimonies, he explained how he was found by his wife while in bed with his boyfriend [REDACTED].

This is said to have occurred in the family home where he resided with his parents, his sisters, and his wife. This event led to a divorce with his wife in [REDACTED] 1996. He continued his relationship with [REDACTED] between [REDACTED] 1997 until the break-up in [REDACTED] 1998. This was said to have been the only homosexual relationship he has had.

Due to the alleged fact that he felt pressure while living in a macho state like Mexico, he decided to come to Canada in order to rest. His intentions were to return to his family in Mexico once he had finished his holiday in this country. However, while here he met a person on the street who told him that he should claim refugee protection. This was done in the fall of 2003.

## 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 grounds upon which he claims refugee protection are identified in section 96 of the *Act*, in Social Group – Homosexual or Bisexual. He contends to need protection from Canada based on section 97 (1) (b) of the *Act* because of his fear of Mexican society in general, but with nobody in particular being the agent(s) of persecution. He submits that he was discriminated against because people had doubts regarding his bisexuality, causing him to receive discriminatory treatment when he visited public establishments as restaurants and bars. He could not define how people could see

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that he was different from the general population, only that he was victimised because of the alleged fact that he is bisexual. The tribunal does not have a magical means to identify bisexuals, and can only rely on the general testimony and his refugee claim file contents.

In oral testimony, the claimant explained that he met his wife in a clothing store when he was eighteen years of age. She was six years his senior and an architect by profession. They were married the following year when he was nineteen. They lived together as a married couple in his family residence. He testified that he could not explain what had happened to him and why he had had a homosexual relationship in his own home environment. He stated that he is not at all proud of that situation. He had much difficulty to speak on the subject matter during the hearing. Testimony shows that his wife did not divulge to anyone how she had uncovered him in a compromising situation. She did not tell the family nor was the family informed why he and his wife divorced after only one year of marriage. This particular situation was neither convincing nor was it considered credible. He did not provide any documentary evidence to show that he had ever married. There are no marriage or divorce confirmation documents. There are no pictures or notable events to confirm the relationship. He testified that he asked his mother to send him all of the aforementioned proof of marriage, but she failed to comply even after he has asked her approximately ten times in the past year. Had the claimant considered these documents to be necessary to prove his once married status, he had almost one year to obtain the documents which he contends are at home. If it were true that his mother had failed to send him such important documents, he could well have obtained certified copies from the issuing authorities. He did not so much as attempt to get these documents on his own. The tribunal has nothing but his testimony to rely upon, and it was fraught with inconsistencies. Credibility is an issue in this claim.

In an attempt to establish this claimant's sexual preferences, he was asked to state the number of amorous relationships he had had in his lifetime. He first said: "two or three, but I don't know". Then he corrected that to say that he had only one relationship, and that was with        It lasted eleven months and ended in        1998. This confirms that he has not had an amorous relationship in the past six years. The tribunal believes that it is unlikely that he would be harassed or discriminated against if he did not frequent gay bars, as he testified he had not, and had no homosexual relations. His credibility concerning his alleged past victimisation is affected.

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The confusing testimony regarding his place of residence while in the alleged amorous relationship led the tribunal to doubt that it ever existed. He first said that he lived with his lover at the same address as his parents and sisters. Then he corrected to say that his parents had moved to another address, approximately fifteen city blocks away, and he had kept the family home for his own. However, in his interview with an Immigration official on October 15, 2003, he stated that he lived with his boyfriend at ' (sic). The address he had given in answer to question 20 of his Personal Information Form (PIF), as his place of residence between 1993 and 2003 was ' Mexico. He then testified that he had never lived at but his boyfriend lived there. He also stated that he never, at any time, had gone to that address, nor does he or did he know with whom lived at that address. His contention is that the Immigration official made a mistake. The tribunal does not believe that a mistake was made by the Immigration official, but rather believes that once he was caught-up in a contradiction, this was the best explanation he could offer. He is not credible.

In a further attempt to establish the extent of his fear in Mexico, the claimant was asked if he had ever been victimized due to his bisexuality. He said that he had not, but he had witnessed others being beaten outside what he believes to be a homosexual hangout bar. This was said to be the first and only time he had actually seen violence against gays. Asked why he would believe that the persons being beaten were homosexuals, his reply was that only homosexuals go to that bar. Nobody else would ever go there. Consequently, as he testified, anyone seen exiting that bar would necessarily be a homosexual. He was asked if he visited gay establishments. His first answer was that he never went to such places because he feared being beaten and humiliated. He later said that he went to such bars perhaps once or twice per year. He personally was never subjected to any problem when he visited such gay bars. His testimony was neither plausible nor did it seem to the tribunal to be trustworthy. He was hesitant and was not at all convincing in his delivery of information. He appeared to improvise most answers in order to show that he was aware of the situation to which he testified. The tribunal is unconvinced of his alleged homosexuality.

The claimant was asked why he had gotten married. He said that he loved that girl. Asked if he then had a particular penchant for men at that time, his answer was: "Non, tout était bien". When he was questioned on the compromising situation in which he alleges his wife discovered him, his comment was that he does not know why he did such a thing. This again contributed to the

unconvincing evidence which was meant to support the alleged fact of homosexuality or bisexuality.

When the decision is said to have been taken by the claimant to come to Montreal, in order to rest, his cousins decided to come with him. Both his cousins also claimed refugee protection on the same "bisexual" grounds as he. However, he testified that he is unaware of the grounds his cousins would have contended in order to claim refugee protection, and if we wished to know, the question should be addressed to the cousins. This was not the answer the tribunal expected from this claimant who left Mexico with two cousins; travelled to Canada with them; was met at the airport by his cousins' family friend; and, all three were present together at the hearings for the two cousins. The likelihood that he would not know on which grounds his cousins had claimed is simply inexistent. He is not credible.

Because of such a far-fetched statement as shown in the previous paragraph, the claimant was asked how he had decided that he should claim protection in Canada. He stated that he found someone on the street; he does not know who that person is; that person allegedly told him he should stay in Canada and ask for refugee protection; again said he does not know this person "and that is it". As for the cousins, he stated: "I don't know what I should answer". The incredibility of such a situation was addressed without receiving any further explanatory comment. This claimant is not credible.

The tribunal believes this story of bisexuality or homosexuality to be one of total fabrication, meant to help gain access to Canada's refugee protection. The claimant was unable to deliver what may be considered a minimum of credible information. He was unconvincing and did not produce what may be considered as trustworthy evidence. He did not make a reasonable effort to obtain any official documents from his country of origin in order to support his contentions of marriage or divorce. The tribunal believes that the documents to which he referred in testimony do not exist. There is no documented evidence that he was ever married; no evidence that he was discriminated against, consequently there is no cumulative effect of discrimination being tantamount to persecution; and, most importantly, no evidence that he has ever had a homosexual relationship. His contention of bisexuality is not believed and is not supported by any credible evidence, either written or oral.

**IV. CONCLUSION**

The tribunal finds that the claimant is not a Convention refugee, by virtue of section 96 of the *Act*, membership in a particular social group – homosexual or bisexual, or any other grounds. It further finds that the claimant is not a person in need of protection in that his removal to Mexico would not subject him to risk to his life or to risk of cruel and unusual treatment or punishment.

For these reasons, the application for refugee protection is rejected. Furthermore, pursuant to subsection 107 (2) of the *Act*, the tribunal concludes that there is no credible basis for the claim.

*Jean Paul Pelletier*

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**Jean Paul Pelletier**

**July 19, 2004**

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**Date**

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