

RPD File No. / N° de dossier de la SPR : TA9-16871

TA9-16872

TA9-16873

TA9-20732

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

July 20, 2010

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

July 20, 2010 (rendered orally)
August 11, 2010 (written reasons)

Date de la décision

Panel

David McBean

**Counsel for the Claimant
(s)**

John Campion

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) de

**Designated
Representative(s)**

s.19(1)

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] _____, his spouse,
 _____, his daughter, _____, and his son,
 _____, (the “claimants”), citizens of Portugal, claim refugee protection
 pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*
(IRPA).¹

ALLEGATIONS

[2] The claimants left Portugal due to a poor economy and poverty.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or that they would, on a balance of probabilities, personally be subjected to a danger of torture or a risk to their life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants’ identities as citizens of Portugal were accepted at the beginning of the hearing as copies of their Portuguese passports² were on file.

Nexus

[5] As conceded by counsel for the claimants, a fear of poverty provides no nexus to the Convention definition; as such, the claims pursuant to section 96 of the *IRPA* fail.

Generalized Risk

[6] Poverty is a risk faced generally by others in Portugal and is therefore precluded from my consideration pursuant to the exception in section 97(1) of the *IRPA*. There being no other evidence that the claimants would be at risk of any of the risks delineated under section 97, the claims pursuant to that section fail as well.

No Credible Basis

[7] I find that pursuant to section 107(2) of the *IRPA* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

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CONCLUSION

[8] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims.³

(signed)

“David McBean”

David McBean

August 11, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2.

3 Edited for syntax and grammar.

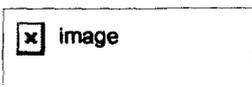


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RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA9-12340

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)**Demandeur(e)(s)****Date(s) of Hearing**

July 6, 2010

Date(s) de l'audience**Place of Hearing**

Toronto, Ontario

Lieu de l'audience**Date of Decision**

September 7, 2010

Date de la décision**Panel**

David McBean

**Counsel for the Claimant
(s)**Andrew Confente
(Barrister and Solicitor)**Conseil(s) du / de
demandeur(e)(s)****Tribunal Officer**

N/A

Agent(e) de**Designated
Representative(s)**

s.19(1)

Représentant(e)(s) du**Counsel for the Minister**

N/A

Conseil du

s.19(1)

[1] _____ a citizen of Hungary, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born in Hungary in 1993. Her father left before she was born and her mother died when she was very young so she was raised by her grandmother. The claimant's grandmother could not find work as she was Roma and was forced to beg. The claimant was prevented from furthering her education due to racism. The claimant's grandmother was beaten several times in the street and the claimant was threatened as well. Rocks were thrown through the windows of their house and they were threatened with death. A distant relative, _____ (the claimant's current Designated Representative – the "DR") visited from Canada. The claimant's grandmother urged the DR to take the claimant to Canada to be safe. The claimant traveled to Canada on _____, 2009. The claimant's grandmother traveled to Canada on _____, 2009. While the claimant and her grandmother made their intention to make a refugee claim known to Canadian Immigration officials, the claimant's grandmother was unable to attend her appointment with Immigration as she suffered a stroke in Canada and was hospitalized and subsequently passed away on _____, 2009. The claimant made a refugee claim on _____, 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*2 and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS***Identity***

[4] The claimant's identity as a citizen of Hungary was accepted at the hearing given that a certified copy of her Hungarian passport was on file.3 Also accepted at the hearing was the fact that she would be at least perceived to be Roma.

Credibility

[5] While both the DR and the claimant provided testimony, it was apparent throughout the hearing that there were a number of serious discrepancies in the witnesses' evidence when the oral testimony was compared to the Personal Information Form4 (PIF) and the other documents available. For example, the DR was asked about the claimant's grandmother's experiences a number of times and she consistently responded that while she was yelled at and chased on a number of occasions, she always

managed to get away. However, as noted at the hearing, when the counsel for the claimant confronted her with the fact that the PIF states that the claimant's grandmother was beaten on several occasions the DR stated that the matter was "touchy" and that the claimant was at school at the time. I do not find the DR's explanation satisfactory. There is no question that the subject matter of one's grandmother being beaten may be a difficult one, however, I do not see how it would be so difficult in this case. The claimant appeared to have prepared her own narrative prior to the appointment of the DR, who was subsequently given a chance to review the narrative and the PIF after her appointment. The narrative explicitly speaks of the beatings, so it appears that they were both aware of these events and their respective knowledge thereof. The claimant even testified that she had seen her grandmother beaten. In these circumstances, it makes little sense for the DR to have testified that the claimant's grandmother always managed to get away if in fact she had been beaten several times. I find that this discrepancy undermines the witnesses' credibility.

[6] In oral testimony, the DR stated that the claimant was chased home from school by racists. However, as noted at the hearing, this information was not mentioned in the PIF. The DR stated that she did not know why this was omitted. The claimant stated orally that she had not only been chased home, but that people had spit at her, and that both her teacher and her principal had acted in a racist fashion towards her. However, as noted at the hearing, this information is not contained in the PIF. The claimant stated that she did not know why this information was not contained in her PIF. I do not find these explanations satisfactory. These alleged experiences would have been the primary problems that the claimant personally experienced. While it is understandable that more attention might be paid to the more serious events that allegedly happened to the claimant's grandmother, if the claimant experienced racist events to the level that she and the DR alleged, I would have expected them to be mentioned in the PIF. I find the fact that they were not further undermines the witnesses' credibility.

[7] Initially the DR seemed to say that she did not know if the claimant and her grandmother had ever gone to the police. However, in late testimony she stated that the claimant and her grandmother went to the police a few times but stopped going because they were always brushed off and nothing was ever done. She even stated the police themselves were responsible for the majority of the killings of Roma in Hungary. However, as noted at the hearing, none of this information is contained in the PIF and as further noted at the hearing, there does not appear to be any corroboration in the documentary evidence before me that the police are responsible for the majority of the killings of Roma in Hungary. The DR and the claimant stated separately that they did not know why the information about going to the police a few times and being repeatedly brushed off was not in the PIF. The DR stated that what she meant by stating that the police were responsible for the majority of the killings of Roma was that there was a group formed by the sons of police officers, that no one was in police uniform, and that a police chief was involved and ordered to do things in Roma areas. I do not find these explanations satisfactory. The directions for filling out the PIF narrative are quite clear in that all attempts to obtain protection from the authorities are to be mentioned and if attempts are not made, than the reasons should be given as well.

While it appears that the claimant filled out her own PIF, when the DR was appointed she was explicitly given time to review the document and make any changes necessary. In these circumstances it makes no sense for there to be no mention of the claimant and her grandmother going to the police on multiple occasions and then stopping going because they were always brushed off. Furthermore, the DR's explanations about the police killing Roma simply made no sense at all. Had any of this been true on any sort of a wide scale, I would have expected some mention of this in the documentary evidence before me. It appears that the DR made an outlandish statement in an attempt to embellish her evidence and there was simply no way to effectively explain what she said so that it could square with the general country conditions. I find that these discrepancies further undermine the witnesses' credibility.

[8] In oral testimony, the DR stated that the claimant's grandmother sent the claimant to Canada first out of fear for what might happen to her. By coincidence she met the DR's son for the first time in Canada and after entering into a relationship was then married. However, as noted at the hearing, in an annual guardianship report,⁵ it is stated that the claimant actually had already met a Canadian boy, that they were in love and she had been invited to Canada to stay with him and his family. The DR stated that this was a false alibi concocted to allow the claimant to leave Hungary as she would never have been allowed to leave if she said that she was fleeing persecution. I do not find this explanation satisfactory. As noted at the hearing, Hungary does not have exit controls at its borders. If there was some need to explain a visit to Canada it makes little sense that something along the lines of "just visiting" would have not have sufficed rather than such an elaborate story. To then have the claimant marry the son of the DR (the family that she was invited to stay with) as a sheer coincidence makes absolutely no sense at all. It appeared that the story contained in the guardianship report was actually the true one, in that the claimant actually came to Canada as part of a relationship. While I am mindful that one may have more than one motivation for coming to Canada, I find the fact that the DR attempted to cover this motivation up to further undermine the witnesses' credibility.

[9] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that both witnesses were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the witnesses alleged happened, actually happened.

Profile as Roma/State Protection

[10] Even though I disbelieve the events that the witnesses recounted orally and in the PIF, I turn now to the general situation for Roma people in Hungary. While I do note that problems exist for people of Roma ethnicity, I find even based on the general profile of the claimant as Roma, the claim fails as she has failed to rebut the presumption of state protection.

[11] There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing" proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁶ Evidence that protection being offered is not necessarily perfect⁷ is not clear and

convincing proof of the state's inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police, and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that a claimant is unable to avail herself of protection.⁸

[12] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection that is directly proportional to the level of democracy of that state.⁹ The more democratic the state's institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.¹⁰ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹¹

[13] The documentary evidence shows that Hungary is a country of 10 million people with a functioning, multi-party parliamentary democracy with free and fair elections.¹² I find that Hungary is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Hungary is in a state of complete breakdown.

[14] There is no question that racism exists in Hungary and while efforts to combat racism have achieved mixed results, serious efforts are being made. Although progress has been made, some areas worsened such as extremist violence and harsh rhetoric against ethnic and religious minority groups. Extremists increasingly targeted Roma, resulting in injuries and four deaths. The police sometimes use excessive force, particularly against Roma. Discrimination against Roma in education, housing, employment, and access to social services continued.¹³

Police

[15] Despite the fact that there are reports that the police sometimes use excessive force against Roma, the objective documentary evidence states that if complaints are made, action is taken. The Parliamentary Commissioner for National and Ethnic Minority Rights (Minority Ombudsman) takes complaints based on a government agency's decision, proceedings or negligence, a violation that has taken place of a complainant's national or ethnic minority rights, or the direct threat of such a violation is imminent. The Protective Service of Enforcement Agencies (Protective Service) of Hungary's Ministry of Interior has a mandate to prevent and investigate crimes committed by authorities such as the police, border guard and civil defense, and national and local fire stations. The Protective Service investigates such crimes as abuse of office and crimes committed by those acting in an official capacity.¹⁴

[16] In 2004 some police personnel were investigated and disciplined for their involvement in the

death of suspects, including some Roma. These actions led the Council of Europe Commissioner of Human Rights to declare that despite continued reports of police violence, in particular against Roma and in country areas, there has been a significant change in official attitudes in Hungary towards such occurrences. Disciplinary and criminal proceedings are now brought to the Commissioner for Human Rights against police officers responsible, and convictions and dismissals are frequent.¹⁵ While I am mindful that there are some reports that suggest police are not held to account in every instance, this is definitely not a situation of police acting with impunity.

[17] In 2006, the authorities conducted 203 criminal investigations into allegations of police misconduct during demonstrations that year. In eight cases the court rejected the charges. Prosecutors terminated their investigations in 171 cases, mainly because authorities could not identify the individual perpetrators since many police were wearing masks and helmets without visible identification. There are reports that authorities were instructed not to wear badges specifically so they could not be identified, which is against the law.¹⁶ The prosecutor pressed charges of causing bodily injury in 20 cases and of that that number, the court made legally binding rulings in 10 cases with the remaining 10 cases awaiting action. One case remained under investigation, while three were transferred to the military prosecutor's office. Furthermore, in civil proceedings arising from the 2006 demonstrations, the Budapest municipal court issued seven verdicts during 2009, ordering police authorities to pay 7,850,000 forint (approximately \$37,000 Canadian at today's exchange rate) to compensate eight demonstrators who were either beaten or illegally detained in 2006. ¹⁷

[18] In 2009 the Office of the Prosecutor General received 18 complaints of police use of force during interrogation. The complaints resulted in 17 indictments of 11 police officers. There were also complaints filed by some Roma which were under investigation or working their way through the courts. There was evidence that Roma could pursue complaints even without the involvement of the state prosecutor as the law permits. ¹⁸ There were also instances where higher courts have intervened sometimes to decrease sentences, sometimes to increase sentences and even to overturn a previous acquittal.¹⁹

[19] Taken as a whole, I find that while the objective documentary evidence indicates that police do still commit abuses against people, including the Roma, it is reasonable to expect authorities to take action in response to these cases.

Programs for Inclusion

[20] There Hungarian government generally does not condone racism or discrimination by the authorities or the public. The state has undertaken serious and a substantial effort to ensure the future existence of the Roma, and other minorities, is protected. There are a number of programs to help Roma people find work, get education, and find housing. Hungary has laws to combat discrimination wherever it is faced by Roma. The 1993 law for the protection of minorities was reinforced in 2003

with the law on equal treatment and promoting equal opportunity. Then in January 2005 the Equal Treatment Authority was established to supervise proper implementation of the law and is empowered to put a stop to contraventions and to impose fines and penalties under other legislation as applicable.²⁰

[21] In 2006, a state secretary responsible for equal opportunities in the Ministry of Social Affairs and Labour was established to supervise the execution of the tasks of Roma integration. The Ministry established a Department for Roma Integration to coordinate governmental tasks. The Ministry pays attention to the enhancement of the labour market opportunities of the Roma population, operates a scholarship scheme for young Roma, and cooperates with organizations for the protection of the rights and interests of Roma people. Further, in 2009 the Prime Minister's Office had a state secretary responsible for Roma affairs, and the ministries of education, culture and economy had ministerial commissioners to coordinate the tasks which served the promotion of the social integration of the Roma and the improvement of their living conditions.²¹

[22] In April 2007, Hungary adopted the Strategic Plan of the Decade of Roma Inclusion Programme. The overall objectives of the program include four priority areas (among others) including education, employment, housing and health care, each with regard to the enforcement of equal treatment²² Most ministries and county labour affairs centers had special officers for Romani affairs focused on the needs of the Romani community. The Ministry of Education and Culture continued to offer financial incentives to encourage schools to integrate Romani and non-Romani children in the same classrooms and to reintegrate Roma inappropriately placed in remedial programs. The Ministry of Social Affairs and Labour operated a program to finance infrastructure development in Romani communities. The Ministry of Justice and Law Enforcement operated an anti-discrimination legal service network that provided free legal aid to Roma in cases where they encountered discrimination based on their ethnicity. Roma, like the other 12 official minorities, are entitled to elect their own minority self-governments (MSGs), which organize minority activities and handle cultural and educational affairs. The president of each MSG also has the right to attend and speak at local government assemblies.²³

Employment

[23] There is no doubt that under-employment of Roma people is a serious problem that has serious social implications. To address this, Hungary has implemented a number of programs. The government opened 200 positions in public administration for Romani college graduates. By the end of 2009, 122 applicants passed the mandatory civil servant entry exam and awaited placement in various national and county offices.²⁴ Since 2003, billions of forints have been dedicated to employment and opportunity programs to promote employment and training to unemployed Roma. In 2003 an affirmative action program was created and a significant number of Roma were found both permanent and temporary public-sector jobs.²⁵ In 2006 the Regional Training Centre in Pecs carried out a complex program in employment with assistance from the National Council for Adult Education to improve the chances of

Roma people. Since 2003 there have been 55 complex programs under the auspices of labour centres to help those in long-term unemployment situations, including Roma people and programs continued in 2008. The government runs a number of programs to improve the employment prospects of Roma people that assist with finding employment, offer training sessions to help them develop marketable skills, provide financial incentives to employers who hire minorities, and provide Roma desk officers in every labour exchange centre and employment office. Employers are fined for acting in contravention to the principle of equal treatment which disqualifies them from state aid for two years. For example, in 2008 a company was fined for refusing to hire Roma people as cleaners on account of their ethnicity.²⁶ Under these kinds of programs tens of thousands of Roma people have found employment. ²⁷

[24] I am mindful that there has been criticism that some of these measures have been sometimes short-term and can only help a limited number of people at one time.²⁸ However, when looked at as a whole I find that Hungary has been making serious efforts and that progress has been made.

Education

[25] Segregation of Roma students has definitely been a serious problem as it lowers education standards and rates for Roma students and contributes to under-employment and poverty. However, wide-ranging programs have been set-up to address segregation through facilitating access to kindergarten, introducing stricter requirements how local authorities draw the boundaries between catchment areas and organize the composition of classes within schools, and the drawing up of new cognitive tests designed to take better account of cultural differences and socioeconomic disadvantage in testing children's development.²⁹ However, the efforts of the central authorities are frequently hampered by the manner in which local authorities interpret the measures and translate them into practice. Flaws in the assessment system allow for further segregation and parents of Roma and non-Roma contribute by moving their children to preferred schools.

[26] According to the European Roma Rights Centre (ERRC), desegregation efforts by the national government in Hungary have been amongst the strongest in the Central European region including efforts to subsidize schools that integrate Roma and non-Roma students in the same classroom, reintegrate Roma students inappropriately placed in remedial programs, getting schools to accept disadvantaged children in order to prevent non-Roma parents from withdrawing their children from certain schools, and a scholarship program for young Roma which in 2007-2008 had 11,352 recipients.³⁰ Also, on 19 November 2008 the Supreme Court upheld a ruling in a school segregation lawsuit against primary schools in Hajdúhadháza, according to which two primary schools of the municipality violated the law in an act of illegal segregation and the Ministry of Education and Culture issued a statement agreeing with the judgment.³¹

Housing

[27] The Roma population is concentrated in economically disadvantaged rural areas and urban

slums. Access to public housing can be contingent upon financial resources which many Roma people do not have and Roma people are generally not aware of their rights or judicial recourse available to them.³² The government has stated their aim is to reduce segregation in housing by eliminating Roma ghettos. A program was introduced to refurbish social housing and encourage Roma living in segregated settlements outside towns and villages to move into the refurbished social housing inside the town or village. Further, to ensure that the principle of desegregation is taken into account in the award of state or European Union funding for various projects, the authorities are introducing an equal opportunities subsidy policy. To receive funding for urban development projects, whether or not these are directly related to desegregation efforts, a town will be required to submit a desegregation plan aimed at the elimination of segregated living in the town.³³ I am mindful of reports of occasional resistance from local authorities and individuals when a Roma family has sought to move into a new neighbourhood, sometimes resulting in damage. Attitudinal change is not quick or universal, however the work of the authorities is ongoing and persistent. While progress is slow, progress is being made.

[28] In 2007, the United Nations reported that the Hungarian government was financing housing renovations in nine Romani localities, "dramatically improving living conditions for some families".³⁴ The Ministry of Social Affairs and Labour earmarked a total of 2.875 billion forints for the implementation of the Housing and Social Integration Programme for Residents of Roma Colonies in 30 municipalities of the country. Eleven municipalities were awarded support under the call for applications announced at the end of 2007 for the third time.³⁵ The NGO Roma Civil Rights Foundation (RCRF) accused some municipalities of using a variety of methods to prevent Roma from moving to more desirable neighbourhoods such as auctioning off social housing units to the highest bidder, or evicting Roma from housing under renovation and providing inadequate compensation. However, the authorities will take action against such tactics. For example, in 2009, the Budapest Court fined the 2nd district of Budapest about 400 Euros per capita for having evicted 40 Roma, half of whom were children, from housing that they were occupying without entitlement.³⁶

Recourse

[29] There is no question that the world-wide economic downturn has had an effect on Hungary. Far-right extremists have used this opportunity to blame minorities, including the Roma, for recent events. Violence and violent rhetoric increased as did societal discrimination as is reflected by misinformed comments of some politicians. Families have been deprived of access to social housing by discriminatory rules and practices of local authorities and Roma children are still sometimes confronted with segregation in schools, which has a devastating impact on education outcomes for these children and leaves them with limited future life choices and employment prospects. There has been a sharp rise in racism in public discourse and anti-Roma discourse appears to be becoming increasingly virulent and wide-spread.³⁷

[30] However, the documentary evidence indicates that the government remains dedicated to the protection and enhancement of the lives of the Roma people. Throughout 2009 the fight against the *Magyar Garda* (Hungarian Guard) continued. On December 15, the Supreme Court upheld an earlier appeals court decision dissolving the far-right paramilitary group. The Hungarian Guard was formed in 2007 following violent anti-government demonstrations in 2006. It was formed to preserve Hungary's "traditions and culture". The Hungarian Guard staged marches in various towns wearing uniforms depicting "Gypsy crime" as a threat to security. The court ruled that the Hungarian Guard curtailed the freedom and the rights of others and "triggered a risk of violence" during its rallies.³⁸ Prior to the Supreme Court ruling, the Guard continued to take in new members despite being banned. During one ceremony on private property, police arrived and initiated legal proceedings against 176 people for participating in a banned organization. In November before the Supreme Court decision, in Sajobabony, Roma people attempted to break up a Hungarian Guard assembly during a Jobbik party political rally. After a group of Roma people assaulted one of the organizers, Jobbik and the Magyar Garda members proceeded to the Romani section of town. Several clashes and damage to vehicles resulted. Police responded by establishing several checkpoints leading into town.³⁹

[31] Between June and August 2008, a series of physical attacks against Roma people resulted in the killing of nine persons and injuries to many others. In response, the national police chief doubled the number of detectives in the special unit assigned to the case to 100. On August 21, 2008 police arrested four suspects and no additional attacks of this nature occurred after the arrests. When non-governmental groups criticized the investigation into the crimes, police ordered an internal disciplinary proceeding to identify the alleged mistakes, and these resulted in disciplinary measures against two police officers.⁴⁰

[32] On some occasions leaders in authority, including the Parliamentary Commissioner for Civil Rights, made some disparaging remarks with respect to Roma people. In each case there was investigation and consequences. There has been effort to bolster public relations efforts to garner support for tolerance such as efforts to encourage public personalities to speak out against racism. The Ministry of Justice and Law Enforcement operated the Roma Anti-discrimination Customer Service Network, a legal service network that provides free legal aid to Roma in cases where they encountered discrimination based on their ethnicity.⁴¹ With the expansion of the Roma Anti-Discrimination Customer Service Network in 2008 there were 30 lawyers at 47 municipalities in the country and the coordination of the program in the Ministry is ensured by a desk officer for Roma affairs. Clients can obtain information on the customer service contact details of Network lawyers 24 hours a day. There was a nation-wide campaign promoting the network and toll-free number. Since 2004 the Network has handled more than 7,200 cases.⁴²

[33] There is also recourse to the Equal Treatment Authority. Since 2005 it has provided individuals with a direct avenue of redress for violations of the prohibition of discrimination in a variety of public-

and private-law relationships. In the first year, there were nearly 500 complaints lodged and the number has risen steadily every since. There are also other remedies such as seeking compensation through the courts, or turning to one of the Parliamentary Commissioners where public authorities are concerned.⁴³ There is also the Roma Police Officers' Association in Hungary and Roma people are able to file a complaint to the association. The complaints mostly concern discrimination in employment, discriminatory treatment, and discrimination by law enforcement authorities or police officers.⁴⁴

[34] Taking all of this into account, I find that there is recourse for Roma people who face discrimination in Hungary. It is reasonable to expect the state would be reasonably forthcoming with serious efforts at protection should they be sought. Unfortunately, as noted by the Council of Europe's European Commission against Racism and Intolerance (ECRI), it is a failure of the local authorities in implementing centrally enacted legislation that is at the heart of much of the discrimination experienced by Roma in daily life.⁴⁵ However, others note that Hungary has one of the most advanced systems for minority protection in the region. Despite these efforts, funding sometimes fails to reach groups with the greatest needs.⁴⁶ However, as noted above, Hungary is a democracy. Freedom House notes in its 2009 report that democratic institutions are robust and likely to hold despite reckless party politics, illiberal rhetoric, high-profile corruption, and radicalization on the political Right aimed at the minority Roma population.⁴⁷ The burden is on the claimant to provide clear and convincing evidence that the state protection available would not be adequate. Evidence shows that state's efforts are serious, that progress is slow but that there are positive signs and there are results.

Circumstances as a Minor

[35] Counsel for the claimant submitted that not only have difficulties arisen due to her ethnicity, but also as a minor. It should be noted that the claimant will turn 18 (the age of majority) in 2011 and it is unlikely she would be returned to Hungary before then. Even if she was, the claimant's own documents⁴⁸ indicate that she has experience dealing with the child welfare system. As stated previously I simply do not believe the claimant's testimony so I do not accept her statement that she would not be able to obtain social assistance. I note that recent documentary evidence makes no mention of problems in this area.⁴⁹

[36] Taking all of the above into account, I find that the claimant has not satisfactorily rebutted the presumption of state protection and the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant would be subject to the risks delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

CONCLUSION

[37] I find that the claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean
September 7, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1, Personal Information Form.
- 5 Exhibit C-4, Item 2
- 6 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 7 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 8 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 10 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 11 *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 12 Exhibit R-1, *National Documentation Package*, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.
- 13 Exhibit R-1, Item 2.1.

- 14 Exhibit R1, Item 10.2, Response to Information Request HUN100494.E. IRB. 22 September 2005.
- 15 Exhibit R-1, Item 2.4, Council of Europe. 29 March 2006. Commissioner for Human Rights.
Follow-Up Report on Hungary (2002-2005).
- 16 Exhibit R-1, Item 2.5, International Helsinki Federation for Human Rights (IHF). 2007. "Hungary."
Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2007 (Events of 2006).
- 17 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*
- 18 Exhibit R-1, item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*
- 19 Exhibit R-1, Item 2.3, Amnesty International (AI). 2009. "Hungary." *Amnesty International Report 2009.*
- 20 Exhibit R-1, Item 2.4, Council of Europe. 29 March 2006. Commissioner for Human Rights.
Follow-Up Report on Hungary (2002-2005).
- 21 Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*
- 22 Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*
- 23 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*
- 24 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary."
Country Reports on Human Rights Practices for 2009.
- 25 Exhibit R-1, Item 2.4, Council of Europe. 29 March 2006. Commissioner for Human Rights.
Follow-Up Report on Hungary (2002-2005).
- 26 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

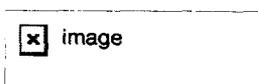
- 27 Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*
- 28 Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*
- 29 Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*
- 30 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 31 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 32 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 33 Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*
- 34 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 35 Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*
- 36 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 37 Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*
- 38 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*
- 39 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*
- 40 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country*

Reports on Human Rights Practices for 2009.

- 41 Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*
- 42 Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*
- 43 Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle; and Exhibit R-1, Item 13.10, Response to Information Request HUN103232.E. 15 October 2009.*
- 44 Exhibit R-1, Item 10.1, Response to Information Request HUN103091.E. 21 April 2009.
- 45 Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.
- 46 Exhibit R-1, Item 13.10, Response to Information Request HUN103232.E. 15 October 2009.
- 47 Exhibit R-1, Item 2.2, Freedom House. 2009. Balázs Áron Kovács and Bálint Molnár. "Hungary." *Nations in Transit 2009.*
- 48 Exhibit C-4, Items 2 and 3.
- 49 Exhibit R-1 Item 2.1



RPD File No. : TA9-12340



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-20470

TA8-20518

TA8-20519

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) Demandeur(e)(s)

Date(s) of Hearing February 19, 2010 Date(s) de l'audience

Place of Hearing Toronto, Ontario Lieu de l'audience

Date of Decision October 5, 2010 Date de la décision

Panel David McBean

Counsel for the Claimant (s) Philip U. Okpala (Barrister and Solicitor) Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer N/A Agent(e) de la décision s.19(1)

Designated Representative(s) Représentant(e)(s) de la décision

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] (the male claimant), his wife (the female claimant), and their son , citizens of the Czech Republic, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The male claimant, who is white, lived his life generally without incident until he met the female claimant, who is ethnically Roma in 2006. They met at work where the male claimant was a No one took their relationship seriously until they moved in together after a few months. The male claimant began to experience racial insults. Facing increasing problems from other workers, the male claimant was demoted with a cut in pay and was moved to another location where he interacted with fewer coworkers. The claimants faced problems when shopping as shop-keepers always watched them as if they expected the claimants to steal things. The claimants faced problems swimming as well, with people avoiding them unless they went to the “Black Beach” where Roma swam. In 2007 the female claimant and a friend were coming home from a movie when a skinhead smashed a beer bottle over the female claimant’s head while racially insulting her. The claimants’ son faced psychological and physical abuse at school where he was the only Roma child. The claimants came to Canada on 2008. They made refugee claims on , 2008.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS***Identity***

[4] The claimants’ identities as citizens of the Czech Republic were accepted at the hearing given that certified copies of their Czech passports were on file.² Also accepted at the hearing was the female claimant’s ethnicity as Roma.

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants’ evidence when the oral testimony was compared to the Personal Information Forms³ (PIF) and the other documents available. For example, in oral testimony, the male claimant stated that,

because of his relationship with his wife, his family disowned him, that his mother prayed against the relationship, and that his sister was actually living with a skinhead. When asked why none of this information was contained in his PIF, the male claimant stated that he had been too ashamed to include it. I do not find the claimant's explanation satisfactory. The lack of support that the claimants' felt in the Czech Republic was obviously important to them. While I can understand that refugee claims often deal with sensitive issues, no psychological evidence was presented that the male claimant was unable to recount information about his family. Given the importance that he placed upon this testimony it makes little sense that he would include such detailed information in his PIF about the discrimination that he experienced at work and yet make no mention of what happened with his family. I find that this discrepancy undermines the claimants' credibility.

[6] The male claimant stated orally and in his PIF that the minor claimant had been both verbally and physically assaulted while at school. In oral testimony he stated that one of the two most serious incidents that his family had suffered was the minor claimant's problems at school. However, as noted at the hearing, in a statement⁴ made to an Immigration officer at the time that the claimants made their claims, there is no mention of the minor claimant being physically assaulted at school. The male claimant stated that he was told to keep the statement to the Immigration officer short. I do not find the claimant's explanation satisfactory. The statement to the Immigration officer specifically mentions the minor claimant being called racist names at school, an example is provided, and says that the teacher did nothing to stop this. Even if the claimants were told to keep their statement brief, it makes little sense for them to provide such detailed information about the lesser problem of being called racist names at school and omit all mention of the far more serious problem of the minor claimant being physically assaulted. I find that this discrepancy further undermines the claimants' credibility.

[7] The male claimant stated that the other most serious incident that had happened to his family was when the female claimant was attacked by a skinhead who broke a beer bottle over her head. However, as noted at the hearing, this incident was not mentioned in the statement made to the Immigration officer. The male claimant stated he felt that the other information given to the Immigration officer was more important than this incident. The female claimant stated that while she was present at the interview, she did not speak up to add the incident as she had been told to keep the statement brief. I do not find the claimants' explanations satisfactory. Numerous less serious problems were stated to the Immigration officer. Had the female claimant really been attacked by a skinhead, which would have been by far the most significant incident that the adult claimants would have experienced, I would have expected some mention of it to be made to the Immigration officer rather than the numerous more minor incidents that were mentioned. The fact that it was omitted makes no sense at all and I find that this omission further undermines the claimants' credibility.

[8] In oral testimony, the female claimant related a number of problems that she had when dealing

with the police after the incident with the beer bottle. She stated that the police generally did not believe her, that there was no record of her initial contact with the police when she made a return visit, she could tell by their body language that the officers that she spoke with did not want to help her, and that one police officer actually told her that no one would help her. The female claimant stated that all these things happened for racist reasons. The female claimant also asked to speak to a supervisor but was denied as the supervisor was "too busy." However, as noted at the hearing, the PIF makes no mention of any problems at all with the police with respect to this incident. The female claimant stated that there had been many incidents and that the PIF could not contain everything. I do not find the claimant's explanation satisfactory. The PIF contains minute details with respect to the claimants' daily lives, many of these details covering what appear to be more minor situations than racism at the hands of the police. Furthermore, the directions for filling out the PIF narrative are quite clear in that all efforts to obtain protection from the authorities are to be detailed and if efforts to obtain protection are not made, the reasons should be stated. Given the level of detail contained in the PIF and the clear directions for the narrative with respect to dealings with the authorities, if the female claimant really had experienced a lack of help from the police for racist reasons, I would have expected some mention of this in the PIF. I find the omission of all these events to further undermine the claimants' credibility.

[9] In oral testimony the female claimant stated that in addition to the incident with the beer bottle, she had experienced a number of racist incidents with one of them involving violence. The female claimant stated that when she was 17, she and her boyfriend at the time (not the male claimant) were confronted by a large racist man. A fight ensued and her boyfriend was injured. However, as noted at the hearing, this incident is not mentioned in the PIF. The female claimant stated that the incident occurred long ago and therefore it was not included. I do not find the claimant's explanation satisfactory. Once again, the directions for filling out the PIF narrative are quite clear in that all significant incidents are to be mentioned. The narrative gives minute details with respect to the claimants' lives. This was allegedly one of two violent incidents that the female claimant was involved in. Even though she stated it occurred about 20 years ago and the female claimant was not injured herself during the incident, given the level of detail contained in the PIF and the fact that this incident was far more serious than many of the incidents actually detailed in the PIF, I would have expected this incident to have been mentioned in the PIF. I find the fact that it was not, to further undermine the claimants' credibility.

[10] I do note that the claimants presented some documents⁵ which state that the male claimant changed employment status at least twice over time. However, these documents state that his status was changed by "mutual agreement" and give no further information that would corroborate the claimants' testimony or overcome the credibility problems noted above.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I

find that the claimants were generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimants alleged happened to them, actually happened.

Profile as Roma/State Protection

[12] Even though I disbelieve the events that the claimants recounted orally and in their PIFs, I turn now to the general situation for Roma people in the Czech Republic. While I do note that problems do exist for people of Roma ethnicity, I find even based on the general profile of the claimants as Roma (and those related closely to Roma), the claims fail as the claimants have failed to rebut the presumption of state protection.

[13] There is a presumption that a state is capable of protecting its citizens. The claimants may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimants must approach the state for protection, providing state protection might be reasonably forthcoming.⁶ Evidence that protection being offered is not necessarily perfect⁷ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimants are unable to avail themselves of protection.⁸

[14] When the state in question is a democratic state, the claimants must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimants is to prove an absence of state protection that is directly proportional to the level of democracy of that state.⁹ The more democratic the state’s institutions, the greater the onus is on the claimants to show that they have exhausted all courses of action available.¹⁰ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹¹

[15] The documentary evidence shows that the Czech Republic is a functioning, parliamentary democracy with free and fair elections.¹² I find that Czech Republic is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Czech Republic is in a state of complete breakdown.

[16] The documentary evidence further indicates that the government generally respected and protected the rights of its citizens.¹³ While there is no question that Roma do face discrimination and that there have been demonstrations and even some attacks at the hands of skinheads, neo-Nazis and

other extremists,¹⁴ there is legislation in place that provides protection for the Roma and other groups including anti-discrimination and hate-crime legislation. The Czech constitution prohibits discrimination based on national, racial or ethnic background as well as other pieces of legislation governing employment and education as well as *The Charter of Rights and Freedoms*. An anti-discrimination bill which would harmonize Czech legislation with that of the European Union was passed on June 17, 2009. Furthermore, the Czech Republic is a member of the European Union, which has had a positive impact on the country by setting standards concerning human rights, as well as access to the European Court of Human Rights and access to multi lateral programs such as the Decade of Roma Inclusion. I do note that some observers have questioned the degree of positive impact that these measures have had.¹⁵

[17] To address acts of discrimination, the authorities introduced the Roma Police Assistant (RPA) program in 2003. The purpose of employing RPAs is to assist in building better relations and trust between the Roma and the police. The RPAs assist police in their investigations and assist in accompanying Roma who are victims of crime to file police reports and in obtaining social services for such victims. A program of hiring Minority Liason Officers (MLOs) was also begun in 2004 with the focus on crime reduction and lessening social exclusion. Several observers have commented that these programs have been helpful and represent progress in the relationship between Roma and the authorities, which has not been one of trust over the years. Furthermore, in the mid 1990s, the Ministry of the Interior initiated programs to combat extremists by allowing the police to closely monitor such group activities and created an anti-extremist department within the police itself, which is showing signs of success. The police have arrested neo-Nazis and they have been prosecuted, including a case where a Romani had been murdered. The police also successfully prevented or broke up extremist clashes and demonstrations. The government is trying to recruit Roma as police officers, with a number of drives being conducted in Prague and Brno. While there has been a good response to these drives, many applicants are screened out due to a lack of a secondary school diploma. However, to counter-act this problem, the police and other organizations offer assistance to people who want to complete their education so that they can then join the police force. Furthermore, the police are trained on how to deal with minorities and extremists. The police are making other efforts such as participating in day camps, seminars and school visits in order to foster better relations with Roma children. While statistics are difficult to come by given privacy laws, as of 2006, there were an estimated 61 Roma police officers in Czech Republic.¹⁶

[18] The judiciary has prosecuted hate crimes committed against Roma people on several occasions. The documentary evidence notes that “the judicial proceedings on racial crime have increased in recent years due to the efforts of NGOs ...”¹⁷ The Czech Ombudsman was created in 1999 and is known as the Public Defender of Rights. The Ombudsman investigates allegations of public sector mistreatment of Roma and may take corrective action or issue advice or recommendations. The Ombudsman has

successfully intervened in areas such as housing but has yet to receive any formal complaints against the police.¹⁸ There is a new independent and transparent mechanism to investigate police misconduct.¹⁹ There are other government and non government agencies available to assist the Roma, including 400 Roma NGOs, the Czech Trade Inspectorate (to deal with unfair business practices or consumer discrimination), and the Social Inclusion Agency to address the social integration of the Roma into Czech society, including housing, health care, employment, social services and cohesion.²⁰

[19] While I have read counsel's written submissions with respect to state protection and other issues, I note that the sources that he refers to are all several years or more old. Given that the decision I must make is forward looking, I prefer the generally more current evidence found in the standard documentary package,²¹ particularly those items cited above.

[20] Counsel also submitted a DVD²² that contained a number of clips related to the Czech Republic. While, some of the clips were in a language other than English, there were clips in English that dealt with an incident where two members of the Czech armed forces had added Nazi insignia to their uniforms. While such an incident is troubling, it is heartening to note that controversy and outrage erupted, the offenders and their commander were suspended and then, according to the onscreen headline, were dismissed. Reference was also made to another soldier who had been fired for his Neo-Nazi connections. Once again, while troubling that such a thing would happen, it is heartening that the Czech authorities are dealing with any problems that arise quite strongly.

[21] Reference was also made to Roma women being sterilized without their knowing consent in the past. While there is an ongoing campaign for compensation, court rulings have not been favourable since the statute of limitations has already expired. Once again, while it is unfortunate that the limitation period has expired, current judges are simply applying laws of general application.

[22] While somewhat unclear, one clip appears to show police blocking a demonstration from entering a Roma neighbourhood and that tear gas was used to disperse the crowd. Once again, while the potential for conflict is troubling, the authorities appeared to be responding appropriately to the situation.

[23] Other clips do mention that discrimination does occur, however, some non-Roma were reluctant to speak on camera out of fears they would face retaliation by Roma. Also, a clip from *Al Jazeera* from 2008 indicates that most Roma children in one town still attend a "special needs" school. Given that the majority of the documents on file and another clip on the same DVD from a different source indicate that Roma students are being streamed back into regular schools it is unclear if this was a temporary aberration or what was at work. Also in question is the expertise and motivation of *Al Jazeera* in this area, given that this does not seem to be a standard situation.

[24] In summary, I find that the preponderance of the documentary evidence indicates that the Czech Republic government is making very serious efforts to provide protection to the Roma, whether as victims of a hate crime, to assistance in obtaining social services or inclusion into Czech society. While there is discrimination against Roma people and even some incidents of violence, I find that the Czech government in recent years is making very serious strides to have this discrimination overcome.

[25] I find that the claimants have not established, on a balance of probabilities, that adequate state protection is not available. As such the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *IRPA*, the claims pursuant to that section fail as well.

[26] As the claim of the minor child relies entirely on the evidence of his parents, and no persuasive evidence was adduced to differentiate his claim from that of theirs, his claim must also fail.

CONCLUSION

[27] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

October 5, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1; Exhibit C-2; Exhibit C-3.

4 Exhibit R-2.

5 Exhibit C-4.

6 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.

- 7 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 8 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 10 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 11 *Zhuravlev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 12 Exhibit R-1, *National Documentation Package, September 25, 2009, tab 2.1, United States Department of State, Country Reports on Human Rights Practices for 2008, February 25, 2009.*
- 13 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008.*
- 14 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008.*
- 15 Exhibit R-1, tab 13.12, *Issue Paper, Czech Republic: "Fact –Finding Mission Report on State Protection", Immigration and Refugee Board, June 2009.*
- 16 Exhibit R-1, tab 13.12, *Issue Paper.*
- 17 Exhibit R-1, tab 13.12, *Issue Paper.*
- 18 Exhibit R-1, tab 13.12, *Issue Paper.*
- 19 Exhibit R-1, tab 2.3, "International Helsinki Federation Annual Report on Human Rights Violations", March 27, 2007.
- 20 Exhibit R-1, tab 13.12, *Issue Paper.*
- 21 Exhibit R-1.

22 Exhibit PH-2. It should be noted that the original DVD that was submitted during the hearing would not play on IRB equipment. After several attempts at a replacement, one that would play on IRB equipment was received on August 5, 2010.



RPD File No. : TA8-20470

TA8-20518

TA8-20519



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-11999

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	July 23, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	September 1, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Razgar Hasan	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la cour
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] **s.19(1)**
 , a citizen of Sweden and Iraq, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

Allegations

[2] The claimant was born and raised in Iraq as a Christian. After experiencing problems there she traveled to Jordan in 1998, where she was recognized as a refugee by the United Nations High Commissioner for Refugees. After being accepted by the Swedish government she traveled there and eventually became a citizen. While the claimant tried to integrate into Swedish society, she found herself rejected. In 2000, she married a Muslim Jordanian man which caused a severe rift with her family. The claimant did work for 16 months but was laid off and could not find another job due to racism and discrimination. The claimant's husband eventually left her for another woman and the claimant became very depressed. Her brothers in Sweden would not speak to her because she had married a Muslim man. The claimant was diagnosed with depression and was prescribed medication. The claimant came to Canada to be with relatives on , 2008, and made a refugee claim on , 2008. The claimant fears what she might do to herself if she returns to Sweden and fears what would happen to her in Iraq as a Christian woman.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*2 and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Country of Reference

[4] While claimants must prove their claim against all countries of citizenship, the focus at the hearing and the focus of this decision is on Sweden.

Identity

[5] The identity of the claimant as a citizen of Sweden was accepted at the beginning of the hearing as a copy of her Swedish passport was on file.³

State Protection/Objective Basis

[6] While the claimant alleged that she may face harm due to her background, the claim fails as I find that the claimant has failed to rebut the presumption of state protection. There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁴ Evidence that protection being offered is not necessarily perfect⁵ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.⁶

[7] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁷ The more democratic the state’s institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁸ Moreover, local failures by the authorities to provide protection do not mean that the state, as a whole, fails to protect its citizens unless the failures form part of a broader pattern of state inability or refusal to provide protection.⁹

[8] The documentary evidence shows that Sweden is a functioning, constitutional monarchy with a multiparty parliamentary form of government with free and fair elections.¹⁰ I find that Sweden is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Sweden is in a state of complete breakdown.

[9] While the claimant stated that the police would not be around her 24 hours per day to protect her, no country could be expected to do such a thing. The claimant conceded if she faced harm, due to intolerance or other reasons, and the police became aware of it, they would respond to her aid. The objective documentary evidence confirms this in that while race-related crimes do occur, the offenders are prosecuted.¹¹

[10] The claimant also stated that she faced discrimination in attempting to find a job. While the claimant stated that while she had complained to an employer directly, she was unaware that she could complain about such problems to the discrimination ombudsman. With the knowledge that the complaints ombudsman does investigate these matters,¹² the claimant should be able to resolve future problems much more successfully.

[11] While the claimant indicated that she had difficulty learning Swedish, as counsel noted both during the hearing and in submissions, there is a large Iraqi community in Sweden. She could call upon members of this community should a language problem arise.

[12] The claimant also stated that she experienced technical problems in Sweden as she has never obtained a final divorce and does not know the current address of her spouse. However, the claimant only ever consulted a non-lawyer in Canada. Should she consult a lawyer, either here or in Sweden, no evidence was presented that a lawyer would be unable to obtain a divorce even with the lack of an address.

[13] Finally, the claimant stated that, despite having lived in Sweden for a number of years and having a university education, she had always lived with people and that she would face a tough time personally and culturally living on her own in Sweden. While I can understand her desire to live with her relatives here in Canada, I do not see how this forms an objective basis for fearing to return to Sweden. Even if the claimant were to suffer psychological problems as a result, no evidence was presented that she could not obtain further psychological treatment in Sweden as she has done in the past.

[14] I find that the claimant has not established, on a balance of probabilities, that adequate state protection is not available. As such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[15] I find that, pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore

there is no credible basis for the claim.

CONCLUSION

[16] I find that the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

'David McBean'

David McBean

September 1, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 4 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 5 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 6 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 7 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 8 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 9 *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 10 Exhibit R-1, National Documentation Package, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.

11 Exhibit R-1, U.S. Dept. of State Report, Sweden, item 2.1

12 Ibid.



RPD File No. : TA8-11999



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-07290

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 28, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 22, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Luis Antonio Monroy Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la
Designated Representative(s)	N/A	Représentant(e)(s) du
Counsel for the Minister	N/A	Conseil du

s.19(1)

[1] a citizen of both Bolivia and Cuba, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Cuba. In 2006, she began a relationship with a Canadian man who frequently traveled to Cuba and was originally from Bolivia. met the claimant's family in Cuba. They decided to get married in Bolivia so that she could meet his family as well. On , 2007, the claimant traveled to Bolivia with permission from the Cuban authorities to remain abroad for one month, renewable until 2007. They married in Bolivia without incident. began the process to sponsor the claimant to come to Canada as his wife. However, problems arose when it was discovered that former wife had obtained welfare assistance in Canada without his knowledge while they were still married. The claimant lived in with parents. On , 2007, while on the way to the immigration office, the claimant was stopped by three people on . They asked if she was Cuban and when she said that she was they insulted her and told her to leave or face the consequences. The claimant either stayed inside or went out with other people. On , 2007, the claimant approached the Cuban Consulate to authenticate a document but was told that since she had overstayed her time abroad she had lost her Cuban citizenship. On , 2007, the claimant was in a line at a government office with mother when a man began berating the claimant and even pushed her because she was Cuban. The claimant told the security guard but he did nothing. The claimant heard of other attacks on Cubans and while high profile doctors were protected she did not feel that she would be protected. In 2008, the claimant paid a man to take her to the United States using a false passport. On , 2008, the claimant found a threatening note on her door. The claimant reported this to the police and while they promised to investigate nothing happened. The claimant left Bolivia for the United States on , 2008 and traveled to Canada on , 2008, making a refugee claim upon arrival.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons for decision are as follows.

ANALYSIS**Country of Reference**

[4] While refugee claimants must establish their claims against all countries of citizenship, given my findings below this decision will focus on Bolivia.

Identity

[5] The claimant's identity as a citizen of Bolivia was accepted at the hearing given that she had married a Bolivian citizen and obtained status through him.²

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated after the three people threatened her on ^{s.19(1)} she went to the police and the police not only did not help her but actually told her that she should leave Bolivia. However, as noted at the hearing, the PIF does not mention that the claimant went to the police after this incident, that they did not help her and that the police actually told her to return to Cuba. The claimant stated that she did not know why this was not in her PIF and that she had perhaps forgotten. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that all efforts to obtain assistance from the authorities are to be detailed and if efforts are not made the reasons should be detailed as well. If the claimant really had gone to the police after this incident, this would have been only one of two times in total that she sought their help, so one would think her contact with them would stick out in her mind. If the authorities had not only been not helpful but actually told the claimant to leave the country, it makes little sense for all of this not to be mentioned in the PIF, particularly since this would make her less likely to go to the authorities in the future. I find that this omission undermines the claimant's credibility.

[7] In oral testimony the claimant initially stated that she reported one of the incidents where she received a threatening note on her door. When asked to confirm the number of times that she received threatening notes on her door, the claimant stated that some of the threats were in black paint on the door itself. As the questioning continued, the claimant stated that she had received both a threatening note and threats in paint and that these threats were at the same time. When asked why her earlier testimony seemed to suggest that there was more than one time that she received a threatening note, the claimant simply insisted that there had been only one occasion where she had received threats on her door. The claimant then stated that she had never reported the threat to the police. However, as noted at the hearing, the PIF states that the claimant did report the threat to the police, albeit with no results. The claimant stated that she did go to the police but had forgotten since it was so long ago. I do not find the claimant's explanations satisfactory. It was obvious as the claimant's testimony evolved that she had realized that her PIF only mentioned one threatening note and not more than one. Rather than simply

stating that she had made a mistake, the claimant attempted to reconcile stating that there were more than one threat (oral) and one threat (PIF). She simply did not succeed as the two are not reconcilable. Furthermore, this was the only time in the PIF where the claimant contacted the authorities and it was within the last two years so it was not so long ago that she would not have remembered seeking protection. I find that this discrepancy with respect to the number of threats on the claimant's door and more importantly the contradiction with respect to whether or not the claimant went to the police to further undermine the claimant's credibility.

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[8] The claimant presented a letter⁴ from [redacted] parents. It spoke of the incident on [redacted] when people threatened her. When asked to clarify what the police had told her after that incident, the claimant stated that the police told her that they did not care if she left Bolivia. However, when confronted with the fact that she had said earlier that the police had allegedly told her that she should leave Bolivia, the claimant stated that was what they had said. When it was noted that the two statements were different, the claimant simply insisted that the police told her that she should leave Bolivia. When asked if the police said anything else, the claimant said no. However, as further noted at the hearing, the letter states that the police said that they hoped that the claimant would be beaten. The claimant stated that this was simply "an expression". I do not find the claimant's explanations satisfactory. The claimant's evidence in this area varied greatly, sometimes question to question. This was allegedly one of two times that the claimant went to the police. At varying times the claimant stated that the police did not care if she left Bolivia, told her to leave Bolivia and/or told her to leave Bolivia and in the meantime hoped that she was beaten. It should not have been this difficult to summarize the response of the police after this incident. These statements simply could not be reconciled and I find that these discrepancies not only call into question the authenticity of the document presented but further undermine the claimant's credibility as well.

[9] Also contained in the letter from [redacted] parents was the statement that stones were thrown at the claimant. However, as noted at the hearing, there is no mention in the PIF of stones being thrown at the claimant. The claimant stated that stones had been thrown at her house and that she was unsure why the stones were thrown. I do not find the claimant's explanations satisfactory. The claimant indicated that the stone throwing was at least possibly due to her being Cuban. Had this actually happened I would have expected her to mention this in her PIF. I find that this discrepancy not only further calls into question the authenticity of the document presented, but given the concerns noted above I find, on a balance of probabilities, that the letter from [redacted] parents was falsely conscripted in an attempt to corroborate the claimant's story. I find that this discrepancy further undermines the claimant's credibility.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of

probabilities, that any of the significant events that the claimant alleged happened to her, actually happened, and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be subject to the risks delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

State Protection

[11] Even if my analysis with respect to credibility were found to be incorrect, I find in the alternative that the claim still fails as the claimant has failed to rebut the presumption of state protection.

[12] There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁵ Evidence that protection being offered is not necessarily perfect⁶ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.⁷

[13] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁸ The more democratic the state’s institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁹ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁰

[14] The documentary evidence shows that Bolivia is a constitutional, multi-party democracy with free and fair elections.¹¹ I find that Bolivia is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Bolivia is in a state of complete breakdown.

[15] While there have been some incidents in the past with respect to Cuban doctors, it appears this was more an issue of two competing health care systems.¹² Counsel for the claimant conceded that he could find no documents that indicate that “ordinary” Cuban citizens generally face harm in Bolivia. This makes sense since the government is allied with the Cuban government.¹³ Even if the claimant were to encounter some discrimination from the public or even from one representative of the authorities, it makes little sense that she would not be able to escalate her complaint to a higher level and

that assistance would be forthcoming.

[16] I find that the claimant has not established, on a balance of probabilities, that adequate state protection is not available. As such the claim pursuant to section 96 of the IRPA fails. The being no other evidence that the claimant would be subject to the risks delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[17] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[18] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

July 22, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit C-1 PIF and Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, as amended by C-20

4 Exhibit C-2, p.2.

5 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.

6 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).

7 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

8 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

10 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

11 Exhibit R-1, *National Documentation Package*, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.

12 Exhibit C-2, p. 6.

13 Exhibit C-2, p. 9.



RPD File No. : TA8-07290



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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-05173

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing June 22, 2010 **Date(s) de l'a**

Place of Hearing Toronto, Ontario **Lieu de l'a**

Date of Decision August 20, 2010 **Date de la**

Panel David McBean

Counsel for the Claimant (s) Joseph L. Salsbury **Conseil(s) du / de demandeur(e)(s)**

Tribunal Officer N/A **Agent(e) de**

Designated Representative(s) N/A **Représentant(e)(s) de**

Counsel for the Minister N/A **Conseil du**

successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.⁵

[6] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁶ The more democratic the state's institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁷ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.⁸

[7] The documentary evidence shows that Dominica is a multi-party, parliamentary democracy with generally free and fair elections.⁹ I find that Dominica is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Dominica is in a state of complete breakdown.

[8] The claimant did not present any documents that would link him to the [redacted] and this may make sense since he was never actually a [redacted]. Generally, it appeared that his involvement in the [redacted] was at a low level. As noted at the hearing, the objective documentary evidence¹⁰ does not make mention of any incidents of violence directed at members or supporters of the [redacted] at any level. This despite the [redacted] being specifically mentioned in a dispute over the amount of radio airtime available to them during the most recent [redacted]. While the claimant mentioned that he was aware of many unsolved murders he presented no documents to corroborate that such murders had indeed taken place. While counsel for the claimant speculated that perhaps the government had covered up political murders I do not accept this speculation. The objective documentary evidence¹¹ states that freedom of the press is generally respected and that the media are independent. The government places no restriction on the Internet and does not monitor e-mail. While there was the above-noted controversy with respect to radio airtime, in these circumstances had any political murders, disappearances or violence actually taken place I would have expected them to be mentioned in the objective documentary evidence. I find on a balance of probabilities that there are no politically motivated killings, disappearances or violence in Dominica. Even if an isolated incident were to befall the claimant he could always call upon the authorities for help. While the claimant stated he would be brushed off since the [redacted], as noted at the hearing, there was no mention in the objective documentary evidence of the [redacted] acting with impunity against the [redacted].

[9] I find that the claimant has not established, on a balance of probabilities, that adequate state protection is not available. As such the claim pursuant to section 96 of the IRPA fails.

Generalized Risk

[10] While the claimant mentioned that he was also afraid of crime in Dominica this is a risk faced generally by others and as such section 97(1)(b)(ii) of the *IRPA* prevents me from considering it. Even if the claimant were to be perceived as wealthy given his lengthy stay abroad and therefore more subject to targeting by criminals, this merely alters the degree of the risk and not the nature of it.¹² There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA* the claim pursuant to that section fails as well.

No Credible Basis

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[12] I find that the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

August 20, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

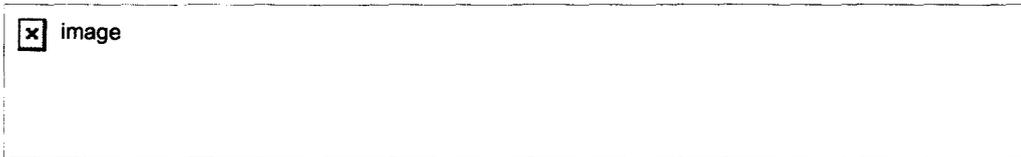
2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.

4 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).

5 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

- 6 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 7 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 8 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 9 Exhibit R-1, *National Documentation Package*, March 30, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.
- 10 Ibid
- 11 Exhibit R-1, 2.1
- 12 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. : TA8-05173



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA6-01686

TA6-01687

TA6-01688

TA6-01689

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

June 10, 2009

Date(s) de l'audience

September 4, 2009

November 27, 2009

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

January 25, 2010

Date de la décision

Panel

David McBean

Counsel for the Claimant

Silas Tilluckdharry

Conseil(s) du / de la partie

000051

(s)

demandeur(e)(s)

Tribunal Officer

N/A

Agent(e) de

**Designated
Representative(s)**

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Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] ("the claimant"), her son, , her daughter, and her son, , citizens of Trinidad and Tobago, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Trinidad. She met ("T"), in 1993, moved in with him in 1994 and married him in 1995. T's parents did not like her and became abusive over time, starting when the claimant was pregnant with her first child. The claimant noticed signs of T being involved with other women but was abused when she confronted him. While T's family witnessed the abuse they were of no help. T even slammed the claimant's head into concrete walls and attempted to choke her. By 1997, the claimant and T had moved out of her in-laws' house but the situation was still bad. One time T beat the claimant in front of their son, hitting her stomach and banging her head into the wall near a protruding nail. After the claimant's father died she found more evidence of T having an affair. When confronted he beat and raped her in front of . The claimant's employer took her to the police who took a report and suggested counselling. However, T beat the claimant again in front of , for reporting her. The claimant considered a restraining order, but even the police advised against it. T would beat and rape the claimant many times. During one of the rapes in 1998, their daughter was conceived. The claimant was confined to the hospital for most of the pregnancy and T was not well cared for. After T's birth, T demanded sex even though the claimant's stitches from giving birth had not healed. T would still beat the claimant and threatened her with a knife. The neighbours would hear the claimant being beaten and T would try to intervene, but would be beaten in return. While the claimant would try staying with others, T always found them. He would demand sex and threatened the claimant with death should she ever leave him. The claimant hoped that having a Christian wedding in 2000 would improve things but it did not. T made a scene just after the ceremony, demanding that the claimant get back to work. While others intervened at the time, these people left Trinidad, taking away the claimant's support system. T continued to beat the claimant whenever he was suspicious of her. In one incident he filled the house with gas fumes from the stove. On another occasion he had sex with her using a condom covered with hot sauce. Generally, T continued to abuse the claimant and force her to have sex. She learned that T was renting a separate apartment in order to meet women. After receiving counselling at church in 2001, the claimant attempted to get a restraining order. Even though the Judge did not believe her allegations and allowed T to move back in, he did grant a protection order. The claimant was hospitalized for much of her third pregnancy and despite her condition T continued to abuse her. T even scolded her for creating a mess on the sheets

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as part of the birthing process. [redacted] then applied to become a [redacted], even receiving recommendations from the [redacted] that had dealt with the claimant's domestic violence complaints. He began training in [redacted] 2003 and was posted to another part of the island; therefore, he only came home once or twice a week. When the claimant got a job as a [redacted] in 2004, he monitored her whereabouts, letting her co-workers know he was a [redacted] forced their daughter [redacted] to perform oral sex on him and he watched pornography in front of the children. The claimant asked [redacted] to leave but he in turn asked for time to find a place. When the claimant found him fondling [redacted] while masturbating, she ordered him to leave. When [redacted] discovered the claimant speaking to [redacted], a friend, he hit [redacted] and beat the claimant severely. When the police came, they congratulated [redacted] for doing what he had done. [redacted] finally left the claimant on [redacted], 2004. The claimant was hospitalized soon after and [redacted] came to interrogate her there. After the claimant was released from a psychiatric clinic, [redacted] would stop by whenever he wanted to abuse the claimant, at one point even laying a false complaint of child neglect with the authorities. The claimant's doctors advised her to flee the country. The claimant saved up enough money to buy tickets on [redacted], 2005, travelling to Canada on [redacted], 2005. The claimants made refugee claims on [redacted], 2006.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Trinidad and Tobago were accepted at the hearing given that copies of their Trinidadian passports are on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, while I am mindful that claimants are not required to document all aspects of their claim, if documents are reasonably available they should be presented.

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Given that the claimant stated orally that she had received medical treatment on a number of occasions, it seemed odd that there was a general lack of medical documentation. The only documents presented were mostly technical documents and background histories from 2004. When asked why there were no records from other occasions that she had obtained medical treatment, the claimant stated that she had usually gone for treatment with and that she could not tell the doctor how she had been injured. Furthermore, she stated that she went to family doctor, who was in private practice and he had only ever given her painkillers and that she had not contacted him. Furthermore, as also noted at the hearing, despite the claimant stating orally that she had made approximately formal complaints to the police, there were no documents from the police or a copy of the protection order that the claimant allegedly obtained. The claimant stated that the officers involved with her complaints had since moved on to other duties. When I noted that her files would still be there even if the officers had left, she stated while she did have a copy of the protection order in Trinidad, she was not able to obtain it and that it would take a long time to obtain documents from the police and no one was helping her. I do not find the claimant's explanations satisfactory. If the claimant is to be believed, she was injured extensively, sometimes gruesomely on a large number of occasions over the course of a decade and that she also had many dealings with the police. For there to be only one medical document and absolutely nothing from the police makes little sense at all, particularly since the claimant had over three years to prepare her case in Canada after she made her claim. I find on a balance of probabilities that far more documents would have been reasonably available and that this lack of documentation undermines the claimant's credibility.

[6] In oral testimony, the claimant described an incident wherein she and the children moved away to a shelter. found them after a couple of days and arrived in full police uniform. He threatened the shelter workers and since the shelter workers were afraid for their own safety and the safety of the other women at the shelter, they told the claimant to leave. However, as noted at the hearing, this incident is not mentioned at all in the PIF. The claimant stated that she had been too overwhelmed to remember everything to include in the PIF. I do not find the claimant's explanation satisfactory. The claimant's narrative is 495 typed lines covering 22 pages. It includes numerous minute details of the claimant's daily life and experiences. Shelters are often an effective way for women to escape from their abusers. To not remember going to a shelter, having the agent of persecution arriving in police uniform threatening the shelter workers, and having those workers give in to his threats by asking the claimant to leave to face further harm makes absolutely no sense at all. I find that this discrepancy further undermines the claimant's credibility.

[7] In oral testimony, the claimant stated that she had gone to the police on numerous occasions and that the police had taken reports from her more than times. However, as noted at the hearing, this information is not in her PIF. The claimant insisted that she went and gave a report more than times. However, as further noted at the hearing, the PIF states at line 357/8, that she was tired of making

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reports because the police would not assist her. The claimant insisted that some officer would take reports. I do not find the claimant's explanation satisfactory. As noted previously, the claimant's PIF is 495 typed lines long. It includes minute details of the claimant's daily life. In all of that information there is only one occasion mentioned where an officer took a formal report and one time when the claimant took [redacted] to court. While another occasion is described where she complained about rape, her report was rebuffed with the statement that spouses cannot rape each other, so there appeared to be no report. Another incident is described where officers responded only to congratulate [redacted] on what he had done so it appears that no report resulted from that incident either. Given the extremely high level of detail in the claimant's PIF, if she had made [redacted] or more reports to the police, I would have expected these reports to have been mentioned in the PIF and not have the PIF written the way that it was. I find that this discrepancy further undermines the claimant's credibility.

[8] The claimant stated that while [redacted] had left her in [redacted] 2004, she did not travel to Canada until [redacted] 2005, as she needed time to save money, put together a visa application, etc. However, as noted at the hearing, it seemed quite odd that [redacted] was actually the principal applicant on the visa application. The claimant stated at various times that she would do anything he asked her to do in return for his assistance, that he was drunk, that she was not sure if he knew exactly what he was signing, that she obtained the letters in support from the school on her own and that she told [redacted] she was going on vacation. I do not find the claimant's explanations satisfactory. Throughout this area she gave evasive and confusing testimony that simply did not match the rest of her evidence. The whole thrust of her evidence was that [redacted] wanted to control and abuse her and would kill her if she ever left. It then makes no sense at all for [redacted] to cooperate in signing what is obviously a visa application to go to Canada with himself as the principal applicant, obtain a letter from his employer, obtain a letter from his own bank, etc, all in the hopes of letting the claimant and the children travel to Canada. If [redacted] was really as controlling and abusive as the claimant stated, it makes no sense for him to assist in the visa application in any way. I find the fact that he did to further undermine the claimant's credibility.

[9] The claimant arrived in Canada on [redacted], 2005, but did not make a refugee claim until [redacted], 2006. When asked to explain this delay, the claimant stated that she had not known what to do and that she was looking for counsel but lacked funds to retain one. When it was pointed out that having representation is not required to initiate a claim, the claimant stated that she was not aware of that. I do not find the claimant's explanation satisfactory. The claimant is not unsophisticated; she has 12 years of education and had worked in more than one job, including as a [redacted] with [redacted]. Over the last three years she has been represented by several different counsels. I find that it would have been reasonable in the claimant's own particular circumstances to express her desire to claim protection to Canadian authorities sooner than she did. I find that this delay in claiming not only showed a lack of subjective fear but further undermines the claimant's credibility.

s.19(1)

[10] I do note that the claimant did present what purports to be an extract from a Magistrate's casebook.⁵ However, as noted at the hearing, there are many odd things about this document. Under the heading "Offence" it states, "Application for protection order," rather than something to the effect of "Assault". Under the heading "How Disposed" it states "Applicant appear. Respondent appear – Denies Allegations. Mr.". As noted at the hearing it seemed odd that there would be such grammatical mistakes or that there would be no formal place to list solicitors. The claimant stated that she did not know anything about the contents or format of the document. I do not find these unexplained oddities reasonable. The claimant insisted that she had made assault complaints to the police. I would have expected an offence of assault to be listed in the area dealing with offences rather than a subsidiary application for a protection order. Even if the Magistrate had indeed not believed her allegations, this portion of the document does not make sense. Furthermore, the awkward way that the disposition area is written and the fact that there is no place to record the names of counsels, I find on a balance of probabilities that this document is a forgery and the fact that the claimant relied on it to further undermine her credibility.

[11] The claimant presented numerous letters⁶ of support in an attempt to corroborate her claim. However, there were concerns even within these letters. For example, the claimant provided an undated letter of support purportedly from , her friend and former employer. As noted at the hearing, in the return address section, Ms. contact information is listed as " [amended to], ".⁷ The claimant did not know why the address appeared like that. I do not find this satisfactory. The claimant stated that in approximately 2000, Ms. had moved to the United States. Given that the letter appears to have been prepared after the claimant came to Canada, Ms. would have lived in the United States for over half a decade before preparing the letter. It seems quite odd that if she actually lived on a street called that she would insert an improper space. It seems even odder for someone living in the to initially write then amend the word to , both names of course being incorrect. It seems evens odder still that someone living in the United States for over half a decade would not know that their own Zip code would have either five or nine digits, not four. Given these discrepancies I find on a balance of probabilities that this letter is a forgery and that the claimant relied on it to further undermine her credibility. I note that this also casts doubt on the authenticity of all the other letters from friends, family and other acquaintances. Even if the letters are not outright forgeries, I give them little weight given that they are from non-objective sources that would have an interest in helping the claimant bolster her claim.

[12] As stated earlier, the claimant did provide a set of medical documents⁸ from 2004, however these documents were problematic as well. In the contact information section of the admission discharge section of the first page, the claimant's next of kin is listed as " " and her relationship to him is described as common-law spouse. The claimant stated that she had been staying

with a friend and that [redacted] was her friend's partner and that the hospital had wrongly assumed that he was her partner. I do not find the claimant's explanation satisfactory. If the claimant had stated that she was staying with a friend and that [redacted] was either that friend, or the partner of a friend, it makes little sense for the admitting clerk to somehow write down that they were common-law partners rather than list him as a friend. I find that this discrepancy further undermines the claimant's credibility.

[13] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events the claimant alleged happened to her, actually happened and as such the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would be at risk of any of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well. In coming to this conclusion, I am mindful of the medical and psychological report⁹ on file, as well as the letter from a church,¹⁰ and a letter from a guidance counsellor.¹¹ However, the statements in these documents are based on a story that I simply do not believe. Whatever the claimant's actual psychological problems, no evidence has been presented that they could not obtain treatment for such difficulties in Trinidad.

[14] As the claims of the children rely entirely on the evidence of the claimant and no persuasive evidence was adduced to differentiate their claims from that of the claimant, their claims must also fail.

CONCLUSION

[15] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

"David McBean"

David McBean

January 25, 2010

Date

1 As enacted by S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

- 3 Exhibit R-2, certified copies of passports received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1.
- 5 Exhibit C-8.
- 6 Exhibit C-9, items 'A' through 'R'.
- 7 Exhibit C-9, item 'L'.
- 8 Exhibit C-9, item 'T'.
- 9 Exhibit C-6.
- 10 Exhibit C-9, item 'K'.
- 11 Exhibit C-9, item 'M'.

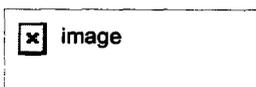


RPD File No. : TA6-01686

TA6-01687

TA6-01688

TA6-01689



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA6-02167

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing June 24, 2008 **Date(s) de l'a**

Place of Hearing TORONTO **Lieu de l'a**

Date of Decision July 11, 2008 **Date de la**

Panel David McBean **Panel**

Counsel for the Claimant(s) Maureen Silcoff
Barrister and Solicitor **Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer A. Martin **Agent(e) des tr**

Designated Nil **Représent**

000061

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Grenada, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant had a relationship with () a . After having a son together, became verbally and physically abusive so the claimant left him. The claimant then had a relationship with (). left the claimant when she became pregnant with her second son. The claimant then had a relationship with (). After having a daughter together, became abusive as well. The claimant decided to find comfort in a sexual encounter with another woman, (). In attempting to visit his son, found the claimant and together. beat the claimant and said that she was a bad example for their son. After travelling to Trinidad for one month with the hope that everything would calm down, she returned to . However, the claimant received a message from directing her to turn herself in to the police station, as homosexuality is illegal in . The claimant came to Canada on , 2001 and made a refugee claim on , 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this determination, I have considered the *Chairperson's Gender Guidelines*.² My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Grenada was accepted at the beginning of the hearing³ as a copy of her Grenadian passport was on file.

Credibility

There were numerous contradictions and omissions the three times that the claimant has told her story. For example, in the Personal Information Form⁴ (PIF), , the father of her first son, beat her during their relationship. In oral testimony, the claimant stated that was the only one who ever beat her physically and that was only verbally abusive. The only key incident mentioned in the

PIF was that [redacted] came to visit his son, discovered the claimant in a same-sex encounter and then proceeded to beat her. When the claimant gave a statement to an Immigration Officer⁵ (IO) about what had happened to her, that [redacted] discovered the encounter but then told [redacted], and it was [redacted] that beat the claimant. The claimant stated at the hearing that the version of the story contained in the IO's notes was the correct one and that the PIF was incorrect with respect to both allegations that beat the claimant. The claimant signed a declaration that the PIF was complete, true and accurate and re-affirmed that declaration at the beginning of the hearing. She was unable to explain why the PIF said what it did about [redacted].

If this was a simple mix-up in names perhaps these would not have been major errors; however, these two instances seem far more than a simple mix-up in names. In the PIF, the claimant states that she left [redacted] because he was both physically and verbally abusive. In the PIF, when beating the claimant after discovering her in a same-sex encounter, [redacted] is alleged to have said that the claimant was setting a bad example for their son. Had the perpetrator been [redacted], as the claimant stated orally and at the time that she made her claim, he would have spoken about their daughter, as they only shared a daughter together. I find that these inconsistencies, particularly with respect to the most significant incident mentioned in the PIF to undermine the claimant's credibility.

In the PIF, the claimant felt that she had to leave Grenada because [redacted], a [redacted] left her a message directing her to report to the police station as homosexuality was illegal in Grenada. When the claimant spoke to the IO, she did not mention that [redacted] was a [redacted] or that he had told her to report to the police station. When asked to explain why she did not mention these facts to the IO, the claimant said that it was too brief of an interview for her to do so. I do not find this explanation satisfactory. While it would make sense to omit minor details in a brief interview, it makes no sense for her to omit the very reason for which she fled her country. I find that this omission further undermines the claimant's credibility.

In the PIF, as it was originally transcribed, [redacted] left the claimant a message in [redacted] 2001, telling her report to the police station causing her to flee Grenada almost immediately. At the beginning of the hearing, the PIF was amended to give the date as [redacted] 2000. In oral testimony, the claimant stated that the incident not only actually happened a year before claimant left but that [redacted] had not only left one message but had actually told her a few times over the course of the year to report to the police station. The PIF was also amended at the start of the hearing to state, "Currently the main agent of persecution is [redacted]". In oral testimony, the claimant stated that while the incident with [redacted] did happen, her primary reason for fleeing Grenada was that she suffered physical abuse at the hands of [redacted] from 1995 to 2001 and it was this long-term abuse that caused her to flee. The claimant stated that she did not realize that her PIF had not contained any of this information. Counsel submitted that the claimant should not be penalized for problems in her narrative given that the claimant has a limited education, low literacy skills and had some dealings with potentially shady counsels who helped prepare the PIF. I do not find this explanation satisfactory. The claimant affirmed in writing on the PIF and orally at the

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beginning of the hearing that PIF was complete, true and correct. The claimant's current counsel was retained at least since March 11, 2008 according to a "Notice of Representative" form on file. Several other PIF amendments were made at the beginning of the hearing so any defects in the narrative should have been "cured" at that time. Both the IO's notes and PIF make it clear that the claimant fled because she was discovered in a same sex encounter. While the PIF was amended to state, "Currently the main agent of persecution is _____",⁶ the entire thrust of the IO interview and the actual narrative is a claim based on sexual orientation. While some women may be reluctant to disclose abuse in some situations, this does not appear to have been an issue for the claimant as she stated in her PIF that two of her three major relationships in Grenada were abusive. It's just that in the PIF they were simply not her motivation for fleeing. I find that this significant change in not only the triggering incident that caused the claimant to flee but also the sudden change in the very nature of the claim to further undermine the claimants credibility.

The claimant arrived in Canada, whatever the motivation, on _____, 2001 and was granted permission to remain for six months. No attempt was made to extend that permission so the claimant lived here for a further four years illegally until she made her claim on February 3, 2006. When asked why she did not make a claim earlier, she said that she was unfamiliar with

the process. Eventually she sought advice of a counsel in 2004 who took some money from her. Even though she seemed to be aware that she could do something to regularize her status in 2004, she waited until 2006 before her claim was initiated through another counsel. While delay, particularly a short period, is not determinative of refugee claims, the claimant was in Canada for close to half a decade before she initiated her claim. Even with the claimant's limited education, it appeared that she was aware that she could do something to regularize her status as early as 2004. I find that by not filing a claim for almost half a decade while in Canada, the claimant has demonstrated a lack of subjective fear that further undermines her credibility.

CONCLUSION

In general, the claimant simply could not tell a consistent story from one version of her story to the next. I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleges happened to her, actually happened. As such, her claim under section 96 of the *IRPA* fails. Since I do not believe the claimant with respect to the events described in the PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, her claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David Mc Bean”

David McBean

July 11, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1, Personal Information Form (PIF).
- 5 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, Record of Examination.
- 6 Exhibit C-1, PIF.
- 7 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

RPD File No. / N° de dossier de la SPR: TA6-02167

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RPD File No. / N° de dossier de la SPR : TA6-02971

TA6-02972; TA6-02973

TA6-02974

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

April 24, 2009

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

May 14, 2009

Date de la décision

Panel

David McBean

**Counsel for the
Claimant(s)**

Nil

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

Nil

Agent(e) des tribunaux

000067

s.19(1)

**Designated
Representative(s)**

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

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, (the male claimant), his common law wife, ,
 , (the female claimant) and their minor daughters,
 and , citizens of Trinidad and Tobago, claim
 refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee
 Protection Act*1 (IRPA).

ALLEGATIONS

In 2000, the female claimant's , (" "), visited the
 claimants' apartment. After doing her hair they had a few drinks. Realizing the hour was late, ,
 innocently spent the night. The next morning , boyfriend came looking for her and discovered
 the two had spent the night together. An angry, violent argument ensued. Neighbours were attracted by
 the commotion and , boyfriend accused , and the female claimant of being lesbians.
 The female claimant left the area and soon made plans to travel Canada. Through the use of an agent,
 she entered surreptitiously in the 1000 Islands on 2000, where she joined the male claimant
 who was already in Canada. Their daughters soon joined them. The male claimant personally feared
 violence as a perceived bisexual since he would be perceived as being aware of his wife's sexual
 orientation and since he had never denounced her, everyone would believe that he not only approved of
 her sexual orientation, but that he must be bisexual as well in order to give that approval. The entire
 family made refugee claims on February 21, 2006.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of
 persecution on a Convention ground, or that they would personally be subjected on a balance of
 probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or
 punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Trinidad and Tobago were accepted at the beginning of
 the hearing as copies of their Trinidadian passports were on file.2

Credibility**s.19(1)**

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Forms3 (PIFs) and the other documents available. For example, in the PIF and oral testimony, [redacted] boyfriend saw [redacted] in the female claimant's bed in the apartment. Furthermore, in oral testimony, he pushed past the female claimant and began beating [redacted] in the apartment. However, in the notes4 of the immigration officer made at the time that the claimants made their claims, there is no mention that the boyfriend ever entered the apartment, no mention that he saw [redacted] in the female claimant's bed in the apartment and most importantly, the beating actually started outside the apartment after [redacted] went out. The female claimant stated that she merely provided the "gist" of the event to the immigration officer and that she was providing more detail in the PIF and oral testimony. I do not find the claimant's explanation satisfactory. This is not a case where a few details were added; the two accounts actually contradicted each other on several points, particularly with respect to where the beating began. If [redacted] boyfriend had actually seen [redacted] in the female claimant's bed, pushed past the female claimant and began beating [redacted] in the apartment, I would have expected her to say just that to the immigration officer, and not that everything began outside after [redacted] left. I find that these contradictions undermine the claimants' credibility.

In the PIF and oral testimony, [redacted] boyfriend not only beat [redacted], but beat the female claimant as well, hitting her in the face and other places, leaving cuts and scrapes. However, as noted at the hearing, the notes of the immigration officer make no mention of the claimant being beaten by anyone. The female claimant stated that she was too embarrassed to say that she was beaten and that she was told by the immigration officer to slow down so she could record what she was saying. I do not find the claimant's explanation satisfactory. The immigration officer in question was female and the female claimant was not embarrassed to give great details about being found with another woman and accused of being bisexual, despite that being an alleged taboo in her own country. To be "too embarrassed" to state that she was beaten during the same incident does not make sense. To say that the immigration officer asked the female claimant to slow down so she could accurately record what was said, does not explain anything, particularly since the immigration officer also asked if the claimants had anything to add and they said that they did not. Had the female claimant actually been beaten, I would have expected her to mention that to the immigration officer. I find that this key omission from the description of the only significant incident in all of the claimants' claims to further undermine their credibility.

When asked to explain the more than half decade delay in making refugee claims, the female claimant said that she travelled to the United States of America (USA), did not make a claim and then mysteriously paid an agent to be smuggled through the 1000 Islands using a false passport without

reporting to Canadian Immigration. She joined the male claimant who was already living in Montreal. They consulted a lawyer who said that they had no chance with respect to a refugee claim and that they should wait four years before they filed an application to stay in Canada on Humanitarian and Compassionate grounds. Other people told them the same thing and it was not until the claimants moved to Toronto and consulted a new counsel that they decided to file refugee claims in 2006. I do not find the claimants' explanation satisfactory. Both adult claimants speak English, have at least 10 years of education, have worked at various jobs and have travelled internationally to the USA and Canada on different occasions. Both have managed to live their lives and arrange extensive care for one of their daughters who has cerebral palsy and vision problems. It simply does not make sense that if the claimants truly had some reason to fear death that they would not at least attempt to make refugee claims to see what would happen. I find that this more than five year delay in claiming not only demonstrates a lack of subjective fear, but also further undermines the claimants' credibility.

The male claimant's fear is simply implausible. To state both orally and in his PIF that because his wife was found to have spent the night with another woman while he was in Canada, that he would be perceived as bisexual for not having earlier denounced her apparent sexual orientation, simply on the assumption that the lack of disapproval not only means that he approved of her sexual orientation, but that he also must share the same sexual orientation makes absolutely no sense at all. I do not see how anyone would form that perception on the basis of the facts that the claimants have alleged. I find that this implausibility not only shows that the claimants are greatly embellishing their evidence, but also undermines their credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to numerous major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and as such their claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims pursuant to section 97 of the *IRPA* fail as well. The minor claimants base their claims on that of their parents and membership in a particular social group, namely, the family and no persuasive evidence was adduced to differentiate their claims from that of the parents, therefore, their claims must also fail.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claims.

CONCLUSION

Since I do not believe the claimants with respect to the events described in their PIFs their claims pursuant to section 96 of the IRPA fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well. There was no credible basis for the claims.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

May 14, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1 through C-4.
- 4 Exhibit R-2, CIC Etobocoke In-person Refugee Intake “Record of Examination.”

RPD File No. / N° de dossier de la SPR : TA6-02971

TA6-02972

TA6-02973

TA6-02974

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RPD File No. / N° de dossier de la SPR: TA6-04219

TA6-04220

TA6-04221

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing February 28, 2008 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision June 16, 2008 **Date de la décision**

Panel David McBean **Panel**

Counsel for the Claimant(s) Wennie Lee
Barrister and Solicitor **Conseil(s) du / de la demandeur(e)(s)**

Tribunal Officer J. Baptiste **Agent(e) des tribunaux**

s.19(1)

**Designated
Representative(s)**

**Représent
désigné**

Counsel for the Minister

Nil

Conseil du

s.19(1)

, and her two children, and
 , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the
Immigration and Refugee Protection Act (IRPA).

ALLEGATIONS

The claimants lived in , next door to a terrible household. Their neighbour, (“”) and her family threatened and harassed a number of people in the neighbourhood. At least one person moved away to escape the harassment. After an incident between and son, threatened the claimants with a knife. When husband threatened to report and her son to the police, responded that she had family in the police and said that they would not only do nothing against her but that she could also arrange for the police to kill the claimants. began making harassing telephone calls and also threw stones at the claimants’ house. The claimants found their car tampered with and their dogs poisoned and they suspected that was responsible. husband fled to Canada to make a refugee claim in 2005, albeit unsuccessfully. The harassment continued and the claimants fled to Canada in 2006.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants’ identity as citizens of Mexico was accepted at the beginning of the hearing as copies of their Mexican passports were on file.

Internal Flight Alternative (IFA)

Even if I accept all of the claimants’ evidence as true, which I do not necessarily do, the

claims fail as the claimants have a viable IFA in the Federal District. In *Rasaratnam*,² the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, the claimants fear criminal harassment by a neighbour and her family in _____, approximately 250 kilometres away from the proposed IFA in the F.D. The claimants had observed that _____ did have some family in the police, as they would visit _____ home and loudly announce their presence. _____ thought they must be Federal Police as they did not wear uniforms and their cars were in bad shape. Despite repeated visits to _____ house, there was never any direct contact between the claimants and the police.

While _____ speculated that _____ would follow her wherever she went, this appears to be extremely unlikely. The claimants never reported _____ to the police, so she has suffered no harm. While it requires little in the way of resources to harass a neighbour, it is another matter to conduct a national search for the claimants, find them and then attempt to do them harm in a large city 250 kilometers away. No evidence has been presented that _____ and her family would have such resources. While _____ does have some contacts within the police, it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.³

I find that, on a balance of probabilities, there is a no serious possibility of the claimants being persecuted in the F.D.

With respect to the reasonability of the claimants moving to the F.D., I note that the threshold for the claimants to show that relocation to the proposed IFA would be unreasonable is quite high.⁴ If the claimants were to return to Mexico they would be using the

international airport in the F.D., so they would not have to return to _____. While

it would not necessarily be easy for a mother and two children to relocate, I would note that they are used to _____ husband being away for months at a time while he worked on a _____. _____ does have work experience _____

k. Andrea has now turned 19 while living in Canada

and may assist in supporting the household. The claimants did express their unwillingness to live in the F.D., given what they perceived to be a high rate of crime there. However, there is nothing in the objective documentary evidence which would suggest that the crime rate in the F.D. is beyond what one would expect in a large metropolitan area, and there is no indication that the authorities would be unable or unwilling to protect them, should they experience crime there. More importantly, this is a generalized risk which is excluded under section 97(1)(b).

I find that it is reasonable for the claimants to relocate to the F.D.

CONCLUSION

The claimants have alleged that they are victims of crime based on a being criminally harassed by a neighbour. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. As I find that the claimants have a viable IFA in the F.D., the claims also fail with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

June 16, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 3 Exhibit R-3, *National Documentation Package*, January 30, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.
- 4 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.

RPD File No. / N° de dossier de la SPR : TA6-04219

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TA6-04220

TA6-04221



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA6-05307

*Private Proceeding / Huis clos***DE NOVO****Reasons and Decision – Motifs et décision****s.19(1)**

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 25, 2009	Date(s) de l':
Place of Hearing	Toronto, Ontario	Lieu de l':
Date of Decision	June 19, 2009	Date de la
Panel	David McBean	7
Counsel for the Claimant (s)	Patricia Wells Barrister and Solicitor	Conseil(s) du / d demandeur(e)(s)
Tribunal Officer	S. Golden	Agent(e) de
Designated Representative(s)	N/A	Représentant(e)(s) d

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Counsel for the Minister

N/A

Conseil du

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[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant began working in 1998 in Mexico City for the _____ (_____), a _____ in Mexico. Initially performing _____ she was progressively given more responsibilities. In _____ 1999, _____ (“_____”) became _____ of the _____ and the claimant went to work on her team. While she reported to _____ assistant, she sometimes transferred calls directly to _____ and would interact with her at office parties. The _____ lost the _____ and _____ resigned her position. There was friction and conflict between _____ and her successor, _____ (“_____”). While _____ took part of her team with her when she left, the claimant remained behind as she was employed by the _____ itself. Under _____, the claimant’s duties began to change. She was no longer allowed to _____ to _____, and instead had to _____ them to his assistant, _____ (“_____”). _____ began to question the claimant’s links with _____ people. The claimant’s duties were progressively scaled back until early _____ 2003, when _____ told the claimant that she was part of the voluntary layoff program. The claimant expressed surprise and _____ said that if she quit voluntarily she would be entitled to a payment of 7,000 pesos (approximately \$700). The claimant objected as she knew under the law she should be entitled to a payment of 50,000 pesos based on her years of service.

[3] The claimant retained a lawyer, _____ who encouraged her to sue for wrongful dismissal. The lawsuit was filed in _____ 2003 and soon after the documents were served the claimant received a call from a man telling her to drop the lawsuit. After an interim court date in _____ 2004, at which the _____ did not appear, the claimant received a second call insisting that she drop the lawsuit and accept the offer of 7,000 pesos. The claimant’s lawyer received a similar call. The _____ did appear in court on the next date in _____ 2004, but the party’s lawyer simply reiterated the offer of 7,000 pesos. The claimant received more calls insisting she drop the lawsuit. The claimant had difficulty finding new employment and she suspected that the _____ was issuing negative references.

[4] In _____ 2004, the claimant moved to a friend’s place in _____ in the hopes of finding a job. On _____, 2004, the claimant noticed the garage door had been left open. While a break-in was suspected nothing seemed amiss. However, when the claimant drove off and approached an intersection on a red light she found that the brakes did not work. The claimant was broadsided by a truck. The claimant was seriously injured, being hospitalized for over a month until _____, 2004. The claimant then returned to Mexico City. About a month later she received a threatening call stating that she had been “lucky” with respect to the accident. The claimant and her lawyer received further threatening calls insisting that they drop the lawsuit and that Mexico City was a “dangerous” place. As

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a result of the calls the claimant moved with her mother and sister to [redacted] in [redacted] 2005. After giving her lawyer a power of attorney to carry on the lawsuit she came to Canada on [redacted], 2005. The claimant did not make a refugee claim as she feared that the information that she would have to provide to Canadian authorities would end up in Mexican hands.

[5] The claimant found out from her mother that her lawyer died in [redacted] 2006. While the claimant's mother had spoken to the lawyer's wife, her mother was unable to get any details and she was not sure of the circumstances of his death. A second lawyer at the same firm, [redacted], assumed carriage of the lawsuit. A claim was also made to the [redacted] involving [redacted]

[6] The claimant eventually consulted a lawyer in Canada who assured her that her information would be kept confidential, and while hesitant, made a refugee claim on [redacted], 2006. After filing her Personal Information Form (PIF), the claimant learned that her first lawyer ([redacted]) had been killed in an automobile crash, but had no further information on the matter as her mother did not want to press the lawyer's widow for details. In [redacted] 2006, the claimant's mother also learned that the claimant's second lawyer ([redacted]) had died as well and a third lawyer was now handling her lawsuit. The claimant's claim was heard and rejected by the Board in October 2007. However, that decision was overturned upon judicial review by the Federal Court on June 6, 2008, which directed that a new hearing be held.

DETERMINATION

[7] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this decision I have taken into consideration the Chairperson's *Gender Guidelines* before rendering my decision.² My reasons are as follows.

ANALYSIS**Identity**

[8] The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of her Mexican passport was on file.³

Credibility

[9] It was apparent throughout the hearing that there were a number of serious discrepancies in the

claimant's evidence when the oral testimony was compared internally and to the PIF4 and the other documents available. For example, the claim is based on a vendetta arising because the claimant filed a lawsuit for wrongful dismissal. Just trying to clarify the claimant's term of employment with the _____ was a problem. In a letter from _____, dated _____, 2006,⁵ her term of employment was stated as _____ 1998 to _____ 2003. Then, in a letter from 2007,⁶ the same author stated that the dates were _____ 1998 to _____ 2003. He apologized and stated that he had been mistaken with respect to the claimant's start date as he had been confused with the date when joined the _____. However, as noted at the hearing, the second letter was silent with respect to the mistake with the far more important date of the claimant's dismissal (i.e. _____ versus _____). The PIF stated that the claimant was fired in early _____ and in oral testimony she said that she left the same day and was not actually paid for her work in _____. Finally, the lawsuit document⁷ states the dates of employment are given as _____, 1998 (by this time the third different start date) through _____, 2003 (i.e. late _____ and by this time the fourth different termination date). When all of this was put to the claimant she stated that she was not good with dates. I do not find the claimant's explanation satisfactory. It should be fairly easy to establish employment dates for a salaried position after prepping a lawsuit based on those very dates. The fact that the claimant herself gave varying times in _____ (early versus _____) makes little sense. Even if the claimant is not good with dates, it makes no sense for her to give her reference person even more incorrect dates than the ones that the claimant used herself for use in letters to establish her employment record. It also makes little sense that when the reference was trying to correct the dates that he used, that he only explained one correction on a non-contentious date (when the claimant began employment) and then silently amend a far more contentious date (when the claimant was fired). Even the name of her reference was in question. When I first read the name out loud as "_____" the claimant quickly corrected me and said his last surname was actually "_____" and confirmed that again when I asked her to repeat it. Only after I read the name given on his letterhead did she say that she was then "unsure" of his second surname even though she seemed quite certain moments before. I do not find the claimant's explanation satisfactory. Either her reference's name is _____ or _____. The documents list it as _____. The claimant allegedly knew this person well as he was her "immediate boss".⁸ As her boss, the claimant would have seen his surname on many occasions. It makes absolutely no sense at all for her to initially think his second surname was something else than what is listed on the letters that he allegedly wrote. I find that these repeated discrepancies in dates and in the name of the claimant's reference and former boss to not only cast doubt on the authenticity of the claimant's documents but undermine the claimant's credibility.

[10] Also in dispute was the amount involved in the lawsuit. In the PIF, repeated reference is made to the fact that the _____ was offering 7,000 pesos and the claimant was demanding 50,000 pesos. In the transcript from the previous hearing⁹ at the Board, the _____ was offering 50,000 pesos and the claimant was demanding 200,000 pesos. However, in oral testimony at this hearing, the claimant stated that

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while she was demanding 200,000 pesos, the [redacted] was offering approximately 30,000 to 40,000 pesos. When all of this was put to the claimant, she stated that the larger figures included wages lost over time. Counsel submitted that fluctuations in currency rates could be a problem as well. I do not find the claimant's explanation satisfactory. All of the references to the [redacted] offer to settle in the PIF state the offer was 7,000 pesos not the much higher figures found in the transcript of the first hearing or the oral evidence from the current hearing. There is no mention of this amount ever changing. It does not make sense that the passage of time would inflate these amounts to the degree that the claimant alleged as the claimant was suing based on a past fixed period of employment. Currency fluctuations do not explain anything either as while the [redacted] offer to settle was stated in two different amounts between the previous hearing and the current one (i.e. 50,000 versus 30-40,000), the claimant's demand remained constant between the two hearings (i.e. 200,000). If currency fluctuations were at work both amounts should have changed in the same proportion. I find that these discrepancies with respect to the amount of money involved in the lawsuit to further undermine the claimant's credibility.

[11] There were also problems with respect to the name of the claimant's first lawyer. In both the original PIF and in the later addendum his name is [redacted] [emphasis mine]. However, as noted at the hearing, in the lawsuit document the name is given as [redacted] 10 [emphasis mine, bolded in the original Spanish on p. 215, Federal Court documents]. The claimant stated that she knew him as [redacted]. I do not find the claimant's explanation satisfactory. Even if she only used her lawyer's first surname in casual conversation, it was not as if she would never have been exposed to his full name in her life. The lawyer had been known to at least the claimant's mother for over 20 years from the time that she initially consulted him about her divorce and then on subsequent matters. The claimant stated in her PIF that she had great confidence in him because of his long-time dealings with her mother. She met with him on many occasions in order to initiate the lawsuit, appear in court (on more than one occasion) and even execute a power of attorney in his favour in order for him to continue the lawsuit. It makes no sense that she would not know his full name after meeting with him in a formal capacity on several occasions. It makes no sense for the claimant to affirm that the PIF and its addendum, documents produced over a year apart, were accurate while getting the name of such a central figure in the last year or so of her life in Mexico so wrong. I find that this discrepancy in the name of the claimant's first lawyer to not only call into further question the authenticity of the claimant's documents but further undermines the claimant's credibility.

[12] As noted at the hearing, there were no documents presented to corroborate the deaths of the claimant's first two lawyers in Mexico. While it is true that claimants do not have to document every aspect of their claim, if documents are reasonably available they should be presented. It seems quite odd that two lawyers could die and absolutely no documents could be located in order to corroborate these events. No news stories, no obituaries, no death notices, no death certificates. The claimant stated that she thought there should be some documents, but had not thought to ask her mother to check media

sources. While counsel submitted there is a lack of press freedom in Mexico and that we should not assume that deaths are reported in the same way as they are in Canada, one would think that at least something could have been found. However, far more telling is the evidence with respect to how the claimant's first lawyer allegedly died. In the original PIF, the claimant was aware that he died, but knew no details. In the PIF addendum, the claimant was aware that he died in an automobile accident. However, in the transcript of the previous hearing and in oral testimony at the current hearing, the claimant stated that her mother had heard from the lawyer's widow that he had been "murdered". The claimant also stated at the current hearing that her mother had learned from the claimant's second lawyer that her first lawyer died when the brakes in his vehicle failed. The claimant provided vague and evasive testimony when asked to clarify when she knew about the brakes failing on the first lawyer's car. Eventually she stated that she knew at least before she made her refugee claim. When asked why she did not include this information about the first lawyer being murdered and the method used in her PIF, the claimant stated that she did not want to accuse anyone without further information and that she was trying to be concise and clear in writing a sequence of events. I do not find the claimant's explanations satisfactory. If the claimant is to be believed, the person most similarly situated to her in Mexico, the lawyer handling her lawsuit that is aggravating powerful people, was murdered using the same method as the incident in which the claimant was seriously injured and no mention of this is made in her PIF or later PIF Addendum. The directions for filling out the PIF narrative are quite clear in that incidents involving similarly situated persons are to be included. To say that the claimant did not wish to accuse anyone makes no sense. She accused Madrazo and other powerful people throughout her PIF. To suddenly be reticent about using the term "murder" makes little sense. To make no mention that the alleged murder was carried out in the exact same way in which the claimant was injured makes no sense at all. I find that these discrepancies with respect to the deaths of the claimant's first two lawyers, particularly the manner in which the first lawyer died, to further undermine the claimant's credibility.

[13] While the claimant did provide a medical report detailing injuries that she received in a car accident, she did not present any documents dealing with the accident itself and the circumstances of the accident were in question. The claimant was actually driving her friend's car which was severely damaged. An unrelated person driving a pick-up truck was involved in the accident as well. One would think that some documents would exist dealing at least with the damage to the vehicles. In the transcript of the original hearing the claimant stated that she did not know if her friend had insured the vehicle in question. However, in oral testimony during the current hearing the claimant stated that she actually believed that her friend did not have insurance and knew this when she was in Mexico. When asked why she did not say this at the first hearing the claimant did not know. I do not find this satisfactory. It makes little sense that there would be no documents at all with respect to a two-vehicle accident where one person was seriously injured and at least one vehicle was seriously damaged and to which emergency services responded. It appeared that the claimant embellished her evidence by stating at the current hearing that her friend had no insurance to attempt to explain the lack of documents. I find that had the

accident taken place as described, documents would have been reasonably available and that the lack of such documents further undermines the claimant's credibility.

[14] Even the location of the accident was in question. The claimant initially stated that she had been driving for less than 10 minutes before the accident took place. Then she stated she had been driving for five minutes. Then three minutes. Then after stating that she had never tried using the brakes prior to reaching the accident scene she stated that she drove for three to five minutes. In attempting to clarify at least a geographic location for the accident the claimant stated that she had driven a total distance of 20-25 metres from her friend's garage to the accident site. When it was pointed out that such a small distance would be covered in a few seconds of driving, the claimant stated that it was just an approximate distance. Counsel submitted the only discrepancy in this area was that the claimant said in her PIF that there was a "red light" and in oral testimony that there was a stop sign, and that this was not a major discrepancy. In actual fact, the claimant testified at the current hearing that it was an uncontrolled intersection and that when the discrepancy was pointed out she stated that her PIF was meant to indicate that someone had to stop. I do not find the claimant's explanations satisfactory. The claimant was already familiar with the area as she had lived with her friend for two weeks prior to the accident. Either the intersection was controlled or it was not. To not know the reason why the claimant had to stop makes little sense. More importantly, the claimant provided evasive and contradictory testimony throughout this area when being questioned. The statement that she drove only a small distance of 20-25 metres seemed to be an attempt to bolster her testimony that she had never had to use the brakes before the intersection. This simply could not be reconciled with her testimony that she had driven for anywhere between three and less than 10 minutes prior to reaching the accident site. It actually took several questions to get the claimant to state that she was driving at "city" speed at the time of the accident and it appeared that this was simply because the claimant realized that her testimony was already substantially inconsistent with respect to distance and time. I find that these discrepancies, particularly with respect to the distance and time driven from the friend's house to further undermine the claimant's credibility.

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[15] The PIF stated that a major reason for the claimant's more than one year delay in claiming (more than six months after the claimant's visa expired) was that the claimant was scared that if she made a refugee claim the information would somehow end up in the hands of the Mexican government and given the residual power this could lead to harm. The claimant presented a psychological report¹¹ dated 2007, more than a year after she made her refugee claim, which stated that she continued to be so afraid of information about her whereabouts being made known to [redacted] and his associates, that she would call her mother in Mexico from various payphones so no one could trace the calls back to her. However, as noted at the current hearing, one month before making her refugee claim the claimant went to the Mexican Consulate in Toronto, a branch of the Mexican government, and applied to renew her passport, a copy of which was on file¹². In order to renew her passport, the

claimant would have had to given her personal information to employees of the Mexican government, the very thing that the claimant was allegedly trying to avoid. The claimant stated that her previous counsel told her that while a renewed passport would not be necessary for her refugee claim, it should not cause her concern. This makes absolutely no sense at all. If the claimant was so afraid of the Mexican government learning about her location that she specifically did not file a refugee claim for over a year and used payphones to call home in order to avoid Mexican authorities learning her whereabouts even after making a claim, it defies logic that the claimant would approach the Mexican government a month before making her claim and give them all of the information that she was allegedly so afraid of them learning in the first place. I find that the delay in claiming and the claimant's actions during that delay not only demonstrate a lack of subjective fear but also further undermine the claimant's credibility.

[16] Given the serious contradictions, discrepancies and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and as such, the claim pursuant to section 96 of the *IRPA* fails. While I am mindful of the claimant's psychological report, I do not believe that any psychological issues that she is experiencing are due to the causes that she alleges and no evidence has been adduced that she could not receive treatment in Mexico for such problems.

[17] There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, her claim pursuant to section 97 of the *IRPA* fails as well.

CONCLUSION

[18] For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

June 19, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued*

by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993,
Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to
section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

4 Exhibit C-1 PIF, as amended by Exhibit C-6

5 Exhibit C-4, item 3, p. 205 of the Federal Court documents.

6 Exhibit C-3, p. 195 of the Federal Court documents.

7 Exhibit C-4, item 5, p. 211 of the Federal Court documents.

8 Exhibit C-4, item 3, p. 205 of the Federal Court documents.

9 Exhibit R-3, p. 283 of the Federal Court documents.

10 Exhibit C-4, item 5, p. 211 of the Federal Court documents.

11 Exhibit C-5, p. 260 of the Federal Court documents.

12 Exhibit R-2, p. 182 of the Federal Court documents.

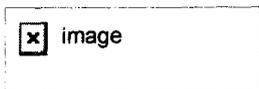
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RPD File No. : TA6-05307

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RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA6-05380

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	November 21, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	January 23, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Joseph S. Farkas Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

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Representative(s)

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Counsel for the Minister

Nil

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant met [redacted] (“ [redacted] ”) in [redacted] 2005. They became boyfriend and girlfriend in [redacted] 2005, however the claimant ended the relationship approximately one month later in [redacted] 2005 as [redacted] was possessive, jealous and physically violent. [redacted] criminally harassed the claimant and threatened to kill her. When [redacted], an ex-boyfriend, tried to intervene on the claimant’s behalf, [redacted] beat him severely. Although the claimant reported to the authorities to seek protection, they did not care about her situation. The claimant came to Canada on [redacted], 2006 and made a refugee claim on [redacted], 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities, to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this conclusion, I have considered the Chairperson’s Guideline with respect to Women Refugee Claimants Fearing Gender-Related Persecution. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of her Mexican passport was on file.²

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant’s evidence when her oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, the claimant’s PIF mentions that after the relationship ended [redacted] criminally harassed her. In the notes of the Immigration Officer made at the time that the claimant made her claim, [redacted] is described as sexually harassing her. In oral testimony, the claimant gave detailed testimony of [redacted] attempting to violently rape her, injuring her badly enough to require her to seek medical

treatment. When asked why this incident had not been mentioned previously, particularly in the PIF, the claimant stated that it was mentioned in the story that she had given to her first lawyer but that story had

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been changed prior to the PIF being written. I do not find this explanation satisfactory. I might understand why the claimant might be uncomfortable describing a violent attempted rape to an Immigration Officer in an initial interview. I do not understand at all why it was not mentioned in the PIF. The claimant affirmed both orally and in writing that the PIF had been interpreted back to her and that it was complete and accurate. To not notice all mention of a violent attempted rape, one of two significant incidents that had happened to the claimant, had been omitted makes no sense at all. I find that this omission undermines the claimant's credibility.

In oral testimony, the claimant described going to the Public Ministry twice: once after the attempted rape and once after the incident with . However, the Immigration Officer's notes and more importantly the PIF mention the claimant approaching the authorities only once. When asked to explain this discrepancy, the claimant stated that unlike in English culture such a thing would be taken for granted in Spanish culture. When asked why in describing going to the Public Ministry she would not use the phrase "the second time", the claimant did not know. I do not find these explanations satisfactory. The directions for filling out the PIF are quite clear, in that claimants are to include any steps they took to attempt to obtain protection. If the claimant went to the authorities twice on two separate occasions with respect to two separate incidents I would expect the PIF to say just that. To say that one visit to the authorities was not included because of unexplained cultural difference makes no sense at all. I find that this discrepancy with respect to the number of times that the claimant went to the authorities to further undermine her credibility.

In oral testimony, the claimant described the incident wherein intervened on her behalf. She stated that he was hit in the area of his face and eyes and that he sustained a cut above his eye but was not aware of other injuries. As pointed out at the hearing, the claimant's PIF states: "When my ex-boyfriend [i.e. tried to intervene, beat him severely, injuring him badly". When asked why the two accounts appeared quite different with respect to the extent of injuries, the claimant stated that her PIF had been poorly translated. I do not find this explanation satisfactory. Once again, the claimant affirmed both orally and in writing that her PIF had been interpreted back to her and that it was accurate. If had only sustained a cut above his eye, I would not expect the PIF to say that he had been beaten severely and injured badly. For the claimant not to notice such a different account in her PIF does not make sense and I find that this discrepancy further undermines her credibility.

The claimant stated orally on more than one occasion that told her that he wanted to take her away with him. When asked if he said anything else, the claimant said "no". However, as pointed out at the hearing, in the PIF threatened to kill the claimant on more than one occasion, and it was actually a death threat that spurred to protect the claimant. When asked why, she had not mentioned the death threat(s) the claimant said that she had been thinking chronologically and had simply not been at that point in the chain of events. I do not find this explanation satisfactory. The

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claimant was specifically asked if [redacted] had said anything else and she said “no”. If [redacted] was spurred into action by a death threat I would expect some mention of that death threat to be made in the description of the incident. I find that this discrepancy further undermines the claimant’s credibility.

While claimants are not required to document every aspect of their claim, if documents are reasonably available, they should be obtained. Other than a photo of someone who the claimant alleges is [redacted], the claimant presented no documents, cards, letters or anything else to substantiate her relationship with [redacted]. While the claimant did say that they usually communicated by unsaved text messages, it does seem odd that there would be so little trace of someone she dated for several months before being in a month long exclusive relationship. More disturbing were the medical documents both presented and not presented. The medical note provided⁴ is a prescription to deal with low blood pressure. However, no medical or psychological evidence was provided to state where that low blood pressure came from or to substantiate the problems the claimant orally stated that she was having. Given that low blood pressure can be due to a variety of causes, I find that this document does not assist the claimant. More importantly, the claimant stated that she visited a medical facility and received treatment after the attempted rape but could not produce the related medical document as it could not be found in Mexico. I note that the attempted rape and the related medical treatment were not mentioned in the PIF. It is far too much of a coincidence that a medical note that would substantiate a never-before-mentioned major incident to be coincidentally unavailable while another medical note relating to a general condition is available. I find the general lack of documentation with respect to the relationship with [redacted] and more importantly, the absence

of the key medical note to further undermine the claimant's credibility.

Given the serious inconsistencies, discrepancies, and other problems with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and as such, her claim fails.

CONCLUSION

Since I do not believe the claimant with respect to the events described in her PIF, her claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, her claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

January 23, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit C-8, medical note.

RPD File No. / N° de dossier de la SPR : TA6-05380



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA6-06372

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	October 15, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	January 22, 2009	Date de la
Panel	David McBean]
Counsel for the Claimant(s)	Silas Tilluckdharry	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	S. Golden	Agent(e) des tr
Designated	Nil	Représent

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Representative(s)

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Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Grenada, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant's father, , helped against in . During the and others were killed. The United States of America (U.S.A.) invaded Grenada and the were arrested, tried and convicted of several crimes and sentenced to death. While the death sentences were eventually commuted, the were notorious in Grenada. Given the small population of the island, many knew that the claimant and his family were and became the subject of threats themselves, particularly when there were rumours that the claimant's father would be released from prison. This notoriety led " ", a gang member to repeatedly attempt to recruit the claimant into his gang. The claimant came to Canada to study in 1998. After several trips to the USA and Grenada, the claimant returned to Canada for good in 2002. He made a refugee claim in 2006. The claimant's father was released from prison in 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Grenada was accepted at the beginning of the hearing as a copy of his passport was on file.²

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, in oral testimony, the claimant stated that after he grew up, he and his mother had been physically assaulted on more than one occasion. As pointed out at the hearing, there is no mention in the Personal Information Form of the claimant and his mother being assaulted. The claimant stated that he was uncomfortable dealing with unpleasant things with respect to his mother. I do not find this explanation satisfactory. The instructions for filling out the PIF are quite

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clear: all significant incidents that happened to the claimant and those similarly situated to him are to be included. No exception is made for “uncomfortable” topics. No evidence has been presented that would indicate that the claimant was psychologically unable to include the mention of physical assaults against himself and his mother in the PIF. I find that these omissions undermine the claimant’s credibility.

In fact, the claimant testified that he and his mother were not just the targets of violence in public, but that people had broken into their home to beat them. When asked why he had made no mention of this in his PIF, the claimant stated that he did not think that they were relevant at the time and that perhaps he could talk about this at his hearing. I do not find this explanation satisfactory. As noted before, the directions for filling out the PIF are quite clear in that all significant events should be included. The claimant was represented by counsel at the time he filled out his PIF. To say that people breaking into the claimant’s home to beat the claimant and his mother was not relevant enough to the claim to be included in the PIF makes no sense at all. I find that his omission further undermines the claimant’s credibility.

The claimant stated orally that he went to the police on numerous occasions but received no assistance. When asked why only one visit to the police was mentioned in his PIF, the claimant stated that the incident mentioned in the PIF stood out in his mind and that all of the occasions that he approached the police were similar and he therefore did not mention them. I do not find this explanation satisfactory. Once again, the directions for filling out the PIF are quite clear, the claimant is to include “any” steps taken to obtain protection from the authorities. It is quite different to get no assistance from one police officer on one occasion and get no assistance from what would be numerous police officers on numerous occasions. If the claimant had indeed approached the authorities on numerous occasions, I would have expected him to say just that. I find that this omission further undermines the claimant’s credibility.

While the claimant stated that he feared returning to Grenada, it was obvious from his own actions and the actions of those around him that not only did the claimant not subjectively fear any harm but that also on an objective level, there was nothing for him to fear. Despite his father’s notoriety, the claimant finished school in Grenada and then worked for the remainder of his time there (1994-1998) as an :

with . According to the stamps in the claimant’s passport, the claimant traveled extensively to a number of countries but made no attempts to stay in those countries or avoid returning to Grenada. When the claimant came to Canada to study in 1998, he made no attempt to make a refugee claim. While here, he traveled several times to the USA but made no attempts to make an asylum claim there. He returned to the country that he allegedly feared and every time he returned to Canada; no matter from what country, he did not make a refugee claim. In fact, it was over four years after his final arrival in Canada that the claimant finally made a claim. While it is true that the claimant did have a

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Humanitarian and Compassionate (H&C) application in progress for a good portion of that time, such applications have no guarantee of success and do not preclude a concurrent refugee claim. The claimant's repeated failure to make a refugee claim in other countries, the repeated reavailments to Grenada and the years delay in claiming in Canada are the antithesis of what someone would do if he honestly felt at risk in Grenada. I find that these actions not only demonstrate an utter lack of subjective fear but also severely undermine the claimant's credibility.

With respect to the actions of those around him, a simple examination of his family's situation gives great insight into whether or not the claimant has anything to fear on an objective level. The person most similarly situated to the claimant, his brother, would have about the same level of risk as the claimant. He has now returned to Grenada and to the best of the claimant's knowledge, is working as a [redacted] and has not faced any major problems specifically related to their father, either directly or through forced recruitment by a gang. The claimant's mother works in Grenada as a [redacted] with a division of the [redacted], a very good job to have in Grenada. Had the claimant's mother actually faced antagonism, she would have unlikely been able to attain and retain such a job. Most telling are the experiences of the claimant's father.

The claimant's father and the other [redacted] even made [redacted] in [redacted] with respect to their experiences with [redacted]

However, it appears that the claimant has not accurately gauged the level of animosity targeted at his father. The United States Department of State Report⁵ specifically mentions the case of the [redacted] but makes no mention of them experiencing violence or other problems as I would expect if that were to be the case. While the claimant felt his father played an important role in the [redacted], he admitted he relied on stories told to him personally years later. The objective evidence indicates that among [redacted]

While the claimant's father has not found a well-paying job since then, he has been able to get by doing various jobs, mostly for his family and sympathizers. Most importantly, nothing significant has happened to the claimant's father since [redacted] and while the claimant stated that his father was aware of the Canadian refugee system (through his awareness of his son's claim), he has not come to Canada to seek protection. The experiences of his family show that the claimant does not have anything significant to fear on an objective level and I find that these experiences further undermine the claimant's credibility with respect to his alleged numerous problems.

Given the serious inconsistencies, omissions and other problems, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such, his claim fails.

CONCLUSION

Since I do not believe the claimant with respect to the events described in his PIF, his claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

s.19(1)

January 22, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit C-1, PIF, question 7.
- 5 Exhibit R-1, *National Documentation Package*, April 2, 2008, item 2.1, Country Reports on Human Rights Practices for 2007, March 11, 2008.
- 6 Exhibit R-3,

RPD File No. / N° de dossier de la SPR : TA6-06372



RPD.15.7 (October 2007)

000104

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RPD File No. / N° de dossier de la SPR : TA6-07093

TA6-07094

TA6-07095

TA6-07096

TA6-07097

Private Proceeding / Huis clos

DE NOVO

Reasons and Decision – Motifs et décision **s.19(1)**

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

August 26, 2009

Date(s) de l'audience

December 11, 2009

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

February 19, 2010

Date de la décision

Panel

David McBean

Counsel for the Claimant

No Counsel

Conseil(s) du / de la demandeur(e)

(s)

demandeur(e)(s)

Tribunal Officer

N/A

Agent(e) de

s.19(1)

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

REASONS AND DECISION

[1] (“ ”), her husband, (“ ”), their daughters, and , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] This is a *de novo* claim which has been sent back to the Board by the Federal Court to be heard by a newly constituted panel.

ALLEGATIONS

[3] The claimants lived in the . In 1991, began traveling to Canada on a series of work permits to work in the in , Ontario. On , 2005, while was in Canada, his daughter decided to at a without telling her mother . One of the took an interest in even though he was in his 40s and she was only 15 years old. Introducing himself as “ ” he offered a drink that turned out to be drugged. led to a back room where he sexually assaulted her. left the room and returned home with some cousins who had gone to the club with her. The next day knew something was wrong and after some probing, told her that she had been sexually assaulted. They went to the police to lay a complaint but the police did nothing. This was especially frustrating given that, even though “ ” was likely not a genuine name, his identity could be determined fairly easily since he was one of the at the . About two and a half weeks later, drove up to who was walking home from school. He said that if she did not come with him he would kill her and her family. He also said that he had seen her with her sister and that he thought she was “pretty”. ran home and was quite upset. returned to the police on , 2005 and demanded that something be done. However, she got the distinct impression that the police were not interested in helping her. The claimants began to receive anonymous calls stating that the caller was in possession of a videotape that showed naked and that he wanted US\$5,000 for it. The caller even threatened to kidnap . The calls escalated in frequency and violence, and was afraid of being raped. returned to the police and nothing was done. Even after going higher up in the police force nothing was done. and her daughters came to Canada to join on , 2005. In 2005, went to Mexico to see if it was safe for the rest of the family to return. He visited the police many times to check on the status of the investigation. On the last two times he shouted at the officers and accused them of corruption. As a consequence, he was beaten badly and warned that if pursued the matter of his daughter he would regret it. returned to Canada on 2006. All claimants filed refugee claims on , 2006.

DETERMINATION

[4] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[5] The claimants' identities as citizens of Mexico were accepted at the hearing given that copies of their Mexican passports were on file.³

Internal Flight Alternative (IFA)

[6] Even if I were to accept the claimants' evidence as true, which I do not necessarily do, these claims fail as I find that a viable IFA exists in the Federal District. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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[7] With respect to the first prong of the test, the claimants would return to the airport in the Federal District so there would be no need to return to their former home in The claimants have not lived in Mexico for several years and while they speculate that “ ” would still be searching for them, I do not agree with this speculation. Regardless of (. . . .) actual identity (the claimants' admitted they did not know who he was, although they thought he might be a police officer, a politician, or perhaps even both) his crime appeared to be one of opportunity. He preyed upon a young girl (. . . .) he was involved with and later attempted to extort money from the family. While the claimants felt the fact that (. . . .) managed to avoid being trafficked would have angered (. . . .) causing him to pursue them indefinitely, I do not agree this would be the case. Other than a lost opportunity for profit years ago, the claimants appeared to have caused no actual damage to (. . . .) since the police essentially “did nothing” so it does not make sense that he would still be seeking the claimants throughout Mexico. Instead, unfortunately, he would have moved on to other potential victims. While the claimants fear the police in their hometown as well, it appeared their enmity towards (. . . .) was based on his continual visits to them and the fact that he accused them of corruption. If the claimants simply did as the police asked and left the matter alone and did not return, I do not see why any police officers that caused Ignacio harm would have any reason to pursue the claimants. Furthermore, neither (. . . .) nor the police would have any active knowledge that the claimants would have returned to Mexico. I find, on a balance of probabilities, that neither (. . . .) nor the police officers involved in

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beating would still be seeking the claimants at this time, especially not outside their former hometown, and as such the Federal District provides a safe IFA.

[8] With respect to the reasonableness of the claimants moving to the Federal District, I note that the threshold for the claimants to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ I am mindful that has suffered physical problems that have prevented him from working in the in Canada. However, there are other jobs that he might find that do not require physical labour, even though they may be low-paying given his lack of experience and education. However, I also note that would be able to work to support the family and two of the daughters are now adults themselves and would be able to help support the family as well. Even if were to require further treatment or therapy, no evidence has been presented that she could not obtain treatment or therapy in the Federal District. While mentioned orally that she saw a body lying in a street in the Federal District and feared somehow being held responsible for the death, had she remained to see what happened when the police arrived, this is pure speculation on her part and no evidence was presented that anyone actually suspected of any involvement in the person's death. Also, while the claimants expressed a fear of crime in the Federal District, this is a risk faced generally by others and as such is precluded from my consideration by section 97(1)(b)(ii) of the *IRPA*. The claimants also noted that they would be perceived as wealthy having spent several years in Canada and therefore it would be more likely that they would be targeted for crime. However, this merely increases the degree of the risk; it does not alter the fact that crime is a generalized risk faced by others.⁶ I find that it would not be unduly harsh for the claimants to relocate to the Federal District and as such the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are at risk of the harms delineated in section 97 of the *IRPA* the claims pursuant to that section fail as well.

CONCLUSION

[9] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

February 19, 2010

Date

¹ As enacted by S.C. 2001, c. 27.

- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, Information from the previous sitting (pp. 88-238).
- 4 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 5 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).
- 6 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. : TA6-07093

TA6-07094

TA6-07095

TA6-07096

TA6-07097



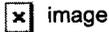
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RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA6-07832

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 11, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	July 18, 2008	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Byron Thomas Barrister and Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	J. Ross	Agent(e) des tr
Designated	Nil	Représent

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Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant alleges that he is a gay male who lived in . After experiencing a number of problems growing up, he reunited in 2004 with (“ ”), a former boyfriend from when the claimant attended school. Unfortunately, brother, , a , did not approve of the relationship. One night, and other found the claimant and in a car. The claimant was beaten and threatened. The claimant then fled to . After two months, found the claimant. The claimant was driven to an isolated area, where he was beaten so badly that he had difficulty walking. The claimant fled to Canada on , 2005 and made a refugee claim on . 2006. According to the latest information available, is still interested in and looking for the claimant.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.² The claimant's sexual orientation was also accepted for the purposes of the hearing.

Issues

The determinative issues are credibility and internal flight alternative (IFA).

Credibility

A number of credibility concerns arose during the course of the hearing as there were a number of inconsistencies and omissions between the various times that the claimant has told his story. For example, the claimant's narrative stated that the claimant experienced two major beatings at the hands of

However, when the claimant spoke with an Immigration Officer

at the time that he made his refugee claim,³ he mentioned only one of the incidents. When confronted with this discrepancy, the claimant initially said that he had been instructed to mention only incidents where he was threatened with death. However, in oral testimony, the claimant clearly stated that he was threatened with death in both major incidents. In later re-examination by counsel, the claimant stated that he was not given any instructions by the Immigration Officer. I find neither explanation satisfactory. The claimant made his claim after living in Canada for nine months so he would not be stressed from the flight. An interpreter was provided so he could express himself clearly and minimize any misunderstandings. Had the claimant been instructed to only mention incidents where he had been threatened with death, he should have mentioned both major incidents since by his own testimony, he was threatened with death both times. Had the claimant been given no instructions, it makes little sense to mention minor details (e.g., verbally threatened on other occasions) and not mention an incident in which the claimant was beaten so badly that he could not walk. I find this omission, the second of two major beatings, to undermine the claimant's credibility.

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In the claimant's Personal Information Form⁴ (PIF) there is no mention that [redacted] was beaten during the first major incident where the claimant was pulled out of a car. In oral testimony the claimant stated that [redacted] was beaten. When confronted with this contradiction, the claimant denied that he had said that [redacted] was beaten, even though it appeared that he had said just that. I find that this contradiction further undermines the claimant's credibility.

When the claimant made his claim, he stated to the Immigration Officer that his problems began in [redacted] 2004. In his initial narrative, submitted in 2006, the first major incident happened in [redacted] 2005. In the amended narrative, submitted in 2008, the first major incident happened in [redacted] 2005. When asked why three different dates had been given for when the first incident happened, the claimant stated that he was simply mistaken when he gave the [redacted] date and it was well after preparing his initial narrative that he realized he had made another mistake as he knew that the incident happened on a Sunday and, therefore, had to have happened in [redacted]. I do not find these explanations satisfactory. While it is understandable that with the passage of time, one might misestimate a date by a few days, in this case, the claimant gave dates that ranged over half a year apart, all at different times of the year. As stated earlier, the claimant

made his claim inland and an interpreter was provided so there is little reason for the claimant to so dramatically get the date wrong in relating his story to the Immigration Officer. When the claimant signed his PIF in 2006, he attested to the fact that it had been interpreted back to him and that the contents were accurate. I find that this discrepancy in dates of when the first of two major beatings occurred to further undermine the claimant's credibility.

At the hearing the claimant stated that he approached CONAPRED, an organization that deals with cases of discrimination and has powers to deal with public servants who was guilty of impropriety. When asked why he had not mentioned this in his PIF, the claimant stated that since CONAPRED did not help him, he did not think it necessary to mention them. However, as pointed out at the hearing, the claimant did mention in his PIF that he approached the police for assistance and they did not help him either. I find that this omission further undermines the claimant's credibility.

While the claimant did provide a medical note⁵ with respect to the first incident, more problems were raised by the note itself. It did seem somewhat odd that the note would originate from a highly specialized doctor whose specialties (stated as _____) did not match the treatment that the claimant received. The claimant explained that the doctor also had a general practice and that he had not visited him as a specialist. More troubling are the contents of the note itself. The doctor states that the claimant was injured by the use of "massive objects". The claimant stated that a better translation would be "blunt objects" although by his own testimony, there were no blunt objects used in his beating. The claimant then theorized that the doctor used blunt objects to mean fists and elbows. I find that this explanation makes little sense. For a highly trained and highly specialized doctor to use such imprecise and incorrect language makes no sense at all. The claimant also stated at the hearing that no one could obtain a note covering the second incident despite the fact that after the second incident, he went to the same doctor who was located on the same street as the claimant's home and that almost three years had passed since the second incident. Given the problems with the document provided and the lack of what would appear to be a reasonably available second document, I find that the claimant's credibility is further undermined.

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A letter was also presented from _____.⁶ Once again, more problems were raised. In the letter, states that the dates of the two major incidents were _____ and _____. The

claimant speculated that _____ had gotten confused and used the months when the claimant left Mexico rather than when the incidents actually took place. This explanation does not seem to make sense as there does not appear to be any reason why _____ would be confused or why he could not recall even the correct time of year that these extremely significant events actually occurred. Even more significantly, _____ fails to mention that _____ is a _____. It makes no sense at all to mention minor details (such as the monitoring of mail) but fail to mention this important fact when that one fact is what

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 gives the ability to track the claimant and do him harm with alleged impunity. I find these contradictions (by this time the fourth different set of dates for the beatings) and an extremely major omission to further undermine the claimant's credibility.

While the claimant did present other documents, such as information from his mother, I do not give this evidence much weight as the claimant's mother is hardly an objective source with no interest in the outcome of the claim. Taken together, I find that the many inconsistencies, contradictions and omissions with respect to the number of incidents, when they occurred, what happened when they occurred and even the significant occupation of the agent of persecution, all central elements of the claim, I do not believe that the events that the claimant alleged happened to him, actually happened. I do not believe that there is a serious possibility that the claimant faces persecution at the hands of his ex-partner's brother.

Internal Flight Alternative (IFA)

In addition to the claimant's alleged difficulties with , the claimant stated that he experienced a number of problems as a gay man living in , a

Even based on the claimant's residual profile as a gay man, the claim fails as the claimant has a viable IFA in the F.D. In *Rasaratnam*,⁷ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, the independent documentary evidence⁸ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the Federal level and in major cities such as the F.D. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the F.D. Penal Code. One of the co-sponsors of the legislation, lesbian Congresswoman Patria Jimenez, stated that "with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework".⁹ In September 1999, the Legislative Assembly of the F.D. passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Comacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the F.D. has been relatively diligent in enforcing its anti-discrimination statute. In April 2003, the Mexican Congress unanimously

approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.¹⁰

Participation by homosexuals is now widely accepted in at least two of Mexico's three principal political parties.¹¹

A law allowing same-sex unions in the F.D. became effective March 16, 2007.¹² Conjugal

prison visits are now allowed for same sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the FD.¹³ The National Council Against Discrimination (CONAPRED) has an office in the FD. CONAPRED is charged

is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination with CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation. Victims of discrimination can also contact their state Human Rights Commission.¹⁴ Some concerns have been voiced however, about the effectiveness of the Human Rights Commissions.¹⁵

This is not to say that the situation for gay men in the F.D. is perfect. For example, the Citizen's Commission Against Homophobic Hate Crimes alleged there were 332 murders in Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁶ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

There is also a report by the Metropolitan Autonomous University that eleven percent of homosexual men, bisexuals and lesbians in Mexico City had reported being threatened with extortion and detention by police officers.¹⁷ However, these results appear to have been obtained from surveying a number of individuals, so there is no way of verifying the accuracy of the answers. There is also no indication as to whether the sample of individuals used is representative of the experiences of gay men, bisexuals and lesbians in general. There is also no indication as to when the threats took place, whether recently or years ago. It should be noted that the first line of the IRB document states that "Reports of police officers sexually abusing homosexuals were scarce..."

I find that, on a balance of probabilities, the F.D. does provide a safe IFA for the claimant.¹⁸ The claimant has provided insufficient evidence to rebut the presumption of state protection in the F.D. There is no serious possibility that as a gay man he would face persecution.

With respect to the reasonableness of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹⁹ While the claimant did provide a psychological report,²⁰ that report is based on incidents which I simply do not believe happened. Should the claimant require psychological treatment for whatever experiences that actually have happened to him, no evidence has been presented that he would be unable

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to obtain this treatment in Mexico. The claimant does have at least a partial university education and has extensive work experience both in Canada and Mexico. The claimant's mother, who has accepted the claimant's sexual orientation, lives in nearby ' so she should be able to assist in the claimant re-starting his life in the F.D. It should be noted that the claimant's homophobic father passed away several years ago so the claimant's mother should now face no restriction on assisting him. I find that it would not be unduly harsh for the claimant to relocate to the F.D.

CONCLUSION

As I find the claimant's story not credible and that as a gay man he has a viable IFA in the F.D., the claim fails with respect to section 96 of the *IRPA*. Given those findings and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, the claim under that section fails as well.

For all these reasons, the Refugee Protection Division rejects the claim.

(signed)

"David McBean"

David McBean

July 18, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, Record of Examination.

4 Exhibit C-1, Personal Information Form (PIF).

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5 Exhibit C-3, medical note from Dr. [redacted], dated [redacted], 2008.

6 Exhibit C-5, p. 6, letter dated June 1, 2006.

7 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

8 Exhibit R-1, *National Documentation Package*, March 19, 2008, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute, December 2003.

9 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*,

World Policy Reports, World Policy Institute.

- 10 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 11 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 12 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 13 Exhibit R-1, item 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.
- 14 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute; and item 2.4, *Issue Paper*, section 5, subsection 5.3, "Traceability of Individuals Fleeing Violent Situations", *Immigration Refugee Board (IRB)*, February 2007.
- 15 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 16 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 17 Exhibit R-1, item 6.4, *Response to Information Request*, number MEX102682.E, January 9, 2008.
- 18 The panel notes that a number of RPD decisions finding that homosexuals had a viable IFA in Mexico City have been upheld by the Federal Court: *De La Rosa, Luis Francisco Flores v. M.C.I.* (F.C., no. IMM-1624-07), Phelan, January 23, 2008, 2008 FC 83; *Rosas Carrasco, Jesus Antonio v M.C.I.* (F.C. No. IMM-3283-06), Martineau, April 12, 2007, 2007 F.C. 382; *Herrera, Oscar Marquez v. M.C.I.* (F.C., no. IMM-1499-06), Shore, October 26, 2006, 2006 FC 1272.
- 19 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.

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20 Letter dated _____, 2008 from Dr. _____.

RPD File No. / N° de dossier de la SPR: TA6-07832



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR : TA6-08970

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Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile
Date(s) of Hearing	April 28, 2009 August 12, 2009 September 15, 2009 October 20, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 15, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Aadil Mangalji Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N. Cassano	Agent(e) de tribunal
Designated Representative(s)		Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS AND DECISION
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[1] a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA)

ALLEGATIONS

[2] The claimant was born and raised in Mexico. According to a recent report from the claimant's family physician here in Canada,² the claimant appears to have been physically and sexually abused at an earlier stage in life. As the claimant got older he abused alcohol, drugs, inhalants and other illicit substances to the extent where he suffers permanently from a psychotic disorder. While partially treatable by drugs, the claimant can at times suffer delusions, paranoia and hear voices speaking to him. The claimant also suffers from Generalized Anxiety Disorder. All of these factors lead to him being an inconsistent historian. This was borne out in each telling of the claimant's story. At the time that the claimant made his claim at the Citizenship and Immigration Canada (CIC) office, it was noted that there were fingerprint matches with various identities with radically different names in both Canada and the United States, with at least some of the identities having been accused of petty crimes. The claimant was also in possession of a list of names that may also have been aliases. The claimant referenced Mexico, Guatemala, El Salvador, Pakistan and the United States as part of his travels with various allegations of plots in those countries. However, the CIC interview stopped when the claimant passed a note to someone indicating that either the immigration officer and/or the interpreter was plotting against him. In the claimant's initial Personal Information Form (PIF) narrative, the claimant indicated that in the 1980's, he discovered that his sexual orientation was different from other people, identifying as a homosexual. The claimant also has transsexual thoughts, believing himself to be a "trapped in a man's body. The claimant's father forced him into relationships with women and physically abused him. The claimant moved away from home and came back many times. The claimant faced violence at the hands of the police and neighbours. The claimant's father and neighbours tried to set him on fire and came at him with a pistol. He faced

¹ As enacted by S.C. 2001, c. 27.

² Exhibit C-3, Report from Dr. [redacted] Family Physician, dated [redacted] 2009.

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further violence in the 1990's. The claimant assumed the identities of people that he knew and moved around a lot. In the claimant's second narrative, he indicated that he identifies as a bisexual and discovered this orientation in his teens. His father was furious with his suspicions about the claimant's sexuality and while he beat him and threatened to kick him out of the house, the claimant's mother would intervene on his behalf. The claimant was even beaten with a baton. In 1995, after a bad beating the claimant did go to the police but feared telling the police about his sexual orientation so he simply claimed that it was a case of familial violence. The police stated that the claimant needed hard evidence that his father was the one who beat him and since he had none, there was no investigation. The claimant never returned to the police. The claimant enjoyed _____ within his own home under his alter-ego '_____'. The claimant experienced symptoms of anxiety, depression and abused various substances. While his parents took him to various addiction rehab programs none of them worked. The claimant's psychological problems became worse and in 1998, he ran away to the United States of America (USA) and another part of Mexico. In 2002, the claimant was at home having sex with another man when he heard his father banging at the door with a hammer. He ran away to safety. In 2003, the claimant went to the USA but his psychological problems became worse, with the claimant often becoming homeless. His body could not tolerate the degree of substance abuse that he had become accustomed to. In 2006, the claimant came to Canada. In oral testimony, the claimant stated that he went to the USA in approximately 1989 or 1990, lived there for a time, returned to Mexico and went to the USA for good in 2003 to join family there. He described working in various jobs in the USA and his problems with substance abuse and mental health. The claimant identified himself as both gay and bisexual. He stated that he still feared that his father would still attempt to harm him even though his father would by now be in his late 60s. The claimant gave varying accounts of the number of times that he met his father over the last two decades, ranging from a few occasions to many occasions. The claimant also stated that he feared the police as they would want to take advantage of him sexually. The claimant described an incident wherein the Mexican authorities in northern Mexico put the claimant and another _____ and that the claimant had been raped as a result. The claimant initially said this occurred in 2003, but then stated it actually happened in 1993. Despite there being no official record of that event, the

claimant knew that all authorities throughout Mexico would know of this event to this day and would persecute him as a result.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] Given that the claimant has used many identities over time, his personal identity was very much in doubt during the preliminaries of these proceedings. However, the claimant was directed to approach the Mexican Consulate in Toronto to see if he could obtain a Mexican passport, given that he had other documents from Mexico. A passport was then produced and while it lacks many security features that passports generated in Mexico contain, I find on a balance of probabilities that the claimant is a citizen of Mexico.

Credibility

[5] I totally agree with counsel for the claimant that this was not a typical hearing and that credibility could not simply be assessed by the usual "Here you said A, there you said B, please explain why the two answers are different" types of questions. Among other things, the claimant is psychotic and delusional. While the medication he is taking does seem to be helpful to some extent, he simply does not have the same contact with reality that other people do and that was evident throughout the hearing process and at the hearing itself. In addition, as the Designated Representative noted, the claimant is extremely accommodating, wanting to agree with virtually anything said to him. This at times led to the claimant agreeing to two contradictory statements, one right after the other (e.g. his sexual orientation). At other times, information spontaneously appeared out of nowhere (e.g. :

all the authorities in Mexico knew about this). While the evidence was contradictory and changed over time, I find on a balance of probabilities that the claimant is not heterosexual, or will at least engage in behaviour that will make others perceive him as not being heterosexual. However, with respect to the specific incidents that the claimant recounted at various times, from plots in Pakistan, to his father and neighbours attempting to burn him, to

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all the authorities in Mexico knew; entire incidents appeared and disappeared in the claimant's memory. Small details and big details changed from telling to telling. Dates changed from one decade to another. This was entirely expected, given the psychological evidence on file³ that the claimant has never been a consistent historian. Even Dr. notes that in three years of treatment the claimant has never given a fully consistent history of his past. While it is clear that something happened to the claimant in the past, given his current permanent mental condition, I doubt that we will ever truly know what that something was. I find on a balance of probabilities that all of these incidents mentioned by the claimant are merely manifestations of the claimant's psychiatric condition and that they never actually occurred.

State Protection

[6] While the claimant did state that he remained afraid of his father, assuming he was still alive, he would have to be in his late 60s. No evidence was presented that the claimant's father was powerful or had extensive contacts or influence. As noted at the hearing, the greater Mexico City area is a huge place with tens of millions of people. While the claimant gave varying times that he has been in contact with his father, I do not see how he would know that the claimant had returned to Mexico City or be motivated to seek him out and attempt to harm him.

[7] However, with respect to society at large, I find that the claimant has failed to rebut the presumption of state protection. With respect to Mexican society in general, the independent documentary evidence⁴ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the Federal level and in major cities,

³ Exhibit C-3.

⁴ Exhibit R-1, *National Documentation Package*, June 2009, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

such as the Federal District. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the Federal District Penal Code. One of the co-sponsors of the legislation, lesbian Congresswoman, Patria Jimenez, stated that "with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework".⁵ In September 1999, the Legislative Assembly of the Federal District passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the Federal District has been relatively diligent in enforcing its anti-discrimination statute.⁶ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

[8] The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.⁷

[9] Participation by homosexuals is now widely accepted in at least two of Mexico's three principal political parties.⁸

[10] A law allowing same-sex unions in the Federal District became effective March 16, 2007.⁹ Conjugal prison visits are now allowed for same-sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the Federal District.¹⁰ The National Council Against Discrimination (CONAPRED) has an

⁵ Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

⁶ Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

⁷ Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

⁸ Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

⁹ Exhibit R-1, tab 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.

¹⁰ Exhibit R-1, tab 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.

office in the Federal District. CONAPRED is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.¹¹ Victims of discrimination can also contact their state Human Rights Commission.¹² Some concerns have been voiced however, about the effectiveness of the Human Rights Commission.¹³

[11] This is not to say that the situation for sexual minorities in the Federal District is perfect. For example, the Citizens' Commission Against Homophobic Hate Crimes alleged there were 332 murders in Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology, given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁴ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

[12] In his submissions, counsel made reference to the Board's own research with respect to violence by police officers against homosexuals and other vulnerable individuals.¹⁵ The key sentence in the document is the first one; "Reports of police officers sexually abusing homosexuals were scarce among the sources consulted by the Research Directorate". While the report does go on to indicate that there have at least been a few incidents in the recent past, there is nothing to indicate that these are anything but isolated

¹¹ Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

¹² Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute; and tab 2.4, *Issue Paper*, "Mexico, Situation of Witnesses to Crime and Corruption", section 5.3, "Traceability of Individuals Fleeing Violent Situations", *Immigration Refugee Board (IRB)*, February 2007.

¹³ Exhibit R-1, tab 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

¹⁴ Exhibit R-1, tab 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.

¹⁵ Exhibit R-1, tab 6.4, *Response to Information Request*, number MEX102682.E, January 9, 2008.

incidents. Counsel also noted that within the same document,¹⁶ there is mention of a report by the Metropolitan Autonomous University that eleven percent of homosexual men, bisexuals and lesbians in Mexico City, had reported being threatened with extortion and detention by police officers. However, these results appear to have been obtained from surveying a number of individuals and there is no way of verifying the accuracy of the answers. There is also no indication as to whether the sample of individuals used is representative of the experiences of gay men, bisexuals and lesbians in general. There is also no indication as to when the threats took place, whether recently or years ago.

[13] Counsel also made reference¹⁷ to a study by CONAPRED conducted in 2005. According to the study, 94.7 percent of Mexican homosexuals face some degree of discrimination. Furthermore, 43 percent of self-identified homosexuals interviewed claimed that they had been the victim of an act of discrimination within the last year. However, the methodology used to carry out this study is unknown. While the reference does state that 1,482 members of the public were surveyed along with 200 self-identified homosexuals, once again this appears to be a simple survey where the truthfulness of the answers can not be verified. Once again, there is no indication as to whether the sample of individuals chosen is representative of the larger community of "homosexuals". Even within the same article, it is noted that CONAPRED itself stated in 2006 that statistical information in this area is scarce.

[14] Counsel also made reference to an article¹⁸ which provides mostly anecdotal evidence of hate crimes. There is reference made to a figure of three murders based on sexual orientation occurring every month in the county of Mexico. While the source is quoted as saying that for every documented case there are five undocumented ones it is unknown how he came to arrive at that figure. Furthermore, while any murder is regrettable, there is no analysis provided to show whether or not 36 murders per year throughout the country is statistically significant in and of itself or is it simply part of what many observers would consider a fairly violent society, given the thousands of recent murders linked to the drug trade.

¹⁶ Exhibit R-1, tab 6.4, *Response to Information Request*, number MEX102682.E, January 9, 2008.

¹⁷ Exhibit R-2, tab 2.4, *Issue Paper*, section 5.1, "Situation and legislative framework".

¹⁸ Exhibit C-2, tab 3, package 2, item 15, "To Die by Hate", p. 92.

[15] Counsel urged me not to consider the claimant's sexual orientation in isolation and that his mental state should be considered at the same time. He also drew my attention to the situation of the mentally ill who were abandoned in the street by their families as well as appalling conditions in Mexican psychiatric institutions. However, I do not think the claimant is actually in a similar state as those abandoned. It should be noted that despite the claimant's mental state, he is fairly high functioning. He is able to interact with others and do so to a degree, as per the claimant's PIF, that he can actually take on the identities of those people around him. Even though he was in both the USA and Canada where the dominant language is not his native Spanish, he was evidently able to assume these identities quite successfully given that in his contacts with the authorities¹⁹ he was able to convince various people taking his fingerprints that he was actually someone else. The claimant also managed to work at a variety of jobs in the USA despite his problems. It was the evidence of the Designated Representative that the claimant had heard of him through others and specifically sought him out and found him. When that meeting did not go well, the claimant went elsewhere and sought out the Designated Representative at a later date. The Designated Representative even noted that the claimant required assistance in dealing with a large cell phone bill that he had run-up. While it is unfortunate that the claimant's mental state appears to be permanent even though he has stopped abusing the substances that led to it, he is able to function and deal with others. Even during those times where he has been homeless in Toronto he has managed to function, eventually getting back to a more settled life after each period of homelessness.

[16] Counsel also noted that the vast majority of the materials filed on this point were extremely dated. While it appears that the mental health system was bad in the past, things appear to have improved. For example, in the article, "Out of mind, out of sight,"²⁰ it is noted that there were shocking conditions in a psychiatric institution in Hidalgo Mexico. However, upon close reading of the article, it appears that the investigation was actually done in 1999 and as a result of the ensuing outcry the institution was closed in 2001. The most recent United States Department of State report²¹ does not mention problems faced by those with psychological problems. The claimant himself is currently taking various

¹⁹ Exhibit R-2.

²⁰ Exhibit C-5.

²¹ Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.

prescription medications to deal with his condition and no evidence was presented that he could not obtain these prescriptions in Mexico.

[17] I find that, on a balance of probabilities, the claimant has provided insufficient evidence to rebut the presumption of state protection in the Federal District. There is no serious possibility that as a mentally ill male of a minority sexual orientation, he would face persecution and as such his claim pursuant to section 96 of the IRPA fails. The issue being the same with respect to the harms delineated in section 97 of the IRPA, the claim pursuant to that section fails as well.

Section 97 (1)(b)(iv)

[18] While counsel noted various problems in the Mexican mental health care system, there is no indication any such inadequacies are due to a persecutory or otherwise improper motive beyond the state's inability to provide adequate health or medical care and as such is precluded from my consideration by section 97(1)(b)(iv) of the IRPA.

Humanitarian and Compassionate Consideration

[19] The claimant's situation may be compelling from a Humanitarian and Compassionate perspective. It appears that his condition is permanent and he has managed to forge a life for himself here. However, applications to stay in Canada on a Humanitarian and Compassionate basis must be made separately to another government department, and I have no jurisdiction to consider such grounds.



RPD File No. / N° de dossier de la SPR : TA6-13049

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	21 February 2008	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	31 March 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Hart A. Kaminker Barrister & Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	J. Cutler	Agent(e) des travaux
Designated	Nil	Représentant désigné

000137

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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(the claimant) is a thirty-year-old male from Mexico, claiming refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.¹

ALLEGATIONS

The claimant alleges that drug dealers were operating on his street while the local police did nothing to stop them. One day, some non-local police stopped and spoke to the claimant and his neighbours. Not long after, the drug dealers were arrested and their possessions seized. After being released, the drug dealers, having observed the claimant speaking to the non-local police earlier, blamed him for their arrest and threatened to harm him. The claimant then fled to Canada.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, he would be subjected personally to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment, if he were to return to Mexico. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the hearing and a copy of his Mexican passport is on file.

Issues

At the outset of the hearing, the issues to be decided were identified as credibility, state protection and Internal Flight Alternative (IFA).

Credibility

I find that the evidence presented in support of his allegations does not establish a serious possibility of persecution or a likelihood, on a balance of probabilities, of the other harms alleged, as I simply do not find the claimant's evidence credible.

The claimant has had several opportunities to tell his story. The first opportunity came at the Port of Entry (POE) when the receiving Immigration Officer made some notes of their conversation² and he was given the chance to make a written declaration in his own handwriting.³ The second opportunity came via the narrative portion of the Personal Information Form (PIF).⁴ The third and final

opportunity was the claimant's oral evidence at the hearing.

Counsel submitted that while there were some differences between the three major versions of the story, these differences were minor and that the core of the story remained the same in each version. While I might agree that the most basic "plot" of the story was consistent across the three versions, in that there were drug dealers on the claimant's street and they suspected him of informing the police about their activities, virtually every significant detail about every significant event differed inexplicably from one version of the story to another. For example:

(1) In the POE Declaration,⁵ the claimant mentions one instance where he was specifically threatened once by the drug dealers; in the PIF narrative⁶ the claimant was threatened twice and in oral testimony he was threatened on three separate occasions. At the hearing, the claimant alleged that the interviewing Immigration Officer told him to be "brief" so all incidents were not necessarily recorded. The claimant also stated that his PIF narrative may not be exactly correct as transcribed. I find that these explanations are not satisfactory. As pointed out at the hearing, the claimant's POE Declaration is over two pages long in the claimant's own handwriting and is quite detailed. It does not make sense that the claimant would only refer to one of three significant incidents when he was threatened if they had, indeed, occurred. With respect to the PIF, the claimant signed a written declaration stating that the contents had been interpreted to him and were complete, true and correct. A small portion of the PIF narrative was amended at the start of the hearing and the claimant orally made a similar declaration with respect to the amended PIF narrative. It was only after discrepancies in his oral testimony were pointed out to the claimant did he allege that his PIF narrative may still be incorrect. It does not make sense that such a major omission would not be caught by the claimant either in the initial drafting of the PIF or during his later review in which an unrelated amendment to his PIF narrative was made through his Counsel. A central element of the claimant's evidence was that he was threatened on a number of different occasions. I find that the discrepancies in the numbers of times that the claimant was threatened impacts negatively on his credibility.

s.19(1) (2) In describing the final occasion on which he was threatened after leaving his workplace (an incident not mentioned in his POE Declaration,⁷ the second specific threat described in the PIF narrative and the third threat in oral testimony), in the PIF narrative, the claimant states that he was chased by the individuals of the " ". In oral testimony, there was no chase, the drug dealers threatened him while walking in a public area. When confronted with this apparent discrepancy, the claimant stated that he did not see any difference in the descriptions. Even with clarification from the interpreter, with respect to terminology, I fail to see how the different descriptions of the event can be reconciled. Again, this is a central element of the claim and I find that the differing descriptions of this event (that is, when it was described at all) further undermine the claimant's credibility.

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(3) In the POE Declaration⁸ there is no mention of going to the police to seek assistance. The Immigration Officer's notes⁹ state that the claimant did not go to the police after being threatened, specifically "When asked why he did not seek police assistance from the drug dealers, Mr. [redacted] advised the police are corrupt in [redacted] and could not be trusted, that rather the police worked with the drug dealers on occasion to harass innocent citizens." In oral testimony and the PIF narrative, the claimant alleges he did go to the police for assistance. While the statement that the claimant did not go to the police is not in the claimant's own handwriting, it appears that this is not a simple typographical error, given the detailed reasons to supplement this note by the Immigration Officer. The claimant was unable to reconcile this contradiction and I find that this further undermines his credibility.

(4) In oral testimony, when the claimant spoke to a police officer, he was told that he was on a blacklist and that in order to be safe he should "get the hell out of where I was". In the PIF narrative version, the claimant also went to the police, however here he was told he was on the "black list of finger pointers and that some one had promised to kill me". Apart from the oral version of the police warning being vague with an apparent option of fleeing the immediate area to safety and the PIF narrative version stating that the claimant was specifically marked for death by someone; in oral testimony the claimant stated that this was the first and only time he had been to the police. In the PIF narrative version, this was not the first time that he sought the assistance of the police ("I once again tried to look for help from the police..."). Once again, the claimant was unable to reconcile these differences and once again, I find that these contradictions further undermine the claimant's credibility.

These are only some of the inconsistencies, contradictions and omissions that arose during the hearing. In addition to stating that he was told to be "brief" at the POE and that his PIF narrative may not be entirely correct, the claimant stated that he was under a great deal of stress and that he was generally "unsettled". I do not find these explanations to be satisfactory. Adding a general factor of "stress" simply does not explain why there were major contradictions between versions of the claimant's story and major events were either described very differently or omitted entirely in one or more versions.

In general, the claimant simply could not tell a consistent story from one time to the next. I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleges happened to him actually happened.

The claimant has alleged that he is a victim of crime based on a criminal vendetta by drug dealers who suspect him of informing on them. As such, his claim under s. 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in the PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under s. 97 of the *IRPA*, his

claim under that section fails as well.

State Protection/IFA

Given my findings with respect to credibility, there is no need to deal with the issues of state protection or Internal Flight Alternative, as there is no harm that the claimant needs to be protected or flee from.

CONCLUSION

For all these reasons, the Refugee Protection Division, therefore, rejects the claim.

“David McBean”

David McBean

March 31, 2008

Date

1 As enacted by S.C. 2001, c. 27.

2 Exhibit R-2, POE Notes, dated 08 October 2006.

3 Exhibit R-3, with English language translation by the Translation Bureau, Multilingual Translation Directorate, Public Works and Government Services Canada, dated 04 January 2007.

4 Exhibit C-1.

5 *Supra*, footnote 3.

6 *Supra*, footnote 4.

7 *Supra*, footnote 3.

8 *Ibid*.

9 *Supra*, footnote 2.

RPD File No. / N° de dossier de la SPR : TA -

RPD File No. / N° de dossier de la SPR : TA6-13049



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA6-13906

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

June 24, 2008
April 25, 2008

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

December 30, 2008

Date de la décision

Panel

David McBean

**Counsel for the
Claimant(s)**

Donald C. Simmons
Barrister and Solicitor

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

J. Baptiste

Agent(e) des tribunaux

000144

**Designated
Representative(s)**

Nil

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant lived in [redacted] and befriended a coworker, [redacted] (“[redacted]”), in 2001. She was married to [redacted] (“[redacted]”), a powerful man who is a [redacted] of the [redacted] ([redacted]) with many influential contacts and who was involved in the [redacted] of [redacted]. [redacted] abused [redacted], alternately fighting with or ignoring her. While [redacted] relationship with [redacted] was not a good one, over time, the relationship between [redacted] and the claimant became a romantic one. As time went by, the claimant was accepted by [redacted] family. However in [redacted] 2006, [redacted] confronted [redacted] with details of her relationship with the claimant. On [redacted], 2006, [redacted] physically confronted the claimant and threatened him to stay away. [redacted] contacted the claimant a week later and said that [redacted] had beaten her and had kept her and her children locked away. She also overheard [redacted] plotting to kill the claimant. The claimant helped [redacted] and her children flee to her mother’s place in [redacted].

On [redacted], 2006, two patrol cars were waiting for the claimant outside his home. The officers took the claimant to an isolated location, robbed him and beat him so badly that he bled when he urinated. The officers said that they had done this on behalf of [redacted] and would later kill the claimant. The claimant relocated to Mexico City in early [redacted] 2006. On [redacted], [redacted] working for [redacted] found the claimant and drove him at gunpoint to a warehouse. There they beat the claimant and threatened to kill him; however they relented when the claimant gave them his bank cards and PIN numbers. When they released the claimant, they said the claimant should leave the country or face death. The claimant fled to Canada on [redacted] and made a refugee claim on [redacted], 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility**s.19(1)**

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared to the Personal Information Forms³ (PIFs) and the other documents available. For example, there were dramatic differences with respect to when [redacted] made it clear he knew of the affair. Early on in oral testimony, the claimant stated that he and [redacted] found out when [redacted] confronted them on [redacted], 2006. He repeated this in later testimony on the second hearing date. However, the PIF⁴ makes it clear that [redacted] confronted [redacted] during the second weekend of [redacted] 2006 with details of the affair. The PIF then continues using "we" in dealing with this new-found knowledge. While the claimant stated the PIF was incorrect and perhaps referred to an assumption of [redacted] knowing earlier, this does nothing to explain why the PIF is so definite down to the weekend that [redacted] allegedly confronted [redacted] when, in oral testimony, it was during a specific incident a month later. The claimant affirmed both orally and in writing that his amended PIF was accurate. To get this point, a significant one in the claimant's life, so badly wrong makes no sense at all. It appeared at the time that the claimant simply forgot the paragraph in his narrative dealing with [redacted] confronting [redacted] about the affair. I find that this discrepancy undermines the claimant's credibility.

In the first version of the PIF,⁵ the claimant and [redacted] were physically confronted by [redacted] on [redacted], 2006. Throughout the description of the incident, it appears that [redacted] was alone. In the amended version of the PIF, [redacted] was a passenger in a van driven by other men. When asked why the description of the event changed when the second PIF was prepared, the claimant stated that he was being more careful when he prepared the second version. I do not find this explanation satisfactory. The claimant affirmed in writing that his original PIF was accurate. While it is understandable that some errors may occur, there is a significant difference in being confronted by a jealous husband acting alone and being confronted by a jealous husband who was accompanied to the confrontation by a driver and other men. I find that this discrepancy further undermines the claimant's credibility.

In late oral testimony, the claimant was asked what [redacted] said to him on the phone after the initial confrontation with [redacted]. The claimant mentioned a number of things but as noted at the hearing, he omitted mentioning that [redacted] said she overheard [redacted] contacting members of PAN and contacting an uncle in the military to aid in his plot to kill the claimant. The claimant provided no real explanation as to why he would omit such important details, even after being specifically prompted as to whether she said "anything else". I find that this omission further undermines the claimant's credibility.

In oral testimony, the claimant stated that after the [redacted], 2006 incident in which he was beaten by police officers on a "solitary street", he was then brought to a police station, where he complained to a person on duty who laughed at his predicament and was then locked up and beaten by police officers

again while in detention. As pointed out at the hearing, absolutely none of the events after the beating on the “solitary street” were contained in the claimant’s amended PIF. The claimant responded that the events were included in the Spanish version of his narrative, a version which he did not have on hand at the time of the hearing. It would be very significant for the police to not just beat the claimant once on an isolated street (as detailed in the PIF) but continue on to take him to a police station, lock him up, ignore his complaint and then beat him again. Once again, the claimant affirmed both orally and in writing that his PIF, as amended, was complete and accurate. To not notice such a glaring omission makes no sense at all. I find that this omission further undermines the claimant’s credibility.

With respect to the same incident there were also issues with respect to the identities of the police officers and whether or not they were involved at all. In the first version of the PIF the claimant was confronted by state police officers. In the amended PIF, the claimant was confronted by municipal police officers. In the notes made by the Immigration Officer at the time the claimant made his refugee claim,⁶ the claimant makes no mention of being beaten by police officers of any rank. The claimant stated that he was mistaken in the first version of the PIF and that he was told to be brief during his interview with the Immigration Officer and therefore did not mention the involvement of the police. I do not find these explanations satisfactory. The claimant provided a very detailed description of the police cars involved, a

description which enabled him to identify the police force involved. Given the claimant’s level of knowledge on the subject and the fact that he had affirmed in writing that the original version of the PIF was accurate, it seems odd that he would misidentify the force. More importantly, while the description of the claimant’s problems is only one paragraph in the Record of Examination, there is actually a large amount of detail, including political history and the fact that his bodyguards were involved. To mention the involvement while failing to mention that the agents of the state who would normally be expected to protect the claimant were involved as well, makes no sense whether or not it is a brief description. I find that these discrepancies, particularly the second one, to further undermine the claimant’s credibility.

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With respect to the , 2006 incident, the claimant stated that after he returned home he bled when he urinated. When asked by the Refugee Protection Officer (RPO) if he sought medical attention, the claimant said that he had not. When I somewhat incredulously asked the same question at a later point in the hearing, the claimant stated that he had spoken with doctor at school who said that this could be temporary and that he wanted to see the urine. When pressed further, the claimant stated that this doctor also did a general check of his body. When asked why he did not tell the RPO this information when he was asked, the claimant stated that he thought the RPO specifically meant treatment at a hospital. I do not find this explanation satisfactory. It seemed bizarre that the claimant would not seek formal medical attention when he allegedly discovered that he bled when he urinated. Throughout my

questions on the subject it appeared that the claimant also realized that a reasonable person would have sought medical aid in the circumstances and then invented the story of approaching a doctor at the school to cover this realization, while at the same time avoiding any questions about medical documentation. I find that this discrepancy further undermines the claimant's credibility.

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After the final incident, the claimant was released by _____ either very late at night or in the early hours of the morning. The claimant sought medical attention that same morning and was in Canada before the end of the day. The claimant's passport and other documents make it clear that he arrived in Canada on _____, 2006, but the medical note provided to substantiate the incident is dated _____, 2006, i.e. before the claimant was released by the _____. At first, the claimant theorized that the previous day's date had been used because he would have visited the facility around midnight. However, as pointed out to the claimant, the document actually states the time as 6:30 a.m. The claimant then theorized that perhaps the date-problem was due to the facility using preprinted forms. However, this did not seem to be the case as both time and date were handwritten. The claimant could not provide an explanation as to why the medical note appears to have been written a day before he actually sought medical attention and I find that this discrepancy not only casts doubt on this and the other documents proffered by the claimant but further undermines his credibility as well.

The claimant stated that he gave his identification documents, debit cards and PIN numbers to _____ who withdrew money from his bank but he never contacted the bank to cancel everything. When asked why he would not do this given the possibility of identity theft, he said that he had only a small amount of money in the bank and was not concerned about it and did not know how to go about dealing with this problem from Canada. I do not find this explanation satisfactory. The claimant was sophisticated enough to check his balances online. He alleged (without proof at the hearing) he informed his employer of his departure via e-mail. Even if there was only a small amount of money in the account at the time, it does not make sense to leave these accounts in the hands of one's alleged persecutors. This lack of rational action makes little sense and I find that it further undermines the claimant's credibility.

Given the serious inconsistencies and omissions with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and, as such, his claim fails. While the claimant did provide a document stating that he had met with the Canadian Centre for Victims of Torture (CCVT), the document makes no mention of what his experiences or difficulties might be. Even if the claimant had experienced something which caused him to seek out the CCVT, it was not the story contained in his PIF, a story which I simply do not believe.

CONCLUSION

Since I do not believe the claimant with respect to the events described in his PIFs, I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

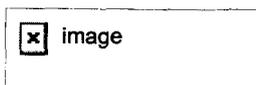
David McBean

December 30, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, PIF and Exhibit C-2, Amended PIF.
- 4 Exhibit C-2, Amended PIF.
- 5 Exhibit C-1, PIF.
- 6 Exhibit R-2, CIC Etobicoke In-person Refugee Intake Record of Examination.

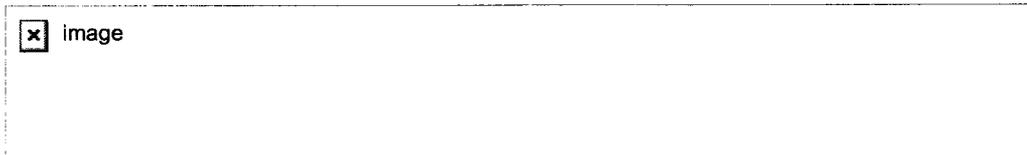
RPD File No. / N° de dossier de la SPR : TA6-13906



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA6-14464

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 8, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	June 16, 2008	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Patricia Ritter Barrister and Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Dennis Johnston	Agent(e) des tr
Designated	Nil	Représent

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Representative(s)

dési:

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

The claimant is a [redacted] and other [redacted] in the [redacted] area. In 2005, he was approached by a man known as "[redacted]", who proposed a business venture whereby the claimant would allow "[redacted]" to ship something along with the claimant's regular shipments of goods. The claimant inferred that "[redacted]" was asking him to [redacted]. When "[redacted]" threatened him by showing him a gun, the claimant complained to the police. The police said that they could not do anything without further information about "[redacted]", such as his real name or an address. Soon afterwards, the claimant was ordered into a car by "[redacted]", who then ordered the claimant to comply with his scheme. Rather than complying with the order, the claimant moved to another house that he had already owned about 30 minutes away. The claimant had a couple months of peace before a number of calls were made to the new house asking for him. In [redacted] 2006, in an apparent chance encounter, the claimant saw "[redacted]" and some men in a parking lot. They spotted the claimant and gave chase, however the claimant was able to elude them. While the claimant did see "[redacted]" in his area a couple of times, "[redacted]" never visited the claimant's house. After another month and a half, the claimant came to Canada and stayed for five and a half months before he made a refugee claim in [redacted], 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the

hearing as a copy of his Mexican passport was on file.²

Internal Flight Alternative (IFA)

Even if I accept all of the claimant's evidence as true (which I do not necessarily do), the claim fails as the claimant has a viable IFA in the Federal District (F.D.). In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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With respect to the first prong of the test, the claimant fears an alleged [redacted] from the [redacted] area, approximately 400 kilometres away from the proposed IFA in the F.D. The claimant feels that he was targeted by "[redacted]" because of his particular business. He stated that it would be quite easy to hide a [redacted] under several [redacted] being shipped at a time, which would make the claimant's business ideal for "[redacted]" purposes. It stands to reason that as long as the claimant was involved in the [redacted]; "[redacted]" would be interested. However, it also stands to reason that if the claimant was no longer in the business of shipping [redacted], "[redacted]" would have no interest in doing business with him. The claimant stated that it would be quite easy for him to find another type of job so he is by no means limited to this one profession.

When problems initially developed, the claimant moved from [redacted] to a house that he had already owned about 30 minutes away in [redacted], which is a little further away from the centre of [redacted] in a different direction. After a couple of months, several calls were made to the claimant's new home enquiring about his whereabouts. These calls, made by both men and women have continued up until recently. The claimant speculated that the calls originated from "[redacted]". When asked if these calls had been reported to the police, the claimant questioned the point in doing so, given that they were just people enquiring about his whereabouts. In fact, some or all of the calls may have a far less sinister purpose than the

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claimant speculated; they could, in fact, be from telemarketers or creditors. The callers never linked themselves to “ ” and no threats were issued. Even though the calls started months before he left Mexico and it would seem the callers had some way of locating the claimant, no one ever visited the claimant’s home to see if he was there. It appears that “ ” was not that interested in finding the claimant.

The claimant’s last direct contact with “ ” was a chance encounter in a parking lot two years ago. While the claimant refused to participate in the smuggling scheme, “ ” suffered no loss or harm as a result. If the claimant moved out of the area and gave up his business for good, it is difficult to see why “ ” would still be motivated or have the resources to conduct a national search, somehow find the claimant and then do him harm, particularly if the claimant found another type of employment and would therefore be of no use to a smuggler. It should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor’s office.⁴

I find that, on a balance of probabilities, there is no serious possibility of the claimant being harmed in the F.D.

With respect to the reasonability of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ If the claimant were to return to Mexico, he would be using the international airport in the F.D. His family could join him there and he would not have to travel back to the area. As stated previously, the claimant felt that given his skills and experience it would be quite easy for him to find any number of jobs, so the claimant should have no trouble supporting himself and his family. The claimant did express his unwillingness to live in the F.D. given what he perceived to be a high rate of crime there. However, there is nothing in the objective documentary evidence which would suggest that the crime rate in the F.D. is beyond what one would expect in a large metropolitan area and there is no indication that the authorities would be unable or unwilling to protect him, should he experience crime there. More

importantly, it is a risk faced generally by others and therefore excluded under section 97(1)(b).

I find that it is reasonable for the claimant to relocate to the F.D.

CONCLUSION

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The claimant has alleged that he is a victim of crime based on being criminally harassed by a . As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Refugee Convention grounds.⁶ As I find that the claimant has a viable IFA in the F.D., the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

(signed)

David McBean

June 16, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 Exhibit R-1, *National Documentation Package*, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.
- 5 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.
- 6 *Leon, Johnny Edgar Orellana v. M.C.I.* (F.C.T.D., no. IMM-3520-94), Jerome, September 19, 1995.

RPD File No. / N° de dossier de la SPR: TA6-14464



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA6-14480

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	July 23, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	September 22, 2008	Date de la
Panel	David McBean	1
Counsel for the Claimant(s)	Dariusz Wroblewski Barrister and Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

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Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant married (" ") in 2005 and lived in , Guanajuato. In 2006, he came home to find his wife having sex with his lawyer, (" "). The claimant's wife and lawyer laughed at and mocked him. The claimant moved into his mother's house. demanded that the claimant divorce his wife but the claimant refused. repeated his demands many times, particularly through his friend, who also demanded that the claimant divorce his wife and leave the city. The claimant refused each time. On , 2006, sent two noted criminals to attack the claimant. They beat him with a flagpole and a rock causing a broken nose. They demanded that the claimant divorce his wife and leave the city but still the claimant refused. repeatedly demanded that the claimant divorce his wife and leave the city but still the claimant refused. In 2006, sent two men with a gun to the claimant's house. When the claimant's sister said that the claimant was not home (even though he was), they told the claimant's sister that the claimant should sign some legal papers, presumably the divorce papers. Once again, the claimant did not sign the divorce papers. Knowing that was a powerful person, the claimant fled to Canada on , 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.2

Nexus

The claimant has alleged that he is a victim of crime based on being criminally harassed by his wife's lover. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

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It quickly became apparent that there were a number of contradictions and omissions when the claimant's oral testimony was compared to the Personal Information Form3 (PIF), the Immigration Officer's notes made at the time the claimant made his claim, and the claimant's own hand-written statement in Spanish. For example, there was much confusion regarding the agent of persecution, [REDACTED], himself. [REDACTED] was described as both being the claimant's lawyer and a [REDACTED]. When it was pointed out that one cannot usually be both at the same time, the claimant clarified that [REDACTED] was initially a lawyer when his wife first met him and that she still consulted him for legal advice as she did in early 2006 with respect to a wrongful dismissal matter. The claimant stated that [REDACTED] had been [REDACTED] in approximately 2003-2004. However, this contradicted the PIF where both the claimant and his wife are described as meeting [REDACTED] for the first time in [REDACTED] 2005 with respect to the same wrongful dismissal problem. The claimant stated that the PIF was incorrect in that his wife had known [REDACTED] well before [REDACTED] 2005 and that it was also incorrect with respect to describing the wrongful dismissal problem as arising in [REDACTED] 2005 as it actually occurred in 2006. The claimant did not provide an explanation as to why the PIF contained such incorrect information about how and when he and his wife had met [REDACTED]. The claimant affirmed both in writing and orally that the PIF was complete, true and accurate and I find that these discrepancies with respect to how and when he met the agent of persecution undermine his credibility.

The claimant presented confusing, inconsistent testimony with respect to the initial confrontation when he discovered his wife and [REDACTED] having sex and the immediate aftermath. In the PIF and oral testimony, the claimant stated that he left the house the next morning. However, at the time that he made his claim, the detailed notes of the Immigration Officer state that he left the house after two days, specifically [REDACTED] to [REDACTED], a time period that the claimant stated orally was incorrect. In the detailed notes of the Immigration Officer, the claimant stated that both his wife and [REDACTED] wanted him to sign the divorce papers and that his wife had been [REDACTED]

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calling to get him to do so. In the PIF, it is [redacted] who had been calling the claimant. Furthermore, in oral testimony the claimant tried to explain that his wife had called not to convince him to sign the divorce papers but to “explain” the situation. However, shortly after that statement the claimant said that his wife had at least initially wanted him to sign the divorce papers along with [redacted]. As previously noted, the claimant affirmed both orally and in writing that his PIF was complete, true and accurate. The Immigration Officer’s notes do provide a level of detail and Spanish/English interpretation was provided at the time. The claimant could not effectively explain why there were such differences in what happened after the initial confrontation, when he left the house, or more importantly, who called him and for what purpose. I find all these differences further undermine the claimant’s credibility.

There were discrepancies as well with respect to the one serious incident of violence that the claimant allegedly endured. In the written declaration that the claimant made in Spanish in his own hand-writing at the time that he made his claim, the incident is described as taking place on [redacted]. In the PIF and oral testimony the incident is described as taking place on [redacted]. More importantly, in the PIF and oral testimony the claimant described being beaten with a small flagpole and having his nose broken by a rock. However, in the detailed medical report with respect to the same incident, there is no mention of being attacked with a flag pole or hit by a rock. Instead, the report states that he was punched and kicked. While counsel submitted that the medical report was not prepared with respect to providing a narrative report of the incident, it actually does just that with the English translation of the description of the events going on for a very detailed six typed lines. It is quite odd for a medically trained person to provide such a different version of events, given the large amount of very specific details included in the detailed description of what allegedly happened. I find that this discrepancy in dates and more importantly, the discrepancy in the description of what actually happened during the one incident where the claimant allegedly experienced violence, to further undermine the claimant’s credibility.

The claimant presented a letter from [redacted] a lawyer in Mexico, stating that the claimant had consulted him on [redacted] 2006, with respect to his problems and that due to the magnitude of the problems and the status of the persons involved, the lawyer declined to provide any assistance. As pointed out at the hearing, there are absolutely no specifics mentioned in the letter with respect to the type of problems that the claimant was experiencing or the identities of the persons that are involved. Counsel submitted that it

would be unreasonable to expect the lawyer to get into specifics as that would place him at risk as well. I do not find this submission to be persuasive. I find it difficult to believe that a lawyer in preparing a private letter to be used in an *in camera* proceeding in another country would be so afraid of getting involved that he would write such an intentionally vague letter. Furthermore, as pointed out at the hearing, the fact that the claimant consulted this lawyer in an attempt to obtain assistance was not contained in the PIF. The claimant could only state that he could not write “everything” as an explanation for the omission. I do not find this explanation satisfactory. The directions for preparing the narrative are quite clear in that all attempts to obtain redress are to be included. I find that with the letter being so unexpectedly vague and the fact that the claimant attempted to contact the author in Mexico was omitted entirely from the narrative further undermines the claimant’s credibility.

It should be noted that the claimant has been in Canada for quite some time. The screening form prepared in December 2006 stated that the claimant should provide all documentation necessary to support his claim. On the fourth attempted hearing date, July 16, 2008, the claimant was specifically instructed to obtain documentation that would show at the very least the agent of harm’s existence.

s.19(1) is allegedly a well-known individual in [redacted] from a well-known family. The claimant has never provided any documents which would show that [redacted] even exists, much less that he is somehow involved in the claimant’s life. I find this absence of what one would think would be reasonably available documentation to further undermine the claimant’s credibility.

Given the numerous inconsistencies and omissions noted, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleges happened to him, actually happened. As such, his claim under section 97 fails.

Internal Flight Alternative (IFA)

Even if I did not come to the conclusion that I did with respect to credibility, the claim still fails as the claimant has a viable IFA in the Federal District. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable, which has been adjusted for the purpose of section 97 as follows:

- i. The Board must be satisfied on a balance of probabilities that the claimant does not face a danger of torture or a risk to life or a risk of cruel and

unusual treatment or punishment in the part of the country to which it finds an IFA exists. Section 97(1)(b)(ii) of the *IRPA* requires that the risk would be faced in every part of the country.

- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, the claimant was repeatedly asked at the hearing why he did not just sign the divorce papers and leave town as had repeatedly demanded. After all, the claimant has been separated from his wife longer than they were together as a married couple, he has not kept in touch with his wife who previously laughed at his predicament, and while the PIF stated that the claimant was concerned that his wife still possessed his business and tools, the claimant stated orally that she had since closed the business and sold off all of the assets and that there was nothing left. The only real reason that the claimant gave for not wanting to sign the divorce papers was that he did not want to give "the satisfaction". While such a position is perhaps understandable on an emotional level, it makes no sense at all when one fears for one's life, particularly given that there is nothing left of the marriage "to save". sole motivation for persecuting the claimant was the claimant's refusal to sign divorce papers. Once those papers are signed, which at this point is a mere legal formality, would lose all motivation for persecuting the claimant. If the claimant were to leave town (as requested) and move to the Federal District, would have no motivation to follow him anywhere, let alone harm him.

s.19(1)

I find that, on a balance of probabilities, the claimant would not face a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of torture in the Federal District.

With respect to the reasonableness of the claimant moving to the Federal District, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ The claimant has extensive experience as an entrepreneur, having started his own that eventually employed up to people. While the claimant did express a general concern that relocating to a new area is not the easiest thing to do, this is a general challenge faced by all people. The claimant's parents, though separated now themselves, are comfortable financially and may help the claimant in getting himself re-established.

I find that it would not be unduly harsh for the claimant to relocate to the Federal District.

CONCLUSION

The claimant has alleged that he is a victim of crime based on being criminally harassed by his wife's lover. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. As I find that the claimant was lacking in credibility and in the alternative, has a viable IFA in the Federal District, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

September 22, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form.
- 4 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 5 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

RPD File No. / N° de dossier de la SPR : TA6-14480

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RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR : TA6-14692

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1) (a.k.a.)	Demandeur(e)(s)
Date(s) of Hearing	June 23, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 17, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Camilla Jones	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] (a.k.a.), a citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in the Philippines. She feared armed groups such as the New People's Army (NPA) and the Abu Sayyaf Group (ASG). In 1996 she travelled to Israel to work as a . In the year 2000 she moved to Canada as part of the . She made a refugee claim on November 8, 2006.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of the Philippines was accepted at the beginning of the hearing as a copy of her passport from the Philippines was on file.²

Failure to Claim Elsewhere/Delay in Claiming

[5] The claimant has not lived in the Philippines since 1996. She stated orally that she had already formed a fear of the various armed militant groups in the Philippines by the time that she left. However, she did not make a refugee claim in Israel, which is a signatory to the United Nations Convention and Protocol Relating to the Status of Refugees. When asked why she did not make a claim in Israel, the claimant stated that she was working there at the time and that she wanted to go to Canada. Counsel submitted that the claimant took effective steps in Israel to prevent being returned to the Philippines by applying to and being accepted into Canada's . While the claimant did indeed come to Canada after living in Israel for four years, it does not explain the claimant's behaviour while in Israel. The claimant stated that while she had forgotten the specific name of the Israeli agency that deals with refugee claims made in Israel, she was aware of its existence while she lived there. She had allegedly already formed a fear of the armed groups in the Philippines before she arrived in Israel. If the claimant had truly felt this subjective fear and was aware of the Israeli agency that processes refugee

claims while she was living there, I would have expected her to make a refugee claim while in Israel. The fact that she did not demonstrates a lack of subjective fear. **s.19(1)**

[6] The claimant then came to Canada and worked legally as part of the from 2000 until 2002. At that time her work permit expired and she did not apply in time to have it renewed. From the evidence on file it appears that this has caused the claimant many difficulties in attempting to stay in Canada. The claimant applied to stay on Humanitarian and Compassionate grounds but was eventually refused. While the claimant stated that she had expressed a fear of returning to the Philippines in her application to stay on Humanitarian and Compassionate grounds she did not make a refugee claim until 2006, six years after her arrival in Canada and four years after her permission to remain in Canada expired. When asked why she did not make a refugee claim in addition to her dealings with immigration, the claimant said that she did not know. If the claimant did in fact fear for her life, I would have expected her to make a refugee claim in Canada long before she actually did, at the very least soon after the time that her permission to remain in Canada expired as there is no barrier to making a refugee concurrent with other processes. The fact that she did not, once again demonstrates a lack of subjective fear.

[7] The claimant demonstrated a lack subjective fear in the ten years between the time that she left the Philippines and when she finally made a refugee claim in 2006. She made no refugee claim in either Israel or Canada even though she had already formed the fear of militant groups and she was aware of the refugee process, even back in Israel. I find that in the claimant's particular circumstances this lack of subjective fear is determinative of the claim³ and as such the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of any of the harms noted in section 97 of the *IRPA* the claim pursuant to that section fails as well.

Internal Flight Alternative (IFA)

[8] Even if my analysis above should be found to be incorrect, the claim still fails as I find in the alternative that the claimant has a viable IFA in Manila. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[9] With respect to the first prong of the test, it should be noted that while the groups that the claimant fears have conducted the occasional operation in Manila, the overwhelming majority of their operations are conducted elsewhere. For example, the NPA, an armed communist group, is rural based. As noted in counsel's own submissions, a government spokesperson considers them to be a "group of extortionists thwarting rural development". Furthermore, while there are many armed Islamic groups such as the Abu Sayyaf Group, they are concentrated in the southern islands of the Philippines such as Mindanao and Jolo.⁵ While counsel did disclose a document⁶ from the Canadian Department of Foreign Affairs urging travellers to Manila to exercise caution, the number of incidents involved are not actually that many in a country of 89 million people.⁷

At year's end, according to military and police sources, 209 members of the AFP [Armed Forces of the Philippines] were killed in action during encounters with rebel and terrorist groups: 140 by the NPA, 56 by the ASG [Abu Sayyaf Group], and 13 by the MILF [Moro Islamic Liberation Front]. During the same period, AFP operations resulted in 340 insurgents killed: 166 NPA, 27 ASG, 146 MILF, and one from the Moro National Liberation Front. The PNP [Philippines National Police] recorded 82 of its personnel killed from January to November and claimed 91 insurgents killed in operations around the country, including 67 NPA, two ASG, and 22 MILF.

[10] Given that the police and armed forces are carrying out active campaigns against the various militant groups in areas mostly away from Manila, the number of incidents in comparison to the population, particularly with respect to Manila are quite small. In reviewing the objective documentary evidence on file,⁸ it appears that the claimant has no more than a mere possibility of being targeted by such groups in a large city such as Manila. It should also be noted that when I asked the claimant why she could not move to Manila to be safe she responded that she had no house there. When I then asked if there was any other reason she would not be safe in Manila she responded "no". I find on a balance of probabilities that there is no serious possibility of the claimant being persecuted in Manila.

[11] With respect to the reasonability of the claimant moving to Manila, I note that the threshold for the claimants to show that relocation to the proposed IFA would be unreasonable is quite high.⁹ If the claimant was to return to the Philippines she would arrive at the international airport in Manila and would not have to return to her home area. The claimant was widowed in 1993 so she should be used to living on her own. Apart from many years experience as a _____ she has also been trained as a _____ so she should be quite employable. I find that it would not be unduly harsh for the claimant to relocate to Manila and as a result the claim pursuant to section 96 fails.

[12] While counsel did make reference that the claimant would be perceived as wealthy given her lengthy time abroad and therefore be at particular risk of the crimes of extortion and kidnapping, these are generalized risks faces by all the people in the Philippines and as such are precluded from consideration under section 97 of the *IRPA*. The fact that perceived wealth may put someone at a greater degree of risk than others does not change the nature of the risk.¹⁰ There being no other

evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA* the claim pursuant to that section fails as well.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[14] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

July 7, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 *Maqdassy, Joyce Ruth v. M.C.I.* (F.C.T.D., no. IMM-2992-00), Tremblay-Lamer, February 19, 2002 and *Nazir, Qaiser Mahmood v. M.C.I.* (F.C., no. IMM-3857-04), Harrington, February 3, 2005, 2005 FC 168.
- 4 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 5 Exhibit R-1, *National Documentation Package*, April 29, 2009, tab 4.2, *Response to Information Request*, number PHL101566.E, October 18, 2006.
- 6 Exhibit C-2, p.50.
- 7 Exhibit R-1, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices*

for 2008, February 25, 2009, section 1(g) "Killings".

8 Exhibit R-1, tab 4.2, *Response to Information Request*, number PHL101566.E, October 18, 2006 and counsel's submissions.

9 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000. **Reported:** *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

10 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. : TA6-14692



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA6-15441

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	December 2, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	April 23, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Neil Cohen Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des travaux
Designated	Nil	Représentant

000174

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Guyana, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant lived with her well-off family in Guyana. The claimant's parents were supporters of the (), on the party's behalf and they . In 1992, when the claimant was nine years old, a was underway. While the family was shopping, the claimant's father noticed three men following them, one of them a known supporter of the rival (). When the claimant's family returned home, a car carrying the three men followed them into their driveway. The claimant and her sister watched helplessly from the house as the men beat their parents. Then, the attackers set the family with the claimant's parents still in it. After threatening the claimant and her sister, the attackers fled. Despite suffering severe burns, the claimant's parents managed to escape the and survive. While her parents recovered in the hospital, the claimant and her sister were cared for by an aunt who abused them. The claimant's father fled to the United States of America (USA) in 1993. In 1994, the claimant, her mother and her sister came to Canada for a short period then joined the claimant's father in the USA. The claimant lived illegally in the USA for the next decade. When the claimant was returning to the US mainland from the US Virgin Islands in 2006, she was detained by US Immigration authorities. The claimant filed a claim for asylum in 2006 but did not appear for her hearing as her lawyer told her that she had little chance of success. The claimant travelled to Canada using a false Canadian passport on 2006, and made a refugee claim on November 21, 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this decision, I have taken into account the

Chairperson's *Gender Guidelines*.² My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Guyana was accepted at the beginning of the hearing as a

copy of her Guyanese passport was on file.³

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form 4 (PIF) and the other documents available. For example, the claimant stated that the attack against her parents in a [redacted] in Guyana intended to send a message to other supporters of the [redacted]. However, the claimant presented no media reports that would corroborate that the event actually took place. While I realize that the claimant was only nine years old at the time, she is now an adult and able to make efforts to document her claim. While the claimant stated that she did not like thinking about the event, she is represented by competent counsel who could have assisted in documenting the alleged attack. If the attack had actually occurred and truly been so notorious at the time, there should be no shortage of media accounts of the incident. I find that these accounts would have been reasonably available and the fact that none were presented, undermines the claimant's credibility.

One document that was presented was a recently-written letter from Dr. [redacted], a doctor at [redacted] hospital in Guyana.⁵ In the letter Dr. [redacted] details the attack against the claimant's parents and the background situation and the medical care that her parents received. However, as noted at the hearing, the letter is somewhat difficult to read as it inexplicably switches back and forth between the past and present tense. When asked, the claimant did not know why the letter was written in the fashion that it was. However, another letter was also presented, this from Dr. [redacted] in [redacted] who stated that he examined the claimant's mother [redacted] **s.19(1)**

in 2008. In this letter, the claimant's mother is described as having been burned in an accident [emphasis mine]. When asked why Dr. [redacted] would state that the cause of her mother's injuries

was an accident rather than an attack, the claimant speculated that her mother would have been psychologically unable to tell her current doctor the truth about her injuries. However, in a letter from the claimant's mother,⁷ she does, in fact, detail her injuries and experiences at great length, so it seems odd that she would not detail these experiences to her current doctor, given that he would want some idea with respect to how the injuries were received (e.g.

). The letter from the claimant's mother raises further difficulties as well. She describes having _____ her and her spouse, being pushed _____ and then having

She describes kicking open a door, getting out and then reaching back :

her husband out of the car. However, as the letter from Dr. _____ states and the accompanying pictures show, the claimant's mother received burns from approximately the knees down and nowhere else. The claimant's mother's injuries do not appear to be consistent with the facts alleged. If she really had been _____ and _____ managed to get out and then reached back : _____ spouse, I would have expected her to be injured in areas of the upper body, rather than only her feet and lower legs. Given the difficulties in the letter from Dr. _____ in describing the incident, the fact that Dr. _____ described the incident as an "accident" and more importantly, the claimant's mother's injuries do not appear consistent with the facts alleged, I find that these discrepancies further undermine the claimant's credibility.

In oral testimony the claimant described a number of incidents that occurred in 1993 and 1994. The claimant described break-ins in the family home, objects being thrown at the house, graffiti being painted on the house and other problems. The claimant said that she knew that this was not random crime as nothing was ever stolen during the break-ins. However, as noted at the hearing, none of these incidents are mentioned in the PIF. The only significant incident mentioned is the claimant's parents being burned in 1992. Other than one mention of always being threatened, nothing specific is mentioned. The claimant stated that there was constant conflict and she and her mother had psychological issues. I do not find the claimant's explanation satisfactory. The directions for filling out the narrative are quite clear in that all the significant incidents are to be included. The claimant affirmed both orally and in writing that her

s.19(1)

PIF was complete and accurate. Had these incidents taken place as alleged, it would have shown that there was continuing keen interest in the claimant's family throughout their time in Guyana and the 1992 incident was not a one-time thing. I find that the omission of these incidents from the PIF, particularly the targeted break-ins, further undermines the claimant's credibility.

Given that the claimant was a minor when she came first to Canada and then the USA in 1994, she cannot be faulted for not making a refugee claim at that time. However, she turned 18 in 2001 and then 21 in 2004 but took no steps to regularize her status in the USA. It was only in 2006 when she was detained when she unexpectedly came to the attention of US Immigration officials did she make an

asylum claim. Despite being released into the community, she did not appear for her scheduled hearing and abandoned her claim for asylum. When asked why she did that, she stated that her lawyer told her that she had little chance for success and given her psychological state, she abandoned her claim. I do not find the claimant's explanation satisfactory. The claimant has 14 years of education and some work experience. After being released from detention, she was able to arrange travel to Canada using a false Canadian passport. The claimant seemed quite able to arrange her affairs yet chose not to see her asylum claim through. If the claimant truly had something to fear in Guyana, I find that it would have been reasonable for her to see her asylum claim in the USA through to its completion. The fact that she abandoned her claim not only displays a lack of subjective fear but also further undermines the credibility.

At the hearing, the claimant stated that she was still afraid of the men who burned her parents, in part because she could identify them. She stated that she could not only describe them, but also came to know where at least one of them lived. This information would of course be relevant in any potential criminal prosecution so it would put the claimant at increased risk of being targeted for violence. However, as noted at the hearing, while the claimant did state in the PIF that she saw the men after the attack, she does not state that she knew where at least one of the men lived. The claimant stated that she became aware of the information in the USA in speaking with her father and that she rarely discussed the matter. I do not find the claimant's explanation satisfactory. While the claimant speculated that she would recognize her attackers from her memories from the time that she was nine years old, these memories would be open to attack in court as being quite frail. The fact that the claimant could identify where at least one of the men lived would definitely narrow the list of suspects and make her potential testimony far stronger. Stating that she came to know this information later in the USA and that she rarely discussed it explains nothing. If the claimant had such specific information about her parents' attackers identities, and that information would put her at increased risk, I would have expected her to include it in her PIF. I find the fact that the information was omitted to further undermine her credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and, as such, the claim fails. While I appreciate that there is a report dealing with the psychological health of the claimant, I simply do not believe that any of the psychological problems that she has experienced were due to the causes that the claimant alleged. Also, no evidence was presented that the claimant would not be able to obtain treatment for these problems should she return to Guyana.

State Protection

Even if my analysis with respect to credibility were found to be incorrect, I find in the alternative, the claim also fails with respect to the issue of state protection. States are presumed capable of protecting their citizens.⁸ That presumption can be rebutted by providing clear convincing evidence that on a balance of probabilities state protection would be inadequate. Claimants are expected to approach the state for protection if such protection could be reasonably seen as forthcoming.⁹ While the claimant stated that she would be perceived as a “normal person” and not receive any special assistance from the authorities if she were to approach them, I disagree. It is the claimant’s own evidence that her parents were targeted as they were prominent in their support of the . They :

and . As noted at the hearing, at the conclusion of the 1992

during which the claimant’s parents were attacked, the were

It makes no sense for the claimant’s family to not have approached the government for assistance using their connections and influence in the early 1990’s when the claimant was a minor. It also makes no sense for her not to approach the same government today when it was her family’s prominent support for the government that caused them to be targeted in the first place. I do not believe that the claimant would have been perceived as a normal person then or now. While counsel made extensive reference in his

submissions to the difficulties of the Guyanese authorities in dealing with general crime, I find that the claimant’s situation is far from “general”. While the claimant stated that no one was brought to account for the attack in 1992, her knowledge of the situation was understandably vague. In a very detailed letter from the claimant’s father¹⁰ no mention is made of any difficulties in dealing with the authorities in the past, only that the police and justices are corrupted. Given the level of detail in the letter, if the claimant’s father had, in fact, experienced any difficulties in dealing with the authorities I would have expected him to specifically mention them. Given the level of the claimant’s family’s historical : and the lack of evidence with respect to any past problems with respect to the authorities, I find that, on a balance of probabilities, the claimant has not presented “clear and convincing” evidence that state protection would not reasonably have been forthcoming whether one views the situation as it was in the early 1990s before she left Guyana or today and, as such, the claim fails.

Compelling Reasons

While counsel submitted that even if the claim fails on one of the other issues, the claimant should still be granted protection pursuant to section 108 of the *IRPA*, in that her experiences come within the exception for “compelling reasons”, I disagree. For the provision dealing with “compelling reasons” to apply I would first need to find that the claimant would have succeeded in her claim at the time that she left Guyana and for some reason, that situation has changed. As per my reasons above, I do not believe the claimant’s story and in the alternative, that state protection was available. In both

alternatives the claim would have failed at the time that the claimant left Guyana and therefore the provision dealing with compelling reasons has no applicability in this claim.

CONCLUSION

Since I do not believe the claimant with respect to the events described in her PIF and, in the alternative, that state protection would have been available, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

April 23, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1, Personal Information Form (PIF).
- 5 Exhibit C-3, item 1, p. 1.
- 6 Exhibit C-3, item 2, p. 3.
- 7 Exhibit C-3, item 3, p. 8.
- 8 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

9 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

10 Exhibit C-3, p. 12.

RPD File No. / N° de dossier de la SPR : TA6-15441



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA6-16535

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s) d'asile

Date(s) of Hearing

February 20, 2009

Date(s) de l'audience

Place of Hearing

Toronto

Lieu de l'audience

Date of Decision

March 4, 2009

Date de la décision

Panel

David McBean

Tribunal

**Counsel for the
Claimant(s)**

John Campion

**Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer

N. Cassano

Agent(e) des tribunaux

**Designated
Representative(s)**

N/A

**Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister

N/A

Conseil du ministre

(a.k.a. _____), a citizen of Germany, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

The claimant, originally from Sri Lanka, has been a citizen of Germany since the year 2000. Throughout his time in Germany, he feels that he has been treated like a second class citizen due to his race. He has been denied educational opportunities, job training and the ability to work in the area of his choice. He came to Canada on _____, 2004 and made a refugee claim on December 13, 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

The claimant's identity as a citizen of Germany was accepted at the beginning of the hearing as a copy of his German passport was on file.²

Discrimination versus Persecution

The determinative issue in this claim is that of "discrimination versus persecution". The claimant has never been physically or psychologically harmed in Germany. The claimant stated that he was denied the opportunity to work in a certain branch of a company where he worked and on another occasion was not given specialized training that he wished to receive. While the claimant stated that on both occasions he thought that racism was at work, this is mere speculation on the part of the claimant as he presented no evidence of any racism was actually involved. It may be that his superiors simply did not feel that his talents were suited to the branch of the company in question. There may have been a host of reasons such as other

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

candidates being more talented in the area, budgetary restrictions, etc. why the claimant did not receive the specialized training which had been promised to him at some point, All of these reasons are potentially legitimate and not related to any racism. The claimant did not allege any racist language either oral or written that would lead anyone to believe that racism was at work in the events cited. The simple fact is that many people of all races do not always get to work in their preferred job and many people of all races are not given particular training courses for any number of reasons. It is unfortunate that the claimant was not able to achieve these two things that he desired but neither is indicative of discrimination, let alone persecution.

As noted by the Refugee Protection Officer, the claimant provided somewhat confusing evidence with respect to an educational opportunity. If I understand correctly, he initially applied to a _____ prior to becoming a German citizen and was told that German citizens were to be given preference. After obtaining German citizenship, he applied again and that time was told to write an entrance test. The claimant stated that he did not feel that his performance on the test warranted a failing grade, but he was denied entry into the course nevertheless. Confusion arose over whether the test administrator said again at this point that “Germans” were to be preferred. However, even if I give the claimant the benefit of the doubt and find that the test administrator was bigoted and the claimant was not able to enter a particular school on account of his race, this was the only specific example of actual discrimination that the claimant alleged. The claimant was otherwise able to be educated and worked in Germany throughout his time there. While the claimant stated that he did not complain to anyone about this incident due to “fear”, he could provide no explanation for this fear either through personal experience or through persons similarly situated to him. In examining the objective documentary evidence,³ while problems with race relations are noted, it is stated *inter alia* that “the law prohibits the denial of access to housing, health care, or education on the basis of race, gender, disability, language, or social status, and the government generally enforced these provisions in practice”; so there does not appear to be any objective basis for the claimant not to complain about being denied an educational opportunity due to his race.

In total, the claimant has, at worst, experienced one specific incident of discrimination from one person at one school. While any incidents of discrimination are of course regrettable, this one incident in no way comes close to “persecution”. I find that that the claimant has not

³ Exhibit R-1, *National Documentation Package*, March 31, 2008, tab 2.1, United States, Department of State, *Country Reports on Human Rights Practices for 2007*, March 6, 2007.

experienced persecution and therefore his claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

Since I have found that the claimant has not experienced persecution, his claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

David McBean

March 4, 2009

Date



RPD File No. / N° de dossier de la SPR: TA6-16901

TA7-01146

TA7-01147

TA7-06791

Private Proceeding / Huis clos
s.19(1)

Reasons and Decision – Motifs et décision

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing July 18, 2008 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision August 26, 2008 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) Peter Wuebbolt
Barrister and Solicitor **Conseil(s) du / de la demandeur(e)(s)**

Tribunal Officer	Nil	Agent(e) des tr
Designated Representative(s)	Nil	Représent dési;
Counsel for the Minister	Nil	Conseil du

s.19(1)

and

, citizens of Mexico, claim refugee protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

was a in . In 2004, he began to work with . The work of this group was opposed by the influential , a group of . After involvement with was discovered in 2006, he began to receive threats. On , 2006, he was threatened at gunpoint. After fled to Canada on 2006, felt as though she was being followed so she fled to Canada as well with their daughter. brother, , was also involved with and after left, the attention of the turned to him. On , 2007, survived an assassination attempt. He attempted to flee to Canada soon after but was not successful in entering at the airport. Returning to Mexico, he lived in fear in Mexico City. He again tried to come to Canada in , 2007, this time entering successfully.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.³

Credibility

It became apparent that there were a large number of problems with respect to the claimants'

testimony and the documents that they introduced to support their claim. There were numerous,

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serious contradictions and omissions when the Personal Information Forms⁴ (PIFs), notes made by Immigration, the claimants' documents and the oral testimony were all compared to each other. For example, in the notes⁵ made by an Immigration Officer at the time that he made his claim, [redacted] said that he did not know who he was afraid of several times. However, in [redacted] PIF,⁶ there is not only a definite name for the group ([redacted]) but [redacted] was able to provide numerous details with respect to the composition and activities of that group. [redacted] attempted to explain this discrepancy by stating that he did not know that he had to state the name of the group to the Immigration Officer. I do not find this explanation satisfactory. At the time that he made his claim, there was an interpreter provided so [redacted] should not have been misunderstood, nor should he have misunderstood the questions. According to the notes, he was specifically asked: "Do you know the name of this group/gang." The answer recorded is "no", even though he would have been well aware of the group's name. I find that this contradiction undermines the claimants' credibility.

In oral testimony, [redacted] repeatedly stated that the organization that he was afraid of was the [redacted] rather than the [redacted] as repeatedly referenced in the PIF. Even after being challenged with what was in the PIF ([redacted]), [redacted] continued to insist that he feared the [redacted]. Both he and [redacted] later said that the organization uses both names, the [redacted] title masking their true intentions of hurting [redacted] people. I do not find this explanation to be satisfactory. While there are references to an organization known as the [redacted] there are no references to this alternate title. Both terms abbreviate in Spanish as [redacted], and throughout the hearing, it appeared that [redacted] had memorized the acronym, but not the words behind the acronym. The alternate name appeared to have been invented by [redacted] and [redacted] to attempt to cover the discrepancy. I find that this discrepancy in the name of the organization that the claimants' fear, to further undermine the claimants' credibility.

[redacted] stated orally that he was actually a member of [redacted], however, in the PIF, it was only mentioned that he supported the group and this fact was not mentioned anywhere in the Immigration notes. In fact, [redacted] stated in the Immigration notes that he

simply helped [redacted] volunteer on his own, not as part of a formal group. While [redacted] did present a letter purporting to be from [redacted], [redacted] did not have such a document. When [redacted] was asked why he had a membership letter from [redacted] and [redacted] did not, [redacted] stated that [redacted] was a member for a much shorter period. I do not find this explanation to be satisfactory. It makes no sense for [redacted] Immigration notes to read: "Which organization did your brother volunteer for?" [Answer] "Just on his own, he would help people", if indeed either [redacted] or [redacted] had actually been members of a group. I find that this contradiction casts doubt on the

claimants' documents and further undermines their credibility.

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At the hearing, [redacted] was asked who the "[redacted]" was. He said that they were a group of [redacted] that persecuted poor people. When it was pointed out that the claimants had submitted a letter of support from the [redacted] praising [redacted] and stating, in fact, that he was their [redacted] in [redacted], [redacted] stated that he had helped [redacted] said that [redacted] must have been confused and really, the [redacted] was actually [redacted] peoples. I do not find this explanation satisfactory. It makes no sense at all for [redacted] to be so totally confused with respect to the purpose of a group for which he was not only a member but also a [redacted] and that he could state that the goals of the group were the opposite of what they are supposed to be. Counsel even asked if [redacted] suffered from any difficulties with respect to concentration or attention span and [redacted] said "no". I find that this utter lack of knowledge with respect to a group for which [redacted] was allegedly a [redacted], casts further doubt on all of the documents presented and further undermines the claimants' credibility.

In the Immigration notes, [redacted] stated that he had made a complaint to the police and that he had a copy of this police report. However, the PIF makes no mention of [redacted] going to the police. In oral testimony, the claimant stated that he had mistakenly omitted the police from his narrative and that the visit was informal and no formal report was given to him. The claimant was unable to explain three entirely different accounts as to whether or not he went to the police. I find that these contradictions further undermine the claimants' credibility.

In oral testimony, [redacted] said that while he had received several anonymous death threats over the telephone, nothing else had happened to him. This contrasts sharply in the PIF where there are multiple references to a [redacted], 2007 attempt on his life. [redacted] stated that what he meant in his PIF by "...I was almost killed. The attack was carry out by..."[sic] and "...the incident of the attempted murder", was that he received an anonymous death threat by telephone. I do not find this explanation satisfactory. There is no way that I can find that meaning within the words used and I find this major discrepancy in testimony to further undermine the claimants' credibility.

It should be noted that this is not [redacted] first trip to Canada. He originally attempted to enter in [redacted] 2007. At the time, he was asked twice if he feared returning to Mexico, or if his life was in danger. On both occasions he said "no", even though he had allegedly received several death threats and survived an assassination attempt by this time. [redacted] stated that he was unfamiliar with the refugee process and feared being detained by Canadian Immigration authorities, even though he had spoken by telephone to [redacted] who had already made a refugee claim. One would logically assume that [redacted] would have advised [redacted] about the refugee process at this time and that [redacted] would have been able to enter Canada successfully. However, [redacted] testified that even though [redacted] told him of the

problems shifting to him after [redacted] left, [redacted] did not tell [redacted] about the refugee process as he was worried that doing so would somehow affect his own claim. I do not find this explanation satisfactory. It makes no sense at all for [redacted] to have withheld this information in the face of [redacted] alleged troubles, as he stated that he did. I find this discrepancy further undermines the claimants' credibility.

CONCLUSION

In general, the claimants simply could not tell a consistent story from one version of their story to the next. I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants allege happened to them, actually happened. As such, their claims under section 96 of the *IRPA* fail.

Since I do not believe the claimants with respect to the events described in their PIFs and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects their claims.

(signed)

“David McBean”

David McBean

August 26, 2008

Date

1 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

2 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

4 Exhibits C-1, C-2, C-4 and C-4, Personal Information Forms (PIFs).

5 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, Record of Examination.

6 Exhibit C-4.

7 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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TA7-01146

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TA7-06791

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RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-00260

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing January 28, 2009 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision April 23, 2009 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) Roy C. Amadi **Conseil(s) du / de la demandeur(e)(s)**
Barrister and Solicitor

Tribunal Officer Nil **Agent(e) des tribunaux**

Designated Nil **Représentant désigné**

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

a citizen of Germany, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant's problems with her husband started shortly after she moved from Nigeria to Germany in the early 1990's. Initially, her husband mistreated her and withheld access to funds. He began to abuse her physically. Even though they divorced in _____, he still threatened her. When her former husband stalked and attacked her a couple of times, she called the police. Fearing for that her ex-husband would kill her in Germany and fearing that his family would do the same in Nigeria, the claimant fled to Canada on _____, 2005, and made a refugee claim on _____, 2006.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this decision, I have taken into account the Chairperson's *Gender Guidelines*.² My reasons are as follows.

ANALYSIS

Identity

The claimant's identity as a citizen of Germany was accepted at the beginning of the hearing as a copy of her German passport was on file.³

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form⁴ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that the son (by another woman) of her ex-spouse participated in her physical abuse in Germany. However, as noted at the hearing, there is no mention of her ex-spouse's son

abusing her in Germany in the PIF. The claimant stated that she was very emotional and wanted

to forget everything. I do not find the claimant's explanation satisfactory. The only person mentioned in the PIF as having physically abused the claimant is her ex-spouse. Her ex-spouse's family are mentioned but only to the extent that she fears going to Nigeria as the family members there now hate her too. If more than one person had physically abused the claimant, I would have expected her to mention that fact and not simply make a passing reference to a general fear. I find that this omission undermines the claimant's credibility.

As noted at the hearing, this is not the claimant's first trip to Canada since her divorce and she delayed one year after her last arrival before she made a claim. While the claimant was given the default permission to remain in Canada for six months upon her last arrival (as indicated by the lack of a second date on her entry stamp in her passport), she overstayed this permission by six months. The claimant stated that she had been ill-advised by someone with respect to the Immigration process and was generally upset. I do not find this explanation satisfactory. The claimant allegedly has a [redacted] and an [redacted] both obtained in English in the USA. She has travelled internationally on many occasions, spending significant periods of time in at least four countries. To delay in claiming for six months past the expiry of her permission to remain because of bad advice from an individual that the claimant could not name and make no further enquiries as to how to obtain protection despite having the wherewithal to attempt to stay on other means, makes no sense at all. I find that the significant delay in claiming not only demonstrates a lack of subjective fear, but also further undermines the claimant's credibility.

As noted at the hearing, virtually every element of the claimant's background was in doubt, from her educational background to which of three continents that the claimant may or may not have been living in at various times. Much of the confusion arose from her application for permanent resident status in Canada that had previously been refused. Counsel for the claimant repeatedly objected to reference being made to the Immigration record⁵ for a variety of reasons, ranging from the fact that since the application had been finalized and rejected, the information could no longer be used to it not being relevant as it focused on other issues. As stated at the hearing, I totally disagree with counsel's reasoning. The information from Immigration was disclosed in the normal course of business. As in all claims, the claimant's credibility was at

issue. While I am in no way bound by the credibility findings of another decision-maker, the

claimant's history in dealing with Canadian Immigration authorities is quite telling with respect

to what has previously transpired, particularly since the claimant adopted some of the problematic areas in her current claim. For example, in her application for permanent residency the claimant stated that she was a [redacted] for most of the 1990's. However, as noted at the hearing, the employment history in her PIF states that she was a [redacted] from 1997 to 1999. The claimant stated that she was merely confused when she filled out her application for permanent residency and had meant that she was a [redacted] by trade even though she had not been working as one. This explanation makes no sense. The claimant allegedly obtained a [redacted] and [redacted] in the USA while studying in English. For someone with the claimant's educational background to be so confused in giving an employment history in an application for permanent residency based on her profession of being a [redacted], makes no sense. It was also noted that [redacted] included in her application for permanent residency was a letter from "[redacted]" stating that the claimant worked for that company in Nigeria for several years starting in 1999. Yet upon examination by the Immigration officer at the time, absolutely no details about the company or the claimant's employment at that company could be confirmed; and the officer noted that the claimant's alleged travels did not match her passport stamps. At the current hearing, when discrepancies in countries of residence were noted, the claimant could only state that the information in her PIF should be relied upon although she could not remember the dates of her international travels, including two previous trips to Canada. When asked at the hearing if the letter from [redacted] was actually genuine, given that in her PIF and oral testimony she was only in Nigeria for a brief period in 2001, and her PIF indicated that during those few months she worked as a [redacted] the claimant became quite evasive. Eventually the claimant said that some inaccurate information had been used in her application for permanent residency and that she had filled it out in concert with someone she had paid. However, when asked to identify this person who had advised her to make false statements in her application, she somewhat tellingly could not. Had the claimant just admitted that she made up the vast majority of the information in her application for permanent residency would be one thing, however the claimant did not do this and was evasive throughout the current hearing and as stated previously, adopted some of the problematic areas. For example, when the claimant spoke to the Immigration Officer she was unable to use [redacted] or [redacted]. In the current hearing, I asked what she did in the [redacted] field. The claimant stated that she [redacted]. As noted at the hearing, it seemed rather exceptional that the claimant would be able to [redacted] that she had told the Immigration officer that she was familiar with, to [redacted] who were just beginning to learn how to read and write. The claimant then said that she meant that she [redacted]. This explanation makes no sense at all. The claimant allegedly has a degree in [redacted] obtained in English in the USA and to confuse the term [redacted] a name for a [redacted] with "[redacted]" is bizarre. The claimant has a history of supplying false information including a forged document to Canadian Immigration officials, allegedly at the hands of an unknown individual. However, with many of the same problems in the current hearing, it was simply unclear in which country the claimant had been living, what she had been

doing and what her educational background was. While many of these areas are not normally thought to be central to refugee claims, when dealing with situations of alleged domestic violence, one must examine the background of the victim to determine how she would be able to deal with the situation. I find that these numerous, repeated and pervasive discrepancies related to education, work experience and residency coupled with the claimant's past history of being untruthful destroy what is left of her credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and, as such, the claim fails. I am mindful of the reports dealing with the claimant's psychological state, however I simply do not believe that her problems arose in the manner that the claimant described. Furthermore, no evidence has been presented that she could not obtain appropriate treatment for her problems should she return to Germany.

Internal Flight Alternative

Even if my analysis with respect to credibility were found to be incorrect, the claim still fails as the claimant has a viable IFA in Berlin. In *Rasaratnam*,⁶ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for her to seek refuge there.

With respect to the first prong of the test, the claimant fears her ex-husband, a [redacted] in the city of [redacted]. The claimant stated orally that her husband was able to abuse her after the divorce as she maintained the same apartment that for which he had a key and she could not change the lock as she was only renting. When asked why she did not move to a different apartment building, the claimant stated that she would be unable to find another apartment in Germany due to racism against her as she is [redacted]. I do not find the claimant's explanation satisfactory. There is nothing in the documentary evidence that would indicate that black people are unable to find apartments in Germany. In fact, it was the claimant's own evidence that the reason that she stayed in the apartment was that it was her name on the lease. While the claimant speculated that he had extensive contacts that would be able to locate her wherever she went, no evidence was presented to establish this. Even if her ex-spouse

did find her, the objective documentary evidence states that the German Penal Code provides for high penalties for crimes of violence including domestic violence and that police and prosecution are obligated to institute criminal proceedings when they are informed that violence has taken place.⁷ In 2002 a new law was enacted, specifically designed for women being subordinated to domestic violence and/or stalking.⁸ The government enforced these laws.⁹ In Berlin, there is a Domestic Violence Intervention Centre that deals with clients in person and over a telephone hotline when they require assistance.¹⁰ While counsel did cite examples of racism occurring in Germany, none of these documents cited with respect to domestic violence make note of any exceptions for women. Also no evidence has been presented that the claimant would face more than a mere possibility of being targeted for violence as a woman. Counsel also made reference to an American Immigration decision from a few years ago mentioned in a newspaper article¹¹ as support for the claim in that violence against foreigners in Germany is grounds for a claim. However, the actual decision referred to is an appellate court sending a case back for reconsideration as the decision-maker applied the wrong test in law in dealing with

the case. I prefer the objective recent reports that I have cited to the often out-of-date reports cited by counsel as it is the situation today in Germany about which I am concerned. Counsel also submitted that due to the claimant's personal and cultural circumstances, she could not be expected to make further efforts to obtain protection from the authorities should she return. I disagree. If claimant is to be believed, she has a passport and an I-94, both obtained in the USA. She has travelled internationally on numerous occasions and has lived for lengthy periods of time in the USA, Germany and Canada and applied to stay in Canada on other grounds. Unlike many battered women, the claimant actually did take steps to end her marriage and deal with her situation. While the claimant stated that she was unsuccessful in obtaining assistance in the city of Berlin, she never attempted to escalate her complaints. Should she experience problems in Berlin, I find that it would be reasonable for her to approach the authorities in Berlin and that help would be reasonably seen as forthcoming.

I find that, on a balance of probabilities, Berlin does provide a safe IFA for the claimant. The claimant has provided insufficient evidence to rebut the presumption of state protection in Berlin. There is no serious possibility that she would face persecution there.

With respect to the reasonableness of the claimant moving to Berlin, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹² If the claimant were to return to Germany, she would be using an international airport in one of the larger cities so she would not have to return to Berlin. The claimant has two degrees and has lived and travelled internationally so she should not have difficulty in finding employment. As stated previously, while I am aware of the documents dealing with the claimant's psychological problems, no evidence has been adduced that she could not obtain treatment in Germany. I find that it would not be unduly harsh

for the claimant to relocate to Berlin and as such the claim fails.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

Since I do not believe the claimant with respect to the events described in her PIF and, in the alternative, that a viable IFA is available, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claim under that section fails as well. There was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

April 23, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1, PIF.
- 5 Exhibit R/A-2.
- 6 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 7 Exhibit R/A-1, *National Documentation Package*, March 31, 2008, item 5.2, *Violence Against Women*, N.d. Dominika Skubida, OSCE Office for Democratic Institutions and Human Rights.
- 8 Exhibit R/A-1, item 5.1, *Domestic Violence Intervention Center Berlin*.

9 Exhibit R/A-1, item 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2007*, March 11, 2008.

10 Exhibit R/A-1, item 5.1, *Domestic Violence Intervention Center Berlin*.

11 Exhibit C-3, item (a), p. 10, Kenneth Ofgang, "Ninth Circuit Overrules INS, says violence Against Foreigners in Germany Is Ground for U.S. Asylum", Metropolitan News-Enterprise, September 23, 2004.

12 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

RPD File No. / N° de dossier de la SPR : TA7-00260



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-00431

TA7-07909

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing May 6, 2008 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision July 18, 2008 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) No Counsel **Conseil(s) du / de la / de la demandeur(e)(s)**

Tribunal Officer J. Baptiste **Agent(e) des tribunaux**

**Designated
Representative(s)**

Nil

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

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(“ ”)and his daughter, (“ ”), citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

ran a in the . He helped in so they could support themselves. In 2005, a man demanded that the claimant and that he pay him 20,000 pesos every month. The claimant did not comply despite subsequently receiving threatening telephone calls. On , 2005, a group of men came to the to demand money and while there, they broke a number of windows. Even after shut down the , the threatening calls continued. On , 2006, traveled to Canada. While worked illegally in Canada for six months, was approached by a man making rude inquiries about whereabouts. returned to Mexico on 2006. On , 2006, he was attacked by a group of men and suffered a number of injuries. returned to Canada on , 2006, making a refugee claim on December 28, 2006. came to Canada on , 2007, and made a refugee claim upon arrival.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Credibility

There were a number of major inconsistencies and omissions when the various times that the claimants told their story were compared. For example, in the Personal Information Form³

(PIF) and oral testimony stated that the

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and happened to be single mothers. He suspected that the men who attacked him were motivated to do so to prevent such support being given to . However, when made his refugee claim he participated in an interview with an Immigration Officer who asked him to provide details with respect to the grounds of his claim. An interpreter was present in person. In the notes of the interview, the people he helped are described as being single mothers.⁴ When this apparent discrepancy was put to him, agreed that this was a big difference, however he could not explain why the difference occurred. I find this unexplained difference in the motivation of the agents of persecution undermines the claimants' credibility.

In the PIF and oral testimony, there were two main incidents of violence directed at the claimants: The first came when a group of men came to the and broke its windows; the second came when a group of men attacked causing him to sustain serious injuries up to and including fractured ribs. A medical note was produced with respect to the injuries sustained during the second incident. However, in the notes from the interview when made his claim, neither of these two incidents is mentioned - only that had received threatening telephone calls.⁵ When asked why he had not mentioned the two major incidents, said that the interview was short and he mentioned only the most relevant information. I do not find this explanation satisfactory. It makes little sense to mention threatening telephone calls while omitting incidents in which actual violence took place, particularly one incident in which the claimant was seriously injured. Even if the medical note is genuine, it does not speak to the identities of the aggressors or their motivation for aggression, which could be anything. I find these omissions of the only two major incidents of alleged persecution to further undermine the claimants' credibility.

At the hearing, stated that the name of the organization that was persecuting him was " ", an organization from the . When came to Canada to make her claim in Canada in 2007, she stated in her Immigration interview that the name of the organization was " ".⁶ At the hearing, it was established that the alleged agents of persecution had identified themselves as members of when they approached in

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2006. [redacted] was given this information within days. However, [redacted] did not give the name [redacted] at either his interview with Immigration (December 2006) or in his PIF (February 2007). When asked why he had not mentioned who his alleged agents of Persecution were either at the time that he made his claim or anywhere in his PIF even though he was aware of their identity, he said that he had, in fact, told at least one of his three former counsels this information and that he had mistakenly thought that they had included it in his PIF. I do not find this explanation satisfactory. If this were a simple one-time omission, that explanation may have been satisfactory. However, this is more than just a simple one-time omission of a name. As mentioned previously, there was a Spanish interpreter present at the Immigration interview. The name “[redacted]” is not simply omitted, the recorded answer is actually “I received death threats from a group. I do not know who they are”.[emphasis mine] [redacted] PIF narrative is almost four pages long and both an interpreter’s declaration and a written declaration of truthfulness were both signed on February 1, 2007. [redacted] orally affirmed that his PIF was complete true and correct at the time of the hearing. Once again, the name “[redacted]” is simply not omitted. At page 12 of the PIF, [redacted] states: “I don’t know the identity of the people that are threatening me. They could be...” In both cases, this is not a simple omission of the name of the organization but a direct contradiction of the claimants’ testimony. I find that this further undermines the claimants’ credibility.

There were major credibility concerns with respect to the motivation of the agents of persecution, the only two major incidents that happened to the principal claimant and with respect to who the agents of persecution actually were. I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events the claimants allege happened to them, actually did.

CONCLUSION

Since I do not believe the claimants with respect to any of the events described in their PIFs, their claims under section 96 of the *IRPA*⁷ fail. Since there is no other evidence that would indicate that the claimants are, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

July 18, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit R-2, Citizenship and Immigration Canada (CIC), Etobicoke In-person Refugee Intake, Record of Examination, p. 9.
- 5 Exhibit R-2, Etobicoke In-person Refugee Intake, Record of Examination.
- 6 Exhibit C-2, Personal Information Form, PIF.
- 7 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

RPD File No. / N° de dossier de la SPR : TA7-00431

TA7-07909



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-00757

TA7-00758

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 14, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	May 20, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Carl Mahmood Hosein	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) du / de la demandeur(e)(s)

Counsel for the Minister

N/A

Conseil du

REASONS AND DECISION

s.19(1)

[1] ((the claimant) and his spouse,] (the female claimant), citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

[2] The claimants lived in . On , 2006, they were shopping when three men ran out of a jewellery store. The men were in the process of taking off masks and as they ran towards the claimants, money and jewellery started to fall from their pockets. The men punched the male claimant in the stomach and then threw both claimants to the ground at gunpoint. They demanded that the male claimant give them his wallet which he did expecting them to steal his cash. Instead, the men stole his National Identity Card. After warning the claimants not to go to the authorities, the men ran off. After returning home the claimants called the police and were told that someone would come to their house to take a report. Soon after, two men in suits arrived in an unmarked car. When they came in they began to beat the male claimant. The men searched the house and took some bank statements and other documents. They threatened the claimants and left. Over the next several days the claimants received numerous threatening calls and saw men watching the house from cars. On , the claimant's house had its windows shattered. Finding all flights to Canada fully booked until .

the claimants went to the female claimant's parents' house and spent Christmas there. The claimants came to Canada on] , 2006, and made refugee claims on , 2006.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Mexico were accepted at the hearing given that certified copies of their Mexican passports were on file.²

Nexus

[5] The claimants allege that they are the victims of a criminal vendetta and as such I find that there is no nexus to the Convention refugee definition. Therefore, the claims pursuant to section 96 of the *IRPA* fail.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, in oral testimony, the claimant stated that when the robbers left the jewellery store they observed one of them take off his mask and it was this single robber who came over to harm the claimants while the other two robbers simply ran away. However, as noted at the hearing, the PIF states that multiple robbers came and harmed the claimants. The claimant stated that he did not know why the PIF said that. I do not find this unexplained contradiction satisfactory. Either one robber came and harmed the claimants or more than one robber came and harmed the claimants. If it was only one as the male claimant insisted, it made no sense for the PIF to be written the way that it was with the word "they" used repeatedly with respect to who was harming the claimants. I find that this discrepancy undermines the claimant's credibility.

[7] In oral testimony, the claimant stated that the while the robber came over, punched him and threw him to the ground, the female claimant essentially had nothing happen to her. However, as noted at the hearing, the PIF states that when the robber(s) came to harm the claimants, both claimants were thrown to the ground. The claimant stated that it was his oral testimony that was correct and he did not know why the PIF said what it did. I do not find this further unexplained contradiction satisfactory. Either the female claimant was thrown to the ground in the incident or she just stood by and watched. If she was essentially not involved in the altercation it makes no sense for the PIF to be written the way that it was. I find that this discrepancy further undermines the claimant's credibility.

[8] In oral testimony, the claimant stated that the robber took his wallet and left the scene leaving the claimants with a long journey home given that they now had no money. However, as noted at the hearing, in the PIF the robber(s) asked for the wallet but instead of taking the money they instead took the claimant's National Identity Card. The claimant insisted that the robber took the wallet and everything in it and that the PIF was incorrect. I do not find this further unexplained contradiction satisfactory. If the robber took the wallet and everything in it, specifically leaving the claimants with no money for the trip home, it makes absolutely no sense at all that the PIF would specifically state that instead of taking the money the robber took an identity card which would indicate he was interested in knowing the identity of the claimant rather than an interest in simple robbery. I find that this discrepancy further undermines the claimant's credibility.

[9] In oral testimony, the claimant stated that after they called the police, a marked municipal police

vehicle came to their house and two uniformed officers came to the door. However, as noted at the hearing, the PIF states that two men in suits came to the house in an unmarked car. The claimant stated that perhaps there had been an error in translation. I do not find the claimant's explanation satisfactory. The claimants both affirmed orally that the PIFs had been translated to them, the female claimant signed a written declaration that the PIF had been translated to her and the male claimant signed a written declaration stating that he understood the PIF in English. Both claimants affirmed orally and in writing that the PIF was accurate. Given the declarations made and the claimant's demonstrated proficiency in English it makes no sense for there to be such serious errors in translation that had not been noticed before. If the men who came to the house were really in police uniform driving a marked police car, it makes no sense that the PIF would describe the men as being in plainclothes driving an unmarked car. It makes even less sense that the PIF would go on to state that these men had arrived instead of the hoped for "actual police" and it was for this reason the claimants believed that the robbers may be connected to the police. I find these discrepancies to further undermine the claimant's credibility.

[10] In oral testimony, the claimant stated that after the men left their house, their windows were broken a few days later. When asked if anything else was happening during this time period the claimant said "no". However, as noted at the hearing, the PIF states that during this time period the claimants were receiving nothing but threatening phone calls and observed suspicious cars parked near the house giving the appearance that people were watching them. The claimant stated that he had forgotten this since the events occurred long ago. I do not find the claimant's explanation satisfactory. While I am mindful that memories can fade over time and these events allegedly occurred back in 2006, in these circumstances I would have thought that the claimant would have remembered that there were numerous threatening calls and people were watching the house. These incidents are important given that they show a constant, serious interest in the claimants by the agents of persecution, rather than someone randomly breaking the claimants' windows a few days later, which without the threats and surveillance could have simply been random crime. I find that this omission further undermines the claimant's credibility.

[11] In oral testimony, the claimant stated that after the incident wherein the windows were broken, their house was broken into and ransacked while they were out grocery shopping. However, as noted at the hearing, this incident is not mentioned in the PIF. The claimant stated that he did not know why it was not mentioned in the PIF. I do not find this unexplained omission from the PIF satisfactory. If the agents of persecution really did break into and ransack the claimants' house, this would definitely indicate a serious continuing interest in the claimants and would obviously be significant. The directions for filling out the PIF narrative are quite clear in that all significant incidents are to be included. I find that this omission further undermines the claimant's credibility.

[12] Given the serious discrepancies, omissions and other problems with respect to major issues, I

find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 97 of the *IRPA* fails.

[13] As the claim of the claimant's wife relies entirely on his, and no persuasive evidence was adduced to differentiate her claim from his, her claim must also fail.

Crime/Generalized Risk

[14] While counsel noted in his submissions that crime can be a problem in Mexico, this is a risk faced generally by others and as such is precluded from my consideration by section 97(1)(b)(ii) of the *IRPA*.

NO CREDIBLE BASIS

[15] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

CONCLUSION:

[16] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims.

(signed)

“David McBean”

David McBean

May 20, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.



RPD File No. : TA7-00757

TA7-00758



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-01919

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 14, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	June 20, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Linda Heathfield	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000220

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant worked at a _____ in _____. On _____, 2006, the police came to the _____ as part of an investigation. The police said that someone had been arrested for selling drugs in the _____. On _____, 2006, the claimant was confronted by the _____ (“_____”), a known _____. _____ pointed a gun at the claimant and accused him of informing the police about his activities. When the claimant went to the police to file a complaint, he saw _____ happily talking with the local police commander. Realizing that _____ was connected to a senior law enforcement official, the claimant did not file a complaint. Over the next few months, the claimant was harassed by state police officers and was repeatedly threatened at the _____ by _____. In _____, 2006, Oscar confronted the claimant and his family and threatened to kill all of them. The claimant and his family fled to _____ to live with relatives. On _____, 2007, a police car pulled up beside the claimant while he was walking down the street. The officer warned the claimant that wherever he fled, he could be found and killed. Soon after, the claimant fled Mexico and made a refugee claim in Canada on _____, 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility

It quickly became apparent that there were a number of problems with respect to the claimant’s testimony. There were numerous serious contradictions and omissions when the claimant’s oral evidence was compared to the Personal Information Form³ (PIF) and the Immigration notes⁴ made

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when he completed his refugee claim. Seemingly straightforward questions had to be put to the claimant repeatedly before a “responsive answer” was given. At times, the claimant’s evidence was contradictory from one answer to the next. For instance, the claimant initially testified that the person who was arrested was in the back of a police car parked at the . When the Refugee Protection Officer (RPO) attempted to confirm that this was indeed the case, the claimant gave numerous non-responsive answers. Then when it was pointed out that the fact there was no mention of someone being in the back of the police car in the PIF, the claimant said the information was actually irrelevant, as he did not know who the person was. Later, the claimant was asked five times in succession as to when he first realized that drugs were being sold in the . Only after four non-responsive answers did he say that he first realized that drugs were being sold in approximately the year 2000. At another point in the hearing, the claimant was asked six times as to how long was it after being threatened by before he went to the police. He gave various answers, but only on the sixth time did he finally say “the next day”, which is in contrast to the PIF, where, as pointed out at the hearing, the claimant stated that he “hurriedly approached law enforcement”. The claimant has 16 years of education, including at least some time spent at university. The claimant could not provide any explanation as to why his answers to repeated straightforward questions were either non-responsive or conflicting from one moment to the next. I find that the claimant was intentionally being evasive for much of the questioning, and this evasiveness undermined his credibility.

In one rather remarkable series of questions and answers, the claimant was asked how he knew that were being conducted in the . Initially, he said that he would arrive for work “the next day” and find receipts on the ground for . When asked if these receipts actually used the term “”, he said the receipts were actually for transporting people who had with them. When asked how these receipts gave him knowledge that there were in his , the claimant responded that there were actually receipts for money deposits, far more than what one would pay for . When asked how he knew these amounts were actually for , the claimant said that he would hear

conversations about costs of packages, where they came from and where the deposits would be made. When asked how he could hear conversations about this information since these transactions would be taking place after the lot closed and he was not there, he said these conversations were directly after banks were open. Each answer led to another problem and throughout the hearing, it appeared the claimant was simply making up answers as he went along rather than responding with an accurate recollection of events. I find that this further undermined the claimant’s credibility.

The claimant was asked how he knew of police connections. He stated that various agents of various police forces and other important groups would arrive in uniform on a regular basis at the looking for . When asked why this was not mentioned in the PIF, he responded

that he was told he could only mention things that he could establish with physical evidence, documents or photographs. I do not find this explanation satisfactory because, as was pointed out at the hearing, the claimant made numerous undocumented allegations in the PIF including conversations, dealings with officials, etc. I find that this omission of such an important element of the claim to further undermine the credibility of the claimant.

When the claimant made a refugee claim, the Immigration Officer made notes⁵ with respect to the claimant's story. The only mention of police involvement in the claimant's story was that "... is protected by the authorities". An interpreter had been provided and the claimant was asked if he wanted to add anything to the statement and the recorded response is "no". When asked at the hearing why these notes do not mention that the police were actually heavily involved in claimant's problems, from visiting the lot on numerous occasions in full uniform to meet with to harassing the claimant in and then harassing and threatening to kill the claimant after he relocated to , the claimant stated that he was told to be brief. I find that this explanation is not satisfactory. It is one thing to be afraid of a who may act with impunity, however it is another to fear a who has mobilized the police forces in at least two states to take an active role in harassing, threatening and potentially killing the claimant. I find that this omission to be of such a central element of the claim that it further undermines the claimant's credibility.

In general, the claimant simply could not tell a consistent story from one moment to the next. I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged had happened to him, actually did.

CONCLUSION

The claimant has alleged that he is a victim of crime based on a criminal vendetta by who suspect him of being an informant. As such, his claim under section 96 of the *IRPA*⁶ fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in the PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

"David McBean"

(signed)

David McBean

June 20, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 5 Exhibit R-2, CIC Etobicoke In-person Refugee Intake – Record of Examination, “Reasons for Making Refugee Claim”, p. 1 of 1.
- 6 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

RPD File No. / N° de dossier de la SPR: TA7-01919



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-03034

TA7-03035

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing January 21, 2009 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision January 26, 2009 **Date de la décision**

Panel David McBean 1

Counsel for the Claimant(s) John Campion **Conseil(s) du / de la partie demandeur(e)(s)**

Tribunal Officer Nil **Agent(e) des travaux**

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**Designated
Representative(s)**

**Représent
désigné**

Counsel for the Minister

Nil

Conseil du

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and her son,
citizens of Portugal, claim refugee protection pursuant to sections 96 and 97(1) of the
*Immigration and Refugee Protection Act*¹ (*IRPA*).

ALLEGATIONS

The claimants fear poverty and a general lack of employment opportunities in Portugal. No other evidence was presented that would indicate the claimants would face any form of harm or risk.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would, on a balance of probabilities, personally be subjected to a danger of torture, or a risk to their life, or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants' identities as citizens of Portugal were accepted at the beginning of the hearing as copies of their Portuguese passports were on file.²

Objective Basis of Claims

Counsel for the claimants submitted and I find that there is neither a nexus to the Convention refugee definition established nor is there any evidence which would indicate that the claimants are at any risk of any of the risks delineated in section 97 of the *IRPA*. I find that pursuant to subsection 107 (2) of the *IRPA*, that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims. As such, the claims are rejected.

(signed)

“David McBean”

David McBean

January 26, 2009

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

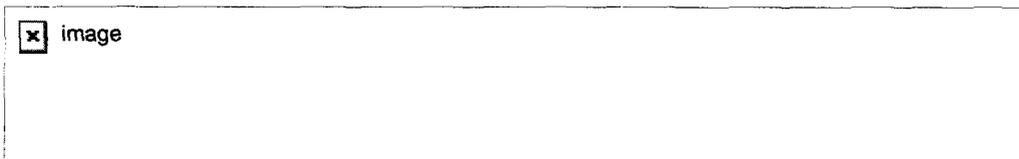
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RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-03282

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s) (a.k.a.) **Demandeur(e)(s)**

Date(s) of Hearing March 12, 2008 **Date(s) de l'a**

Place of Hearing TORONTO **Lieu de l'a**

Date of Decision July 15, 2008 **Date de la**

Panel David McBean]

Counsel for the Claimant(s) Dariusz Wroblewski **Conseil(s) du / de demandeur(e)(s)**
Barrister and Solicitor

Tribunal Officer J. Ross **Agent(e) des tr**

Designated Nil **Représent**

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant is bisexual and lived in the . In 2005, the claimant dated a woman named (“ ”) for four months. The claimant met her brother, (“ ”) who proved to be violent and unstable. After breaking up with , the claimant began dating a man named (“ ”), a transvestite, in 2005. discovered the claimant with and began to harass him on an ongoing basis. The claimant escaped a drive-by shooting and a kidnapping. The claimant attempted to come to Canada in 2005 but was detained upon arrival at Pearson Airport in Toronto and returned home to Mexico without having been allowed to enter. The claimant came to Canada again on , 2006, this time entering successfully at Montreal’s Trudeau Airport. He made a refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country.

ANALYSIS**Identity**

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.² I also accept that the claimant has established that his sexual orientation is bisexual.

Issues

The determinative issues are credibility and state protection.

Credibility

There were a number of problems with respect to the claimant’s testimony at the hearing and with statements that he made to various Immigration Officers. For example, the claimant

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stated three times that the only occasion he went to the police was in 2005. When asked if he was sure of the month he said “yes”; he was just not sure of the exact day. It was only after he was confronted with the fact that his Personal Information Form3 (PIF) gives the date as 2005 did he say that he was unsure of when he went to the police. Given the claimant’s previously stated certainty with respect to the timing of the only occasion he ever went to the police, I find that this discrepancy in dates undermines the claimant’s credibility.

In describing the first major incident that happened to him, a drive-by shooting at a bus stop, the claimant gave a detailed oral description of the event. The claimant stated more than once that there were two people in the car: one in the front and one in the back. However, once it was pointed out that his PIF stated that there were three people in the car, the claimant said that he was actually unsure as to how many people were in the car since it happened so fast. I do not find this explanation satisfactory. The claimant was very detailed in his initial description of the two occupants of the vehicle and confirmed that there were only two occupants when asked. It was only after the discrepancy was pointed out that the claimant suddenly felt unsure of the number of occupants in the car and only then felt that everything happened too fast to provide an accurate number. Had the event happened too fast, it makes no sense that the claimant was so definite about his initial testimony. I find that this discrepancy in the number of perpetrators in the car to further undermine the claimant’s testimony.

In later testimony, the claimant was asked if the reason why he did not recognize anyone in the car was because he hid from their view at the bus stop. The claimant stated that he did not hide but had merely changed positions at the bus stop. However, as pointed out at the hearing, in the PIF the claimant’s description of the same event is “Anticipating trouble I went to hid behind the corner. Five minutes later the same car pass by...” [sic]. After the shooting, one of the bystanders is described as coming around the corner to where the claimant then was. Other than stating that he had simply moved to the side, the claimant could not explain this discrepancy in the description of what happened. Given that whichever version of events is to be believed provides the method by which the claimant avoided a murder attempt, it would be an event that would be extremely important in the claimant’s life. The fact that he could not consistently describe the event and could not provide an explanation for the discrepancy further undermines the claimant’s credibility.

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At the beginning of the hearing, the claimant provided a privately notarized declaration from a friend in Mexico, (“ ”). In the declaration, states that he knows both the claimant and . The claimant stated that this document somehow proves that his friend went to the authorities about the claimant’s problems as they required this document to initiate a major investigation. Rather than bolstering the claimant’s story, I find that this document actually harms it. The claimant stated that was aware of the problems that the claimant had with and yet mentioned none of them; he simply stated that he knew the claimant and . One would expect that the major document created to start a major police investigation would make some mention of what the investigation was supposed to be about. I find that this significant omission from this document to further undermine the claimant’s credibility.

Perhaps most telling with respect to the claimant’s credibility were his experiences in Canada prior to his referral to the IRB. The claimant initially attempted to enter Canada at Pearson Airport in Toronto on , 2005. While his stated intention was a brief visit as a tourist, he presented an international student ID card and was found to be in possession of language books and his transcripts. When asked at the hearing why he was carrying such things, the claimant stated that he wanted to know more English for his visit and the transcript “just happened” to be in his bag. Given that transcripts are only useful for enrolling in educational institutions or obtaining jobs, neither of which the claimant would be legally entitled to do as a visitor, the suspicions of the Immigration Officer were raised. While the claimant stated that he knew no one in Canada and was not meeting anyone at the airport, a page was made to the public area to canvass if anyone was meeting the claimant. In response to the page, the claimant’s cousin reported to the Immigration Office, identified herself, her relationship to the claimant and stated that she was there to meet him. Even when confronted with this information, the claimant continued to deny that he knew her. As it turned out, the cousin was a failed refugee claimant with an outstanding warrant for her arrest for failing to comply with the removal process so she was arrested and taken into custody. After spending a night in detention, the claimant was allowed to withdraw his application to enter Canada and was returned to Mexico. When asked at the hearing why he had lied about knowing his cousin and the fact that someone was meeting him, the claimant stated that his cousin had asked him to lie. On , 2006, the claimant re-appeared at Montreal’s Trudeau Airport. Once again, he stated that he wished to enter Canada for a brief period as a tourist. He also said that his father had paid for the trip. When asked why his PIF stated that helped pay for the trip and not his father who was not talking to him, the claimant said that he lied since he did not want his answer to give rise to further questions. The claimant was granted permission to enter for four days. However, the claimant did not leave after four days, did not make any application for an extension and, in fact, lived illegally in Canada for over a year before he made a refugee claim on , 2007. At the hearing the claimant stated that he was unfamiliar with the refugee process and that he made a claim only after he learned sufficient information about the process. I do not find this explanation for the lengthy delay in making a claim to be satisfactory. The claimant’s cousin was a failed refugee claimant herself who

would have been available as a resource. The claimant was even asked by the Immigration Officer at Trudeau Airport if he wished to make a claim and the claimant said that he did not. I find that the significant delay in making a claim not only indicates a lack of subjective fear on the part of the claimant, but coupled with the numerous admitted lies that the claimant has made to various Immigration Officers along the way, I find that the claimant's credibility is further undermined.

Given the numerous contradictions, omissions and admitted lies all going to central areas of the claim, I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him actually did.

State Protection

s.19(1)

While the claimant only expressed a fear of _____ and his friends at the hearing, counsel in post-hearing submissions did provide some documentary evidence of problems for people of non-heterosexual orientation. However, even based on this residual profile as a bisexual man, the claim still fails as the claimant has failed to rebut the presumption of state protection being available to him, should he experience any difficulties based on his sexual orientation. The claimant lived in the F.D. since birth. The independent documentary evidence⁴ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the federal level and in major cities, such as the F.D. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the F.D. Penal Code. One of

the co-sponsors of the legislation, lesbian Congresswoman Patria Jimenez, stated that “with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework”.⁵ In September 1999, the Legislative Assembly of the FD passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the F.D. has been relatively diligent in enforcing its anti-discrimination statute.⁶ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.⁷

Participation by homosexuals is now widely accepted in at least two of Mexico’s three principal political parties.⁸

A law allowing same-sex unions in the F.D became effective March 16, 2007.⁹ Conjugal prison visits are now allowed for same sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the F.D.¹⁰ The National Council Against Discrimination (CONAPRED) has an office in the F.D. CONAPRED is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination with CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with

forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.¹¹ Victims of discrimination can also contact their state Human Rights Commission.¹² Some concerns have been voiced however, about the effectiveness of the Human Rights Commission.¹³ This is not to say that the situation for gay men in the F.D. is perfect. For example, the Citizens' Commission Against Homophobic Hate Crimes alleged there were 332 murders in Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁴ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

At the hearing, the claimant expressed some reluctance to approach organizations that dealt with sexual minorities since his family was close-minded. However, I do not find this unwillingness to be reasonable. The claimant was willing to introduce his family to his male partner whom he openly dated. Should the claimant encounter difficulties as a bisexual male, I find that it would be reasonable for him to seek assistance. While counsel did provide an excerpt from a Department of State report which says that homophobic beliefs, practices and attacks do occur in Mexico, various methods are being used to change that. Given the FD's serious efforts to deal with homophobic discrimination noted above and the rights that sexual minorities have obtained, I find that the claimant has provided insufficient evidence to rebut the presumption of state protection in the F.D. so the claim pursuant to section 96 of the *IRPA* fails. As I find the claimant has not rebutted the presumption of state protection in the F.D., the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

CONCLUSION

For all these reasons, the Refugee Protection Division, therefore, rejects the claim.

(signed)

“David McBean”

David McBean

July 15, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit R-1, *National Documentation Package*, January 30, 2008, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute, December 2003.
- 5 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 6 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute
- 7 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 8 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 9 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 10 Exhibit R-1, item 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.

11 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute

12 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

Exhibit R-1, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination Based on Sexual Orientation, section 5.1, "Situation and legislative framework," *Immigration and Refugee Board (IRB)*, February 2007.

13 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

14 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.

RPD File No. / N° de dossier de la SPR: TA7-03282



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-03477

TA7-03478

TA7-03479

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 3, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	April 8, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Boniface Ahunwan Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000240

Representative(s)

dési:

Counsel for the Minister

Nil

Conseil du

s.19(1)

, her son and her daughter
 , citizens of St. Vincent, claim refugee protection pursuant to sections 96 and 97
 (1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

ran a and in St. Vincent. The was on the second floor. In 2004, a man known as “ ” came into the sat on an open windowsill. watched him accidentally fall out of the window. Everyone rushed outside to discover that had landed on his head. While asked if needed to go to the hospital, he said that he would be all right and requested that he be allowed to “sleep things off” at the . In the morning, it was discovered that was more seriously injured than originally thought. An ambulance took him to the hospital where he died soon after. Apparently, a previous head injury had left susceptible to injury in this area. The police investigated and questioned the claimants but determined that no charges should be laid. While had visited in the hospital and attended the funeral, brother and sister blamed her for the death. was concerned because of threats made by sister and his brother, who was mentally ill. travelled to Canada in 2004 and stayed until 2005, when she returned to St. Vincent. siblings made more threats. called the police approximately four times since death and while they would come to investigate, they never laid charges against siblings. returned to Canada in 2005. and joined her in 2006. After coming to the attention of Canadian Immigration authorities, the claimants were placed in detention in 2007. They then filed refugee claims after speaking to a lawyer.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants’ identities as citizens of St. Vincent were accepted at the beginning of the hearing as a copy of their St. Vincent passports were on file.²

Nexus

The claimants fear a personal criminal vendetta. As such, their claims under section 96 of the

IRPA fail for lack of nexus to any of the Convention grounds.

Objective Basis

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Even if I were to accept all of the claimants' evidence as true, which I do not necessarily do, the claims pursuant to section 97 of the *IRPA* fail as the claimants have not established, on a balance of probabilities, that they have anything to fear on an objective level. The death of [redacted] was almost five years ago. Had his siblings truly intended to harm the claimants, it would have made sense for them to do so at the time when the events were fresh in their minds. [redacted] was in St. Vincent for approximately six months after [redacted] death, was in Canada for six months then returned to [redacted] for a further six months. During those periods, the claimant did not experience any physical problems, just threats and harsh words. If violence was going to occur, there was more than ample opportunity for it to take place and it did not. Even the threats of violence appeared to dissipate over time. Even though they stayed over half a year longer than [redacted], the last threats that [redacted] and [redacted] were aware of were in [redacted] or [redacted] 2006, several months before they left St. Vincent. [redacted] and [redacted], like their mother, never experienced any physical problems at any time. No one in [redacted] large family has experienced any problems. While [redacted] stated this was likely due to the fact that they lived in different villages, one would think if [redacted] siblings were truly bent on violence, they would attempt to seek out other family members and residences when it was discovered that [redacted] and later her two youngest children were no longer living at the same address. While it may be understandable for [redacted] family to harbour hard feelings, given the lack of violence over a significant period of time when the events were fresh in everyone's minds and the fact that the threats appeared to become less frequent over time, I find that the risk of any harm posed to the claimants half a decade later to be far below the level of a balance of probabilities and, as such, the claims fail.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claims.

CONCLUSION

The claimants fear a personal criminal vendetta and, as such, their claims pursuant to section 96 of the *IRPA* fail as they lack a nexus to the refugee Convention grounds. Since I have found, on a balance of probabilities, that the claimants have nothing to fear from [redacted] siblings on an objective level and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims pursuant to that section fail as well. There is no credible basis for the claims.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

April 8, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

RPD File No. / N° de dossier de la SPR : TA7-03477

TA7-03478

TA7-03479



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-03594

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	June 24, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	August 26, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Sukhram Ramkissoon	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la cour
Designated Representative(s)	N/A	Représentant(e)(s) de la cour

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] a citizen of Trinidad and Tobago, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in Trinidad. The claimant was born with a that has affected him throughout his life. He attended school for and after 15 years then attended a vocational school to learn Throughout his life the claimant has been taken advantage of, been mocked and verbally abused and even beaten and robbed. The claimant was unable to join the rest of his family when they moved to Canada in the 1990s as he was too old to be sponsored. He did come to Canada as a visitor on , 2000. Almost seven years later, after being detained by Canadian Immigration officials the claimant made a refugee claim on March 13, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. In coming to this decision, I considered whether or not the claimant required a designated representative. However, given that the claimant appeared to appreciate the nature of the proceedings no such representative was appointed. My reasons for the decision are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Trinidad and Tobago was accepted at the beginning of the hearing as a copy of his Trinidadian passport was on file.2

Credibility

s.19(1)

[5] In addition to my opportunity to speak with and observe the claimant, I note that after the hearing a letter from the [REDACTED] was presented that confirmed that the claimant was classified as “ [REDACTED] ”. The letter states that this impairment caused the claimant to learn at a slow rate and he was therefore recommended for [REDACTED]. While no other medical or psychological evidence was presented to confirm this fact, I find, on a balance of probabilities, that the claimant does have some form of, as counsel put it, “learning disability”. I also accept that the claimant was subject to mocking, name calling and people taking advantage of him. However, I find that the evidence as to the degree of harms that he has suffered over the years was embellished.

[6] The claimant’s father mentioned more than once the name calling and people taking advantage of his son, yet failed to mention that his son had been beaten, even though he was specifically asked by counsel more than once if, “anything else” had happened to his son. When I asked in later testimony why he made this repeated omission, the claimant’s father stated that his son had been beaten and that he had never been asked specifically about it. I do not find this explanation satisfactory. The claimant’s father was asked more than once if “anything else” had happened to his son and he said “no”. Had his son really been beaten repeatedly, I would have expected that to be the first thing he testified about and not something omitted on more than one occasion all the while mentioning much more minor things. While the claimant also mentioned that someone had beaten him, he also conceded that the last time he had required medical attention as a result, was when he was very young. Furthermore, when the claimant's father was asked why his son could not go to the authorities if he did face harm, he said that the authorities would laugh at him. When it was noted that this appeared not to be consistent with the objective documentary evidence on file, the claimant’s father immediately conceded that the authorities would indeed try to help his son; however, his son would have difficulty in contacting the authorities. At times it appeared that the claimant’s father was providing whatever answer that seemed to make his son look vulnerable, even if it meant contradicting his immediate past statement. I find that the omissions and embellishments with respect to the degree of harm that the claimant has suffered and the likely response of the authorities to undermine the claimant’s credibility.

[7] It also appears that the claimant’s alleged history of abuse is simply not consistent with the objective evidence with respect to country conditions. Counsel did refer to a media article³ that states that the police allegedly picked up a “slow and slightly retarded” man and beat him up while looking for information. However, upon closer examination this article is actually an e-mail comment sent by an “ [REDACTED] ”. No indication is given as to who “ [REDACTED] ” actually is, whether or not they are a trustworthy source of information and most importantly, no indication is given that the information on the comment had in fact been verified. I find this comment has little probative value. I prefer the objective, verified sources of information on file such as the United States Department of State report.⁴

While the report does mention that people with disabilities can and do face discrimination in many aspects of life, it makes no mention of people with disabilities facing violence. If people with disabilities, either physical or mental, actually faced violence, I would have expected the report to mention it. I find that the fact that it does not to further undermine the claimant's credibility.

[8] The claimant was too old to be sponsored when the rest of his family came to Canada in the mid 1990s. After several attempts to get a visitor's visa the claimant was able to travel to Canada in 2000. However, he did not make a refugee claim until almost seven years later when he came to the attention of the authorities after some confusion over an unpaid item in a store. When asked why no claim was made for such a long period, the claimant's father stated that he and his family feared the claimant would lose his claim and be sent home right away to face harm. I do not find this explanation satisfactory. If the claimant did indeed have some reason to fear returning to Trinidad then making a refugee claim in order to prevent that would have made sense. To automatically assume that the claimant would be unsuccessful and would then be sent back to be harmed makes no sense. I find that this close to seven year delay in claiming to not only demonstrate a lack of subjective fear, but also further undermine the credibility of the claimant.

[9] Given the omissions, embellishments, lack of consistency with the objective evidence and the lengthy delay in claiming, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and therefore, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, at risk of any of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well. I also find that while the claimant did experience much more minor problems than the major ones alleged, these problems even when considered collectively amount only to discrimination and do not rise to the level of persecution.

State Protection

[10] Even if my foregoing analysis were found to be incorrect, the claim still fails as the claimant has failed to rebut the presumption of state protection. While the claimant's father initially stated that the authorities would laugh at the claimant should he seek their help and when it was pointed out that this is not consistent with the documentary evidence on file, the claimant's father conceded that the authorities would in fact help the claimant. However, he then noted that the problem would be that the claimant would have no family members there to assist in taking him to the authorities so that they would know that the claimant required assistance. I simply do not agree with this proposition. As noted previously, the objective documentary evidence makes no mention of the police failing to assist people with s.19(1) physical or mental disabilities should they face serious harm. The letter from the

states the claimant is a slow learner. It does not state that he is unable to speak up on his own behalf. No objective evidence has been presented that the claimant would be unable to approach the authorities on his own. It should be noted that the claimant has been employed in a number of jobs in Trinidad over the years. The claimant and his family also have friends in Trinidad that may assist in contacting the authorities should the claimant face serious harm. I find that the claimant would be able to access the authorities should he be required to do so and that help, as conceded by the claimant's father, would be reasonably forthcoming.

Humanitarian and Compassionate Consideration

[11] While it may make sense for the claimant to be allowed to stay in Canada for Humanitarian and Compassionate reasons, I have no jurisdiction to entertain such a request as that is the responsibility of another Department. I understand that such an application is already in progress.

CONCLUSION

[12] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

August 26, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-2, p. 21.

4 Exhibit R-1, *National Documentation Package*, March 20, 2009, tab 2.1, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.



RPD File No. : TA7-03594



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-03868

TA7-03869

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

March 20, 2009

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

April 3, 2009

Date de la décision

Panel

David McBean

Counsel for the Claimant(s)

John Campion

Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer

Nil

Agent(e) des tribunaux

**Designated
Representative(s)**

Nil

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

s.19(1)

and his sister, _____, citizens of Portugal, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimants, ages 59 and 50 respectively, are severely mentally handicapped. A Designated Representative (DR) was appointed as neither claimant was capable of appreciating the nature of the proceedings. The DR provided evidence through the Personal Information Forms2 (PIFs) and her own oral testimony that the claimants require constant care and they have no close relatives left in Portugal to provide that care. The most recent court-appointed caregiver did not care for the claimants properly, leaving the claimants hungry and unclean at times. When family members sent money to be used for the care of the claimants, the caregiver used the money for herself. The claimants were brought to Canada in _____ 2005 and refugee claims were made in March 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants' identities as citizens of Portugal were accepted at the beginning of the hearing as a copy of their Portuguese passports were on file.³

Objective Basis

No evidence was presented that anyone would actively seek to harm the claimants. While the DR did express concern that the former caregiver would attempt to become involved in the claimants' lives, she also stated that she did not think that the former caregiver would get very far in such an effort even if she was so inclined. Since there is no objective basis for the claimants to fear persecution, the claims fail with respect to section 96 of the *IRPA*. No evidence was presented that the claimants would face a risk of torture as defined pursuant to section

97(1)(a) of the *IRPA* and I find that there is no such risk.

***IRPA* Section 97(1)(b) – Exception pursuant to 97(1)(b)(iv)**

s.19(1)

The DR stated that Portugal lacks sufficient facilities to provide proper care for the claimants. She stated that this is particularly true in the _____, where the claimants resided. The DR stated that the waiting list for places in care facilities is lengthy and the claimants would suffer without anyone to care for them. Other than the DR's oral evidence, no evidence was presented that there would be no spaces in care facilities or that an alternate court-appointed caregiver could not provide appropriate care. However, such evidence would be irrelevant as the *IRPA* specifically excludes situations in which countries are unable to provide adequate health or medical care from consideration of the risks enumerated under section 97(1)(b). Since it is a lack of proper care facilities that would cause the risk to the claimants, their claims pursuant to section 97(1)(b) fail as well.

Humanitarian and Compassionate Consideration

While it may make sense from a humanitarian and compassionate perspective for the claimants to remain in Canada, I have no jurisdiction to rule on such matters. That is the responsibility of another Department, which, from what I understand, already has an application before it.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claims.

CONCLUSION

The claimants are not at risk of persecution as defined in section 96 of the *IRPA* or torture as defined in section 97(1)(a), therefore their claims pursuant to those sections fail. Since I have found that the harm feared by the claimants is excluded from consideration due to the exception contained in section 97(1)(b)(iv) of the *IRPA* and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well. There was no credible basis for the claims.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

April 3, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibits C-1 and C-2.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

RPD File No. / N° de dossier de la SPR : TA7-03868

TA7-03869



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-04359

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s) d'asile

Date(s) of Hearing

September 17, 2009

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

September 17, 2009 (rendered orally)
September 30, 2009 (written reasons)

Date de la décision

Panel

David McBean

Tribunal

**Counsel for the
Claimant(s)**

John Campion

**Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer

N/A

Agent(e) de tribunal

**Designated
Representative(s)**

N/A

**Représentant(e)(s)
désigné(e)(s)**

**Counsel for the
Minister**

N/A

Conseil du ministre

[1] , the claimant, is a citizen of Portugal who claims refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act (IRPA)*.¹

Allegations

[2] The claimant, in his Personal Information Form², has expressed a fear of an abusive father whom he lived with in the past. He also described a great difficulty in finding work and the general situation of poverty in the where he lived.

Determination

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or that he would, on a balance of probabilities, personally be subjected to a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment upon returning to his country. My reasons are as follows.

Identity

[4] I do accept the claimant's identity as a citizen of Portugal, as we do have a copy of his Portuguese passport.³

¹ As enacted by S.C. 2001, c. 27.

² Exhibit C-1.

³ Exhibit R-2, Certified copy of passport received from Citizenship and Immigration Canada (CIC).

Nexus

[5] As counsel conceded just in reading the claimant's allegations, there is no nexus to any of the Convention grounds.

Consolidated grounds

[6] The claimant has mentioned some rather bad experiences at the hands of an abusive father. However, he is now 32-years-old and there is no requirement that he live with his father and there is no evidence presented that his father would objectively be able to harm him in any way at this stage in his life.

s.19(1)

[7] While the claimant has stated that there is a situation of generalized poverty in the and it is very difficult to find work, this is unfortunately a situation that is faced generally by all persons in the and in Portugal in general.

[8] No evidence has been presented that the claimant would be at risk of any of the harms as delineated in section 97 of the IRPA as considered by our law and I find on a balance of probabilities that he is not at risk of any of those harms.

No credible basis

[9] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim. As such, the claim is rejected.

[10] The claimant is not a Convention refugee or a person in need of protection.

[edited for syntax and grammar]

(signed)

“David McBean”

David McBean

September 30, 2009

Date



RPD File No. / N° de dossier de la SPR : TA7-06343
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s) d'asile
Date(s) of Hearing	April 28, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 13, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Jonathon W. Jurmain Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant lived in Mexico City. While _____ in 1996, the claimant was attacked by three men who had pretended to be _____ . The claimant was beaten, but not robbed. The claimant reported the matter to the authorities, but was told to pay a bribe if he wanted something done. The claimant suspected that a _____, aka " _____", was responsible for the attack as he was angry at the claimant for infringing on his territory. The claimant obtained a work visa for the United States of America (USA) and went to New York City in _____ 1998, leaving behind his wife and two children. The claimant's sister-in-law was mentally ill and to assist her family the claimant's wife and children moved to her parents' house. While there, the claimant's son _____ showed signs of sexual abuse. The claimant's wife suspected her younger brother, _____, then aged 16, who was having significant problems himself and hanging out with an unsavoury crowd. While the claimant's wife reported the matter to the authorities, no charges were laid as there was no "physical evidence". The authorities recommended that she separate the child from the alleged abuser. The claimant's wife told her mother but she did not believe her. _____ then threatened the claimant's wife to keep quiet or he would have friends hurt her. The claimant's wife moved to the home of the claimant's parents. The claimant's wife told the claimant that she wanted to join him in the USA and he returned to Mexico in _____ 1999 to facilitate the paperwork. The entire family travelled to the USA in _____ 1999. The claimant's wife did not tell him the truth about _____ and their relationship suffered. The claimant returned to Mexico in _____ 2000 to have a medical procedure done and while there he stayed at his wife's parents' house. His own family, including three brothers who were _____, all learned of his presence and soon afterwards his parents began receiving calls enquiring about him. The claimant was unsure if these calls were from the men who beat him earlier or from _____. After remaining in Mexico for about one month, the claimant returned to the USA, never to return to Mexico. Eventually, after about two years, the claimant's wife told him the truth

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

s.19(1)

about and . The claimant's wife's family, including , moved to New York City. The claimant's wife ran into on the street in 2001 and an argument ensued with threatening the claimant's wife once again. The claimant and his family experienced break-ins and suspected , however, no arrests were made. The claimant's wife next saw in 2005, standing at a bus stop near where the claimant's children would be coming home from school. The claimant and his family decided to move to North Carolina; however, they returned to the same neighbourhood in New York where they had previously lived because it was too difficult to find employment in North Carolina. The claimant's car licence plates were stolen. While they suspected , no arrests were made. The claimant's wife next saw at a bus stop in 2007. Long-since without status in the USA, the claimant and his family travelled to Canada on , 2007, making refugee claims upon arrival. In a separate administrative proceeding, the claimant's file was disjoined from the rest of his family to be heard separately due to an acrimonious divorce proceeding.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons for decision are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

Nexus**s.19(1)**

[5] The claimant fears two separate criminal vendettas. One at the hands of a [redacted] angry at the claimant for moving in on his territory and the other at the hands of the claimant's brother-in-law, [redacted] over concerns that the claimant may go to the police to report [redacted] crime against [redacted]. I find neither vendetta creates a nexus to the Convention refugee definition, and as such, the claim pursuant to section 96 of the IRPA fails.

Credibility

[6] In post-hearing submissions counsel essentially urged me to find the claimant credible. However, it was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally to the Personal Information Form³ (PIF) and the other documents available. For example, the entire plot that dealt with a [redacted] named " [redacted] " was only first mentioned in the claimant's narrative addendum, filed in January 2009.⁴ When asked why he would not mention this plot to the immigration officer who interviewed the claimant and his family at the time that they made their claims, the claimant stated that the main issue at the time was [redacted] abuse of [redacted]. When asked why the [redacted] was not mentioned in the original PIF narrative that the claimant relied on,⁵ the claimant stated once again that the focus was on [redacted] abuse of [redacted] and not events that happened a long time ago. I do not find the claimant's explanations satisfactory. The [redacted] was appeared to be the reason that the claimant left Mexico in the first place. He was actually beaten by a group of men whose motive was not robbery. The claimant still expresses a fear on this basis today given events that happened over time. The claimant's statement to the immigration officer is 29 single-spaced densely typed lines.⁶ The claimant's narrative as originally relied on is over two and half pages and quite detailed. The directions for the completion of the narrative section of the PIF are quite clear in that "**all the significant events and reasons** that have led you to claim refugee protection" [emphasis in original] are to be

³ Exhibit C-1, PIF, C-2 Spouse's PIF containing narrative, C-3 Narrative Addendum.

⁴ Exhibit C-3.

⁵ Exhibit C-2, PIF of the claimant's spouse.

⁶ Exhibit R-2, Schedule 1, "Background Information Attachment."

included. For such detailed documents, particularly the original PIF narrative, to make absolutely no mention of the taxi plot when this appeared to be the claimant's original motivation for leaving Mexico and a source of continuing fear, makes absolutely no sense at all. I find that these omissions undermine the claimant's credibility.

s.19(1)

[7] The claimant stated that even though the main events with respect to the [redacted] took place over a decade ago, he was still fearful as his parents were still receiving calls enquiring about him. When asked why he thought people calling his parents house to enquire about him would necessarily be sinister and not simply innocuous attempts by others to contact him, the claimant stated that the callers were not respectful and used obscenities and were offensive to his mother. However, as noted at the hearing, while the narrative addendum does make mention of the claimants' parents receiving calls, no mention is made that the calls were overtly sinister, offensive and contained obscenities. The claimant stated that he did not know why he did not mention these additional details. I do not find the claimant's explanation satisfactory. The calls are described in a very detailed way in the PIF Addendum "They simply asked for me by name. They did not identify themselves to my mother." If the calls were truly sinister, offensive and filled with obscenities, I would have expected the PIF Addendum to make some mention of that, rather than the contrary description given. I find that this discrepancy with respect to the contact of the phone calls that the claimants' parents allegedly received to further undermine his credibility.

[8] The claimant also stated that he still had a current fear with respect to the [redacted] as his parents still saw [redacted] in their area, even though one would not expect to see them. In fact, they not only saw [redacted] but specifically recognized "[redacted]", the man who was attempting to harm the claimant. They saw him near their house frequently from 1996 until the present day. As noted at the hearing, none of this is included in the PIF Addendum. The claimant stated, given that the custody of his children was at issue, he was not focusing on himself. I do not find the claimant's explanation satisfactory. No psychological evidence was presented to indicate that the claimant would be so distracted by child custody issues that he would be unable to fill out a PIF narrative properly. The claimant described in great detail the beating he incurred in 1996 which he only suspected

" " of being involved in. If " | ' had really been frequently lurking about the claimants' parents' house for the last 13 years, I would have expected some mention to be made of that fact in the PIF Addendum. I find that this omission further undermines the claimant's credibility.

[9] The claimant stated that during one of the break-ins at his apartment, a witness inside (a nephew) and a witness outside saw a man matching | description leaving the apartment and that this information was reported to the police. However, as noted at the hearing, this information is not mentioned in the PIF. The claimant stated that he did not know why the information was omitted. I do not find the claimant's explanation satisfactory. The narrative that the claimant relied on is extremely detailed. In describing the break-ins, it is written in such a way that indicates that other than suspicion, the claimant and his family had no evidence from the time of the crime's commission that would lead them to believe that was the perpetrator, and to suddenly say that two witnesses saw a man matching description at the scene of the crime, and that this information was strong enough to give to the police, makes no sense at all. I find that this discrepancy with respect to the alleged crimes of to further undermine the claimant's credibility.

[10] The claimant's original narrative that he relied on mentioned several instances where the claimant and his family suspected of perpetrating crimes against them in the USA. However, as noted at the hearing, in the very detailed statement given by the claimant at the time that he made his refugee claim,⁷ there is no mention of committing or being suspected of committing any crimes. He is only described as repeatedly hanging around a bus stop both before and after the claimant's children went to school. The claimant stated that there was only one occasion where someone matching description was seen and that he did not remember these crimes when he spoke with the immigration officer. I do not find the claimant's explanation satisfactory. If the claimant truly believed that was responsible for repeated crimes against his family and there was some eyewitness information that would lend credence to this, I would have expected some mention of these suspicions to be made in such a detailed statement to

⁷ Exhibit R-2.

the Immigration Officer. To omit all mention of these suspicions and instead say that was repeatedly hanging around a bus stop does not make sense. I find that this omission further undermines the claimant's credibility.

[11] Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened, and as such, the claim pursuant to section 97 of the IRPA fails.

Crime

[12] The original narrative states that the claimant would be at increased risk of general crime in Mexico due to him being perceived as wealthy after spending so much time in the USA and Canada. While being at risk of crime is of course unfortunate, it is a risk generally feared by others in Mexico. While being perceived as wealthy may increase the degree of the risk, it does not alter the nature of the risk.⁸ I therefore find that the claimant's fear of crime falls within the exception for "generalized risk"⁹ and as such cannot form the basis for a claim.

CONCLUSION

[13] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

October 13, 2009

Date

⁸ *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.

⁹ Section 97(1)(b)(ii) of the IRPA.



RPD File No. / N° de dossier de la SPR: TA7-07556

TA7-07582

TA7-07476

TA7-07477

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

April 15, 2008

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

September 2, 2008

Date de la décision

Panel

David McBean

1

Counsel for the Claimant(s)

Alexei Grachev

Conseil(s) du / de la demandeur(e)(s)

Barrister and Solicitor

Tribunal Officer	J. Baptiste	Agent(e) des tr
Designated Representative(s)	Nil	Représent dési
Counsel for the Minister	Nil	Conseil du

s.19(1)

, and
citizens of Mexico, claim refugee protection pursuant to sections 96
and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

worked as a with the On
2006, (“”) came to the and proposed a
to] refused to participate in the scheme and left angry. reported
the scheme to his supervisor, the director, who thanked him for doing the proper thing. To
surprise, began attempting to reach him by telephone. reported this to the
director who said that he would be in charge of the matter. A couple of days later, the director told
to take two weeks vacation, which he did. While on vacation, the claimants received
threatening calls and noted cars lurking about their house. Upon his return to work, was
informed that he was no longer employed and was pressured to sign a voluntary resignation letter. The
director stated that he had received orders from “above” to fire]. On] 2006,
sons were attacked and beaten at a disco. While they did go to the police to attempt to file a
complaint, there was no secretary on duty at that hour and they were told to return later in the morning
to finalize the complaint. The claimants received a call at home threatening them not to involve the
police. sons did not return to the police to formally file the complaint. After receiving the
advice of a lawyer to move away to let things “cool down”, the claimants moved to] Guanajuato,
on] 2006. On] 2006,] managed to escape a kidnapping attempt. On
] 2006 the claimants moved again, this time to Queretaro State.] went to the police
in] to report the problems that he had experienced in] and] but was told
that the police in] lacked jurisdiction as the alleged crimes had occurred in other states. On
] 2007] received a threatening call on his cell phone. The claimants decided to flee
Mexico, leaving separately on dates ranging from] though] 2007. The claimants then
made refugee claims on July 31, 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that they would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as a copy of their Mexican passports were on file.²

Nexus

s.19(1)

The claimants fear a criminal vendetta as a result of [redacted] refusal to help [redacted]. Counsel submitted that the claimants have a nexus to the Convention Refugee definition through an imputed political opinion. He argued that since there is corruption and state involvement in narco-trafficking in Mexico, the claimants denounced that corruption by refusing to break the law when asked to do so by [redacted], an alleged narco-trafficker. I do not find counsel's submissions persuasive. There is no doubt that corruption can be a problem in Mexico and that there have been instances where some people in positions of authority have been found to be working together with narco-traffickers. There are even problems with corruption in parts of the Mexican [redacted].³ However, in this case, [redacted] testified that in his 30 years working in the Mexican [redacted], this was the first time that he had ever been asked to do something illegal. The claimants have not experienced any problems at the hands of the Mexican state. No evidence of state complicity in the claimants' problems has been presented other than the fact that [redacted] boasted that he had powerful un-named connections. Generally, opposition to corruption or criminality is not a perceived political opinion unless it can be seen to challenge the state apparatus.⁴

I find that while refusing to commit a criminal act is laudable, the claimant's refusal to participate is not an expression of political opinion and does not provide a nexus to the Convention Refugee definition. As such, the claims pursuant to section 96 of the *IRPA* fail.

State Protection

Even if I accept the claimants' evidence as true, which I do not necessarily do, the claims pursuant to section 97(1) of the *IRPA* fail on the issue of state protection. States are presumed **s.19(1)** capable of protecting their citizens.⁵ That presumption can be rebutted by providing clear convincing evidence that on a balance of probabilities state protection would be inadequate. Claimants are expected to approach the state for protection if such protection could be reasonably seen as forthcoming.⁶ While sons did attend a police station in the early morning hours after they were attacked, they never returned to finalize their complaint to allow the complaint to go forward. did approach a police force in another state, however it did not have jurisdiction to deal with the matters complained about. The claimants have never approached the most logical choice for protection - the local police, or any other policing agency that had jurisdiction to act (such as the state or federal police) with a perfected request for assistance. The claimants felt that making no perfected effort to obtain protection was reasonable, given that the criminals told them not to approach the police, had boasted that he had powerful connections and that they felt that there was widespread corruption in police forces across Mexico.

Some documentation has been provided that previously tranquil is now experiencing criminal violence.⁷ There were even gun battles between the authorities and criminals.⁸ As stated previously, police corruption can be a problem in many areas of Mexico.⁹ However, these same articles make reference to numerous state agencies that are battling these problems, including the state police, the army, the AFI (the Federal Investigative Agency) and the Preventive Federal Police. Other than boasts, no evidence has been presented that the police and other authorities in have been corrupted to the extent that there would be no point in approaching them for assistance. Even if they did encounter some problem with the local authorities, there are a number of measures in place to deal with people who have problems with corrupt authorities. For example, the AFI investigated and arrested drug traffickers, violent kidnappers and corrupt officials.¹⁰ The federal government continued to work

on reducing corruption levels in Mexico by investigating and sanctioning employee misconduct.¹¹ However, it must be noted that the need for these measures is entirely speculative at this point, as the claimants have not even approached the authorities in a proper manner in the first place. has been a for 30 years and is legally trained so the family is not "unsophisticated". Despite avenues of protection being available they simply chose not to use them. I find that, on a balance of probabilities, the claimants have not presented "clear and convincing" evidence that state protection would not reasonably have been forthcoming to the claimants, had they attempted to seek it. One cannot expect the authorities to protect you if they do not know that you require protection.

CONCLUSION

The claimants have alleged that they are victims of crime based on a criminal vendetta. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. Since I have found that there is state protection available for the problems alleged by the claimants and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

September 2, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

3 Exhibit C-5, undated article titled ” Mexican authorities put an end to BBVA purchase of Bancomer,” p. 7.

4 *Klinko, Alexander v. M.C.I.* (F.C.T.D., no. IMM-2511-97), Rothstein, April 30, 1998).

5 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

6 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

7 Exhibit C-5, “SLP is Contaminated by the Delinquency”, Pulse internet article, Friday January 4, 2008, p. 18.

8 Exhibit C-5, “Clashes between gunmen and the Police: 4 dead”, Pulse internet article, January 4, 2008, p. 13.

- 9 Exhibit R-1, *National Documentation Package*, June 29, 2007, item 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2006*, March 6, 2007.
- 10 Exhibit R-1, item 7.1, *International Narcotics Control Strategy Report 2007*, United States, March 2007.
- 11 Exhibit R-1, item 7.1, *International Narcotics Control Strategy Report 2007*, United States, March 2007.

RPD File No. / N° de dossier de la SPR: TA7-07556

TA7-07582

TA7-07476

TA7-07477



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-07697

TA7-07735

TA7-08763

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

May 27, 2009

Date(s) de l'audience

March 19, 2010

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

May 20, 2010

Date de la décision

Panel

David McBean

**Counsel for the Claimant
(s)**

Sheliza Suchak

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) de

s.19(1)

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

REASONS AND DECISION**s.19(1)**

[1] (the male claimant), his wife (the female claimant) and their son, citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimants lived in , State of Mexico. On , 2007, the male claimant began working as a at , a company which and was owned by , a former . On , 2007, the claimant was asked to work overtime alone . Amongst the expected merchandise the male claimant found a . When the claimant informed his boss, , he was told to hide the in the merchandise and that he would be well compensated for his cooperation. The male claimant refused, said he was quitting his job and attempted to leave. However, he was stopped by his boss and a security guard and was told not to tell anyone about what had happened and that he should report to work as normal the next day. The claimant did not go back to work and his boss called him at home to threaten him. On , two men identifying themselves as judicial police approached the male claimant at his home. While he didn't entirely trust them, he got into their car as they asked. Once inside they started to yell at and threaten him and his family. They drove him to a dark and lonely place. There one man held him while the other man beat him. They warned him if he said anything about the they would kill him the next time. After they left the male claimant had to walk two hours before he could find a taxi that would take him home. The male claimant then sought medical attention for his injuries. On , the claimants moved to , State of Mexico, but he continued to receive threatening calls. On , the male claimant attempted to file a complaint in , State of Mexico. However, while he was waiting at the Attorney General's office he saw that one of the men that had beaten him was working there. The man came up to him and said that he had been warned not to do anything and that they would now kill him. The threatening phone calls increased so the male claimant stopped answering his phone. On , the male claimant was returning home when he saw a car which he had seen before parked on the corner. The male claimant turned and began walking away but the car started and the claimant began to run. While being chased by the car, the claimant ran across a field and got onto a bus to get away. On , the male claimant traveled to Canada. On , the female claimant told the male claimant on the phone that she was still receiving threatening calls and there were suspicious cars prowling around the house and that she was being watched. The male claimant advised her to sell everything. On , the female claimant filed a report with the authorities in and was told that they would investigate. On , some men attempted to force the female claimant

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s.19(1)

and the minor claimant into a car, but they did not succeed as there were too many people around and they left when the female claimant called out. The female claimant and the minor claimant went to her father's house and traveled to Canada on [redacted] and made refugee claims upon arrival. The male claimant made a refugee claim on [redacted], 2007.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimants' identities as citizens of Mexico were accepted at the hearing given that certified copies of their Mexican passports were on file.²

Nexus

[5] The claimants allege that they are the victims of a criminal vendetta and as such I find that there is no nexus to the Convention refugee definition. Therefore, the claims pursuant to section 96 of the *IRPA* fails.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Forms³ (PIF) and the other documents available. For example, in oral testimony, the male claimant stated that when he was hired to work at the [redacted] his soon to be boss had delved extensively into his previous work at a [redacted], his access to [redacted], pass-codes, locks to doors, etc. While the male claimant stated that he did not think too much of this at the time, about 10 days after he left work he came to realize the significance of these matters. However, as noted at the hearing, none of this was mentioned in the PIF. The male claimant stated that while this really caught his attention it was not in a specific manner. I do not find the claimant's explanation satisfactory. It is one thing for the male claimant to be a random individual who happens to find [redacted] at work and then problems ensue. It is another thing entirely for the male claimant to be specifically recruited for a job that would cause him to come into contact with [redacted] based on his past experiences with [redacted]. The male claimant allegedly knew that he had been

specifically targeted before he left Mexico. If this was really the case it makes little sense for his PIF to make no mention of this given that these facts gave the alleged agents of persecution far more motivation to be interested in the claimant. I find that this omission undermines the claimants' credibility.

[7] In oral testimony, the male claimant stated that after he failed to return to work men who claimed to be police officers asked him to get into their car. Two men interacted with him and a third drove them to the spot where he was beaten by the other two. In later testimony the male claimant stated that the driver verbally assaulted him. However as noted at the hearing, in the PIF there was a total of two men, and there was no mention of a third man being a driver. The claimant stated that he never came into physical contact with the driver. Furthermore, in oral testimony, the male claimant stated that when the incident ended his assailants kicked him in the back. However, as noted at the hearing, there is no mention in the PIF of his assailants kicking him. The male claimant stated that he thought he had mentioned this in his PIF. I do not find the male claimant's explanations satisfactory. If there were really three men involved in this incident, even if one was only a driver and played no other physical role, I would not have expected the PIF to have been written in the way that it was, in that it mentioned that there were only two men. Furthermore, the PIF only mentions that the claimant was hit in the back. Given the way that the PIF was written in that he was also hit in the face, thorax and stomach, if the assailants had really switched to kicking him, I would have expected the PIF to say just that. I find that this discrepancy with respect to the manner in which the claimant was abused and, more importantly, the number of assailants who kidnapped him, to further undermine the claimants' credibility.

[8] In both the PIF and in oral testimony the male claimant emphasized that these men (whether two or three) who had taken him in their car stole his Personal Digital Assistant (PDA). In oral testimony, the male claimant stated that this was how the agents of persecution knew where to call to threaten him. However, as noted at the hearing, the claimant also testified that that he was threatened at the same cell phone number before the PDA was stolen. The claimant stated that he had been confused and meant to say that this was how the agents of persecution found his address. I do not find the male claimant's explanation satisfactory. It was somewhat odd that the PIF and the oral testimony placed so much weight on the PDA being stolen. The male claimant had allegedly already been threatened by phone and his employment file would have contained a wealth of contact information including his address. It makes little sense for his assailants to be interested in his PDA and makes even less sense for the claimant to have emphasized this alleged theft so much. I find that this discrepancy further undermines the claimants' credibility.

[9] In oral testimony the male claimant stated that he personally saw a suspicious car lurking outside his home about four times, sometimes late at night and up to seven hours at a time. However, as noted at the hearing, the PIF does not mention the male claimant seeing any suspicious vehicle watching his

house. The male claimant stated that this was the vehicle that eventually chased him after he attempted to make a report to the Attorney General's office. However, as noted at the hearing, the PIF only mentions one vehicle; the car where the two (or three) men abducted and beat him and then later a car which the male claimant had seen before (so therefore the same car) which chased him. The male claimant stated that he had limited the narrative to the basic facts of what had happened. I do not find the male claimant's explanations satisfactory. Either there was one car or there were two. The PIF seemed quite clear about there being one car, a black car, wherein the men originally picked him up and then later the same car chased him. If there really were two cars, as there would have to be given that the claimant stated in oral testimony that the second car was a white car, I would not have expected the PIF to be written the way that it was. If there were also significant surveillance activities observed by the male claimant I would have expected the PIF to mention these as well. I find that these discrepancies further undermine the claimants' credibility.

[10] In the PIF and in oral testimony the male claimant did not make a complaint to the Attorney General's office because while he was at the Attorney General's office waiting to make a complaint he saw and was confronted by one of the men who had beaten him who happened to work there. The male claimant testified that he had told the female claimant about this before he left Mexico. However, as noted at the hearing, the female claimant gave a different version of why he had not made a complaint. In the notes of the immigration officer made at the time that the female claimant made her claim,⁴ in a translation of a statement⁵ that she wrote in Spanish at the time that she made her claim, and in her separate PIF narrative,⁶ there is no mention of the male claimant seeing and being confronted by one of the men who beat him who was working at the Attorney General's office. Instead, the female claimant stated that the male claimant did not make a complaint out of general fear and in the PIF and the translation of the Spanish statement specifically stated that the male claimant did not make a complaint because he had been warned over the phone not to. The male claimant stated that he did not know why the female claimant had said these things. In later testimony, the female claimant stated that she had been mistaken with respect to what she had written and was stressed upon arrival in Canada. I do not find the claimants' explanations satisfactory. The male claimant was quite clear in his evidence that it was the fact that he had encountered one of the men that had beaten him at the Attorney General's office; that this man worked there and this man confronted him and warned him not to make a complaint. The male claimant was also definite in his evidence that he told the female claimant all of this before he left Mexico. It makes absolutely no sense at all that the female claimant would then consistently say that the male claimant did not make a complaint as a result of general fear and phone threats rather than specifically encountering one of the men who had beaten him. Even if the female claimant was experiencing stress at the time of her arrival in Canada, her PIF, which contains the same "mistake" is dated [redacted], 2007, a month after she arrived. The female claimant was represented by counsel when the PIF was prepared and she affirmed orally and in writing that it had not only been interpreted to her but that it was accurate. It makes no sense that this significant contradiction could be a

simple “mistake”. I find that this discrepancy further undermines the claimants’ credibility.

[11] In oral testimony, the male claimant stated that in the final incident his attention was drawn to the car that chased him when it accelerated from normal driving speed to a higher speed as it came towards him. However, as noted at the hearing, in the PIF the male claimant’s attention was drawn to the car while it was parked and not started. The male claimant stated that he was unsure if the engine was running when he saw the car parked. I do not find the male claimant’s explanation satisfactory. In oral testimony, the male claimant was quite definite in that the car was already moving when he first noticed it and became suspicious of it. If this was the case I would not have expected that the PIF would have been written in the way that it was, that the car was parked (whether the engine was on or off) when the claimant first became suspicious of it and the car only started moving after the claimant became suspicious and changed direction while walking. I find that this discrepancy further undermines the claimants’ credibility.

[12] In oral testimony, the male claimant stated that when he arrived at the airport in Canada he stated that he was a tourist. As noted at the hearing, in the notes printed from FOSS (the immigration computer system) in the female claimant’s documents received from immigration there is an entry which states that the male claimant expressed no fear of returning to Mexico when he arrived in Canada. The male claimant stated that this was correct. He said that he did not know the refugee process and feared being sent back if he told the truth. I do not find the claimant’s explanations in this area satisfactory. The male claimant was allegedly fleeing to Canada so that he could be safe. He has 14 years of education and has worked as a s.19(1) Regardless of whether or not he knew the details of the Canadian refugee system he was asked directly by a Canadian Immigration officer, a person representing the government of the country that he was trying to seek safety in, whether or not he feared something in Mexico and he said “no”. Had the claimant really experienced what he said he experienced in Mexico, I would have expected him in these circumstances to tell the immigration officer what he was afraid of. I find that this discrepancy further undermines the claimants’ credibility.

[13] In the documents⁷ received from the immigration officer, he made notes of the male claimant’s reasons for coming to Canada. These notes mention the claimant discovering s.19(1), that he was stopped by the police once and that he was harassed and threatened. However, as noted at the hearing, by this time the male claimant had been kidnapped and beaten by the police, chased separately by a car and his wife and child had faced a kidnapping attempt (which the male claimant stated that he had knowledge of before this statement was made). The male claimant stated that he was not given a chance to finish by the immigration officer and that he had been cut-off. I do not find the male claimant’s explanation in this area satisfactory. The statement is actually fairly detailed and does not seem “cut-off”. After the few minor incidents are described there is then a three line ending statement. Even if the male claimant was being pressed for time I would have expected some mention of the

kidnapping and beating and the attempted kidnapping of his family rather than general references to harassment and a three line general ending. I find that this discrepancy further undermines the claimants' credibility.

[14] In oral testimony the female claimant stated that her father and a lawyer had attempted to get a copy of her complaint to the Attorney General's office but were repeatedly refused. However, as noted at the hearing, this information was not contained in her PIF. The female claimant stated that she did not think that she could add anything to her PIF because she had already signed it. The male claimant then stated that the female claimant's PIF narrative was actually a translation of what she said at the airport and they believed that they could not add anything to it. I do not find the claimants' explanations satisfactory. The female claimant signed her PIF on _____, 2007. She testified that she was aware well-before that that her father had been refused a copy of the complaint despite several attempts. As noted above, the female claimant was represented by counsel at the time that she filled out her PIF and she affirmed both orally and in writing that the PIF had been interpreted to her and that it was accurate. Given the clear directions for filling out the narrative in that all significant incidents are to be mentioned and the fact that the claimant was represented by counsel who would have been able to explain what to include in the narrative, had the female claimant's father faced any sort of difficulties in obtaining a copy of her complaint, given that this would appear to show some form of lingering conspiracy, I would have expected some mention of this to have been made in the PIF. I find that the fact that it was not to further undermine the claimants' credibility.

[15] I do note the presence of a document⁸ which purports to be a letter from a lawyer in Mexico stating that he was unable to obtain a copy of a certain numbered complaint on behalf of the female claimant. However, I give this document little weight given that the document originates from her father and the lawyer that he retained; two people with an obvious interest in having the female claimant's claim succeed. More importantly, the entire series of events that this document allegedly corroborates (that the authorities refused to provide a copy of the complaint despite repeated attempts) was not mentioned in the PIF and as noted above if they had occurred I would have expected them to be mentioned in the PIF. While I do note that the letter is dated a few days after the female claimant's PIF was signed, the claimant had testified that she was already aware of her father's difficulties before that.

[16] I also note the presence of what appear to be some medical documents⁹ dealing with some injuries and treatment that the male claimant received. I give these documents little weight as well as even if these documents are genuine, they do not state how the claimant received his injuries which could have been from any number of causes for any number of reasons.

[17] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of

probabilities, that any of the significant events that the claimants alleged happened to them, actually happened and as a result the claims pursuant to section 97 of the *IRPA* fails.

NO CREDIBLE BASIS

[18] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

CONCLUSION

[19] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims.

(signed)

“David McBean”

David McBean

May 20, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibits C-1,C-2 and C-3.

4 Exhibit R-2.

5 Exhibit R-2.

6 Exhibit C-1.

7 Exhibit R-2, Interview Record.

8 Exhibit C-4, item 2.

9 Exhibit C-4, item 4.



RPD File No. : TA7-07697

TA7-07735

TA7-08763



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA7-07893

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	January 6, 2010	Date(s) de l'a
Place of Hearing	Toronto, Ontario	Lieu de l'a
Date of Decision	March 10, 2010	Date de la
Panel	David McBean	
Counsel for the Claimant (s)	Maria Lina Melo	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de
Designated Representative(s)	N/A	Représentant(e)(s) de
Counsel for the Minister	N/A	Conseil du

s.19(1) REASONS AND DECISION

[1] [REDACTED] a citizen of Trinidad and Tobago, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Trinidad and Tobago. His wife ran a [REDACTED] in the [REDACTED] of their [REDACTED] but sales had started to slow down. They decided to shrink the store to half its size and rent out the other half as an apartment. They eventually rented the space to [REDACTED] (“ [REDACTED]”) in [REDACTED] 2006. At first things were fine and [REDACTED] paid his rent in advance. Then people started to come and go from [REDACTED] place at all hours of the day and night. Even police officers partied with [REDACTED] at his place. [REDACTED] did not pay rent for [REDACTED] 2006. After stringing the claimant along for a month, the claimant spoke to [REDACTED] on [REDACTED], 2007, and threatened him with eviction if he did not pay his rent. Two of [REDACTED] friends came out as [REDACTED] began to threaten the claimant. He hit the claimant on the head with a beer bottle and began to beat him. [REDACTED] stated that he was a member of the [REDACTED] and threatened both the claimant and his wife with death if they should try to evict him or go to the authorities. The claimant attempted to minimize his contact with [REDACTED] until he and his wife left Trinidad on [REDACTED], 2007. The claimant and his wife made refugee claims on [REDACTED], 2007. The claimant’s wife withdrew her claim on [REDACTED], 2008. The claimant does not know where his wife is now.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant’s identity as a citizen of Trinidad and Tobago was accepted at the hearing given that a copy of the claimant’s Trinidadian passport was on file.²

Nexus

[5] The claimant fears a criminal vendetta. Since there is no nexus to the Convention refugee

s.19(1)

definition, the claim pursuant to section 96 of the *IRPA* fails.

Objective Basis

[6] Even if I were to accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as there is no objective basis for the claimant to fear returning to Trinidad. The claimant stated that he lived for over two months in the same house as _____, albeit on different floors, after the one incident of violence and no further violent incidents occurred. While the claimant speculated that _____ would now see the claimant as somehow being a threat to him and therefore be more prone to violence, I do not agree with this speculation. If further violent incidents were going to take place, they would have taken place when the events were fresh in _____ mind. The fact that nothing violent happened when the claimant was living in the same house as the agent of persecution, from the one violent incident on _____ until the claimant left in _____, indicates that _____ was not that serious about harming the claimant as long as he did not bother him. The claimant stated that while he still had family in Trinidad they have not had any problems with _____ during the three years that the claimant has been away, so this further shows that _____ does not have a lingering interest in harming the claimant. Given that the claimant has now been away for over three years, he would face no harm should he return to Trinidad and simply live in a different dwelling and not bother _____.

Generalized Risk

[7] While counsel for the claimant made reference to the fact that the general crime rate in Trinidad is high, crime is a risk faced generally by everyone in Trinidad. As such, it is precluded from my consideration by the Generalized Risk exception in section 97 of the *IRPA*. Even if the claimant were perceived to be wealthy given that he has spent several years abroad, this simply changes the degree of the risk, not the generalized nature of it.³

No Credible Basis

[8] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[9] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

March 10, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada.

3 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. : TA7-07893



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-07999

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	June 24, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 3, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Sukhram Ramkissoon	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) de la Commission
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] a citizen of Saint Lucia (St. Lucia), claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant lived in , a village in St. Lucia. On , 1998, the claimant was at a disco when he accidentally bumped into someone and spilled a drink all over him. A physical altercation ensued and the claimant went outside. The man pointed a gun at the claimant and while he thought that he would immediately be shot the sound of screeching tires distracted the man. The claimant escaped in his friend's vehicle and while the man did shoot at him, he missed. The claimant's friend then told him that the man who the claimant spilled a drink on was a powerful member of the gang " ". The claimant reported the matter to the police the next day. However, when he returned home later that evening he found various possessions trashed and a witness said that the gang was responsible. The claimant moved to the city of . He heard from his boss back in that the gang had been looking for him at work. After going to the passport office, the claimant was approached by a man who briefly interacted with him. The man followed the claimant excitedly speaking into a cell phone and said, "It's him!". The claimant managed to escape by going into a shop and then jumping into a passing van. As months passed, the claimant stayed mostly indoors. Then, when he was getting off a bus he was jumped by two men who told the claimant that he could not hide forever. The claimant escaped by running in front of a passing police vehicle. The officers took the claimant to the hospital to obtain treatment for his injuries and then interviewed him after he obtained stitches. The claimant came to Canada on , 1999. After being detained by Canadian Immigration authorities he made a refugee claim on September 6, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of St. Lucia was accepted at the beginning of the hearing as a copy of his passport from St. Lucia was on file.²

Nexus

[5] The claimant has alleged that he is a victim of crime based on a personal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF). For example, in oral testimony describing the first incident, the claimant mentioned spilling the gang member's drink, that there was a physical confrontation and that the claimant left in his friend's vehicle. Despite being asked more than once if anything else had happened, the claimant said "no". As noted at the hearing, the PIF stated that the gang member actually pulled out a gun outside the disco and after being distracted by screeching tires shot at the claimant. The claimant stated he had not mentioned this in his oral testimony as the gunman was a different gang member from the one that he had had the physical altercation with. When it was noted that the PIF specifically stated it was the same gang member who was in the physical altercation that pulled out a gun and shot at the claimant, the claimant said the PIF was incorrect and that they were different men. He also said that he had not mentioned the gunman or the shooting in his previous oral testimony since this was a "different conflict". I do not find the claimant's explanations satisfactory. The claimant affirmed both orally and in writing that his PIF was accurate. While I am mindful of counsel's submission that memories tend to fade over time and this event took place a decade ago, this was the turning point in the claimant's life. To state throughout the PIF that there was only one gang member involved in this incident when there were actually two makes no sense. Stating that the other gang member shooting at him was a "different conflict" explains nothing. The claimant was not asked if anything else with the same gang member happened, but he was asked more than once if anything else happened in a general sense during the incident and he said "no". To not remember that the gang member had a gun pointed at him at close range and then have the gang member actually shoot at him makes no sense at all. It actually appeared that once the claimant was confronted with the fact that he had omitted all mention of being shot at in his earlier oral testimony, he spontaneously invented the existence of the second gang member in an attempt to explain away the omission. I find that this discrepancy with respect to the number of gang members actively involved in the incident and the total omission from oral testimony of the fact that the claimant was shot at, to seriously undermine the claimant's credibility.

[7] In describing the next significant incident, the claimant stated that after he picked up his passport, he was followed by a man talking on a cell phone who was excitedly stating "It's him!" with respect to the claimant. After being followed for a while the claimant jumped in front of a police vehicle and the man disappeared. When asked to clarify if that was "all" that happened, the claimant then said that he had forgotten to mention that another man had joined the man with the cell phone and that this man had struck him, requiring the claimant to go to the hospital to seek medical attention. However, as noted at

the hearing, the PIF states that there were actually two separate incidents months apart. The claimant, after leaving the passport office was followed by the man with the cell phone and after interacting with him briefly and hearing what he was saying on the phone, the claimant managed to escape by going into a shop and then jumping into a van. Then months later as the claimant got off a bus, two men attacked him; they injured his head and he ran in front of a police vehicle to escape. The claimant stated that the PIF was incorrect and that all of these events took place during the same incident and that there was only one incident. I do not find the claimant's explanation satisfactory. The PIF was written in such a way that indicated that there had to be two separate incidents months apart; there were different ways that each incident started; different things happened in them and the incidents finished in different ways. The PIF narrative was amended in several areas, but not this one. It makes absolutely no sense at all for the claimant not to notice that the PIF was so wrong with what would have been the only other significant incident that had happened to him. I find that this discrepancy in such a key area further undermines the claimant's credibility.

[8] The claimant was asked if he had any police or medical reports that would corroborate his story and he said that while he used to have them, they were disposed of long ago by his ex-partner. He also stated that while his uncle recently made efforts to obtain new copies of these documents, he was told that they were too old to be found. As noted at the hearing, it has indeed been a long time since the events in St. Lucia allegedly occurred and it may be that documents from that era are difficult to obtain. However, the reasons for the length of time passing with respect to the alleged events in question are problematic in and of themselves. The claimant came to Canada in 1999, but did not make a refugee claim until he was detained by Canadian Immigration authorities in 2007. The claimant stated that he was unaware that he could have made a claim at the airport. However, he also stated that he consulted a lawyer early on during his stay in Canada who told him that while he could make a refugee claim he would lose. As noted by counsel, this was likely correct advice as the provisions dealing with "Risk to Life" were not effective until 2002 with the coming into force of the *Immigration and Refugee Protection Act*. However, the claimant also stated that this lawyer told him that he should wait eight to ten years and then apply for status on Humanitarian and Compassionate grounds. The claimant made no further efforts to obtain status in Canada and feared being returned to St. Lucia. I do not find the claimant's explanation satisfactory. To meet with a lawyer once and then make no efforts or enquiries about attempting to obtain status legally all the while fearing being deported to face death, makes absolutely no sense. I find that this behaviour during a lengthy delay in claiming not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

[9] Given the serious contradictions, discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and therefore, the claim pursuant to section 97 of the *IRPA* fails.

No Credible Basis

[10] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[11] For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”
David McBean
July 3, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, PIF, as amended by C-2.



RPD File No. : TA7-07999



Disponible en français



Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-08474

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	October 27, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 10, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Razgar Hasan	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1) REASONS AND DECISION

[1] _____, a citizen of the Netherlands, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Iraq, however, the claimant became solely a citizen of the Netherlands in 1999 through sponsorship. After the events of September 11, 2001, the claimant found that Dutch citizens expressed hatred towards people they perceived as foreigners. The claimant was called insulting names at work and in daily life. On _____, 2007, the claimant and his girlfriend were approached by skinheads at a nightclub. The skinheads made racial comments to her about her choice of boyfriends. The claimant initiated a fight. While the police came, no charges were laid and the police cautioned the claimant to be careful. On _____, 2007, the claimant was beaten by a skinhead and received an eye injury. While the claimant obtained treatment from nurses at a hospital, the nurses did not report this matter to the police. The claimant came to Canada on _____, 2007. He made a refugee claim on August 9, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of the Netherlands was accepted at the hearing given that a copy of his Dutch passport was on file.²

¹ As enacted by S.C. 2001, c. 27.

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that he was generally barred from nightclubs and if he managed to get in he was treated badly. He also stated that he was generally barred from getting most jobs. However, as noted at the hearing, while the PIF does say that the situation changed after September 11, 2001, there is no mention of such widespread discrimination that the claimant testified about orally. After several non-responsive answers the claimant stated that he meant to say that he had been degraded generally. I do not find the claimant's explanation satisfactory. If the discrimination against the claimant, particularly in employment, was as widespread as the claimant alleged in oral testimony, I would have expected some specific mention of this in his PIF. It appeared at the time that the claimant was greatly exaggerating and embellishing his evidence and I find the fact that he did so to undermine his credibility.

s.19(1)

[6] In oral testimony, the claimant described the 2007, incident at the nightclub. He stated that he fought with five to six Dutch people and there was nothing particularly remarkable about them. However, as noted at the hearing, the PIF states that the claimant fought with two people and they were both skinheads. The claimant then agreed that the people were skinheads and that the PIF was potentially incorrect with respect to details such as numbers. I do not find the claimant's explanations satisfactory. The claimant was asked repeatedly if there was anything remarkable with respect to the people that he was fighting and he repeatedly answered that there was not. If the claimant had really fought with skinheads, I would have expected him to say that he had done just that. Furthermore, the claimant confirmed both orally and in writing that the PIF had been interpreted to him (while the claimant initially disputed this, he eventually agreed that it had, which counsel confirmed) and that it was correct. The claimant knew that even if the PIF was incorrect, it could be amended as a detail was amended prior to the hearing. To not notice that the PIF stated that there were only two other combatants versus the orally

² Exhibit R-2, Certified copy of passport received from Citizenship and Immigration Canada (CIC).
³ Exhibit C-1, PIF.

stated five or six does not make sense. I find that these discrepancies with respect the identity and numbers of the alleged assailants to further undermine the claimant's credibility.

[7] In oral testimony, the claimant stated that he was the only one thrown out of the nightclub, while the other combatants were allowed to remain. However, as noted at the hearing, the PIF makes no mention of the claimant being the only one thrown out of the nightclub. The claimant stated that he had written a brief story and this was a detail that he had not included. I do not find the claimant's explanation satisfactory. If the claimant really was the only one thrown out of the nightclub and the skinheads were allowed to stay in the club, it would have potentially been clear evidence of differential treatment and I would have expected the claimant to mention this in his PIF and I would not have expected the PIF to be written in the manner that it was. I find that this discrepancy further undermines the claimant's credibility.

s.19(1)

[8] In the claimant's oral testimony, the only physical confrontation that he was involved with occurred on _____, 2007. The claimant stated that he received an eye injury during that confrontation and as a result stayed home six days and then visited a hospital for treatment on _____, 2007, as he was still experiencing pain. However, as noted at the hearing, the PIF states that the claimant was actually in two separate physical confrontations. In the PIF there is no mention of the claimant being physically injured during the confrontation on _____ and it describes an entirely separate physical confrontation with a skinhead on _____ wherein the claimant's eye is injured. The claimant stated that the PIF was incorrect and that there was only one confrontation. I do not find the claimant's explanation satisfactory. As indicated previously, the claimant indicated both orally and in writing that his PIF had not only been interpreted to him, but that it also was correct. The PIF plainly states that there were two separate fights with skinheads and it was during the second fight that the claimant received his injury. It makes no sense for the PIF to be written that way if there was only one fight and the second date merely referred to the day that the claimant sought treatment. I find this discrepancy to further undermine the claimant's credibility.

[9] The claimant stated that he possessed no medical documents that might have corroborated the attack(s) as he had not thought about getting any and doubted their existence given that he was simply treated and released. While I am mindful that claimants are not required to document every aspect of their claim, if documents are reasonably available, they should be presented. As noted at the hearing, the directions for filling out the PIF narrative state, all medical and other documents that would support the claim are to be included. Given that the Netherlands is an advanced country, I find that medical documentation would, on a balance of probabilities, been reasonably available and given the clear directions in the PIF with respect to the inclusion of medical documents, I find that their absence further undermines the claimant's credibility.

[10] In oral testimony, the claimant stated that he encountered no difficulties at the hospital and that he was treated like a normal Dutch person. He went on to state that he had never had with any difficulties with any government or government official in the Netherlands. However, as noted at the hearing, the PIF states that the nurse who gave him treatment failed to report his injuries to the police as it appeared she was required to do. The claimant stated that the nurse had reported his injuries to the authorities and had not misbehaved in any way. I do not find the claimant's explanation satisfactory. Once again the claimant's oral testimony was the exact opposite of his PIF. If the claimant really experienced no problems with the nurse at the hospital, it makes absolutely no sense that the PIF would suggest so strongly that the nurse misbehaved. I find that this discrepancy further undermines the claimant's credibility.

[11] In attempting to explain why he delayed in making a refugee claim in Canada, the claimant stated that he was told by friends that he could stay as long as his visa was valid and then he should make a refugee claim just prior to the visa's expiry. I do not find the claimant's explanation satisfactory. The claimant explicitly knew about the refugee process. If he truly felt his life were in danger, it makes no sense that he would not make use of the refugee process as soon as he found out about it, rather than waiting until his permission to remain in Canada was about to expire. I find that this behaviour not only demonstrated a lack of subjective fear but further undermines the claimant's credibility.

[12] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened. While counsel noted that, regardless of the claimant's experiences, the claimant still has the profile of a visible minority and may face discrimination on that basis, I note that the current documentary evidence⁴ states that violence against minorities is rare. Should the claimant actually experience discrimination in areas such as employment, there are anti-discrimination bureaus⁵ that he could complain to. I find that even looked at cumulatively, any discrimination that the claimant might face in the future does not give rise to a serious possibility of persecution and as such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[14] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed) _____
“David McBean”
David McBean

_____ **December 10, 2009**
Date

⁴ Exhibit R-1, *National Documentation Package*, (Netherlands) March 30, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.

⁵ Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*, section 5, “National/Racial/Ethnic Minorities”.



RPD File No. / N° de dossier de la SPR: TA7-08508

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 29, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	June 16, 2008	Date de la
Panel	David McBean]
Counsel for the Claimant(s)	Daniel L. Winbaum Barrister and Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Jeff Cutler	Agent(e) des tr
Designated	Nil	Représent

000305

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

In 1994, the claimant was visiting his hometown where he noticed that drug dealers were operating outside his cousin's school. The claimant reported the drug dealers to the authorities in a larger town nearby. The drug dealers were soon arrested and their drugs and weapons seized. After being released from custody, the drug dealers demanded compensation and an altercation ensued wherein the claimant was stabbed. As the claimant was preparing to return to his residence in , he was threatened with death. The claimant later discovered that the drug dealers had learned he was living in , so he moved towards the border of the United States of America (USA) in late 1994, crossed into the USA and lived in Florida from 1995 until 2007, at which time he came to Canada to make his refugee claim.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing² as a copy of his Mexican passport was on file.

Internal Flight Alternative (IFA)

Even if I accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District (F.D.). In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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With respect to the first prong of the test, the claimant fears street-level drug dealers who hung around his cousin's school in his hometown in 1994. At the time of his confrontations with the drug dealers, the claimant was living in _____, a long distance from his hometown. When the claimant was informed by letter that the drug dealers had been told of his location, he waited for a period of time before moving towards the USA border. The claimant was rather vague with respect to the dates involved, however given that the events in question occurred almost a decade and a half ago, that is perhaps understandable. The claimant estimated that he waited in _____ anywhere from one to five months after he received the letter. He eventually settled on an estimate of two to three months. What should be noted is that for whatever the period of time was in 1994 when the drug dealers knew of his location, nothing happened to the claimant in _____. Counsel for the claimant speculated that perhaps that was because the claimant was not the highest item on the drug dealers' list of criminal priorities. However, if the claimant was not a high priority for the drug dealers when the events in question were fresh in everyone's minds and the claimant's location was known, it is difficult to see how he would be any sort of a "priority" 14 years later. About two years ago the claimant's sister did tell him that she had seen someone around town whom she thought resembled one of the drug dealers but there was no attempt at contact. The claimant has not heard of any attempts by the drug dealers to find out his whereabouts in the intervening years, even though he still has family in the area.

Despite the fact that no one seems to be looking for him, even in his hometown, the claimant speculated that the drug dealers would never forget his actions and would use unknown connections to find him and kill him no matter where he went. While counsel for the claimant did make reference to several pieces of evidence indicating that drug cartels are a major problem in many areas of Mexico, no evidence has been presented that the street-level drug dealers that hung around a small town school 14 years ago would somehow be able to mobilize a national search for the claimant, find him and cause him harm in a large city far away. It should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁴

I find that, on balance of probabilities, there is no serious possibility of the claimant being harmed in the F.D.

With respect to the reasonability of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ If the claimant were to return to Mexico, he would be using the international airport in the F.D. so he would

not have to return to his hometown. The claimant has an extensive work history in and related fields, most of which was obtained during the 12 years that he spent in the USA. With this extensive work experience, the claimant should have no difficulty in finding a job and supporting himself in the F.D., and I find that it is reasonable for him to do so.

CONCLUSION

The claimant has alleged that he is a victim of crime based on a criminal vendetta by drug dealers. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Refugee Convention grounds.⁶ As I find that the claimant has a viable IFA in the F.D., the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

(signed)

David McBean

June 16, 2008

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

⁴ Exhibit R-1, *National Documentation Package*, March 19, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.

⁵ *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.

⁶ *Leon, Johnny Edgar Orellana v. M.C.I.* (F.C.T.D., no. IMM-3520-94), Jerome, September 19, 1995.

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RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-08664

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	MAY 2, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	July 7, 2008	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Joseph Farkas Barrister and Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	J. Cutler	Agent(e) des tr
Designated	Nil	Représent

000311

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant lived in the Federal District (F.D.) and began a same-sex relationship with (“ ”) in 2003. proved jealous, aggressive and abusive, so the claimant broke up with in 2006. In oral testimony, the claimant described three major incidents in which his former partner physically attacked him. The claimant then fled to Canada on 2006, and after a period of nine months, made a refugee claim on 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, he would personally be subjected to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file. The claimant’s sexual orientation was also accepted for the purposes of the hearing.

Issues

The determinative issues are credibility and state protection.

Credibility

The claimant’s oral testimony differed dramatically from the story contained in his Personal Information Form2 (PIF) on many significant points. For example, in oral testimony, the claimant described three major incidents where his ex-partner, physically assaulted him. Only one incident was mentioned in the PIF. When asked if the passage in the PIF stating that was quite possessive and would hit the claimant whenever he saw him with another man, was meant to cover the first two incidents, the claimant said ‘no’. He said that comment

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was meant to describe the situation during their relationship, and that the three incidents all occurred after they broke up. Instead, the omissions of the first two major incidents of physical assault were attributed to the fact that the claimant was told to be “brief”. I do not find this explanation satisfactory as the claimant had affirmed in writing and orally prior to the hearing that the information in his PIF had been interpreted back to him and that the information was complete, true and accurate. Even if the claimant was instructed to be brief, it makes little sense to include many of the minor details included in the narrative (e.g. threatening telephone calls) but not two of three major assaults. I find the omission of these two significant events seriously undermines the claimant’s credibility.

In describing the final major incident that caused the claimant to finally go to the authorities and ultimately flee Mexico, the claimant stated orally that it occurred near his home on a street named _____ near the corner of _____. In his PIF, the incident is described as taking place on a street named _____ near the corner of _____. When asked to explain the difference, the claimant said that the address in the PIF related to the second major assault (an incident not mentioned in the PIF) and that the PIF was simply incorrect. Once again, I find the claimant’s explanation unsatisfactory, given that he had confirmed that his PIF was accurate. Once again, I find that this undermines the claimant’s credibility.

When asked at the hearing when the final physical assault took place, the claimant repeatedly stated that it occurred mid-_____ 2006. His PIF states that the incident took place on _____ 2006. Once again, the claimant stated that his PIF was incorrect. Once again, I find this explanation to be unsatisfactory given the claimant’s affirmations of accuracy, especially since the date given in the PIF is so definite. Again, I find that this undermines the claimant’s credibility.

When asked what injuries he suffered during this final incident, the claimant stated orally that he was beaten about the head and upper body and that he sustained a cut lip, a swollen face and a serious eye injury that caused some form of discharge. After going home, the claimant’s mother brought him via private taxi to the hospital for treatment. In his PIF, the only injury mentioned was that he was beaten unconscious and that he woke up when someone called the Red Cross. The claimant was unable to explain why the two accounts contained such different information. Once again, I find that this undermines the claimant’s credibility.

The claimant stated that he went to the authorities (orally stated as the Public Ministry and in the PIF as the police authorities) to report this final assault. In oral testimony, he stated that the receiving police officer referred to the assault as a “faggot fight”. In the PIF, it merely states that the claimant made a report and there is no mention of any derogatory comments on the part of the authorities. When asked why he did not mention this comment, which would seem to indicate that the authorities would take his complaint less seriously, the claimant only responded that he had at least mentioned that he had

made the report. I do not find this explains the omission and once again, I find that this undermines the claimant's credibility.

As pointed out by the Refugee Protection Officer (RPO), the claimant stated orally that he had lived with his ex-partner from 2005 through 2006. In his PIF,³ and in his Record of Examination,⁴ the claimant stated that he had only lived with his parents for the last 10 years. When asked to explain this discrepancy, the claimant stated that he had continued to use his parents' address for mailing purposes just in case documents sent to him might get lost. I do not find this explanation satisfactory as the claimant allegedly moved in with his ex-partner when they were on good terms. In fact, the claimant has not provided any documents showing that he lived with his ex-partner, or any other documents in support of his claim, such as medical documents or a police report. The claimant stated that he had some prescriptions relating to his eye injury and a copy of the police report at his parent's house in Mexico. Despite being able to request that they be sent to him, the claimant stated that he had never asked for them. While claimants are not required to document all aspects of their claim, I find that the absolute lack of what should be reasonably available documents, particularly with respect to an alleged relationship of three years and the inconsistency regarding where the claimant was living, further undermines the claimant's credibility.

Taking into account all of the major credibility concerns going to central areas of the claim, I do not believe that the events that what the claimant alleged happened to him, actually happened. I do not believe that there is a serious possibility that the claimant faces persecution at the hands of an ex-partner.

State Protection

While never mentioned in the PIF, the claimant stated orally that as a gay male he was subjected to discrimination by the authorities and society in general. However, even based on this residual profile as a gay man, the claim still fails as the claimant has failed to rebut the presumption of state protection being available to him, should he experience any difficulties based on his sexual orientation. The claimant lived in the F.D. since birth. The independent

documentary evidence⁵ indicates that there have been substantial political and legal gains for

sexual minorities, particularly at the federal level and in major cities, such as the F.D. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the F.D. Penal Code. One of the co-sponsors of the legislation, lesbian Congresswoman Patria Jimenez, stated that “with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework”.⁶ In September 1999, the Legislative Assembly of the FD passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the F.D. has been relatively diligent in enforcing its anti-discrimination statute.⁷ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.⁸

Participation by homosexuals is now widely accepted in at least two of Mexico’s three principal political parties.⁹

A law allowing same-sex unions in the F.D became effective March 16, 2007.¹⁰ Conjugal prison visits are now allowed for same sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the F.D.¹¹ The National Council Against Discrimination (CONAPRED) has an office in the F.D. CONAPRED is

charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file

complaints of discrimination with CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.¹² Victims of discrimination can also contact their state Human Rights Commission.¹³ Some concerns have been voiced however, about the effectiveness of the Human Rights Commission.¹⁴ This is not to say that the situation for gay men in the F.D. is perfect. For example, the Citizens' Commission Against Homophobic Hate Crimes alleged there were 332 murders in Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁵ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

I find that the claimant has provided insufficient evidence to rebut the presumption of state protection in the F.D. so the claim pursuant to section 96 of the *IRPA* fails. As I find the claimant has not rebutted the presumption of state protection in the F.D., the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

CONCLUSION

For all these reasons, the Refugee Protection Division, therefore, rejects the claim.

(signed)

“David McBean”

David McBean

July 7, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit C-1, Personal Information Form (PIF).
- 3 Exhibit C-1, question 11.
- 4 Exhibit R-2, Citizenship and Immigration (CIC) Etobicoke In-person, Record of Examination, p. 5 of 6.
- 5 Exhibit R-1, *National Documentation Package*, March 19, 2008, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute, December 2003.
- 6 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 7 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute
- 8 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

- 9 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 10 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 11 Exhibit R-1, item 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.
- 12 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute
- 13 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

Exhibit R-1, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, Women Victims of Violence and Victims of Discrimination Based on Sexual Orientation, section 5.1, "Situation and legislative framework," *Immigration and Refugee Board (IRB)*, February 2007.
- 14 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 15 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.

RPD File No. / N° de dossier de la SPR: TA7-08664



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-09246

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 4, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	July 7, 2008	Date de la
Panel	David McBean]
Counsel for the Claimant(s)	Jonathan Fedder Barrister and Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant alleges that he is gay. He became involved with a man whose father is a After controversy erupted over the in a nightclub, the claimant was attacked and threatened by henchmen of the family. The claimant then fled to Canada.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or that he would personally be subjected on a balance of probabilities to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

IDENTITY

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport2 was on file. The claimant's sexual orientation as a gay male was provisionally accepted at the beginning of the hearing on the condition that no major credibility issues would arise.

ISSUES

The determinative issues are credibility and internal flight alternative (IFA).

CREDIBILITY

The claimant has had a number of opportunities to describe why he fears returning to Mexico. The first opportunity came when the claimant made his claim at the Etobicoke Immigration office, where the claimant submitted a form that he had filled out and the Immigration Officer made some notes of his conversation with the claimant.3 The second opportunity came in the claimant's first Personal Information Form4 (PIF) narrative which was submitted at the time the claimant filed the PIF. The third opportunity came in the second PIF narrative5 which was prepared just days prior to the hearing. The fourth and final opportunity came during the claimant's oral testimony.

As pointed out at the hearing, significant details changed from one version of the story to another. There were significant differences with respect to how the major players interacted with each

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other, the rationale for the claimant's fear and even the name of the claimant's ex-boyfriend/agent of persecution. In the "Schedule 1 Background Information"⁶ that the claimant signed on September 25, 2007, the claimant stated that he feared returning to Mexico "Because I'm gay, and the gay people don't be accepted" [sic] and that he specifically feared "Police & Society". In the Immigration Officer's typewritten notes of the "Record of Examination", the claimant stated that he was afraid of his unnamed ex-boyfriend's father who was a [redacted]. When the father of his ex-boyfriend found out that his son and the claimant were gay, he sent his men to assault the claimant and threaten him with further harm if he did not stay away.

A somewhat different story was contained in the first PIF narrative.⁷ Here, the claimant stated that he was afraid because he observed the father of his ex-boyfriend, [redacted] (" [redacted]"), at a club. After a confrontation over the [redacted], [redacted] father sent his [redacted] to harm and threaten the claimant.

In the second PIF narrative⁸ the story changed again. The claimant stated that it was actually his ex-boyfriend, [redacted] (" [redacted]") whom he observed [redacted]. After a confrontation with [redacted] over the [redacted], it was [redacted] who sent his own [redacted] to harm and threaten the claimant.

When asked to explain why two separate PIF narratives had been prepared, the claimant stated that he had originally been advised to just cover the basics and had felt pressured in preparing the first narrative due to time constraints. While this might be a valid explanation with respect to the length of the narratives and the level of detail contained therein, it does not explain why allegations central to the claim changed dramatically.

With two very different names already given for the claimant's ex-boyfriend (" [redacted]" and " [redacted]"), I asked the claimant to state the name of his ex-lover that had caused him so many problems. He answered on two separate occasions, " [redacted]". When asked why in the first narrative he gave the name " [redacted]", the claimant admitted that he had knowingly lied in the first narrative, despite signing an attestation to the narrative's truthfulness. The claimant stated that he also did not tell the truth with respect to

whom he had witnessed [redacted]. It was not the father of his ex-boyfriend as stated in his first narrative, but his ex-boyfriend as per his second narrative. The claimant said that he had lied about the name of the alleged agent of persecution and the agent's motivation for persecuting the claimant because he was afraid that his ex-boyfriend would somehow find out about his testimony. Given the *in camera* nature of refugee proceedings, I find this explanation totally unsatisfactory and that these admitted lies seriously undermine the claimant's credibility.

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The claimant was provided with a third opportunity to orally state the name of his ex-boyfriend and for the third time he answered “_____”. When I pointed out that throughout the claimant’s second narrative his ex-boyfriend is referred to as “_____”, the claimant then stated that he had been untruthful throughout his oral testimony and that his boyfriend’s real name was “_____”. The claimant explained that he had repeatedly been untruthful in his oral testimony once again out of fear that his ex-boyfriend would somehow hear of the testimony and that he was generally experiencing stress. Once again, I find this explanation totally unsatisfactory given the fact that refugee proceedings are *in camera*, particularly since the claimant was represented by a lawyer who would have been able to explain what that meant. At the beginning of the hearing, the claimant made a solemn affirmation that his testimony would be truthful and affirmed that the contents of his second narrative were truthful. By lying both orally and in writing in the face of these affirmations to be truthful, I find the claimant’s credibility to be totally undermined.

By the claimant’s own admission, he lied repeatedly about central elements of the claim, both orally and in writing, despite repeatedly promising to be truthful. Counsel for the claimant submitted that the claimant should be given credit for not “actively” attempting to deceive the system. In counsel’s opinion, if that was the case, the claimant would not have waited until after his visitor’s visa (CVV) expired before he made a refugee claim but would instead have made a claim immediately upon arrival in Canada, and would have testified in a consistent manner throughout the process. Rather than being a credit to the claimant, I find that the claimant’s numerous contradictions, inconsistencies and admitted lies simply mean that the claimant is not very good at lying. By the time the claimant gave the fourth different name for his ex-boyfriend, it appeared that he was making his evidence up as he went along. I do not believe that the claimant is in danger of persecution from an ex-boyfriend by any name (“_____”, “_____”, “_____” or “_____”) for any reason (father of ex-boyfriend disapproves of gay relationship, father of ex-boyfriend confronted while _____ or ex-boyfriend confronted while _____) as the ex-boyfriend simply does not exist. I find the claimant was so lacking in credibility that I do not believe any of the claimant’s evidence with respect to the alleged persecution and therefore reject the claim. As I find the basis for the claim not to be credible, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.⁹

INTERNAL FLIGHT ALTERNATIVE (IFA)

Even if my analysis with respect to credibility is incorrect and the claimant may face harassment in _____ from his ex-boyfriend, _____ (or whichever other name) or simply as a gay man, the claim still fails as the claimant has an IFA in the Federal District of Mexico City (FD). In *Rasaratnam*,¹⁰ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
 - ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.
- s.19(1)**

With respect to the first prong of the test, the claimant lived with his parents in . for at least a month after the last incident and experienced no problems. The claimant stated that he actually attempted to contact by telephone during this period and other than someone calling back to tell the claimant not to call again, nothing happened, even though the events were fresh in everyone's mind. It is now one and a half years later so would have even less motivation to harass him now, even if he could locate him. It should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order

and/or written permission from the public prosecutor's office.¹¹ There have been no reports of aggressors tracking down homosexuals through the use of government databases.¹² While counsel did provide some computer printouts from what appears to be a website known as

"Infonavit", it is unclear what information is exactly required to use the site and what data is potentially available with respect to locating someone.

I find that, on a balance of probabilities, that with the passage of time and the difficulties in tracking the claimant, there is no serious possibility of the claimant being persecuted by his ex-boyfriend in the FD.

With respect to the claimant being gay, the independent documentary evidence¹³ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the federal level and in major cities, such as the FD. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the FD Penal Code. One of the co-sponsors of the legislation, lesbian Congresswoman Patria Jimenez, stated that "with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework."¹⁴ In September 1999, the Legislative Assembly of the FD passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the FD has been relatively diligent in enforcing its anti-discrimination statute.¹⁵ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parade, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.¹⁶

Participation by homosexuals is now widely accepted in at least two of Mexico's three principal political parties.¹⁷ A law allowing same-sex unions in the FD became effective March 16, 2007.¹⁸ Conjugal prison visits are now allowed for same sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the FD.¹⁹ The National Council Against Discrimination (CONAPRED) has an office in the FD. CONAPRED is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination with CONAPRED. Allegations of discrimination committed by public officers require

mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.²⁰ Victims of discrimination can also contact their state Human Rights Commission.²¹ Some concerns have been voiced however, about the effectiveness of the Human Rights Commission.²² This is not to say that the situation for gay men in the FD is perfect. For example, the Citizen's Commission Against Homophobic Hate Crimes alleged there were 332 murders in Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology, given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.²³ Also, while every murder is regrettable, there is no indication if this

murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

There is also a report by the Metropolitan Autonomous University that eleven percent of homosexual men, bisexuals and lesbians in Mexico City had reported being threatened with extortion and detention by police officers. However, these results appear to have been obtained from surveying a number of individuals, so there is no way of verifying the accuracy of the answers. There is also no indication as to whether the sample of individuals used is representative of the experiences of gay men, bisexuals and lesbians in general. There is also no indication as to when the threats took place, whether recently or years ago. It should be noted that the first line of the IRB document states that “Reports of police officers sexually abusing homosexuals were scarce...”²⁴

Counsel in his submissions, referred to a recent study which found that thirty-two percent of gay men in Mexico reported being assaulted.²⁵ Upon closer reading, it appears that the thirty-two percent figure refers to assaults that have occurred in the course of the subjects’ adult lives, so it is unclear where, or more importantly, when these assaults took place. Given that this survey involved self-reports by the subjects, there is no way to objectively verify the data produced. Also, it is unclear if the sample of subjects is representative of the general population of gay men or how this compares to the general level of violence in Mexican society.

I find that, on a balance of probabilities, the FD does provide a safe IFA for the claimant.²⁶ The claimant has provided insufficient evidence to rebut the presumption of state protection in the FD. There is no serious possibility that as a gay man he would face persecution or that on a balance of probabilities, the authorities would not protect him in the FD should he face continued harassment based on his experiences in (whatever the actual motivation is for that harassment).

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With respect to the reasonability of the claimant moving to the FD, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.²⁷ When asked if he could relocate to the FD, the claimant did express some concern that the FD is a dangerous place. However, there is nothing in the documentary evidence which would suggest that the crime rate in the FD is beyond what one would expect in a large metropolitan area. More importantly, this is a generalized risk which is excluded under section 97(1) of the *IRPA*.²⁸ The claimant has 17 years of education and several years of work experience. I find that, apart from the general difficulties in starting over one’s life in a new location, it would not be unduly harsh for the claimant to relocate to the FD.

As I find the claimant has a viable IFA in the FD, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

CONCLUSION

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

David McBean

July 7, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, documents received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit R-2, CIC Etobicoke In-Person Refugee Intake - Record of Examination.
- 4 Exhibit C-1, Personal Information Form (PIF).
- 5 Exhibit C-5, PIF amendment.
- 6 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 7 Exhibit C-1, PIF.
- 8 Exhibit C-5, amended PIF.
- 9 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 10 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 11 Exhibit R-1, *National Documentation Package*, January 30, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3, subsection 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.
- 12 Exhibit R-1, item 2.4, *Issue Paper*, section 5, subsection 5.3, “Traceability of Individuals Fleeing

Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.

13 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

14 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

15 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

16 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

17 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

18 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.

19 Exhibit R-1, item 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.

20 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

21 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute; and item 2.4, *Issue Paper*, section 5, subsection 5.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.

22 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

23 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.

24 Exhibit R-1, item 6.4, *Response to Information Request*, number MEX102682.E, January 9, 2008.

25 Exhibit C-2, Table 2.

- 26 The panel notes that a number of RPD decisions finding that homosexuals had a viable IFA in Mexico City have been upheld by the Federal Court: *De La Rosa, Luis Francisco Flores v. M.C.I.* (F.C., no. IMM-1624-07), Phelan, January 23, 2008, 2008 FC 83; *Rosas Carrasco, Jesus Antonio v. M.C.I.* (F.C. No. IMM-3283-06), Martineau, April 12, 2007, 2007 F.C. 382; *Herrera, Oscar Marquez v. M.C.I.* (F.C., no. IMM-1499-06), Shore, October 26, 2006, 2006 FC 1272.
- 27 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.
- 28 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	October 7, 2008 December 9, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	May 6, 2009	Date de la décision
Panel	David McBean M. Freilich Louise Paquette-Neville	
Counsel for the Claimant(s)	Hilary Evans Cameron Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer

N. Cassano

Agent(e) des tr

**Designated
Representative(s)**

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant lived in , Veracruz, and worked at a subsidiary of . In his most recent position, the claimant was responsible for . In 2007, he attempted to collect a debt of 40,000 pesos (approximately \$4,000 Canadian) from , who was the Mrs. refused to pay and stated that she knew influential people and that her son was a police officer. The claimant received anonymous threatening calls. On , the claimant delivered a legal warning letter to Mrs. who, in turn, threatened the claimant. On , the claimant received an anonymous death-threat via telephone but was unsure to which debtor the call was related. The same day, the claimant filed a complaint with the Public Ministry in . The claimant followed up this complaint by phone with the police on and and re-attended in person on only to be told that the police lacked the equipment to trace the threatening calls. The claimant was dissatisfied with the police not being able to solve the case and stated that he wished to file a complaint with the state's Human Right Commission. The police gave him the address of the Human Rights Commission. The claimant consulted a lawyer who said the police were supposed to report to the claimant within 48 hours of his complaint and that this had not properly been done. The lawyer said that the claimant could go to the Human Rights Commission, he doubted that they would be able to assist and that there was little that he could do himself. After filing a complaint with the Human Rights Commission, he was told by telephone that the Human Rights Commission could not do anything as there was no evidence that the police were "at fault". In early 2007, the claimant asked a friend in school who volunteered at the , to investigate Mrs. found out that Mrs. had been hospitalized due to and that her son, , was a Federal Judicial Police Officer. warned the claimant to be careful. Under pressure from his superiors, the claimant persisted in his attempts to collect the debt and the threats continued.

Unbeknownst to the claimant at the time, Mrs. passed away in early 2007. At 2:30 a.m. on , the claimant was leaving a birthday celebration when he was forced into a car. The men inside began to beat and threaten the claimant. As the car slowed for a red light, the claimant jumped out and ran away, eventually escaping in a taxi. There were threatening calls to the claimant's house and the claimant's son, saw a car following him. The claimant spoke to and she said that Mrs. had died just days before the claimant had been assaulted. The claimant moved his family to his wife's parents' home in , approximately 60 kilometres away on . The claimant however, returned to on to continue working. His boss refused to ride in the same car with the claimant and told him to stop attempting to collect Mrs. debt, however the company's

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head office refused the claimant's request for a transfer. Due to fear the claimant never reported anything further to the authorities. The claimant fled to Canada on [redacted], 2007, and made a refugee claim on [redacted], 2007. While in [redacted], the claimant's family received threatening phone calls. The claimant's wife and two sons came to Canada on [redacted], 2007, and made refugee claims upon arrival. On [redacted], 2008, the claimant's wife and sons withdrew their refugee claims and returned to Mexico as the claimant's mother-in-law was seriously ill. The hearing of this claim started on October 7, 2008, but was adjourned after several hours of testimony due to a lack of time. The claimant's wife attempted to return to Canada in early [redacted] 2008 but was detained by Canadian Immigration authorities as she had no status in Canada, having withdrawn her refugee claim. She testified as a witness via teleconference from the Immigration Holding Centre in Etobicoke during the resumption of the hearing on December 9, 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant fears a personal criminal vendetta. While the alleged agent of persecution is a police officer, his actions are purely personal and criminal. Opposing his actions would not be perceived as challenging the state. As such, his claim pursuant to section 96 of the *IRPA* fails for lack of nexus to one of the Convention Refugee grounds.

Credibility

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It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, the claimant allegedly became the target of a personal vendetta as a result of his work as a . While claimants are not required to document every aspect of their claim, if documentation is reasonably available, it should be presented. One would think that documenting the nature of one's employment would be a fairly simple task, but here it was not and doubts persisted throughout the hearing. There were several documents, including the claimant's c.v. which indicated his job title as " ". When the claimant was asked what that meant he stated that he had various duties. In addition to (he also did () on Saturdays. As noted at the hearing, it seemed odd that if the claimant's prime duty is and a minor duty is : that his position would be titled " ". The claimant stated that the title could be interpreted in many ways although he did not know the origin of the title. He also noted that multinational corporations define multiple duties in various ways. While the claimant also provided a description of various , contrary to counsels' submissions, I found that there was nothing remarkable or telling about the claimant's testimony as to "what one does as a " that a layperson could not give. While counsels for the claimant submitted that the claimant's curriculum vitae4 stated that he was a , it does not. It simply lists his title as " " (i.e.) along with the related company and contact information. Counsels for the claimant also submitted that the letter from should be seen as supporting the claimant's credibility regarding his profession, however for reasons cited below, there are concerns with respect to that letter. Regardless of these other concerns, by far the most telling document was from the Public Ministry5 wherein the claimant detailed the anonymous death-threat made against him. As noted at the hearing, while the name of the claimant's employer is given, there is no mention that he was worked in the and that might be a motive for the death-threat, given that attempting to would likely make people angry. The claimant stated that he merely answered the questions that were posed to him. When it was noted that it was actually he who was telling the story to the Public Ministry and that it would make sense to tell them that angering people in his alleged profession of was the likely motive for the death-threat, the claimant stated that he assumed the Public Ministry official would assume he

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worked in [redacted] by knowing where he worked, that the interviewing official saw him in uniform and the fact that other coworkers had made similar complaints. I do not find the claimant's explanations satisfactory. The claimant's own evidence is that he worked for a [redacted] and that there were a variety of jobs at the company. In fact, the claimant's previous position was the much happier one of [redacted]. Even if the fact that the claimant was [redacted] was significant, only the interviewing official would have been able to see it. Anyone attempting to investigate the complaint would not have been aware of the claimant's attire at the time that he made his complaint, which was then just against an anonymous source. There were a number of other jobs at the company so I do not see how one can make the leap from knowing the name of the company to assuming that at the relevant time the claimant worked as a [redacted]. Despite the anonymity of the threat, the motive for the threat was obviously the claimant's job. The fact that his complaint to the authorities omits the fact that he worked as a [redacted] makes no sense. Given the whole motivation for the plot against the claimant was his job as a [redacted], I find that this general lack of documentation with respect to his duties, and most importantly, this key omission in this key document to undermine the claimant's credibility. Even if the Public Ministry document was found to be authentic, given its self-serving nature and vague contents, coupled with the credibility concerns here and below, I give it little weight.

In the claimant's PIF, the claimant stated that all his problems began in [redacted] 2007, when he began attempting to collect Mrs. [redacted] debt. In oral testimony, the claimant stated that he received threatening calls for two weeks prior to the death threat on [redacted]. However, as noted at the hearing, the document from the Public Ministry⁶ stated that he had been receiving threats for approximately one month prior to [redacted], which would mean sometime in [redacted]. The claimant stated orally that the calls had been anonymous and he had not known their origin and that he had been receiving threats since the end of [redacted]. I do not find the claimant's explanations satisfactory. The claimant was quite definite both orally and in writing about when the threats started and the duration of time that he was receiving those threats. It was only after he was confronted with the Public Ministry document did both measures suddenly change. If the claimant's attempts to [redacted] and the accompanying threats started in [redacted] and lasted a month, I would not have expected the claimant to state in his PIF and confirm orally in such a definite fashion, conflicting information. I find that these discrepancies with respect to the start and the duration of the threats to further undermine the claimant's credibility.

The claimant was asked what the reference to "cars following him" meant in the Record of Examination⁷ filled out with the Immigration Officer at the time that the claimant made his refugee claim. The claimant stated that referred to the time period between the death-threat and the kidnapping attempt made against him. He stated that cars were driving and lurking around his workplace. When it was noted that this information was not contained in his PIF and the claimant stated that perhaps the comments related to his family's experience with cars, the claimant was reminded that he had already

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testified that he had his own personal experiences with cars lurking around and that information was not in the PIF. The claimant then stated that he had taken that information for granted, that it was not important and he believed that his original counsel was the expert as to what was needed to be included in the PIF. I do not find the claimant's explanations satisfactory. The PIF narrative is a very detailed six pages. Numerous amendments were made on a host of other points. Given the huge amount of detail included in the narrative as amended and the fact that the claimant takes the time to mention his family's experience with cars lurking about, it makes no sense for the claimant to omit all mention of vehicles conducting surveillance at his workplace in the weeks between the death-threat and the kidnapping attempt. This is particularly so since this changed the whole tenor of the claim. In the PIF, it appeared there was a threat and then nothing until after mother dies and then a grief-stricken sends thugs to exact revenge. In the oral version, the claimant is stalked from the time of the threat, even before mother dies. This would make it far more likely

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that [redacted] would remain interested in harming the claimant, given that his crime did not arise in the heat of the moment. I find that this omission further undermines the claimant's credibility.

The claimant's PIF states that the claimant was kidnapped in the early morning hours of [redacted], which was the claimant's birthday. During testimony at the first sitting of the hearing, the claimant confirmed the date of his kidnapping as [redacted]. However in testimony during the second sitting of the hearing, both the claimant and his spouse gave the time of his kidnapping as the early morning hours of [redacted]. When the discrepancy was pointed out, the claimant said that he did not notice the error when his original PIF had been translated back to him. However, he stated that he did notice when the PIF was extensively amended with his current counsels. He said that when he noted the error to his counsels, he was told that no amendment was required. In submissions, counsels for the claimant confirmed that it was, in fact, their position that no amendment was required as many people would refer to the date from the day before when referring to events in the early morning hours of the next day. I am rather puzzled as to why counsels for the claimant would refuse to amend an error with respect to the key date in the claim. Many other amendments were made on numerous points. A difference of a day is not usually an issue but here the date in question was explicitly tied to the claimant's birthday. In my opinion, it made perfect sense as the PIF was written for the claimant to be out celebrating his birthday with his coworkers the night before the actual birthday and then perhaps to celebrate his birthday with family on the actual day and night of his birthday. However, since counsels for the claimant took responsibility for not amending the error, I draw no negative inference on the point.

Two letters⁸ were presented from the claimant's friend [redacted]. As noted at the hearing, it seemed odd that a lawyer with courthouse experience would refer to herself as a "witness" even though she actually witnessed nothing, although this may simply be a language/translation issue. However, it also seemed odd that someone who was allegedly a lawyer would not identify herself as such. It also seemed odd that she would not present her letters in the form of an affidavit or at least have them notarized. While she did state in her second letter that the letters were not notarized due to safety concerns, it is difficult to ascertain the connection. Refugee

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Protection Division proceedings are *in camera* so the letters should not leak out. Even if they did, I do not see how not notarizing them somehow prevents revenge being extracted for the statements having been made. Most telling are the contents of the letters. In the PIF, [redacted] warns the claimant to be careful prior to the kidnapping attempt, given the background of the people with whom he is dealing. However, in her first letter she states that she did not warn the claimant until after he told her of the kidnapping attempt that had already taken place. When this was put to the claimant he stated that he had “lived” these events and that he thought that she was referring to two different things and that her letters were not intended as a recording of the events in question. I do not find the claimant’s explanations satisfactory. [redacted] appeared to be offering up her recollection of events and they differed from the claimant’s. One would think one would remember whether the need to warn someone of their potential doom was due to either the simple background of people with whom someone is dealing or after hearing about a very specific kidnapping attempt from which the claimant just managed to escape, coupled with the background of the people involved. I find that the oddities about the letters and far more importantly, the key error in chronology to not only call into question the authenticity of the claimant’s documents but also further undermines the claimant’s credibility.

The claimant testified that in a call to his spouse in [redacted], she was told that revenge will be taken against a family member so the claimant could feel the same pain as the caller was feeling. From this information, the claimant inferred that [redacted] was the one persecuting him since he had just lost his mother. However, when the claimant’s spouse testified as a witness, she was read back the portions of her own narrative⁹ that dealt with the calls that she received in [redacted]. The contents of the calls mentioned in her narrative are quite specific and do not include the information that the claimant quoted. The claimant’s spouse was asked if she had received other calls and she said that she had not. When she was asked if she had told the claimant that the caller threatened that the claimant would feel the same pain as the claimant she stated that he had said that as well, quickly, just before hanging up. When asked why she had not mentioned this earlier, she stated that she had simply forgotten. I do not find the witness’ explanation satisfactory. To say that the caller said this as he was hanging up explains nothing. This information was crucial for the claimant in determining the identity of his agent of

persecution. One would think that such a comment would have struck terror into the heart of the claimant's spouse in that it would be someone close to the claimant, which one would think would either be her or her sons, who was going to be targeted for harm. Despite all of this, the claimant's spouse never mentioned this comment in her detailed narrative even though she had affirmed in writing at the time that it not only had been interpreted back to her and that it was complete and accurate and then orally she "forgot" to mention it until the quote was put specifically to her. To omit all mention of this crucial threat when other far mundane threats are actually quoted, makes absolutely no sense at all. I find that this omission not only undermines the credibility of the claimant's spouse as a witness, but since her story is inextricably linked with the claimant's, it further undermines his credibility as well.

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There were a couple of letters from the claimant's former employer. One in the bundle of documents¹⁰ received from Immigration from the time that the claimants made their claims was from his Human Resources department dated _____, 2007 that stated his term of employment finished on the same day. However the claimant also presented a letter from his former supervisor stating that he was still employed and on paid leave effective _____, 2007.¹¹ When asked to explain the difference, the claimant stated that the letter from the supervisor was actually false, that he had not asked his supervisor to write it and that his supervisor simply gave it to him for unknown reasons, perhaps to aid in finding employment. The claimant also stated that while he had asked for a letter from his employer detailing the problems that caused him to leave he stated that his request had been refused out of fear. When asked why such a request and subsequent refusal were not mentioned in the PIF, the claimant stated that he did not feel it was important what his supervisor felt and therefore did not include mention of the refusal in the PIF. I do not find the claimant's explanations satisfactory. I do not see how falsely stating that the claimant is on paid leave when, in fact, he had already resigned would somehow help him find employment. I also fail to see why the claimant's supervisor would falsify a letter "out of the blue", particularly since one would think that forging employment letters would get him in trouble with his superiors. Also, in the very detailed PIF, the claimant does, in fact, make reference to the fears of others, in that he specifically states that his boss stopped riding to work with him out of fear. If his supervisor refused to write a letter corroborating the claimant's version of events as well, I would have expected this refusal to have also been mentioned. I find that these discrepancies not only further call into question the authenticity of the claimant's documents, but also further undermine his credibility as well.

The claimant allegedly jumped out of the vehicle in which he was being held captive and sustained injuries as a result. One injury was a cut on his elbow and he still has a scar. However, as noted at the hearing, in the Record of Examination¹² prepared with the Immigration Officer, while specific scars are noted, this one is not, even though it was allegedly obtained through the actions of the claimant's persecutors. When asked why he would not have mentioned the scar that he obtained when fleeing his captors, the claimant initially attempted to state that there was no interpreter present during that portion

of the interview. When it was pointed out that the preceding page notes the presence of an interpreter and the fact that the claimant understood the interpreter, the claimant stated that he had not been in Canada long. I do not find the claimant's explanations satisfactory. Counsels' submissions may be correct in that the claimant "misremembered" the interview in question, as to whether it was his separate medical clearance exam or the interview with the Immigration Officer. The Record of Examination reads quite clearly that there was an interpreter present at the time that the claimant was questioned about scars, so there should have been no confusion with respect to language. While I also do agree with counsels' submission that the purpose of that interview was to give an overview of the claimant's situation, I cannot agree that a negative inference should not be drawn in this situation. The claimant was telling an Immigration Officer that he feared for his life at the hands of a very specific agent of persecution. The claimant had allegedly had suffered scarring by jumping out a moving vehicle after being kidnapped by men sent by the man he feared. I would have expected that when asked about scars, the claimant would have immediately mentioned the scarring that he had suffered at the hands of his persecutors and said something to the effect of "Look what they did" rather than only describe the mundane scars that he actually mentioned and omit mention of the one gained in the kidnapping attempt. I find that this omission further undermines the claimant's credibility.

The notes of the Immigration Officer are fairly detailed yet while they do say that the claimant was threatened and beaten, it does not mention that he was kidnapped. When asked

why the notes do not mention that he was kidnapped, the claimant said he had been instructed to only answer the questions posed to him. I do not find the claimant's explanation satisfactory. As mentioned previously, there was an interpreter present in person whom the claimant stated that he understood. The Immigration Officer's notes contain a great amount of detail that could only come from the claimant and the claimant was asked if there was anything that he wanted to add. Had the claimant been kidnapped in a vehicle and on his way to his potential doom had jumped out of the moving vehicle, injuring himself in the process, I would have expected him to make some specific mention of this happening. I find the fact that he omitted to do so to further undermine the claimant's credibility.

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The claimant's mother-in-law asked to see her daughter and grandsons when she was seriously ill in Mexico. While it may be partially understandable for the claimant's wife to withdraw her refugee claim and return to Mexico when her mother was seriously ill, it seems very strange for the claimant's sons to have gone as well, even if they were close to their grandmother. [redacted] had quite specifically threatened that he was going to make the claimant suffer in the same way that he did, that is, kill a close family member of the claimant. While the claimant and his wife testified that their sons are attending [redacted] schools, that does nothing to explain their actions. The claimant's sons are being driven to and from their respective schools by Ms. [redacted]. Given that [redacted] is allegedly able to locate the claimant and his family in any city and he specifically made a threat that it would be a close family member of the claimant that would be harmed, and one of the claimant's sons had previously seen someone following him prior to the claimant leaving Mexico, it would not appear that difficult for [redacted] to carry out his threat, particularly on the way to or from school. If [redacted] were truly bent on murdering a member of the claimant's close family, I cannot see how having someone else in the car is going to afford any level of protection. While counsels for the claimant have submitted that one cannot say that all claimants who withdraw their claims and return to their country of origin demonstrate a lack of subjective fear, this is not one of those situations. For the claimant's sons in particular, one an adult at the time, to withdraw their claims and return to Mexico and rely on the fact that someone drives them to school to protect them from threats that appear to be specifically directed against them, coupled with the history of at least one of them already being followed makes no sense at all. The claimant's family are the people most similarly situated to him and their situations are inextricably the same as the claimant's, if not worse, given the specific nature of the alleged threat. I find that this behaviour, particularly with respect to the sons, demonstrates not only a lack of subjective fear, but also further undermines the claimant's credibility.

There were instances where the claimant appeared to be embellishing his testimony. For example, when the claimant was asked why he could not reasonably relocate to the Federal District, he stated that there was a policy in the [redacted] in Mexico that no one over the age of 28-30 would be hired and that the claimant was 47. When asked if this meant that even with the claimant's expertise in the [redacted] he was no longer employable, the claimant stated that this was the policy of all [redacted]

While I am mindful of counsels' submissions that age discrimination can occur and that this is likely to what the claimant was referring, I disagree. Had the claimant simply stated that it would be more difficult to find a job because of his age, there would not have been a problem. However, that is simply not what he said. Instead, he attempted to explain that there was a firm policy in place that prevented him from finding work. The claimant was clearly embellishing his evidence and I find that this embellishment further undermines the claimant's credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such the claim fails.

CONCLUSION

Since the claimant fears a personal criminal vendetta, the claim pursuant to section 96 of the *IRPA* fails for lack of nexus to the Convention definition. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

David McBean

Concurred in by

“M. Freilich”

M. Freilich

“Louise Paquette-Neville”

Concurred in by

Louise Paquette-Neville

May 6, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, PIF.
- 4 Exhibit R-2.
- 5 Exhibit C-5, claimant’s personal documents.
- 6 Exhibit C-5, claimant’s personal documents.

7 Exhibit R-2.

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8 Exhibit C-9, copies of letters written by _____ and dated _____, 2008.

9 Exhibit C-2.

10 Exhibit R-2.

11 Exhibit C-5, claimant's personal documents.

12 Exhibit R-2.

RPD File No. / N° de dossier de la SPR : TA7-09410



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-09520

TA7-09587

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	November 14, 2008 April 4, 2008	Date(s) de l'a
Place of Hearing	Toronto, Ontario	Lieu de l'a
Date of Decision	January 28, 2009	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Pamila Bhardwaj Barrister & Solicitor	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	S. Indrasigamany	Agent(e) des tr

000347

**Designated
Representative(s)**

N/A

**Représent
désigné**

Counsel for the Minister

N/A

Conseil du

s.19(1)

(the male claimant) and his wife,

(the female claimant), both citizens of Mexico, claim refugee

protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act.1***ALLEGATIONS**

The female claimant began dating ("T") in high school in . . . was aggressive and possessive and after they went to different universities, the female claimant decided to end the relationship. The female claimant met the male claimant in 2005 and they became engaged in 2005. found out about the engagement and attempted to woo the female claimant back. In 2005, there was a fight between friends of the claimants and and his outside a disco. The male claimant began to receive anonymous threatening letters. While the claimants attempted to report the threats to the authorities, they were told that was a respected member of society and that they had no actual evidence that he had sent the threats. In 2005, the male claimant was driving with friends when another vehicle cut them off. In the ensuing confrontation, the male claimant's friend, was shot to death. The assailants warned the male claimant to stay away from the female claimant. The murderer was a to the then and family was offered money for their silence. The female claimant learned she was pregnant in 2006. In 2006, she was walking with the male claimant in downtown when they saw car driving towards them. The male claimant was struck and his wrist was injured, requiring surgery. The female claimant suffered a miscarriage. When they attempted to report to the authorities again, they were laughed at as was powerful. continued to threaten the female claimant and in 2006, forced her into his car while she waited for a bus. drove the female claimant to an isolated area. He asked her to leave the male claimant and showed her a gun that he said he would use to kill him. After promising to comply with his demands, the female claimant was allowed to return home. When she attempted to report to the authorities, they told her to stop fabricating evidence. In 2006, the male claimant was confronted by and members of the Judicial Police. was threatened, assaulted and his car was vandalized. On , 2006, the male claimant came to Canada but since he was only allowed to stay for ten days, he returned to Mexico on , 2006. When the male claimant attempted to return to work, he was told that he was not welcome as drugs had been found in his company vehicle. The male claimant believed that had planted the drugs and the owner of the company was afraid . While the male claimant was able to find another job, he was fired from there as well in 2007, as drugs were found in his office. Soon after, the male claimant was assaulted by and two accomplices and was once again taken to the hospital. Not long after, went to the male claimant and said that if he wanted to live, he had to sell drugs on his behalf. In

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2007, the female claimant was once again kidnapped by . This time he attempted to rape her and held her for several days before being released. While her parents reported her disappearance to the authorities, they were warned that the male claimant could be killed just as . was. The claimants married secretly on . , 2007 and left for her brother's place in Mexico City the next day. On the day that they arrived, . and . entered her brother's house. Her brother managed to convince . that they were not there. On . , 2007, the claimants came to Canada and made refugee claims on . , 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would, on a balance of probabilities, personally be subjected to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this conclusion, I have considered the Chairperson's Guidelines with respect to Women Refugee Claimants Fearing Gender-Related Persecution.² My reasons are as follows.

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing, as copies of their Mexican passports were on file.³

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when their oral testimony was compared internally and to the Personal Information Forms⁴ (PIF) and the other documents available. For example, the female claimant initially said that her relationship with . started in 2005 or perhaps 2004. When it was pointed out that this would have put her in university rather than high school as stated in the PIF, the female claimant then stated that the relationship began in 2001. After being told that the PIF stated the relationship began in 2002, she stated that they were friends before they began their romantic relationship, which did not start until 2002 or 2003. I do not find these explanations satisfactory. The female claimant gave every year from 2001 through 2005 as the year that her romantic relationship began with . While I would not expect someone to necessarily remember down to the day when a former relationship started, it makes no sense at all for the female claimant to have given five separate potential years, all of them fairly recent, for the year that the relationship started. At the time, it appeared that she was just guessing at random as to when she was in a relationship with . I find that this inability to recall the year when her relationship with the agent of persecution began to undermine the claimants' credibility.

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A letter from a friend⁵ indicated that the male claimant had sustained a wrist injury when [redacted] assaulted him. However, as pointed out at the hearing, the PIF indicated that the male claimant sustained a wrist injury when [redacted] ran him over with a car. When asked why the two descriptions differed, the female claimant stated that her friend was actually referring to a later incident which was not mentioned in the PIF. When asked why this second incident, where the male claimant was beaten and his wrist injured a second time was not included in the PIF, the female claimant stated that she had no proof of the incident and had not attempted to obtain proof like she had of other incidents. I do not find this explanation satisfactory. The instructions for filling out the PIF are quite clear; all significant incidents are to be mentioned and no exception is made for proof or potential proof available. Despite the female claimant allegedly telling her friend about the male claimant being run over by a car, it appears that the friend simply described the incident in a wholly inconsistent fashion. I find that this inconsistency not only casts doubt on the authenticity of the documents presented by the claimant (and definitely not the only point that would cast such doubt as will be seen later) but that it also further undermines the claimants' credibility.

In the PIF, the claimants see [redacted] driving his car in [redacted] 2006. [redacted] "...hit the male claimant with his car" causing the male claimant to go to the hospital for surgery to repair his hand. The female claimant started bleeding at the hospital and had a miscarriage. However, in oral testimony, the female claimant said that she too was struck by the car which was travelling at 40-60 km/h. She was not seriously hurt, went to the hospital without incident, went home to calm down without incident and then began to bleed. She then returned to the hospital where she suffered a miscarriage. While a medical note was provided,⁶ it stated that the female claimant had suffered a spontaneous miscarriage with no cause given. When asked why the accounts seemed to differ noticeably, the female claimant stated she did not know why the medical note would not state the miscarriage was the result of being struck by a car. She did not recall why she had omitted mention of a second trip to the hospital rather than the single visit recorded in the PIF and she said that unlike the male claimant, she was not badly hurt by the car that struck them. I do not find these explanations satisfactory. A spontaneous miscarriage, tragic though it may be, is spontaneous. A miscarriage from being hit by a car is something else. It makes no sense for what the female claimant experienced to be termed a "spontaneous" miscarriage if it was really caused by being struck by a car. It appeared that the never before mentioned second trip to the hospital was created in oral testimony to distance the miscarriage from the incident with the car, so that the miscarriage would be more likely termed spontaneous. Also, if the female claimant was struck as well, it made no sense for the PIF to be written in a way whereby the male claimant is the only one struck by the car, particularly since a miscarriage soon resulted, directly caused or otherwise. I find that these discrepancies with respect to these incidents further undermine the claimants' credibility.

When asked about when she was kidnapped, the female claimant stated that she was kidnapped for three days in [redacted] 2006. However, as noted at the hearing, the PIF states that she was kidnapped

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twice, once when she was released the same day in 2006 and a second time when she was held for several days in 2007. The claimant stated that she had confused the two incidents, as they had occurred two to three years ago. I do not find this explanation satisfactory. As the Tribunal Officer noted in his observations, the female claimant may not have considered the incident where she returned home the same day a “kidnapping”. However, it does not explain why she got the date so wrong. That portion of the hearing took place in 2008, so the alleged kidnapping had occurred less than a year prior to her making the statement and one would think the incident would stick out in the female claimant’s mind, as it was the last significant thing to happen to the female claimant prior to her fleeing. I find that this discrepancy in the date of the kidnapping to further undermine the claimants’ credibility.

In oral testimony, the female claimant stated that the male claimant had been assaulted during the 2005 incident at the disco and sought medical attention as a result. The male claimant confirmed these facts in his testimony. However, as noted at the hearing, the PIF does not mention that the male claimant was assaulted or that he sought medical attention as a result. The male claimant stated that the information in the PIF was simply a brief recount. Since he only sought medical attention and was not required to be hospitalized, he did not mention being assaulted. I do not find this explanation satisfactory. The claimants’ narrative is five pages long and is quite detailed with respect to numerous events. As noted earlier, the instructions for filling out the PIF are quite clear; all incidents are to be included and no exception is made for whether or not hospitalization was required. The PIF actually reads in such a way that it can only be that the male claimant’s friends were assaulted, not him as well. I find that this discrepancy to further undermine the claimants’ credibility.

At the time that the claimants made their refugee claims, they spoke with an Immigration Officer. The Immigration Officer made notes⁷ of their discussion as to why the claimants were making refugee claims. Here the male claimant states that he is afraid of the female claimant’s ex-boyfriend because he wanted the male claimant to sell drugs on his behalf. The male claimant stated that he had been beaten and that had shown the female claimant a gun. As pointed out at the hearing, no mention is made of actual motivation for causing the claimants harm; that he wanted the male claimant out of the way so that he could have the female claimant back for himself. No mention is made of being repeatedly beaten, multiple surgeries, being run over by a car, a miscarriage, a multi-day kidnapping and attempted rape, a friend being murdered in front of the male claimant, etc. When asked why the Immigration Officer’s notes seemed to differ so drastically from the PIF and oral testimony, the male claimant stated that the points mentioned in the Immigration Officer’s notes were also mentioned in the PIF and that he had been told to be brief. I do not find this explanation satisfactory. The Immigration Officer’s notes are quite detailed and they include many minor elements of the story contained in the PIF. However, it makes absolutely no sense at all that brevity would necessitate the omission of the actual motivation for the agent of persecution (i.e. spurned former lover). It makes absolutely no sense for many minor incidents to be mentioned (e.g. being shown a gun), while at the

same time omitting all mention of major events in the claimants' lives (e.g. kidnapping, a murder, being run over by a car, etc). I find that these dramatic differences in the different versions of the claimants' story to severely undermine their credibility.

s.19(1) While claimants are not required to document all aspects of their claim, documents should be provided if they are reasonably available. It seemed odd that the only medical document provided dealt with the female claimant's "spontaneous miscarriage". All of the other medical documents, which would have substantiated the claimants' story, were unavailable because the medical authorities would not release them or they could not be physically located. It also seemed odd that despite many trips to the authorities by both the claimants and at least once by the female claimant's family, that the authorities had not released any documents. By far, the most telling was what was discovered with respect to the one document presented from an outside objective source that dealt with the claimants' alleged persecution. The claimants presented a newspaper article⁸ which purportedly dealt with the incident wherein the male claimant's friend was murdered in front of the male claimant's eyes. However, as noted at the hearing, a large number of details differed between the account of the incident contained in the article and the account contained in the PIF. In the article, the male claimant was one of four people in a car, however, in the PIF, he was one of three. In the article, there is a chase after a traffic accident. In the PIF, there is no chase. In the article, the male claimant was hit by a gun butt. In the PIF, he was not physically assaulted. In the article, was gunned down while defending his friend. In the PIF, he was hit to the ground, charged towards the assailants and was then shot. In the article, the incident took place in 2005. In the PIF, it took place in 2005. The claimants stated that the details had been changed by powerful people sympathetic to . When asked why, if the powers that be were so sympathetic to , they would publish the article at all, the claimants did not know. As noted at the hearing, there were a number of oddities with respect to the article itself, particularly when the Spanish version is consulted. It contained none of the usual website information when a document is printed from the Internet. The names of the male claimant and are not given in full and not in the same format of the names of the other people mentioned in the article (i.e. " " and " [blank space]" rather than all names written in full). It was also noted that while the referenced date on the first page was given as 2005, other references to dates later in the story actually refer to at least one other article about the incident published before the incident allegedly took place. The female claimant stated that she had received this article in an e-mail attachment and had printed it as it had been sent to her. She said that the person who had sent it to her from Mexico had obtained it from some form of restricted archive and that the original could no longer be consulted. Given the problems that were apparent on the face of the document, it was sent for verification. The results can be seen in the actual Spanish original and its translation.⁹ In the actual article, the names of the male claimant and are not mentioned, other names are in their place. The date referenced on the first page is actually 2004, not 2005, which makes it consistent with respect to the rest of the article. When these discrepancies were put to the claimants, they said that they merely

provided a print of what they had been given and had not altered the document themselves. While counsel for the claimants conceded that a finding that the article had been altered was perhaps warranted, she submitted that the alteration should not go to the claimants' credibility and that the document merely could not assist them in documenting their claim. I do not agree with counsel. The article was obviously modified to insert the names of the male claimant and [redacted] and a date was changed so that it was at least close to the events in the PIF. In actual fact, the article had nothing to do with the claimants or people related to them and dealt with an incident that happened the year before the claimants even began dating, which was the alleged cause of the incident. Regardless of who actually did the physical forgery of the article, the claimants adopted it as their own evidence. Rather than passively making note of the article's existence, the discrepancies on the face of the (forged) version that they presented were actively explained by the claimants as further proof of [redacted] influence over the powers that be, in this case the publishers. Either the claimants conscripted the forgery themselves or were so wilfully blind to the forgery that it is beyond belief. I find that this forged article destroys whatever little was left of the claimants' credibility. **s.19(1)**

Given the serious inconsistencies, discrepancies and other problems with respect to several major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and as such their claim fails. I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claims.

CONCLUSION

Since I do not believe the claimants with respect to the events described in their PIFs, their claims pursuant to section 96 of the *Immigration and Refugee Protection Act* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *Immigration and Refugee Protection Act*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects their claims.

“David McBean”

David McBean

“January 28, 2009”

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 Pursuant to Section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, certified true copies of the claimant's passports, received from Citizenship and Immigration Canada (CIC).
- 4 Exhibits C-1 and C-2, the claimants' PIFs.
- 5 Exhibit C-6.
- 6 Exhibit C-5.
- 7 Exhibit R-2, CIC notes.
- 8 Exhibit C-4.
- 9 Exhibits R-3 and R-4.

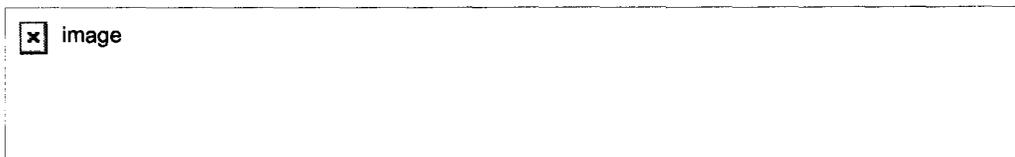
RPD File No. / N° de dossier de la SPR: TA7-09520

TA7-09587



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-09534

TA7-09596

TA7-09597

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	18 July 2008 11 March 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	6 May 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Rev. Daniel Earl McLeod	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	n/a	Agent(e) des tribunaux

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**Designated
Representative(s)**

**Représent
dési:**

Counsel for the Minister

n/a

Conseil du

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, his wife, , and their daughter , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (*IRPA*).

ALLEGATIONS

worked at a in the Federal District. In 2000 he received a call from enquiring about information. sent his secretary, , to conduct negotiations in person. A number of successful transactions were conducted over the next few weeks, however, lost track of after six months. On , 2007, received another call from requesting further transactions. This time sent Mr. to conduct negotiations in person. Mr. offered to pay cash in US dollars for with a bonus for participation if the transactions went through as planned, however, refused. On , 2007, Mr. , accompanied by Judicial Police Agents, took to the detention area of the local Public Ministry office. was struck with a gun and he and his family were threatened with harm should he not conduct the transactions requested. was visited at home by men enquiring about . During preparations for moving to Canada, the men visited again and stated that he was working on the transactions. The claimants came to Canada on , 2007, and made refugee claims on , 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

The claimants' identities, as citizens of Mexico, were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Nexus

The claimants fear a criminal vendetta and as such their claims pursuant to section 96 of the *IRPA* fail for lack of a nexus to the Convention refugee definition.

Credibility

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It was apparent, throughout the hearing, that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Forms³ (PIFs) and the other documents available. For example, in oral testimony, [redacted] gave extensive testimony, with respect to financial improprieties that took place with respect to the transactions that took place a decade ago. The [redacted] were given an inflated value for insurance purposes so if the [redacted] disappeared or was damaged the insurance company would pay more than the actual worth and also the transactions were conducted in increments of just under the equivalent of ten thousand dollars so they would not face increased financial reporting requirements. However, as noted at the hearing, none of this is mentioned in the PIF.⁴ The claimant stated that he did mention these irregularities in a written statement entitled "Details"⁵ that he delivered at the start of the hearing. It was pointed out that his written statement did not simply add details to his PIF, it actually contradicted it, as in the PIF [redacted] was a normal customer with no irregularities in the transactions of a decade ago, and in the written statement there were severe financial irregularities from the start. The claimant then stated that his former counsel was always in a hurry and that he did not disclose the full details of what happened until he retained current counsel. I do not find the claimant's explanations persuasive. As previously noted, this is not simply a case of details being added, it

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is a contradiction. affirmed in writing that his PIF had been interpreted to him and that it was accurate. If the decade-old dealings with were financially irregular on two separate points, I would not have expected the PIF to go on for the length that it did about those transactions and yet make no mention that something was amiss or irregular. I find that this contradiction, with respect to the history of dealings with the alleged agent of persecution, undermines the claimants' credibility.

In oral testimony, stated that he suspected that was criminally laundering money when he dealt with him a decade ago and that he informed his boss of this suspicion at that time. However, as noted at the hearing, there is no mention of the claimant suspecting money laundering during that time period and that he told his boss of this suspicion in the PIF. stated that his PIF was general and that he planned to give further details at the hearing. I do not find the claimant's explanation satisfactory. Once again, this is not a case of details being added, it is a contradiction. In the PIF, there is no mention of impropriety in the decade old transactions and the claimant only came to the conclusion that was up to criminal intent in 2007 and that appeared to be the reason why he refused to cooperate with the transactions in 2007. Had he actually come to this conclusion in 2000, to the extent that he even told his boss about the situation, it makes no sense for the PIF to read the way that it does. I find that this contradiction further undermines the claimants' credibility.

As noted at the hearing, there was confusion with respect to the chronology of the more recent dealings with and his men and the related details. However, by far, the biggest concern was the alleged detention at the Public Ministry. stated that he was confused with respect to some of the details as he was more focused on the fact that he was struck by what he believed to be a gun while detained at the Public Ministry. However, as noted at the hearing, in the notes of the Immigration Officer made at the time that the claimants made their claims⁶ there is no mention of being detained at the Public Ministry or that he was struck by a gun. could not explain why this incident was not mentioned. I note that, during the interview with the Immigration Officer, there was an interpreter present in person so there should have been no confusion with respect to language. Other than stating that he is facing "pressure" to cooperate, there is no mention of being detained and struck with a gun. If had really been marched into the offices of the Public Ministry, detained, threatened and struck with a gun, this would have been by far the most significant event that had ever happened to him in his dealings with. To provide the level of detail that he did on minor points with respect to other matters and yet make no mention of this at all makes no sense. I find that this omission further undermines the claimants' credibility.

In oral testimony, stated that the three men who visited his spouse were from the AFI (the Spanish acronym for the Federal Investigation Agency) and that they arrived in an official vehicle. However, as noted at the hearing, this fact was not mentioned in the notes of the Immigration Officer, the PIF, or the "Details" statement⁷ meant to augment the PIF. did not know why the fact that

the three men were from AFI was never mentioned anywhere previously. This detail was a significant one. It is one thing to be menaced by random thugs; however, it is another to be openly menaced by members of a national law enforcement agency who had jurisdiction throughout Mexico. If the claimants really were menaced by AFI agents, I would have expected that detail to have been mentioned in at least one or more of the three written versions of the story. Given that the fact that the men were from the AFI was only mentioned after questions were asked with respect to why the claimants simply could not move away to escape their problems, it appears that this significant detail was concocted on the spot in order to defeat the idea of an internal flight alternative. I find that this discrepancy with respect to who menaced the claimants to further undermine their credibility.

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In oral testimony, . stated that . was an extremely dangerous man and that, among other things, had killed and faced no problems as a result. As noted at the hearing, this fact had never been mentioned anywhere previously, particularly in the PIF and the supplemental "Details" document. stated that name was so notorious and so well known that he only needed to mention his name and assumed that these other facts would be assumed as well. I do not find the claimant's explanation to be satisfactory. No independent evidence was presented to show that killed or that he did so with impunity. One would think that such a matter would be notorious so documenting it should not have been a problem. however, no documents were presented on the point. Most importantly, if . was truly able to kill with impunity, it would have huge implications with respect to a number of issues, most particularly whether or not the claimants could obtain assistance from the authorities. All statements in writing and all

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of the testimony up until this point made reference to being a criminal, but nothing to this degree. Had [redacted] really killed [redacted] with impunity, I would have expected some mention of this fact in either the PIF or the "Details" document. I find that its omission further undermines the claimants' credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to numerous major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and, there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims pursuant to section 97 of the *IRPA* fail.

CONCLUSION

The claimants fear a personal criminal vendetta and as a result their claims pursuant to section 96 of the *IRPA* fails as they lack a nexus to the Convention Refugee definition. Since I do not believe the claimants with respect to the events described in their PIFs and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well.

For all these reasons, the Refugee Protection Division, therefore, rejects the claims.

(signed)

'David McBean'

David McBean

6 May 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1 through C-3, PIFs

4 Exhibit C-1

5 Exhibit C-5

6 Exhibit R-2

7 Exhibit C-5

RPD File No. / N° de dossier de la SPR : TA7-09534

TA7-09596

TA7-09597

RPD File No. / N° de dossier de la SPR : TA7-09534

TA7-09596

TA7-09597



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-09899

TA7-09982

TA7-09983

TA8-05827

TA8-05828

TA8-05829

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

February 20, 2009

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

May 8, 2009

Date de la décision

000364

Panel	David McBean		
Counsel for the Claimant(s)	Hart Kaminker Barrister & Solicitor		Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	N/A	s.19(1)	Agent(e) des tr
Designated Representative(s)			Représent dési
Counsel for the Minister	N/A		Conseil du

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(the “principal claimant”), his wife
 , his sons ,
 , and his wife , citizens of
 Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration
 and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

ran a in . One day three men entered his store and paid him to store some suitcases. The next day the police searched the store and discovered that the suitcases were full of . The police arrested and told him he would be spending a significant period in jail. However, after being placed in a police vehicle he was released on the street a few blocks away on a promise to appear at the police station the next day. He returned to his store only to have the return as well. After initially being violent, the proposed a business arrangement whereby would on their behalf. When appeared at the police station the next day he was told that there were no charges against him as everything had been taken care of by his “friends”. Out of fear, allowed the to use his store for but decided to stop cooperating after he found out that were being as well. When told the that he would be going away on vacation they offered him money if his wife would carry packages on their behalf to the that she worked at. When did not go to work the found him, beat him and forced him to re-open his store. While he managed to send his family away, the beat him again, this time breaking his left clavicle. , his wife and son travelled to Canada on , 2007 and made refugee claims two days later. sons (and remained in Mexico and each separately experienced violence at the hands of the who were looking for their father. They, along with wife travelled to Canada on , 2008, and made refugee claims on .

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Credibility

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It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Forms³ (PIFs) and the other documents available. For example, in oral testimony the [redacted] visited [redacted] shop twice in [redacted] 2006 and on the second visit proposed the storage of suitcases. [redacted] stated that he refused as he suspected illicit activity of some sort. The same [redacted] then returned a third time in [redacted] 2006, this time to threaten [redacted] and his family and, under duress, he accepted the first suitcases. However, as noted at the hearing, the PIF states that the [redacted] approached [redacted] once and without any mention of threats he agreed to accept the first suitcases upon payment of money. When asked to explain this discrepancy, [redacted] stated that he was not suspicious on the very first visit, that he did not know why the PIF appeared to suggest that the [redacted] in question only visited him once before his arrest and he was now elaborating on all the details contained in his story. In later testimony [redacted] stated that his earlier testimony was meant to be with respect to people wanting him to break his lease. I also note that in his written submissions, counsel states that the PIF is consistent with [redacted] testimony as the PIF speaks of people visiting [redacted] on several occasions in an attempt to get him to break his lease. I do not find [redacted] explanations satisfactory and I disagree with counsel that the information is consistent across the two tellings of the story. [redacted] affirmed both orally and in writing that his PIF had not only been interpreted to him but that it was accurate as well. The PIF is written in such a way ("...until one day three elegant people came to my business...") that the particular [redacted] in question only visited him once and that previous visits appeared to be by others simply attempting to get [redacted] to break his lease and that these people are not the same drug dealers that later menaced [redacted]. It is also clear in the PIF that [redacted] agreed to take the suitcases on the first visit by the three particular [redacted] and that there were no threats at that time. This account simply cannot be reconciled with his oral testimony that there were three visits by the same [redacted], that [redacted] refused the business arrangement on the second visit and after threats to himself and his family he agreed to accept the suitcases on the third visit. This was not a case of providing elaborative details, these were inexplicable direct contradictions on several points. I find that these contradictions with respect to how [redacted] became involved with the drug dealers to undermine the claimants' credibility.

As stated previously, while [redacted] PIF is silent with respect to most dates, in oral testimony he stated that the [redacted] visited him twice in [redacted] 2006 and then threatened him and forced him to take the suitcases in [redacted]. However, as noted at the hearing, in the notes of the Immigration Officer made at the time that [redacted] made his claim⁴ it is stated that his problems began in [redacted]. When

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stated that what he meant was that his problems got worse in . it was then pointed out that is not how the passage reads (“My problems started on . , 2006...”). responded that the notes of the Immigration Officer were incorrect. I do not find explanation satisfactory. The notes of the Immigration Officer are quite detailed and the vast majority of the information contained in the Immigration document appears to be correctly recorded. An interpreter was present in person so there should have been no confusion with respect to language. It makes no sense for to tell the Immigration Officer such a specific date in . as the start date for his problems when they allegedly started at least a month or two earlier. I find this discrepancy with respect to when began to experience problems to further undermine the claimants’ credibility.

In oral testimony, stated that when the returned after his release from the police he could tell that they wanted to beat him up but they did not. However, as noted at the hearing, the PIF states the used violence and attacked him physically. stated that the had grabbed him and shook him, but did not beat him. I do not find explanation satisfactory. As stated earlier, had affirmed that his PIF was accurate. If he was only grabbed and shaken while seeing that the were holding back the urge to beat him I cannot see why he would write that the used violence and attacked him physically. I find this contradiction with respect to the treatment that received at the hands of the to further undermine the claimants’ credibility.

In both the PIF and in oral testimony, was menaced by a trio of . However, as noted at the hearing, in the notes of the Immigration officer made at the time that made his claim, it is stated that he was menaced by two people. stated that he meant that one person spoke and the other two were violent and that he thought that he had said that there were three . I do not find explanations satisfactory. The Immigration Officer’s notes are quite detailed and appear to be for the most part correct and quite definitely stated that he was visited by only two people. It makes no sense for to get such a small number wrong with respect to the men who caused him so many problems, particularly since the number of men never seemed to vary during the principal dates. I find that this contradiction with respect to the number of that repeatedly visited to further undermine the claimants’ credibility.

In the PIF and oral testimony, stated that the only time that he had contact with the authorities was when he was arrested after he accepted the suitcases and then reported as ordered to the police station the next day only to be told that his friends had solved all problems relating to charges against him. However, as noted at the hearing, in the notes of the Immigration Officer it is recorded that he went to the police three days after the beating in which his clavicle was broken, a beating that took place well after the initial incident with the suitcases and his arrest, and that the police told him to come

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back the next day and that when he did no one wanted to talk to him. stated that he did not go to the police three days after the clavicle incident, that he was actually referring to the initial incident and that the incident occurred at 3:00 p.m. I do not find explanations satisfactory. As noted previously, the notes of the Immigration Officer are quite detailed and clearly situate alleged visit to the police in time after the last significant beating at the hands of the when his clavicle was broken. This simply cannot be reconciled with his PIF and oral testimony that his only visit to the police was during the far earlier events immediately after the initial delivery of the suitcases. I find that this discrepancy with respect to when went to the authorities to further undermine the claimants' credibility.

In oral testimony, stated that he had been physically abused by the on two occasions. The first was when he was grabbed and shaken just after his arrest and the second on , 2006, when his clavicle was broken. However, as noted at the hearing, in the PIF he was physically abused three times, the first and last times as per his oral evidence, but there was also an intermediate incident between the two described orally, wherein was forced to re-open his store. When asked to explain this omission, initially stated that he had only been shaken and threatened in the previously orally undescribed second incident, however when it was pointed out that his PIF specifically used the term "beat" he said that he was "pushed". I do not find explanations satisfactory. was either physically abused three times or two times. Only after being confronted with the fact that he had omitted mentioning the second of these incidents in the PIF did he attempt to say that he had been shaken and/or pushed. This simply cannot be reconciled with the PIF's description of being beaten. If he had in fact been beaten, I would have expected that he would have mentioned that in his oral testimony. Had he only been pushed and/or shaken I would not have expected that he would have described being beaten in his PIF. I find that this discrepancy further undermines the claimants' credibility.

stated in the PIF that in the final beating his left clavicle was broken. He confirmed this more than once in oral testimony. However, as noted at the hearing, in the medical notes submitted to substantiate injuries it is stated that his right [emphasis mine] collarbone (i.e. clavicle) is broken. could provide no explanation for this discrepancy. Breaking one's clavicle is a significant, painful event. There are only two clavicles, right and left. To not remember properly which one was broken makes absolutely no sense at all. For a medically trained doctor to get which clavicle was broken wrong also makes no sense at all. I find that this discrepancy with respect to which of clavicles was broken to not only call into question the authenticity of the documents presented on behalf of the claimants, but also further undermines the claimants' credibility.

In answering a series of questions with respect to why delayed leaving Mexico for a year after the "clavicle" incident in , 2006, he stated that he obtained new employment at a store

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in order to raise funds for the trip to Canada. He also described that while at this new job the entered the store and that he escaped by running out the back door. However, as noted at the hearing, this incident in not mentioned at all in the PIF. said that he did not know why he did not include this incident in his PIF and that he did not realize that the PIF would require this level of detail. I do not find explanations satisfactory. The directions for completing the PIF narrative are quite clear in that all significant incidents are to be included. As stated earlier, affirmed orally and in writing that the PIF was complete and accurate. The fact that the managed to find in another location and he had to flee them which indicated a continuing interest on their part in pursuing is far from a mere detail. It is a significant event and I find that its omission from the PIF to further undermine the claimants' credibility.

son also gave evidence. When asked to describe the most significant event that had happened to him, he spoke about an incident in 2007 where he was physically confronted by the who were looking for his father. He stated that his assailants shook him, punched him and specifically cut his hand with a bottle. However, as noted at the hearing,

PIF describes him being kicked and hit. When asked why the two accounts appeared to be different, stated that all of the things described in both versions actually happened and that he had just not mentioned certain details in each version. I do not find the claimant's explanation satisfactory. The claimant was definite about what happened in each version. The key turning point in this incident was when the lost their cool, grabbed a bottle and specifically cut the claimant with it. Had that actually happened I would have expected some mention of it in the PIF, rather than a general reference to being kicked (which was not mentioned orally) and hit. I find that this discrepancy in the manner in which was abused to further undermine the claimants' credibility.

son described orally and in his PIF experiencing problems at the hands of the that had menaced his father. However, as noted at the hearing, made a very detailed written declaration⁶ in Spanish at the time that he made his claim. In that declaration described not only a general fear of crime but a very specific plot by a man known as "I". is alleged to have first menaced in asking him for money and then later came after confirmed that these two plots were separate and distinct. When asked why there was no mention of and his plot against the claimants in the PIFs, said that he had been told that he would be laughed at by the Immigration and Refugee Board and found not credible if he had included it. When asked why he made no mention in his Spanish declaration of the plot by the three to first harm and then himself, stated that he had been experiencing stress at the time that he made his declaration, was unsure what would be found credible and what would not and that he feared he would be deported. I do not find the claimant's explanations satisfactory. The directions for completing the PIF narrative are quite clear in that all significant incidents are to be included. If a man known as had indeed

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specifically menaced the claimants on more than one occasion I would have expected that to be mentioned in the PIFs. With respect to the declaration, I note that [redacted] wrote it in Spanish, his own language, so there should have been no confusion with respect to language or terminology. I fail to see how a declaration entitled “Motivos (Razones) Por Que Vine A Canada” (i.e. Reasons why I came to Canada) could include numerous minute details with respect to problems that the claimant allegedly experienced in Mexico and yet contain not a single mention of the sole plot that was alleged in the PIFs. Had [redacted] experienced the problems that he alleged in his PIF I would have expected them to be mentioned in the declaration. It actually appeared that the two plots were concocted separately at different times ([redacted] story when he came earlier) and [redacted] story upon his arrival at a later time without the realization on anyone’s part that the claims would eventually be joined together and the details of the stories compared. I find that this total contradiction in the reason for the claimants’ fear to destroy what is left of their credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to numerous major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and as such their claims pursuant to section 96 of the *IRPA* fail.

Section 97

While at least some claimants expressed a fear of generalized crime, this fear is specifically excluded from consideration under section 97(1)(b)(ii) as it is a generalized risk faced by others. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claims.

CONCLUSION

Since I do not believe the claimants with respect to the events described in their PIFs their claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well. There was no credible basis for the claims.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

“David McBean”

David McBean

May 8, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1 through C-6, PIFs

4 Exhibit R-2.

5 Exhibit C-7.

6 Exhibit R-3.

RPD File No. / N° de dossier de la SPR: TA7-09899

TA7-09982

TA7-09983

TA8-05827

TA8-05828

TA8-05829



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR : TA7-10194

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 18, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	June 16, 2008	Date de la décision
Panel	David McBean	Le juge
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Linda Hart	Agent(e) des services
Designated	Nil	Représentant

000375

Representative(s)

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Counsel for the Minister

Nil

Conseil du

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

As there was no counsel to represent the claimant, the member and the Refugee Protection Officer reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process.

ALLEGATIONS

The claimant's family lived next door to a small apartment block whose tenants were frequently in trouble with the police. One tenant, (" "), was particularly troublesome. He always hung out on the street and had a reputation for robbing and kidnapping. One day even robbed the claimant when he was too stoned on drugs to recognize his own neighbour. On 2007, police cars were parked waiting outside the apartment block, which was not a rare occurrence. What was rare was that the claimant's dog began barking at something on the roof. Upon investigating the claimant discovered and another neighbour, (" "), evidently hiding from the police on the roof. After taking his dog away the claimant later discovered the same two men in the washroom next to the garage. The claimant threatened to expose the men to the police, however they threatened the claimant and he did not alert the authorities. The men later slipped away and were not arrested. The claimant heard through a neighbour that and had vowed to take revenge against the claimant for not helping them. The claimant then travelled to Canada on , 2007 and made a refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing

as a copy of his Mexican passport was on file.²

Internal Flight Alternative (IFA)

Even if I accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in Acapulco. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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With respect to the first prong of the test, the claimant fears an otherwise jobless street thug who commits crimes in the claimant's neighbourhood and his accomplice, another neighbour. While the claimant heard through yet another neighbour that [redacted] and [redacted] had vowed revenge upon the claimant, it appears that they were not taking this vow very seriously. The claimant remained next door to them for over a month before traveling to Canada. Nothing happened to the claimant or his family during that time and no evidence has been presented that anything has happened to his family after he left. While the claimant did state that he remained in the house for the entire time except to go out to obtain a passport, it would seem to be a simple task for [redacted] and [redacted] to go next door and enquire about the claimant. They did not. The claimant commented that [redacted] was most dangerous when he took large amounts of drugs. One would suppose that if the claimant did return to live in the area there might be a day when [redacted] would take drugs and do violence to the claimant. However, it does not seem possible, that [redacted] and [redacted], two neighbourhood street-level thugs, would have the motivation or resources to conduct a national search for the claimant, find him and do him harm in a major city far away. This is particularly so given that they did not do anything while the claimant continued to live next door for more than a month after the one major incident, and they have not done anything to his family in the intervening months. Even if there was, in fact, motivation, it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁴

I find that, on a balance of probabilities, there is no serious possibility of the claimant being persecuted in the Federal District.

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With respect to the reasonableness of the claimant moving to _____, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ The claimant has 17 years of education, including training in _____. He has a good work history, working for a number of years as an _____, _____ and an _____. The claimant has friends in _____ that may be able to help him get established. While the claimant speculated that he might not be able to earn enough to support himself, difficulties in finding a well-paying job are just part of the usual challenges faced in re-establishing oneself.

I find that it is reasonable for the claimant to relocate to _____.

CONCLUSION

The claimant has alleged that he is a victim of crime based on being criminally harassed by a neighbour. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. As I find that the claimant has a viable IFA in _____ the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

June 16, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 Exhibit R-1, *National Documentation Package*, January 30, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.

5 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.

RPD File No. / N° de dossier de la SPR: TA7-10194



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-10388

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	September 19, 2008	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 26, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Aisling Eileen Bondy	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) des tribunaux
Designated	N/A	Représentant désigné

Representative(s)

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Counsel for the Minister

N/A

Conseil du

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

ALLEGATIONS

The claimant was born in _____ and lived in a number of locations when growing up. In 2003, he began attending university in Mexico City and became involved with a organization, _____ (_____). The organization _____ work and related educational activities, both locally and when he traveled throughout Mexico. The claimant experienced conflicts as he _____, such as arguing with _____ in a _____. In _____ 2007, the claimant was attacked by four people who, while they did not identify themselves, ordered him to stop conducting his _____, which was hurting their interests. Approximately 10 days after reporting the incident to the authorities, the claimant received a phone call wherein the caller threatened to kill the claimant and stated that “they” controlled the police. The claimant relocated to his mother’s place in _____. While there, the claimant learned from a friend that some people had attended a meeting of _____ looking for the claimant. These people stated that they knew the claimant had left the city and were looking to find him so they could kill him as a message to the rest of the group. The claimant’s mother received a call on her cell phone from a person looking for the claimant. The claimant then answered a call on his mother’s cell phone. The caller stated that he knew the claimant had left Mexico City and was speaking on a cell phone registered in _____. The claimant traveled to Mexico City on several occasions to make arrangements to leave the country. The claimant traveled to Canada on _____, 2007 and made a refugee claim on _____, 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing, as a certified true copy of his Mexican passport was on file.²

Credibility

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A number of issues arose that called into question the claimant's credibility. For example, as noted previously, the men who allegedly attacked the claimant in 2007 did not identify themselves or the group that they represented. While they assaulted and threatened the claimant and ordered him to cease his [redacted], they didn't actually say which activities he should cease. At the hearing, the claimant was asked where he suspected the source of this plot came from. He said that it was potentially from his attempts to [redacted]. Apart from the local people who were interested in stealing [redacted] for profit, the claimant stated that major hotel chains were interested in building hotels on the [redacted] and by inference, the construction companies were quite interested in having the [redacted]. The claimant stated that he made speeches to discourage the sale of beachfront property to the hotel industry. However, as pointed out at the hearing, none of this information about the [redacted], the hotel and construction industries being interested in the beaches and the claimant speaking out against them, was in the claimant's Personal Information Form (PIF).³ The claimant said that he had not mentioned this because he intended to provide the details of his story at the hearing. It was also noted that while the issue of the claimant affecting the profits of people collecting [redacted] was mentioned in the Immigration Officer's notes,⁴ no mention was made that the hotel and construction industries would be involved as well or that the claimant had spoken out against them. The claimant explained that he did not provide all the details at that time. I do not find these explanations satisfactory. If the claimant suspected that he was targeted because of specific activities, I would have expected him to mention that fact in the PIF, even if it was just an educated "hunch". To say that the motivation for the alleged agents of persecution is a mere detail that would be elaborated upon at the hearing makes no sense. While the PIF does mention that the claimant experienced a number of problems in various areas of Mexico, the only one specifically mentioned was when he argued with [redacted] in a [redacted]. To not even mention the [redacted] issue in the PIF makes no sense at all. With respect to the Immigration Officer's notes, it should be noted that they contain a number of details, including the fact that the claimant was affecting the profits of people who sell [redacted]. It makes no sense to mention that the claimant was affecting the profits of local scavengers and not mention that he had spoken out against the powerful hotel and construction industries who were interested in the same area. In fact, it appeared the claimant concocted the hotel/construction industry angle after a series of questions (and evasive answers) attempted to establish who was stealing the [redacted]. Given that local beach scavengers would be little-resourced to find, track and harm the claimant, it appeared that a more powerful agent of persecution was then alleged. I also note, as I did at the hearing, that near the end of his testimony, after a break in the proceedings, when asked why he was targeted, the claimant stated that he could be at risk because he argued with [redacted] in a [redacted]. While the claimant did indicate that either motivation could be the one that led the claimant to being targeted, it seemed rather odd for him to speculate consistently during my questioning and that of the Immigration Officer that the motivation for

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persecution was the (which was not in his PIF and described differently in the Immigration Officer's notes), when later asked essentially the same question by his counsel to respond that it was the (which actually was in his PIF) caused him problems. It appeared that the claimant changed his thinking in order to cover the fact that his initial response as to what was the motivation for persecution, was not in the PIF. I find that this sudden change in "hunches" and the fact that the claimant's initial version of who he thought was persecuting him was not in his PIF at all and described differently at a much lower level in the Immigration Officer's notes, undermines the claimant's credibility.

The claimant allegedly sustained serious injuries to his ribs and ankle when he was attacked, however, he provided no medical documentation of any kind. When asked why not, the claimant stated that he used a private hospital that did not release medical records to outsiders. As noted at the hearing, this appeared to make little sense since many patients would require follow-up and not all would live near that hospital. The claimant stated that the corporation had locations throughout Mexico and would simply require the patient to visit one of their other locations for follow-up. I do not find that explanation persuasive. Mexico is a fairly large country, so to have blanket coverage of the entire populace seems unlikely. Given the large number of people traveling internationally every year, it makes little sense that their medical records would not be able to travel with them. I find that medical documents would have been reasonably available and that their absence undermines the claimant's credibility.

The claimant stated that he filed a denunciation with the authorities after the attack, yet he did not present a copy of that denunciation. As pointed out at the hearing, many Mexican claimants document their claims with copies of denunciations that they made to the Public Ministry. The claimant stated that he was not given a copy when he was at the Public Ministry and never returned to get a copy while he was there mainly out of fear. He made no attempts to get a copy through Mexican Consular officials after coming to Canada since he felt the police were involved in the plot against him and they would likely deny the existence of such a document or falsely claim any document sent to them for verification would be invalid. I do not find these explanations persuasive. The only evidence that the police were involved came ten days after the attack from an anonymous voice in a phone call who stated that the claimant should not have gone to the police as "they" controlled the police. Given the passage of time since the attack, it may be that the anonymous caller was speculating about the claimant going to the police. If the agents of persecution actually controlled not just one or two police officers but as the claimant stated all of the police in all Mexico, it would make little sense for the authorities to take his complaint in the first place. In any event, the claimant, who was safe in Canada, made no attempt to get what would be a crucial document and it is mere speculation on his part that improprieties would have taken place. I find he could have reasonably attempted to obtain the document and that a copy of the denunciation would reasonably have been available and its absence and more importantly the lack of

any attempt to obtain the document further undermine the claimant's credibility.

The denunciation was also problematic in another respect. In the PIF, much is made of the fact that the claimant was not asked to sign a sworn statement when he went to the authorities. This was significant because without a sworn statement, the authorities would not act to protect the claimant. In the Immigration Officer's notes, no mention is made of the claimant not being asked to sign a sworn statement or that this would mean that they would not intervene on his behalf. The only thing mentioned is that the authorities told the claimant that he must wait and that they would investigate. When asked bluntly at the hearing why not signing his statement would be significant, the claimant said that he did not know if it mattered or not. The claimant was asked why there were three very different takes on the signature issue. The PIF states that he definitely thought the lack of a signature mattered, as it meant the authorities would take no further action, however, in oral testimony, he stated that he was unsure if it mattered or not and in the very detailed notes of the Immigration Officer, the issue is not mentioned at all. The claimant stated that the lack of a signature might lead to his complaint being seen as lacking validity. I do not find this explanation persuasive. Not signing the complaint is either an issue or it is not. It makes no sense for the claimant to state in the PIF that the lack of a signature actively prevented the authorities from assisting him, yet make no mention of the issue when describing his meeting with the authorities to the Immigration Officer and then be unsure in oral testimony whether or not the signature mattered. I find that the fact that these unreconciled descriptions of whether or not an unsigned complaint was significant further undermines the claimant's credibility.

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In general, some very basic parts of the claimant's story just did not make sense. The claimant alleges that he was part of a small, . Their logo/letterhead consists of a . The group attracted no media coverage and had no contacts in the media. The claimant stated that there were many, many other groups all doing similar work in similar areas. The claimant's involvement in the group appeared to have tapered off since 2005. The claimant alleged that the author of the letter⁵ from the group, listing his duties, intended the very detailed description of his duties up to 2005 as a template, and since the author did not want to keep repeating similar activities from 2005 to 2007, did not bother listing them. However, the letter simply does not say that. Had the author intended the list of duties as a template, it would have made sense to state that and it should be noted that many of the items listed do not lend themselves to templating. My reading of the letter is that the claimant's involvement with the group was not as frequent after 2005. With all these facts taken together, it makes little sense that a powerful unknown group would so specifically target and track throughout Mexico and attempt to harm a full-time university student who spent his non-school hours and days helping a small virtually unknown . It also makes little sense that this mysterious group, after finding and attacking the claimant, would not tell him the actual activities they wanted him to cease yet later be so bold as to walk into a room full of witnesses, announce a murder plot against the claimant specifically and take no action against other members of the claimant's group while

they were there.

Given the numerous problems noted above, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as a result, pursuant to section 96 of the *Immigration and Refugee Protection Act*, his claim fails. As there is no other evidence to indicate that the claimant would be at risk of the risks enumerated under section 97 of the *Immigration and Refugee Protection Act*, his claim, pursuant to that section, fails as well.

State Protection

Even if I did not come to the conclusion that I did with respect to credibility, the claim still fails on the issue of state protection. States are presumed capable of protecting their citizens.⁶ To rebut the presumption of state protection, a claimant must provide “clear and convincing” evidence of the state’s inability to protect (absent an admission by the national’s state of its inability to protect that national).⁷ The evidence that state protection is inadequate must not only be reliable and probative, it must also satisfy the Board, on a balance of probabilities, that the state protection is inadequate.⁸

s.19(1) Claimants are expected to approach the state for protection if such protection could be reasonably seen as forthcoming.⁹ In this case, the claimant approached the local authorities once to file a complaint. As mentioned previously, there was some debate as to whether that complaint was perfected by way of a signature. In oral testimony, the claimant stated that he initially did not return to perfect his statement, as Mexico City is large and it would be a long trip across town. Regardless of the logistics or whether or not the complaint was perfected, I do not see what the authorities could reasonably have done at that point. The claimant was unable to describe any of the four people who attacked him, could not provide more than a generalized motive for their attack since they did not say which of the claimant’s environmental activities ran afoul of their interests and since the claimant had traveled extensively throughout Mexico to his assailants could be from just about anywhere in the country. Once further events unfolded which would potentially have provided further evidence to aid in an investigation, the claimant made no further attempts to contact the authorities. The claimant stated that since the voice on the phone told him that “they” knew that he had gone to the authorities and that “they” controlled the police, he made no further attempts to contact the authorities out of fear.

There is no question that police corruption can be a problem in many areas of Mexico¹⁰ and the idea that a group of evil-doers may control some crooked officers in some locations is not far-fetched. However, the claimant’s apparent assumption that this mysterious group somehow controls all of the police forces at the municipal, state and federal levels is simply wild speculation on the part of the claimant. If the claimant was concerned that the local authorities that he contacted were indeed involved in the plot against him, there are other avenues of redress available as there are a number of measures in place to

deal with people who have problems with corrupt authorities. For example, the AFI (Federal Agency of Investigation) investigated, among other things, corrupt officials.¹¹ When the claimant was asked why he did/would not go to AFI if he experienced problems with the local authorities, he said that while he was aware that AFI was mandated to deal with such matters, he did not think such a complaint would be useful, as corruption permeated all levels of the authorities, including the AFI. However, the independent documentary evidence¹² indicates that according to The Economist, the AFI is a relatively clean police force that is proving to be more effective than any other police body. The claimant did not complain to the Federal Prosecutor's Office for the Protection of the Environment,¹³ or other public officials as the ability to make such complaints amounted to "bread and circuses for the people". However, it seems odd that such an office exists in the first place and that human rights groups are actively soliciting complaints to this office if it was thought to be useless. In general, the federal government continued to work on reducing corruption levels in Mexico by investigating and sanctioning employee misconduct.¹⁴ I prefer the objective documentary evidence over the claimant's assertion that all of the authorities throughout Mexico are either controlled by the mysterious group or are at least corrupt enough to be controlled. However, it must be noted that the need for these alternative measures is entirely speculative at this point, as the claimant has not actually had any difficulties with the authorities and it is only his speculation that they are involved. At this point, he has only made one complaint that did not contain evidence that would realistically allow for any chance of a successful investigation. The claimant is an articulate, university-educated individual who is by no means "unsophisticated". Despite avenues of protection being available, even if he suspected a problem, he simply chose not to use them. I find that, on a balance of probabilities, the claimant has not presented "clear and convincing" evidence that state protection would not reasonably have been forthcoming to him, had he attempted to seek it in an effective fashion, and as a result his claim fails on this basis as well.

CONCLUSION

Since I have found that the claimant's story is not credible and in the alternative, state protection was available, the claim fails pursuant to section 96. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *Immigration and Refugee Protection Act*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

"David McBean"

David McBean

November 26, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit R-2.

5 Exhibit C-3.

6 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

7 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 724.

8 *M.C.I. v. Flores Carrillo, Maria del Rosario* (F.C.A., no. A-225-07), Létourneau, Nadon, Sharlow, March 12, 2008; 2008 FCA 94.

9 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

- 10 Exhibit R-1, *National Documentation Package*, June 27, 2008, item 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2007*, March 11, 2008.
- 11 Exhibit R-1, item 7.1, *International Narcotics Control Strategy Report for 2008*, United States, March 2008.
- 12 Exhibit R-1, item 7.3, Information Request MEX101376.E, 6 June 2006.
- 13 Exhibit C-2, p. 32.
- 14 Exhibit R-1, item 7.1.

RPD File No. / N° de dossier de la SPR: TA7-10388



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-10400

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) Demandeur(e)(s)

(a.k.a.)

Date(s) of Hearing March 17, 2009 Date(s) de l'a

Place of Hearing Toronto Lieu de l'a

Date of Decision March 23, 2009 Date de la

Panel David McBean]

Counsel for the Claimant(s) No counsel Conseil(s) du / de demandeur(e)(s)

Tribunal Officer R. Gould Agent(e) des tr

**Designated
Representative(s)**

N/A

**Représent
dési**

Counsel for the Minister

N/A

Conseil du

s.19(1)

(a.k.a. _____), a citizen of Saint Vincent, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant was born and raised in Saint Vincent. In the early 1990's, he lived with several men, including _____. One day a little girl disappeared. _____ became the prime suspect after he was seen nearby, hiding behind a tree. The police surrounded the house shared by the claimant and _____ but did not enter. When the claimant approached the house, the police asked for his assistance in entering. The claimant and an officer went in through an open window and other officers were allowed entry. _____ was discovered in the house and after leaving the house confessed to _____ and murdering _____. At trial, _____ lawyer alleged that the confession had been obtained through the use of torture. _____ was convicted and, as per the law in force in Saint Vincent, _____ appealed his conviction up through various levels of court up to and including the _____

There the Law Lords confirmed conviction. A complaint was also made to the _____ on _____ behalf due to the provision for an automatic death sentence regardless of circumstance. Despite the _____, Saint Vincent _____ and _____ remained alive but incarcerated. _____ was granted some form of temporary supervised parole for the Christmas holidays in 2004. In 2005, the claimant heard through some men at a bar that should _____ be given an unsupervised release, he would attempt to exact violent revenge upon the claimant for his role in the arrest. The claimant fled to Canada in the fall of 2005. In _____ 2007, after being detained by the Ontario Provincial Police near Sudbury, the claimant made a refugee claim.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

IDENTITY

The claimant's identity as a citizen of Saint Vincent was accepted at the beginning of the hearing as a copy of his Saint Vincent passport was on file.²

ANALYSIS

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta. As such, his claim pursuant to section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

State Protection

Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim pursuant to section 97 of the *IRPA* fails on the issue of state protection. States are presumed capable of protecting their citizens.³ That presumption can be rebutted by providing clear convincing evidence that on a balance of probabilities state protection would be inadequate. Claimants are expected to approach the state for protection if such protection could be reasonably seen as forthcoming.⁴ s.19(1)

While concerns have been noted about the authorities in St. Vincent, their past actions provide telling guidance with respect to what will potentially happen in the future. [redacted] was investigated, questioned, allegedly tortured, prosecuted, convicted and sentenced to death. Despite several appeals, the authorities fought each appeal up to and including the [redacted]. The matter was also brought to the [redacted] has been incarcerated for over a decade and a half. Throughout the history of this matter the authorities seemed quite willing and able to investigate and punish [redacted]. The claimant stated that this was because that [redacted] had murdered [redacted] and the authorities were therefore obligated while under public scrutiny to deal with the matter. He speculated that should something happen to himself, in his own opinion a person of little importance, the authorities would not be motivated to intervene. I totally disagree with the claimant. [redacted] is an [redacted] man who [redacted]. The authorities in Saint Vincent have expended a huge amount of time and effort to ensure that [redacted] was punished for his crimes. At this point, I cannot imagine them not responding should the claimant or anyone else inform them that [redacted] is misbehaving in any fashion. I find that, on a balance of probabilities, the claimant has not presented "clear and convincing" evidence that state protection would not reasonably be forthcoming should he need to seek it, and therefore his claim pursuant to section 97 of the *IRPA* fails.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

The claimant allegedly fears a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I have found that there is state protection available for the problems alleged by the claimant and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well. There was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

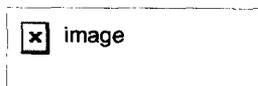
DAVID McBEAN

March 23, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.
- 4 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

RPD File No. / N° de dossier de la SPR:



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-10505
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile
	s.19(1)	
Date(s) of Hearing	October 2, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 30, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Patrick J. Roche Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	S. Golden	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant lived in Mexico City. Starting with the 2000 elections he became interested in the (), a as well as other related parties. The claimant became a in 2003. The claimant . In 2005, the claimant began to work on the of (" "). was of a local area within the Federal District. Prior to this , had collected pesos (over CDN\$) to be used for the construction of public housing. With no housing being constructed 50-60 people requested help from members of the including the claimant. The claimant and five other members requested several times that fulfill his promises only to be rebuffed. In mid- the claimant and his group met briefly with who was angry that the residents had filed formal complaints against him. While the claimant and the others continued to insist that should keep his promise, the claimant and two others each received a threat. Each time the claimant and the others tried to get a response from , they received threats in return. The claimant received a total of five to six threats from 2006 to 2007. Around 2006, some of the intended beneficiaries of the money were found beaten. While they made formal denunciations against to the authorities, nothing was done. The claimant and his colleagues considered reporting to more senior levels of the party but decided against it given his powerful connections. In mid 2007, the claimant and his colleagues once again approached , however, he told them to leave the matter alone. He said if the claimant and his colleagues continued to support the people against him, the claimant and his colleagues would be considered his enemy. By this time 50-60 people had denounced to the authorities and nothing had been done. Near the end of . the claimant received a harsh death threat from one of supporters. Out of fear, the claimant moved to , for three months while his wife and children

¹ As enacted by S.C. 2001, c. 27.

s.19(1)

stayed in _____, State of Mexico. In _____ 2007, the claimant heard that one of his colleagues, _____ had disappeared. In _____ 2007, the claimant ran into some of _____ people in Mexico City. When he enquired about the situation they threatened him and made reference to the fate of _____. In _____ 2007, the claimant moved to _____, _____, where he hid; however, he still commuted three times per week to work in Mexico City. On _____, 2007, the claimant's family moved to another house in _____ in the State of Mexico. The claimant came to Canada and made a refugee claim on _____, 2007. In a statement written in Spanish made at the time that he made his claim, the claimant stated that _____ is not only powerful himself, but is also supported by _____, the _____ and _____ the _____. In _____ 2008, the police in _____ area raided a nightclub known as the "_____". Unfortunately, the police botched the raid by preventing patrons from leaving _____. In the ensuing _____

_____ stepped aside from his position to allow an investigation and the _____, was forced to resign.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Mexico was accepted at the hearing given that a copy of his Mexican passport was on file.²

² Exhibit R-2, certified copy of passport received from Citizenship and Immigration Canada (CIC).

Internal Flight Alternative (IFA)

[5] Even if I were to accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in Guadalajara. In *Rasaratnam*,³ the Federal Court of Appeal set-out a two-prong test to be used in determining if an IFA is viable:

(i) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.

(ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

s.19(1)

[6] With respect to the first prong of the test, the claimant's own evidence is that he never had a personal conversation with [redacted] alone, whether face to face, on the phone, or by electronic means. He only ever met [redacted] as part of a group of four to five people approximately three to four times. During at least some of those meetings, the claimant was unsure if [redacted] even noted his presence. While the claimant stated that he was an [redacted], his position seemed to be fairly low ranking given the number of [redacted] within the local jurisdiction. Coupled with the fact that the claimant, as he acknowledged, had difficulties recalling details about the [redacted] when questioned by the immigration officer (albeit under trying circumstances), it appeared that the claimant was not a senior [redacted] person that would be well known to [redacted]. The claimant stated that another member of his group who met with [redacted], did disappear, but he could only speculate why this person disappeared. While the claimant was threatened with a reference made to the disappearance, this may simply have been the threatener's "talking" and the disappearance may have happened for unrelated reasons.

[7] Apart from the fact that the claimant seemed to be of low profile in the eyes of [redacted], it is obvious that others would be of a higher profile. It was the claimant's own evidence that 50-60 people affected by the public housing scandal filed formal denunciations with the authorities. Some of these people were beaten and denunciations were filed as a result of the beatings as well. As the claimant stated, unlike these other

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

people, he never filed a denunciation about to the authorities or complained to anyone higher up in the . Even before the claimant left Mexico, at least one article⁴ appeared in the media severely criticizing . It should be noted that the claimant was not involved in the publication of this or any other article critical of and furthermore, that he was not aware of reprisals against anyone involved with the publication. While the claimant did hear of wanting to harm him, he was not ever harmed and faced no actual attempts at harm while still in Mexico. His family lived peacefully in and faced no harm as well.

[8] Most telling are the events that occurred after the claimant left Mexico. After the infamous was forced to step aside. While the claimant has received information from his brother-in-law that is still pulling strings from behind the scenes, it is important to note that he still had to step aside as noted by numerous news articles.⁵ After resigning, was even fined by a Judge for initially failing to appear when directed.⁶ Even when he did appear he refused to testify given that he was still considered a suspect (ibid). Even ally, , the was forced to resign as well.⁷ While attempted to regain some power by having his wife elected to office, it was the claimant's own evidence that she was unsuccessful.

[9] Even if were to retain some residual power behind the scenes, I cannot see at this point why he would be motivated to seek out and harm the claimant, particularly if he were to move to another city such as Guadalajara. Even when the claimant lived in Mexico, he was of a fairly low profile personally and others did far more to raise the ire of that he did. With all of the events that have happened since, totally unrelated to the claimant, I cannot see why or anyone related to him would bother exerting any effort to harm the claimant given the relatively minor nature of what the claimant did and the fact that far more serious things have happened since.

⁴ Exhibit C-4, p. 5.

⁵ Exhibit R-4 (as an example).

⁶ Exhibit C-7, item 1.

⁷ Exhibit R-4, item 4.

s.19(1)

[10] I find that, on a balance of probabilities, there is no serious possibility of the claimant being persecuted in Guadalajara.

[11] With respect to the reasonableness of the claimant moving to Guadalajara, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁸ The claimant has approximately 12 years of education and was previously able to find work when he moved to _____ and _____. I find that it would not be unduly harsh for the claimant to relocate to Guadalajara and as a result, the claim pursuant to section 96 of the *IRPA* fails.

[12] There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

Conclusion

[13] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

November 30, 2009

Date

⁸ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

RPD File No. / N° de dossier de la SPR : TA7-10816

TA8-06284

TA8-06307

TA8-06308

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

January 23, 2009

Date(s) de l'audience

February 13, 2009

April 3, 2009

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

June 19, 2009

Date de la décision

Panel

David McBean

**Counsel for the Claimant
(s)**

Donald C. Simmons
Barrister and Solicitor

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

s.19(1)

Agent(e) de

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] (“the claimant”), his wife, (the female claimant), their minor son, and their minor daughter, are citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant was a in , Guanajuato. On , 2007, at the “”, he observed another (“”), selling what appeared to be drugs. The claimant called the municipal police on his cell phone to report and they arrived a few minutes later. The police discovered and the two men that he was with were in possession of cocaine; the three men were arrested and taken away. The next day, the claimant returned to his car after finishing a job only to find that his car had been trashed. Witnesses said it was that had trashed the car, uttering threats against claimant while he did so. The claimant called the police only to be told that with respect to the destroyed car, he would have to file a complaint with the Public Ministry and that they could not act on the threats unless something more happened to him. The claimant did not contact the Public Ministry or the police any further as he felt that it would be useless since had been released within a few hours on the drug charges. The claimant feared as he was a violent man, having amongst other things spent two years in jail for killing someone in . The claimant received calls from , another warning him that was looking for him. The claimant traveled to Mexico City on , 2007 and flew to Canada on , 2007, making a refugee claim upon arrival. Soon after, came to the claimants’ house and made threats to the female claimant. Out of fear, she and the children moved to her parents’ house in a different part of (an area within). They stayed there until 2008. Thinking things had calmed down, they returned to the claimants’ home. came again to the claimants’ home in 2008 and made more threats. The female claimant and the children returned to her parents’ home once again, staying there until they traveled to Canada to make refugee claims on , 2008.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as a copy of their Mexican passports were on file.²

Nexus**s.19(1)**

[5] The claimant has alleged that he is a victim of crime based on a personal vendetta. While the claimant speculated that some of the Mexican authorities may be in cahoots with _____, I find that denouncing _____ and anyone connected to him would be seen as challenging the state. As such, the claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.

Internal Flight Alternative (IFA)

[6] Even if I accept all of the claimant's evidence as true (which I do not necessarily do), the claims fail as the claimants have a viable IFA in the Federal District. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable, which has been adjusted for the purpose of section 97 as follows:

- i. The Board must be satisfied on a balance of probabilities that the claimant does not face a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment in the part of the country to which it finds an IFA exists. Section 97(1)(b)(ii) of the *IRPA* requires that the risk would be faced in every part of the country.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[7] With respect to the first prong of the test, the claimant fears a fellow _____ who goes to the same _____ as the claimant does looking for work as a _____ and at the same time sells drugs on the street. While the claimant speculated that _____ has links to the authorities I do not agree. The claimant was quite upset that _____ was released within 24 hours and had learned that he was the one who informed the police of the drug sales in the _____ and the claimant assumed the police told _____. He also expressed dissatisfaction at how the authorities handled his complaint about the destruction of his car.

[8] I would note that even if _____ did learn of the claimant's involvement through the police, there is nothing necessarily sinister about this fact and may simply reflect the normal process of the disclosure of evidence. There is also nothing necessarily sinister about _____ being released on bail the next day. In fact, if _____ actually had connections in the police department, it made little sense for the police to attend at the plaza when the claimant called as per the Personal Information Form (PIF), specifically identified _____ by name. It made even less sense for _____ to be taken in and

s.19(1)

arrested once the police arrived and identified him in person. The claimant was aware of at least four occasions where [redacted] had been arrested, including one time unconnected to the claimant after the arrest in the [redacted]. The claimant also stated that he was aware through friends that [redacted] had spent two years in jail for killing someone. While the claimant used the term “murder”, he did so as a layperson and candidly admitted that he knew no details of what happened. Also, while the claimant was dissatisfied about the lack of action with respect to his vehicle, it was the claimant’s own evidence that the police told him to make a complaint to the Public Ministry in order to initiate the process and he simply did not do so. Given [redacted] multiple arrests and past incarceration I find, on a balance of probabilities, that [redacted] has no significant connections with the authorities.

[9] It should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor’s office.⁴ While the claimant noted that under the right circumstances information can be gleaned from Infonavit, a credit reporting system, [redacted] did not seem to do very well in his stated goal of finding and harming the claimant. To the best of the claimant’s knowledge [redacted] did not go to the claimants’ house in the week after he informed on him. While [redacted] subsequent unrelated arrest obviously would have hampered his plans, once he did appear at the claimants’ house, the female claimant and the children were able to evade [redacted] by simply moving in with the female claimant’s parents in another part of [redacted] (as per the PIFs, an area within [redacted]). One would think if [redacted] were truly motivated to find the claimants he would think of attempting to locate them through their parents. As it was, there was no contact with [redacted] for months until he reappeared once again at the claimants’ home in [redacted] and once again the female claimant was able to evade further problems by moving back in with her parents. In general, it did not seem that [redacted] had the motivation and/or the resources to find track and harm the claimants as he had threatened.

[10] Even if [redacted] were able to find the claimants in the Federal District, the claimants would be able to call on the authorities for assistance. While the claimant did state that there was a lot of corruption in the Federal District, it makes little sense for [redacted] to suddenly be able to act with impunity in a new city while have difficulties in the past in [redacted] where his connections would theoretically be the strongest.

[11] I find on a balance of probabilities that the Federal District does provide a safe IFA for the claimants. The claimants have failed to rebut the presumption of state protection in the Federal District.

[12] With respect to the reasonability of the claimants moving to the Federal District, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ If the claimants were to return to Mexico, they would be using the international airport in the

s.19(1)

Federal District so they would not have to return to . The male claimant stated that he would likely be able to find employment, particularly as a . He has also worked at a . The female claimant has 17 years of education and has several years experience as a so she seems quite employable as well. While the claimant did express concern that there was a high rate of crime in the Federal District, there is nothing in the objective documentary evidence which would suggest that the crime rate in the Federal District is beyond what one would expect in a large metropolitan area and there is no indication that the authorities would be unable or unwilling to protect the claimants should they experience crime there. More importantly, it is a risk faced generally by others and therefore excluded under section 97(1)(b) of the *IRPA*.

[13] I find that it would not be unduly harsh for the claimants to relocate to the Federal District, and as such, the claims pursuant to section 97 of the *IRPA* fail.

CONCLUSION

[14] The claimants have alleged that they are victims of crime based on being criminally harassed by a drug dealer. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.⁶ As I find that the claimants have a viable IFA in the Federal District, their claims also fail with respect to the grounds enumerated under section 97 of the *IRPA*.

[15] For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

June 19, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

4 Exhibit R-1, *National Documentation Package*, June 27, 2008, tab 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.

5 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.).

6 Leon, Johnny Edgar Orellana v. M.C.I. (F.C.T.D., no. IMM-3520-94), Jerome, September 19, 1995.



RPD File No. : TA7-10816

TA8-06284

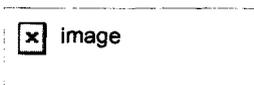
TA8-06307

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA7-10894

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	June 16, 2009	Date(s) de l'a
Place of Hearing	Toronto, Ontario	Lieu de l'a
Date of Decision	July 14, 2009	Date de la
Panel	David McBean	
Counsel for the Claimant (s)	Razgar Hasan	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de
Designated Representative(s)	N/A	Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] _____, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in Poland. The claimant came to Canada on _____, 2005, at the age of 17. On _____, 2006, his life changed when he attended a meeting of Jehovah's Witnesses. While never formally baptized, the claimant's beliefs are such that he cannot serve in the Polish military and as a result he fears conscription. Also, his family does not approve of his conversion and the claimant fears them as well. The claimant made a refugee claim on _____, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Poland was accepted at the beginning of the hearing as a copy of his Polish passport was on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, the claimant presented two documents directing him to report for military service.⁴ The second, undated document seems to be fairly recent since it directs the claimant to report on May 11, 2009.⁵ As noted at the hearing, the document seems quite odd in that it is undated and does not refer to the other document dated in 2008. Far stranger is the fact that conscription in Poland actually ended in January 2009.⁶ The article makes specific reference to the fact that the last conscripts will finish their nine months of service in October 2009. While counsel noted that the article announcing the end of conscription was written a few months before January 2009, I declared my specialized knowledge gained from doing other hearings that conscription had indeed ended as planned in January 2009. The claimant stated that he knew nothing about the notices other than he believed them to be genuine. I disagree with the claimant's belief. If the second document were

genuine, I would have expected it to refer in some way to the previous documents since the claimant had not reported as previously directed. Also, I would have expected it to acknowledge in some way the ending of conscription and whatever residual obligations the claimant might have. The document has none of this information. I find on a balance of probabilities that the second document⁷ is a forgery and as a result this undermines the claimant's credibility.

[6] The fact that the claimant was able to present these documents was problematic as well. The claimant stated that his family in Poland has hated him since 2006, with his father specifically expressing a desire to kill him. However, the claimant was able to ask his aunt in Canada to call his family in Poland and they then assisted in providing documents in support of his refugee claim. When asked how this would be possible given the alleged hatred involved, the claimant stated that his aunt is his mother's sister and he did not know how she arranged for the letters to be sent to Canada. I do not find the claimant's explanation satisfactory. Either the claimant's family hates him and wishes to kill him or they do not. It makes no sense, even for the claimant's mother who hated the claimant (even though she did not specifically issue a death threat) to suddenly cooperate and assist in documenting the claimant's refugee claim. I find that this implausibility further undermines the claimant's credibility.

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[7] The claimant's permission to remain in Canada expired in 2006. The claimant stated that his father threatened him with death in 2006. The claimant turned 18 and was therefore eligible to be conscripted in 2006, and stated that after he began attending meetings with Jehovah's Witnesses at about the same time, he began fearing conscription in late 2006. However, as noted at the hearing, he did not make a refugee claim until , 2007. The claimant stated that while he consulted a lawyer about extending his visa he was told that he was too late. The claimant stated that he did not tell his lawyer about his fear of his family or his fear of conscription. The claimant stated that he finally made a refugee claim in . 2007, after he told another Jehovah's Witness about his lack of status in Canada and his fears and that person informed him about the refugee system. He stated that he had not done so earlier out of fear and shame. I do not find the claimant's explanations satisfactory. It makes no sense at all for the claimant to fear death and forced conscription and yet not mention anything about either topic when consulting a lawyer with respect to how to stay in Canada and avoid going back to Poland. Further, it makes no sense for the claimant to attend meetings of Jehovah's Witnesses, knowing that one of the core beliefs is not serving in the military and not mentioning to any fellow believers that this is one of the reasons why he fears returning to Poland and overstayed his visit in Canada. I find that the delay in claiming not only demonstrates a lack of subjective fear but further undermines the claimant's credibility.

[8] Given the serious discrepancies and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and therefore

the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject to the risks enumerated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

Objective Basis/Internal Flight Alternative

[9] Even if my analysis with respect to credibility were found to be incorrect, the claim still fails on the issues of objective basis and internal flight alternative (IFA). As noted previously, conscription in Poland ended in January 2009 with the last conscripts set to end their nine month assignments in October 2009. The Polish military generally denigrated⁸ both the lack of abilities and lack of usefulness of conscripts so it would appear that they would not be interested in forcing people to serve. However, even if the claimant were to face some residual interest on the part of the military, Poland does have a conscientious objector program.⁹ While existing conscripts cannot apply, applications can be made up until the start of military service. While statistics have varied by year, more than 50% of such applications were approved each year. When asked why he could not simply apply to this program, the claimant stated that he would not have family to assist him. I do not see how this would be a barrier since the claimant is now 21 years of age and able to represent himself. While I acknowledge that the claimant did present a letter from a lawyer in Poland, I discount the opinion expressed therein that he could face imprisonment, as it does not appear to take into account all of the facts in the claimant's case. The lawyer makes no reference to conscription having ended and, more importantly, does not deal with the conscientious objector program. Had the lawyer been fully informed about the claimant's situation, I would have expected these aspects, particularly the latter one, to be mentioned somewhere in the document. The fact that they are not mentioned leaves the document with little probative value. I find that there is no objective basis for the claimant to fear the military in Poland.

[10] With respect to the claimant's other fears, the claimant repeatedly stated that he feared his family. He speculated that his family would be able to find and harm him with impunity with the aid of an uncle who is a police officer. However, I find that this portion of the claim fails as there is a viable IFA in Warsaw. In *Rasaratnam*,¹⁰ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[11] With respect to the first prong of the test, while it may be that the claimant's family might be able to exert some influence over others in his home village, no evidence was presented that they would be able to act with impunity in a large city such as Warsaw, even with the assistance of the claimant's uncle who is allegedly a police officer. While counsel speculated that Jehovah's Witnesses would be hated throughout Poland, he presented no actual evidence of this beyond his own speculation. The claimant, despite being given several chances to state if he feared "anyone else" other than the military and his

family, said that he did not. More importantly, the documentary evidence on file does not indicate that Jehovah's Witnesses face any significant problems in Poland. For example, the United States Department of State report¹¹ does deal with religious problems in Poland but makes no mention of problems experienced by Jehovah's Witnesses. I find on a balance of probabilities that there is no serious possibility of the claimant being persecuted in Warsaw.

[12] With respect to the reasonability of the claimant moving to Warsaw, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹² If the claimant was to return to Poland he would be returning through the international airport in Warsaw or another major city and would not have to return to his home village where his family lives. While the claimant has little work experience given his relatively young age, the claimant did attend a vocational school in Poland to learn skills and appears to have "cleaned up his act" since becoming a Jehovah's Witness, so it would appear that he is quite employable. I find that it would not be unduly harsh for the claimant to relocate to Warsaw and therefore the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would be, on a balance of probabilities, at risk of any of the grounds enumerated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[14] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

July 14, 2009

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1 PIF.
- 4 Exhibit C-2, item 2, Military summons and item 3, Notice No. 150.
- 5 Exhibit C-2, item 3, Notice No. 150.
- 6 Exhibit R-1, *National Documentation Package*, March 25, 2009, tab 8.2, "Poland Ends Army Conscription", *Telegraph [London]*, August 5, 2008.
- 7 Exhibit C-2, item 3.
- 8 Exhibit R-1, tab 8.2, "Poland Ends Army Conscription", *Telegraph [London]*, August 5, 2008.
- 9 Exhibit R-1, tab 8.1, "Country Report: Poland, The Right to Conscientious Objection in Europe: A Review of the Current Situation", *Quaker Council for European Affairs*, April 2005.
- 10 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 11 Exhibit R-1, tab 2.1, *Country Report of Human Rights Practices for 2008*, February 25, 2009.
- 12 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000. **Reported:** *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

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RPD File No. / N° de dossier de la SPR: TA7-10912

TA7-12205

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TA7-12254

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

August 22, 2008

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

October 22, 2008

Date de la décision

Panel

David McBean

**Counsel for the
Claimant(s)**

Joseph Farkas
Barrister and Solicitor

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

Nil

Agent(e) des tribunaux

000418

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**Designated
Representative(s)**

**Représent
désigné**

Counsel for the Minister

Nil

Conseil du

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, his wife , and their adult daughters
and , citizens of Mexico, claim refugee protection
pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

Designated Representative

was appointed the Designated Representative for , as she was unable to appreciate the nature of the proceedings due to Down Syndrome.

Allegations

After a long number of years in the United States (U.S.), Pedro returned to Mexico in 2007, to live in Guanajuato. He found a job working known as After three weeks, the , drank alcohol with , inviting him back to his office. made a sexual proposition to , who, as a 57-year-old straight male, was somewhat taken aback.

refused and did not return to work. In the first week of 2007, found his way blocked by a car. The men who confronted him identified themselves as Judicial Police Officers. He was forced into the car at gunpoint and beaten. They threatened the claimant and told him that no one could insult and that if he wanted to live, he had to return to work at After being struck unconscious, awoke while being treated by the Red Cross. When he attempted to report the incident to the Public Ministry, he was told that while he was not the first person to complain about , he was, in fact, a very powerful person and would kill the claimant for making a complaint. decided to do nothing. In mid-, fled to the Federal District. telephoned a threat to , demanding that he return to him. then relocated to the State of Mexico but received yet another telephone threat from , this time giving details about the address where was staying. After consulting a lawyer, fled to Canada on , 2007. family began to experience problems as a result of his absence. Men began asking about whereabouts. After some men attempted to break into the house, threatening the claimants as they ran away. Near the end of various windows were broken. In 2007, was followed to school but managed to escape. Despite relocating to , the claimants were found and threatened again. They travelled to Canada to join on 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as a copy of their Mexican passports were on file.²

Nexus

The claimants have alleged that they are victims of crime based on being criminally harassed by the male claimant's former boss. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.

Credibility s.19(1)

It quickly became apparent that there were a number of serious contradictions and omissions when the claimants' oral testimony was compared to the Personal Information Forms³ (PIFs), notes from the Immigration Officer and other documents submitted in support of the claim. For example, at the time that [redacted] made his refugee claim, he was asked if he knew the name of the person of whom he was afraid, and the answer recorded is, "Somebody [redacted]",⁴ and that the surname was unknown.⁵ However in the PIF and oral testimony, the claimant repeatedly identified the main agent of persecution as [redacted].

. When asked why at the time that he made his claim, he did not know the surname of the person that caused him so many problems in Mexico, [redacted] stated that his mind was still affected by the events in Mexico that he only remembered [redacted] surname when filling out his PIF. I do not find this explanation satisfactory. The interview recorded in the Record of Examination occurred on October 18, 2007, one month

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after [redacted] arrived in Canada so he would have had several weeks to collect his thoughts. An interpreter was provided in person so there should have been no miscommunication. It makes no sense for [redacted] to be so vague about the alleged agent of persecution only to be so definite later on. I find that this omission undermines the claimants' credibility.

When [redacted] was heading to his house, the road was blocked by the Judicial Police. [redacted] was asked how many men there were in the car and he said three came out. When asked if there were more in the car, he said there were a total of three. When asked why his PIF would indicate that there were four men in the car, he said that he had not included the driver. I do not find this explanation for this contradiction to be satisfactory. [redacted] was specifically asked to clarify if there were more men in the car than the three that came out and he said that there were a total of three. This simply does not match the story contained in the PIF and I find that this contradiction further undermines the claimants' credibility.

When asked orally who these men that attacked him were, the claimant said that while he did not ask them for identification, they had identified themselves as Judicial Police officers. A letter from a neighbour indicated that the Judicial Police had been canvassing the area searching for the claimant. However, in [redacted] psychological report6 [redacted] is described as experiencing problems at the hands of people working for [redacted] and the police are separately described as doing nothing about these problems. [redacted] attempted to explain that he meant that [redacted] was protected by the police, that he never confirmed the identities of the people who attacked him and that perhaps he used the wrong words. I do not find these explanations satisfactory. The perpetrators of the beating allegedly identified themselves as Judicial Police officers and up until this point in the testimony, [redacted] appeared to assume that they were. [redacted] stated that he received the letter from his neighbour which specifically stated that the Judicial Police were searching for him prior to being interviewed by Dr. [redacted]. It makes no sense for [redacted] to tell Dr. [redacted] that he experienced problems at the hands of people who worked for [redacted] and separately say that the police did nothing when, in fact, the Judicial Police were the ones with whom he experienced problems in the first place. I find that this contradiction further undermines the claimants' credibility.

With respect to the beating itself, [redacted] stated orally that one officer had a gun and the

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other officers struck him with some sort of bars or pipes. When confronted with the fact that his PIF did not make mention of bars or pipes and instead referred to all of the officers having guns (plural), indicated that the narrative was incorrect and he was not sure who made the error. The claimant further stated that he was not given a full translation of his narrative to check for errors. I do not find this explanation satisfactory. This hearing did not proceed as originally scheduled on June 10, 2008, as the original narrative was often incomprehensible in English. The matter was postponed specifically for the translation to be remedied. [redacted] affirmed at the beginning of the hearing that the PIF (as amended) had been translated to him and that it was complete, true and accurate. By this time, all errors should have been corrected and I find that this discrepancy in the manner that [redacted] was attacked to further undermine the claimants' credibility.

In oral testimony, [redacted] was asked three times in succession whether or not he filed a complaint with the Public Ministry before he finally said that "no", he had not. This contrasts with the Immigration Officer's notes where it is noted that not only did he file a report but that also he could likely get a copy. As stated previously, [redacted] was in Canada for one month prior to being interviewed by an Immigration Officer and an interpreter was provided in person. [redacted] could not provide a meaningful explanation for this discrepancy as to whether he notified the authorities, and I find that it further undermines the claimants' credibility.

When speaking of [redacted] efforts to track him throughout Mexico, [redacted] stated orally that when called on [redacted] phone the second time, [redacted] said that he knew where [redacted] was. However, [redacted] stated he was not sure if [redacted] actually knew where he was as he had simply reached him on his cell phone. Once again, this contrasts with the PIF where [redacted] is specifically described as reading [redacted] new address out to him. Once again, [redacted] could not provide a meaningful explanation for this discrepancy and once again, I find that this contradiction further undermines the claimants' credibility.

In oral testimony, [redacted] described seeing the two men who had earlier tried to break into her house in [redacted] a month later in [redacted]. While she felt that they might have spotted her, she stated they did not interact. This contrasts with her PIF which describes her as being threatened by these men. [redacted] could not provide an explanation for this apparent discrepancy and I find that this further undermines the claimants' credibility as well.

Apart from the numerous specific credibility concerns, the claimants' story fails to make sense on a very basic level. [redacted] allegedly worked in a bar for a few weeks and rebuffed a single drunken sexual proposition from the owner. Somehow this one refusal caused the forces of the Judicial Police and others to track [redacted] and his family throughout Mexico in order to get [redacted] to return to work and give in to the demands of the bar owner.

Given the numerous inconsistencies, omissions, and contradictions brought to light at the hearing

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and the general implausibility of the story, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants allege happened to them, actually happened. I make this finding even though a medical note was presented stating that [redacted] had been injured. I note that the note does not disclose who had given him his injuries or the circumstances in which he sustained them. Apart from the earlier deficiencies noted, the psychological report was based on the story that [redacted] told Dr. [redacted], a story that I simply disbelieve. If [redacted] is suffering from psychological difficulties, they did not arise as described in the PIF. These documents do not assist the claimants and with no other evidence pointing to a risk related to the harms enumerated under section 97 of the *IRPA*, the claims pursuant to that section fail as well.

CONCLUSION

The claimants have alleged that they are victims of crime based on being criminally harassed by the male claimant's former boss. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. As I find that the claimants were lacking in credibility, the claims also fail with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David Mc Bean

October 22, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1 to C-4, claimants' Personal Information Forms.
- 4 Exhibit R-2, Schedule 1, Background Information, p. 3 of 6.
- 5 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, Record of Examination, p. 6.
- 6 Exhibit C-5, psychological report from Dr. [redacted].

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TA7-12205

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RPD File No. / N° de dossier de la SPR : TA7-11051

TA7-11058; TA7-11059

TA7-11060; TA7-11061

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

NEFTALY TORRES VALDEZ

Date(s) of Hearing September 26, 2008 **Date(s) de l'audience**
December 16, 2008
February 27, 2009

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision May 13, 2009 **Date de la décision**

Panel David McBean]

Counsel for the Claimant(s) Vaska Bozinovski **Conseil(s) du / de la**
Barrister and Solicitor **demandeur(e)(s)**

Tribunal Officer

J. Ross

Agent(e) des tr

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**Designated
Representative(s)**

**Représent
dési:**

Counsel for the Minister

Nil

Conseil du

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(the claimant), his wife, (the female claimant), their minor son, and their minor daughters, and , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (*IRPA*).

ALLEGATIONS

The claimants lived in , in the state of . In 2007, the claimant received approval for a pre-approved mortgage of two million pesos (approximately \$200,000 CDN). On , 2007, he was kidnapped on his way to work by kidnappers hiding in his vehicle. The kidnappers demanded that the claimant give them two million pesos. They called the female claimant to make the same demand. Despite warning her not to go to the authorities, she went to see (“ ”), the of the . While he promised to assist, he kept recommending that the ransom be paid and that he needed help with “expenses” for himself and his men. As time passed, she received more calls and repeatedly made payments to so he would continue the investigation. Despite being tortured, the claimant managed to free himself on while his captors were in drunken and drugged states. He was surprised to find himself not far from his home. His wife helped take him to the hospital to obtain treatment for his injuries. The next day they reported to , and while he took their report, he did not investigate the house where the claimant was held. Near the end of , a friend noticed the claimant’s vehicle nearby. The claimants informed and they met at the vehicle. As opened the vehicle they noticed him dusting away a shoe print inside the vehicle that had been left by someone else. Other than impounding the vehicle, took no further steps to investigate. The claimants believed that had actually been working with the kidnappers so they went to the Prosecutor’s office. The Prosecutor stated that had been expelled; however, they soon found that he had actually obtained position in the . After found out that the claimants had gone to the Prosecutors office, he began calling the claimants and made threats. He was seen driving past the claimants’ home on two occasions. In 2007, a man started appearing at their son’s school asking questions. In mid-, a man claiming to be an uncle

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attempted to take their son away from the school, however, the school officials became suspicious and prevented the abduction. Out of fear, the claimants did not report the kidnapping attempt. Eventually, the claimants made a complaint to the Human Rights Commission of . However, the person they spoke with said that while there would be an investigation they could not protect them and recommended that the claimants move to another state. The claimants moved to the state of . On , 2007, men attempted to enter the family's home in another attempt to kidnap their son. The female claimant's screams eventually caused the kidnappers to flee. As the phone lines had been cut, she used her cell phone to call the claimant. The claimants went to the Public Ministry Office in to make a complaint against . However, they were told that since they were new to the area and had no proof of the events, would have to be called to the area to give his version of events. A lawyer overheard what was happening and advised the claimants to flee to Canada. After briefly returning to for a few days, the claimants came to Canada on , 2007, and made refugee claims upon arrival.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Forms³ (PIFs) and the other documents available. For example, in oral testimony, the claimant stated that while he was held captive he was burned by cigarette butts and received electrical shocks, particularly on his testicles. He stated that both of these methods of torture caused damage to his skin. However, as noted at the hearing, while the medical note⁴ that was produced to substantiate the claimant's injuries states that he had received black eyes, dehydration and contusions (i.e. bruises) in several parts of the body, there is no mention of burns from a lit cigarette or skin damage from the

administration of electrical shocks. The claimant stated that he did not know why this information was not contained in the medical note and insisted that his oral testimony was correct. I do not find the claimant's explanation satisfactory. Burns from a cigarette and skin damage from the administration of electrical shocks would have been fairly obvious on the claimant's body. For a medically trained doctor to not notice these things, or notice them and fail to include them in a medical report while only mentioning other less serious injuries, does not make sense. I find that these omissions from the medical report not only call into question the authenticity of the claimant's documents, but also undermine the claimant's credibility.

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In oral testimony, the claimant agreed with the statement that he had been kidnapped for 10 days, yet when pressed for the dates he stated from [redacted] through [redacted]. However, as noted at the hearing in the Immigration Officer Interview Notes,⁵ he stated that he had been kidnapped for 15 days. The claimant stated that all of the periods were approximate and that he did not want to correct the Refugee Protection Officer (RPO) on her mistaken calculation. I do not find the claimant's explanations satisfactory. While I do note counsels' submission that the claimant uses the phrase "about two weeks" in his declaration written in Spanish,⁶ he also uses the exact alleged dates involved (i.e. [redacted] through [redacted]). The interview with the immigration officer took place with the assistance of a Spanish interpreter, so there should have been no confusion with respect to terminology. Had the time period been approximate in the claimant's mind, I would have expected that fact to have been recorded rather than such a specific time period as 15 days. Also, there were instances, such as when I was questioning with respect to how the claimants found out that [redacted] had been promoted rather than expelled; where the claimant did interrupt questioning to correct and/or clarify what he had heard. I find that these conflicts with respect to the length of time that the claimant was kidnapped to further undermine the his credibility.

In the claimant's PIF, he states that when he reported to [redacted] that he was free, [redacted] was disrespectful towards him. This disrespect then formed part of the reason that the claimants' believed that [redacted] was involved in the kidnapping. In oral testimony, he described [redacted] as mocking him when he reported his escape. However, as noted at the hearing, in the translation of the statement,⁷ that the claimant made in Spanish at the time that he made his claim, he states with respect to [redacted], "He jokingly said that I didn't let myself be helped." The claimant stated that the PIF and oral versions were simply examples of giving more details than he had given at the time that he made his claim. Counsel, in her written submissions, stated that the information was actually consistent and that perhaps the claimant used inappropriate language in attempting to explain the situation. It was also noted at the hearing that in oral testimony he stated that [redacted] said that the claimants should have simply paid the ransom and that [redacted] took few notes while they were speaking. However, as noted previously, while [redacted] is described in the claimant's PIF as acting disrespectfully, there is no mention of him stating at this meeting that the ransom should have been paid and that he took few notes. The claimant

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insisted that the oral version was correct. I do not find the claimant's explanations satisfactory. The claimant made the written statement in Spanish, his own language, so there should have been no confusion with respect to terminology. It would make perfect sense for the [redacted] of an [redacted] unit to tell someone who had just managed to escape on his own in an innocent joking fashion that he had not been allowed to help. To then say that the transaction was disrespectful and sinister to the degree that this formed part of the basis for the eventual complaint to the authorities is not simply the addition of details, it is a contradiction. Also, the claimant's PIF was amended on numerous occasions. There were four separate exhibits that contained amendments to his original PIF. By the time of the final version of his PIF,⁸ I would have expected that all significant details would have been included in the narrative. Had [redacted] made further comments at the time of their meeting, and, more importantly had the claimant noticed that [redacted] took few notes, which would have added to

the conspiracy theory, I would have expected this to be mentioned in the PIF. I find that the contradiction and the omissions with respect to how the claimants reported his escape to the alleged agent of persecution to further undermine the claimants' credibility.

I should note that there was one part of the female claimant's testimony where language also became problematic. Confusion arose when an obscenity directed at her was translated into English using a North American term "motherfucker", which as noted at the hearing, has no equivalent in Mexican Spanish. The interpreter stated that the obscenity as used in Spanish had no equivalent in English, so she had substituted an obscenity of equal severity. Given that the interpreter took full responsibility for changing the term used, I draw no negative inference from that portion of the testimony.

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In the PIF and in oral testimony, a friend spots the claimant's vehicle parked on a nearby street and informs the claimants of this fact. The claimants then inform [redacted] and they meet him at the vehicle where he proceeds to destroy a shoeprint. However, as noted at the hearing, in the hand written statement that the claimant gave at the time that he made his claim, the friend not only spots the vehicle, but then contacts the district attorney's office himself and then [redacted] arrives. The claimant insisted that the oral and PIF version of his testimony was correct. I do not find the claimant's explanation satisfactory. I realize that the claimant was experiencing stress when he came to Canada. I also realize that there is psychological evidence on file with respect to him.⁹ However, I would note that that psychological evidence does not disclose any problems with respect to memory. In fact, the comment is made "I sense that he will have no difficulties in providing details at his hearing. His judgment appeared to be intact". This incident was the key event that exposed [redacted] involvement in the conspiracy. The claimant wrote the hand written statement in Spanish so there should have been no confusion with respect to terminology. The two descriptions are quite different, in that, in the hand written statement, the friend calls the "district attorney's office" and subsequently [redacted] appears to investigate/destroy evidence, while in the PIF version, the friend only contacts the claimants about the vehicle and the claimants contact [redacted] directly. To get the actors and the roles they played "wrong" in such a key event makes no sense. I find that this contradiction further undermines the claimants' credibility.

In the PIF and in oral testimony, after the claimants came to suspect [redacted] involvement in the kidnap plot, they complained to the authorities. After [redacted] discovered this he called and threatened the claimants and wanted revenge. However, as noted at the hearing, in the Immigration Officer Interview Notes,¹⁰ it is recorded that after the vehicle was impounded "Phone calls requesting money came in and the same deal was going to happen again." The claimant insisted that the PIF/oral version was correct and counsel submitted generally that due to the fact that the claimant was detained overnight by immigration authorities before he could have his refugee interview, little weight can be

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given to the answers recorded during that interview. I do not find the claimant's explanation satisfactory. During the interview a Spanish interpreter was provided and there are numerous details included, most of them appearing to have been correctly recorded, so it appears the claimants were able to recall their experiences. To change what should have been called to threaten revenge for denouncing him into callers requesting money, which appeared to indicate that the kidnap plot was replaying itself, makes no sense. I find that this contradiction further undermines the claimants' credibility.

While the claimants presented what is purported to be a document from the Public Ministry in Puebla, 11 as noted at the hearing, there is no file number written on that document. The claimant stated that he was supposed to come back to ratify it and that he had not done so out of fear. Letters were presented from a lawyer in Mexico Mr. , who essentially stated that it would be proper for such a document not to have a file number. Also noted were a number of differences between the Public Ministry document and the claimant's story contained in their PIFs. In the Public Ministry document, the claimant is not only kidnapped by , but that it appears that asked for two million pesos personally. The claimant stated this meant that had told the female claimant to pay the ransom. Also, he did not know why there is no mention in the Public Ministry document of the claimants seeing outside their home and that was acting out of revenge for them having reported him to the authorities. The female claimant did not know why the fact that she had paid 18,000 pesos in bribes to had been omitted as well. Most importantly, it was noted that the Public

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Ministry document states that [redacted] had sent people to the children's school "to investigate our activities" and to prevent a further kidnapping, the claimants withdrew the children from school. This contrasted sharply with the PIF wherein an actual kidnapping attempt causes the claimants to withdraw the children from school. The claimant stated that while he was given the chance to read over the statement to check for accuracy, he only read the first part and trusted the writer to be accurate with respect to the remainder. I do not find the claimant's explanations satisfactory. While counsel submitted that Mr. [redacted] is not a family member of the claimants, the claimant actually testified that [redacted] was the spouse of his sister-in-law. His letters are not on formal letterhead and his e-mail contact is stated as a "hotmail" account, an account which anyone can sign-up for. The evidence obtained by the Board's own research unit¹² explains the process by which the Board attempted to authenticate the Public Ministry document. From reading that document, it appears that a file number should have been present, as this was the only way to search for the document. I give little weight to the statements made by Mr. [redacted], not only because of the concerns expressed with respect to the form of his letter, but also the fact that he obviously has an interest in the outcome of the case given that he is indeed related to the claimants. It makes little sense for a government document to have no file number if that is the only way to search for it, as it was the claimants own evidence that they were to come back at a later time to confirm the document. To do so, someone would have to locate the document upon their return. Furthermore, the discrepancies and omissions noted in the document are major ones on major points. The complaint was written at the claimants' behest. The information contained therein could only have come from the claimants and for them to describe the events so incorrectly, or for the transcribing official to get the information so wrong, makes no sense. Given the lack of a file number and more importantly the numerous omissions from and contradictions to the claimants' story on a number of significant points contained in the body of the Public Ministry document, I find on a balance of probabilities that the Public Ministry document is not a genuine document. I find that this not only casts further doubt on the authenticity of all of the documents presented by the claimants, but that is also further undermines the claimants' credibility.

During the first sitting of the hearing, the claimant stated that in a recent conversation with his father, he learned that an individual was seen stopping his car outside the house in which the claimants used to live and therefore it appeared that [redacted] was still interested in causing the claimants harm. In later testimony, he stated that this had happened many times. However, as noted at the hearing, this information is not contained in any of the numerous PIF amendments. The claimant stated that he had not realized that the information was important. I do not find the claimant's explanation satisfactory. He affirmed that his PIF, as amended, had not only been interpreted to him, but that it was also complete and accurate. The five original PIFs were separately amended a total of eight times on a host of points. The claimant's original PIF alone was amended on four separate occasions. The final amendment to his narrative¹³ shows over half the narrative text in yellow (yellow being used to signify changes made at some point). This never before mentioned information showed that [redacted] had not simply acted in

the heat of the moment and was still interested in the claimants over a year after they left the country. To not include such a significant piece of information, particularly when amendments were made on numerous other points, makes no sense at all. I find that this omission further undermines the claimants' credibility.

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One amendment that was actually contained in Exhibit C-25, the fourth amendment to the claimant's PIF was also problematic. For the first time it was noted that the claimant not only used to have a brother named [redacted], but that [redacted] was murdered by the police in [redacted] and the police covered up this murder. As noted at the hearing, this information was not contained in any of the previous versions of the PIF, either in Question 4 which contains information about the claimant's family or in the narrative itself. The claimant stated that he did not originally consider the information important as it dealt with relative, that it was just a detail and that he had concentrated on his living relatives. I do not find the claimant's explanations satisfactory. The directions for filling out the PIF are quite clear. For question 4, the details are to be given for all close relatives either living or dead. Question 4 was even amended earlier after the claimants retained current counsel with respect to other information. Also, the narrative is to include details of all events with respect to family members and persons similarly situated to the claimant. One would think if these things had truly happened to his brother, they would have been front and centre in the claimant's mind when he was dealing with his own problems with the authorities. To make no mention of his brother being murdered by the authorities and the authorities covering up the murder, or even the fact that he had a deceased brother until the fifth version of his PIF, makes absolutely no sense at all. I find that these discrepancies further undermine the claimants' credibility.

In general, the basic premise for the claim was implausible. The claimant stated that he assumed that through some form of "broken telephone" style gossip, word spread that he actually had two million pesos rather than he had simply qualified for a pre-approved mortgage in the same amount. He also stated that the kidnappers never bothered attempting to use his debit or credit cards as the amounts accessible by those cards would be small and that it was Mexican tradition to not trust the banks so many people would hide cash in other places. The letter¹⁴ presented from [redacted] that allegedly started all of the events in motion, is undated and appears to be a fairly generic form letter that was in no way rare. The claimant stated that getting a pre-approved mortgage is a fairly common arrangement in Mexico and that several of his colleagues had obtained similar arrangements in the past. Pre-approved mortgages are loans tied explicitly to the purchase of a house and the person receiving the loan does not actually get the cash. It makes little sense that telling his colleagues about the pre-approved mortgage would somehow lead to people believing that he had two million pesos stashed away somewhere, when they were already familiar with how pre-approved mortgages worked. It made little sense for the claimant to allegedly get this money from a bank and then have people believe that he would hide it somewhere else. Also, it made little sense for the alleged agents of persecution to separately expect the

female claimant to get the stashed money and separately torture the claimant into telling them its location, while making no efforts to go to the claimants' house and/or bank.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to numerous major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and as such, their claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims pursuant to section 97 of the *IRPA* fail as well. While I am mindful of the psychological evidence on file with respect to the claimant,¹⁵ I do not believe that any psychological problems that he may be experiencing are due to the causes that he has stated. Furthermore, no evidence has been presented that he could not obtain treatment for these problems should he return to Mexico.

CONCLUSION

Since I do not believe the claimants with respect to the events described in their PIFs their claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well.

As the claims of his wife and children rely entirely on the evidence of the claimant and no persuasive evidence was adduced to differentiate their claims from that of the claimant, the claims of his wife and children must also fail.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

May 13, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibits C-1 through C-5, PIFs as amended by Exhibits C-6 through C-12, and C-25.

4 Exhibit C-14., item 2.

5 Exhibit R-2.

6 Exhibit R-3.

7 Exhibit R-3.

8 Exhibit C-25.

9 Exhibit C-15.

10 Exhibit R-2.

11 Exhibit C-14, item 4.

12 Exhibit R-5.

13 Exhibit C-25.

14 Exhibit C-14, item 1.

15 Exhibit C-15.

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TA7-11058

TA7-11059

TA7-11060

TA7-11061



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA7-11162

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 9, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	July 7, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Andrew Brouwer Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	J. Cutler	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant alleges that he is gay. While he did not publicly admit to his sexual orientation while living in Mexico, many people suspected that he was gay. Although he was able to patronize gay bars in various cities, have same-sex encounters and have a same-sex relationship, he was mocked by and laughed at by various people. After living and studying in Canada for a few months, the claimant “came out” to his parents during a telephone call. This revelation was not well received, particularly by the claimant’s father. The claimant feels that his parents would have told others in his hometown of Oaxaca, about his sexual orientation. The claimant fears that this would put him at risk for even greater mocking and perhaps violence.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.² The claimant’s sexual orientation was provisionally accepted at the beginning of the hearing and I do find that the claimant has established that he is gay.

Internal Flight Alternative (IFA)

Even if I accept all of the claimant’s evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District (F.D.). In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the

claimant, for him to seek refuge there.

With respect to the first prong of the test, the claimant fears a negative reaction from the people in his hometown and from Mexican society in general. No evidence has been presented that anyone from the claimant's hometown would have the motivation to follow him anywhere in order to do him harm. With respect to Mexican society in general, the independent documentary evidence⁴ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the Federal level and in major cities, such as the F.D. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the F.D Penal Code. One of the co-sponsors of the legislation, lesbian Congresswoman, Patria Jimenez, stated that "with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework".⁵ In September 1999, the Legislative Assembly of the F.D passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the F.D. has been relatively diligent in enforcing its anti-discrimination statute.⁶ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.⁷

Participation by homosexuals is now widely accepted in at least two of Mexico's three principal political parties.⁸

A law allowing same-sex unions in the F.D. became effective March 16, 2007.⁹ Conjugal prison visits are now allowed for same-sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the F.D.¹⁰ The National Council Against Discrimination (CONAPRED) has an office in the F.D. CONAPRED is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.¹¹ Victims of discrimination can also contact their state Human Rights Commission.¹² Some concerns have been voiced however, about the effectiveness of the Human

Rights Commission.13

This is not to say that the situation for gay men in the FD is perfect. For example, the Citizens' Commission Against Homophobic Hate Crimes alleged there were 332 murders in Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology, given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁴ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

In post-hearing submissions¹⁵ counsel noted that the Federal District Commission of Human Rights reported that there were 137 hate crimes in Mexico City in the period 1995-2005. At a rate of just over one per month over 11 years, that does not appear on the face of it to be statistically out of line, given the huge population of the F.D. (over 8 million in the city proper and over 18 million in the greater urban area).¹⁶

Counsel also made reference to a report by the Metropolitan Autonomous University that eleven percent of homosexual men, bisexuals and lesbians in Mexico City had reported being threatened with extortion and detention by police officers.¹⁷ However, these results appear to have been obtained from surveying a number of individuals, so there is no way of verifying the accuracy of the answers. There is also no indication as to whether the sample of individuals used is representative of the experiences of gay men, bisexuals and lesbians in general. There is also no indication as to when the threats took place, whether recently or years ago. It should be noted that the first line of the IRB document states that "Reports of police officers sexually abusing homosexuals were scarce..."

I find that, on a balance of probabilities, the F.D. does provide a safe IFA for the claimant.¹⁸ The claimant has provided insufficient evidence to rebut the presumption of state protection in the F.D. There is no serious possibility that as a gay man he would face persecution.

With respect to the reasonableness of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹⁹ If the claimant were to return to Mexico, he would be using the international airport in the F.D. so he would not have to return to his hometown. While he did voice concerns that he would have no family there to support him and given his limited education he would be unlikely to find a high paying job, these are the normal problems of relocating and are actually the same

problems he is facing here in Canada with the added problem of working in a second language. Even before officially “coming out”, the claimant was able to visit gay bars in a variety of smaller cities, have a boyfriend (albeit at a younger age) and have same-sex encounters. I find that, apart from the general difficulties in starting over his life in a new location, it would not be unduly harsh for the claimant to relocate to the F.D.

CONCLUSION

As I find the claimant has a viable IFA in the F.D, the claim also fails with respect to the grounds enumerated under section 97(1) of the *IRPA*. For all these reasons, the Refugee Protection Division, therefore, rejects the claim.

(signed)

“David McBean”

David McBean

July 7, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 Exhibit R-1, *National Documentation Package*, January 30, 2008, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 5 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 6 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 7 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.

- 8 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 9 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 10 Exhibit R-1, item 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.
- 11 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 12 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute; and item 2.4, *Issue Paper*, “Mexico, Situation of Witnesses to Crime and Corruption”, section 5.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.
- 13 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 14 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 15 Exhibit C-4, post-hearing submissions.
- 16 Exhibit R-1, item 10.1, *Issue Paper*, “Mexico: Police”, section 2.5, “The Federal District, (Mexico City)”, *Immigration and Refugee Board (IRB)*, May 2004.
- 17 Exhibit R-1, item 6.4, *Response to Information Request*, number MEX102682.E, January 9, 2008.
- 18 The panel notes that a number of RPD decisions finding that homosexuals had a viable IFA in Mexico City have been upheld by the Federal Court: *De La Rosa, Luis Francisco Flores v. M.C.I.* (F.C., no. IMM-1624-07), Phelan, January 23, 2008, 2008 FC 83; *Rosas Carrasco, Jesus Antonio v. M.C.I.* (F.C. No. IMM-3283-06), Martineau, April 12, 2007, 2007 F.C. 382; *Herrera, Oscar Marquez v. M.C.I.* (F.C., no. IMM-1499-06), Shore, October 26, 2006, 2006 FC 1272.
- 19 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.

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RPD File No. / N° de dossier de la SPR : TA7-11170
TA7-11212

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s) s.19(1) **Demandeur(e)(s) d'asile**

Date(s) of Hearing June 2, 2009 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision October 16, 2009 **Date de la décision**

Panel David McBean **Tribunal**

Counsel for the Claimant(s) Anita Leggett
Barrister and Solicitor **Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer N/A **Agent(e) de tribunal**

Designated Representative(s) N/A **Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister N/A **Conseil du ministre**

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[1] _____, (the claimant), and his spouse _____, citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimants lived in Mexico City. The male claimant worked for his uncle in a place of _____ that offered _____ and _____. The night of _____, 2007, had been a busy one with a full house in attendance. However, by 2:30 a.m. on _____, only _____ of _____ remained. The other employees having been sent home, only the claimant and his uncle remained to look after the _____ and close-up for the night. At the table were four people. One was _____, (“_____”), a _____ and long-time frequent patron who was reputed to have connections and be corrupt. He had brought with him two other people, one of whom the male claimant heard referred to as “_____”, the other he did not know. The fourth person was a man who went by the name _____ or sometimes “_____”. _____ and _____ sometimes _____ together. As the night progressed the claimant and his uncle became aware of strong words being passed between the trio of _____ and his two acquaintances and _____ with allegations _____ being made. While strong words were not uncommon in this place, the arguments escalated to involve insults. By about 3:00 a.m. the claimant’s uncle thought to intervene but was stopped when things turned violent. _____ pulled out a knife and attempted to stab _____ pulled out his service revolver and shot _____ in the head point blank. As _____ fell to the floor bleeding profusely the claimant and his uncle fled out the main door in panic. One of the men with _____ followed them, firing two shots that missed. After splitting up, the claimant hid under a car where he heard a vehicle coming and going. After waiting for about two and a half hours the claimant began to hear normal traffic sounds and the sun began to rise so he cautiously made his way home. The claimant’s uncle eventually contacted him. The claimant, his wife and his uncle all went to the Public Ministry to make a complaint. After taking down all of their personal information, the attendant aggressively told them that they lacked evidence and said they may be accused of defaming _____.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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After stopping for lunch, the claimants returned home only to find the windows broken and the garage door open. The claimants went to the claimant's mother's house. The next day, the claimant received a death threat on his cell phone stating that he should never have attempted to make a denunciation. The claimant's uncle was threatened as well. On , 2007, a man came to the claimant's mother's house asking for the claimant. She lied and said that he was not there. However, the man returned and was seen walking up and down the street. The claimant and his spouse also saw the same vehicle that the claimant saw on the night of the incident. The claimant called the police and gave vague information asking for a patrol to stop by. When a cruiser did appear the man and the vehicle disappeared. The claimants used this opportunity to leave the house, travelling to a friend's place in about two hours away. On , the claimant's uncle joined them and they all went to the Attorney General's Office for the State of to make a complaint. The claimant received another threatening call on his cell phone wherein the caller said that he knew that the claimant had made a complaint in . The claimant warned his uncle, who had by this time returned to Mexico City. The claimant received two or three more threatening calls prior to their fleeing to Canada on , 2007. The claimant's uncle moved his family to his mother-in-law's house. On , 2007, someone sprayed gunfire into that house, killing the claimant's uncle with bullet wounds, killing one other person and wounding numerous others. The claimant and his spouse made their refugee claims on , 2007.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identity as citizens of Mexico was accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Credibility s.19(1)

[5] While counsel stated in her post-hearing submissions that the male claimant was "extremely credible," I disagree. It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form³ (PIF) and the other documents available. For example, in the claimant's initial oral testimony, he referred to the [redacted] was as " [redacted] " more than once. However when asked about him later, the claimant stated that his name was " [redacted] ", which matched the name given in the PIF. When it was pointed out that the he had given two different names for the dead person, he stated that they are different ways of colloquially referring to the same person and mean the same thing. I do not find the claimant's explanation satisfactory. The claimant only ever knew the man by his one nickname " [redacted] " and this version is given consistently in the PIF. Had this really been the case, I would have expected the claimant to use the same nickname in oral testimony rather than suddenly start using a different nickname, even if one would translate their English equivalents as the same. I find this discrepancy with respect to the name of the alleged victim to undermine the claimants' credibility.

[6] In oral testimony, the claimant stated that after he fled the scene of the killing, he specifically saw [redacted] vehicle that he had seen many times before, driving around at high speed for two hours while the claimant was hiding under another vehicle. The male claimant then fled at dawn when he no longer heard [redacted] vehicle. However, as noted at the hearing, in the PIF, the claimant was menaced by a "black pick-up truck" which he heard "coming and going". The claimant stated that he had forgotten to say at the time he

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1.

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prepared the PIF, that it was [redacted] vehicle and he was only providing full details about the vehicle that was driving around for two hours. I do not find the claimant's explanations satisfactory. If the claimant had really recognized that it was [redacted] vehicle, a vehicle he stated he knew from seeing many times previously, I would have expected him to state in the PIF, that it was in fact [redacted] vehicle, rather than make a generic reference to a black pick-up truck. Furthermore, if [redacted] vehicle drove around two continuous hours in the same area searching for the claimant, I would have expected some mention of that, rather than what was written in the PIF, which appeared to suggest that whatever vehicle it was, simply came and went once in each direction with the claimant cautiously waiting until dawn. I find that these discrepancies with respect to the length of time that the claimant was menaced by the vehicle, and more importantly, the identification of the vehicle itself as [redacted] to further undermine the claimant's credibility.

[7] In oral testimony, the claimant stated that the first companion of [redacted] at the [redacted] was "[redacted]" ("[redacted]"), although he was sometimes known as "[redacted]" ("[redacted]"). However, as noted at the hearing, in the PIF, the claimant knew the first companion of [redacted] only as "[redacted]" and that in the copy⁴ of the denunciation made to the authorities, the only information about [redacted] first companion is that his nick-name is "[redacted]". The claimant stated that there were errors in the denunciation. I do not find the claimant's explanation satisfactory as it actually contradicts his own evidence in that he had previously stated that both names were correct. However, the PIF is quite detailed down to alternate nick-names being given for the [redacted] ([redacted]). Had [redacted] first companion really had an alternate nick-name as well, I would have expected both to be given in such a detailed PIF narrative. Furthermore, if this person was known primarily by "[redacted]", I would have expected that name to be used in the denunciation. At the hearing, it appeared that the claimant was aware of the contradiction in the names and scripted his evidence in an attempt to cover up the contradiction. I find that this contradiction in names with respect to [redacted] first companion to undermine the claimant's credibility.

⁴ Exhibit C-4, item 2.

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[8] In the PIF and oral testimony, [redacted] is at the [redacted] with two other people and [redacted] is alone. However, as noted at the hearing, while the denunciation initially refers to [redacted] being in the company of two people, it later makes reference to one of the people watching the [redacted] as a friend of [redacted]. The claimant stated that this was an error on the part of the authorities made perhaps when handwritten notes were typed up. I do not find the claimant's explanation satisfactory. This may in fact be an error, particularly given the awkward way this portion of the document is worded. However, given that the person allegedly transcribing this would have the job of transcribing complaints and this information is quite basic and important in that it deals with who were the witnesses to the alleged crime, and more importantly, whether or not any of those witnesses might not be friendly with [redacted]. To make such a basic error on such a basic point with that error not being caught even after transcription does not make sense. I find that this discrepancy further undermines the claimant's credibility.

[9] The male claimant stated in oral testimony that after visiting the authorities in Mexico City, the claimants returned to their house only to see from a distance that their windows had been broken, the doors (note plural) were now open, and various belongings had been taken out of the house and scattered out in front. However, as noted at the hearing, the PIF narrative states that the claimants were able to notice at a distance that the windows had been broken and their garage door was open. The male claimant stated that he was now providing further details at the hearing than the fewer details that had been included in the PIF. I do not find the claimant's explanation satisfactory. The PIF narrative is quite detailed and specific with respect to the description of the claimants' house. Had multiple doors actually been left open and belongings scattered in front of the house, I would have expected there to be some mention of that in the PIF given the way that the PIF was written, rather than the very specific description of fewer things wrong. I find that this discrepancy further undermines the claimants' credibility.

[10] The denunciation specifically states that the claimants believe that the Public Ministry in the State of [redacted] gave their personal information to their enemies. However, as noted at the hearing, this should have been the Public Ministry of the Federal District. The claimant initially stated that he had received more than one threatening call in more

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than one location. However, after it was pointed out that given the sequence of events, this information had to refer to the Federal District as the claimants had not yet left Mexico City to travel to . The claimant stated that this must be one of many errors contained in the document. I do not find the claimant's explanation satisfactory. Regardless of whether the typed version of the document was transcribed in either or the Federal District, for the transcriber to be unable to get the organization being complained about correct, makes no sense as it would either be the organization "that I work for" or a different one. I find that this discrepancy further undermines the claimant's credibility.

[11] The copy of the denunciation on file was actually issued in the Federal District with that jurisdiction's information in the administrative portions of the document. The claimant stated that even though he made the complaint in , the events being complained about took place in the Federal District, so the complaint would have been administratively transferred to the Federal District for follow-up. However, the claimant also stated that on the day he went to the authorities in , he received a threatening call at 3:00 or 4:00 p.m., about two hours after visiting the authorities and the caller knew that the claimant was not only in , but that he had already complained to the authorities. While the claimant did not specifically know how the caller came to know this, he stated that he believed the authorities in were involved in the conspiracy against him. However, as noted at the hearing, the administrative portions of the document state that various administrative procedures were done in the Federal District later that night at 22:30 and then later the next morning at 01:30. When asked why the authorities would perform more than one administrative procedure with respect to the complaint, even though they were allegedly in on the conspiracy, and why the authorities in would transmit the complaint in the first place given that they were allegedly in on the conspiracy as well, the claimant said that he did not know. I do not find this lack of an explanation satisfactory. From the testimony given by the claimant, the threatening caller knew that he went to the authorities quite quickly, so it would appear that complaints were being monitored. It makes little sense for the authorities in , who the claimant believes were part of the conspiracy, to transmit the file to the Federal District, and it even makes less sense for the authorities in the Federal District where was based, to administratively follow-up on

the complaint more than once with the conspirators already long aware of the complaint being made. Instead, one would have expected the complaint to have been “buried” at one of these points. I find that this implausibility with respect to the processing of the complaint to further undermine the claimant’s credibility.

[12] The claimant stated that the previously mentioned copy⁵ of the denunciation made to the authorities in Mexico City was obtained by his mother after he travelled to Canada. However, as noted at the hearing, the documentary evidence on file⁶ makes it clear that due to Mexican privacy laws, such a copy would not be available to anyone other than a person directly involved in the investigation. The claimant stated that this was proof that anyone could do anything in Mexico regardless of the law, and counsel in her submissions, echoed the claimant, in that this was further proof of corruption. Furthermore, it was noted at the hearing that the file number on the denunciation differed radically in format from the file number of the investigation referred to in the copy of the death certificate⁷ presented separately. This difference even extended to the manner in which the date was apparently noted within the file number (i.e. 2007 versus 07-08). The claimant stated that while he did not know anything with respect to file numbers and their format, he speculated that the file number on the denunciation may have been altered to potentially cause problems. I do not find these explanations satisfactory. If the claimant really was facing a conspiracy at the hands of the authorities, it makes little sense that they would bend the rules to help out his mother. Furthermore, it makes little sense that the authorities would attempt to cause problems by altering the format of the file number on the denunciation while allowing the denunciation itself to go out unaltered when one would think they would simply deny the existence of a denunciation in the first place. I am mindful that the claimant stated that the denunciation was never read back to him so that he could verify its correctness. However, the evidence in the denunciation originated from the claimant and the vast majority of it is correct and the problems noted previously go far beyond simple typographical errors. I am also mindful of counsel’s speculation in her submission that some of the errors may have been intentional on the part of the authorities

⁵ Exhibit C-4, item 2.

⁶ Exhibit R-3, *National Documentation Package*, March 18, 2009, tab 9.10, *Response to Information Request*, number MEX102725.E, April 17, 2008.

⁷ Exhibit C-5, item 1.

in order to prevent the complaint from proceeding. However, this speculation does not make sense. If the conspiring authorities really wanted to prevent the complaint from proceeding, one would once again expect the complaint to disappear rather than have someone intentionally alter little bits of information within the document, and then, administratively process it in the usual manner, and then even break the rules by providing the claimant's mother with a copy. Given that the mother was able to get a copy, even though she should not have been able to, and the problem with the file number and the numerous problems noted previously, I find on a balance of probabilities that the denunciation is a forged document and that the presentation of this forgery further undermines the claimants' credibility.

[13] As noted previously, the claimants produced a death certificate⁸ for the claimant's uncle immediately prior to the hearing which listed the cause of death as "Wounded by firearm projectile that penetrated the skull, thorax and abdomen". In the PIF, the uncle was wounded by a total of bullets with many other friends and relatives next to him, including children, being wounded, and with one other person dying from their injuries. I should note that these descriptions are not necessarily inconsistent as only one of the five wounds may have caused the actual death. However, the claimant stated orally that to the best of his knowledge there was no media coverage with respect to this mass shooting. As declared at the hearing, it is within my "specialized knowledge" gained adjudicating Mexican refugee claims, that the media in Mexico are not exactly shy when it comes to reporting crimes. Instead, many media sources are quite sensationalistic with respect to crimes and banner headlines are written about drug dealers shooting drug dealers, cops shooting cops, all accompanied by grisly photos of crime scenes including headless bodies and bodiless heads. When asked why there was no media coverage of a mass shooting that involved two deaths and the wounding of several family members including children, the claimant said that he did not know. I do not find the claimant's lack of an explanation satisfactory. While I am mindful of the fact that claimants are not required to document all aspects of their claims, if documents are reasonably available, they should be presented. I am also mindful of counsel noting in her submissions that the claimant was already in Canada at the time of the shooting. However, this mass shooting allegedly

⁸ Exhibit C-5, item 1.

took place in 2007, over a year prior to the hearing of the claim which would have given the claimants more than enough time to research the issue. I find on a balance of probabilities that corroborating media reports would have reasonably been available had the incident actually taken place in the manner that the claimant alleged. I find that this lack of documentation further undermines the claimant's credibility. Even if the uncle is indeed dead, his death did not happen in the manner alleged.

[14] I do note that the claimants also presented a corroborative letter⁹ from . However, this letter is explicitly a letter from a personal friend who is by no means an independent, objective source of information and who would of course be interested in assisting the claimants. I give this letter little probative value or weight.

[15] Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened, and as such, the claims pursuant to section 96 of the IRPA fail. Since I do not believe the claimant with respect to the events that they allege and there being no other evidence that they would be subject to any of the harms delineated in section 97 of the IRPA the claims pursuant to that section fail as well.

CONCLUSION

[16] As the claim of the claimant's spouse relies entirely on his, and no persuasive evidence was adduced to differentiate her claim from his, her claim must also fail. For all these reasons, the Refugee Protection Division therefore rejects the claims. The claimants are not Convention refugees or persons in need of protection.

(signed)

"David McBean"

David McBean

October 16, 2009

Date

⁹ Exhibit C-4, item 5.



RPD File No. / N° de dossier de la SPR7: TA7-11238

TA7-06686

TA7-06747

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) Demandeur(e)(s)

Date(s) of Hearing April 1, 2008 Date(s) de l'audience

Place of Hearing TORONTO Lieu de l'audience

Date of Decision July 7, 2008 Date de la décision

Panel David McBean

Counsel for the Claimant(s) Carlos Terry Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer S. Indrasigamany Agent(e) des travaux

**Designated
Representative(s)**

Nil

**Représent
désigné**

Counsel for the Minister

Nil

Conseil du

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, and citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimants owned a in . In 2006, pirate street vendors began selling in the street near the once per week. This began to hurt the claimants' business as the pirates were at much lower prices than the claimants, who, in addition to the normal legitimate costs of the merchandise, had the overhead of a store to worry about. When the pirates began to operate more frequently, complained to the police. After being told by the police that he did not have standing to complain, given that he did not hold title to the copyright being violated, he went to the Federal Investigative Agency (AFI), which he was told had jurisdiction. Nothing happened for a week so in early 2006, he went to the Treasury Department, which is responsible for collecting taxes. Soon after, the pirates' merchandise was seized and they stopped setting up their table in the street. The claimants then began to receive threatening telephone calls. One day after work, was run off the road while driving his scooter. After closing down the store and moving to , Guanajuato, saw one of the pirates who began shooting at him. fled to Canada to make a refugee claim in 2007. His wife and daughter joined him in Canada in 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as a copy of their Mexican passports were on file.²

Credibility

The determinative issue in these claims is credibility.

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A number of contradictions, omissions and implausibilities emerged at the hearing. For instance, in oral testimony, [redacted] stated that he did not give a statement in writing to the AFI. He said that he did not as he was hoping that they would give him a form to complete. When it was pointed out that in his Personal Information Form (PIF)³ he had given a written statement to AFI, he said that the PIF was incorrect and that the written statement had instead been provided later to the Treasury Department. I do not find this explanation satisfactory, as the PIF not only states that [redacted] gave a written statement to AFI but that also that they gave him no receipt for the document and did nothing to follow up on the document and as a result of that inaction, he went to the Treasury Department. By situating the incident in such a detailed context, this appears to be more than just a simple juxtaposition of organizations. The claimants affirmed both orally and in writing that their PIFs had not only been translated to them but were complete, true and accurate. If the PIF was incorrect, the claimants should have noticed the error. I find that this inconsistency with respect to how the claimants attempted to obtain state protection undermines their credibility.

When [redacted] came to Canada to make her refugee claim she gave a written statement in Spanish detailing her family's experiences to an Immigration Officer.⁴ As pointed out at the hearing, she inverted the order of the two major incidents that had happened to [redacted] (i.e., being run off the road and being shot at). The claimants attempted to explain these inconsistencies by stating that after a long flight from Mexico, [redacted] had been put into a small room, was experiencing stress and simply made a mistake in recalling the timeline. I do not find this explanation satisfactory. While being tired and stressed may explain a simple discrepancy in a date, the discrepancy is actually much larger than that. Writing in her own native language, [redacted] gave a detailed context for each of the two incidents. In the first incident that she described, someone shot at [redacted] while he was closing the [redacted] for the night. As a result of being shot at while closing up, the claimants jointly decided, in what would have been a face-

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to-face conversation, to close the store for good and decided to move to another city. was then run off the road when he was living far away from . In the PIF, was run off the road after closing up, prompting the joint decision to close the store and his flight to another city. By situating the incident in such a detailed context, including not only time but place and several consequences flowing out of the incident, this does not appear to be a simple error in dates. I find that this major inconsistency in the timing, location and consequences of the two major incidents in the claimant's story further undermines her credibility.

Late in the hearing, new testimony emerged with respect to an incident that happened to . She had been stopped by a man on her way home from school. After asking her some questions, he attempted to force himself on her sexually; however, she was able to escape unharmed. The claimants felt that this was related to their difficulties with the pirates as they did not have any other enemies. When asked why this was the first time we were hearing about this incident, explained that they had only learned about it a few weeks prior to the hearing and did not realize that they could have amended the PIFs. I do not find this explanation satisfactory. The claimants affirmed that their PIFs were complete at the beginning of the hearing. They were represented by counsel who has appeared before the IRB on a variety of matters. If the claimants believed that this alleged incident had something to do with their refugee claim, they should have amended their PIFs to reflect that. By not amending their PIFs, I find that their credibility is further undermined.

The claimants fear pirate street vendors who set up a temporary table to sell bootleg merchandise at low prices. Somehow, these street-level pirates were able to track to a city in another state and attempt to do him harm (i.e., in the PIF by shooting at him, in POE statement, by attempting to run him off the road). theorized that the pirates would have used a rumoured relative in the AFI to track him through a government database, such as the voter registration system.

was asked repeatedly if he had actually registered in . After a number of evasive answers, he finally said that he had, even though he had not been issued any documents to attest to this registration. As pointed out at the hearing, it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁵ With respect to the Federal Registry of Voters in particular, the objective documentation on file states that information from that system can only be provided to authorized users. There are no reports of improper use of the system to trace people.⁶ While counsel argued that in Mexico "money talks", it is implausible that street vendors who sold pirated merchandise at low cost and who were angry that their had been seized, would somehow have enough resources and motivation to bribe enough people to track the claimant even after he closed down his store and moved to another state. This is particularly so given the difficulties involved. I do not believe, on a balance of probabilities, that the pirates were able to track the claimants in the manner that they described.

Given the numerous omissions, contradictions and implausibilities all going to central elements of the claim, I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually did.

CONCLUSION

The claimants have alleged that they are victims of crime based on a criminal vendetta by street pirates. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention refugee grounds. Since I do not believe the claimants with respect to the events described in their PIFs and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

July 7, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, Personal Information Form (PIF).

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4 Exhibit R-3, translation of personal statement.

5 Exhibit R-1, *National Documentation Package*, June 29, 2007, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations,” *Immigration Refugee Board (IRB)*, February 2007.

6 Exhibit R-1, item 3.4, *Response to Information Request*, number MEX101353.E, June 2, 2006.

RPD File No. / N° de dossier de la SPR: TA7-11238

TA7-06686

TA7-06747



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-11253

*Private Proceeding / Huis clos***DE NOVO****Reasons and Decision – Motifs et décision**

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 26, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	August 20, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Joseph S. Farkas Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)

Counsel for the Minister

N/A

Conseil du

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[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in _____. On _____, 2005, she began an eight-month relationship with her first boyfriend, _____ (“_____”). Over time he became abusive and possessive. On _____, 2006, _____ screamed at and threatened the claimant after he saw her with another man, however, then apologized once he learned that the man was the claimant’s brother. On _____, 2006, _____ became enraged after the claimant’s cell phone rang and she refused to tell him who had called her. He tried to forcibly take the phone away and struck the claimant. While the claimant tried to call the authorities, _____ threatened the claimant and a fight ensued. The claimant was injured and spent two days in the hospital. On _____, 2006, the day after her release from hospital, the claimant went to the authorities to denounce _____. While they did take her denunciation, the claimant was told the authorities could not proceed without a witness to corroborate her version of events. The claimant never approached the authorities again. While the claimant ended the relationship, _____ kept calling and following the claimant. He would ask the claimant’s friends for information about her and made scenes in front of them. On _____, 2006, the claimant moved to _____, _____ to live with her Godmother. In late _____ 2006, _____ found the claimant in _____ and threatened her if she did not return. The claimant traveled to Canada on _____, 2006. She made a refugee claim on _____, 2007. In a decision dated _____, 2008, her refugee claim was rejected. However, the Federal Court granted an Application for Judicial Review and ordered that the claim be reheard by the Board

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson’s *Gender Guidelines*² and I accept that the circumstances which give rise to women’s fear of persecution are often unique to women.

ANALYSIS**Identity**

[4] The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of her Mexican passport was on file.³

Internal Flight Alternative (IFA)

[5] Even if I were to accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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[6] With respect to the first prong of the test, the claimant fears her ex-boyfriend. They dated for eight months and have been apart for over three years now. While the claimant's family moved twice to avoid being harassed by the ex-boyfriend, he has not been heard from since 2008. However, the claimant did say that as far as she knew her ex-boyfriend was still employed in the and may simply have been " " since then. Of course, it may simply be that the ex-boyfriend had lost interest in pursuing the claimant.

[7] Even if the ex-boyfriend were still interested in finding and harming the claimant, it should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁵ While the claimant speculated that her ex-boyfriend would be able to draw upon his contacts in , it should be noted that the Federal District is located several states inland up in the mountains so contacts in the would not be as useful. I am mindful that the claimant's ex-boyfriend was able to find her in , another city in Mexico. However, while the claimant said she did not know how he found her there, I note that the claimant was actually living with her Godmother. After dating for eight months and knowing people in common it may be that the claimant's ex-boyfriend simply thought of following up with known relatives (or their equivalent) to see if she had gone there. As noted by the claimant herself, she has no contacts in the Federal District.

[8] Even if the claimant's ex-boyfriend was able to track her to the Federal District the claimant could ask the authorities there for assistance. While the claimant stated that she was not satisfied by the response of the authorities in her hometown and that while she could try going to the authorities in the Federal District, she was not sure if they would help her based on her past experience, I do not find this belief reasonable. The claimant went to the authorities only once and while they took her complaint⁶

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they said that in order for an investigation to proceed she would need to have a corroborating witness. The claimant never followed up on or escalated this complaint in any way and did not return to the authorities anywhere, even in situations where witnesses were present. While it is true that no violent acts took place after the one incident wherein the claimant went to the authorities, I fail to see how this can lead the claimant to come to the conclusion that it would be unreasonable to go the authorities should she experience problems in the Federal District simply based on past direct experience. While one might speculate that the ex-boyfriend's contacts in the navy might have assisted him with the authorities in _____, I do not see how the same could be said with respect to the Federal District, which as previously mentioned is well inland.

[9] There is no question that domestic violence can be a problem in Mexico. However, it is unclear if the claimant's situation would actually be termed that at this point since the time since the end of the relationship (three years) is now far longer than the actual length of the relationship (eight months). Regardless of the terminology, it does not appear that the authorities in the Federal District would be unable or unwilling to assist her should she experience problems there. It should be noted that the Federal District does have a system of shelters for women fearing violence and a telephone hotline for those needing assistance, and temporary protection orders are available.⁷ It should also be noted that even if the claimant were to experience a lack of response upon initial contact with the authorities, not only are Mexican police forces hierarchical (thereby enabling an elevation of complaints to a superior officer), but there are numerous ways to complain about police officers, including the Human Rights Commission of the Federal District, the Secretariat of Public Administration, a telephone hotline (SACTEL), etc.⁸ Further, "the government generally respected and promoted human rights at the national level by investigating, prosecuting, and sentencing public officials and members of the security forces".⁹

[10] Even if the claimant were to experience problems in the Federal District at the hands of her ex-boyfriend, I find on a balance of probabilities that she has failed to rebut the presumption of state protection within the Federal District.

[11] With respect to the reasonableness of the claimant moving to the Federal District, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹⁰ If the claimant were to return to Mexico, she would be using the international airport in the Federal District, so there would be no need for her to return to _____. While the claimant stated that she did not have any contacts in the Federal District, she has done quite well for herself since coming to Canada. She is now 26 years of age, has 17 years of education, is now fluent in English and is currently the _____ Toronto, so it would appear that she would be quite employable should she go to the Federal District. The claimant did express a concern about general crime in the Federal District. However, the claimant did not present evidence that

would show that crime in the Federal District is beyond what one would expect in an extremely large city, nor did she present evidence that the authorities would be unable or unwilling to protect her should she experience crime. More importantly, crime is a risk faced generally by others and is precluded from my consideration by section 97 of the IRPA.

[12] I find that it would not be unduly harsh for the claimant to relocate to the Federal District.

CONCLUSION

[13] The claimant has a viable IFA in the Federal District. As such the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant is, on a balance of probabilities, subject to the harms listed in section 97 of the IRPA the claim pursuant to that section fails as well.

[14] For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

August 20, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2, evidence from previous hearing.

4 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

5 Exhibit R-1, *National Documentation Package*, March 19, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.

6 Exhibit C-3, Police report.

7 Exhibit R-1, *National Documentation Package*, March 18, 2009, tab 5.16, *Response to Information Request*, number MEX102832.FE, June 3, 2008.

8 Exhibit R-1, tab 9.8, *Response to Information Request*, number MEX42663.E, October 1, 2004.

9 Exhibit R-1, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.

10 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).



RPD File No. : TA7-11253



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA7-11379

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 21, 2009	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	April 21, 2009 (rendered orally) May 7, 2009 (written reasons)	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Benedykt Gondek	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

000472

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.¹

ALLEGATIONS

The claimant came to Canada in early 2006 to visit family. After coming to the attention of Canadian authorities for overstaying his permission to remain in Canada, he was detained in of 2007. He then made a claim for refugee protection. The claimant stated he feared being drafted due to personal and religious convictions against joining the armed forces in Poland. Despite the draft in Poland ending in January 2009, he still fears returning to Poland as he believes no amnesty has been declared for those who did not serve when called.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or that he would, on a balance of probabilities, personally be subjected to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country.

Identity

The claimant's identity as a citizen of Poland was accepted at the beginning of the hearing as a copy of his Polish passport was on file.²

Objective Basis of the Claim

I find that the claim fails as there is no objective reason for the claimant to fear returning to Poland. According to the objective documentary evidence on file,³ when Poland had a draft, there was a conscientious objective program to allow those with religious and/or personal beliefs that prevented them from serving in the military to perform alternate service. While statistics vary by year, more than 50% of such applications for alternate service were approved. However, as noted at the hearing, the draft ended in Poland in January of 2009. According to our documentary evidence,⁴ the Polish military was expecting their ranks to shrink by one-third from 180,000 to 120,000 personnel, a drop of 60,000 people. A military spokesperson in explaining the end of the draft stated that conscripts were not operationally useful as the law banned them from serving overseas in places such as Afghanistan or Iraq and also generally denigrated the abilities and training of conscripts; the spokesperson did not believe that conscripts were sufficiently prepared or useful to the military and praised Poland's move to professional military people who wish to be a part of that military. What appeared to be the cause of the

claimant's fear ended several months ago with the end of the draft, and it was submitted that there has been no amnesty with respect to those who failed to report when they were required to do so. However, no evidence beyond the counsel's and claimant's beliefs were actually presented on this point. The onus to present evidence is on the claimant. I would be quite surprised if any evidence could ever be found on such a point, given the comments quoted from the military spokesperson regarding the lack of usefulness of conscripts. Those comments coupled with the fact that the claimant has presented no actual evidence of lingering problems for people who failed to report, leads me to find there is nothing left for the claimant to fear. In the alternative, even if the military were, for some unstated reason, still interested in forcing the claimant to serve, one could still apply as a conscientious objector as his military service has not yet started. However, as stated earlier, that does not appear to be case. In either alternative, I find that there is nothing on an objective level for the claimant to fear and therefore the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence which would indicate that the claimant is at any of the risks delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well. I find that pursuant to subsection 107(2) of *IRPA* that there is no credible or trustworthy evidence on which a favorable decision could have been made and, therefore, there is no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(Edited for syntax and grammar)

(signed)

“David McBean”

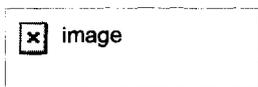
David McBean

May 7, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit R-1, tab 8.1, *Country Report: Poland*, The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council for European Affairs (QCEA), April 2005.
- 4 Exhibit R-1, tab 8.2, Matthew Day, “Poland Ends Army Conscription”, *Telegraph* [London], August 5, 2008.

RPD File No. / N° de dossier de la SPR : TA7-11379



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-11417

TA7-11418

TA7-11419

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

June 9, 2009

Date(s) de l'audience

September 1, 2009

January 5, 2010

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

July 16, 2010

Date de la décision

Panel

David McBean

**Counsel for the Claimant
(s)**

Neil Cohen
Barrister and Solicitor

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

T. Horbay

Agent(e) de

s.19(1)

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

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[1] (“the claimant”), her daughter, , and her son, , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in the Federal District. She separated from the father of in 2005, moving in with her widowed father. In 2005, while working at a , she met (, a man who . They formed a relationship and the claimant rented a place of her own in 2006. While (did not live there, he helped with expenses and sometimes stayed overnight. (became jealous of the attention that the claimant paid to (and they argued, with (often beating the claimant. In 2005, during the Independence Day celebrations, there were separate arguments involving the claimant, (and the claimant’s sister (who told (that the claimant left a party with another man). (picked the claimant up in a car. He punched her, slapped and kicked her in the shins as he drove the car. He pointed a gun at the claimant but then apologized for what he had done. To hide her injuries from her family the claimant stayed in a hotel for a week. While she knew there was an abuse hotline, she did not call it because she did not want (to get into further trouble and feared that he would do worse if she reported him. Their relationship continued as before, with (jealous of the attention the claimant paid to (and the arguments would usually degenerate into violence. After moving into her own place in (, State of Mexico, in 2006, the claimant became pregnant with (in (. The claimant learned that (had impregnated another woman who gave birth that same month. When she confronted (he reacted with violence, and when (cried he picked her up by the hair and threw her onto the bed. Days later he begged for forgiveness and the claimant was too scared to report his behaviour. In 2006 the claimant and (went to (for the Easter holidays. As they walked along the seawall, he became violent, however, passersby came to the claimant’s assistance and began hitting (. He ran into a bar, changing his shirt to avoid detection. Paramedics arrived to treat the claimant’s injuries and the police tried to convince the claimant to file a complaint against (. She refused as she thought (would try to hurt her and (after the authorities were finished with him. While (later begged forgiveness, he also threatened the claimant. On (, 2006, known as the (, (argued with the claimant while driving, apparently already angry from his “other” woman. He told the claimant to have an abortion and once home he continued to argue, pulling the claimant by the hair and pushing her onto the bed. During an argument on ((received a phone call the claimant believed was from the “other” woman. They argued again the next day which again became violent. On (they argued once again and once again the argument became violent, although this time (slapped (, giving her a bloody nose. The claimant moved back in with her father, however, the

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relationship with [redacted] continued as it had in the past. In [redacted] 2006 [redacted] drove the claimant to a park where he demanded sex but instead ended up stranding her there. [redacted] became much calmer as the claimant's due date approached, taking the claimant out and buying things for the baby. [redacted] was born in [redacted] 2006. On [redacted], [redacted] came to see the claimant at her uncle's house. He forced the claimant into his car where he hit her numerous times with a gun. While the claimant lay sprawled on the ground bleeding, [redacted] menaced a gathering crowd with his gun before he left. The claimant's family took her to the hospital and then to [redacted]. A [redacted] worker gave her a document to take to the police to have [redacted] charged. Later she went to the police where she received a forensic medical exam and was interviewed by a female representative of the Public Ministry to whom she told everything. The Public Ministry agent asked the claimant if she was sure that she wanted to proceed since [redacted] may make reprisals. The claimant decided against proceeding but was told by the agent that the [redacted] document was good for six months. In [redacted] 2007, the claimant moved to her aunt's place in [redacted]. The claimant visited her father in [redacted], and while waiting for the bus to [redacted] at a bus stop solely for [redacted] [redacted] drove by in his car and said "Aha, you're in [redacted]". In [redacted] 2007, [redacted] saw the claimant in [redacted], however she managed to avoid him by walking onto a side street where he was not allowed to make a left turn. Moving back in with her father, the claimant made arrangements to come to Canada during [redacted] 2007. [redacted] father gave permission for not only [redacted] to come to Canada but also [redacted] as well given that he was listed as the father on [redacted] birth document. [redacted] called several times looking for the claimant and his car was seen in the area. The claimants came to Canada on [redacted], 2007, and made refugee claims on [redacted] 2007.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. On this basis, the standard order of questioning was varied to allow counsel for the claimant to question the claimant first. My reasons for decision are as follows.

ANALYSIS**Identity**

[4] The claimants' identities as citizens of Mexico were accepted at the hearing given that certified copies of their Mexican passports were on file.³

Credibility**s.19(1)**

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form4 (PIF) and the other documents available. For example, in oral testimony, the claimant described the incident that occurred on [REDACTED], 2006, the [REDACTED]. She stated that [REDACTED] first became violent in this incident while still in the car. He started by pulling her daughter's hair and striking her daughter and then he began pulling the claimant's hair and punching her. However, as noted at the hearing, the PIF makes no mention of the claimant being physically assaulted while in the car during this incident and furthermore makes no mention of the claimant's daughter ever being physically abused during this incident, whether in the car or at the house. The claimant stated that she did not know why these facts were not mentioned in the PIF and said that she may have confused this with another incident. I do not find the claimant's explanation satisfactory. The claimant provided a number of specific details in oral testimony (e.g. It was the "[REDACTED]", she was coming from [REDACTED], etc.) that showed that she knew which incident she was talking about. After it appeared that the claimant's testimony did not match her PIF, Counsel for the claimant even specifically prompted her that she was being asked about the [REDACTED] and still seemed quite definite that this was the incident that she was describing. The claimant's narrative is 11 typed pages long and contains minute details with respect to everything that allegedly happened in the claimant's life. Given the extreme level of detail contained in the PIF, if the claimant had been assaulted in the car and if her daughter was abused at any point during this incident, I would have expected the PIF to say just that. I find the fact that it did not to undermine the claimant's credibility.

[6] The claimant described an incident wherein [REDACTED] was driving a car with the claimant in the front passenger seat. An argument ensued and [REDACTED] not only struck the claimant but also kicked her in the shins, all while driving. Counsel for the claimant asked how [REDACTED] could have accomplished this and the claimant stated simply that he had. I asked her a similar question and she once again simply replied that what she had said was what happened. Even in an extremely detailed re-examination, counsel for the claimant attempted to get the claimant, through a number of questions (e.g. type of transmission, etc), to explain how [REDACTED] might have accomplished this. However, generally speaking, the claimant could provide few details and simply insisted that this was what [REDACTED] had done. I find this allegation implausible. While I would be able to understand how a driver would be able to strike a passenger in the front seat with his hand or fist, I do not see how he could kick a passenger in the front seat in the shins. It appeared that the claimant was simply embellishing her evidence and when asked to explain could provide nothing but the vaguest of details. I find that this embellishment further undermines the claimant's credibility.

[7] The claimant was also quite vague about [REDACTED] himself. She stated that she had never been to

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his workplace and she had no knowledge of () business other than it involved such as (). She did not know what, if anything, he exactly did in the business, who was in the business with him, or whether the business had more than one location. She knew little of () family and had no idea why his father was not present. Eventually the claimant did produce a photo⁵ that shows her sitting next to a man. Other than the documents from the Public Ministry (which I will discuss later) the only document that the claimant produced to link () to () as his father was a vaccination card⁶ which listed () first surname in hand-writing as () (() first surname). However, as noted at the hearing, the card was mostly blank. The claimant stated that the person performing the vaccination had filled out the card. She also stated that she had no other documents since she had not married () and he was actually living with someone else. I do not find these explanations satisfactory. The claimant allegedly met () two years before she left Mexico and had a relationship with him. She had a child with him. It makes little sense that she would know so little about him or what he did or have only a mostly blank vaccination card and one picture to show for someone that that she had such a relationship with. I find that this further undermines the claimant's credibility.

[8] In orally describing the incident that occurred in () in 2006, the claimant initially stated that the police did not come to her aid, only paramedics. As the claimant was questioned further with respect to the incident, she later said that security guards from the bar came to aid. Then she stated that she could not remember if the police came. Then she stated that she thought the police came. As noted at the hearing, the PIF was quite different from the claimant's evolving testimony. In the PIF, the police not only definitely responded but also actively attempted to convince the claimant to file a complaint against (). The claimant stated that the incident happened many years ago and she only remembered the main points. I do not find the claimant's explanation satisfactory. Either the police came to the claimant's aid and attempted to convince her to press charges or they did not. While it is true that some years had passed by the time the claimant testified about this incident, there was only one other incident where the claimant came into contact with the authorities with respect to (), so the actions of the police in this incident should have stuck out in her mind. I would have expected her, in the circumstances of the case, to have remembered that the police responded and that they attempted to get her to file a complaint. I find the fact that she did not to undermine the claimant's credibility.

[9] According to the claimant, she did go to the authorities about the (), 2007 incident wherein she was hit by a gun. In oral testimony she described at length numerous ways that the Public Ministry agent attempted to discourage her from filing a complaint. The claimant stated that the agent repeatedly asked if the claimant was sure, that the police cannot stay outside her house 24 hours a day to protect her and he may take retribution and do bad things, and that even if he goes to jail he could send someone to hurt her. The claimant stated it appeared that the Public Ministry agent's shift was about to end and was anxious to leave. However, as noted at the hearing, in the PIF the Public Ministry agent is quoted as

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saying “Are you sure about what you want to do? Because, since you told us about everything he () did to you before, maybe he will take reprisals against you, and we (the police) need to know whether you are sure you want to proceed against him”. The claimant stated that the PIF was a general description. I do not find the claimant’s explanation satisfactory. Either the Public Ministry agent asked the claimant once “if she was sure”, as per the PIF, or she made repeated efforts to discourage the claimant from lodging a complaint. As noted previously, the claimant’s narrative is 11 typed pages long and minutely detailed. Had the Public Ministry agent repeatedly tried to discourage the claimant from filing a complaint in the way that the claimant alleged orally, I would not have expected the PIF to have been written the way that it was. I find that this discrepancy further undermines the claimant’s credibility.

[10] With respect to the same incident, the claimant stated as per her PIF, that she was assaulted at 8:00 a.m. However, as noted at the hearing, the Public Ministry document⁷ stated the incident took place at 10:00 a.m. The claimant stated that maybe that is what she said at the time. It was further noted at the hearing that the document from the Public Ministry states that had threatened to take away if he saw the claimant with another man, while the PIF makes no mention of threatening to take away. The claimant stated that he actually threatened this many times. I do not find the claimant’s explanations satisfactory. In and of itself, a difference of two hours may not be a huge discrepancy, however, it is odd that such definite times were given for what would either be early morning or mid-morning. Far more disturbing is the information about himself. As noted previously, the claimant’s narrative is 11 typed pages long and is minutely detailed. Detailed descriptions of threats and accusations are included throughout. If had ever threatened to take away, particularly the number of times that the claimant alleged orally, I would have expected there to be some mention of this in the PIF. I find that these discrepancies, particularly with respect to , to not only call into question the authenticity of the claimant’s documents, but also further undermine her credibility.

[11] The claimant stated more than once during the hearing that routinely abused her daughter on what appeared to be a regular basis and this abuse included pulling her by the hair, slapping her, biting her and striking her. However, as noted more than once at the hearing by both counsel for the claimant and myself, the PIF makes little mention of the claimant’s daughter ever being abused. The claimant stated that she included the dates that she had remembered and that she had mentioned at least one incident. It was also noted at the hearing that the previously mentioned Public Ministry document states that had previously hit her daughter on a number of occasions, but this information was not mentioned in the PIF. The claimant stated that she always mentioned her daughter. I do not find the claimant’s explanations satisfactory. Either was frequently abusive of the claimant’s daughter or he was not and only abused her the two times detailed in the PIF. Counsel submitted in written post-hearing submissions⁸ that the issue of the degree of abuse that the claimant’s daughter experienced to be

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a “lack of detail” in the PIF. As noted many times previously, the claimant’s narrative is 11 typed pages long and is minutely detailed with respect to the alleged events. Apart from only describing two instances where the claimant’s daughter was abused in any way (with numerous details provided about each incident), near the conclusion of the narrative it states at page 10 “I do not trust . He had always said that he’d change, that everything would be alright between us, yet, at the same time he kept threatening and attacking me, and, on two occasions, he attacked ”. If the claimant’s daughter had been routinely abused as the claimant stated orally or repeatedly hit as per the Public Ministry document stated. I would not have expected such a detailed PIF narrative to so specifically describe two incidents of abuse, which appear by the way the PIF was worded to be the only two incidents. I find that these discrepancies not only further undermine the credibility of the claimant, but further call into question the authenticity of the claimant’s documents.

[12] The claimant also presented what purported to be a forensic examination document⁹ created in her alleged dealing with public officials that same day. The claimant also presented some actual X-Rays that she stated were created at the same time (they were not entered as exhibits since they could not be photocopied in any meaningful way). However, as noted at the hearing, the fact that the claimant was X-Rayed was not mentioned in the forensic examination document. The claimant stated that she did not know why that the X-Rays were not mentioned. I do not find this lack of an explanation satisfactory. The forensic examination document speaks only of a physical examination of the claimant and the injuries that could be observed by the naked eye. It does not mention that X-Rays were taken or even that they were ordered, it simply makes a conclusion that the claimant’s injuries will heal within 15 days. It makes no sense for a medical doctor conducting a forensic medical examination for potential criminal law purposes to only mention simply observing the patients injuries and not mention X-Rays if X-Rays had indeed been ordered. Given this discrepancy and the other discrepancies noted above I find on a balance of probabilities that the documents that the claimant presented are forgeries and her reliance upon them further undermines the claimant’s credibility.

[13] I am mindful that the claimant did present what appeared to be X-Rays, however, X-Rays can be taken for any number of reasons, not only the one alleged by the claimant. The claimant also presented some photos¹⁰ of what appear to be her with what may be blood on her face and her sitting next to a man. However, given that these photos are only images without concrete context as to who is who and who caused what within the images I give them little weight.

[14] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened, and as a result, the claim pursuant to section 96 of the *IRPA* fails. In coming to this conclusion, I am mindful of the psychological evidence on file,¹¹ however, this evidence is based on a

story which I simply do not believe. No evidence was presented that the claimant could not obtain treatment in Mexico for whatever psychological issues she actually does face.

[15] There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

[16] As the claims of the minor children rely entirely on the evidence of their parent, and no persuasive evidence was adduced to differentiate their claims from that of hers, their claims must also fail.

CONCLUSION

[17] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

July 16, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1
- 5 Exhibit C-12.
- 6 Exhibit C-10.
- 7 Exhibit C-4, Item 1.

8 Exhibit PH-2.

9 Exhibit C-4, Item 2.

10 Exhibits C-7 and C-12.

11 Exhibit C-4, Item 3.



RPD File No. : TA7-11417

TA7-11418

TA7-11419



RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA7-11451

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	June 27, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	July 7, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Bola Adetunji Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000487

Representative(s)

désigné

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant lived in , . In 2004, the claimant's father-in-law killed someone in a fight. The relatives of the victim swore revenge and began to target the claimant. After being beaten twice, the claimant reported the family to the police. Some family members were arrested and jailed. Over time, the family grew in power even though some of their members were in jail. They became so powerful that they even arranged for the judge who had sentenced some of their members to jail to be assassinated. In 2007, the family renewed their targeting of the claimant. After receiving threatening notes under his door, the claimant relocated his wife and daughter to a distant village for safety. The claimant then traveled to Canada on , 2007, and made a refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility

It quickly became apparent that there were a number of problems with respect to the claimant's testimony. There were numerous, serious contradictions and omissions when the claimant's oral evidence was compared to the Personal Information Form³ (PIF) and the Immigration notes made when he made his refugee claim.⁴ For example, in oral testimony the claimant stated that the family of criminals had initially targeted his wife and later came to target

him. He also stated that his entire family had suffered the effects of the family of criminals, given that

his daughter had to be sent for psychological counselling. However, none of this was mentioned in the PIF or the interview with the Immigration Officer (IO). When asked why he had never mentioned these facts previously, the claimant stated that he was nervous when he spoke with the IO and when he was filling out his PIF and he simply forgot them. I do not find this explanation persuasive. While the claimant may have been somewhat nervous in a face-to-face interview with the IO, a Spanish interpreter was present to help the claimant express himself. The PIF was filled out at home with several weeks available for the process. It makes no sense that the claimant should have omitted the facts that he did, particularly the initial target for the agents of persecution. I find that these omissions undermine the claimant's credibility.

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In the PIF and in oral testimony, the claimant stated that his problems started with the family of criminals in 2004. However, in the interview with the IO, the claimant stated that his problems started in 2003. When confronted with the discrepancy, the claimant stated that the 2003 date was incorrect. The claimant could not explain why the date was incorrect other than to say generally that he was nervous during the interview with the IO. I do not find this explanation satisfactory. As noted previously, there was a Spanish interpreter present during the interview so the claimant could express himself clearly. While it might have been understandable had the claimant been off by a few days, it makes little sense for nervousness to result in the claimant to get the time of year and the year itself wrong. I find this discrepancy further undermines the claimant's credibility.

In oral testimony, the claimant stated that the family of criminals beat him, he filed a denunciation with the police, then they beat him a second time. However, after it became obvious that there was a conflict in dates with that timeline, whereby members of the family would already have been in jail and could not have beaten the claimant a second time, the claimant changed his testimony and said that both beatings took place prior to his filing of the denunciation. Once again, the claimant blamed the inconsistency on being nervous. I do not find this explanation satisfactory. In the claimant's initial testimony, the second beating would appear to be as a result of the claimant filing a denunciation. In his later testimony, the denunciation was filed as a result of being beaten a second time. Given that these important events gave rise to each other, I would have expected the claimant to get their order in time correct; that the claimant did not, further undermines his credibility.

In oral testimony, the claimant stated that after members of the family of criminals were arrested, they were put on trial. When asked when the trial was, the claimant said that he believed that it was in 2006. When later asked to confirm that the trial had been sometime in 2006, a date which seriously conflicted with the claimant's story, he changed his testimony and said that the trial was actually sometime in 2004. The claimant stated that the discrepancy was due to the fact that he had not understood the initial question. I do not find the claimant's explanation satisfactory. The question was quite simple and he was merely asked the date of the trial. The claimant's answer was responsive. The

claimant was a witness at the trial, so it was not an abstract date for him. I find that this discrepancy in years for what would have been a significant event in the life of the claimant to further undermine his credibility.

In the PIF, specific dates are given for when the judge was assassinated (, 2006) and when members of the criminal family were released from prison (, 2006). However, when asked if he could recall these dates he could not. In fact the claimant could not even recall the month or the season when they occurred. Once again the claimant cited the fact that he was nervous and uncomfortable. Once again, I do not find this explanation satisfactory. While it would be understandable for nervousness to cause someone to forget the exact date, to not even recall the month or the season when these two significant events in the life of the claimant occurred makes no sense. I find that this lack of recall further undermines the claimant's credibility.

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In the claimant's PIF and oral testimony, the claimant received threatening notes and relocated his spouse and daughter all in . 2007. However, in the interview with the IO, the claimant stated that he received the notes in 2006 and relocated his spouse and daughter in 2007. When asked to explain these discrepancies, the claimant stated that he was not only nervous during the interview, he was also worried that he might be locked up and deported. I do not find this explanation satisfactory. As stated previously, there was a Spanish interpreter present during the interview with the IO, so the claimant could express himself clearly and be able to clarify any concerns he had with the IO. While it might be understandable for the claimant to be off by a few days, it makes absolutely no sense to be off by these large time periods, particularly given the surrounding events, i.e., they either both occurred long before the claimant came to Canada (the version given to the IO) or both occurred immediately prior to coming to Canada (the PIF and oral testimony version). I find these major discrepancies with respect to when these major events occurred further undermine the claimant's credibility.

The claimant was asked a general question as to why he did not approach the authorities when he was targeted anew by the members of the family of criminals, particularly since the authorities had acted on the claimant's previous complaint. The claimant stated that by 2007, the family of criminals and the authorities were now working together in collusion so the claimant could obtain no protection. When asked why he had never previously mentioned that the authorities were working in collusion with the criminals, he stated that he was nervous at the interview with the IO, so had not mentioned it and that he had simply forgotten to include it in his PIF. I do not find these explanations satisfactory. While minor, peripheral details of one's experiences may be forgotten, the fact that the authorities were now in collusion with the claimant's agents of persecution is a very significant change in circumstances. To have forgotten such a major fact makes no sense at all. I find that this further undermines the claimant's credibility.

In general, the claimant simply could not tell a consistent story from one version to the next. I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleges happened to him actually happened.

CONCLUSION

The claimant has alleged that he is a victim of crime based on a criminal vendetta by a family of criminals. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in the PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

July 7, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, Record of Examination.

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RPD File No. / N° de dossier de la SPR: TA7-11601

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing April 1, 2008 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision June 20, 2008 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) No Counsel **Conseil(s) du / de la demandeur(e)(s)**

Tribunal Officer D. Rose **Agent(e) des tribunaux**

Designated Nil **Représentant désigné**

000494

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant worked as an _____ at a _____, in _____, Veracruz. In 2005, the claimant visited the house of _____ (“_____”) in order to verify information as part of a _____ that he requested. While she was there, two vehicles arrived. The claimant was surprised to see armed men appear from within the house and the vehicles. The men began to unload packages from the vehicles and take them into the house. _____ told the claimant that she had discovered his “real” business. The claimant inferred that _____ was _____ had men accompany the claimant back to work and then to and from her home. At one point, she was brought back to _____ house where she was threatened to approve the _____. She _____ in _____ 2005. Nothing happened for several months. Then _____ called to say that his sister wanted a _____ as well. While the claimant ended up transferring to a different _____ in the local area, _____ persisted in his request and his threats. The claimant eventually _____ for the sister. Still being shadowed by _____ men, the claimant quit her job in _____ 2006. She travelled about Mexico for a month, staying in hotels in _____ and _____. She then came to Canada in _____ 2006 and made a refugee claim in April 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons are as follows.

ANALYSIS**Identity**

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of her Mexican passport was on file.²

Internal Flight Alternative (IFA)

The claimant argued both at the hearing and in post-hearing submissions³ that as a result of her experiences, she would not feel safe anywhere in Mexico. Even if I were to accept the claimant's evidence with respect to her experiences in Orizaba as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District (F.D.). In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there. **s.19(1)**

With respect to the first prong of the test, the claimant fears an alleged interest in the claimant seemed to stem entirely from her employment at the where she was able to . The claimant states that both that she were quite validly granted from a and to the best of her knowledge, both were in good standing at the time that she left. Her only concern was that in granting the , she violated the non-profit with respect to dealing only with people of good character. Assuming she found a job in another area that did not involve , should have no interest in her, particularly since it was the claimant's own evidence that and his sister quite validly qualified for the made to them, and there are other with which they could do business. It should be noted that the claimant stated that after she quit her job in 2006, she traveled about Mexico freely and personally experienced no problems.

The claimant also stated that she was concerned that may also harm her as she witnessed his . However, as was pointed out at the hearing, the only thing she saw was a number of armed men moving packages three years ago in an area sheltered from

s.19(1)

view of the street. She never actually saw any nor does she have any physical evidence to corroborate what she saw. As the Refugee Protection Officer (RPO) pointed out, it would at best be her word against and his numerous accomplices. Given the length of time since the incident, it is difficult to see why would be concerned about what the claimant saw.

Apart from lacking motivation to pursue the claimant should she relocate, it should also be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁵ The claimant speculated that would use corruption within the police to aid in finding her, but as I have stated, he does not have the motivation to do so, especially with the difficulties involved.

I find that, on a balance of probabilities, there is no serious possibility of the claimant being persecuted in the F.D.

With respect to the reasonableness of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁶ If the claimant were to return to Mexico, she would be using the international airport in the F.D. so she would not have to return to . The claimant's employment prospects look good as she studied in university and has work experience in . I find that it is reasonable for the claimant to relocate to the F.D.

As I find that the claimant has a viable IFA in the F.D., the claim also fails with respect to the grounds enumerated under section 97(1) of the *IRPA*.⁷

The claimant has alleged that she fears the criminal actions of a . As such, her claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Experiences in Canada

The claimant described in her PIF a series of unfortunate relationships within Canada. In post-hearing submissions, she states that she has married a Canadian citizen and is soon due to give birth. While the claimant's personal situation and her volunteer experience within Canada may form the basis for an application to stay in Canada on humanitarian and compassionate grounds, that is the responsibility of a separate Department, and I have no jurisdiction to consider it.

CONCLUSION

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

June 20, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-3, post-hearing submissions.
- 4 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 5 Exhibit R-1, *National Documentation Package*, January 30, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations,” *Immigration Refugee Board (IRB)*, February 2007.
- 6 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.
- 7 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

April 8, 2010

Date(s) de l'aud

Place of Hearing

Toronto, Ontario

Lieu de l'aud

Date of Decision

July 23, 2010

Date de la

Panel

David McBean

**Counsel for the Claimant
(s)**

Razgar Hasan

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

s.19(1)

Agent(e) de

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] (“the claimant”), his spouse, , their son, , and their daughters, , and citizens of Norway, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

Allegations

[2] The claimant was born and raised in Iraq. He moved to Norway in 1998, eventually obtaining status there. The other members of his family joined him in Norway at various points over the years. The claimant attempted numerous jobs over the years and would apprentice or train for three to six months at a time only to be ultimately told that he was not suited for the job. On , 2007, the claimant was told by a prospective manager that Norwegians would be considered priorities for jobs and foreigners would be considered last. The claimant complained to the labour office but was not only not helped but subjected to rude remarks. The claimant’s children would be harassed at school and sometimes come home with bruises after having been beaten. The claimant’s neighbours would not let their children play with the claimant’s children. Sometimes they would make false noise complaints. One time a police officer said that he knew the claimant and his family are good people but that he simply had to follow through and investigate the complaint. The neighbours also owned some dogs that were quite wild, causing the claimant and his family to stay in the house or leave the neighbourhood. When the claimant complained to the police he was told “You even complain about the animals”. When the children stopped attending school the school officials complained that the claimant’s children had the opportunity to study for free yet did not attend class. As Chaldean Catholics, the claimant and his family hoped to worship at the local Church, however they were told that they were not welcome to do so since the local Churches were Protestant. Often facing insults and other harassment, the claimant and most of his family traveled to the United States of America on , 2007. They came to Canada on , 2007, and made refugee claims on , 2007.

[3] left Iraq in 1994 and after living in Jordan arrived in Norway in 2003. She made a refugee claim but it was denied and she was not given permanent resident status because of racism. She was not allowed to attend school until 2005 but was still treated like a foreigner. While in Norway she faced racism and discrimination. While she was allowed to stay in Norway on a humanitarian basis, she no longer has status in Norway and cannot return there. She traveled to the USA on , 2007, and then joined the rest of her family in coming to Canada on , 2007, also making a claim on , 2007.

DETERMINATION

[4] I find that the claimants have not satisfied the burden of establishing a serious possibility of

persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons for decision are as follows.

ANALYSIS

Identity s.19(1)

[5] The identities of the claimant and four of his family members as Norwegian citizens were accepted at the beginning of the hearing as copies of their Norwegian passports were on file.² Given my findings below with respect to . I find her to be Norwegian as well.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that his children were surrounded by self-professed Nazis 10-15 times and threatened with knives. However, as noted at the hearing, the PIF does not mention anything about Nazis, about them surrounding the children 10-15 times or the Nazis threatening the children with knives. The claimant noted that he had mentioned this to the immigration officer and counsel for the claimant noted that in one of the immigration documents⁴ the claimant stated that he was afraid of skinheads and neo-Nazis. The claimant went on to state that he had been told to elaborate on his statement at his hearing. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that all significant incidents are to be detailed. The statement in the immigration documents is a few words long and does not state if this is a general fear or a fear based on specific things having happened. Had the claimant's children really been surrounded by Nazis 10-15 times and threatened with knives, which would have been a truly frightening and significant experience, I would have expected some mention to have been made of this in the PIF. I find that this omission undermines the claimant's credibility.

[7] In oral testimony, the claimant described being with his family on a bus with another Iraqi family. A knife fight broke out between Nazis and the other family, with the claimant and his family running to safety. However, as noted at the hearing, this event is not mentioned in the PIF. The claimant stated that he thought that he had mentioned it. I do not find the claimant's explanation satisfactory. Once again, the directions for filling out the PIF narrative are quite clear in that all incidents that happened to similarly situated people are to be included. The claimant affirmed both orally and in writing that his PIF had not only been interpreted back to him but that it was also complete and accurate. The claimant was allegedly present when the fight broke out and the other Iraqi family were obviously similarly situated, given that they were one of the two other Iraqi families that lived in the same town. Under the

circumstances, had this event really happened I would have expected it to be mentioned in the PIF. I find the fact that it was not to further undermine the claimant's credibility.

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[8] In oral testimony, the claimant stated that a neighbour purposely unleashed a dog that attacked and almost bit his daughter who then required psychological treatment as a result. However, as noted at the hearing, this event is not mentioned in the PIF. The claimant stated that he had hoped to elaborate on his PIF at the hearing. I do not find the claimant's explanation satisfactory. As stated previously, all significant incidents are to be mentioned in the PIF narrative. The claimant's narrative is minutely detailed. There is an entire paragraph devoted to a general fear of dogs. Had a dog really attacked causing her to seek psychological treatment I would have expected this to be mentioned in the PIF. I find the fact that it was not to further undermine the claimant's credibility.

[9] In oral testimony the claimant stated that he was told to cover up the Cross that he was attempting to wear at work. However, as noted at the hearing, this incident was not mentioned in the PIF. The claimant stated that he had hoped to elaborate on his PIF at his hearing. I do not find the claimant's explanation satisfactory. The claimant's PIF is minutely detailed. There is an entire paragraph devoted to the claimant not being able to worship as a Chaldean Catholic in a Protestant Church. Had the claimant really been forced to conceal a religious symbol, given the level of detail contained on the PIF, I would have expected this incident to have been mentioned. I find the fact that it was not to further undermine the claimant's credibility.

[10] In oral testimony, the claimant stated that his children were punched once at school and that the perpetrators did not commit violence after that because they were worried that they would be expelled. However, as noted at the hearing, the PIF appears to state that the children were beaten frequently at school. The claimant stated the punching incident was an example and that other times they used sticks and rulers. When asked why the claimant did not mention sticks and rulers earlier, he stated that he was just using an example. I do not find the claimant's explanations satisfactory. It was clear from the claimant's initial testimony that there was only one time that there was a beating. This was reinforced by the claimant stating that the perpetrators did not do it again out of fear of being expelled from school. It therefore makes no sense for the PIF to be written the way that it was in that the children were beaten on multiple occasions. I find that this discrepancy further undermines the claimant's credibility.

[11] In oral testimony, the claimant stated that of the three Iraqi families that lived in the same town one moved away to another country and the other had their house burned down by the Nazis after which they were moved to a different town. The Nazis then told the claimant that his family was the only Iraqi family left in town. However, as noted at the hearing, none of this is mentioned in the PIF. The claimant stated that he had hoped to elaborate on his PIF at the hearing. I do not find the claimant's explanation satisfactory. As noted previously, significant events involving similarly situated people are

to be detailed in the narrative. The claimant's family was one of three Iraqi families that lived in the same town. As noted previously many times, the claimant's narrative is minutely detailed. If the house of one of the other two Iraqi families in town had really been burned down by the Nazis with the Nazis specifically telling the claimant as a result his was the only family left, which one would think be some form of threat, I would have expected some mention of this incident in the PIF. I find the fact that it was not to further undermine the claimant's credibility.

[12] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened.

Profile as Foreigners/Race – State Protection

[13] While I do not believe the claimants' story, I turn now to their general profile as racial "foreigners" in Norway. I find that the claims pursuant to this section fail as well as the claimants have failed to rebut the presumption of state protection.

[14] There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing" proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁵ Evidence that protection being offered is not necessarily perfect⁶ is not clear and convincing proof of the state's inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimants are unable to avail themselves of protection.⁷

[15] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁸ The more democratic the state's institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁹ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁰

[16] The documentary evidence shows that Norway is a parliamentary democracy and constitutional monarchy with free and fair elections.¹¹ I find that Norway is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing

in the documentation before the Board to suggest that Norway is in a state of complete breakdown.

[17] While racism can occur in any country, the objective documentary evidence¹² indicates that violence does not normally occur on this basis. While a man was shot in a refugee camp the perpetrator was arrested and charged and the authorities prosecuted offenders when isolated incidents would occur. While there were reported complaints about fewer job opportunities, there is nothing to suggest that any problems along this line are so widespread or far-reaching to suggest that the claimants would be unable to complain should a specific problem occur and have that complaint successfully dealt with.

[18] I find that the claimant has not established, on a balance of probabilities, that adequate state protection is not available. As such, the claim pursuant to section 96 of the IRPA fails. The being no other evidence that the claimant would be subject to the risks delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

Country of Reference – s.19(1)

[19] submitted that she is in a situation that differs from the other claimants in that she presented an “Immigrant’s Passport” from Norway and that any status she had in Norway had expired when her passport did. In post-hearing submissions¹³ counsel for the claimants noted that this passport’s expiry date had passed. At the beginning of testimony she explicitly stated that she adopted and agreed with the testimony of her father. Given my findings above with respect to his testimony being not believable, this statement alone already put whatever she might testify about in doubt. However, her own testimony was problematic in and of itself.

[20] stated orally that her status in Norway had expired. However, when challenged to produce a document stating that her status had expired, she said it must have as one has to be in Norway to apply to renew status. However, when challenged to produce a document that would corroborate this could not. In fact when asked to provide documentation showing that the claimant had indeed lost her original refugee claim in Norway she stated that she could not as there was no one in Norway who could send her the necessary documentation. When asked to provide documents to show how she was granted whatever status that she actually had the claimant stated that she could not obtain them as there was no one to send them from Norway. Even after her own counsel orally implored her to attempt to obtain these documents, the claimant said that she could not as there was no one in Norway that could send them. Even after it was confirmed that she was represented by a counsel in Norway the claimant said that she could not contact him as she had forgotten his name. I do not find these explanations satisfactory. had over two years in Canada to document her status. It makes absolutely no sense at all for her to be totally unable to document what actually happened in her refugee claim in Norway, how she obtained status and most importantly that she had lost whatever status that she had and was trapped in limbo without a valid passport and unable to apply for renewal from

Canada. As noted at the hearing, the only proviso contained in the “Immigrant’s Passport” is that it is not valid for travel to Iraq. Given that her refugee claim would have dealt with fear of returning to Iraq, just as the claims of her family would have been it seems this fear led to her status. It makes no sense that she would be unable to contact the Norwegian authorities to obtain documents that would corroborate her testimony. Given her reliance on her father’s simply unbelievable testimony and, more importantly, her refusal to provide documents that would be reasonably available that would have shown her status or lack thereof, I find on a balance of probabilities that [redacted] misrepresented her status in Norway. I find on a balance of probabilities that she is a citizen of Norway, just like the rest of her family.

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Claims of the Family

[21] As the claimant’s family members’ claims, including [redacted], relied on the claim of the claimant and no evidence was adduced to differentiate their situation from his, their claims pursuant to section 96 and 97 fail as well.

No Credible Basis

[22] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

CONCLUSION

[23] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims.

(signed)

“David McBean”

David McBean

July 23, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1 PIF
- 4 Exhibit R-2, Schedule 1, Background Information.
- 5 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 6 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 7 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 8 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 10 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 11 Exhibit R-1, *National Documentation Package*, March 30, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.

12 Exhibit R-1, DOS.

13 Exhibit PH-1.



RPD File No. : TA7-11622

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TA7-11651

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TA7-11654



RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA7-11751

TA7-11809

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 6, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	July 17, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Howard P. Eisenberg Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	S. Indrasigamany	Agent(e) des tribunaux

**Designated
Representative(s)**

Nil

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

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and citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimants worked at a in . On , 2006, (“ ”) visited the to enquire about . After registering with the receptionist, he spoke with , one of the salesmen. After some initial negotiations, proposed a criminal business venture. was to take out on a in one of the for sale. would pretend that the had been stolen from them at gunpoint in exchange for paying him \$3,000. The insurance would cover the cost of the , so there would be little in the way of direct impact on anyone. refused to participate in the scheme and left. The next day, came back to the adjacent which was owned by the same owners as the claimants’ . Since he used the same name, the computer showed him as a client of . quickly alerted the manager of that part of the of true intentions and then went on to assist in notifying other in the area of the potential scam. Despite this warning, may have succeeded at least once in his scheme.

The next year, called on , 2007, to threaten that he will exact revenge for having assisted in informing the other of his scheme. claimed to be a member of the a powerful

After numerous ongoing threats, the claimants found their dog killed and their windows broken. After reporting these incidents to the authorities on , 2007, they came to Canada on , 2007, making refugee claims on , 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to their lives or to a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Credibility

s.19(1)

It became apparent that there were a number of problems with respect to the claimants' testimony and the documents that they introduced to support their claim. There were numerous, serious contradictions and omissions when the claimants' oral evidence was compared to the Personal Information Forms³ (PIFs), the Immigration notes⁴ made when they made their refugee claim and the two documents from the Attorney General's office. While the claimants did present some letters in support of their claim,⁵ these letters are from non-objective sources who would most likely wish to have the claimants do well in their refugee claims. On the other hand, the two documents from the Attorney General's office are from an objective source; however they are far more problematic for the claimants. For example, the claimants submitted that the detailed Attorney General's report⁶ that deals with a theft in 2006 from another unrelated [redacted] proves that [redacted] succeeded in his scheme at least once. However, as pointed out at the hearing, the document is actually inconsistent with the claimants' story. Despite [redacted] allegedly assisting in spreading word of [redacted] scheme to the other [redacted] there is no mention of [redacted] name in the document. [redacted] stated that he knew that this was the same perpetrator as he had compared his recollection of [redacted] physical description with his friends' recollections at the other [redacted]. However, even the physical description of the perpetrator is not included in the document. Apart from appearing to be an unrelated theft in that the method used was totally different (keys manipulated versus a bribery/false robbery scheme), one would expect that if [redacted] did, in fact, publicize [redacted] scheme to all of the other [redacted] in town that [redacted] name and physical description would be included in subsequent reports that allegedly deal with the same individual. I find that the absence of this

important information from such a detailed document undermines the claimants' credibility.

When the claimants made their refugee claims, the Immigration Officer took detailed notes of their reasons for making a claim.⁷ The claimants did not mention the fact that [redacted] had been offered \$3,000 to participate in [redacted] scheme. Also, in the Attorney General's document where the claimants complained to the authorities about [redacted] actions,⁸ there is no mention of the \$3,000 bribe. [redacted] stated that the bribe was not mentioned to the Immigration Officer since the Spanish interpreter told him to simply present a summary and not provide specifics. [redacted], after a number of answers, could not recall if he had informed the Attorney General's office about the bribe. I do not find these explanations satisfactory. Both documents in question are lengthy and detailed. Both include minor details on a number of points so it makes little sense to omit a crucial piece of evidence with respect to the only time that [redacted] dealt face-to-face with [redacted]. I find that these omissions further undermine the claimants' credibility. s.19(1)

The information contained in the document from the Attorney General⁹ (AG) is actually inconsistent with the claimants' story on a number of points. In the AG document, [redacted] gave [redacted] a cheque, while in oral testimony the cheque was initially presented to [redacted] who passed it along to [redacted]. In the AG document, [redacted] accused the claimant of being gay and wanted to have him fired; in oral testimony, [redacted] said that definitely did not happen. In the AG's document [redacted] was responsible for breaking two windows in the claimant's house. In the PIF, all of the windows were broken which was clarified in oral testimony to mean that eight windows, four in front and four in back, were broken. When confronted with these inconsistencies, [redacted] stated that the person at the AG's office was just finishing their shift and in their rush to leave, may have typed some things incorrectly. I do not find this explanation satisfactory. At the end of the document is a statement that the contents of the document were read back to [redacted]. While [redacted] said that he instead read a portion of the document himself and "trusted" the accuracy of the rest, I find that these inconsistencies are more than mere typographical errors made in haste. One would expect errors in spelling and/or digits, but here entirely new allegations are made (e.g. the claimant is "a gay"), different actors are at work and significant changes in detail are made ("two" versus eight windows). I find that these inconsistencies further undermine the claimants' credibility.

In the AG document¹⁰ the agents of persecution are listed as "[redacted] and [redacted] who is [redacted] partner and keeps his company at all times". As pointed out at the hearing, [redacted] (or any sort of partner for [redacted]) is not mentioned anywhere in the Immigration Officer's notes, the PIF or anywhere in [redacted] testimony until the RPO asked him late in the hearing to identify who [redacted] was. When asked why [redacted] had never been mentioned previously, [redacted] stated that he had never been asked about him and that his involvement

s.19(1)

was not important as he had simply introduced him to [redacted] and left. I do not find this explanation satisfactory. If [redacted] did indeed have a partner who accompanied him everywhere and whose involvement was considered important enough to be reported to the authorities, it makes no sense to omit his existence from the PIF. I find that this omission further undermines the claimants' credibility.

In the PIF and oral testimony, [redacted] is alleged to be a member of the "[redacted]", a powerful [redacted]. However, in the AG document [redacted] is simply described as being a member of a family that owns a [redacted] in [redacted] ([redacted]). No mention is made of a connection to the [redacted], even though the claimants were allegedly well aware of this connection by the time that they made their complaint. While [redacted] did say that [redacted] told him that the [redacted] was involved in organized crime, I find that the total omission of this connection to the [redacted] further undermines the claimants' credibility.

Given the numerous inconsistencies and omissions noted, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants allege happened to them actually happened.

CONCLUSION

The claimants have alleged that they are victims of crime based on a criminal vendetta. As such, their claims under section 96 of the *IRPA* fail for lack of a nexus to any of the Convention grounds as well as because of a lack of credibility. Since I do not believe the claimants with respect to the events described in their PIFs and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David Mc Bean”

David McBean

July 17, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1(a) and (b), claimants' Personal Information Forms.
- 4 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 5 Exhibit C-5, letter dated _____, 2008 from _____ and _____; and
letter dated _____, 2008 from _____ **s.19(1)**
- 6 Exhibit C-5, pp. 2 – 8.
- 7 Exhibit R-2, CIC Etobicoke In-person Refugee Intake.
- 8 Exhibit C-2, pp. 35-38.

9 Exhibit C-2, pp. 35-38.

10 Exhibit C-2, pp. 35-38.

11 Exhibit C-2, pp. 35-38.

RPD File No. / N° de dossier de la SPR : TA7-11751

TA7-11809



Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-12057

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s)
(a.k.a.])	
Date(s) of Hearing	August 20, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	September 23, 2008	Date de la
Panel	David McBean]]
Counsel for the Claimant(s)	No counsel	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

000518

Representative(s)

dési;

Counsel for the Minister

Nil

Conseil du

s.19(1)

(a.k.a. _____), a citizen of Venezuela, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant was born in Venezuela in 1980 to a Nigerian man who worked at the Nigerian Embassy and a woman whose family was from _____. Unfortunately, the claimant's father was physically abusive to the claimant, her siblings and her mother. When the claimant was about five or six years old, the claimant's mother moved the family to _____ in the hopes of escaping the abuse. Unfortunately, the claimant's father succeeded in kidnapping the claimant, taking her back to Venezuela. When the claimant was eight years old, the claimant's family illegally relocated to the USA where the abuse continued. Thankfully, the claimant's father was deported when the claimant was 16. Throughout her close to two decades in the USA, the claimant lived the life of a "model non-citizen". She stayed out of trouble, went to school, got an education and did well enough to get a scholarship. She found gainful employment and was well-regarded by her employers. Despite all of these factors in her favour, she did not succeed in regularizing her status. After a lengthy, unsuccessful battle with the American Immigration authorities, the claimant was ordered to leave the USA. Faced with the prospect of returning to a country she had not lived in since early childhood where she would potentially face, as a black woman - racism, as a single woman - human trafficking, as a perceived American - discrimination, as her father's daughter as a result of his anti-governmental stance - oppression, and perhaps even abuse at the hands of her father himself, the claimant came to Canada and made a refugee claim on _____, 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Venezuela was accepted at the beginning of the

hearing as a copy of her Venezuelan passport was on file.²

Objective Basis

While the claimant advanced a number of grounds on which she feared harm, I do not find that taken individually or collectively they provide an objective basis for her refugee claim. I will deal with each in turn:

- (i) **Racism** – While the claimant left Venezuela at too young of an age to either experience or remember experiencing racism, the claimant is black and as a result fears racial discrimination at the hands of the majority non-black population. However, the objective documentary evidence does not support this fear. For example, the most recent Department of State Country Report on Human Rights Practices³ makes no mention of any significant racial problems experienced by black people, only problems experienced by indigenous people. Given the well-documented differences between the USA and Venezuela, I would expect if there was some evidence of racial problems in Venezuela, the Department of State would document it. In fact, the claimant’s own document, “Racism and Racial Divides in Venezuela”⁴ states that the vast majority of Venezuelans will say that racism does not exist in Venezuela. While the article does state that inappropriate names and words are sometimes used, and at least one source consulted was able to provide some anecdotal knowledge of racial incidents occurring, no evidence has been presented that there are any statistically significant problems of persecution based on racism that the claimant would have an objective basis for a claim based on race.
- (ii) **Human Trafficking** – Human trafficking, especially of women, is indeed a problem in Venezuela.⁵ However, the claimant’s fear on this basis is entirely speculative. No evidence has been presented that human trafficking in Venezuela has risen to such a level that a statistically significant proportion of women would have some reason to fear this harm. As pointed out at the hearing, the claimant went to school, is well-educated, was awarded a scholarship and has good work experience. She is, by her own testimony, also aware of some of the methods employed by human

traffickers, in that not all job offers are legitimate. All these factors make it far less likely for her to be successfully preyed upon by the criminals that engage in human trafficking. I find that there is no objective basis to the claimant's speculative fear of human trafficking.

- (iii) Perceived as an American/Related to father who was anti-Chavez – As noted by the claimant at the hearing, relations between the Chavez regime in Venezuela and the USA are anything but close. The claimant fears that since she would speak Spanish with a different accent than the local population, she would be perceived as an “American” and therefore be subject to persecution. She also stated that her father had called her from Venezuela and told her that he was against the Chavez regime. When asked if he had done anything specific against Chavez she said ‘no’, only that he was against the regime and did not care who knew about it. While there is evidence that those who have taken personal direct action against the Chavez regime may face problems and that demonstrators have faced violence at the hands of the authorities, no evidence has been presented that would show any sort of risk for people who are known to have simply spent some time in the USA. The claimant's father's vague “opposition” to Chavez does not assist the claimant's claim either, as no evidence has been presented that family members of low profile individuals who took no direct action against the regime have experienced any form of harm. I find there is no objective basis with respect to these related areas.
- (iv) Abusive father – The claimant fears that if she is forced to return to Venezuela she would be forced to resume living with her father who would then begin abusing her again. It should be noted that the claimant has not lived with her father for the last 12 or so years. The claimant is 27 years old, has an education and work experience so there should be no need for her to return to her father's house. It should be noted that as part of her attempts to stay in the USA the Venezuelan Embassy in the USA attempted to locate the claimant's father on her behalf and were unable to find him. The whole thrust of the claimant's attempt to stay in the USA was that she would go back to a country where she had no family or friends. Given that the claimant's father is likely not in Venezuela and even if he was she would have no requirement of any sort to have contact with him, I find that there is no objective basis for the claim in this area as well.

Even when all these factors are considered collectively, I find that the claimant has not established an objective basis for her claim.

ARTICLE 1E

Given my findings with respect to the lack of an objective basis for the claim, I do not find it necessary to make a finding with respect to Article 1E, exclusion based on status or potential status in a

third country (i.e. Trinidad).

Humanitarian and Compassionate Consideration

While the claimant's experiences are compelling on a personal level, I have no jurisdiction to consider humanitarian and compassionate considerations; that would, of course, be the subject of a separate application before a separate Department.

CONCLUSION

Given the lack of objective basis for her claim, I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to Venezuela.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

September 23, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit R-1, *National Documentation Package*, May 2, 2008, item 2.1, March 11, 2008.
- 4 Exhibit C-3, Claimant's documents.
- 5 Exhibit C-4, CIA World Factbook.

RPD File No. / N° de dossier de la SPR : TA7-12057

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RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR : TA7-12962
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 21, 2008 November 28, 2008 May 8, 2009 August 12, 2009 November 20, 2009 January 22, 2010 April 7, 2010 May 27, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	September 15, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Neil Cohen Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)		Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity, as a citizen of Mexico, was accepted at the hearing given that a certified copy of her Mexican passport was on file.³

Credibility s.19(1)

[5] While the claimant and her two sons all provided testimony, it was apparent throughout the hearing that there were a number of serious discrepancies in all of the witnesses' evidence when the oral testimony was compared to the Personal Information Forms⁴ (PIF) and the other documents available. In early testimony, [redacted] stated that in the incident where he was attacked by [redacted] two people got out of the car. However, as counsel noted at the hearing, [redacted] PIF⁵ stated that three people got out of the car. [redacted] reiterated that only two people had gotten out of the car and that the PIF was incorrect and perhaps wrongly interpreted. In later testimony he stated that the third person stayed in the car but with the door open and his hand on the wheel. However, as further noted at the hearing, there is more than one reference in the PIF to [redacted] being beaten by more than one person and that [redacted] ordered the other two to beat him. [redacted] stated he was beaten by [redacted] and another person. In later testimony [redacted] stated that [redacted] had actually pushed him. However, as further noted at the hearing, there is no mention in the PIF that [redacted] actually touched [redacted] during this

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibits C-1, R-4 and R-6

⁵ Exhibit R-4

s.19(1)

incident. insisted he told his lawyer this when he filled out his PIF. Finally, in oral testimony stated that had fired a shot into the ground during the incident. However, as noted at the hearing, this is not mentioned in the PIF. stated that he had told the person that was helping him fill out the PIF about that but it was omitted and the PIF was never translated back to him. I do not find these explanations satisfactory. Either two people got out of the car and attacked or there were three. was generally evasive throughout his testimony and at times seemed to be making things up as he went along in an attempt to explain this inconsistency. If there were only two people who physically got out of the car (i.e. and one other man) I would not have expected the PIF to make repeated reference to there being three people or that ordered "the other guys" [emphasis mine] to hit him. Also, had any of this happened, I would have expected to be fairly consistent with respect to the actions of instead of varying greatly from doing nothing physically (the PIF) to firing a shot (oral testimony) to beating the claimant (initial testimony) to simply shoving him (Later testimony). testimony simply could not be reconciled with his PIF. While asserted that the PIF had never been translated back to him, it was noted at the hearing that he was 18 at the time he signed a declaration stating that it had been translated back to him. Furthermore, given that the vast majority of the PIF appeared to be correct, that there were problems within the oral testimony throughout and the fact that was evasive throughout his testimony, I do not believe that the PIF was not translated to him. simply could not reconcile his oral testimony with the PIF with respect to the , what actions they took or the degree that they took them. I find that these discrepancies undermine the witnesses' credibility.

[6] As further noted at the hearing, in the notes⁶ of an Immigration officer made at the time that made his claim, there is no mention of being beaten, that there was a gun and that a shot was fired. The claimant stated that he only mentioned what came to mind. I do not find this explanation satisfactory. While only a paragraph, the reasons given for fleeing Mexico are quite detailed in their description of the initial extortion attempt. However, the attack by was the most significant event that the claimant experienced and the only one that involved violence. It makes no sense at all for to have remember such great detail of the initial extortion plot and make no mention of the time that he was attacked at gunpoint and beaten. I find that this omission further undermines the witnesses' credibility.

⁶ Exhibit R-6

s.19(1)

[7] After being asked repeated questions on the matter, [redacted] stated that he learned the name of [redacted] and that he was a [redacted] a few days after the claimant reported the incident to the authorities. After learning this and hearing his mother's description of [redacted], he made the connection with a man he had seen taking pictures of his family and the stalls, a man he then realized was [redacted]. However, as noted at the hearing, [redacted] also stated that he was able to observe [redacted] during the actual incident with the [redacted] so it didn't seem to make sense that he would not recognize him at the time as the man who had been taking pictures. [redacted] said that he had recognized him and that he had been frightened, did not know what was going on and that a light bulb had gone off in his mind. I do not find these explanations satisfactory. I am mindful that [redacted] was only 15 at the time of the alleged incident with the [redacted]. However, it appeared throughout [redacted] generally evasive testimony that he had attempted to memorize two separate irreconcilable stories. Had [redacted] really seen and recognized [redacted] during the [redacted] incident, it makes no sense for him to have needed his mother's subsequent knowledge of his name and profession and most importantly his description to realize who he was. I find that this discrepancy further undermines the witnesses' credibility.

[8] According to [redacted] oral testimony and the claimant's PIF, the precipitating incident that caused him to be sent to Canada was the incident with the [redacted]. However, as noted at the hearing, this incident was not mentioned in his PIF.⁷ [redacted] stated that he had been extremely frightened and did not have an answer for that and that the interpretation could have been faulty. Later, [redacted] stated that his PIF had never been translated back to him. However, after much questioning, he stated that it had in fact been translated back to him and that the [redacted] incident had been omitted because it was a brief appointment in which the PIF was prepared. I do not find these explanations satisfactory. [redacted] PIF contains a separate narrative that provides an update as to what happened to him since [redacted] left. Even though he was only 15 at the time, I would have expected him to mention the [redacted] incident in the PIF. Even if the PIF interview was quite brief it makes absolutely no sense at all for [redacted] to mention the number of minor details that he did and yet make no mention of the most serious thing that had ever happened to him. I find that this discrepancy further undermines the witnesses' credibility.

7

Exhibit R-6

s.19(1)

[9] At the time that [redacted] made his claim, an Immigration officer made a number of notes.⁸ As noted at the hearing, while there were fairly general answers as to who he feared, he did not mention the name [redacted] or that he was a [redacted]. [redacted] stated that the interpreter at the time was grouchy and that he was confused and scared. I do not find this explanation satisfactory. Once again, I am mindful of [redacted] age and that traveling to another country can be unsettling. However, given that [redacted] was already well aware of [redacted] name and that he was a [redacted], I would not have expected him to give the vague answers to the Immigration officer that he did (e.g. That he did not know the agent of persecution's name) and instead be able to recount who he was afraid of. I find that this discrepancy further undermines the witnesses' credibility.

[10] Also in the Immigration notes, it states that [redacted] saw the man he feared at a distance taking pictures. However, as noted at the hearing, by this time, [redacted] and the claimant had been confronted by [redacted] at gunpoint in the [redacted] incident. [redacted] stated that he was confused and just said what came to mind at the time. I do not find this explanation satisfactory. [redacted] was asked numerous questions about what had happened in Mexico. The incident with the [redacted] was by far the most serious thing that had ever happened to him. Had this really happened, I would have expected some mention to have been made during the Immigration interview. I find that this omission further undermines the witnesses' credibility.

[11] In oral testimony, the claimant stated that she was asked for money by the [redacted] that she initially reported [redacted] actions to. She gave repeated non-responsive answers when asked repeatedly if this was a proper fee or a bribe. Eventually the claimant stated it was a bribe. However, as noted at the hearing, the fact that the [redacted] asked for a bribe was not contained in her PIF.⁹ The claimant stated she had been nervous and tense and, as a result, had omitted this fact. I do not find this explanation satisfactory. Had the claimant really been asked for a bribe, I would have expected her to say that quite simply both in oral testimony and mention this as well in her PIF. The direction for filling out the narrative are quite clear in that all attempt to obtain protection from the authorities are to be detailed and if efforts are not made the reasons should be given as well. A [redacted] demanding a bribe would have led the claimant to be less inclined to

⁸ Exhibit R-7

⁹ Exhibit C-1

go to the authorities in the future. I find the claimant's evasiveness and this omission from her PIF to further undermine the witnesses' credibility. **s.19(1)**

[12] The claimant stated orally more than once that when she complained to the police that she was told that the police would be checking their database of _____ and this is how they identified _____. However, as declared at the hearing, it is within my specialized knowledge gained from adjudicating numerous claims from Mexico that I can recall no mention of there being a database of _____ that other officers could check and there is no mention of this database in the claimant's PIF. The claimant stated that she had been confused, did not know the procedure, had many problems and did not know why she omitted this. I do not find these explanations satisfactory. This was simply a large embellishment by the claimant wherein it appeared she was trying to show how "corrupt" Mexico could be. I find the fact that the claimant would embellish her evidence to this degree to further undermine the credibility of the witnesses.

[13] The claimant's PIF makes note of a number of errors in the police report¹⁰ from 2006. However, as noted at the hearing, not noted is the fact that, while in the PIF _____ extorted then switched his attention the claimant after _____ left Mexico, the report says that _____ initially extorted the claimant and that, if she did not pay, he would hurt _____. The claimant stated that she provided the information and the officer produced the report. It was also noted that the report was produced using an interesting type style, is somewhat difficult to read given the way that the margins are used as the type is alternately compressed or elongated and unlike the document¹¹ dealing with the fire in 2007 which has a large amount of legal "boilerplate", this document was a fairly simple statement. The claimant stated that she did not know why this was. The claimant did state that the officer prepared the document from the information that she provided. However, as noted at the hearing, there are the exact same types of grammatical errors (e.g. Switching back and forth between "I" and "She") in the police document as in the claimant's own written statement¹² in Spanish made at the time that she made her claim. The claimant stated that the officer wrote the report. I do not find these explanations satisfactory. The police report was sent to Canada long before the claimant came to Canada as it was mentioned as post-hearing disclosure in the reasons

¹⁰ Exhibit C-2, page 4

¹¹ Exhibit C-2, page 8

¹² Exhibit R-3

for decision¹³ for her sons' refugee claims. Given the errors, the strange format of the document, its lack of formality and by far the most importantly the exact same style of writing and the exact same grammatical errors made as made in the claimant's own handwritten statement in Spanish I find, on a balance of probabilities, that the claimant forged this document in a late effort to bolster her son's claims. I find that her reliance upon this document further undermines the witnesses' credibility.

s.19(1)

[14] The claimant presented medical documents¹⁴ purporting to corroborate her injuries from the 2007 beating. However, the documents provided turned out to be from a breast examination by a cancer organization. The claimant stated that she had not sought medical attention at the time of the incident and had followed up later since her chest still hurt. Given that these documents seem only to corroborate that the claimant had a breast exam for cancer I give them little weight. Other medical documents would have been helpful as there were problems with this incident as well. The claimant stated orally that she was knocked unconscious. However, as noted at the hearing, this fact was not contained in the PIF. The claimant stated that she had forgotten this at the time. It was also noted at the hearing that there was no mention of this incident in the handwritten statement in Spanish that the claimant provided at the time that she made her claim. The claimant stated that she had been upset and nervous and that she had forgotten the incident at the time. I do not find these explanations satisfactory. If the claimant had really been knocked unconscious, I would have expected this to have been mentioned in the PIF given the level of detail that it contained. Furthermore, the statement made by the claimant in Spanish at the time that she made her claim is very detailed and describes many events. The 2007 beating was not only serious, but also the most recent event that had happened to the claimant before she left Mexico. Under these circumstances it makes little sense for her not to have mentioned it in her statement. I find that these omissions further undermine the credibility of the witnesses.

[15] The claimant and both witnesses all relied on the same story and each other's testimony. Given the serious discrepancies, omissions and other problems with respect to major issues, I find that both witnesses and the claimant were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the witnesses and the claimant alleged happened, actually happened.

¹³ Exhibit R-8

¹⁴ Exhibit C-7

Profile as Indigenous Person

[16] In post-hearing submissions,¹⁵ counsel made reference to the fact that the claimant is of indigenous ancestry and as such is part of a vulnerable group. While there is no question that discrimination can happen against people of indigenous ancestry in Mexico, there is also no question that the authorities have programs in place to deal with it. In reading the objective documentary evidence,¹⁶ indigenous peoples have access to the various human rights commissions and other complaints bodies and in Mexico City (where the claimant resided) the Office of the Public Prosecutor's Specialized Agency for Indigenous Peoples (Agencia Especializada del Ministerio Público para la Atención a Poblaciones Indígenas). It actually appears from the documents that many problems faced by Indigenous peoples are due to a language barriers, given that the Indigenous languages of Mexico are quite different from Spanish. However, the claimant is fluent in Spanish and should not have difficulty in accessing government assistance should the need arise.

[17] Given the all of the above, I find the claim pursuant to section 96 of the *IRPA* fails.

Crime

[18] More than once during the hearing, the claimant expressed a fear of general crime in Mexico. However, as crime is a risk faced generally by others it is precluded from my consideration by section 97 (1)(b)(ii). Even if the claimant's time in Canada were to place her at increased risk of targeting due to perceived wealth this merely alters the degree of the risk, not the nature of it.¹⁷ Given this and the fact that I simply do not believe the claimant's story, the claim pursuant to section 97 of the *IRPA* fails as well.

¹⁵ Exhibit PH-1

¹⁶ Exhibit R-11, item 13.1

¹⁷ *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31

No Credible Basis

[19] I find that, pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[20] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

‘David McBean’

David McBean

September 15, 2010

Date



RPD File No. / N° de dossier de la SPR: TA7-13173

TA7-13201

TA7-13202

TA7-13203

TA7-13204

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

August 29, 2008

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

November 3, 2008

Date de la décision

Panel

David McBean

Counsel for the Claimant(s)

Vilma Filici

Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer	Nil	Agent(e) des tr
Designated Representative(s)	Nil	Représent dési
Counsel for the Minister	Nil	Conseil du

s.19(1)

, his common-law partner , their daughter , their oldest son , and their youngest son , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

and his family lived in Mexico City. His mother, , wished to sell her car. She asked a neighbour, (“ ”), to assist her in this process as he took the vehicle to a local automotive market on , 2006. He was approached by three Judicial Police officers who alleged that the transmission number had been altered. , his mother and his brother, , went to the market to investigate. recorded the ensuing incident using his camcorder. The Judicial Police officers stated that they would overlook the problem if they were paid 3,000 pesos (approximately \$300 Canadian), but the amount would rise to 10,000 pesos if they had to arrest anyone. No payments were made and and were brought to the Ministry of Justice and charged with attempting to sell a vehicle with stolen parts. They were detained overnight and released on a promise to appear at a later date.

made a declaration that accused the officers involved of extortion and violence. The officers noted that they had everyone's personal information recorded and if any action was taken against them, there would be serious consequences. In early 2007, was almost run over by a car while walking his dog. While he was able to get out of the way, his dog was not so fortunate. An anonymous caller stated soon afterwards that this was just the beginning. The case against and was heard in 2007. They were found not guilty as the transmission number in question was actually a part number and not related to the Vehicle Identification Number. Out of fear, moved in 2007. In 2007, filed a complaint with the Human Rights Commission. In 2007, after a brief trip to Canada, received a call threatening death to him and his family if the Human Rights case continued. Out of fear, he did not attend the Human Rights hearing as he was supposed to. On , 2007 relocated again. On , 2007, the claimant received a call from

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the officers threatening that if he did not give them the videotape of the incident, his family would be killed. [redacted] countered that if the officers did not leave him alone, he would send the videotape to a friend who was the [redacted] of the [redacted], [redacted] made a report to the authorities the next day but was not allowed to name the callers as he had no proof. On [redacted] 2007, [redacted] noticed men taking pictures of him and [redacted] as they left school. On [redacted] 2007, [redacted] received a call threatening that if he did not turn over the video by Monday, there would be serious consequences as the callers now had information about his children. [redacted] reported the call the next day and fled Mexico with his wife and three children on [redacted] 2007. They made refugee claims on [redacted] 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that they would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Nexus

The claimants alleged that they are victims of crime based on a criminal vendetta by Judicial Police officers acting outside of their lawful duties. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when their PIFs³ and oral testimony were compared to the other documents available. For example, in the PIFs and in oral testimony, the case against [redacted] was heard and decided by a judge in [redacted]. However, in [redacted] complaint to the Human Rights Commission,⁴ a different story was presented. In this version, a document was slipped

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under the door of [redacted] brother's house stated that no further action would be taken in the case as the initial investigation had proven mistaken. [redacted] was asked to explain why the two versions were so different and he simply insisted that a judge had dropped the charges in [redacted] on the strength of an explanatory letter from [redacted]. I do not find this explanation satisfactory. Whether or not the authorities were willing to proceed to trial would have been a key issue in the family. In the PIF,5 a car attempted to run over [redacted] just prior to the trial. One would logically assume this was a form of intimidation related to the upcoming trial. However, in the Human Rights Commission complaint, the matter had already been disposed of and with no other proceedings at the time, it made little sense for there to be an attempt on [redacted] life. I find that this discrepancy with respect to how the criminal charges were resolved and when they were resolved to undermine the claimants' credibility.

In the same Human Rights Commission Document6 in recalling the initial confrontation, [redacted] states that "...3 members of the Federal District Judicial Police, whose names I don't know, happened to be there..."[emphasis mine]. As pointed out at the hearing, [redacted] should already have known well who the Judicial Police officers were as they were identified quite specifically in the denunciation that the officers had made against her after the original incident.7 [redacted] could provide no explanation as to why his mother wrote what she did. Given that [redacted] would obviously have known the identities of the officers in question, I do not find it reasonable for her to state the opposite in a subsequent proceeding. I would have expected a proper identification under the circumstances and this direct contradiction further undermines the claimants' credibility.

In the first Attorney General document that the claimant presented,8 [redacted] reports being threatened in [redacted] 2007. However, he does not mention the fact that the same perpetrators attempted to run him over in [redacted]. When asked to explain the omission, the claimant stated that he did not include reference to almost being run over as he had no proof that such an incident took place. I do not find this explanation satisfactory. The claimant was threatened by telephone so he would have no more proof of that than of a car attempting to run him over. It makes little sense for the claimant to report only threats while ignoring what appeared to be an

attempt to murder him. Had the events took place as the claimant testified, I would have expected mention to be made of the murder attempt and I find that its omission to further undermine the claimants' credibility.

As pointed out at the hearing, the names of the Judicial Police officers are not mentioned in either Attorney General document that Samuel presented. In the first document, dated

20079 as background to the complaint, he declared: "Some months ago, I had a problem with some individuals who were supposed to be Judicial Police Officers. From that time until yesterday they

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have been threatening me...I don't understand the reason for such conduct". In the second document, 10 dated 2007, the claimant states "I have no knowledge of who those individuals are or where they can be located. I don't know why these people are doing this to me...". This contrasts sharply with the PIF and oral testimony where by the time of his first complaint, the claimant knew the identities of the officers and knew quite well their motivation. When asked why there were these inconsistencies, the claimant stated that he was not allowed to "name names" as he lacked proof. As I disclosed at the hearing, my "specialized knowledge" gained from hearing other Mexican refugee claims is that where names are known they are disclosed in denunciations, even if the only proof of the allegations is the person's own word. In this case, would not only have his own word but several other eyewitnesses and a videotape of the initial event. Samuel responded that this was an example of police officers protecting other police officers. I do not find these explanations satisfactory. Since knew the names of the officers and their motivation, I would have expected them to be mentioned. If there was some form of cover-up, one would have expected the authorities to take the complaints and not proceed or not take the complaints in the first place - not to change the story. It should be noted that both documents are not simply silent on the issue; they actually contradict the claimants' story. I find these discrepancies in knowledge of the perpetrators and their motivation for harming him to further undermine the claimants' credibility.

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Throughout the hearing, [redacted] alleged that that his persecutors were officers of the Federal Judicial Police, an agency that has jurisdiction throughout the country. As noted at the

hearing, the documentary evidence,¹¹ states that there are a number of police forces in Mexico. The Federal District is unique in that it maintains its own Judicial Police force, separate and apart from the national Judicial Police. The claimant repeatedly stated that the officers in question were not from the Judicial Police of the Federal District but from the national force, actually named the Federal Investigation Agency since 2001. However, as pointed out at the hearing, in the original document¹² whereby [redacted] was charged the officers in question are identified as

being part of the Judicial Police of the Federal District, not the Federal Investigation Agency. [redacted] repeated once again that the officers were part of the national body and that they had some form of federal jurisdiction over the car lot. I do not find this explanation satisfactory. The claimants allegedly fear the officers because of their national jurisdiction and ability to hurt them anywhere in Mexico. The Judicial Police of the Federal District would have a much more limited reach. It appears the claimants simply concocted the idea that the officers involved were from the national body as it is inconceivable that the initiating document for [redacted] charges would get the name of the police force so wrong. I find that this contradiction to which police force the alleged agents of persecution belonged, to further undermine the claimants' credibility.

Apart from the numerous contradictions, there were some basic areas of the claimants' story that just did not make sense. Apart from [redacted] allegedly destroying the videotape of the initial incident (even though this was the one thing that gave the claimant power), [redacted] mother, [redacted], remains in Mexico and has experienced no problems since the original incident. It makes little sense that [redacted], who at best, witnessed part of a "shakedown" for the equivalent of a few hundred dollars would face threats, a murder attempt and the stalking and threat to murder his family, while the person at the centre of the dispute, [redacted], experienced no problems after her initial arrest and has not come to Canada. If the alleged agents of persecution were so motivated to make the problem disappear, one would have thought that something would have happened to [redacted] at some time.

Given the numerous contradictions, inconsistencies and outright plausibility problems, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to [redacted] them, actually happened.

CONCLUSION

The claimants have alleged that they are victims of crime based on a criminal vendetta. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. Since I do not believe the claimants with respect to the events described in their PIFs, and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

November 3, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1 to C-5, claimant’s PIFs.
- 4 Exhibit C-6, Human Rights Commission document, p. 37.
- 5 Exhibit C-1.
- 6 Exhibit C-6, Human Rights Commission document, p. 36.
- 7 Exhibit C-6, Human Rights Commission document, pp. 31 – 32.
- 8 Exhibit C-6, document from Office of the Attorney General, p. 48A.
- 9 Exhibit C-6, document from Office of the Attorney General, p. 48A.
- 10 Exhibit C-6, document from Office of the Attorney General, p. 52.

11 Exhibit C-6, p. 10, Benjamin Reams, Police Forces in Mexico: A Profile.

12 Exhibit C-6, document from Office of the Attorney General, p. 32.

RPD File No. / N° de dossier de la SPR : TA7-13173

TA7-13201

TA7-13202

TA7-13203

TA7-13204



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-13446
TA7-13702

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

s.19(1) Demandeur(e)(s) d'asile

Date(s) of Hearing

October 9, 2009

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

October 20, 2009

Date de la décision

Panel

David McBean

Tribunal

**Counsel for the
Claimant(s)**

Orr Kolesnik

**Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer

N/A

Agent(e) de tribunal

**Designated
Representative(s)**

N/A

**Représentant(e)(s)
désigné(e)(s)**

**Counsel for the
Minister**

N/A

Conseil du ministre

s.19(1)

[1] (a.k.a.), (the claimant) and his spouse
, citizens of Costa Rica, claim refugee protection pursuant to
sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant worked as a in a small town in Costa Rica. In or about
1997, he overheard one of his coworkers, (“ ”), making a phone
call in which the delivery of was discussed. The claimant told his friend who
was a police officer what he had overheard and an investigation commenced. The
claimant received threats for being a “snitch”. During an undercover sting,
attempted to escape but was shot in the leg and captured. was sentenced to
prison in 1998 and served five years. issued threats to the claimant from prison.
After being released in 2003, threatened the female claimant in person.
On another occasion, the claimants’ windows were broken and their tires were slashed.
They learned that was now part of a criminal organization that involved members
of the police. The claimants came to Canada on , 2003. After learning that
ties to the authorities had only become stronger, they made refugee claims on
, 2007.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious
possibility of persecution on a Convention ground, or that they would personally be
subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of
cruel and unusual treatment or punishment upon return to their country. My reasons for
decision are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

Identity

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[4] The claimants' identity as citizens of Costa Rica was accepted at the beginning of the hearing as copies of their Costa Rican passports were on file.²

Nexus

[5] The claimants fear a criminal vendetta at the hands of a [redacted] and as such the claims pursuant to section 96 of the *IRPA* fail for lack of a nexus to the Convention refugee definition.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant was repeatedly asked why he thought that [redacted] suspected him as being the informant and he stated that [redacted] knew that he had overheard the original phone conversation about [redacted]. When asked about their relationship he described a situation of two normal coworkers, even to the extent of having lunch together. After numerous questions, the claimant finally stated that [redacted] began to specifically threaten him since he suspected him as being the informer. When asked to clarify how long it had been from the phone call to the start of the threats, the claimant estimated about half a year (i.e. from approximately [redacted] to the end of the year). However, as noted at the hearing, the PIF reads as if all of the events occur in rapid succession and that it was fairly soon after the phone call that the threats began. The claimant stated that the periods may have been less than he originally estimated. It was also noted at the hearing that throughout the claimant's initial testimony, he never stated there were threats even though there appeared to be many instances where it would have been logical to say so. The claimant stated that initially the relationship between [redacted] and himself was normal and

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, PIF.

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later the threats started. I do not find the claimant's explanations satisfactory. I am mindful that these events allegedly took place over a decade ago and it would be unreasonable to expect most people to remember everything down to the exact day. However, I would expect someone to remember whether overhearing a phone call led fairly quickly to threats as opposed to nothing happening for about half a year before the threats started. Furthermore, there were several instances in the claimant's initial testimony where if the claimant had received threats from [redacted] on the basis that [redacted] suspected him of being an informant, I would have expected him to say just that and not wait until later testimony to mention threats. I find that these discrepancies with respect to the length of time before the threats started and the existence of the threats themselves to undermine the claimants' credibility.

[7] The claimant stated in oral testimony that after [redacted] was released from prison, he threatened him five times over the phone with the claimant speaking to personally each time. However, as noted at the hearing, the PIF does not make any mention of the claimant ever being threatened directly by [redacted] in any manner after he was released from prison. The claimant stated that he had not remembered all of the details of his story at the time that he filled out his PIF. I do not find the claimant's explanation satisfactory. It would be one thing for the claimant to not remember whether [redacted] called him up to threaten him directly either four or five times. It is entirely another thing for the claimant to fail to remember that [redacted] **ever** threatened him directly over the phone. I find that the omission of these five threats further undermine the claimants' credibility.

[8] As noted previously, the claimant stated orally that he was threatened five times by [redacted] over the phone and both orally and in the PIF that his spouse had been threatened in person by [redacted]. However, as noted at the hearing, in the notes of the immigration officer made at the time the claimants made their claims, it is noted that "This person was in jail, and upon his release, told members of the PC's family that he was going to kill him."⁴ No mention is made of the (here referred to as the Person Concerned/Principal Claimant) being threatened over the phone or his spouse, at this

⁴ Exhibit R-2, Minister's Delegate Review.

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point a co-claimant, being threatened in person. The claimant stated that the threats mentioned were what his family heard while [redacted] was in jail and that he had not remembered all of the details of the story at the time that he spoke to the immigration officer. I do not find the claimant's explanation satisfactory. Apart from the notes clearly indicating that the threats mentioned were made after [redacted] was released, it makes no sense at all for the claimant to only mention threats that his family had heard and forget to mention that he had been threatened directly five times over the phone and that his spouse had been specifically threatened in person. I find that these omissions further undermine the claimant's credibility.

[9] The claimant stated orally that he did not report [redacted] threats to the authorities because [redacted] had money, that [redacted] had become very friendly with the [redacted] police officer in their town and that he was afraid of [redacted] acting on his threats. However, as noted at the hearing, in the PIF the claimants did not want to go to the authorities because they heard that [redacted] was part of a criminal organization which included members [plural in the original] of the police. The claimant stated that he had not mentioned that earlier given the way the questions had been worded. I do not find the claimant's explanation satisfactory. The claimant was asked in numerous ways why he did not report [redacted] to the authorities. He was even asked if there was "any other" reason, other than the reasons that he had already given. To not make mention of the fact that [redacted] was now allegedly part of some criminal organization that included multiple members of the police, which given that there was [redacted] in town would have to involve officers from other locations, makes absolutely no sense at all. I find that this omission further undermines the claimants' credibility.

[10] In attempting to explain why the claimants delayed over four years after their arrival in Canada before they made their refugee claims, the claimant stated orally that he had hoped the situation with [redacted] would cool down. The claimant went on to say that [redacted] made threats against him from the time that the claimants left Costa Rica in 2003, through the time that they made their refugee claims in 2007 and those threats continued today. He said that for the sake of his daughter, born [redacted] 2005, they made refugee claims in order to avoid facing danger. However, as noted at the hearing, the PIF makes

s.19(1)

no mention of any threats at all after the claimants left Costa Rica in 2003 and instead states that the claimants learned that ties to the police had become stronger over time. The claimant stated that he had not remembered that there were ongoing threats at the time that he prepared his PIF. I do not find the claimant's explanation satisfactory. It makes very little sense for the claimants to forget at the time that they filled out their PIFs that continued to issue threats for years after they left Costa Rica, which would have indicated a strong continuing interest on the part of . It makes absolutely no sense at all given that the PIF specifically speaks to why the claimants were afraid to return after all these years and an entirely different reason is given (i.e. now more connected to the police). I find that this discrepancy further undermines the claimant's credibility.

[11] As noted earlier, the claimants delayed several years in making their refugee claims. While I can understand perhaps waiting a little while to see if things cooled down, the claimants waited over four years from the time that they arrived before making their claims. During the vast majority of their time in Canada, they were without status. If they had actually feared for their lives, I would have expected the claimants to exert some form of effort in attempting to stay in Canada permanently. Even the claimant's statement that he wanted to stay in Canada for the sake of his daughter made little sense given that the daughter was born almost two years before the refugee claims were made. Given the long years of delay in making their claims, I find that the claimants' displayed a lack of subjective fear, and that this further undermined their credibility.

[12] I am mindful of the fact that a "Penal Records Certificate"⁵ was presented that indicates that someone by name did serve a sentence for five years for and . However, this document does nothing to tie the claimants to or more importantly overcome the credibility problems noted. I am also mindful of the fact that a letter⁶ was presented from which essentially attempts to corroborate the claimant's story. However, the letter is explicitly from a personal friend and personal friends are definitely not an objective,

⁵ Exhibit C-3, item 3.

⁶ Exhibit C-3, item 2.

disinterested source of information. This friend would obviously be interested in helping the claimants. I give both documents little weight in my assessment of the evidence.

[13] Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened, and as such, the claims pursuant to section 97 of the IRPA fail.

[14] As the claim of the claimant's wife relies entirely on his, and no persuasive evidence was adduced to differentiate her claim from his, her claim must also fail.

No Credible Basis

[15] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made, and therefore, there is no credible basis for these claims.

CONCLUSION

[16] For all these reasons, the Refugee Protection Division therefore rejects these claims. The claimants are not Convention refugees or persons in need of protection.

(signed)

"David McBean"

David McBean

October 20, 2009

Date



RPD File No. / N° de dossier de la SPR: TA7-13573

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

February 6, 2009

Date(s) de l'aud

Place of Hearing

Toronto

Lieu de l'aud

Date of Decision

March 20, 2009

Date de la

Panel

David McBean

]

**Counsel for the
Claimant(s)**

Dunstan Munro

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) des tr

**Designated
Representative(s)**

N/A

**Représent
désigné**

Counsel for the Minister

N/A

Conseil du

s.19(1)

(a.k.a. _____), a citizen of _____, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

During the month of _____ 2000, the claimant witnessed an argument between a known gang member, _____, and another man, _____. During the argument, the claimant saw _____ stab _____ died in hospital of his wounds. The claimant and two other witnesses, _____ and _____, gave statements to the authorities and as a result, _____ was arrested and charged. _____ used his connections to arrange being released on bail quickly, and after an interim court date, the matter was adjourned indefinitely in _____ 2001. After receiving death threats, _____ and _____ fled to _____ and _____ respectively. Despite keeping a low profile, the claimant heard through his sister in _____ 2001 that _____ gang was planning an attack on him. The claimant fled to Canada on _____ 2001. He made a refugee claim on _____, 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

IDENTITY

The claimant's identity as a citizen of _____ was accepted at the beginning of the hearing as a copy of his _____ passport was on file.²

ANALYSIS

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility**s.19(1)**

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, in the PIF, the claimant stated that while he was unsure of the exact day that the murder took place; he knew that it was during [redacted] 2000. The claimant confirmed this date in oral testimony. However, as pointed out at the hearing, at the time that the claimant made his claim he spoke with an Immigration Officer. In the detailed notes of the Immigration Officer,4 the murder is stated to have taken place on [redacted], 2000. The claimant stated that he did not know why the date of the murder was listed differently in the notes of the Immigration Officer. While I realize that the murder allegedly took place almost a decade ago and memories can deteriorate over time, the claimant was quite definite in his oral testimony that the murder happened in [redacted] which not only contradicts the very specific date that he gave the Immigration Officer, but also contradicts the season during which the murder allegedly happened. While it would be understandable for the claimant to be unsure with respect to the exact day that the murder took place, being inexplicably off by a season does not make sense. I find that this discrepancy in when the murder took place to undermine the claimant's credibility.

In the PIF and oral testimony the claimant stated that the murder trial had been adjourned indefinitely. However, as pointed out at the hearing, in the notes of the Immigration Officer, the trial was not adjourned indefinitely and instead the next court date was set to be March 11, 2002. When asked why the two descriptions were different, the claimant and counsel stated that it was their opinion that the Immigration Officer was hostile to the claimant and had transcribed the dates incorrectly, perhaps in an effort to undermine the claimant's refugee hearing. Counsel also initially stated that he objected to the inclusion of the notes as he did not notice them amongst his disclosure. As noted at the hearing, the notes were the only legal size document in the disclosure package and were physically sticking out from the other shorter documents which had all been disclosed to counsel in the normal course of processing the claim. Counsel also asked that the notes be excluded on the issue of bias against his claimant given the Immigration Officer's hostile attitude. I declined to do this as any matters of bias would go to weight, rather than admissibility. In assessing weight to be given to the notes, I note that the Immigration Officer is

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professionally disinterested in the outcome of this refugee claim. The Immigration form in general and the notes with respect to the specifics of the claim in particular are quite detailed and the vast majority of the details appear to match the PIF and oral evidence. Counsel made no effort to cross-examine the Immigration Officer on the contents of the notes. Given the circumstances, it appears that the claimant simply told one story in his PIF and oral evidence and another story to the Immigration Officer. This is significant since in the PIF/oral version [redacted] evidently used his connections to obtain an indefinite adjournment and the claimant fled with no resolution of the trial in sight. In the Immigration notes version, the claimant fled in advance of an impending court date where he would have to testify against a murderer. I find that this discrepancy in what was happening with respect to the trial and the context in which the claimant would have fled to further undermine the claimant's credibility.

In oral testimony, there was no one particular threat that caused the claimant to flee to Canada, just that he had received death threats, although he did not know any specifics at the time. As noted at the hearing, the PIF states that the claimant heard through his sister that there was a specific plan to attack him in [redacted] 2001 and that as a direct result he fled during the same month. When asked to explain this contradiction, the claimant confirmed the version that was contained in his PIF but could not explain why in his initial oral testimony there were only general threats instead of a specific plot at a specific time heard through a specific person. If such a specific plot was indeed the reason that the claimant left [redacted] I would have expected that the claimant to mention just that, rather than vague general threats. I find that this discrepancy in the specific reason for the claimant to flee [redacted] to further undermine his credibility.

The claimant did not present any documents that would substantiate the fact that a murder actually took place. The claimant stated that while his family did attempt to obtain police/court documents they were always told to come back another day and never did obtain any documents. The claimant never made any efforts to obtain any media reports about the incident and no media documents were presented. While I realize that claimants are not required to document every aspect of their claim, if documents are reasonably available they should be obtained and presented. While the lack of police/court documents after seven years is troubling, far more troubling is the lack of media documents about the alleged incident. As noted at the hearing, it is within my specialized knowledge that the media in [redacted] are not shy at all about covering murders and murder trials in great detail, particularly a murder that happened in front of witnesses with multiple trial dates. I find that this lack of what should have been reasonably available corroborating documentation to further undermine the claimant's credibility.

Most telling are the claimant's experiences after he came to Canada. The claimant stated that he did not know that he could make a refugee claim at the airport at the time that he arrived in Canada. He was granted permission to remain for two weeks and did not make a refugee claim during that time. He

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made no efforts to extend his status by any means as he stated that he was told that he would need money for a lawyer. In fact he made no efforts to extend his stay in Canada for close to six years as he thought he would still require money for a lawyer. Finally, in late 2007, he came to the attention of the Canadian authorities, and after being detained and receiving further information, he made a refugee claim. While counsel submitted that it would not be reasonable for the claimant to have made a refugee claim earlier given his personal circumstances, I do not agree. The claimant has 10 years of education and is fluent in English. To live over half a decade in Toronto and not ever attempt to regularize his status while allegedly fearing death in [redacted] all because he thought he “needed money” makes no sense at all. The claimant managed to live his life without incident, form a common law relationship and father a child and generally go about his business for over half a decade without ever making serious inquiries as to how he could avoid being sent back to [redacted] and face death. While delays in claiming are not necessarily determinative of refugee claims, I find that this more than half a decade delay not only displays an utter lack of subjective fear but also further undermines what is left of the claimant’s credibility.

Given the serious inconsistencies in a number of key areas and actions that are absolutely inconsistent with having subjective fear, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

The claimant alleged that he is a victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well. There was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

DAVID McBEAN

March 20, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, PIF.
- 4 Exhibit R/A-2.

RPD File No. / N° de dossier de la SPR: TA7-13573



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-13590

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	June 23, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 17, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Joseph S. Farkas Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la procédure
Designated Representative(s)	N/A	Représentant(e)(s) du demandeur(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

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[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant worked on a ranch in rural _____. On _____, 2006, the claimant came upon the _____ (“_____”), and four men beating _____, one of the claimant’s friends. The claimant was held and beaten and _____ was left near death. The claimant was threatened with death if he failed to keep quiet about the incident. While the claimant did take _____ to a hospital, he died of his injuries at midnight the next day. The claimant told _____ parents the truth about what happened and _____ parents reported the matter to the police. As the only witness, the claimant gave testimony to the authorities on _____, 2006. Fearing that the powerful _____ would carry out his death threat, the claimant moved to _____ and began working for _____. In _____ 2007, the claimant’s brother called to say that he had been beaten by _____ men who were looking for the claimant. The claimant’s boss hid him in a room. The claimant came to Canada on _____, 2007. The claimant’s brother moved away from the small town that he was living in to escape further harm. The claimant made a refugee claim on _____, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, in oral testimony, the claimant stated that while one of [redacted] men broke a fluorescent light tube over the claimant cutting his neck and two men beat him, he sought no treatment for his own injuries when he took [redacted] to a medical clinic. Given that this seemed to make little sense based on his account of the incident, I pressed the claimant on the matter and he insisted that he sought no treatment at the medical clinic and simply treated himself at home. I find this account of the incident implausible. If the claimant had indeed been beaten by two men and more importantly had his neck cut when a glass tube was smashed over him, it makes no sense at all for the claimant not to seek treatment while he was standing in a medical clinic. It actually seemed that the claimant was inventing this portion of his testimony as a way of explaining why he did not have a medical note. I find that this implausibility undermines the claimant's credibility.

[6] In the claimant's initial oral testimony, the claimant stated that [redacted] died two days after he received his injuries. Then when asked to confirm the amount of time that had passed as two days, the claimant denied saying two days and insisted that he had said one day. Regardless of the number of days, the claimant stated orally more than once that [redacted] died at noon and then [redacted] threatened the claimant in person that same afternoon. However, as noted at the hearing, the PIF states that [redacted] died at midnight. The claimant stated that the PIF was wrong on this point. Also noted at the hearing was the fact that there is no mention in the PIF of [redacted] coming to threaten the claimant in person after [redacted] died. The claimant stated that information had been omitted from the PIF as he was trying to be concise. I do not find the claimant's explanations satisfactory. The first portion of the hearing was spent fixing a number of errors in the PIF. The claimant testified that the written declaration that he made affirming that the PIF had been interpreted to him and was complete and accurate was not true at the time that he signed the affirmation. However, after a number of errors were fixed, the claimant then affirmed that everything had been interpreted more recently to him and that with the amendments the contents were now complete and accurate, so I would have thought that no errors would remain in the PIF. However, when the discrepancy with respect to [redacted] death was pointed out, the claimant then stated that he was not sure if the person who most recently interpreted the PIF to him was actually able to read. This does not make sense as the claimant expressed no such concern

earlier in the hearing when asked if the PIF had been more recently been interpreted to him. It appeared that the claimant suddenly invented an “illiterate” interpreter in an attempt to cover up the fact that he had made a mistake with respect to the time of death. The time of death should have been fairly easy to remember since it was either in the middle of the day or in the middle of the night. Furthermore, the directions for filling out the PIF narrative are quite clear in that all significant incidents are to be included. To omit being threatened in person by [redacted] and his men immediately after the death of [redacted] (i.e. the cause of the renewed threats) for the sake of being “concise” makes no sense at all. I find that these discrepancies with respect to the timing of [redacted] death and the immediate aftermath to further undermine the claimant’s credibility.

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[7] Initially in oral testimony, the claimant stated that he went back to work at [redacted] until [redacted] (i.e. after [redacted] died and before leaving for [redacted]). Then in later oral testimony he stated that he did not return to work at the ranch after [redacted] died and simply stayed in his room in a nearby town. When confronted with this direct contradiction, the claimant did not offer an explanation and simply insisted that he went to his room in the town. I do not find this lack of an explanation satisfactory. It appeared that the claimant changed his testimony outright after he realized that it did not sound logical that he would return to work on the ranch of the man who was threatening him with death. I find this contradiction to further undermine the claimant’s credibility.

[8] Initially in oral testimony, the claimant stated that he stayed in his room from the time that he was threatened until he left for [redacted] and that “nothing happened” during that time period. Only after being prompted as to whether anything else actually happened did the claimant state that he went to the authorities to provide evidence against [redacted] at the behest of [redacted] mother. When asked why he had not said this earlier when given the opportunity, the claimant thought he had only been asked about the days between the threat and the day that he left and did not mention going to the authorities as that happened on the day that he left. I do not find the claimant’s explanation satisfactory. It was obvious from the way that it was worded that the claimant’s previous testimony was meant to include the day that he left. It appeared that the claimant simply forgot that he had allegedly gone to the authorities. I find that this omission further undermines the claimant’s credibility.

[9] It did seem odd that the claimant was not able to present any documentation to corroborate the fact that [redacted] had sought medical treatment, had died and that a complaint was made to the authorities. Documents would have been helpful in clearing up some of the issues noted at the hearing. For example, in oral testimony and in the PIF the claimant gave testimony to the authorities. However, as noted at the hearing, the notes⁴ made by the immigration officer at the time that the claimant made his refugee claim, indicate that while the claimant was expected to testify, he did not actually do so. The claimant stated that the interpreter present at the immigration interview must have misunderstood and meant to say that the claimant did not make a separate complaint from the one made by

mother. I do not find the claimant's explanation satisfactory. The vast majority of the information contained in the immigration notes appears to be correct, so there did not appear to be a difficulty in being understood and it does not make sense for there to be a misunderstanding on the basis that the claimant alleged. It is clear from the way that the notes are worded that the claimant did not in fact provide testimony to the authorities and I find that the subsequent contradiction in his PIF and oral evidence further undermines his credibility.

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[10] In oral testimony the claimant stated that after being beaten his brother told [redacted] and his men that the claimant was in [redacted]. However, as noted at the hearing, this information is not contained in the PIF. The claimant stated he did not know why it was not included in the PIF. I do not find this lack of an explanation satisfactory. It is one thing for the claimant to become concerned for his safety because the men looking for him harmed his brother. It is another thing entirely for the claimant to become concerned because his brother gave away his location to the men looking to harm him. I find that the omission of this significant information to further undermine the claimant's credibility.

[11] In oral testimony, the claimant stated that his family received a ransom demand for his brother, who had allegedly been kidnapped. The claimant stated that while he could not be sure, he thought that this might be related to his own situation. When asked why he had not included this in his PIF, the claimant stated that he had only recently learned of the information. When asked why he did not include add this information to his PIF at the beginning of the hearing when several amendments to the PIF were made, the claimant stated that he had only recently learned of the information, just after his final meeting with his lawyer the week before the hearing. I do not find the claimant's explanation satisfactory. For the claimant to believe that his brother had been potentially kidnapped as a result of the claimant's own problems and make no efforts to inform his own counsel of this, even if just prior to starting the hearing and before various amendments to the PIF were made and then affirm orally that the apparently "incomplete" PIF was complete and accurate after the other amendments were made, makes absolutely no sense at all. It actually appeared at the time that the claimant realized that "nothing had happened" since 2007 and spontaneously invented the kidnapping in an attempt to show continuing interest on the part of the agent of persecution. I find that this omission further undermines the claimant's credibility.

[12] The claimant embellished his testimony at various points in the hearing. For example, when being questioned about the possibility of an internal flight alternative in the Federal District, the claimant stated that the police were no good there. Later, he stated that he actually feared the police more than he did [redacted]. While some of the documentary evidence indicates that some police officers in Mexico have been involved in criminal acts, as noted at the hearing, there is no mention in the PIF of the claimant fearing the police, particularly not to the extent that he would fear them more than a man who was specifically trying to kill him. While the claimant stated that he was trying to be concise, I do

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 not find the claimant's explanation satisfactory. It actually appeared that this particular embellishment was spontaneously made to reduce the likelihood of a viable IFA being found in the Federal District after it was noted that _____, a _____, albeit a powerful one in his own local area, may not have much influence in a huge city like the Federal District. I find that this embellishment further undermines the claimant's credibility.

[13] Given the serious discrepancies and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and therefore the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, at risk of any of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

No Credible Basis

[14] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[15] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

July 17, 2009

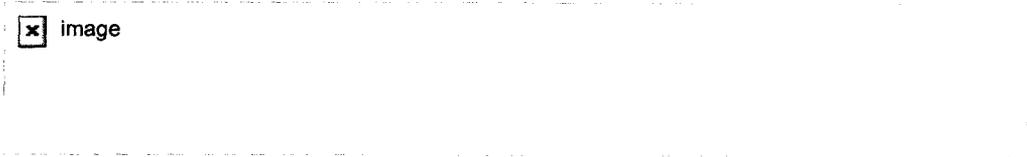
Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, PIF.

4 Exhibit R-2, CIC Etobicoke In-person Refugee Intake “Record of Examination”, p. 6.



RPD File No. : TA7-13590



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-14705

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing January 21, 2010 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision April 9, 2010 **Date de la décision**

Panel David McBean **Panel**

Counsel for the Claimant (s) Robert Hamilton Jr. **Conseil(s) du / de la demandeur(e)(s)**

Tribunal Officer N/A **Agent(e) de la**

Designated Representative(s) N/A **Représentant(e)(s) désigné(s)**

Counsel for the Minister N/A **Conseil du ministre**

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REASONS AND DECISION

[1] _____, a citizen of both _____ and _____ (_____), claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant was born in _____. She is a citizen of _____ by birth and became a citizen of _____ (“_____”) through her father in 2004. She met _____ (“_____”) in _____ in 1995. Soon after they began a relationship. However, in 2002, the claimant began noting a change in _____ attitude toward her. _____ began abusing her. While the claimant was attending the University of _____, _____ came to the university in _____ 2002 and forced the claimant to go to the _____ accused the claimant of having an affair and attempted to throw her into the sea. Passersby intervened and _____ escaped. The claimant went to the police who advised her to get a medical report before they proceeded. While the claimant did get the medical report, she did not return to the police as _____ had come to her and begged for forgiveness. The abuse continued and got worse. On _____, 2003, the claimant was attending a party when _____ became jealous. He beat her, cut her face and stabbed her cheek so badly that she had to be hospitalized for three days. The police came to the hospital and the claimant made a report, however her family advised her to leave for _____ as soon as possible. She moved to _____ on _____, 2003. In _____ 2005, she was surprised to get a call from _____. On _____, 2005, _____ came up to the claimant in _____ and put a gun to her head and threatened to kill her. He then took her to a house and raped her. While he let her go, he stole her belongings. The claimant reported the matter to the police and led them to the house, however _____ was not there. The claimant moved to _____ on _____, 2005. On _____, 2005, _____ jumped out of a _____ and forced the claimant inside. The claimant was driven by _____ and three men to a place where she was gang-raped. The claimant was given something to drink and she passed out. When she came to she found the house abandoned and her _____ passport and other things were missing. The claimant reported the matter to the police. However, a job offer then immediately came through from a company in _____. The claimant seized this opportunity and left _____ using her _____ passport. Unfortunately, her new boss took advantage of the situation and had sex with her while threatening her with losing her job. On _____, 2006, the claimant went to _____ on a business trip and decided to apply for a visa to visit relatives in Canada (the application was eventually rejected). On _____, 2006, the claimant returned to _____ to pick up some certificates that she needed for her visa application. _____ learned that the claimant was in _____ and went to the claimant’s sister’s house to search for her. The claimant came to realize that one of her friends, “_____”, had been telling _____ all this time about where she was. When the claimant and her family stopped telling _____ where the claimant was, _____ could no longer find her so he threatened the claimant’s family. The claimant returned to _____, _____ on _____

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s.19(1)

, 2006. The claimant later learned that [redacted] was in [redacted] and contacted him there. She told him that she wanted to return to [redacted] to live with him and that she wanted her passport back. [redacted] said that he did not want to have anything to do with the claimant and wanted to know her whereabouts. The claimant hung up. The claimant called upon an uncle who was friends with [redacted] and he eventually got her [redacted] passport back. On [redacted], 2007, the claimant received a threatening call from [redacted] stating that he knew that she was in [redacted]. The claimant's uncle brought the claimant's [redacted] passport to [redacted] and she used it to travel to Canada on [redacted] 2007. She made a refugee claim on [redacted], 2007. The claimant later learned that [redacted] was searching all over [redacted] and [redacted] for her.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered

all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

s.19(1)

[4] The claimant's identity as a citizen of [redacted] and [redacted] was accepted at the hearing given the evidence on file.³

Countries of reference

[5] The claimant is a dual citizen of both [redacted] and [redacted]. Claimants must establish a well-founded fear of persecution in all their countries of citizenship in order to be found to be a Convention refugee. As set out below, the claim fails with respect to [redacted] so I do not need to consider the situation in [redacted].

State Protection

[6] At this point it seems unlikely that [redacted] would come to know if the claimant were to go to [redacted]. He seemed to gain the vast majority of his ability to track the claimant through a former mutual friend, [redacted]. Given that the claimant and her family are aware that [redacted] had been passing along news of her whereabouts to [redacted], it seems unlikely they will make the same mistake again. However, even if [redacted] were to come to know that the claimant was in [redacted] and he managed to enter the country despite him not having [redacted] citizenship and wish to do her harm, the claimant could call upon the [redacted] authorities for protection. The claimant has not been in a relationship with [redacted] for well over half a decade so any violence that [redacted] might want to attempt to inflict would not be classed as "domestic violence". [redacted] does not appear to have any means to influence the authorities in [redacted] given that he only worked as a [redacted], his mother is long dead and his father is a [redacted].

While the claimant speculated that [redacted] was able to use a [redacted] in one incident due to him having "wealthy friends", it does not appear that these friends have been able to exert any influence over the authorities in any of the countries that the claimant has lived in and no allegation was made that they would do so in the future.

[7] While the claimant did initially express some uncertainty with respect to what she thought the authorities in [redacted] would have done had she remained in the country after she made her report, it appeared they were taking the matter seriously given that they responded and investigated when she contacted them. Given that the claimant (and presumably [redacted]) immediately left [redacted], the

s.19(1)

authorities would have been unable to proceed on her complaint. The claimant went on to state that if [redacted] menaced her in [redacted] in the future and she called the police, she believed they would respond and attempt to apprehend him. I find on a balance of probabilities that the claimant has failed to rebut the presumption of state protection and as such the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

CONCLUSION

[8] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

April 9, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2.

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RPD File No. : TA7-14705

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RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA7-15160

TA7-15188

TA7-15189

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

January 5, 2010

Date(s) de l':

Place of Hearing

Toronto, Ontario

Lieu de l':

Date of Decision

March 9, 2010

Date de la

Panel

David McBean

**Counsel for the Claimant
(s)**

Philip U. Okpala
Barrister and Solicitor

**Conseil(s) du / d
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) de

s.19(1)

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

REASONS AND DECISION

s.19(1)

[1] (the claimant) and her daughters and citizens of the Czech Republic, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant faced problems at a young age due to her Roma ethnicity. She endured taunts from children and her teachers, was put in a lower school and was even tied to a tree. The claimant would have to wait outside the normal waiting area to see a doctor and she was scared to leave her oldest daughter alone in a stroller. Her oldest daughter faced problems in school and was sent to a lower school as well. When the claimant's second daughter, , was two years old she contracted a form of meningitis. Unfortunately she received negligent treatment from what turned out to be a racist doctor who had a family member who was a skinhead. No one wanted to get involved in suing the negligent doctor. had to attend a school for hearing impaired children. was beaten by her teacher at least twice and while the claimant complained to the principal, nothing was done. was forced to leave secondary school because of racially motivated abuse she received there. A neighbour constantly kicked the claimant's door, made racist threats, beat and spit at her kids and did other things. The superintendent of the building appeared naked in front of . While the claimants moved to a larger city there were still the same problems. The claimants came to Canada on , 2007 and filed refugee claims on , 2007.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of the Czech Republic were accepted at the hearing given that certified copies of their Czech passports were on file.² Also accepted for the purposes of the hearing was the fact that the claimants either are, or would be perceived to be of Roma ethnicity.

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, in oral testimony, the claimant stated that her former spouse, who is also Roma, had been attacked in the subway by racists and injured in 1997. However, as noted at the hearing, this incident is not mentioned in the PIF. The claimant stated that the PIF was meant to concentrate on herself and her daughters and that she did not think it was important to include the incident in the PIF. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that all incidents against family members and similarly situated persons are to be included. The claimant stated that she was present during the attack on her spouse and that this attack was one of the main reasons that she traveled to the United Kingdom to make an asylum claim. While I can understand that the majority of the narrative deals with the current claimants, given the clear directions for filling out the narrative and the fact that the claimant was present during the racially based attack on her former spouse and this attack motivated the claimant at least in part to make an asylum claim in the United Kingdom, I would have expected the claimant to mention the incident in the PIF, especially since the PIF actually details even earlier events. I find that this omission undermines the claimant's credibility. **s.19(1)**

[6] In the PIF and oral testimony, the doctor that allegedly provided negligent care for _____, was a woman whose son was a skinhead. However, as noted at the hearing, in a statement4 provided at the time that the claimants made their claims, the same doctor is a man and it is his brother who is a skinhead. The claimant stated that there must have been a mistake and that she had intended to say the doctor was a woman. I do not find the claimant's explanation satisfactory. The claimant allegedly met this doctor on several occasions so identifying the doctor's gender should not have been a confusing thing. Furthermore, learning that a close relative of the doctor was a skinhead would have been a chilling event, one whose details I would have expected to stick out in the claimant's mind. Given the circumstances, I would have expected the claimant to give consistent testimony regarding the doctor's gender and which of the doctor's relatives was a skinhead. I find the fact that she did not to further undermine her credibility.

[7] In oral testimony, the claimant stated that _____ had been beaten by her teacher. The claimant then escalated the matter to the principal and then went to the police who did nothing as there were no witnesses. However, as noted at the hearing, while the PIF does mention that _____ teacher beat her and that the claimant went to the principal who did nothing, there is no mention of the claimant then going to the police to complain only to be rebuffed over a lack of witnesses. The claimant stated that she had forgotten a lot of things when she filled out the PIF. I do not find the claimant's explanation satisfactory. Once again, the directions for filling out the narrative are quite clear in that all attempts to obtain protection from the authorities are to be mentioned. It is one thing to complain to the principal about gross misconduct on the part of a teacher; it is another thing entirely to then attempt to lodge a

formal complaint with the police. The fact that the claimant was rebuffed would have strengthened her distrust of the authorities so this portion of the alleged incident was quite significant. Even if the claimant had somehow forgotten about going to the police during this incident at the time that she filled out her PIF, the claimant appeared to be aware that the PIF could be amended as amendments were made on other points. Given the circumstances I would have expected the claimant to mention in her PIF her attempt to go to the police during this incident and I find that this omission from the PIF to further undermine the claimant's credibility.

[8] In oral testimony, the claimant spoke about a racist neighbour who was constantly kicked her door, made racist threats, beat up the children and did other bad things. The claimant stated that while she called the police and they did respond, the police ended up talking and laughing with the racist neighbour and nothing was done. However, as noted at the hearing, there is no mention in the PIF of the police responding to the scene and talking and laughing with this neighbour. The claimant stated that she had forgotten this event. I do not find the claimant's explanation satisfactory. This event would have once again strengthened the mistrust of the authorities in the claimant's mind. To see the police actually laughing with a man who had allegedly committed criminal racist acts against the claimant and her children, would be a very significant event which would have destroyed any remaining trust that the claimant had in the authorities and it makes no sense that the claimant would forget it. I find that this omission further undermines the claimant's credibility.

[9] In oral testimony the claimant stated that her ex-spouse was delinquent in paying child support. She went on to say that while she contacted the police, they refused to get involved. The claimant stated that the police would normally get involved in such matters and that their refusal to do so, in her opinion, was potentially due to her race. However, as noted at the hearing, this entire matter was not mentioned in the PIF. The claimant stated that her PIF had focused on certain incidents that had happened to her and that she did not consider this incident to be important. I do not find the claimant's explanation satisfactory. As stated previously, the directions for filling out the PIF narrative are quite clear in that all efforts to obtain protection should be detailed and if efforts are not made, the reasons for that should be given. Here the claimant stated that the police failed to become involved⁵ potentially because of her race and this was one of the reasons that she would not approach the authorities today should she return to the Czech Republic. Given the clear directions in the PIF and the fact that this event seemed quite significant to the claimant as it is one of the reasons she will no longer approach the authorities, I would have expected her to mention the event in the PIF. I find that this omission further undermines her credibility.

[10] I do note that counsel submitted a photograph⁵ which apparently shows one of the minor claimants sitting by herself in a classroom. However, I also note that the photograph appears to have been taken for some form of special occasion given that there are people standing at the back of the

room. Also, only a portion of the classroom is showing, so it unclear whether other people are sitting alone as well. Given that it is unclear what is happening in the photograph I give it little weight.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her and her children, actually happened.

Profile as Roma/State Protection

[12] Even though I disbelieve the events that the claimants recounted orally and in their PIFs, I turn now to the general situation for Roma people in the Czech Republic. While I do note that problems do exist for people of Roma ethnicity, I find even based on the general profile of the claimants as Roma, the claims fail as I find that the claimants have failed to rebut the presumption of state protection.

[13] There is a presumption that a state is capable of protecting its citizens. The claimants may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimants must approach the state for protection, providing that state protection might be reasonably forthcoming.⁶ Evidence that protection being offered is not necessarily perfect⁷ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimants are unable to avail themselves of protection.⁸

[14] When the state in question is a democratic state, the claimants must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimants is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁹ The more democratic the state’s institutions, the greater the onus is on the claimants to show that they have exhausted all courses of action available.¹⁰ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection. | |

[15] The documentary evidence shows that the Czech Republic is a functioning, parliamentary democracy with free and fair elections.¹² I find that Czech Republic is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Czech Republic is in a state of complete breakdown.

[16] The documentary evidence further indicates that the government generally respected and protected the rights of its citizens.¹³ While there is no question that Roma do face discrimination and that there have been demonstrations and even some attacks at the hands of skinheads, neo-Nazis and other extremists,¹⁴ there is legislation in place that provides protection for the Roma and other groups including anti-discrimination and hate-crime legislation. The Czech constitution prohibits discrimination based on national, racial or ethnic background as well as other pieces of legislation governing employment and education as well as *The Charter of Rights and Freedoms*. An anti-discrimination bill which would harmonize Czech legislation with that of the European Union was passed on June 17, 2009. Furthermore, the Czech Republic is a member of the European Union, which has had a positive impact on the country by setting standards concerning human rights, as well as access to the European Court of Human Rights and access to multi lateral programs such as the Decade of Roma Inclusion.¹⁵

[17] To address acts of discrimination the authorities introduced the Roma Police Assistant (RPA) program in 2003. The purpose of employing RPA's is to assist in building better relations and trust between the Roma and the police. The RPA's assist police in their investigations, assist in accompanying Roma who are victims of crime to file police reports and in helping obtain social services for such victims. A program of hiring Minority Liaison Officers (MLOs) was also begun in 2004 with the focus on crime reduction and lessening social exclusion. Several observers have commented that these programs have been helpful and represent progress in the relationship between Roma and the authorities. Furthermore, in the mid 1990's, the Ministry of the Interior initiated programs to combat extremists by allowing the police to closely monitor such group activities and created an anti-extremist department within the police itself, which is showing signs of success. The police have arrested neo-Nazis and they have been prosecuted, including a case where a Romani had been murdered. The police also successfully prevented or broke up extremist clashes and demonstrations. The government is also trying to recruit Roma as police officers, with a number of drives being conducted in Prague and Brno. While there has been a good response to these drives, many applicants are screened out due to a lack of a secondary school diploma. However, to counter-act this problem, the police and other organizations offer assistance to people who want to complete their education so that they can then join the police force. Furthermore, the police are trained on how to deal with minorities and extremists. The police are making other efforts such as participating in day camps, seminars and school visits in order to foster better relations with Roma children. While statistics are difficult to come by given privacy laws, as of 2006, there were an estimated 61 Roma police officers in Czech Republic.¹⁶

[18] The judiciary has prosecuted hate crimes committed against Roma people on several occasions. The documentary evidence notes that "the judicial proceedings on racial crime have increased in recent years due to the efforts of NGO's ..."¹⁷ The Czech Ombudsman was created in 1999 and is known as the Public Defender of Rights. The Ombudsman investigates allegations of public sector mistreatment

of Roma and may take corrective action or issue advice or recommendations. The Ombudsman has successfully intervened in areas such as housing but has yet to receive any formal complaints against the police.¹⁸ There is a new independent and transparent mechanism to investigate police misconduct.¹⁹ There are other government and non government agencies available to assist the Roma, including 400 Roma NGO's, the Czech Trade Inspectorate (to deal with unfair business practices or consumer discrimination), and the Social Inclusion Agency to address the social integration of the Roma into Czech society, including housing, health care, employment, social services and cohesion.²⁰

[19] In summary, I find that the preponderance of the documentary evidence indicates that the Czech Republic government is making very serious efforts to provide protection to the Roma whether as a victim of a hate crime, to assistance in obtaining social services or inclusion into Czech society. While there is discrimination against Roma people and even some incidents of violence, I find that the Czech government in recent years is making very serious strides to have this discrimination overcome.

Persons with disabilities

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[20] While not actively argued at the hearing, does have a hearing disability. While in some countries this may lead to persecutory acts, with respect to the Czech Republic the documentary evidence states that "The law prohibits discrimination against persons with disabilities in employment, education, access to health care, and the provision of other state services, and the government generally enforced these provisions."²¹

[21] In summary, I find on a balance of probabilities that the claimants have failed to rebut the presumption of state protection and as such the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *IRPA*, the claims pursuant to that section fail as well.

CONCLUSION

[22] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

"David McBean"

David McBean

March 9, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1.
- 4 Exhibit R-2, Certified true copy of claimant's statement received from CIC.
- 5 Exhibit C-4.
- 6 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 7 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 8 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 10 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 11 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 12 Exhibit R-1, *National Documentation Package*, September 25, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.
- 13 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.
- 14 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.
- 15 Exhibit R-1, tab 13.12, *Issue Paper*, Czech Republic: "Fact –Finding Mission Report on State Protection", *Immigration and Refugee Board*, June 2009.
- 16 Exhibit R-1, tab 13.12, *Issue Paper*.

17 Exhibit R-1, tab 13.12, *Issue Paper*.

18 Exhibit R-1, tab 13.12, *Issue Paper*.

19 Exhibit R-1, tab 2.3, "International Helsinki Federation Annual Report on Human Rights Violations", March 27, 2007.

20 Exhibit R-1, tab 13.12, *Issue Paper*.

21 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.



RPD File No. : TA7-15160

TA7-15188

TA7-15189



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Disponible en français



RPD File No. / N° de dossier de la SPR: TA7-15564

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 28, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	June 24, 2008	Date de la décision
Panel	David McBean S. S. Kular Roslyn Ahara	
Counsel for the Claimant(s)	Thore Lederer Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	J. Baptiste	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000583

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

In 2005, the claimant began dating (“ ”), a man who lived ten blocks away from her home in the town of . Throughout their relationship, was jealous and possessive. After breaking up over the telephone on , 2005, the claimant began receiving threatening telephone calls from . On , 2005, threw a rock through the windshield of the vehicle that the claimant was driving. As a result, the claimant received cuts to her face from flying glass. Unfortunately, the town’s entire police force was for the and could not protect her. The town’s police force being too small to accept complaints directly, the claimant made a written complaint to the . The was then to involve the police; however, to the best of the claimant’s knowledge, nothing happened. At the end of , after more threats, the claimant went to live with friends in , , while her children stayed with her parents. In 2006, the claimant’s mother called to say that a “ ’ had called about a problem with her . The claimant speculated that this was really as she did not have a at the in question. Fearing that would now find her, the claimant moved to in the to live with her aunt. One day when she was desperate to speak to her children, she was unable to contact her parents as their telephone was not working. When the claimant called through a public telephone service, she was warned not to use that service again as it had caller ID and could potentially locate her that way. In 2007, the claimant moved to , where she applied to be a in Canada. After being accepted into the program she worked in : Ontario from through 2007. Finding the work hard and missing her children, she returned to the . She lived there for a few weeks, during which time her parents brought her children to her so they could be together. In , the claimant returned to work in Canada. She made a refugee claim in 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of

persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this determination, I have considered the *Gender Guidelines*.² My reasons are as follows.

ANALYSIS

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing³ as a copy of her Mexican passport was on file.

Internal Flight Alternative (IFA)

The claimant presented a medical note to substantiate her injuries as well as a copy of the complaint that she made to the [redacted].⁴ While I accept that the claimant may face a serious possibility of persecution should she return to her hometown, the claim fails as the claimant has a viable IFA in the F.D. In *Rasaratnam*,⁵ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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With respect to the first prong of the test, the claimant fears an ex-boyfriend, [redacted], from her hometown of [redacted], which is about a twelve-hour drive from the F.D. While the claimant has heard through family that [redacted] is still asking around town about her, he has not visited her family's home, which is only ten blocks away from his. The claimant speculated that it was really [redacted] who was impersonating the "t [redacted]" who called enquiring about her while she was living in [redacted]. However, no evidence has been

presented that [redacted] actually travelled to [redacted] or called there. While the claimant was concerned that he would locate her after using the public telephone service, no evidence was presented that [redacted] visited the F.D. or called there. The claimant lived in the F.D. for several weeks while she was taking a break from the [redacted]. Her parents were able to [redacted].

s.19(1)

bring her children for a two-week visit while there and she had no problems with . Assuming the claimant's children came to live with her full time in the F.D., the claimant would not be forced to occasionally use the public telephone service in in order to speak with them.

The claimant described as a 40-year-old divorced man who lives with his parents, supporting himself by . No evidence has been presented which would indicate that would have the ability and resources to mount a national search for the claimant and find her. It should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁶

I find that, on a balance of probabilities, there is no serious possibility of the claimant being persecuted in the F.D.

With respect to the reasonableness of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁷ If the claimant were to return to Mexico, she would be using the international airport in the F.D. and her children could be brought to her there as they were before, so there is no need for her to return to

. While the claimant does have limited education and work experience, she did manage to impress Canadian officials enough to qualify for the : . She does have family in the F.D. with whom she has lived previously to help her get established. While not necessarily easy for her to do so, I find that it is not unduly harsh for the claimant to relocate to the F.D.

As I find that the claimant has a viable IFA in the F.D., the claim also fails with respect to the grounds enumerated under section 97(1) of the *IRPA*.⁸

CONCLUSION

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

June 19, 2008

Date

Concurred in By:

“S.S. Kular”

S. S. Kular

June 19, 2008

Date

Concurred in By:

“Roslyn Ahara”

Roslyn Ahara

June 19, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-2, Claimant’s Affidavit regarding the medical certificate and sworn statement before prosecutor.
- 5 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 6 Exhibit R-1, *National Documentation Package*, March 19, 2008, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, *Immigration Refugee Board (IRB)*, February 2007.
- 7 *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000.
- 8 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

RPD File No. / N° de dossier de la SPR : TA7-15564



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-00117

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	December 4, 2009	Date(s) de l'a
Place of Hearing	Toronto, Ontario	Lieu de l'a
Date of Decision	February 1, 2010	Date de la
Panel	David McBean	
Counsel for the Claimant (s)	Calvert Lewin	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de
Designated Representative(s)	N/A	Représentant(e)(s) de
Counsel for the Minister	N/A	Conseil du

s.19(1)

[1] (the claimant), a citizen of St. Lucia, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in St. Lucia. Her step-father abused her mother and when the claimant was 13, he began to sexually abuse her as well by touching her inappropriately. The abuse escalated to intercourse when the claimant was 14. While the claimant's mother believed her when she told her of the abuse, she was too afraid to take action. The claimant dropped out of school due to shame. The step-father's brother was a police officer and while the claimant reported the abuse to him, he was of no help. In fact, he tried to sexually abuse the claimant as well, albeit unsuccessfully. In 2007, the claimant's step-father raped her twice with the claimant becoming pregnant as a result. When her step-father demanded that she get an abortion using local medication, the claimant refused. He then threatened to kill her to cover up the rapes and the pregnancy. The claimant's aunt helped her come to Canada just after she turned 18 on , 2007. While in Canada, she was able to obtain an abortion. The claimant filed a refugee claim on , 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of St. Lucia was accepted at the hearing given that a copy of her St. Lucian passport was on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, in the claimant's initial oral testimony she stated that

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she received counseling in St. Lucia from . However, when it was noted that while there was a letter⁵ on file from someone with a similar name, the name given was . The claimant then confirmed the surname as . However, the claimant was unable to provide any explanation as to why this letter was not on letterhead and the name of the organization that Ms. worked for was listed as the “ ” [emphasis mine]. Furthermore, while this letter seemed to be from an agency that provides assistance to people like the claimant, as noted at the hearing, the claimant stated⁶ to an immigration officer at the time that she made her claim that there were no places for her to obtain assistance in St. Lucia. The claimant stated that the situation was so intense that Ms. has told her to leave St. Lucia. I do not find the claimant's explanations satisfactory. It did seem odd that the claimant would get the name of her counselor wrong after receiving counseling from her in many sessions from 2006 to 2007. However, even if this was reasonable, it makes little sense for the letter from Ms. , a business letter, to not be written on letterhead and it makes even less sense for Ms. to not know how to capitalize the name of her own organization. It made no sense at all for the claimant to make the essentially unexplained statement to the immigration officer that there was nowhere for her to go for assistance when in fact she had gone to an organization that provided assistance on several occasions over the course of at least a year. Given these discrepancies I find, on a balance of probabilities, that the letter is a forgery. I find that this not only casts doubt on the other documents presented by the claimant but also undermines her credibility.

[6] The claimant further stated to the immigration officer that her step-father had brothers [note plural] who are police officers and that . The claimant confirmed these facts during her oral testimony. However, as noted at the hearing, the PIF only indicates that the claimant's step-father has one brother who is a police officer and there is no mention of any brother or relative . The claimant stated that her PIF omitted these facts as she planned to explain her situation further at the hearing. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that all attempts to obtain protection from the authorities are to be detailed, and if no protection was sought the claimant is to explain why. It is one thing for the claimant's step-father to have a single brother as a low-ranking contact in the police force. It is an entirely different situation

Had this actually been the case, I would have expected to include these facts in her PIF. I find the fact that she did not further undermines her credibility.

[7] In oral testimony, the claimant stated that she made a police report in 2007 and stated that she was quite sure of the date. However, as noted at the hearing, the claimant stated to the immigration officer that she made a police report in 2007. The claimant stated that the date referred to the time that she complained to her step-father's brother and the date referred to a separate time when other police officers attended at her house. However, as further noted at the hearing, there is no mention of a second complaint to the police resulting in officers coming to her house either in the notes

of the immigration officer or in the PIF. The claimant stated that she had simply forgotten the second complaint when speaking with the immigration officer and had hoped to elaborate on her PIF during the hearing. I do not find the claimant's explanations satisfactory. These were not complicated events for the claimant to remember. If the claimant did have two separate dealings with separate police officers months apart I would have expected her to remember that fact when speaking with the immigration officer. More importantly, given that the PIF is quite clear in directing the claimant to recount all of her efforts to obtain protection from the authorities it makes no sense for her to omit all mention of one of two times that she spoke to the police, especially since this was the one time her step-father's brother(s) was(were) not involved. It actually appeared that the claimant realized that she had gotten the date of the complaint wrong and spontaneously invented a second complaint to the authorities. I find that these discrepancies further undermine the claimant's credibility.

[8] The claimant stated orally that she had been both sexually and physically abused by her step-father and the same allegations are made in a psychological report prepared in Canada⁷. However, as noted at the hearing, while the claimant's PIF mentions that she was sexually abused, there is no mention that she was physically abused by her step-father. The claimant stated that she had planned to elaborate on her PIF at the hearing. I do not find the claimant's explanation satisfactory. I can understand that the subject matter of any sort of abuse by a parent is a sensitive issue that is often difficult to discuss. However, it makes little sense for the claimant to be able to provide explicit details with respect to how her father sexually abused her (e.g.) but make no mention that she had been physically assaulted by her step-father as well. While I do note that the term "rape" was used with respect to the time that the claimant became pregnant, it appeared from the way that the PIF was written that this simply referred to the fact that the sexual abuse had escalated from touching to actual intercourse. Given the level of detail contained in the PIF if the claimant had in fact been physically been abused by her step-father I would have expected her PIF to say just that. I find that this discrepancy further undermines the claimant's credibility. **s.19(1)**

[9] The claimant presented a series of pages⁸ purporting to be from the police in St. Lucia. However, as noted at the hearing, the cover letter in particular seemed quite strange. As stated during the hearing, it is within my "specialized knowledge" gained from adjudicating other hearings that the police in St. Lucia normally write letters on formal letterhead rather than the plain blank piece of paper that this letter was written on. Furthermore, while there was what appeared to be a circular date-stamp on the document, the year within the date (i.e. "2008") was over-written by hand on top of something else. The claimant stated that she did not know why the letter looked like that. I do not find this satisfactory. As noted previously, it is within my specialized knowledge that the authorities in St. Lucia do communicate using letterhead. It makes little sense for them to suddenly use a blank piece of paper when sending a formal letter to document a person's history with the authorities. Furthermore, while it is understandable that people can occasionally forget to set a date stamp to the correct day and then have to

s.19(1)

amend the stamped image by hand, it makes little sense for the stamp to be set to an incorrect year as late as () It actually appeared the image of the stamp was pre-existing and copied on to the page with the date amended by hand to fit the claimant's timeline. I find on a balance of probabilities that this document is a forgery and I also find that the fact that the claimant relied upon it to further undermine her credibility.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened and as such the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would be at risk of any of the harms delineated under section 97 of the *IRPA* the claim pursuant to that section fails as well. In coming to this conclusion I am mindful of the psychological report on file. However, that report is based on a story that I simply do not believe. I am also mindful of a letter⁹ from the () in Toronto which states that the claimant had an abortion at that facility. While this may be true, I simply do not believe the pregnancy which was terminated was due to the circumstances which the claimant alleged.

NO CREDIBLE BASIS

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[12] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

February 1, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9.

1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2, certified copy of passport received from Citizenship and Immigration Canada (CIC).

4 Exhibit C-1

5 Exhibit C-2, Item 4

6 Exhibit R-2, Record of Examination

7 Exhibit C-2, Item 2

8 Exhibit C-2, Items 6 and 7

9 Exhibit C-2, Item 3



RPD File No. : TA8-00117



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-00948

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 26, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	March 26, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Michael Campbell Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la
Designated Representative(s)	N/A	Représentant(e)(s) du

Counsel for the Minister

N/A

Conseil du

REASONS AND DECISION

s.19(1)

[1] _____, a citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in _____, nearby but separate from _____. The claimant's father was frequently drunk. His father abused his mother and when the claimant got older, his father began to beat him as well. In _____ 2005, the claimant's mother reported his father to the police but nothing was done as the claimant's father had a friend in the local police. The claimant and his mother travelled to Canada on _____ 2005. After losing contact with his mother in Canada, the claimant made a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Philippines was accepted at the hearing given that a copy of his passport from the Philippines was on file.²

Internal Flight Alternative (IFA)**s.19(1)**

[5] Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails as I find that a viable IFA exists in Manila. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[6] With respect to the first prong of the test, the claimant has not heard from his father in the approximately five years since he came to Canada at the age of 18. Now age 23, he has no reason to live with his father. His father, now approaching the age of 74, is long retired from his job as a worker in a

The claimant speculated that his father may still wish to find him and do him harm, however, this appears unlikely given the almost half decade of no contact while the claimant has been away. Manila is an extremely large city and the claimant's father would have no immediate way of knowing that the claimant would have returned to the Philippines and be living there. Even if the claimant's father were to hear of the claimant's move to Manila through mutual friends and family as the claimant speculated and actually travel to Manila to attempt to do him harm, he could call upon the authorities for aid. While counsel noted that there have been instances where the authorities in the Philippines have demanded bribes, given that the claimant's father is a

he would not have the resources to exert influence in Manila. While I do note that the claimant stated in his Personal Information Form (PIF) that his father had a friend in the local police force in , no allegation was made that this friend would be able to exert influence over the police in Manila. Counsel submitted that if the authorities determined that the situation between the claimant and his father was not serious, they would likely try to calm the parties down and simply mediate any dispute, which is of course quite logical. However, as conceded by the claimant, if the situation was serious the authorities would respond and take action against his father. I find on a balance of probabilities that he has failed to rebut the presumption of state protection in Manila and that he faces no serious possibility of persecution there.

[7] With respect to the reasonableness of the claimant moving to Manila, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁴ The claimant is now 23-years-old and able to live on his own as an adult. While he did not finish college and he has no stated work experience, no evidence was presented that the claimant would be unable to find a job, even if it were a low-paying one given his stated lack of qualifications. I find that it would

not be unduly harsh for the claimant to relocate to Manila and as such the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is at risk of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[8] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[9] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

March 26, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).



RPD File No. : TA8-00948

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RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

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RPD File No. / N° de dossier de la SPR : TA8-01139

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision **s.19(1)**

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing October 17, 2008 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision December 15, 2008 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) Lani Gozlan **Conseil(s) du / de la demandeur(e)(s)**
Barrister and Solicitor

Tribunal Officer Nil **Agent(e) des tribunaux**

Designated Nil **Représentant désigné**

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant was born in the Federal District but has lived on numerous occasions in the United States, most recently from 2000 to 2006. In . 2008, the claimant was working at a in His boss left him while he went out of town. In the early morning hours of . , 2008, the claimant was when he was approached by two armed intruders who demanded money that they claimed the claimant's boss owed them. The claimant told them to take whatever money was there, but it was not enough to satisfy the debt. The intruders were called away when they received a radio transmission from an accomplice saying that the police were on the way. Before leaving they threatened the claimant that they would be back for the rest of the money. After arriving, the police told the claimant that they suspected organized crime was involved. The claimant moved to Mexico City to hide at his uncle's residence. The claimant came to Canada on , 2008 and made a refugee claim the same day.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Exclusion - Article 1F(b)

The claimant stated that he could not have fled to the United States as he is now barred from entering that country due to several dealings with the criminal justice system while living there. According to the Port of Entry (POE) notes,³ the claimant was convicted of two drug offences which were not sufficiently serious for the Immigration Officer who dealt with the claimant to

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recommend Ministerial participation at the hearing. However, it was also noted that the claimant had at least been charged with “*_____*” in California. Unfortunately the phone number available for the relevant police records department in California was not staffed on the weekend so no further information was available on the day that the claimant made his claim. While the file was flagged for follow-up for potential intervention on the part of the Minister, no further information was ever received from the Minister despite several enquires from the Board, both in writing and over the phone. The only letter that the Board received from the Minister’s representatives was that they would not be intervening. It is unknown if any investigation was done to verify what was on file or if it was simply assumed that the claimant had indeed only been charged with “*_____*”

and that offence, as defined in California, is not punishable by a severe enough period of incarceration to warrant an exclusion argument. Given the general lack of information on the point, I make no findings with respect to exclusion pursuant to Article 1F(b) of the *Act*.

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta by criminals and (at least in oral testimony) police officers acting outside of their lawful duties. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant’s evidence when his oral testimony was compared to the Personal Information Form4 (PIF) and the other documents available. For example, twice in oral testimony the claimant said that the intruders told him that they “knew where he lived”. However, as pointed out at the hearing, this fact was not contained in the PIF, the POE notes,⁵ or the translation of the written declaration that the claimant made in his own hand-writing.⁶ When asked why this information was not mentioned in any of those three documents, the claimant stated that he had probably forgotten to include that point. I do not find this explanation satisfactory. The fact that the intruders allegedly knew where the claimant lived is a significant point. It is the difference between the claimant being a random victim of crime and a non-random victim who has been investigated by the criminals who would then be able to harm him at home if he did not comply with their wishes. This information puts the claimant at a particular risk and to forget it, not only during his Port of Entry interview; but also in his very detailed handwritten statement; and then again during the preparation of the PIF makes no sense at all. I find that this significant omission from these three documents undermines the claimant’s credibility.

The claimant stated in oral testimony that he called the authorities in *_____* several times to follow up on his complaint only to be told that there was no record of the complaint. As pointed out at the hearing, this information was not included in the PIF, even though counsel and

claimant were canvassed to see if there were any amendments to the PIF. When asked why he would not amend the PIF to include this information, the claimant stated that he did not think the matter was important. I disagree with the claimant with respect to how important this information is. Apart from the fact that a copy of the complaint would have assisted the claimant in documenting his claim, the fact that the authorities had no record of his complaint (assuming there was a complaint) would lead any observer to think that the authorities were either lacking in competence (which would mean they would be less able to protect the claimant), or that they were in cahoots with the criminals (and therefore interested in harming the claimant). Whichever version is the case, the point is a major one and I find that its omission from the PIF further undermines the credibility of the claimant.

In oral testimony, the claimant stated that he felt that since the police officers attending the scene had a calm demeanour and since the intruders were warned of the approaching officers, that the police were involved in the robbery. As pointed out at the hearing, the fact that the police were “in on it”, a fact which would greatly increase the risk to the claimant, was not mentioned in the POE notes, not mentioned in the very detailed handwritten statement made by the claimant at the POE and not mentioned in the detailed PIF narrative. When asked why he failed to mention that the police were involved in the plot against him, the claimant said that he did not know. I find that this unexplained repeated omission of the police being in cahoots with the intruders to seriously undermine the claimant’s credibility.

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Late in his testimony, the claimant stated that he felt his boss had informed the intruders about his identity and that the claimant would pay them the money owed on his boss’s behalf which specifically and personally set him up to face their wrath. When asked why this information was not included in the PIF, the claimant stated that this was mere speculation. I do not accept this explanation. The idea did not seem like an instantaneous speculation at the time and the point is an important one. If the claimant just happened to be at the time of the robbery, the intruders would likely have little motivation to pursue him. However, as the claimant later went on to testify, by having his boss allegedly tell the intruders that the claimant would be making the payment on his behalf; this makes it appear that the claimant personally stole the money to be paid to the intruders, and making it very likely that they would go to great lengths to pursue him. As it was, it appeared that the claimant spontaneously came up with this information to bolster the idea that he could not be safe anywhere in Mexico as the intruders would be very motivated to track him down. I find that the omission from the PIF of why the agents of persecution would be so interested in tracking down the claimant to further undermine his credibility.

Given the serious inconsistencies and omissions with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened

at all and as such, his claim fails.

CONCLUSION

The claimant alleged that he is the victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for a lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

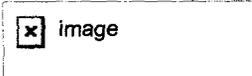
David McBean

December 15, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit R-2, Immigration Officer’s Interview Notes.
- 4 Exhibit C-1, PIF
- 5 Exhibit R-2.
- 6 Exhibit R-3, translation.

RPD File No. / N° de dossier de la SPR : TA8-01139



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-01429
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	(a.k.a.)	Demandeur(e)(s) d'asile
		s.19(1)
Date(s) of Hearing	April 22, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	April 22, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Ken Miller	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

REASONS AND DECISION

[1] _____, a citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant grew-up in a small village in the Philippines. In the early 1990's he moved to _____ as a _____. While visiting the Philippines in approximately 2004 or 2005, the claimant formed a business venture with ("_____"). The claimant would send _____ from _____ to _____ who would then resell them in the Philippines. At first things went well, but eventually stopped sending money to the claimant. The claimant went to the Philippines and confronted _____. When _____ refused to give the claimant money, the claimant summoned the police who ordered _____ to pay the money that he owed or face arrest. After the police left _____ threatened the claimant and his family. The claimant lost his job in _____ and learned through his cousin that _____ was involved with a gang. The claimant came to Canada on _____, 2007 and made a refugee claim on _____ 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Philippines was accepted at the hearing given that a certified copy of his passport from the Philippines was on file.²

Nexus

[5] The claimant faces a criminal vendetta. Since there is no nexus to the Convention refugee definition the claim pursuant to section 96 of the *IRPA* fails.

Internal Flight Alternative (IFA)

[6] Even if I accept all of the claimant's evidence as true (which I do not necessarily do), the claim fails as the claimant has a viable IFA in Manila. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable, which has been adjusted for the purpose of section 97 as follows:

- (i) The Board must be satisfied on a balance of probabilities that the claimant does not face a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment in the part of the country to which it finds an IFA exists. Section 97(1)(b)(ii) of the *IRPA* requires that the risk would be faced in every part of the country.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

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[7] With respect to the first prong of the test, the claimant would be returning to the international airport in Manila, so there would be no need for him to return to his home area where _____ is. While the claimant heard through his cousin that _____ is linked to a gang, _____ did not appear to be very powerful or influential given that the authorities in their home area responded to the claimant's complaint and threatened _____ with arrest

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

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should he not pay his debt. Given that the claimant has been away from the Philippines for more than two years since the initial threats, it is unlikely that [redacted] would come to know that the claimant was living in Manila. Even if [redacted] did come to know that the claimant was living in Manila, it is also unlikely that [redacted] would pursue him there given that [redacted] also threatened the claimant's family and nothing has happened to them in the intervening two years. While the claimant noted that [redacted] was most focused on him and his family is now [redacted] hours away from [redacted], if [redacted] was truly interested in following up on his threats, I would have expected him to make the [redacted] hour journey to carry out his threats. Even if [redacted] did find the claimant and was interested in travelling to Manila to harm the claimant, the claimant could always call upon the authorities in Manila for help. Given that the authorities in the claimant's and [redacted] home area, the place where [redacted] would logically have the most power and influence, responded to the claimant's complaint and threatened [redacted] with arrest, it appears that [redacted] had no influence over the authorities. He would have even less influence over the authorities in Manila. I find, on a balance of probabilities, that the claimant has failed to rebut the presumption of state protection in Manila and as such, Manila is a viable IFA.

[8] With respect to the reasonability of the claimant moving to Manila, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁴ As stated previously, he would be using the international airport in Manila, so he would not have to return to his home area. The claimant has extensive international experience as a [redacted] so it appears that he would be quite employable given that, as the claimant stated, the [redacted]

I find that it would not be unduly harsh for the claimant to relocate to Manila and as such the claim pursuant to section 97 of the *IRPA* fails as well.

NO CREDIBLE BASIS

[9] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

⁴ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

CONCLUSION

[10] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

April 22, 2010

Date



RPD File No. / N° de dossier de la SPR: TA8-01468

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) : **Demandeur(e)(s)**

Date(s) of Hearing : September 5, 2008 **Date(s) de l'audience**

Place of Hearing : TORONTO **Lieu de l'audience**

Date of Decision : November 4, 2008 **Date de la décision**

Panel : David McBean **Le Tribunal**

Counsel for the Claimant(s) : Michael Korman **Conseil(s) du / de la demandeur(e)(s)**
Barrister and Solicitor

Tribunal Officer : Nil **Agent(e) des tribunaux**

Designated : Nil **Représentant désigné**

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

Despite growing up in a religious, homophobic family, the claimant realized that he was attracted to men at a young age. The claimant lived in , , and never dated anyone in his own city. In 2003, he began dating his first partner, , and the claimant traveled frequently to to meet him. They broke up after a few months. In 2004, the claimant met (“ ”), an American citizen, online. After meeting for the first time in person in Texas in 2005, the claimant traveled frequently to to meet using a long-term US visa that the claimant had obtained. The relationship lasted until 2007. With his family continually insisting that he get married in Mexico to a woman, he decided to “come out” to his family in Mexico in 2007. Unfortunately, the claimant’s family did not react well to his news. His father hit him and threatened to commit suicide if the claimant did not become “normal” and marry a woman. His father has refused to speak to him since that day. The claimant left his family’s house and stayed with his sister in . He traveled to Canada on , 2007, and made a refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.² The claimant’s sexual orientation was provisionally accepted at the beginning of the hearing and I do find that the claimant has established that he is gay.

Internal Flight Alternative (IFA)

Even if I accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District (F.D.). In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, the claimant did not present any evidence that would indicate that anyone in his family would follow him anywhere to do him harm. While he found out, through speaking to his mother and two of his sisters, that his father still refuses to speak with him, the claimant does not appear to be at risk at the hands of his family. While the claimant indicated that he feared society in general and the police in particular, the independent documentary evidence⁴ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the Federal level and in major cities, such as the F.D. On December 12, 1998, language which discriminated on the basis of sexual orientation was removed from the F.D Penal Code. One of the co-sponsors of the legislation, lesbian Congresswoman, Patria Jimenez, stated that "with this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework".⁵ In September 1999, the Legislative Assembly of the F.D passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the F.D. has been relatively diligent in enforcing its anti-discrimination statute.⁶ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.⁷

Participation by homosexuals is now widely accepted in at least two of Mexico's three principal

political parties.⁸

A law allowing same-sex unions in the F.D. became effective March 16, 2007.⁹ Conjugal prison visits are now allowed for same-sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the F.D.¹⁰ The National Council Against Discrimination (CONAPRED) has an office in the F.D. CONAPRED is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination with CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.¹¹ Victims of discrimination can also contact their state Human Rights Commission.¹² Some concerns have been voiced however, about the effectiveness of the Human Rights Commission.¹³

This is not to say that the situation for gay men in the F.D. is perfect. For example, the Citizens' Commission Against Homophobic Hate Crimes alleged there were 332 murders in

Mexico as a whole between 1995 and 2004. However, concerns have been noted with respect to the group's methodology, given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁴ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

Counsel also made reference to the most recent Department of State (DOS) Report,¹⁵ which stated that reports of attacks against homosexuals and transsexuals were frequent and that there were several incidents of harassment and violent attacks against homosexuals. It should be noted that the DOS report contains no specifics and refers to the country as a whole and does not analyze the situation in the F.D. specifically. Given that most of the documents I have cited above refer quite specifically to the F.D. I prefer the information contained therein as opposed to the generalized statements contained in the DOS report.

I find that, on a balance of probabilities, the F.D. does provide a safe IFA for the claimant.¹⁶ The claimant has provided insufficient evidence to rebut the presumption of state protection in the F.D. There is no serious possibility that as a gay man he would face persecution at the hands of his father or society in general in the F.D.

With respect to the reasonableness of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹⁷ If the claimant were to return to Mexico, he would be using the international airport in the F.D. so he would not have to return to his hometown. He should not have trouble establishing himself in the F.D. given his 16 years of education including a bachelor's degree and several years of work experience. The claimant did express concern that the F.D. was a dangerous place in that there was crime there; however, the claimant has presented no evidence that the level of crime in the F.D. is statistically more than what one would expect in a large metropolitan area and as stated previously, the claimant has failed to rebut the presumption of state protection in the F.D. I find that it would not be unduly harsh for the claimant to relocate to the F.D.

CONCLUSION

As I find the claimant has a viable IFA in the F.D., the claim fails with respect to section 96 of the *IRPA*. Given that there is no other evidence that would suggest that the claimant is subject, on a balance of probabilities, to the harms enumerated under section 97(1) of the *IRPA*, the claim pursuant to that section fails as well.

For all these reasons, the Refugee Protection Division, therefore, rejects the claim.

(signed)

“David McBean”

David McBean

November 4, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 Exhibit R-1, *National Documentation Package*, June 27, 2008, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute, December 2003.
- 5 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 6 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 7 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 8 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 9 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 10 Exhibit R-1, item 6.3, *Response to Information Request*, number MEX43529.E, May 2, 2005.

- 11 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 12 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute; and item 2.4, *Issue Paper*, "Mexico, Situation of Witnesses to Crime and Corruption", section 5.3, "Traceability of Individuals Fleeing Violent Situations", *Immigration Refugee Board (IRB)*, February 2007.
- 13 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 14 Exhibit R-1, item 6.2, *Response to Information Request*, number MEX102518.E, June 15, 2007.
- 15 Exhibit R-1, item 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2007*, March 21, 2008.
- 16 The panel notes that a number of RPD decisions finding that homosexuals had a viable IFA in Mexico City have been upheld by the Federal Court: *De La Rosa, Luis Francisco Flores v. M.C.I.* (F.C., no. IMM-1624-07), Phelan, January 23, 2008, 2008 FC 83; *Rosas Carrasco, Jesus Antonio v. M.C.I.* (F.C. No. IMM-3283-06), Martineau, April 12, 2007, 2007 F.C. 382; *Herrera, Oscar Marquez v. M.C.I.* (F.C., no. IMM-1499-06), Shore, October 26, 2006, 2006 FC 1272.
- 17 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

RPD File No. / N° de dossier de la SPR : TA8-01468



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-01477

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	October 29, 2008 August 19, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	January 23, 2009	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Geary B. Shorser Barrister and Solicitor	Conseil(s) du / d demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

000623

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

After spending several years studying in the United States, the claimant returned to Mexico City in 2006. He found a job at a company which became the [redacted] in Mexico. The claimant became the [redacted]. While [redacted] has many legitimate uses, it is also used in the [redacted] and [redacted] and therefore its [redacted] around the world. On [redacted], 2007, the claimant received a call from whom he thought was a new customer wishing to purchase [redacted] for use in [redacted]. The claimant told the caller that he must have the correct permits in order and arranged for them to meet on [redacted]. At the meeting, the customer had no permits but demanded a large quantity of the substance. The customer stated that he was from the mafia and that they would kill the claimant if he did not comply with their demands. The claimant faked plans for a delivery to this customer and despite being watched, managed to report the plot to the authorities. However, the authorities provided no assistance. The claimant flew to Canada on [redacted], 2007, and made a refugee claim on [redacted] 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected on a balance of probabilities, to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant alleged that he is a victim of crime based on criminal acts committed by the mafia. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

In his submissions, counsel for the claimant asks that I find the claimant's evidence credible. However, it was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared internally and to the Personal Information Form 3 (PIF) and the other documents available. For example, the claimant was asked several times to identify the mysterious customer who called on the phone and the claimant provided non-responsive, evasive answers before saying with hesitation that the caller identified himself as " [REDACTED] ". In later oral testimony when asked what information he might have about the people plotting against him, he gave the name of the person who threatened him as " [REDACTED] ". When asked why the two names were different, the claimant stated that it was [REDACTED] who spoke to him on the phone and [REDACTED] who met him in person, or at least those were the names given. However, as noted at the hearing, in the PIF the caller and the person that the claimant met were one and the same. The claimant stated that he only knew the names that had been given to him and they were not necessarily correct and eventually stated that perhaps it was the same person using two different names all along. I do not find these explanations satisfactory. After it was pointed out that the claimant had stated two separate names for people threatening him, it was quite clear in most of the claimant's oral testimony that that he was referring to two separate people, although their names were provided with noticeable hesitation and attempts at evasion. It was also quite clear from the PIF that the person that the claimant met was the same person who called him. It was only after the claimant realized that he had provided dramatically different oral testimony from his PIF did he attempt to change that testimony to theorize that perhaps the two men were one and the same. This should have been a simple matter; there were either one man or two men and they either gave the same name or different names. For the claimant to be unable to remember from one version of his story to the next whether he dealt with one person or two makes no sense at all and given his difficulties in providing details about these events, it appeared that he was attempting to recite a story he could barely remember. I find that these discrepancies with respect to whether or not the claimant dealt with one person or two, and in the person's(s') name(s) to seriously undermine the claimant's credibility.

In the PIF, the authorities did not act to protect the claimant because they had no information as to where, and more importantly, who the plotters were. In rather confusing oral testimony, the authorities could not act as they lacked resources and the mafia were more powerful than the police. When it was noted that those two explanations seemed different, the claimant stated that they meant the same thing. I do not find this explanation satisfactory. At that point in oral testimony, the claimant had stated that he knew two names and a phone number of mafia members. This directly contradicts the PIF wherein the claimant had no information to provide the authorities. I find that this contradiction in what evidence the claimant was able to provide to the authorities to further undermine the claimant's credibility.

In oral testimony, after giving several confusing answers with respect to what happened when he went to the authorities, the claimant eventually stated that the authorities wanted him to file a report so they could learn his personal information. The claimant stated that he believed that the authorities were already in on the scheme and that is why he refused to file a report. As pointed out at the hearing, there is no mention in the PIF of the authorities asking the claimant to file a report so they could learn his personal information in order to harm him, and there was no mention of them being involved in the plot. The claimant stated that he thought he could mention these details at the hearing. I do not find this explanation satisfactory. The instructions for filling out the PIF are quite clear: all significant incidents are to be included. To think the fact that the authorities, the very people who are to protect the claimant from harm, would be actively involved in the plot to harm the claimant would be too minor of a detail to be mentioned in the PIF makes no sense at all. I find that this omission from the PIF further undermines the claimant's credibility.

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In oral testimony, the claimant stated that he traveled with each and that those had been stopped numerous times by corrupt police officers who shook down the claimant and the driver for bribes. As pointed out at the hearing, none of these experiences are mentioned in the PIF, even though the instructions are once again quite clear in that all efforts to obtain protection are to be included and if there were reasons why protection was not sought, those reasons should be given. Here, it would be quite understandable for the claimant to be reluctant to approach the authorities if he had been stopped and forced to pay bribes on numerous occasions. The claimant could provide no satisfactory explanation as to why he had not included these prior negative experiences with the authorities in his PIF and I find that their omission further undermines his credibility.

The claimant stated that the company that he worked for employed : people and had invested pesos (over \$ CDN) in starting up the claimant's division. It made sense that a company of that size would have its own e-mail system and the claimant confirmed that it did. What did not make sense was that in the e-mails provided by the claimant, he was using his own private hotmail account in order to conduct business transactions involving . As noted at the hearing, hotmail accounts can be obtained by anyone anonymously, providing whatever contact information they wish to an outside source (i.e. hotmail). When asked why the company would not include the claimant in their e-mail system and instead force him to rely on a private hotmail account, the claimant said that he did not know why it had been done that way. I do not find this situation satisfactory. The buying and selling of is apparently a and involving and many ; , such as the . It makes absolutely no sense for a company of some size, having invested a considerable amount of money into such a sensitive area, to not have the claimant use their e-mail system with whatever monitoring and security that it might provide and instead

depend on the claimant signing up for an anonymous hotmail account to conduct this business. It appeared the claimant fabricated the e-mails for the purposes of supporting his claim, and I find that this further undermines his credibility.

s.19(1)

Parts of the claimant's story just did not make sense. The claimant's company allegedly became the
 in Mexico to deal with | through | in the

If the claimant had indeed been threatened by a bad guy(s), one would have thought he would have reported that fact to the owner of the company. While the claimant stated he was too afraid as the owner was violent, one would think that assisting the mafia would be far worse. One would also think that the company | in the |

would assist in dealing with the mafia. I do not find it plausible that the claimant would not report being approached by the mafia to his boss and instead create some intrigue via a phony delivery of | I find that his implausibility with respect to the claimant's choice of actions further undermines his credibility.

Given the serious inconsistencies, discrepancies, and other problems with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such, his claim fails.

CONCLUSION

The claimant alleged that he is a victim of crime based on criminal acts committed by the mafia. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

January 23, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, Personal Information Form (PIF).

RPD File No. / N° de dossier de la SPR : TA8-01477



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-01487

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing February 13, 2009 **Date(s) de l'audience**

Place of Hearing Toronto **Lieu de l'audience**

Date of Decision March 24, 2009 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) Dunstan Munro **Conseil(s) du / de la partie demandeur(e)(s)**

Tribunal Officer N/A **Agent(e) des tribunaux**

000630

**Designated
Representative(s)**

N/A

**Représent
dési**

Counsel for the Minister

N/A

Conseil du

s.19(1)

(a.k.a. _____), a citizen of Saint Vincent, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant was born and raised in Saint Vincent. On _____ 2005, the claimant's sister's boyfriend, a gang member who went by the name "_____", was murdered, along with a fellow gang member by a rival gang known as "_____". The claimant's boyfriend witnessed the murder. Rumors began to circulate that _____ would eliminate anyone with information about the murders. After three weeks, the claimant's boyfriend began to receive threats against him and the claimant via cell phone that they should keep quiet with respect to what they knew. The claimant and her boyfriend went to the police but nothing was done. In _____ 2005, the claimant went to the _____, who advised her to leave Saint Vincent. The claimant also went to see _____, a _____ and _____, and he also advised her to consider leaving Saint Vincent. Shots were fired at the claimant's house and the claimant fled to Canada on _____, 2005. Not long after, the claimant's boyfriend disappeared. In 2006, one of the other witnesses to the murders was murdered himself. The claimant made a refugee claim on _____, 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons are as follows.

IDENTITY

The claimant's identity as a citizen of Saint Vincent was accepted at the beginning of the hearing as a copy of her Saint Vincent passport was on file.²

ANALYSIS

Nexus

The claimant alleged that she is a victim of crime based on a criminal vendetta. As such, her claim pursuant to section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when her oral testimony was compared to the Personal Information Form (PIF),³ the notes of the Immigration Officer made at the time that she made her claim⁴ and the other documents⁵ available. For example, while claimants are not required to document every aspect of their claim, if documents are reasonably available, they should be presented. A number of documents were presented from independent news sources and a death certificate for one of the murder victims was presented to corroborate the fact that a murder had indeed taken place. However, no documents from sources unknown to the claimant were presented to substantiate either her or her boyfriend's involvement in the situation. In fact, no documents of any kind, whether cards, letters, receipts for goods, etc., were presented to establish that a four year relationship had even happened. While the claimant stated that she and her boyfriend did not buy things together and that they were not "into" letters, it seems odd that there was no direct evidence of a relationship beyond what is mentioned in the claimant's own testimony and letters from sources known to the claimant. As will be seen, many of those letters actually gave rise to even greater concerns. In several instances, including one of the letters from [redacted],⁶ the claimant's boyfriend is actually referred to as her "fiancé". However, as noted at the hearing in oral testimony, the claimant was neither married nor engaged to be married. The claimant stated that referring to a close boyfriend as a fiancé was simply a local custom and did not actually mean that they were engaged. However, in the affidavit of [redacted]⁷ it is stated that the murder victim, [redacted], was the claimant's "brother in law" and that the witness of the murder, [redacted] was the claimant's "boy friend". As noted at the hearing, [redacted] was not married to the claimant's sister; he was only her boyfriend. The claimant stated that referring to a boyfriend as a brother in law was once again a local custom/expression. I do not find these explanations reasonable. To say that some sayings are local customs can make sense in some instances; here it does not. The status of each major relationship in question varied from document to document. If there was a local custom at work, one would think the terms would be used consistently across all documents, rather than varying from one to the other and being opposed to the claimant's testimony. The fact that [redacted] used at least two of the terms separately and distinctly and at opposition to other writers shows that there were distinctions made between the terms. I find that this total lack of independent evidence with respect to the fact that there was a relationship between the claimant and an alleged

witness to murder and the utter confusion in the sources known to the claimant as to the nature of her and another significant relationship as to how she was related in part to the murder victim to undermine the claimant's credibility. s.19(1)

There were further concerns raised by the affidavit of 8 While mentions that there were threats to the claimant, he does not mention any threats to her boyfriend. As noted at the hearing, in oral testimony, the claimant described one threat to her and threats to her boyfriend. While the claimant stated that she had described the threats to her boyfriend to the police, she could not explain why the affidavit of contradicted her evidence. I find that this contradiction further undermines the claimant's credibility.

The letter from the claimant's mother⁹ also raised concerns. In the letter, the claimant's mother stated that shots were heard firing in the area of their home. However, as noted at the hearing, it was the claimant's evidence that the shots were actually fired at their home and it was this incident that caused her to flee to Canada. When asked why her mother would describe the incident the way that she did, the claimant stated that was simply her mother's way of expressing things. I do not find this explanation reasonable. Either shots were fired in the area near their home or they were fired at the home. While it would make sense for the claimant to particularly fear the latter, it makes no sense for her mother to describe the event so differently, particularly since she would have been at risk as well. I find that this discrepancy further undermines the claimant's credibility.

When the claimant came to Canada, she was granted permission to remain for six months. However, she did not apply to extend that permission and ended up living in Canada illegally for over a year and a half. The claimant stated that she did approach an unknown

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person who may have been a lawyer or a consultant who advised her to get married to someone with status and to wait several years to establish herself so that she could be granted humanitarian and compassionate consideration. Only after seeing her current counsel's ad in a newspaper did she make a claim. Counsel submitted that this was all that could be reasonably expected from the claimant given her particular circumstances. I do not agree. The claimant has 10 years of education, speaks English, and has worked in a variety of related jobs. To allegedly contact some vague unknown person once and make no other efforts to regularize her status in Canada for such a lengthy period of time, all the while facing death in Saint Vincent makes little sense. While delays in claiming are not necessarily determinative in refugee claims, I find that this delay not only demonstrated a lack of subjective fear but also further undermines the claimant's credibility.

At the time that the claimant made her claim, she spoke to an Immigration Officer who made notes with respect to her reasons for claiming. As noted at the hearing, while these notes refer to threats, they do not refer to shots being fired at the claimant's house. The claimant stated that she did not know that she had to get into that level of detail at the time and that she would be elaborating in her PIF. I do not find this explanation reasonable. The Immigration Officer's notes refer to minute details such as phone calls. It makes no sense for the claimant to include such small details yet omit the event that caused her to leave her country which would have been the most significant event that had happened to her up until that point. I find that this omission further undermines the claimant's credibility.

At the hearing, the claimant stated that she had heard that her boyfriend, a , was in 2008 and presumed drowned. While she was unsure if this was related to the murder her boyfriend had witnessed, she felt it potentially was. As pointed out at the hearing, the claimant did not amend her PIF to include this information, that the person most similarly situated to her had been murdered under suspicious circumstances. This despite the fact that she knew very well that the PIF could be amended as evidenced by the fact that a crucial PIF amendment had been made at the beginning of the hearing in that the date of the original murder was changed. Up until that point, it had conflicted noticeably with the newspaper articles supplied to corroborate the fact that there had been a murder. The claimant could not explain why the information respecting her boyfriend was not amended as well when she knew she could have done so. I find that this discrepancy further undermines the claimant's credibility.

Apart from the concerns noted with respect to the contents of the various letters supplied by the claimant, their physical condition gave rise to concerns as well. At least two documents were altered by the use of liquid paper. However, if the originals are turned over and held up to a light source, the original contents can still be seen. In one of the letters from ,10 the term of the claimant's employment was originally given as 2005 to 2006. In the altered version, the dates are 2005 to 2006, which was consistent with the PIF. When confronted with this

s.19(1) information, the claimant stated that she herself had altered the document. She stated that she had contacted Mr. [redacted] and obtained his permission to make the changes but provided no evidence of having done that. More important is the alteration of the letter from [redacted] 11 which originally stated that the claimant received threats from [redacted]. This would have made no sense at all since [redacted] was the murder victim, not the aggressors who were allegedly threatening the claimant. This was altered to read that she was threatened by gang members. Once again, the claimant admitted that she herself had altered the document; once again, she stated that she had done so with the permission of the author; and once again, she provided no evidence that she had actually obtained this permission. In both cases, the claimant willingly altered documents prior to presenting them to the IRB so that their altered form would match her PIF. While the claimant stated that she did not realize that this was inappropriate, it makes no sense for her to not to know that altering documents was inappropriate, and it also makes no sense for her to have needed to do so in the first place. The fact that an employer could not accurately recall her fairly recent dates of her employment and far more importantly that someone who was allegedly familiar with the details of the case could not accurately recall who the victim was and who the aggressors were makes no absolutely no sense at all. I find that the alterations that the claimant made on the documents so that they would match her PIF and the fact that she needed to alter them in the first place, particularly with respect to who the person she fears is, to further undermine the claimant's credibility.

Given the numerous contradictions, omissions, inconsistencies, altered documents and other discrepancies on major issues, I find that the claimant was generally lacking in credibility.

I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favorable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

The claimant alleged that she is the victim of crime based on a criminal vendetta. As such, her claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in her PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, her claim under that section fails as well. There was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

DAVID McBEAN

March 24, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit R-2.

5 Exhibit C-2.

6 Exhibit C-2, p. 2.

7 Exhibit C-2, p. 1.

8 Exhibit C-2, p. 1.

9 Exhibit C-2, p. 4.

10 Exhibit C-2, p. 2.

11 Exhibit C-2, p. 6.

RPD File No. / N° de dossier de la SPR: TA8-01487



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR : TA8-01494

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	June 29, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	August 24, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	NO COUNSEL	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, a citizen of Guatemala, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Guatemala. While attending university in 1994, he joined a student organization that was opposed to the government of the day. In _____ 1995, the claimant attended a meeting where the student organization was lobbying for the return of two students who had been expelled over their leadership activities. While the claimant was one of the people who spoke up, the principal denied the request. There was a confrontation and the authorities responded with physical force. Two of the claimant's friends were killed and the claimant spent two days in hospital because of his injuries. His worried parents gave him money to go to Mexico on _____, 1995. Two months later he traveled to the United States of America where he filed an asylum claim that was eventually denied in 1999. The claimant traveled to Canada on _____, 2008 and made a refugee claim the same day.

Objective Basis

[3] As noted at the hearing, when the claimant last lived in Guatemala in 1995 it was a time of civil war and violent conflict. However, as also noted at the hearing, the civil war ended in 1996 and there has been peace since. The claimant was part of a protest meeting that a number of others attended. He was beaten unconscious and caused no harm to the authorities. The claimant speculated that even 15 years later he would still be on some "blacklist" and that the authorities would be interested in persecuting him as a result. I disagree. A week after the incident the principal signed the claimant's diploma and school records.² The claimant's brother was more recently able to get a confirmation letter from the claimant's school which even notes his involvement in the Student Committee.³ In 2006, while he was living in the United States, the claimant obtained a Guatemalan passport and a Guatemalan identity card from a Guatemalan government office. When asked how he had been able to obtain all of these things despite being blacklisted, the claimant stated that the original principal had to sign his diploma and related documents since he had passed the required number of courses, that the current principal was not connected to the police and the representatives of the Guatemalan government in the United States were obliged to help him and were not able to hurt him there. I find that none of this speculation makes sense. If the claimant really was considered a bad person, it makes no sense for his principal, who opposed the claimant's movement, to sign the claimant's diploma and related papers during the civil war. If he were still considered a bad person it makes little sense for the claimant's brother to be able to obtain the claimant's school documents and have a letter written from the school even if the principal is not connected to the police. It makes absolutely no sense at all if the claimant was still considered blacklisted that he would be able to approach representatives of the Guatemalan

government and have them issue a passport and identity card. Instead, they would have at least refused him service.

s.19(1)

[4] Even if the claimant did get caught up in a violent protest in 1995, the situation in Guatemala has long since changed. There is nothing in the objective documentary evidence before me to indicate that persons of generally low profile such as the claimant would continue to face problems based on events of long ago. The claimant's experiences with documents confirm this. Given the circumstances noted above, there is nothing objective left for the claimant to fear should he return to Guatemala. As such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[5] I find that pursuant to subsection 107(2) of the *IRPA* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[6] I find that the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

August 24, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit C-3, items c and d.

3 Exhibit C-3, item b.

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RPD File No. : TA8-01494

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-01701

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
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Date(s) of Hearing	May 7, 2010	Date(s) de l'audience
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Place of Hearing	Toronto, Ontario	Lieu de l'audience
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Date of Decision	May 11, 2010	Date de la décision
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Panel	David McBean	
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Counsel for the Claimant (s)	Joan Raymond	Conseil(s) du / de la demandeur(e)(s)
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Tribunal Officer	N/A	Agent(e) de la cour
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Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)
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Counsel for the Minister

N/A

Conseil du

s.19(1)

REASONS AND DECISION

[1] _____, a citizen of Saint Vincent (St. Vincent) and the Grenadines, age 27, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant faced physical and emotional abuse at the hands of his father and stepbrother. His father attempted to poison his food but the claimant threw it away. His father would beat him daily with a machete, cricket bat, telephone or electrical wires, steel rods and other things. One time he beat and choked the claimant and almost threw him into the ocean although he was stopped by some fishermen. One time, the neighbours called the police but they did not arrive until the next day. At the age of 17, the claimant contemplated suicide but was stopped by a friend. The claimant came to Canada in 2001 and lived here for five years before coming to the attention of the authorities. After being sent back to St. Vincent in 2006, his father and stepbrother would look for him and beat him daily. While he did seek help from the police, he received no satisfaction because his father had friends in the police. The claimant returned to Canada on _____ 2007, and filed a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

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[4] The claimant's identity as a citizen of St. Vincent was accepted at the hearing given that a certified copy of his passport from St. Vincent was on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in the notes⁴ of the immigration officer made at the time that the claimant made his claim, when asked to describe how he was abused, the claimant stated that his father would twist his ears and beat him with telephone wires. However, as noted at the hearing, the PIF states that his father actually used a variety of weapons to beat him, including a machete, cricket bat, steel rod, etc. The claimant stated that he had forgotten about his father making extensive use of weapons when he spoke with the immigration officer. I do not find the claimant's explanation satisfactory. The claimant's response to the immigration officer was quite specific and detailed on this point. It makes little sense for the claimant to describe having his ears twisted rather than the far more serious use of machetes, cricket bats, etc. I find that this discrepancy undermines the claimant's credibility.

[6] In oral testimony, the claimant stated that while he had been physically abused on a daily basis, he never had to seek medical attention. However, as noted at the hearing, the notes of the immigration officer indicate that the claimant did seek medical attention at _____ Hospital. The claimant stated that he had forgotten this in his earlier testimony. I do not find the claimant's explanation satisfactory. The claimant stated orally more than once that he never had to seek medical attention. Even when challenged with the fact that the types of abuse that he alleged were quite serious, he insisted that he never sought medical attention and attempted to explain this by stating that his father would wrap the weapons he used in cloth or rubber. Had the claimant actually been injured and sought medical attention, I would not have expected him to repeatedly say that he had never sought medical attention. I find that this discrepancy further undermines the claimant's credibility.

[7] In oral testimony, the claimant stated that while he contacted the police approximately seven times about his father, they never charged him with any offence. At best they would simply bring his father in for questioning and hold him for 24 hours and then release him without being charged. However, as noted at the hearing, the claimant's PIF states that his father was charged by the police. The claimant stated that the police at most held his father for 24 hours and to the best of his knowledge he was never charged. I do not find the claimant's explanation satisfactory. The claimant affirmed both orally and in

writing that his PIF was complete and accurate. The PIF not only states that the claimant's father was charged by the police, but it went on to say that despite being charged his father was still intent on doing him harm. If the claimant's father had never actually been charged and had at best been held for questioning, I would not have expected the PIF to be written the way that it was. I find that this discrepancy further undermines the claimant's credibility.

[8] The claimant initially came to Canada in 2001 and lived here for approximately five years before he came to the attention of the authorities in 2006 for being in Canada without status. When asked why he did not make a refugee claim either upon arrival or at any time before he returned to St. Vincent, the claimant stated that he did not know the refugee system, did not know that he could make a refugee claim and did not know that he could attempt to extend his permission to remain in Canada. When asked why he did not indicate to the authorities in 2006 that he was at least afraid of returning to St. Vincent, the claimant stated that he did not know why he did not tell the authorities at the time. I do not find the claimant's explanations satisfactory. The claimant has 12 years of education and lived in Canada for approximately half a decade. If the claimant truly feared returning to St. Vincent it makes little sense that he would not make some serious efforts with respect to being able to remain in Canada. When he came to the attention of the authorities his reason for being in Canada was specifically put to him. The claimant confirmed the information reproduced from the immigration computer system, Field Operations Support System (FOSS), in that he misrepresented the purpose of his visit in 2001 and had actually intended to work in Canada at the time. Given that the claimant's reasons for being in Canada were specifically at issue, it makes no sense for him not to mention that he was afraid for his life in St. Vincent. I find that this behaviour not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

[9] In oral testimony, the claimant stated that after he returned to St. Vincent in 2006, his father and brother were looking for him. In the subsequent one year that he lived there, he managed to avoid having contact with them by avoiding their area and moving between different houses. While his brother did manage to see him once, the claimant was able to avoid all harm. However, as noted at the hearing, the PIF states that his father and brother were not only able to find him, but were able to beat him every day as there was "no escape". The claimant stated that his brother hit him once in this time period and that his PIF and earlier testimony were incorrect. I do not find the claimant's explanation satisfactory. Either the claimant was beaten by his father and brother daily, or he was not. The claimant's oral testimony differed dramatically from his PIF. Had either of them been correct, I would not have expected the other version to be so dramatically different. It appeared that the later testimony about being hit once was concocted on the spot in a vain attempt to reconcile the earlier testimony with the PIF, which simply could not be done. I find that this discrepancy further undermines the claimant's credibility.

[10] While counsel asked me to take into account the claimant's emotional state of mind when considering the claimant's testimony, no psychological evidence was produced to indicate that the claimant would have any significant difficulty telling his story. Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[12] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

May 11, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit R-2, CIC Etobicoke In-person Refugee Intake “Record of Examination”.

5 Exhibit R-2, "Remarks".



RPD File No. : TA8-01701



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR: TA8-02233

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing November 26, 2008 **Date(s) de l'audience**

Place of Hearing TORONTO **Lieu de l'audience**

Date of Decision January 6, 2009 **Date de la décision**

Panel David McBean **Le Tribunal**

Counsel for the Claimant(s) No counsel **Conseil(s) du / de la demandeur(e)(s)**

Tribunal Officer Nil **Agent(e) des tribunaux**

Designated Nil **Représentant désigné**

000650

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant lived in . In 2005, the claimant met (“ ”) and soon began dating her. After a period of months, the claimant learned that was also involved in a relationship with (“ ”). an influential was abusive towards and she was afraid of him. When learned of the claimant’s relationship with , he was jealous and enraged. told that he would go after the claimant and kill him, and that he had contacted the a noted criminal organization, in order to carry out this plan. The claimant felt that he was being followed and in 2006, began receiving death threats on his cellphone. The claimant moved to the Federal District in the hope of leaving his problems behind. However, on , 2006, a car almost ran over the claimant and he heard shots being fired at him. The claimant fled to Canada on , 2006, hoping that would lose interest during his absence. However, the claimant heard through his parents that people were still looking for him. He made a refugee claim on , 2008, after being detained by Canadian Immigration authorities.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant alleged that he is a victim of crime based on a personal criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

s.19(1)

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared internally to itself and to the Personal Information Form3 (PIF) and the other documents available. For example, early on in the claimant's oral testimony he said that he dated [redacted] for 5-6 months before finding out about [redacted]. In later oral testimony, he said that he learned about [redacted] in [redacted], which would be seven months after they started dating in [redacted]. In the claimant's PIF, the claimant learned of [redacted] after eight months. When asked to explain the varying lengths of time, the claimant stated it was actually [redacted] to [redacted], i.e. seven months. I do not find this explanation satisfactory. While I would not expect someone to remember timelines from three years ago down to the number of days, in this case the estimates ranged widely between five and eight months. Given that this works out to half or double depending on one's perspective, I do not find it reasonable that the claimant would provide such widely varying estimates. I find that these discrepancies in the amount of time before he knew that he was in danger, to undermine his credibility.

In describing how he came to the decision to leave [redacted] and eventually Mexico, the claimant did not mention speaking to [redacted]. When asked if he had spoken to anyone other than his parents with respect to whether he should stay or leave, the claimant answered "no". In fact, the thrust of his testimony was that [redacted] wanted to stay in a relationship with the claimant, which he did not desire. However, as pointed out at the hearing, in the PIF, [redacted] specifically tells the claimant to leave the country as [redacted] had contacted [redacted] criminal organization. Initially, the claimant said that he had been advised by his former counsel to hold back details. However when it was pointed out that this was not an omission of a detail but a direct contradiction between his oral and written testimony, the claimant could provide no satisfactory explanation. I find this contradiction with respect to whether or not [redacted] told the claimant to leave, to further undermine the claimant's credibility.

The claimant stated that he did not decide to leave Mexico until after the incident with the car in the Federal District in [redacted] 2006. He had thought that he would be able to leave his problems behind, after moving to the Federal District in late [redacted] or early [redacted] 2006. However, as noted at the hearing, the claimant obtained his passport in [redacted] 2006, before he left [redacted]. The claimant stated that this was a mere coincidence as he had been planning to

visit family in Europe in the future. I do not find this explanation satisfactory. The documentary evidence states that passports are issued almost always on the day of application in Mexico.⁴ At the time in question, the claimant learned that he had been marked for death by a powerful man who had contacted a noted criminal organization that has been responsible for many violent murders in order to carry out his plan. To go about the mundane business of applying for a passport that would not be

needed until some time in the future while facing death in one's local area makes little sense. It actually appeared that this was no mere coincidence; it is more likely that the claimant was preparing for his trip to Canada even though he testified to the contrary. I find that this "early" obtaining of the claimant's passport further undermines his credibility. **s.19(1)**

The claimant stated that he never approached the authorities for protection as [redacted] was a powerful man with powerful friends. To bolster this assertion, the claimant cited an instance where [redacted] had [redacted] with impunity; this was reported on an [redacted] ".5 In reading the document in question, many of the details seemed quite odd as the story depended on a human rights worker being coincidentally present in a hospital and despite privacy laws, learns of various nefarious deeds. It seemed even more odd that the phone number provided for an alleged human rights organization in [redacted] actually uses a [redacted] area code. It was also noted that rather than displaying the website along the bottom of the printout as is standard when printing from the Internet, the website address was actually pasted into the document. During a short break in the proceedings, a fresh printout from the website was obtained.⁶ While the information that the claimant provided was at the site in question, it was not in the same format. Rather than appearing as a block article as the claimant presented it, the information actually came from a chat forum wherein users can logon using whatever name they desire and post any information that they wish. In this case, the person who posted the information listed their screen-name as "[redacted]". By clicking on the screen-name, one can find the underlying e-mail address, in this case [redacted].⁷ As noted at the hearing, hotmail accounts are anonymous in and of themselves as users can sign-up using any name and contact information that they wish to provide. Given the oddities contained

in the document and the fact that it was posted by an anonymous user in a chat forum, it appeared that the document was actually a modified chain letter. I find that it does not assist the claimant.

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The claimant arrived in Canada in 2006 and was given permission to stay for two weeks. When asked why he did not make a refugee claim at that time, he said that he was unfamiliar with the refugee process. The claimant stated that he learned of the process six months later when he met a refugee claimant at a party but made no efforts to claim as he incorrectly thought he was ineligible as he was living in Canada illegally. In fact, the claimant made no efforts to make a claim or otherwise regularize his status in Canada until 2008, almost two years later. At that time, he was living with other Mexican citizens. In yet another coincidence, one of his roommates was a failed refugee claimant marked for deportation. When Canadian Immigration authorities raided the claimant's dwelling looking for his roommate, he was detained as he was living in Canada illegally. The claimant stated that only after arriving at the Immigration Detention Centre did he obtain full knowledge of the refugee process and finally made a refugee claim at that time. I do not find this explanation satisfactory. The claimant arrived in Canada having allegedly just escaped being run over and shot at, and was targeted by an infamous criminal organization. To not mention this upon arrival or soon after makes little sense; to not make any attempts to regularize his status for almost two years makes no sense at all; to live with a refugee claimant yet not discuss the refugee process, particularly when one is allegedly fearing for one's life is simply unbelievable. I do not believe that the first time that the claimant learned that he was eligible to make a claim was in the Detention Facility. I find that the claimant's almost two-year delay in making a refugee claim not only demonstrates a lack of subjective fear but also seriously undermines his credibility in general.

When the claimant finally did make a refugee claim, he spoke with an Immigration Officer. One of the questions asked was: "What are you afraid of if you returned to your own country?"⁸ The answer given is "afraid of losing my life. threatened me in 2006. I disappeared since then". When asked why he would only mention being threatened by when he had allegedly survived a murder attempt wherein a car tried to run him over and someone was shooting at him, the claimant stated that the Immigration Officer had advised him to hold back details. I do not find this explanation

satisfactory. This is not a minor detail being "held back"; it is a contradiction. If the claimant had indeed been almost run over and shot at, I would have expected him to mention that rather than saying that he was only "threatened". I find that this contradiction with respect to the harm that the claimant feared to further undermine his credibility.

When asked if he had any documents to substantiate his relationship with from the time that they were together the claimant said "no". They had only communicated verbally and through text

s.19(1)

messages. It seems rather odd that there were no cards or photos or anything else from a relationship that lasted a number of months (however many months it allegedly lasted). The claimant did provide printed copies of two recent e-mails: one to and one from “ ”. As noted at the hearing, both e-mails are from hotmail accounts, which as noted previously, are anonymous with anyone being able to sign-up using whatever information they wish to give. While of course there is a concern that the claimant was simply e-mailing himself using two separate e-mail accounts of his own creation, far more problematic was that the e-mails had allegedly been sent at all. The claimant said that he e-mailed to see if the situation had improved. However, the claimant had stated that he had spoken to his parents as recently as 2008 and they said that even though the claimant had been away for over two years, cars were still circling their house. When asked why he would e-mail to check on the situation if cars were still circling the house two years later, the claimant stated that his parents mentioned that the occupants of the cars no longer came to the door to check on the claimant; they now only circled the house. I do not find these explanations satisfactory. If were truly all-knowing with the power to track and harm the claimant anywhere in Mexico, one would think that he would be able to figure out that the claimant had left the country two years ago and was no longer living with this parents and therefore continuing to send cars to circle the claimant’s house would be a waste of time. Also, if it were actually true that cars were still circling the house over two years later, regardless of whether or not people came to the door, it makes no sense for the claimant to have e-mailed to “check on the situation” as the claimant testified, as the situation was all too clear. I find that the e-mails were fabricated by the claimant and that this, the lack of genuine documents with respect to the relationship and the implausibility of the whole situation all further undermine the claimant’s credibility.

Given the serious inconsistencies, discrepancies and outright implausibility with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such his claim fails.

CONCLUSION

The claimant alleged that he is the victim of criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

“David McBean”

(signed)

000656

David McBean

January 6, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, PIF.
- 4 Exhibit R-1, *National Documentation Package*, June 27, 2008, item 3.9, *Response to Information Request*, number MEX102831.E, May 15, 2008.
- 5 Exhibit C-2, claimant's disclosure.
- 6 Exhibit R-3, discussion forum.
- 7 Exhibit R-4, hotmail address.
- 8 Exhibit R-2, Schedule 1 Background Information, p. 3 of 6.

RPD File No. / N° de dossier de la SPR : TA8-02233



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA8-02301

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	December 5, 2008	Date(s) de l'audience
Place of Hearing	Toronto	Lieu de l'audience
Date of Decision	February 6, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Seliza Suchak Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) des tribunaux

**Designated
Representative(s)**

N/A

**Représent
dési**

Counsel for the Minister

N/A

Conseil du

s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant lived in _____ in the state of _____. She began a relationship with _____ in 2002 while both of them were studying to become _____. While _____ was not physically abusive, he emotionally and psychologically abused the claimant with the two often arguing over his philandering. When the claimant ended the relationship in 2006, _____ swore that he would “get” the claimant if he saw her with another man. In _____ 2006, there was a fight when _____ saw the claimant with her male cousin, _____. _____ sent threatening notes, and even though he lived quite a distance away, he would sometimes visit the claimant’s house looking for her and would sometimes wait outside for her. While the claimant made sure that she never left the house alone, _____ threatened her outside a _____ meeting in _____ 2007. He also threatened her at a _____ in _____ 2007. The claimant did not complain to the authorities, as _____ had two friends in the police, and even if he was jailed, she feared that he would send members of his family to exact revenge. The claimant came to Canada on _____, 2007. _____ contacted the claimant’s cousin several times over the next few months looking for her. The claimant made a refugee claim on _____, 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this conclusion I have considered the Chairperson’s Guidelines² with respect to Women Refugee Claimants Fearing Gender-Related Persecution. My reasons are as follows.

ANALYSIS

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of her Mexican passport was on file.³

Credibility

s.19(1)

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when her oral testimony was compared internally and to the Personal Information Forms⁴ (PIFs) and the other documents available. For example, when the claimant was asked to describe the first time that she was threatened, she responded by describing the 2007 encounter with [redacted] outside a meeting. In oral testimony, the claimant stated that [redacted] threatened her life. However, as pointed out at the hearing, the PIF states that [redacted] threatened both the claimant and her family. When asked why the two descriptions were different, the claimant stated that she had forgotten that [redacted] had threatened both her and her family. I do not find this explanation satisfactory. The claimant gave in oral testimony what was allegedly a direct quote from [redacted] that only threatened her and no one else ("I'm going to kill you") and responded "no" when asked if [redacted] had said anything else. Had [redacted] also threatened the claimant's family, it would not have made sense for him to use the words that he did or if he used different words I would have expected the claimant to remember them. I find that this inconsistency in describing the 2007 incident to undermine the claimant's credibility.

The claimant was asked again when she was first threatened by [redacted] and she confirmed the date as [redacted] 2007 and the second time was in [redacted] 2007. However, as pointed out at the hearing, the PIF makes it quite clear that those were the second and third times where [redacted] specifically threatened the claimant in person; the first time was actually the incident with [redacted] in [redacted] 2006. The claimant stated that she had become confused with the dates in question. I do not find this explanation satisfactory. While counsel noted in her submissions that the claimant had difficulty in recalling what her age would have been during certain events in her life, and therefore submitted that this confusion in the timeline with respect to [redacted] threats should not be held against the claimant, I disagree. It may be understandable for someone to become confused when they are suddenly asked to do mathematical calculations (e.g. "How old were you when ...") during live testimony at a hearing. It is another thing entirely to fail to recall that the incident in the market with [redacted], an incident that involved some form of physical confrontation, was the first time that [redacted] threatened the claimant. This would have been a central turning point in the claimant's life and to forget that it happened first does not make sense. I find that this discrepancy in recalling the order of events to further undermine

the claimant's credibility. s.19(1)

In orally describing the 2006 incident, the claimant stated that initially attempted to hold her hand, then he surprised by punching him in the face, and then the claimant intervened between the two to prevent a fight. As pointed out at the hearing, the PIF contains a different description. Here, attacks the claimant, intervenes, and a fight ensues. When asked why the descriptions seemed so different, she said that she did not remember the incident well. When asked which description was correct, she stated that a little bit of both descriptions were true. I do not find these explanations satisfactory. As noted earlier, this was allegedly a pivotal moment in the claimant's life, the first time that she saw become physically violent. One would think that at least the basic highlights of the event would stick out in the claimant's memory. Either the claimant was attacked first or was. Either intervened between the claimant and or the claimant intervened between and. There was a fight or there was not. The two descriptions differed in virtually every significant aspect. While the claimant did say that was quite rough in grabbing at her hand and arm, it appeared she was embellishing her testimony in an attempt to reconcile two irreconcilable descriptions. I find that these discrepancies further undermine the claimant's credibility.

In the claimant's original PIF, only the incident with is mentioned. No mention is made of the other two incidents where threatened the claimant. When asked why the other two incidents were not mentioned in the original PIF, the claimant stated that at the time that she filled out her PIF she was pregnant and had not been feeling well. I do not find this explanation satisfactory. The instructions for filling out the PIF are quite clear; all significant incidents are to included. The claimant affirmed in writing that her original PIF had been interpreted to her in Spanish and that it was complete and accurate. While it is understandable that pregnancy would provide a distraction, it makes little sense to omit all mention of two out of the three significant incidents with, particularly since they involved death threats. I find that these omissions from the original PIF to further undermine the claimant's credibility.

The claimant stated that part of the reason that she did not go to the authorities was that had two friends in the police. As noted at the hearing, this information was not included in the original PIF. The claimant stated that she had not remembered this fact at the time that she prepared her original PIF. I do not find this explanation satisfactory. Once again, the instructions for filling out the PIF are quite clear; all attempts to seek protection are to be included and if no attempts are made, an explanation must be given. As noted earlier, the claimant affirmed in writing that the PIF had been interpreted to her and that it was complete and accurate. Furthermore, when asked for details with respect to who these "good friends" (the description used in the amended PIF) in the police were, the claimant stated that she did not know their names, their ranks, their location, or even the police force

that they belonged to (there are many in Mexico). It makes no sense for the claimant to be in a four year relationship yet know nothing about his “good friends” and then omit mention of these good police friends even though fairly clear directions indicated that they should be mentioned. I find that this omission, and more importantly, the utter lack of knowledge with respect to the “good friends” to further undermine the claimant’s credibility.

s.19(1)

While claimants are not required to document all aspects of their claim, if documents are reasonably available, they should be presented. The only documents presented to substantiate existence and the relationship were the three anonymous letters allegedly from The claimant stated that she used to have photos of ; however, she had destroyed them and she had no other documents. It should be noted that even though the claimant stated that she usually only saw on weekends, they had a close relationship where they “shared secrets”. While counsel submitted (and I must ruefully agree) that it may be normal for someone to destroy pictures after a failed relationship, it still seemed a little odd that absolutely no documents survived a close, four year relationship. It seemed odder that the claimant provided vague and confusing testimony with respect to how she ended the relationship, which one would think would be a fairly simple thing to explain. However, far more troubling were the three documents that actually were presented. As noted at the hearing, one letter reads in part “. . . this is my first anonymous letter”.⁵ When asked why would word the letter in that way, the claimant did not know. I note that one method of detecting forged items is to keep in mind what the alleged creator of the item would have known at the time of the alleged creation. For example, war documents that were allegedly created during the “First Battle of Bull Run” would obviously be forgeries if they were alleged to have been created prior to the “Second Battle of Bull Run” because at the time of the alleged creation, no one knew that there would be a second such battle and therefore no need to use the word “First”. Here, if had really written the letter, he would have hoped for success in reuniting with the claimant and would not have automatically planned for a second letter by stating that this was the “first” one. Also, it makes little sense for , a , to actually state that it was an “anonymous” letter when the simple lack of a signature would have indicated that fact. The letter reads as if and I find that it was forged at exactly the same time as the other letters in an attempt to bolster the claimant’s story. While I do note the presence of a Mexican FAX number at the top of the originals, I find that this merely indicates that the documents were forged in Mexico. I find that these forged letters further undermine the claimant’s credibility.

Given the serious inconsistencies, discrepancies, and other problems with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and as such her claim fails.

CONCLUSION

Since I do not believe the claimant with respect to the events described in her PIF, her claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, her claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

DAVID McBEAN

February 6, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibits C-1, PIF; C-1(b), amended PIF.
- 5 Exhibit C-2.

RPD File No. / N° de dossier de la SPR: TA8-02301



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR : TA8-02367

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 1, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 14, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Benedykt Gondek	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la procédure
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] (a.k.a.), a citizen of Poland and a permanent resident of Italy, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in Poland. In 1990 at the age of 18, he moved to Italy and became a permanent resident. The claimant married a woman from and they lived in in the north of Italy. The claimant's wife returned to in 2006 and her family demanded that the claimant go to as well. The claimant's brother-in-law and his friends searched for the claimant to either bring him to or kill him. The claimant moved several times and was in hiding for two years. While the claimant did report to the police they were of no assistance and the claimant believes that the police actually passed information to his brother-in-law. The claimant feared returning to Poland since his brother there had been murdered by the mafia. The claimant came to Canada on , 2007. The claimant was detained by the Peel Regional Police in 2007 for driving with more than the acceptable amount of alcohol in his blood. The claimant made a refugee claim soon after.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to either of his countries of origin.

[4] My reasons are as follows.

ANALYSIS

Identity

[5] The claimant's identity as a citizen of Poland and a permanent resident of Italy was accepted at the beginning of the hearing as a copy of his Polish passport was on file.²

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF). For example, in oral testimony the claimant stated that when he was living in his wife's family made it known that they were part of the mafia, that they wished to recruit him into the mafia and that they specifically wanted the claimant to shoot the To escape from this he moved to the north of Italy. As noted at the hearing, there is no mention in the PIF of the claimant's spouse's family being involved with the mafia, there is no mention of them trying to recruit him into the mafia and there is no mention of him being requested to kill anyone. After repeatedly being asked to explain these omissions, the claimant stated that he had hoped to elaborate on the details of his claim at the hearing. I do not find the claimant's explanation satisfactory. The directions for filling out the narrative portion of the PIF are quite clear in that all significant incidents are to be included. To say that the claimant being asked to kill someone, that his spouse's family was attempting to recruit him into the mafia and that they were members of the mafia in the first place, were all mere details that would be "elaborated" upon at the hearing makes absolutely no sense at all. I find that these serious omissions severely undermine the claimant's credibility.

[7] In oral testimony, the claimant stated that the men looking for him found and beat his friend in approximately 2002 or 2003. As noted at the hearing, this information was not contained in the PIF. Once again, the claimant stated that he had hoped to elaborate on his story at the hearing. Once again, I do not find this explanation satisfactory. The directions for filling out the PIF not only state that all significant incidents should be included, but also all significant incidents that happened to similarly situated individuals should be included as well. To say that the men hunting the claimant, finding and beating a friend, was a minor detail to be elaborated upon only in oral testimony, makes no sense and I find that this omission further undermines the claimant's credibility.

[8] In oral testimony, the claimant stated that he left his spouse in in 2003, moved to the north, met a new woman and experienced problems for the next four years. However, as noted at the hearing, in the PIF, the claimant always lived in the north. The claimant's spouse left him in approximately 2005/2006 and he experienced problems for the next two years. When asked to explain how his oral testimony could differ so greatly from his PIF, the claimant stated that he had been confused and that his

mental state caused problems and confusion in recalling some of the details. I do not find the claimant's explanation satisfactory. No psychological evidence was presented that would explain this level of confusion on the claimant's part. The claimant filled out his PIF weeks after making his claim and months after his arrival in Canada, so he should have been able to record his story in a calm manner. To get such basic information wrong with respect to several major points makes absolutely no sense at all. I find that these contradictions further undermine the claimant's credibility.

[9] In oral testimony, the claimant stated that he could not return to Poland because he had been charged and sentenced for desertion by the military and that they would still be looking for him. While the claimant did clarify that he did not actually join the military, he maintained that they were still looking for him. As noted at the hearing, not only is there no mention of any problems with the Polish military in the narrative portion of the PIF, but in questions 8 through 10 of the PIF where problems with conscription, charges and other offences should be mentioned, the only thing mentioned is the claimant being detained in Canada for driving with more than the legal limit of alcohol. The claimant stated that he had been confused in answering those questions. I do not find the claimant's explanation satisfactory. The questions are quite clear in their wording and if the claimant did actually have some form of difficulty with the Polish military, I would have expected it to be mentioned in at least one of the questions or in the PIF narrative itself. The fact that this whole ground was omitted makes no sense at all. I find that this omission further undermines the claimant's credibility.

[10] In the PIF, the claimant's brother was killed by the mafia in Poland. In oral testimony the claimant stated that he suspected that the police were involved as well. However, as noted at the hearing, in the notes of the Immigration Officer when dealing with the location of family members, the claimant is recorded as stating that his brother "passed away".⁴ The claimant stated that he did not know how to answer the questions that the Immigration Officer put to him at the time. I do not find the claimant's explanation satisfactory. Given the way that the questions and answers were worded, if the claimant's brother had indeed been murdered, perhaps in connection with the claimant's own problems, it makes no sense for the claimant to say that he "passed away" rather than he had been killed or murdered. I find that this discrepancy further undermines the claimant's credibility.

[11] Given the serious contradictions, discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened. While I do acknowledge that the claimant tendered a translated copy of a complaint⁵ allegedly made to the Carabinieri immediately prior to the claimant leaving Italy, it does nothing to explain the credibility concerns noted. Therefore the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject to the risks enumerated under section 97 of the *IRPA*, the claim pursuant to that section fails as

well.

Conscription in Poland

[12] Even if I were to be incorrect with my credibility analysis with respect to the claimant's dealings with respect to the Polish military, the claim still fails as there is nothing objective for the claimant to fear. It should be noted that conscription in Poland ended in January 2009,⁶ with the Polish military generally denigrating the abilities and usefulness of conscripts. Given these circumstances it makes little sense for the Polish military to still be interested in the claimant. Even if they were, if there was some reason that the claimant was prevented from serving due to matters of conscience, it should also be noted that Poland also has a program that allows conscientious objectors to avoid military service. While the statistics vary by year, each year more than 50% of such applications are approved.⁷ If the claimant has no objections to service covered by that program, the claimant has presented no evidence that would indicate that conscription in Poland is persecutory in nature. I find that conscription in Poland was a law of general application and the claimant is simply attempting to avoid prosecution and as such the claimant has not established a claim based on either sections 96 or 97 of the *IRPA*.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[14] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

July 14, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1 PIF.

4 Exhibit R-2, CIC Etobicoke In-person Refugee Intake “Record of Examination, p.5.

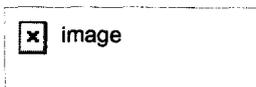
5 Exhibit C-3.

6 Exhibit R-3, *National Documentation Package*, November 28, 2008, tab 8.2, “Poland Ends Arm Conscription”, *Telegraph [London]*, August 5, 2008

7 Exhibit R-3, tab 8.1, “Country Report: Poland, The Right to Conscientious Objection in Europe: A Review of the Current Situation”, *Quaker Council for European Affairs*, April 2005.



RPD File No. : TA8-02367



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-02586
TA8-02604

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s) **Demandeur(e)(s) d'asile**
s.19(1)

Date(s) of Hearing September 29, 2009 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision September 29, 2009 (rendered orally)
October 14, 2009 (written reasons) **Date de la décision**

Panel David McBean **Tribunal**

Counsel for the Claimant(s) John Campion **Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer N/A **Agent(e) de tribunal**

Designated Representative(s) N/A **Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister N/A **Conseil du ministre**

s.19(1)

[1] _____ and his brother _____, citizens of Portugal, claim refugee protection pursuant to sections 96 and 97, one of the *Immigration and Refugee Protection Act (IRPA)*.¹

ALLEGATIONS

[2] The claimants acknowledge that they are economic migrants fearing poverty and unemployment in Portugal.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing the serious possibility of persecution on a Convention ground that they would, on a balance of probabilities, personally be subjected to a danger of torture, or a risk to their life, or a risk of cruel and unusual treatment or punishment upon return to their country.

[4] My reasons are as follows;

IDENTITY

[5] I accept the claimant's identity as citizens of Portugal, as copies of their Portuguese passports are on file.²

NEXUS

[6] As counsel for the claimants conceded, the fear of generalized poverty and unemployment does not establish a nexus to the Convention refugee definition. I find that as there is no nexus to the definition, the claims pursuant to section 96 of the IRPA fail.

RISK TO LIFE AND OTHER RELATED HARMS

[7] Also conceded by counsel, while poverty and unemployment are unfortunate situations and a concern to everyone generally; they do not establish a personal risk of

¹ As enacted by S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

serious harm as required under our legislation. There being no other evidence that the claimants are at risk of any of the harms delineated in section 97 of the IRPA, their claims pursuant to that section fails as well.

NO CREDIBLE BASIS

[8] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for these claims.

CONCLUSION

[9] For all these reasons, the claims are rejected. The claimants are determined not to be Convention refugees or persons in need of protection.

[edited for syntax and grammar]

(signed)

“David McBean”

David McBean

October 14, 2009

Date

RPD File No. / N° de dossier de la SPR : TA8-02738

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	January 28, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	February 8, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la cour
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)

Counsel for the Minister

N/A

Conseil du

REASONS AND DECISION

s.19(1)

[1] (the claimant), a citizen of Saint Lucia (St. Lucia), claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] As there was no counsel to represent the claimant, the panel reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process.

ALLEGATIONS

[3] The claimant was born and raised in St. Lucia and lived in a small village. When the claimant started secondary school he joined a gang. The claimant and the half-dozen or so members of the gang in secluded locations. they sold most of the . However, they also and other people, as well as . The claimant also stole things to later sell to supplement his income. In 2002, the claimant decided to double-cross the gang by so he could sell it for himself. When the other gang members learned that the claimant was himself they questioned him, however they believed him when he said he was not responsible. Then, in 2003, suspicion turned to anger and the gang leader accused the claimant of . He attacked the claimant, wounding him with a cutlass. After receiving medical treatment, the claimant moved to the city of to join his brother. He did not report the matter to the authorities as he feared arrest himself. After living in for over a year the claimant came to Canada on , 2004. After coming to the attention of Canadian authorities he filed a refugee claim on , 2008.

DETERMINATION

[4] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[5] The claimant's identity as a citizen of St. Lucia was accepted at the hearing given that a copy of his St. Lucian passport was on file.²

Article 1F(b) of the *Convention*3 (Exclusion)

[6] The originally scheduled hearing was postponed to notify the Minister of Public Safety that the claimant may have committed serious non-political crimes that would exclude him from protection. By letter dated December 14, 2009, a representative of the Minister stated that the events detailed in the claimant's Personal Information Form4 (PIF) were too vague to be verified through their sources and that they would not be participating in the hearing. While it may be true the events that the claimant affirmed happened cannot be verified through official channels, the letter is strangely silent with respect to the issue of exclusion. It may be that a Minister's Representative examined the equivalent offences in Canada and determined them not to be "serious" in this context. However, this does seem counter-intuitive given that the claimant admitted that he sold _____ and _____

s.19(1)

[7] I am mindful that I am able to decide exclusion issues without the participation of a representative from the Minister or even submissions from the Minister in the absence of actual participation. However, given that the claimant is not legally sophisticated and was unrepresented and there was no information directly in front of me with respect to what offences in Canada would be the equivalent to what the claimant admitted, what sentences might be imposed or other information, I decline to make any findings on this point at this time.

Objective Basis

[8] Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has failed to establish that he would have any objective reason to fear returning to St. Lucia. Even when the events were fresh in the minds of the gang, the claimant managed to move to _____ and live in the city of _____ for over a year without incident before he came to Canada. While the claimant did speculate that leaving St. Lucia may make him look "guilty" and therefore be cause for concern, I do not agree with his speculation. The other gang members suspected him for some time and by _____ 2003, the claimant was directly accused of _____, physically attacked and wounded as a result. However, if the gang intended to pursue the claimant and cause him further harm, this would have happened in the more than a year that he lived in _____ after that incident. Instead, "nothing happened". No evidence was presented that the gang members attempted to track or threaten the claimant in the six and a half years since the attack with the cutlass. While the theft of whatever number of _____ that the claimant could physically carry was no doubt something that made the rest of the gang angry at the time, it appeared that, this anger dissipated enough when he moved away from the village that they lived in. If the claimant were to return to _____, his most recent place of domicile where he had lived for a significant period of time, I cannot foresee any chance of harm befalling him there. While the claimant also indicated that setting up his life again in _____ may

prove difficult as he had been away for a number of years and his brother may no longer be there; there is nothing to indicate that the claimant would have anything beyond the normal difficulties in attempting to re-start one's life in his home country.

[9] Since I have found that there is no objective reason for the claimant to fear returning to St. Lucia the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would be at risk of any of the harms delineated in section 97 of the *IRPA* the claim fails pursuant to that section as well.

NO CREDIBLE BASIS

[10] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[11] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection. There is no credible basis for the claim.

(signed)

“David McBean”

David McBean

February 8, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Certified copy of passport received from Citizenship and Immigration Canada (CIC).
- 3 *1951 Convention Relating to the Status of Refugees*, 189 U.N.T.S. 2545, entered into force on April 22, 1954 and the *1967 Protocol Relating to the Status of Refugees*, 606 U.N.T.S. 8791, entered into force on October 4, 1967.
- 4 Exhibit C-1.



RPD File No. : TA8-02738



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-03254
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	April 27, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 20, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Sol Gombinsky	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] (a.k.a.), a citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in the Philippines. The claimant began working in Saudi Arabia in 1988. In 1988, the claimant became involved in a serious physical altercation with two co-workers named and . As a result of the altercation, all were ordered to return to the Philippines. The claimant began receiving threats from and . At the time, the claimant was not concerned as his wife's cousin was the of the and therefore they had influence. The claimant traveled to Canada in 2006. His wife's cousin was killed in an ambush. Word spread that and were once again threatening the claimant. The claimant advised his wife to report the matter to the authorities in 2006. Unexpectedly, and traveled to the claimant's home area of to ask questions of relatives of the claimant. The claimant made a refugee claim , 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons for decision are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Philippines was accepted at the hearing given that a certified copy of his passport from the Philippines was on file.²

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

Nexus

[5] In post-hearing submissions, counsel for the claimant submits that the claimant is a member of a particular social group, however, I disagree. The claimant allegedly fears a criminal vendetta which does not place the claimant within a particular social group within the meaning of our legislation.³ Since there is no nexus to the Convention definition, the claim pursuant to section 96 of the *IRPA* fails.

Credibility

s.19(1) [6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that he learned that [redacted] and [redacted] were once again trying to find and harm him in 2007. However, as noted at the hearing, the PIF states that he learned that they started looking for him again in 2006. The claimant stated that his wife had written to him about this in both 2006 and 2007. In later testimony, the claimant stated that the threats began before his wife's cousin, an [redacted], was killed. However, as noted at the hearing, the PIF indicates that the threats began after he was killed. The claimant stated that it was a surprise ambush and that he learned of the threats in 2006. I do not find the claimant's explanations satisfactory. Either [redacted] and [redacted] renewed their hunt for the claimant in 2006 (i.e. shortly after the claimant's arrival in Canada, having just left the Philippines) or in 2007 (well into the claimant's stay in Canada). Rather than being vague or unsure about the year, the claimant was definite in his oral testimony about the year and the PIF was just as definite. Since he would have had his move to Canada as a reference point and more importantly, since both statements were so definite it makes little sense for the dates to be different. Furthermore, the whole crux of the PIF was that the claimant was safe for almost 20 years because of his links to a [redacted] and once this [redacted] was killed in an unrelated ambush, the claimant once again faced danger. If instead the claimant faced threats before the ambush it makes little sense for the PIF to be written the way that it was. I find these discrepancies with respect to when the alleged agents of persecution began menacing the claimant again to undermine his credibility.

³ *Rivero, Omar Ramon v. M.C.I.* (F.C.T.D., no. IMM-511-96), Pinard, November 22, 1996.

⁴ Exhibit C-1, as amended by C-20

s.19(1)

[7] In oral testimony, the claimant stated more than once that the reason why [redacted] and [redacted] had not menaced him for close to 20 years after the initial incident was because they could not find him. However, as noted at the hearing, the PIF states that the reason why the claimant was safe for that period was that his wife's cousin was a [redacted] with [redacted] influence. The claimant stated he now remembered that actually that was the case and that his wife's cousin was protecting him. I do not find the claimant's explanation satisfactory. The whole crux of the PIF was that the claimant was related to a powerful politician who kept the claimant safe for close to 20 years. However, once the politician was killed, the claimant faced renewed threats. If that really was the case, it makes no sense at all for the claimant to somehow not only forget all of this but instead say that the alleged agents of persecution simply could not find him for close to two decades. I find that this contradiction further undermines the claimant's credibility.

[8] In oral testimony, the claimant stated that he thought that he may not receive protection from the authorities because his wife had told him that [redacted] and [redacted] had connections within the authorities. However, as noted at the hearing, there is no mention in the PIF of [redacted] and [redacted] having any sort of connection to the authorities. The claimant stated that the matter was reported to the [redacted] and not the police and that he was unsure of the connections. I do not find the claimant's explanation satisfactory. Either the agents of persecution were simply co-workers with no connections or they were men with connections to the authorities and therefore in a much better position to harm the claimant with impunity. The directions for filling out the PIF narrative are quite clear in that not only are efforts to seek protection from the authorities are to be detailed but if there are reasons why efforts to seek protection from the authorities were not made those reasons should be given as well. Even if the claimant did not know the specifics of who in the authorities [redacted] and [redacted] were connected to, under the circumstances, given that his wife had allegedly told the claimant of the connections I would have expected him to make some mention of this in the PIF. I find the fact that he did not to further undermine his credibility.

[9] In oral testimony, the claimant stated that he feared a total of 6-7 people, although he only knew the names of [redacted] and [redacted]. However, as noted at the hearing, the PIF only mentions [redacted] and [redacted] and there is no mention of the claimant fearing anyone else. The claimant stated that the others were connected to [redacted] and [redacted]. I do not find the claimant's explanation satisfactory. Either the claimant simply feared two co-workers or he feared a wider

plot involving at least a half dozen people. Even if the claimant did not know all of the names of the people who were menacing him I would have expected the PIF to say there were others involved if that had indeed been the case. I find the fact that it did not to further undermine the claimant's credibility. **s.19(1)**

[10] The claimant presented what purported to be a letter⁵ from a friend, . It states in part "To my knowledge, the "three" men are always looking for you ..." Later it states "The three (3) men are always asking ..." As noted at the hearing, the letter makes repeated reference to their being three men who are after the claimant, while the PIF only mentions two. The claimant stated that and had connections. I do not find the claimant's explanation satisfactory. The PIF makes it quite clear that there are two people after the claimant; and . Even if they had rounded up some henchmen at some point, I would not have expected the letter to refer to three men in a way that appeared to suggest that they were all equal in their relationship to the claimant. I find that this discrepancy not only calls into question the authenticity of the documents provided by the claimant but also further undermines his credibility.

[11] The claimant also presented what purported to be a letter⁶ from the of the Office of the . It notes that the claimant had an argument with a single co-worker in Saudi Arabia and that this one person is now threatening him. However, as noted at the hearing, in the PIF, there were at least two people that the claimant argued with and was threatened by. The claimant stated that there were connections. This explanation does not explain anything. The PIF was quite simple and quite clear in that the claimant argued with two specific people and that these two specific people wanted to harm him. To say that "connections" with even more people would somehow make a public official refer more than once to there being a single person that the claimant was having problems with makes no sense. Even if one henchman was being specifically being spoken about it makes no sense at all for the letter to not mention the two principals who wanted to harm the claimant. I find that this discrepancy not only calls into question the authenticity of the claimant's documents, but given the concerns noted above I find on a balance of probabilities that the documents presented by the claimant are not authentic and were created to falsely corroborate the claimant's story. I find that the claimant's reliance upon these documents to further undermine his credibility.

⁵ Exhibit C-9.

⁶ Exhibit C-11.

[12] Given the serious discrepancies, omissions and other problems with respect to major issues. I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 97 of the *IRPA* fails.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[14] I find the claimant is not a Convention refugee or person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

July 20, 2010

Date

RPD File No. / N° de dossier de la SPR : TA8-03420

TA8-03534

*Private Proceeding / Huis clos***Reasons and Decision – Motifs et décision** s.19(1)**Claimant(s)** **Demandeur(e)(s)****Date(s) of Hearing** January 26, 2010 **Date(s) de l'audience****Place of Hearing** Toronto, Ontario **Lieu de l'audience****Date of Decision** July 5, 2010 **Date de la décision****Panel** David McBean**Counsel for the Claimant (s)** No counsel **Conseil(s) du / de demandeur(e)(s)****Tribunal Officer** T. Horbay **Agent(e) de****Designated Representative(s)** **Représentant(e)(s) de****Counsel for the Minister** N. Karimullah **Conseil du**

000687

s.19(1)

[1] (“the claimant”) and his son, , citizens of Iraq and Sweden, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] According to the Personal Information Form (PIF),² the claimants are originally from Iraq. They moved to Sweden in 2001 and later obtained citizenship there. The claimant’s wife died in 2002 while still in Iraq and he has not remarried. His family resides in Canada. For the sake of his son, the claimant has come to Canada in the hopes that his own mother would be able to look after his son.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Country of Reference**

[4] The claimants are citizens of both Iraq and Sweden. Because of my findings below, these reasons for decision will deal only with Sweden.

Identity

[5] The claimants’ identity as citizens of Sweden was accepted at the hearing given that certified copies of their Swedish passports were on file.³

Credibility

[6] To say that the claimant's story changed over time is a bit of an understatement. Initially, the claimant brought some forms already filled out to the inland Immigration office in Etobicoke. These forms⁴ stated that he feared persecution in Sweden at the hands of skinheads and racists. However, this information was physically crossed-out. The claimant spoke with an Immigration Officer who transcribed their conversation.⁵ The claimant stated that his brother had written the allegations about Sweden and that if he had had "white-out" he would have erased them as he only feared persecution in Iraq. The claimant stated that his son needed his grandmother and other family members (who were already in Canada) to look after him since the claimant's wife had passed away. As noted above, the claimant's PIF speaks only of family reunification and does not mention any problems in Sweden. The PIF states that "I came to Canada declaring the truth to the Canadian authorities". However, something happened at the hearing that seemed to change the claimant's story. During the preliminaries it was explained to the claimant that I had no jurisdiction to consider family reunification or other factors relating to humanitarian and compassionate consideration. From that point onwards the claimant seemed to provide quite different testimony from what was expected and a number of discrepancies arose. For example, in oral testimony, the claimant stated that his son was attacked and beaten while at school, that he almost died and that the case was closed with nothing being done. However, as noted at the hearing, none of this was contained in the PIF. The claimant stated that he did see how this incident was related to the claim. I do not find the claimant's explanation satisfactory. The claimant stated separately that the attack could have been motivated by the fact that his son was a "foreigner". The directions for filling out the PIF narrative are quite clear in that all significant incidents, including measures taken against you and your family, are to be mentioned. The directions further state that the response from the relevant authorities should be mentioned as well. If the claimant's son really had been beaten and almost died, and the authorities did nothing but close the file in response, this would have been the most significant thing that ever happened to the claimant and his son in Sweden. As a result I would have expected in the circumstances of the case for this incident to have been mentioned in the PIF. I find the fact that it was not to undermine the claimant's credibility.

[7] In oral testimony, the claimant stated that a relative on his wife's side was beaten and left with a brain injury while his attacker was declared "unfit" improperly and the case was closed. However, as noted at the hearing, this information was not mentioned in the PIF. The claimant stated that this was not the basis for his claim and that he wanted to reunite his family. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF are quite clear in that all significant incidents, including those that happened to similarly situated persons are to be included. Had this really happened to one of the claimant's relatives I would have expected some mention to have been made of it in the PIF. I find its omission to further undermine the claimant's credibility.

[8] It was also noted at the hearing that none of these incidents were mentioned in the notes of the Immigration Officer made at the time that the claimant made his claim. The claimant stated that he had not wanted to mention the past and that to mention that his had died would not bring her back so there was no reason to bother. I do not find the claimant's explanation satisfactory. The claimant did mention to the Immigration Officer that his wife had died and that was the reason that he wanted to come to Canada, to have other family members look after his son. Given the way the Immigration Officer asked about the situation in Sweden had the claimant or anyone related to him actually experienced any problems I would have expected them to be mentioned, even though they had occurred in the past. Furthermore, as noted previously, the claimant not only crossed-out the allegations about racism in Sweden but emphasized in his PIF that he had told the truth to the Immigration Officer at the time that he made his claim. From the manner that it was written, it appears that his statement in his PIF is meant as an admission that the story initially prepared by the claimant's brother for presentation to the Immigration Officer with respect to racism in Sweden was a lie. I find that this discrepancy further undermines the claimant's credibility.

[9] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened.

General Profile

[10] According to the objective documentary evidence on file 6 people from Iraq constitute one of the largest immigrant communities in Sweden and were the largest group represented in the people who had immigrated to Iraq the previous year. There is no question that racist acts can occur in Sweden. The ombudsman for ethnic discrimination received 737 reports in 2008, down approximately 10% from the year before. The same report notes that there are skinheads operating within Sweden and they have committed criminal acts. However, the report also notes that the government investigates and prosecutes race related crimes and there is no mention of difficulties in this area. I note that the Refugee Protection Officer submitted an advance unedited version of what appears to be a United Nations document dealing with Sweden.⁷ It makes mention of a survey from 2004 and expresses a desire for Sweden to intensify its efforts against hate speech and evaluate the effectiveness of a hate crime hotline introduced in 2007. Given that this document does not appear to be a “final” one and provides little in the way of hard statistics or what the objective situation in Sweden is today, I give it little weight. I also note a print-out of an article from “The Local: Sweden’s News in English”. It mentions that personnel in the Swedish justice system may have pre-conceived notions about members of ethnic groups and may consider such people less trustworthy. However, no information is given with respect to how this information was obtained, who it might apply to and in what way, whether significant or not. Also, I am unable to determine from the article whether or not “The Local” is an objective source so for these reasons I give this article little weight as well.

[11] Even if the claimant was to face some harm as a result of his general profile as being from Iraq, given the information noted above, I find that he has failed to rebut the presumption of state protection, and as such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA* the claim pursuant to that section fails as well.

Claim of the Son/Need for different Designated Representative

[12] Both the Refugee Protection Officer and the Counsel for the Minister suggested that the claimant had not acted as a proper designated representative on behalf of his son and that a new designated representative should be appointed. I disagree. Despite the fact that a designated representative might do things that others would consider unwise or foolish such as lying, this does not necessarily make them inappropriate as a designated representative.⁸ Here, it appeared the claimant was doing what he thought was best at each stage of the process in order to advance the best interests of his son. Despite his brother telling him to invent a story about skinheads and racists in Sweden he thought better of it and instead he stated to the Immigration Officer and in the PIF what he explicitly called the truth, that he had nothing to fear in Sweden and that he was attempting family reunification. When it was orally noted that family reunification was not relevant to a refugee claim and that only consideration of harm and related problems were to be considered did the claimant then attempt to talk about racism and harm. It simply appeared that the claimant realized that there was a reason why his brother had given him the advice that he had and that since making up a story about racism in Sweden was the only way that the claimant or more importantly his son could get status from the refugee system the claimant then did so. I also note that the minor claimant was actually 16 by the time of the hearing and was present throughout the proceedings. After hearing his father's evidence he was given an opportunity to add whatever he wished and he declined. I find that the claimant did have his son's best interests at heart and attempted to put forward the best case possible for his son. Unfortunately, this involved making up a story I simply do not believe. Given that the son's profile and circumstances are no different than that of his father's the son's claims pursuant to sections 96 and 97 of the *IRPA* fail as well.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

Exclusion pursuant to Article 1F(a) (War Crimes/Crimes Against Humanity)

[14] Given that the hearing focused solely on the situation in Sweden with respect to “inclusion” I make no findings in this area.

CONCLUSION

[15] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims

(signed)

“David McBean”

David McBean

July 5, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit C-1.

3 Exhibit M-2, Information received from Citizenship and Immigration Canada (CIC).

4 Exhibit M-2, Scheduled Background Information, p. 3 of 6.

5 Exhibit M-2, Record of Examination

6 Exhibit R-1, Item 2.1, United States, 25 February 2009, Department of State, “Sweden” – *Country Reports on Human Rights Practices for 2008*.

7 Exhibit PH-1.

8 *Coomaraswamy v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 501 (C.A.).

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RPD File No. : TA8-03420

TA8-03534



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA9-03220

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	April 20, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	June 25, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Daniel M. Fine Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la cour
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)

Counsel for the Minister

N/A

Conseil du

[5] The claimant's identity as a citizen of Mexico was accepted at the hearing given that a certified copy of her Mexican passport was on file.³

Credibility

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[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, it did seem odd that the claimant was not able to present any documents to corroborate the fact that she had been in a relationship with [redacted] for one and one-half years. This might be explained by the fact that they never married and only lived common law. However, far more problematic were the documents that the claimant actually presented. As noted at the hearing, the medical notes⁵ provided speaks only to a cervical sprain and does not mention any of the other injuries that she allegedly received. The claimant stated that her father, also a doctor, examined her first, that she did not tell this doctor that she had been sexually assaulted or beaten unconscious and that this doctor only examined her neck injury. I do not find the claimant's explanations satisfactory. It is one thing for the claimant to not want to tell a strange doctor that she had been forced to have sex. However, it makes little sense not to tell the doctor that she was unconscious because of this incident, which is a serious injury. Furthermore, given that the claimant stated that she had bruises all over this would have been obvious to the examining doctor. There is nothing on the medical note which indicates that the doctor was only consulted with respect to the claimant's neck injury. In these circumstances, I would have expected the note's description of the claimant's injuries to more closely match the claimant's descriptions, especially with respect to the extensive bruising. I find this discrepancy to undermine the claimant's credibility.

[7] The claimant also presented a newspaper article⁶ and a letter⁷ from a public official to corroborate the fact that [redacted] had set a fire at her parents' house. However, as noted at the hearing, both documents indicate that the cause of the fire was an electrical short circuit. The claimant stated that her parents had seen [redacted] in the area but were afraid to name him as a suspect. I do not find the claimant's explanation satisfactory. According to the newspaper article, firefighters, civil protection, municipal police and the Mexican police all came to the scene. Given the level of response one would think that the authorities themselves would determine the cause of the fire and discover that it was arson rather than rely on the claimant's parents telling them it was a simple short circuit. Furthermore, even if the claimant's parents feared naming [redacted] as a suspect, it makes little sense for them to actively invent a cause for a fire they actually did not see start. Instead, I would have expected them to keep silent on the issue of [redacted] and let the authorities draw their own conclusion about the fire, even if it were to be an "unknown" arsonist. I find that this discrepancy further undermines the claimant's credibility.

[8] [redacted] alleged dealings with and relationship to the police were also problematic. In the amended

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narrative, is said to know the police and the claimant stated orally that this statement was to mean that the police knew and respected him. However, as noted at the hearing, there is no mention of this in the original narrative. The claimant stated that she did not know why this had not been included in the original narrative. Furthermore, in oral testimony the claimant stated that would not care if someone denounced him as several people already had and since he was friends with the police nothing came of the denunciations. However, as noted at the hearing, the fact that was able to avoid the consequences of several denunciations due to being friends with the police was not mentioned in the PIF. The claimant stated that she did not know why this was not mentioned in the PIF. Still further, in late testimony the claimant stated that introduced the to her as his friend. However, as noted at the hearing, this was not mentioned in her PIF either. The claimant stated that she was unsure of the extent of friendship with the and that she did not know why she had not mentioned this in her PIF. I do not find the claimant's explanations satisfactory. The claimant confirmed in writing that the original PIF had been interpreted to her and that the contents were complete and accurate even though she seemed to dispute this at the hearing. The directions for filling out the narrative are quite clear in that all efforts to obtain protection from the authorities are to be detailed and if efforts are not made the reasons should be given. If really had such a relationship with the authorities in that he not only was friends with the but was on such friendly terms with the police that he was able to avoid the consequences of several denunciations it makes little sense that the original PIF narrative did not say just that. It makes even less sense that the final narrative as amended would only include a passing reference to Jean knowing the authorities rather than the far more extensive relationship that the claimant alleged in oral testimony. I find that these discrepancies further undermine the claimant's credibility.

[9] As noted at the hearing, the claimant did not make a refugee claim when she arrived in Canada in 2008, and instead received a six-month Temporary Resident Visa. The claimant stated that she was not really thinking of staying in Canada at the time she arrived and was hoping that things would calm down in Mexico. It was further noted that the claimant did not make a claim until 2009, several months after her Temporary Resident Visa expired in 2008 with no application to extend her status. The claimant stated that she was afraid and did not know at the time that there was more than one way for her to extend her stay in Canada. I do not find the claimant's explanations satisfactory. The claimant has a university education and is by no means unsophisticated. She previously obtained a visa from the United States and traveled there on more than one occasion which gave her experience in dealing with immigration officials. If she really was fleeing for her life it makes little sense for her not to enquire early on as to how she could avoid returning to Mexico. It makes even less sense for the claimant to allow her Temporary Resident Visa to lapse during 2008, which is the same month that allegedly set fire to her parents' home. By this time it would have been obvious that things would not be calming down so it makes no sense at all for the claimant to then delay even further months until to seek protection. I find that the claimant's delay in claiming not

only demonstrated a lack of subjective fear but also further undermines her credibility.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well. In coming to this decision, I am mindful of the psychological evidence⁸ on file. However, this report is based on a story which I simply do not believe. No evidence was presented that the claimant could not obtain treatment for whatever psychological issues that she does face. I am also mindful of the documents on file with respect to the claimant's neck injury and the fire at her parents' house. However, even if these documents are genuine, given the credibility concerns noted above I simply do not believe the events took place in the circumstances alleged by the claimant and were due to other causes in the normal course of daily life. I also note the presence of a letter⁹ from a friend which purports to corroborate the claimant's story. However, this document is explicitly from a friend who would have an interest in bolstering the claimant's story so I gave this letter little weight.

CONCLUSION

[11] I find the claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

June 25, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, Immigration and Refugee Board, Ottawa, March 9, 1993; *Update*, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

4 Exhibit C-1, as amended by C-2.

5 Exhibit C-6, item 3.

6 Ibid., item 1.

7 Ibid., item 2.

8 Exhibit C-3.

9 Exhibit C-7.



RPD File No. / No de dossier de la SPR : TA9-03220



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-03872

Private Proceeding / Huis clos

Reasons and Decision – Motifs et decision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	July 15, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	September 1, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Esteban Uribe	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de
Designated Representative(s)	N/A	Représentant(e)(s) de
Counsel for the Minister	N/A	Conseil du

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[1] _____, an alleged citizen of El Salvador, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (*IRPA*).

Allegations

[2] The claimant was born and raised in El Salvador. In 1996, the claimant was visiting his cousin when they were attacked by two members of the _____, an _____. His cousin was _____ with a machete and died. The other gang member chased the claimant back to his house and kept watch for a long period of time. Soon after, gang members came to the claimant's house twice looking for him. Knowing the gang members would want to kill him, as he witnessed a murder, the claimant began moving from place to place to avoid detection. The claimant traveled to the United States of America (U.S.) in 2006. He traveled to Canada on _____, 2008, and made a refugee claim the same day.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons for decision are as follows.

ANALYSIS**Nexus**

[4] The claimant fears a criminal vendetta and as such the claim pursuant to section 96 of the *IRPA* fails for lack of nexus to the Convention definition.

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form2 (PIF) and the other documents available. While the claimant did present a document,³ which appears to be a newspaper article dealing with his cousin's murder, the article is undated and does not mention the claimant's involvement in the incident. While this was somewhat troubling, there were far greater concerns about the claimant's description of the incident itself and its aftermath. In oral testimony, the claimant stated that he was the only witness to his cousin's murder. However, as noted at the hearing, in a statement⁴ made to an Immigration Officer at the time that he made his claim, there were six

witnesses. The claimant stated that the others were in a pool and he was in the house and that he did not know why the Immigration statement said what it did. I do not find the claimant's explanation satisfactory. The Immigration statement clearly states that there were six people who had seen what had happened. It was not written in a way that the other witnesses saw only part of the incident. The claimant simply could not reconcile two dramatically different accounts of the same incident. I find that this contradiction undermines the claimant's credibility.

[6] In oral testimony and in the PIF, one gang member followed the claimant to his house. However, as noted at the hearing, in the Immigration statement, there are repeated references to more than one man ("they", "men", etc.) following him to his house. The claimant stated that only one man followed him from the crime scene and that perhaps he had been nervous when he met with the Immigration Officer. I do not find the claimant's explanation satisfactory. This is not a case of nervousness causing an isolated slip of the tongue. There are three separate references to there being more than one person following the claimant away from the scene. Had there really only been one man, I would not have expected repeated references to there being more than one. I find that this discrepancy further undermines the claimant's credibility.

[7] In oral testimony, the claimant stated that he moved away from home the next day to avoid the gang members. However, as noted at the hearing, in the Immigration statement, the claimant moved away from home days later. The claimant stated that he had been nervous. I do not find the claimant's explanation satisfactory. This was allegedly the most important event in the claimant's life. It should have been fairly easy to recall whether he moved away almost immediately or some time later. The Immigration statement is written in a way that it was only several days later when the gang members attempted to enter the house did the claimant move away. I do not see how nervousness could cause the claimant to say all of that rather than simply, "I moved away the next day". I find that this discrepancy further undermines the claimant's credibility.

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[8] In the Immigration statement the claimant states that he didn't know who his assailants might be because they never identified themselves, although "if [he] had to guess [he] would say that they could be gang members". However, as noted at the hearing, in the PIF and in oral testimony, the claimant's assailants clearly identified themselves by yelling out that they were members of . The claimant stated that he had now thought about the matter it was clearer in his mind. I do not find the claimant's explanation satisfactory. The claimant allegedly witnessed a murder committed by men who clearly identified themselves as members of . They identified themselves by yelling this fact out to the claimant and his cousin. The claimant has allegedly been on the run from for the last 14 years. It makes absolutely no sense at all given these circumstances to tell the Immigration Officer that he didn't know who was after him and that if he had to guess they could be gang members. I find that this discrepancy further undermines the claimant's credibility.

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[9] The claimant also expressed a fear of forced recruitment into the [redacted] should he be returned to El Salvador. However, recruitment into gangs is a risk faced generally by others and as such is precluded from my consideration by section 97(1)(b)(ii) of the *IRPA*. Even if the claimant's time in North America were to place him at greater risk of targeting, this merely alters the degree of the risk, not the generalized nature of it.⁵

[10] However, even at issue in the hearing was the question of whether or not the claimant was indeed from El Salvador. The claimant could only provide vague testimony with respect to his everyday life in El Salvador. He paused for great lengths of time when asked what one would think would be simple questions such as, who he was working for at various times. Initially, the claimant denied that he had ever had a passport from El Salvador. When asked to clarify that statement he then stated that he did at one time have a passport however he had lost it in Mexico. Then the claimant even had difficulty over several questions in attempting to describe the circumstances in which he lost his passport and it took several answers before he stated that he dropped the bag that it was being carried in while being chased by Mexican officials. When it was noted that the birth document and identity card,⁶ that he was carrying at the time that he made his refugee claim, both appeared to have been issued while he was residing in the United States, the claimant stated that not only had he obtained them during his dealings with American immigration authorities, but that he had actually been given a permit to stay in the United States. However, he could not recall specific details about the permit such as the length of time that it was valid. In initial testimony he stated that he did not know why he did not bring the permit from the United States to Canada and in later testimony he stated that he feared if he brought it he would be returned to the United States, although he said he did not know on what basis he would be returned. While the claimant stated that his ultimate goal of coming to Canada was thwarted by lack of funds in the United States, it was noted that he was there for two years and it seemed that he would have been able to at least take a bus north during that time. The claimant stated that he had never used a bus and did not know how far Canada was. When asked if anyone had told him to leave the United States the claimant stated that no one had told him directly. However, as noted at the hearing, the information received from Immigration⁷ indicates that the claimant was ordered to appear for removal in the United States. The claimant stated that he did not know why the Immigration information said that. When asked if he had any documents that were created during the years that he spent in El Salvador the claimant said that he did not and said that he did not know why that he did not have any such documents. None of this makes any sense at all. It should have been a fairly simple task for the claimant to give such basic information as who he was working for as recently as 2006, the year that he allegedly left El Salvador. Throughout his testimony the claimant was vague and evasive and often appeared to be attempting to make information up as he went along. It appeared he was trying to try to hide his experiences in the United State and generally speaking he could not recall anything about El Salvador beyond half-remembered parts of his story contained in his PIF narrative. While I am mindful of the two documents that the claimant was in possession of at the time that he made his claim, it

appears that they were created during previously undisclosed Immigration proceedings in the United States. Given that his parents and nine siblings still reside in El Salvador it makes little sense that these documents would be the only two available to indicate his country of origin. Instead I would have expected several documents issued from 2006 or prior, especially since he has a large number of family members available to send them. I find that these discrepancies further undermine the claimant's credibility.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened, and as such, the claim pursuant to section 97 of the *IRPA* fails as well. Given the severe credibility concerns I find, on a balance of probabilities, that the two identity documents presented are not genuine documents.

No Credible Basis

[12] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[13] I find that the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

'David McBean'

David McBean

September 1, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit C-1, Personal Information Form, Amended by C-2.

3 Exhibit C-3, p. 13

4 Exhibit R-2

5 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31

6 Exhibit R-2

7 Ibid.

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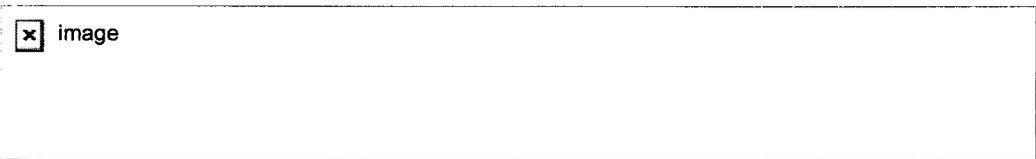
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RPD File No. / N° de dossier de la SPR: TA8-04347

TA8-04348

TA8-04349

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

January 21, 2009

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

April 15, 2009

Date de la décision

Panel

David McBean

Counsel for the Claimant(s)

Luis Antonio Monroy
Barrister and Solicitor

Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer

Nil

Agent(e) des tribunaux

**Designated
Representative(s)**

Nil

**Représent
désigné**

Counsel for the Minister

Nil

Conseil du

s.19(1)

(“Mr. _____”), his spouse _____ and their daughter _____, citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

Mr. _____ worked with the _____ of the _____. In 2005, _____ joined the Department and soon announced that he would be _____ The claimant and other employees assisted in _____, helping to _____ that were not reported to the government. Facing difficulties at home because of the long hours involved, Mr. _____ quit both his job with the _____ and _____ in _____ 2006. While _____ approached Mr. _____ in the hope of obtaining damaging information, _____ responded by sending people to threaten the claimants to keep quiet. Despite moving to the _____, Mr. _____ received more threats by phone to keep quiet. Mr. _____ came to Canada in _____ 2006 while the his wife and their daughter moved to _____ in the _____. Hearing nothing further of Mr. _____ Mr. _____ returned to Mexico in _____ 2006, rejoining his family in _____. Coincidentally, _____ was _____ in the same month. Thinking the situation had calmed down, the claimants moved to _____, _____, where Mrs. _____ had friends. In _____ 2007, three ex-coworkers of Mr. _____ who had become disgruntled as _____ did not keep his promise to them of better employment, contacted Mr. _____. The four of them reported _____ to the _____. However, it turned out that he had been personally selected for his job by _____. On _____, 2007, Mr. _____ learned that one of his ex-coworkers had been arrested for an alleged theft from the _____ and that the police were looking for Mr. _____ and the other coworkers for the same reason. A few days later, the police visited the claimants’ house but Mr. _____ was not at home. Mr. _____ fled to Canada on _____, 2007. Mrs. _____ and their daughter returned to _____. There they began to receive threatening phone calls and saw men watching them. As a result of _____ illness they returned to _____ on _____, 2007, to obtain the support of Mrs. _____ parents. On _____, 2007, while they were traveling with an uncle, _____ two men attempted to kidnap _____. In defending Mrs. _____ and her daughter,

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was run over by the assailant's vehicle and was severely injured. Already in Canada, Mr. [redacted] made a refugee claim on [redacted] 2007. Mrs. [redacted] and their daughter traveled to Canada on [redacted], 2007, making refugee claims upon arrival.

In [redacted] 2008, the Mexican Army moved into [redacted] and arrested several [redacted] police officials, although [redacted].

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Forms³ (PIFs) and the other documents available. For example, in oral testimony Mr. [redacted] described taking part in [redacted] and [redacted]. Money from these events was actually intended for [redacted] even though none of the attendees were aware that the events had anything to do with [redacted]. However, as pointed out at the hearing, the PIF states that the claimant was involved in "[redacted] [i.e. [redacted]]" and the problem was that the [redacted] received through these [redacted] were not reported to the government. Mr. [redacted] stated that perhaps there had been confusion with respect to the PIF since [redacted] was not yet officially a [redacted], therefore no one could know about a [redacted]. I do not find the claimant's explanation satisfactory. This is not an example of confusion, it is a

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direct contradiction. Either the attendees at the events were aware that they were funding

or they were unaware of involvement. Either the “problem” was the secret siphoning of funds intended for the or it was non-reporting of donations. Mr. confirmed both orally and in writing that the PIF had not only been interpreted back to him but that it was complete and accurate as well. The PIF was quite definite in describing the type of events and the alleged problem and it simply appears that the claimant told two dramatically different versions of the alleged events that started all of the claimants’ problems. I find that this contradiction undermines the claimants’ credibility.

In oral testimony, Mr. described as telling him that he was laundering the equivalent of through his . The claimant appeared to realize that none of this was in the PIF and became quite evasive in his testimony, even attempting to define money laundering as almost anything other than the criminal act that it is. The claimant eventually allowed that the knowledge of the money laundering of would potentially cause problems at the hands of . When specifically challenged that none of the information about the money laundering was in the PIF, the claimant stated that the PIF was intended to be general and that this was a minor detail that was omitted. I do not find the claimant’s explanation satisfactory. The amount of money involved in the in which the claimant participated was relatively small: 15,000 to 20,000 Mexican pesos (the equivalent of approximately \$1,500 to \$2,000 Canadian). The claimant acknowledged that his knowledge of both the and the much larger money laundering operations would lead to problems of wanting him to keep quiet. It makes no sense for the claimant not to mention the larger money-laundering operation in the PIF, even if he did not participate directly since mere knowledge of the operation was enough for him to get into trouble. I find that this omission further undermines the claimants’ credibility.

In a statement handwritten in Spanish at the time that she made her claim,⁴ Mrs. stated that her husband “noticed that [] was stealing money from as his position was .” Mr. acknowledged that his wife had no independent knowledge of activities and that she had learned all information about through him. When asked why she would have written what she did, Mr. stated that he had told her that he had for and that had not reported the money to the government. As noted at the hearing, this seemed quite different from stealing money as . Mr. stated that perhaps it was because of the language used or the interpretation. I do not find the claimant’s explanation satisfactory. Mrs. made the statement in her own handwriting in her own language so there should have been no

language issues. In the notes of the Immigration Officer made at the time that Mrs. made her

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claim,⁵ essentially the same statement is repeated: that [redacted] was stealing government funds. If Mr. [redacted] had indeed told his wife that [redacted] was failing to [redacted], I would have expected her to say something that resembled just that. I find that this discrepancy further undermines the claimants' credibility.

While no copy of the denunciation that the claimant made against [redacted] was presented, the document that was presented from the Attorney General's office⁶ confirming that the criminal process against the claimant had ended was in and of itself problematic. In oral testimony, Mr. [redacted] initially stated that he went to the authorities to denounce [redacted] in mid- [redacted] 2007. When it was noted that his PIF gave the time as the end of [redacted] he stated that he was not sure of the week but confirmed more than once that he was certain that he denounced [redacted] in [redacted] 2007. He also confirmed that the trumped-up theft charges against him and his co-workers were made in [redacted] 2007. However, as noted at the hearing, the file number on the Attorney General's document dealing with the charge against the claimant internally contained the date of 2006. The claimant did not know why a date of 2006 would appear in the file number and simply insisted that all dealings with the authorities were in 2007. I do not find the claimant's explanation satisfactory. It makes no sense for the authorities to use a date of 2006 with respect to the criminal charge against the claimant as this predated the date of the actual charge (i.e. [redacted] 2007) and even predated the motivation for [redacted] to have the charge laid (i.e. the claimant denouncing [redacted] in [redacted] 2007). I find that this discrepancy in dates not only calls into question the authenticity of the claimant's documents but further undermines the claimants' credibility.

In the notes of the Immigration Officer made at the time that Mr. [redacted] made his claim⁷ the claimant states: "I did not go to the police as it would not do any good to make a complaint against the [redacted]". As noted at the hearing, the whole thrust of the PIF and the claimant's oral testimony was that it was the very act of going to the police to complain about the [redacted] (i.e. [redacted]) that led to a trumped-up theft charge and a kidnapping attempt against [redacted]. The claimant stated that he did not know the refugee system and was told to be general with his story at the time and that he would be able to get into greater detail in his PIF

later. I do not find the claimant's explanation satisfactory. This is not a missing detail, it is a direct contradiction with respect to the pivotal event in the story. There was an interpreter present in person during the interview so there should have been no confusion with respect to language. It makes absolutely no sense for the claimant to state that he did not bother going to the authorities to report [redacted] if it was that very act that triggered the claimant's flight to Canada. I find that this major contradiction further undermines the claimants' credibility.

Furthermore, in the same interview notes the only mention of the authorities was in the passage

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stating that Mr. [redacted] did not go to them to seek aid as he did not think it would do any good. However, as noted at the hearing, in the PIF and oral testimony it was the police, from the [redacted] on down, who actively became involved in persecuting the claimant. When asked why he would not mention this, the claimant stated that he did not know the system, he knew that the police had not done anything with respect to his complaint and that his PIF would be filed later with more details. I do not find the claimant's explanations satisfactory. This is not a minor detail. The thrust of the story was that [redacted] used his senior connections in the police to have charges trumped up against the claimant and the police were actively pursuing the claimant at the time that he made his claim. Had any of this been true, I would have expected him to mention something about that and not simply make an off-hand remark about never going to the police in the first place. I find that this discrepancy further undermines the claimants' credibility.

In oral testimony Mr. [redacted] alleged that one of co-workers, [redacted] the man who had informed him of the arrest of the other co-worker and of the fact that the police were looking for them, had been run over by an unknown vehicle and was killed. In support of this a Death Certificate was presented.⁸ However, as noted at the hearing, the portion that deals with "Death by Accident or Violence" is not filled out at all, even though the claimant alleged the death was caused by just that. The claimant did not know why this section was not filled out. Given that the form includes categories of Accident, Homicide, Suicide and Unknown, if [redacted] had truly been run down and killed, it would logically follow that at least one of those categories would be marked. The fact that that particular section was left blank appears to contradict the claimant's version of events and I find that this contradiction not only calls further into question the authenticity of the documents presented but also further undermines the claimants' credibility.

In Mrs. [redacted] oral testimony, she described becoming involved in a physical confrontation during the kidnapping attempt and that her legs were hurt. In the assessment by [redacted] and Dr. [redacted] 9 the claimant is described as being "hit badly" during the incident. However as noted at the hearing, in the PIF there is no mention of Mrs. [redacted] being involved in any sort of physical confrontation. The claimant stated that she had been traumatized and that she had tried not to remember the incident and that only after therapy sessions could she describe more. After it was pointed out that none of her medical documents indicated that she had any memory problems, she stated that she did not know why she had not included the information in the PIF about being physically involved in the confrontation and that she had been hit badly. I do not find the claimant's explanations satisfactory. The PIF does not mention the claimant being involved in a physical confrontation, does not mention her being hit, badly or otherwise, and only the uncle is described as getting out of the car to protect the other occupants. If the events took place in the manner that Mrs. [redacted] alleged, I would have expected these significant details to have been included in the PIF. In his submissions, counsel reminds me to consider Mrs. [redacted] testimony with reference to the IRB's *Gender Guidelines*.¹⁰ While I am mindful of the

Gender Guidelines, even if it were true that she did not remember fully the incident at the time that the original PIFs were prepared in 2007, an amended narrative was filed in August 2008 in the same package that included the assessment document in question. By the time of the amended narrative, Mr.

appeared to have remembered all of the details with respect to the kidnapping incident and she simply did not include them in the amended narrative. I find that this omission, particularly from the amended narrative, to further undermine the claimants' credibility.

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A letter from [redacted] was also presented. Ms. [redacted] describes what happened to the claimant and states that the kidnapping incident occurred when the claimant was walking [emphasis mine] with her daughter and that in speaking of the kidnapping Mrs. [redacted] "explained that she could not press criminal charges against these individuals for the attack because the [redacted] of the [redacted] is very close friends with the individual in the [redacted] that

has tried to intimidate and hurt the [redacted] family". As noted at the hearing, in the PIF and oral testimony, the claimant was driving with her daughter and, more importantly, that it was the himself who was the [redacted], not one of his friends. Mrs. [redacted] stated that she did not know why the letter would state that she was walking rather than driving during the kidnapping incident and that Ms. [redacted] must have been confused with respect to the identity of her persecutor. I do not find the claimant's explanations satisfactory. Ms. [redacted] states in her letter that she has been conducting therapy sessions with the claimants and seems to be familiar with the claimants' story. Given that the kidnapping attempt would have been the most traumatic event in the life of Mrs. [redacted], I would have expected that someone who had conducted multiple therapy sessions with her to be familiar with the circumstances in which the event took place. I would also expect her to know that the [redacted] is allegedly the [redacted] rather than a friend of [redacted], as stated. I find that these contradictions further undermine the claimants' credibility.

In oral testimony, Mrs. [redacted] stated that she recognized the kidnappers as men she had seen working with [redacted]. As noted at the hearing, there is no mention in the PIF of the Mrs. [redacted] recognizing the attackers. She stated that she omitted this because she did not feel it was a significant enough detail to mention. I do not find the claimant's explanation satisfactory. Kidnapping occurs far more frequently than anyone would like in Mexico. If there were some way of differentiating between this being a random incident of crime and a targeted incident at the hands of [redacted], I would have expected it to be mentioned in the PIF. I find that this omission further undermines the claimants' credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to several major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged

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happened to them, actually happened and as such, the claims fail. While I appreciate that there are multiple documents dealing with the psychological health of Mrs. [REDACTED], I simply do not believe that any of the psychological problems that she has experienced were due to the causes that the claimants alleged, and no evidence has been presented that she could not obtain treatment for these problems in Mexico.

CONCLUSION

Since I do not believe the claimants with respect to the events described in their PIFs, the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects their claims.

(signed)

“David McBean”

David McBean

April 15, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1, C2 and C3, claimants' PIFs.
- 4 Exhibit R-3, translation of female claimant's declaration.
- 5 Exhibit R-2.
- 6 Exhibit C-5, disclosure.
- 7 Exhibit R-2, "Interview Record", p .7.

8 Exhibit C-4, p. 17.

9 Exhibit C-4, p. 26.

10 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

11 Exhibit C-4, p. 29, Letter from

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, 2007.

RPD File No. / N° de dossier de la SPR : TA8-04347

TA8-04348

TA8-04349

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RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-04751

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 26, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	May 28, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant

000719

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*). As the claimant decided to represent himself a few weeks prior to the hearing, I explained the hearing procedures prior to the claimant's testimony.

ALLEGATIONS

The claimant worked at the _____ His _____ gave him _____ of the _____. He was approached and threatened by people who wanted his assistance in smuggling goods. Knowing these people were connected to the police, he did not go to the authorities and instead quit his job. He travelled to Canada on _____, 2006, and made a refugee claim on _____ 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant was a victim of crime and as such, he failed to establish a nexus to the Convention Refugee definition and his claim pursuant to section 96 of the *IRPA* therefore fails.

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form³ (PIF) and the other documents⁴ available. It should be noted that the claimant's PIF narrative is only six typed lines long. However, even with such a brief narrative there were serious contradictions between the oral and written evidence. For example, in the PIF, the claimant was approached by "some

people” and these people had “links” with the police. However, as noted at the hearing, in oral testimony, the claimant stated that it was the police themselves who approached him. The claimant stated that perhaps he had been unclear in his PIF and that he had meant that the “people” were in fact police officers. I do not find the claimant’s explanation satisfactory. The claimant affirmed both orally and in writing that his PIF had not only been interpreted back to him, but that it was also accurate. It is written in such a way that the people who approached him were not police officers themselves, but instead criminals with links to the police. Had the alleged agents of persecution been police officers, I would have expected the PIF to say just that. This is not a case of the claimant being unclear; it is a direct contradiction with respect to the identities of the alleged agents of persecution. I find that this contradiction undermines the claimant’s credibility.

In oral testimony, the claimant stated that his problems started in the year 2002 and continued on and off until 2006 when he quit his job. During that time period the same group of police officers approached him several times in repeated attempts to gain the claimant’s assistance in their smuggling plans. However, as noted at the hearing, in the PIF, the claimant is approached once, is threatened and then quits his job. The claimant stated that perhaps the person who wrote his PIF in English did not include all of the details of the claimant’s story and that the claimant should have added more. I do not find the claimant’s explanation satisfactory. As stated previously, the claimant affirmed both orally and in writing that his PIF had not only been interpreted back to him, but that it was also complete and accurate. It is written in such a way that shows that he was approached once by the alleged agents of persecution and after receiving threats, the claimant quit his job. Had the claimant really been approached by the same people several times over the course of several years, I would have expected the PIF to say just that. This is not an omission of some minor details; it is a contradiction with respect to how many times and over what time period the claimant experienced problems at the hands of the alleged agents of persecution. I find that this contradiction further undermines the claimant’s credibility.

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The claimant did not make a refugee claim upon arrival in Canada. While he was granted permission to visit Canada for a few days, that permission expired in 2006. He did not make a refugee claim until 2008. When asked to explain the 15-month delay in claiming refugee protection, the claimant stated that he lacked knowledge about the refugee system and that once he knew more about the system he made his refugee claim. I do not find the claimant’s explanation satisfactory. The claimant has 12 years of education and has worked in a very responsible job. If he truly feared for his life, I would have expected him to make some efforts with respect to finding a way to stay in Canada legally and be protected from potential harm. I find that the 15-month delay in claiming not only demonstrated a lack of subjective fear, but also further undermines the claimant’s credibility.

Given the serious contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities,

any of the significant events that the claimant alleged happened to him, actually happened. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim pursuant to section 97 of the *IRPA* fails.

Objective Basis

s.19(1) Even if my analysis with respect to credibility were found to be incorrect, I find in the alternative that the claim still fails as there is no objective basis for the claimant to fear returning to Mexico. The claimant was only of interest to the agents of persecution through his job at the [redacted]. Once he quit his job in 2006, he lost his [redacted] that had allowed him [redacted] not open to the public. His [redacted]. When repeatedly asked why the agents of persecution would still be interested in him in 2009, the claimant could only state that he could not know what would be in the mind of others. Given that the only reason for the claimant to be of interest to the agents of persecution disappeared long ago when the claimant quit his job, I find, on a balance of probabilities, that there would be nothing for the claimant to fear today or in the future. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim pursuant to section 97 of the *IRPA* fails.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

May 28, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit R-2.

RPD File No. / N° de dossier de la SPR : TA8-04751



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-05186
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	August 17, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 3, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Marc J. Herman Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, a citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in the Philippines and lived in a suburban city near _____. She has had a great fear of dogs ever since she was bitten by a stray dog at the age of 15 (in approximately 1956) and was given numerous injections to combat the potential for rabies. At the time that the claimant came to Canada in 2001 there were no dogs at her home in the Philippines. However, after the claimant left, one of her sisters began to raise five dogs. Another sister next door began to raise seven dogs. The claimant's mother was knocked over by the dogs in 2005 and no one could come to help her because of the potential for being bitten. Her mother died since her head had hit the pavement. The claimant's sister, who suffers from depression, did not maintain the house which descended into squalor. The claimant's brothers are abusive drunks and there are drug addicts who infest the neighbourhood. The claimant made a refugee claim in 2008. In _____ 2009, before a hearing for her claim was scheduled, she won _____ playing _____. In addition to her earlier fears about returning home to dogs, the claimant now fears that the fact that her _____ has been publicized in the Philippines will cause her to be targeted for extortion, kidnapping for ransom, and robbery by criminals, corrupt government officials, the police, the New People's Army and other groups.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, Immigration and Refugee Board, Ottawa, March 9, 1993; *Update*, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

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ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Philippines was accepted at the hearing given that a certified copy of her passport from the Philippines was on file.³

Dogs – Internal Flight Alternative (IFA)

[5] Even if I were to accept the claimants' evidence as true, which I do not necessarily do, I find that a viable IFA exists in Manila. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for her to seek refuge there.

With respect to the first prong of the test, the claimant would return to the international airport in Manila so there would be no need to return to her former home town. As the claimant noted at the hearing, most of her family has since passed away and she generally does not keep in contact those that remain alive. She does not know what has happened to the house that she lived in. With even a fraction of her newfound resources I find on a balance of probabilities that she can find a dwelling in Manila where she would be able to live away from dogs.

[6] With respect to the reasonableness of the claimant moving to Manila, I note that the threshold for the claimants to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ The claimant has lived in the greater Toronto area for a number of years and when she was in the Philippines so the city would not be alien to her. As stated previously, her newfound resources would allow her much greater choice in accommodation than

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

⁵ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

she would have had previously and it is unlikely she would need to work to support herself at this point. I find that it would not be unduly harsh for the claimant to relocate to Manila.

- Nexus – Generalized Risk

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[7] In post-hearing submissions (FN Ex PH-1) counsel submitted that the claimant is a member of a particular social group, “namely the female – gender group of the Philippines”. I disagree. The claimant does not face targeting because of her gender. She faces targeting for robbery and related crimes because of her wealth.

[8] Counsel further submitted that the claimant is a member of a second particular social group because of her newfound wealth. However, as counsel also noted in his submissions, a particular social group is defined by innate, immutable or unchangeable characteristics. Unfortunately, wealth is anything but unchangeable. Furthermore, the Federal Court has ruled that where a person is targeted for crime because of wealth there is no nexus to the Convention definition.⁶

[9] Given that the claimant is not a member of a particular social group, she has not established a nexus to the Convention definition. Therefore, the claim pursuant to section 96 of the *IRPA* fails.

[10] With respect to section 97 of the *IRPA*, while the claimant made reference to the fact that the general crime rate in Manila is high, crime is a risk faced generally by everyone in Manila. As such, it is precluded from my consideration by the Generalized Risk exception in section 97(1)(b)(ii) of the *IRPA*. Even if the claimant were known to be wealthy given her recent and the fact that she has spent several years abroad, this simply changes the degree of the risk, not the generalized nature of it.⁷ Therefore, the claim pursuant to section 97 of the *IRPA* fails as well.

No Credible Basis

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

⁶ *Montoya, Hernan Dario Calderon v. M.C.I.* 2003 FCT 63.

⁷ *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.

CONCLUSION

[12] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim

(signed)

“David McBean”

David McBean

November 3, 2010

Date

RPD File No. / N° de dossier de la SPR : TA8-05434

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 20, 2009	Date(s) de l':
Place of Hearing	Toronto, Ontario	Lieu de l':
Date of Decision	June 10, 2009	Date de la
Panel	David McBean]
Counsel for the Claimant (s)	Sandra Bowen	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	T. Horbay	Agent(e) de
Designated Representative(s)		Représentant(e)(s) de

Counsel for the Minister

Nil

Conseil du

s.19(1)

[1] _____, a citizen of Saint Lucia (St. Lucia), claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born in St. Lucia. In approximately 2005, her mother began dating (“_____”). Not long after _____ began to sleep over at the claimant’s house, he began to sexually and physically abuse her. This continued for sometime and the claimant became aware of _____ abusing other young girls including his own disabled niece. When the claimant told her mother about an affair that _____ was having, her mother ended the relationship for a short time, getting back together with him after a couple of days. The claimant never informed her mother about the abuse that she was experiencing. In _____ 2007, the claimant finally confided in a friend, (“_____”). _____ advised her to speak to her school counselor and she did. The counselor advised the claimant to speak to her mother, however she did not. On _____, 2008, _____ broke into the claimant’s room angry that she had told others about what had been going on. He beat the claimant with a piece of wood with nails in it and pushed her into a window that shattered. While there he stated that he would harm _____ as well. The claimant fled to _____ house. The police and the claimant’s mother were informed and the police searched for _____. The claimant came to Canada on _____ 2008 and made a refugee claim on _____, 2008. Soon after she learned that _____ had been shot and wounded.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this decision I have considered the Chairperson’s *Gender Guidelines*,² and the Chairperson’s *Guidelines on Child Refugee Claimants: Procedural and Evidentiary Issues*,³ as the claimant is only 16 years of age. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant’s identity as a citizen of St. Lucia was accepted at the beginning of the hearing as a copy of her St. Lucian passport was on file.⁴

Credibility

s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form 5 (PIF) and the other documents available. For example, the claimant provided a medical note⁶ to substantiate the injuries that she received in [redacted] final attack. It did seem odd that the note was written on the letterhead (about the width of a prescription pad) of one single doctor and was signed by another doctor. However, as counsel noted in her submissions, this may simply be due to the fact that one doctor was transcribing the notes of another. Far more important is the information contained within the note itself, which is at odds with the claimant's story. The note states that the claimant was allegedly seen by a doctor on [redacted] 2008, about injuries sustained in an assault that took place one week earlier. This placed the date of the assault as approximately [redacted], 2008. However, as noted at the hearing, the claimant's oral testimony and her PIF give the date of the assault as [redacted], 2008. The claimant did not know why the medical note indicated a different date. Furthermore, the claimant described very precisely the injuries that she received during that assault, in that they occurred to both of her hands, her right leg and knee and her face. After being prompted more than once, the claimant stated that she was not otherwise injured. However, as noted at the hearing, the medical note stated that the claimant sustained abrasions to her right leg, right shoulder, upper back and upper chest. The claimant then stated that she had only experienced pain in those areas that she had not previously mentioned. Counsel submitted that perhaps some of the claimant's injuries had healed by the time of the medical examination and that would explain some of the differences. I do not find the claimant's explanations satisfactory in either area. No psychiatric evidence was presented that the claimant would have any difficulty testifying or recalling her injuries. The claimant was quite precise in her oral testimony with respect to the date of the assault and the injuries that she received. The medical note is also quite detailed and precise. The timelines simply do not match. While "healing" might explain why the doctor may not have noted some injuries, it does not explain why the claimant initially failed to recall being injured on her back and chest; stating that she only experienced pain in those areas. "Pain" does not match the doctor's description of abrasions in those areas. Abrasions are cuts or scrapes, something that can be physically noticed and these the doctor allegedly noticed a week (or two) later. The two descriptions of the claimant's injuries did not match on points that the claimant should reasonably have been able to recall given the precise nature of her testimony. I find that these discrepancies with respect to the date of the assault and the types of injuries that the claimant received not only call into question the authenticity of the claimant's documents but undermine her credibility.

[6] The claimant stated that she was interviewed by the police; the police sought [redacted] and the police advised her to leave the island for her own safety. However, as noted at the hearing, the claimant presented no documents from the police. I am somewhat puzzled by the Refugee Protection Officer's (RPO) statement that in his opinion this may be due to the fact that the claimant's mother still harboured feelings for [redacted] and did not wish on some level to produce such documents. This seems quite at odds with the evidence as the relationship seems to have ended and the claimant's mother

s.19(1)

obtained documents from other sources. It should also be noted that no police documents were presented dealing with shooting. The claimant could not explain why her mother, or mother could not obtain documents from the police to corroborate the major events of her story, when other documents were produced. According to the information available, police reports can be obtained⁷ and I find that they would have been reasonably available in these circumstances. Had documentation from the police been presented it would have gone a long way to corroborating the claimant's story. The fact that no such documents were presented further undermines the claimant's credibility.

[7] The declaration presented from the claimant's mother states that the police did nothing to help the claimant.⁸ However, as noted at the hearing, the entire thrust of the oral testimony and the PIF was that the police did become involved in the claimant's case and actively pursued . The claimant stated that her mother's comment was true at the time that she wrote it and that the police had investigated for about a week and then ceased all efforts until the claimant's mother got a lawyer involved and they resumed the investigation. Counsel submitted that the reference was to the fact that the police had not apprehended . I do not find the claimant's explanation satisfactory. One week after the assault would have been late or early 2008. The declaration from the claimant's mother is dated , 2008, long after the assault and long after the PIF was prepared in 2008. Had the police investigation ceased by 2008 with the police doing nothing, requiring the claimant's mother to consult a lawyer after the declaration was written in , I would not have expected the claimant's narrative from 2008 (which concludes on a page with pictures reprinted on it) to state that the investigation into the whereabouts of was "continuing". Also, while I am mindful of counsel's submissions, that was simply not the claimant's evidence and it appeared the claimant made up the entire reference regarding the consultation of a lawyer on the spot. Furthermore, given the fact that the police did make efforts at various times since the assault, I would not have expected the declaration to be worded the way that it was. I find that this discrepancy with respect to the efforts of the police to not only call further into question the authenticity of the claimant's documents, but also further undermines the claimant's credibility.

[8] A letter⁹ from the was presented to corroborate the existence of the claimant's friend . However, as noted at the hearing, the very brief letter lists his name as " ". The claimant did not know why name was misspelled and counsel submitted that it was simply an error and that standards in St. Lucia are not the same as they are in Canada. I do not find the claimant's explanation satisfactory. While the names and would be phonetically similar when pronounced, the letters "S" and "C" are not immediately adjacent to each other on a keyboard. It simply makes no sense for a letter allegedly originating from the principal of a secondary school to get the spelling of the name of one of the school's students wrong when the sole purpose of the letter is to confirm that student's attendance at the school in the first place. I find that

this discrepancy not only calls further into question the authenticity of the claimant's documents but also further undermines the claimant's credibility.

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[9] The claimant presented pictures (reproduced on the final page of her PIF narrative) to corroborate the fact that [REDACTED] had been shot and wounded. The pictures appear to show a young man with pieces of cotton affixed to his body by duct tape, or something similar. Of course, the pictures cannot say what if any injuries are actually under the pieces of cotton. As noted at the hearing, no medical or police report was produced to corroborate the injuries. Counsel did provide a brief news article,¹⁰ ("Shooting at [REDACTED]"), however, this article raised even more questions. The article states that [REDACTED] and another person were walking home when "an unknown person" shot at them from a vehicle. The PIF states that [REDACTED] got another person to shoot [REDACTED]. However, as noted at the hearing, the claimant testified that [REDACTED] told her it was [REDACTED] himself who shot him and [REDACTED] described him specifically. The declaration¹¹ presented from [REDACTED] mother reads as if [REDACTED] had done the shooting himself as well. The claimant stated that [REDACTED] was not alone at the time of the shooting. Counsel submitted that it is not known how the news reporter obtained the information in the article and therefore the information may not be complete or correct. I do not find the claimant's explanation satisfactory. I realize that the claimant was not present for the alleged shooting of [REDACTED] and she is relying on the reports of others. However, these reports simply cannot be reconciled. Had there actually been two or more people in the vehicle, I would not have expected the article or the other documents to be written the way that they were. The claimant was quite definite about [REDACTED] doing the shooting himself and stated that she learned this from speaking with [REDACTED] personally. This was corroborated by the declaration from [REDACTED] mother. However, the claimant's evidence changed entirely when it was pointed out that the PIF stated that someone else shot [REDACTED] on [REDACTED] behalf and the news article made reference to an unknown person rather than the still "at-large". Given the discrepancies with respect to the identity of the shooter and the fact that medical and police reports, which I find, would have been reasonably available, were not presented to clear up these discrepancies; I find that the claimant's credibility is further undermined.

[10] In the PIF there is no mention of [REDACTED] threatening the claimant's mother after the assault on the claimant. In oral testimony, the claimant stated that she was not aware of any threats against her mother. However, as noted at the hearing, in the notes of the immigration officer¹² made at the time that the claimant made her refugee claim, it specifically states that [REDACTED] was threatening the claimant's mother. The claimant stated that given the stress she was under at the time, she had said things that had not actually happened. Counsel submitted that the claimant was referring to general fear on the part of her mother. I do not find the claimant's explanation satisfactory. Either [REDACTED] was threatening the claimant's mother or he was not. The way that the immigration officer's notes are written indicates that this was not a reference to "fear". The claimant essentially admitted that she was not telling the truth when she told the immigration officer about her mother being threatened. I do not

see why “stress” would cause her to spontaneously make-up this information. It appeared that the claimant was simply embellishing her claim by lying. I find that this discrepancy further undermines the claimant’s credibility.

[11] Given the serious contradictions, discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and therefore the claim fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, her claim pursuant to section 97 of the *IRPA* fails as well.

CONCLUSION

[12] For all these reasons, the Refugee Protection Division therefore rejects her claim.

(signed)

“David McBean”

David McBean

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Guidelines issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*, Immigration and Refugee Board, Ottawa, Canada, September 30, 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 4 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 5 Exhibit C-1 PIF, as amended by exhibit C-4.

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6 Exhibit C-2, medical note signed by Dr.

7 Exhibit C-4, *Response to Information Request*, number LCA100713.E, January 4, 2006, p. 3 of 6.

8 Exhibit C-4, Statutory Declaration dated October 31, 2008.

9 Exhibit C-4, letter dated October 21, 2008.

10 Exhibit C-4, 2008.

11 Exhibit C-4, Statutory declaration dated November 15, 2008.

12 Exhibit R-2, CIC Etobicoke In-person Refugee Intake "Record of Examination".



RPD File No. : TA8-05434



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-05677

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	September 12, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	October 16, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Paul St. Clair	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant was born in 1971 and from a young age lived in . When the claimant was very young, his father left the family. His father unexpectedly re-appeared in 1993, demanding a divorce from the claimant's mother and possession of the family home, even though at the time the claimant's brother was sick with AIDS. In a face-to-face confrontation, the claimant's mother prevented him from striking his father. The claimant's father continued to make demands for a divorce and the house and in a private confrontation, hit the claimant's mother, causing bruising to her face. The claimant's mother covered up the cause of her injury when the claimant discovered her. In a later confrontation, the claimant's father threatened to hire someone to kill him. In 2004, the claimant's father and three men attacked the claimant and warned him to leave Mexico. The claimant fled to Canada in . 2004, and made a refugee claim three years later in 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility

There were numerous, serious contradictions and omissions when the claimant's oral testimony was compared to his Personal Information Form³ (PIF) and the notes made by the Immigration Officer at the time that he made his claim.⁴ For example, the claimant stated in oral testimony that the worst confrontation that his mother had with his father was approximately in

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2004. The claimant's father beat the claimant's mother all over her body at her house. The claimant presented what appears to be a medical note and a Public Ministry denunciation that purport to document the event. However, as pointed out at the hearing, nowhere in the claimant's very detailed six-page narrative does the claimant mention his mother being beaten in 2004. The only time the PIF mentions that the claimant's mother was injured was the time that she suffered bruising to her face, which is not consistent with the medical note. The claimant stated that he was definitely referring to two separate incidents, and that the incident with facial bruising had occurred years before the 2004 incident. When asked once again why such a terrible incident was totally omitted from his narrative the claimant stated that it must have escaped his memory. During questioning from counsel, the claimant was asked how many times there were physical confrontations between his parents, and said that there were approximately 20 physical confrontations and that he had forgotten to mention the 2004 occurrence because there were so many. When I asked why in his PIF he would only mention one physical confrontation between his parents, particularly one where her injuries were relatively mild, while omitting all mention that there were 20 confrontations including one fairly recent where his mother's injuries were more severe, required medical attention and caused her to report the incident to the authorities, the claimant stated that he was upset and wanted to forget about the situation and that his father was still his father. I do not find this explanation satisfactory. The directions for filling out the PIF are quite clear; all incidents that happened to the claimant and all incidents that happened to anyone similarly situated to the claimant are supposed to be recorded. The PIF was filled out with the assistance of counsel. The PIF only mentioned one physical confrontation between the claimant's parents. To suddenly say at the hearing that there were actually 20 physical confrontations, including one where the injuries sustained were far more severe than the one described, required medical attention and Public Ministry involvement makes absolutely no sense. I find that these omissions from the PIF undermine the claimant's credibility.

The claimant described in some detail the incident where his father and three men attacked him. Despite being prompted several times, the claimant failed to say that either his father or the three men told him that he should leave Mexico entirely, as they were alleged to have said in the PIF. When the omission was pointed out, the claimant said that the PIF was not actually accurate and that his assailants said something more to the effect that the claimant should get away from "here", but was unsure of the exact language used (even after several attempts at getting that language right). I do not find this explanation for the omission satisfactory. The claimant affirmed both orally and in writing that his PIF was complete, true and accurate. The PIF plainly states that "...they warned me to leave the country as soon as possible otherwise, I would face severe circumstances." The claimant then, as a result of the very specific warning, left the country. Attempting to explain the omission of this warning that proved to be pivotal in the claimant's life by stating that the assailants actually said something else makes no sense at all. I find the omission of this pivotal warning to further undermine the claimant's credibility.

s.19(1) The claimant did not make a claim immediately upon his arrival in Canada in 2004. He was admitted as a visitor and stated that after a month or two he found out that he had been granted the default permission to stay for six months. A friend with whom he was staying helped him apply for and receive an extension of three months, which would have meant that his status as a visitor expired in approximately 2005. The claimant made no further request for an extension of visitor status and did not make a refugee claim until 2007. When asked why he had not made a claim earlier or at least tried to extend his visitor status further, the claimant stated that he could not since his friend had moved away, he was not fluent in English and did not know what to do and that only after meeting more friends over two years later did he learn the proper process. I do not find this explanation to be satisfactory. The claimant was aware of the limited nature of his status and was aware of the possibility of having it extended. Having already successfully done that once, it makes no sense that he would make no further enquiries regarding extending his status as a visitor further or investigating other means to stay. I find that the delay in making a claim of over two years since the expiry of his status as a visitor (which itself lasted nine months) not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

When the claimant finally did make a claim in 2007, he spoke with an Immigration Officer. Detailed notes were taken of the reasons that the claimant was making a refugee claim. While the notes include many details on many points, they only state that the claimant's father "threatened" the claimant and his mother. They do not state that the claimant's father attacked the claimant with a gang of men and they do not state that the claimant's mother was attacked either, whether once or 20 times. When asked why he would include numerous other details but not mention at all any of the many incidents of physical violence, the claimant stated that he had been nervous and was in a new situation so he simply forgot to mention these events. I do not find this explanation satisfactory. The claimant had been in Canada three years by the time that he made his claim. He had previously dealt in some way with Immigration by having his status as a visitor extended. An interpreter was present in person so there should have been no miscommunication. Had the claimant or his mother actually experienced any violence (of how ever many times) I would, under the circumstances, expect some mention of them to have made to the Immigration Officer. I find that this omission of all the alleged violent events further undermines the claimant's credibility.

CONCLUSION

Given the numerous inconsistencies and omissions noted, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleges happened to him, actually happened. As such, his claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*,

his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

October 16, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form (PIF).
- 4 Exhibit R-2, Etobicoke In-person Refugee Intake, Record of Examination.

RPD File No. / N° de dossier de la SPR : TA8-05677



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-06094

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

September 12, 2008

Date(s) de l'a

Place of Hearing

TORONTO

Lieu de l'a

Date of Decision

November 14, 2008

Date de la

Panel

David McBean

**Counsel for the
Claimant(s)**

Byron Thomas
Barrister and Solicitor

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

Nil

Agent(e) des tr

Designated

Nil

Représent

000744

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant lived in [redacted] and [redacted]. His [redacted] was contracted by [redacted] (“[redacted]”) to [redacted] during a party at a ranch on [redacted], 2006. The all-night party turned out to be a scary situation with foreigners, guns and drugs. While a gun was pointed during a fight, other people calmed the combatants down. At approximately 5:00 a.m. [redacted] paid the [redacted] pesos (approximately \$[redacted] Canadian) and said that he would call them again for another party. When the [redacted] was contacted about [redacted] at the next party, the [redacted] refused to accept the contract. [redacted] reported being threatened and followed and several quit the [redacted]. The claimant received threats and was told that he was under surveillance. Out of fear, the claimant agreed in [redacted] to [redacted] but reported the situation to the authorities. The authorities stated that they would attack the ranch on the day of the party and that the claimant should act as if he planned to be at the ranch. While the claimant did not attend at the ranch, the authorities did, arresting numerous people, including some from Mexico, Colombia, and the United States of America (USA). The claimant began receiving threats from [redacted] in [redacted] and moved to [redacted]. Hearing that the threats were still continuing at his home, the claimant moved to Mexico City in [redacted], moving between the homes of various friends. The claimant fled to Canada on [redacted], 2007, and made a refugee claim on [redacted], 2007. Police officers visited his former home looking for the claimant in [redacted] 2007. They returned again in [redacted] 2007 still searching for the claimant, this time beating the claimant’s father. In [redacted] 2007 and [redacted] 2008, the claimant’s uncles received enquiries about the claimant. On [redacted], 2008, after leaving the claimant’s parents’ house, the claimant’s uncle and grandmother were in a vehicle that was struck by a transport truck. The claimant’s uncle was injured, the claimant’s grandmother was mortally injured and the truck driver fled the scene. An anonymous note was later delivered to the claimant’s parent’s house stating the “accident” was a consequence for not saying where the claimant was. It was obvious to the claimant by this time that the police and the criminals were working together against him.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta by drug traffickers and police officers acting outside of their lawful duties. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

s.19(1) It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared to the Personal Information Forms³ (PIFs) and the other documents available. For example, in oral testimony, the claimant stated that he did not meet [redacted] at the party at the ranch but did hear people talking about him. He also said that he would not be able to recognize him as he had not seen him and at the conclusion of the party, someone else spoke on [redacted] behalf when it came time to pay the [redacted]. However, as pointed out at the hearing, the PIF indicates that [redacted] spoke to the [redacted] directly, paid the [redacted] directly and personally promised to call the [redacted] for another party. When asked to explain this discrepancy, the claimant stated that he had always said that someone always spoke on [redacted] behalf. I do not find this explanation satisfactory. The PIF makes no mention of [redacted] speaking to the [redacted] through an intermediary and in several references to [redacted], uses language that indicates personal contact. I find that this direct contradiction between whether or not the claimant ever met the main agent of persecution to undermine the claimant's credibility.

At the hearing, the claimant said that the name of [redacted] was "[redacted]" ([redacted]) and while he occasionally [redacted], that was the [redacted] through which he earned a living. However, as pointed out at the hearing, the PIF listed the name of the [redacted] as "[redacted]" ([redacted]). When asked to explain this discrepancy, the claimant stated that he was confused. I find that this explanation does not explain the contradiction. I note that the PIF was amended on more than one occasion and one of those amendments was actually to change a

s.19(1) date in the line in Question 7 "Work Experience" that deals with the . Therefore the line in the PIF was not written in haste and never viewed again. It was changed in the . 2008 amendments so the claimant was obviously aware of what was stated in the PIF. Also noted at the hearing was that the only evidence that the claimant provided that he was in a were two pictures of what appears to be the claimant standing with and with . While interesting, the copies of the photos provided do not show the , the date that they were taken or the context in which they were taken. Without further information, the photos could easily be of the claimant . However, no further documents such as advertising, contracts, pay stubs or other information that would have established the correct and the claimant's membership in it were provided. The claimant stated that the photographs were sent to him in an effort to substantiate his claim so it is obvious that the claimant was aware of the benefits of providing corroborating documents. However, the claimant did not provide any documents beyond the two pictures, even though one would think after earning an income in a for almost six years, there would be reasonably available documents. I find that this unexplained discrepancy in the name of the claimant's and the lack of reasonably available supporting documents to further undermine the claimant's credibility.

The claimant's story revolved around a major drug bust of drug traffickers from Mexico, the USA and Colombia. While it should be noted that it took some creative questioning before the claimant stated that some of the people at the ranch were Colombian, he eventually stated the three countries. As pointed out at the hearing, my specialized knowledge gained from adjudicating other Mexican claims is that major arrests of drug traffickers usually receive extensive media coverage and there was apparently none here. The claimant did not know why there was no coverage of the event. While I realize that in later events the claimant alleges that the authorities were working in collusion with the traffickers, there was no such apparent collusion at the time. If a major arrest had been made of international drug traffickers, I would expect it to be mentioned in the media. I find the fact that it was not mentioned further undermines the claimant's credibility.

The claimant's PIF originally stated that he became fearful enough to flee seven months after the arrests were made. However, this was amended in August 2008 to read three months. The timing is significant as it is the only way in the original narrative to fix the time of the arrests and the length of time that the claimant spent in Mexico after those arrests. When asked why he was so far off the allegedly correct time in the original PIF, the claimant stated that original PIF had never been translated back to him to check for errors. I do not find this explanation satisfactory. The claimant signed a declaration on page 13 of the original PIF, stating that the entire content of the PIF had been interpreted to the claimant and that the contents were complete, true and correct. At the time the claimant was represented by his previous counsel, a member in good standing of the Law Society of Upper Canada. Despite being allegedly induced to sign a false declaration, the claimant made no complaint to the Law

Society which is what I would expect if such an allegation were true. I find that this discrepancy in the timing of one of the major events in the claimant's story to further undermine the claimant's credibility.

s.19(1)

The original PIF made no mention of the claimant ever being threatened after the authorities arrested everyone at the ranch. After apparently staying in the same area for a period of months, his fear built up to a certain level and he left Mexico. However, in the amended narrative, the claimant personally received a number of threats after the arrests while he was still in [redacted] and the threats continued to be received by his parents even after he relocated twice within Mexico (neither relocation being mentioned in the original PIF) and as a result, he left the country. When asked why he had omitted all mention of these numerous threats in his original narrative, the claimant said that he had experienced too much trauma and that and that many changes had occurred in his life. When asked why he had failed to mention that he had relocated twice in his original PIF either in the narrative or at Question 11 which deals with where the claimant lived, he said that he had simply been told to sign his previous PIF and that he may have not realized that his relocations had not been recorded. I do not find these explanations satisfactory. I would note that the claimant has never been injured personally, and that the only time that he personally interacted with the alleged agents of persecution was at a party where he saw one guest point a gun at another guest. At the time that the claimant signed his original PIF in June 2007, the only significant things that had allegedly happened were the party that he [redacted], the aborted second party and numerous threats after the arrests were made, even after he relocated twice. When the claimant signed his first PIF, he was represented by a lawyer who is a member in good standing of the Law Society of Upper Canada. Had the lawyer's conduct been improper in asking the claimant to sign an incorrect document I would normally expect a complaint to be filed with the Law Society of Upper Canada. As noted previously, no complaint was filed. At the time that the claimant signed his original PIF, he had been in Canada for four months, a period which should have given him some mental distance from what happened in Mexico. Given that relatively few things has happened up until that point, I would have expected at least some mention of threats being made in the original PIF, particularly since it changes the rationale for the claimant leaving Mexico, i.e., general fear versus actually being threatened, even after the claimant left town. I find that these discrepancies further undermine the claimant's credibility.

In the psychological report⁴ Dr. [redacted] states at page 2: The threats became more serious over time. Mr. [redacted] moved to different cities and they always managed to find him."[emphasis mine]. At page 4, she states:

...he would be unable to cope with that situation. This would be the case regardless of where in Mexico he would travel to, as he believes that his persecutors would find him anywhere, as they did when he tried to hide within the country before." [emphasis mine].

As pointed out at the hearing, while the psychological report makes repeated definite reference to the claimant being found even after relocating twice, his PIF, even after being amended and extensively added to, makes it quite clear that the claimant was never “found”. The claimant stated that he had never been found and that he had only feared being found. He then added that the later threats indicated that the person who was making the threats knew that the claimant had relocated to the Federal District. As pointed out at the hearing, this fact was not mentioned in any version of the PIF, whether the original (where there were no threats), the PIF as amended or in the quite detailed and extensive addendum. The claimant stated that once again he had forgotten this fact due to the trauma that he experienced. I do not find this explanation to be reasonable. The claimant has had more than one occasion to tell his story in writing, given the different versions of the PIF. The claimant has been represented by two experienced lawyers. The addendum that does mention the threats in some detail makes no mention that the claimant’s city of residence was known. Had this been true, I would have expected it to be mentioned. It appeared at the hearing that the claimant was simply embellishing this aspect of his story to try to provide some explanation for Dr.] inexplicable statements that directly contradicted the PIF and the claimant’s oral testimony when the claimant otherwise had no explanation. I find that these discrepancies in whether or not the claimant had ever been “found” after relocating to further undermine his credibility. s.19(1)

In the original PIF narrative, while it is a little unclear on the point, the impression given is that the authorities already knew the date of the second party when then claimant went to see them. In the amended PIF and in oral testimony, the claimant stated that he gave the date of the party to the authorities. However, as pointed out at the hearing, in the psychological report, Dr.] states at page 2: “This group tried to hire them again but they refused. They only agreed at one point in order to help the police locate the group”. When asked why the psychological report seemed to indicate that the claimant negotiated the date of the second party at the behest of the authorities when in the PIF and oral testimony he only went to the authorities and spoke to them for the first time after the date was already set, the claimant stated that there were a lot of things on his mind and that he had been carrying a heavy load. I do not find this explanation satisfactory. While Dr.] herself states that the claimant can have problems with concentration and forgetfulness, this is not a situation where the claimant merely forgot a detail, it is a direct contradiction on more than one point (claimant spoke to authorities before versus after setting the date for the party, claimant set the date on his own initiative versus at the behest of the authorities) and I find that this unexplained contradiction undermines the claimant’s credibility.

The claimant stated orally and in his PIF addendum that a truck had struck the car that his uncle was driving and as a result, the passenger, the claimant’s grandmother, died of her injuries the next day. However, as pointed out at the hearing, the detailed accident report⁵ provided makes it clear that it was actually the claimant’s uncle’s car that struck the truck, albeit with the truck driver at fault. The detailed

report states that both vehicles had been southbound on the same road with the truck having pulled wide right in order to make an awkward left turn. As the truck swung across the roadway the car drove into the truck. The claimant's grandmother suffered severe head trauma which is consistent with the accident happening in this manner. Even after the contents of the report were pointed out to the claimant he continued to insist that it was the truck that had struck his uncle's car. While counsel submitted that it is mere semantics as to which vehicle "struck" the other vehicle, I do not agree. It is one thing for a truck to make

an improper left turn in front of another vehicle, it is entirely another for a truck to specifically crash into that vehicle. Apart from the claimant insisting that the accident would have happened in a different manner, I find that it is implausible that a large truck would somehow follow the claimant's uncle from the his parent's house, speed up enough to get past the car, get far enough ahead to slow down to make a difficult acute turn and then intentionally make that turn in front of the car. If the truck driver had somehow followed the car in the first place, one would have expected the truck to simply attempt to run the car off the road. As it is, there is no mention in the report of the truck being seen by the claimant's uncle at any time prior to the accident which one would expect if the truck had been involved in following the claimant. I find that the accident, while sad, was not sinister and does not assist the claimant.

s.19(1)

At the hearing, the claimant described what had happened to one of his (" "). While the claimant was quite evasive in providing answers to my questions on the issue, it was eventually established that was in the as the claimant, for the same party at the ranch, was threatened, went to the authorities, was threatened further and then fled the country. Other than choosing the USA and the claimant choosing Canada, their basic situations were exactly the same. However, and his experiences are not mentioned anywhere in the PIF. The claimant said that he did not think that ' situation was important enough to mention. I do not find this explanation satisfactory. The directions for filling out the PIF narrative are quite clear: "Indicate the measures taken against you and members of your family, as well as against similarly situated persons..." [emphasis mine]. The claimant has been represented by two experienced lawyers. While general aspersions were cast at the claimant's original lawyer, his current lawyer would have been able to advise him on the proper way to fill out a narrative. The claimant has told his story in a PIF, an amended PIF and a very detailed extensive addendum to the PIF and the only mention of was in the claimant's oral testimony. If there really is a who experienced all these things that the claimant allegedly experienced, I would have expected that would have been mentioned in one of the PIF documents. I find that this omission further undermines the claimant's credibility.

Given the numerous contradictions, inconsistencies and other discrepancies on major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened. While the claimant did present a psychological report stating that he was forgetful and had difficulty concentrating, the vast majority of the problems identified above were not simple vagueness or forgetting of the odd detail; the vast majority of the problems are dramatic contradictions or omissions of major parts of the claimant's life that forgetfulness and lack of concentration simply do not explain. I also note that the psychological report was prepared based on the claimant's story, a story which I simply do not believe. If the claimant is suffering from some psychological issues from some other source, no evidence has been presented that he could not obtain treatment for these issues in Mexico.

CONCLUSION

The claimant alleged that he is the victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

November 14, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1, PIF and C-2, amended PIF.
- 4 Exhibit C-4, psychological report dated August 21, 2008.
- 5 Exhibit C-4, item 4.

RPD File No. / N° de dossier de la SPR : TA8-06094



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-06216

TA8-06217

TA8-06218

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	October 3, 2008	Date(s) de l':
Place of Hearing	TORONTO	Lieu de l':
Date of Decision	October 16, 2008	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	No counsel	Conseil(s) du / d demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr

**Designated
Representative(s)**

Nil

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

s.19(1)

, his wife and daughter

citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimants ran a . In 2004, the male claimant was robbed after cashing a cheque at a bank. Later in the same year, the claimants were robbed of the bonuses they planned to pay to their staff. The male claimant eventually learned that one of his high school friends, , was behind all of this. romantic/sexual intentions had been rebuffed years ago by the male claimant. Despite having no contact with the male claimant for a significant period of time, suddenly appeared at the male claimant's workplace in , 2006, in the company of other men.

forcibly raped the male claimant and demanded that he comply with his wishes in the future otherwise he would harm the male claimant's family. The claimants fled to Canada in 2006 and made refugee claims in 2007.

Attempted Withdrawals

On October 14, 2008, during the drafting of these reasons, the claimants submitted "Notice of Withdrawal of a Claim for Refugee Protection" forms for all claimants. As noted on the forms themselves, these forms cannot be used in cases where substantive evidence has been heard. Instead, as per Rule 52(3) of the Refugee Protection Division Rules, the claimants are directed to file a formal application to withdraw under Rule 44. As they have not complied with the requirements of Rule 44, their applications to withdraw are rejected. I also note that, even if Rule 44 had been complied with, given that the claimants made their claims one and a half years ago, the hearing was concluded, their decisions were already in the process of being written and there being no other information available with respect to the reasons for withdrawal, their applications would not have been allowed as this would be an abuse of process as per Rule 52(1).

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or

punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Nexus

The claimants have alleged that they are victims of crime based on being criminally harassed by the male claimant's former friend. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.

Credibility

It quickly became apparent that there were a number of serious contradictions and omissions when the claimant's oral testimony was compared to the Personal Information Form (PIF)³. For example, there were dramatic differences in the descriptions of the first time that the male claimant was robbed in 2004 when the male claimant's oral testimony was compared to his PIF. The claimant recalled that he was at a bank to cash a cheque. A minor problem, but in oral testimony, he said the cheque was for 10,000 pesos (a little over \$1,000 Canadian) and in the PIF the cheque was described as being 5,000 pesos. When asked why the two descriptions differed, the claimant eventually stated that he was unsure of the amount, despite the fact that both descriptions seemed quite definite. In any event, after secreting whichever amount of cash on his person, the male claimant then left the bank and was immediately robbed. In oral testimony, the male claimant gave a detailed description of two men who approached him as he rounded the corner of the bank building; one from the side and one from the back. The robber who approached from the back put an unknown object, presumably a weapon, to the claimant's back. He described their age, their skin colour and some of their clothing. However, in the PIF, the claimant was not approached by two men. Instead, he was approached by a single man who pointed a gun at his stomach, i.e., the single man approached him from the front. When confronted with the fairly dramatic differences in describing how he encountered the robber(s), the claimant could not provide a satisfactory explanation beyond eventually saying that he had

mixed events up. It makes no sense for the claimant to describe the events in such detail in each instance and yet have each description so dramatically contradict the other one. I find that these significant differences in describing how he encountered the robber(s) to undermine the claimants' credibility.

There were even differences with respect to where the claimant was relieved of his cash. In oral testimony, the claimant described the two men walking towards the claimant's car with him and relieving him of his cash along the way. After taking his cash, they told him to continue walking to his car and not to look back while they made their escape. This contrasted sharply with the PIF where the single robber is described as taking the claimant inside a grey-coloured vehicle, where, in the company of other robbers, the claimant was relieved of his cash. Once again, the claimant could not provide a satisfactory explanation as to why the two accounts differed so dramatically. Once again, I find that these dramatic differences in where and how the male claimant was robbed to undermine the claimants' credibility.

There were further problems when the subject changed to the second robbery in 2004. In oral testimony, the male claimant stated that he noticed a moving van outside his home. Upon investigating a knock at the door, the male claimant was physically forced back into his home by robbers. However, in the PIF, the male claimant and his wife are described as arriving at their home in their car. As they got out of the car, two men with guns on motorcycles approached them and then took them into the house. When confronted with this contradiction in how the robbers encountered the claimants, the male claimant could not provide any satisfactory explanation as to why the two accounts were so different. Once again, I find this dramatic difference in how the claimants encountered the robbers to undermine the claimant's testimony.

The male claimant orally described these robbers as making threatening remarks before going on to steal money, equipment, raw materials to make clothes and already manufactured clothes. This once again differed from the PIF, where the robbers were described as physically (emphasis mine) and verbally assaulting the claimants before stealing 15,000 pesos, with no mention of anything else being stolen. Once again, the claimant could not provide a satisfactory explanation for the differences other than stating that he was upset and that his mind was blocked. Given the very detailed descriptions of what happened and that each description differed once again from the other (e.g., physically assaulted versus not being physically assaulted), I find that these discrepancies once again undermine the claimants' credibility.

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Apart from the rather dramatic discrepancies in the male claimant's testimony, the claimant's story just did not make sense on a very basic level. The claimants allege that a high school friend of the male claimant's, (), was rebuffed in romantic/sexual advances years ago. Then, for some unknown

s.19(1)

reason, maintained an interest in the male claimant's affairs, sent people to rob him twice in 2004 and then after at least two years of not even speaking, suddenly appear at his workplace with other men to rape him. I fail to see how any of this story makes sense. Throughout the male claimant's testimony, there were numerous serious credibility concerns on a host of issues. At many points, it appeared that the claimants concocted from thin air an implausible story, submitted it with their PIFs and then failed to keep a copy for later reference, forgetting the vast majority of the details along the way. Given the numerous inconsistencies and omissions noted and the general implausibility of the story itself, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants allege happened to them actually happened. As such, their claims pursuant to section 97 of the *IRPA* fail as well.

CONCLUSION

The claimants have alleged that they are victims of crime based on being criminally harassed by the male claimant's former friend. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. As I find that the claimants were lacking in credibility, the claims also fail with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

"David McBean"

David McBean

October 16, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

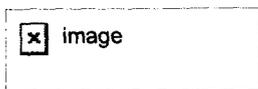
2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, Personal Information Form.

RPD File No. / N° de dossier de la SPR : TA8-06216

TA8-06217

TA8-06218



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA8-06422

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision **s.19(1)**

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	August 27, 2008	Date(s) de l':
Place of Hearing	Toronto, Ontario	Lieu de l':
Date of Decision	October 24, 2008	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	Richard Addinall Barrister & Solicitor	Conseil(s) du / d demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) des tr

**Designated
Representative(s)**

N/A

**Représent
dési**

Counsel for the Minister

N/A

Conseil du

s.19(1)

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

ALLEGATIONS

The claimant grew up in _____, and knew from a young age that he was gay. He experienced a number of problems growing up, particularly at the hands of his homophobic father. After meeting people at university with diverse sexual orientations, he came out to his mother at age 19. While she was initially upset, she said that she loved him as he was. However, she warned him not to tell his father. After finishing university and working to support his parents, the claimant decided to come out to his father on _____, 2006. Unfortunately, his father did not react well and began yelling at the claimant. His father left the room only to return with a machete. The claimant ran from the house with his father in pursuit. After running through a house near the beach, the claimant did not see his father. The claimant then continued to run to his aunt's house. After his aunt attempted to calm him down, the claimant went to the Public Ministry to attempt to complain about his father, however, they rebuffed his complaint and recommended that he attempt to calm his father down. The claimant collected his belongings on a day that his father was not home and traveled to Canada on _____, 2006. He then made a refugee claim on _____, 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing, as a copy of his Mexican passport was on file.² The claimant's sexual orientation was provisionally accepted at the beginning of the hearing and I do find that the claimant has established that he is gay.

Internal Flight Alternative (IFA)

Even if I accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District (F.D.). In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- i. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

s.19(1) With respect to the first prong of the test, the claimant fears death at the hands of his father and from Mexican society in general. With respect to the former, after literally fleeing his father, the claimant stayed at his aunt's place for a little over two weeks. His aunt evidently did not live a great distance from his parents' home as he traveled there on foot. While the claimant believes that his father knew where he was, his father never came to his aunt's place. If the claimant were to relocate to the F.D., it should be noted that it is not always easy to trace people in Mexico. There is no comprehensive personal database in Mexico and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁴ While the claimant believes that his father will draw upon his connections as a who sometimes works to get around all the impediments in tracking someone in Mexico, will find the claimant in the F.D. (a massive city over 1000 kilometres away) and then do him harm, I disagree. No evidence has been presented that the claimant's father attempted to harm the claimant when the events were fresh in his mind and the claimant was in an apparently known location within walking distance. While the claimant said that relations were not strong between his father and his aunt and that he would go "out" if he thought his father was in the area, I do not see how either of these points would prevent the claimant from being harmed. If his father was so intent on killing his own son that he would travel to a strange city far away to accomplish his mission, he surely would not be concerned with the feelings of the claimant's maternal aunt. Also, it was unclear how the claimant would know

when his father would be, to use the claimant's word, "roaming" the area, so that he could get away from the house. In any event, no evidence has been presented that the claimant's father ever approached the claimant's aunt's house regardless of who was there at the time. I find that the claimant's father would not attempt to track him down in the F.D. should the claimant relocate there.

With respect to Mexican society in general, the independent documentary evidences⁵ indicates that there have been substantial political and legal gains for sexual minorities, particularly at the federal level and in major cities, such as the F.D. On December 12, 1998, language, which discriminated on the basis of sexual orientation, was removed from the F.D *Penal Code*. One of the co-sponsors of the legislation, lesbian Congresswoman, Patria Jimenez, stated, "With this achievement, Mexico eliminates the last vestiges of discrimination based on sexual orientation from its legal framework."⁶ In September 1999, the Legislative Assembly of the F.D passed an ordinance banning discrimination based on sexual orientation. The law, sponsored by David Sanchez Camacho, another elected gay and lesbian rights activist, went into effect October 1, 1999. In practice, the government of the F.D. has been relatively diligent in enforcing its anti-discrimination statute.⁷ In April 2003, the Mexican Congress unanimously approved a sweeping new Federal Law to Prevent and Eliminate Discrimination, explicitly referring to sexual orientation as one of the prohibited grounds of discrimination.

The documentary evidence also states:

Gay magazines with erotic photography are available for sale in kiosks in major cities. The authorities generally permit open displays of political activism, including protests and gay pride parades, and allow service organizations and gay bars to operate relatively unhindered in larger cities. Gays and lesbians are invited to take part in educational programs and debates on television.⁸

Participation by homosexuals is now widely accepted in at least two of Mexico's three principal political parties.⁹

A law allowing same-sex unions in the F.D. became effective March 16, 2007.¹⁰ Conjugal prison visits are now allowed for same-sex partners. At least one source estimated the number of gay and lesbian organizations in Mexico to be 180, with many in the F.D.¹¹ The National Council Against Discrimination (CONAPRED) has an office in the F.D. CONAPRED is charged with investigating discrimination and working to ensure compliance with international human rights treaties ratified by Mexico regarding sexual orientation. Individuals and organizations can file complaints of discrimination with CONAPRED. Allegations of discrimination committed by public officers require mandatory responses that are dealt with forthwith. CONAPRED is empowered to punish public officials found to have discriminated and will provide assistance with filing a lawsuit if the accused refuses mediation.¹² Victims of discrimination can also contact their state Human Rights Commission.¹³ Some concerns have been voiced, however, about the effectiveness of the Human

Rights Commission.¹⁴

This is not to say that the situation for gay men in the F.D. is perfect. For example, the Citizens' Commission Against Homophobic Hate Crimes (CCAHC) alleged there were 332 murders in Mexico as a whole, between 1995 and 2004. However, concerns have been noted with respect to the group's methodology, given they have relied upon newspaper reports and assumed there were a number of undocumented homicides for every documented one.¹⁵ Also, while every murder is regrettable, there is no indication if this murder rate is statistically significant on its own or is statistically significantly different from the murder rate in the general population.

While counsel did cite a number of documents in his package, it should be noted that many of the documents are somewhat outdated at this point and events in Mexico have overtaken them. Some other documents cited are rather vague with respect to details. For example, in "Homophobia in Mexico",¹⁶ Professor Casteneda Marina states that there is an average of 35 reported homophobic murders per year and that Mexico ranks second in the world for anti-gay violence. No sources are given for such statements. Perhaps the murder rate figure originates from the CCAHC research, but as noted previously, there are serious concerns with respect to their methodology and whether or not their results are significant statistically.

Counsel also noted that a "gay kiss" caused an incident in a hotel pool in the resort area

of “Los Cabos”.¹⁷ The circumstances are much in dispute as to whether it was a short peck on

the cheek or something more elaborate. One thing that the article does say that in contrast to smaller centres (such as Los Cabos), “In recent years it has become common to see same-sex couples holding hands in Mexico City’s trendiest neighborhoods...”.

Counsel also noted the affidavit evidence from a member of the Federal Prosecutor’s Office (PGR) dealing with her experiences that led her to claim refugee status.¹⁸ Apart from being originally written in support of her own claim and therefore somewhat self-serving, once again this information is rather dated, given that she was apparently a member of the PGR from 1997 to 2000. Therefore, I do not find it useful here.

I find that, on a balance of probabilities, the F.D. does provide a safe IFA for the claimant.¹⁹ The claimant has provided insufficient evidence to rebut the presumption of state protection in the F.D. There is no serious possibility that as a gay man he would face persecution at the hands of his father or society in general in the F.D.

s.19(1) With respect to the reasonableness of the claimant moving to the F.D., I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.²⁰ If the claimant were to return to Mexico, he would be using the international airport in the F.D., so he would not have to return to his hometown. He should not have trouble establishing himself in the F.D. given his 17 years of education, up to and including university. He has several years of work experience in his field of He did express concern that he would not have contacts or connections in the F.D. to draw upon and it would therefore be more difficult to find work. While, these concerns are understandable, they are experienced by all people and are generally experienced by anyone who relocates to a new area. I find that it would not be unduly harsh for the claimant to relocate to the F.D.

CONCLUSION

As I find the claimant has a viable IFA in the F.D, the claim fails with respect to section 96 of the *Immigration and Refugee Protection Act*. Given that there is no other evidence that would suggest that the claimant is subject, on a balance of probabilities, to the harms enumerated under section 97(1) of the *Immigration and Refugee Protection Act*, the claim pursuant to that section fails as well.

For all these reasons, the Refugee Protection Division, therefore, rejects the claim.

“David McBean”

David McBean

October 24, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, certified true copy of the claimant’s passport, received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 Exhibit R-1, *National Documentation Package*, June 27, 2008, item 2.4, Mexico: Situation of Witnesses to Crime and Corruption, section 3.3, “Traceability of Individuals Fleeing Violent Situations”, February 2007.
- 5 Exhibit R-1, item 6.1, Reding, Andrew, *Sexual Orientation and Human Rights in the Americas*, World Policy Reports, World Policy Institute.
- 6 Ibid.
- 7 Exhibit R-1, item 6.1.
- 8 Ibid.

- 9 Exhibit R-1, item 6.1.
- 10 Exhibit R-1, item 6.2, Information Request MEX102518.E, June 15, 2007.
- 11 Exhibit R-1, item 6.3, Information Request MEX43529.E, May 2, 2005.
- 12 Exhibit R-1, item 6.1.
- 13 Exhibit R-1, items item 2.4 and 6.1.
- 14 Exhibit R-1, item 6.1.
- 15 Exhibit R-1, item 6.2.
- 16 Exhibit C-4, p. 43.
- 17 Ibid., pp. 67-68.
- 18 Exhibit C-4, p. 83.
- 19 The panel notes that a number of RPD decisions finding that homosexuals had a viable IFA in Mexico City have been upheld by the Federal Court:

De La Rosa, Luis Francisco Flores v. M.C.I. (F.C., no. IMM-1624-07), Phelan, January 23, 2008, 2008 FC 83;

Rosas Carrasco, Jesus Antonio v. M.C.I. (F.C. No. IMM-3283-06), Martineau, April 12, 2007, 2007 F.C. 382;

Herrera, Oscar Marquez v. M.C.I. (F.C., no. IMM-1499-06), Shore, October 26, 2006, 2006 FC 1272.
- 20 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

RPD File No. / N° de dossier de la SPR: TA8-06422



RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA8-06674

TA8-06675

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

January 9, 2009

Date(s) de l':

Place of Hearing

TORONTO

Lieu de l':

Date of Decision

April 23, 2009

Date de la

Panel

David McBean

**Counsel for the
Claimant(s)**

Waikwa Wanyoike
Barrister and Solicitor

**Conseil(s) du / d.
demandeur(e)(s)**

Tribunal Officer

Nil

Agent(e) des tr

**Designated
Representative(s)**

Nil

**Représent
dési**

Counsel for the Minister

Nil

Conseil du

s.19(1)

and her daughter ,

citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

lived in and married (“ ”) in 2002. Their daughter, was born in 2003. Unfortunately, became violent and abusive to . In one incident in 2003, he beat her until he was too tired to continue. Despite obtaining a divorce in 2003, still had problems with . In 2004, beat . The police arrived and arrested him, however he was freed soon after filed a denunciation as had friends in the police. In 2004, after witnessing speaking with a male friend, beat the claimant so badly that she had to be taken to the hospital. soon learned that had sent men to beat her friend as well. In 2005, the claimants moved to to live with brother. On , 2005, came to brother’s house. After slapping and pushing , he grabbed He told that if she ever wanted to see again, she would move back to . Thinking there was no other option, the claimants returned to . On , 2006, once again threatened the claimant as he had found out that a man had proposed marriage to her. He said: “I will kill you before you give a stepfather to my daughter or I will take her far away from you”. came to Canada for 10 days in 2007. She returned to Canada, this time with on 2007, and they made refugee claims on , 2007.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. In coming to this decision, I have taken into account the Chairperson’s *Gender Guidelines*.² My reasons are as follows.

ANALYSIS

Identity

The claimants’ identities as citizens of Mexico were accepted at the beginning of the hearing as a copy of their Mexican passports were on file.³

Credibility

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It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Form4 (PIF) and the other documents available. For example, in the PIF, [redacted] only complained about [redacted] to the authorities once. In oral testimony, she confirmed this several times. However, as noted at the hearing, in the detailed notes of the Immigration Officer made at the time the claimants made their claims,5 [redacted] stated that she went to the authorities several times and that he was detained once. The claimant stated that the notes of the Immigration Officer were simply incorrect. I do not find the claimant's explanation satisfactory. There was an interpreter present in person during the interview with the Immigration Officer so there should have been no confusion with respect to language. The Officer's notes are quite detailed and otherwise generally correct on the vast majority of the claimant's information. If the claimant had only reported [redacted] to the authorities once, I would have expected the Officer's notes to say just that, not "several times". I find that this discrepancy in the number of times that the claimant reported [redacted] to the authorities undermines the claimants' credibility.

A document6 from the Attorney General's office was presented to corroborate the one time that the claimant went to the authorities. [redacted] stated that a friend obtained the document on her behalf. As noted at the hearing, the documentary evidence on file states that due to privacy legislation, only people directly concerned with the matter can obtain such a document, not friends.7 Also noted was the fact that the document is undated and it says that [redacted] was [emphasis mine] detained 72 hours even though it was the claimant's evidence that he was released almost immediately. The claimant stated that she did not know about anything preventing her friend from obtaining the document or why it would not have a date or why it

would state that [redacted] had been detained for 72 hours when he was not. Counsel for the claimant submitted that given that there is evidence of corruption in Mexico, it is possible that the claimant's friend could have circumvented the normal process and that perhaps because [redacted] should have been detained for 72 hours that figure was substituted for the truth. I do not find the claimant's explanation satisfactory. While the claimant's friend should not have had access to the document, even if the process was circumvented, it makes little sense for a government document to be undated and more importantly for [redacted] detention to be misstated in the manner that it was. If there was some concern about an improper length of detention, it would have made more sense for the document to state that [redacted] had been simply detained, rather than a very specific length of time be given in the past tense. I find that these discrepancies not only cast doubt on the authenticity of the documents presented but further undermine the claimants' credibility.

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In the notes of the Immigration Officer, physical abuse of is stated as starting after was born. In oral testimony, stated that while he had been psychologically abusive earlier, only became physically abusive after was born in 2003. However, as noted at the hearing, the claimant presented a letter⁸ from a friend who stated that while she had not actually witnessed physical abuse prior to the birth of , she knew that it had occurred due to her observation of evidence of “bruises and biting”. The claimant stated that her friend must have observed evidence of rough handling and biting at the hands of , however she had not been beaten at that point. I do not find the claimant’s explanation satisfactory. Either the claimant was physically abused by while she was pregnant with or she was not. The claimant stated to the Immigration Officer and more than once at the hearing that only became physically abusive after the birth of . She even theorized in earlier oral testimony that he had not abused her physically earlier because of the pregnancy. Only after being confronted with the contents of the letter did the claimant then say that had hurt her enough to leave bruises and bite marks. The two versions of events simply cannot be reconciled and I find that this discrepancy with respect to when the physical abuse started to further undermine the claimants’ credibility.

The claimant presented an undated half-page psychological report⁹ from Mexico which stated amongst other things, that the claimant had experienced “rapes”. In oral testimony the claimant confirmed that she had been raped on several occasions. However, as noted at the hearing, there is no mention in the PIF of the claimant ever having been raped. The claimant stated that she had tried to forget about the rapes. When asked why she did not amend her PIF once she received the psychological report in the weeks prior to the hearing, she stated that she was not familiar with the process. I do not find the claimant’s explanations satisfactory. Given that the psychological report originated from Mexico, the claimant would have had to have “remembered” the rapes before she came to Canada. No mention is made in the psychological report of any memory or recall problems. Even if she did not remember the rapes at the time that she filled out her PIF, the short undated report should have jogged her memory. The claimant was represented by counsel and other amendments to the PIF were made at the start of the hearing. If the claimant was truly raped several times, I would have expected that her PIF, either in its original or amended form, to state just that. I find that this discrepancy with respect to the manner in which the claimant was abused not only casts further doubt on the authenticity of the claimant’s documents but also further undermines the claimants’ credibility.

To corroborate the 2004 incident the claimant presented a “newspaper report” from “[]”.¹⁰ The report goes into minute detail of the incident, giving specific names, times and actions. Yet, as noted at the hearing, the claimant maintained throughout the process that her family had no knowledge of the abuse that she had suffered, only that there had been “problems”. When asked how this could be possible given that there was at least one very detailed media report about her abuse, the

claimant stated that the newspaper in question is small and only sold in some stores. I do not find the claimant's explanation satisfactory. It makes no sense at all for the claimant's experiences to be published in the media and yet have no one in her family and none of their friends become aware of it. If the article was genuine, I would have expected the claimant's family to be aware of the abuse. I note that physically the masthead of the paper was presented on one page and the article was presented alone on a second page. I find that this discrepancy with respect to the claimant's family's knowledge of the abuse to not only cast further doubt on the authenticity of the claimant's documents but also further undermines the claimants' credibility.

The PIF narrative was not written using perfect English. In detailing the incident in

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, one reading of the passage is that [redacted] kidnapped [redacted]. This interpretation was reinforced with the extensive notes of the Immigration Officer which referred to an incident where [redacted] had taken [redacted] out for a walk and did not return. After [redacted] was missing for a couple of days, [redacted] was finally contacted by [redacted] brother who threatened him on her behalf, after which [redacted] retrieved [redacted] in a town far away. However, in oral testimony, [redacted] stated that the two incidents were actually separate with the kidnapping incident occurring in [redacted] a week before she left for [redacted] in [redacted] 2005. She stated that in the [redacted] 2005 incident in [redacted], [redacted] grabbed [redacted] and made threats but did not kidnap her. When asked why she only described the kidnapping incident in [redacted] to the Immigration Officer but not the one where [redacted] followed her to [redacted] in [redacted], [redacted] stated that they were quick incidents. When asked why she only described the incident in [redacted] but not the kidnapping incident in [redacted] in her PIF [redacted] stated that she had been confused. Throughout, she maintained her oral testimony, that there were actually two separate incidents was to be preferred. I do not find the claimant's explanations satisfactory. The notes of the Immigration Officer are quite detailed and there was an interpreter present in person so there should have been no difficulties in communication. The claimant was asked more than once by the Immigration Officer if she had anything else to add and she simply never mentioned the incident in [redacted]. Given that the incident was a key one as it showed that [redacted] had the motivation to follow the claimant to another state in Mexico to harm and threaten her, I would have expected her to mention such a key piece of information. I also note that while the claimant said that the incidents happened quickly, they actually occurred four months apart and occurred in different cities in different states so they should not have "blurred" together in any form. With respect to the incident in [redacted] 2005, the claimant affirmed both orally and in writing that the PIF had not only been interpreted back to her but that it was also complete and accurate as well. The directions for the narrative are quite clear in that all significant incidents are to be included. To totally omit all mention of [redacted] being kidnapped to a far-away village for two days makes absolutely no sense at all. I find that these major omissions further undermine the claimants' credibility.

In oral testimony, [redacted] stated that the last violent incident at the hands of [redacted] occurred in either [redacted] 2006 or [redacted] 2007, in that he grabbed her arms and pulled her hair. However, as noted at the hearing, while the PIF states that [redacted] continued to harass her, no violence is mentioned. The claimant stated that [redacted] had always been violent with her and that the word harass should be read as including violence. I do not find the claimant's explanation satisfactory. Once again, the directions for filling out the narrative are quite clear in that measures taken against the claimants are to be mentioned. I would have expected that if [redacted] "harassment" over the final few months that the claimants were in Mexico included violence, I would have expected that fact to have been mentioned. I find its omission further undermines the claimants' credibility.

[redacted] specifically stated that she feared that [redacted] wanted to take [redacted] away from [redacted]

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her. The thrust of most of the evidence was that [redacted] wanted to take [redacted] away, that he had already kidnapped her at least once and specifically threatened [redacted] with death and/or taking [redacted] away, should she re-marry. However, as noted at the hearing, one of the documents found with the claimants at the time that they made their claim was a notarized document [redacted] in Spanish, purportedly from [redacted]. In it, he not only gives permission for [redacted] to be taken out of the country but that she remain [emphasis mine] out of the country. When asked how it was that [redacted] came to sign such a document, [redacted] stated that she had asked her father to speak to [redacted] and that he had brainwashed him into signing it. I do not find the claimant's explanation satisfactory. It makes absolutely no sense at all for [redacted], who wanted to see his daughter, who wanted to take her away from [redacted], who had threatened to take her away and who had already kidnapped her at least once, to suddenly after having some magical discussion with [redacted] father, change his mind completely and give his permission for [redacted] to not only leave the country, but remain outside the country. I find that this serious implausibility not only casts further doubt on the authenticity of the claimant's documents but also further undermines the claimants' credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to several major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and, as such, the claims fail. I am mindful of the report dealing with [redacted] psychological state, however, I simply do not believe that her problems arose in the manner that she described. Furthermore, no evidence has been presented that she could not obtain appropriate treatment for her problems should she return to Mexico.

CONCLUSION

Since I do not believe the claimants with respect to the events described in their PIFs, the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

April 23, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1, PIF
- 5 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, Record of Examination.
- 6 Exhibit C-3, p. 2, Police Report.
- 7 Exhibit R-1, *National Documentation Package*, item 9.10, *Response to Information Request*, number MEX102725.E, April 17, 2008.
- 8 Exhibit C-3, p. 10.

9 Exhibit C-3, p. 5.

10 Exhibit C-3, p. 6.

11 Exhibit R-2, document dated April 17, 2007.

RPD File No. / N° de dossier de la SPR : TA8-06674

TA8-06675



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-06740

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	November 18, 2008	Date(s) de l'a
Place of Hearing	TORONTO	Lieu de l'a
Date of Decision	January 5, 2009	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	No counsel	Conseil(s) du / de demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant lived in . On , 2008, the claimant was leaving his bank when an armed man forced his way into the claimant's car and drove it to meet another car. After forcing the claimant into the other car, the men there demanded that the claimant give them the pesos they claimed that he had just withdrawn from the bank. While the claimant repeatedly and truthfully said that he had actually withdrawn a much smaller amount, the robbers disputed this as they said they had a source in the bank. The robbers stated that they would kill the claimant as he might report them to the authorities. While stopped at a traffic light, the claimant used an approaching panhandler as a distraction and jumped out of the vehicle, running in the opposite direction to a security checkpoint. The claimant then filed a complaint with the authorities. A friend then advised him to leave the country as he felt the authorities would be of no assistance. With the support of his parents, the claimant came to Canada on , 2008, and filed a refugee claim upon arrival.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, later on during the hearing, the claimant was asked how he knew that the cashier he dealt with was the robbers' "man on the inside"; the claimant

said that he noticed the cashier making a signal to the person behind him in line, indicating the claimant. However, as pointed out at the hearing, in earlier testimony when describing what happened at the bank, the claimant omitted this fact. While the claimant stated that he did not have a chance to mention the cashier pointing him out, this is simply incorrect. The claimant was asked to describe what happened at the bank and failed to mention the cashier pointing him out to the person behind him. I do not accept that this was a simple omission. There is a great difference between conducting a banking transaction without incident and then later being set upon seemingly at random and actively noticing something odd going on during the transaction. If the claimant had indeed been pointed out by the cashier, I would have expected him to remember and state that fact. It actually appeared that this transaction was concocted after the claimant was questioned with respect to how he knew it was the cashier who was involved and had no explanation. Also, as pointed out at the hearing, if the signal was made while the claimant was still just stepping aside from the cashier and the robber was the next person in line, it would be impossible to have a problem with mistaken identity which is what the rest of the story is about. I find that this discrepancy regarding the cashier pointing out the claimant undermines the claimant's credibility.

Having one of the robbers in line behind the claimant at the bank was problematic in and of itself. In late testimony the claimant said that he saw the robber follow him out of the bank and also that this same robber was the person sitting to the claimant's right in the back seat of the robbers' vehicle. As pointed out at the hearing, in earlier testimony when asked to describe what happened at the bank the claimant made no mention of seeing someone follow him outside. Also, when asked earlier to describe the occupants of the robbers' vehicle, the claimant referred to the person sitting to the right of him as "some person" rather than "the person who had followed me out of the bank". The claimant stated that the first problem was due to him not focusing on the details of the event and the second problem was said to be because the claimant was nervous and had meant to say that the person was the same one who had followed him out of the bank (a fact previously unmentioned). I do not find these explanations satisfactory. If the claimant had noticed someone following him when he left the bank, I would expect him to

remember and say just that when asked to describe what had happened. More importantly, if the claimant then ended up sitting beside this same individual, I would have expected him to make some reference to having seen him previously. To describe his seat-mate as "some person" makes no sense at all. I find that these discrepancies with respect to whether or not he was followed out of the bank and more importantly, the description of the person in the car, to further undermine the claimant's credibility.

The claimant testified that he managed to escape from the robbers' vehicle when his assailants put their guns down as a panhandler approached. As pointed out at the hearing, it seems quite remarkable

that after four armed men decided to kill him to protect their identities, the claimant managed to hop on top of the armed grown man sitting next to him and despite another armed grown man also sitting in the back seat, open the door, hop out and then run away without incident. The claimant stated that he had taken the robbers by surprise so they did not know what to do and there were also witnesses around. I do not find this explanation satisfactory. If the claimant had indeed been marked for death by four men motivated to protect their identities it makes no sense for the claimant to have been able to escape so easily in the manner that he did as I would have expected the robbers to at least have put up a struggle. I find that this implausible method of escape to further undermine the claimant's credibility.

Even the number of robbers and how they interacted with the claimant was at issue. In oral testimony, there were four robbers in total with one approaching him at the start of the event. In the claimant's original narrative, there were still four robbers but they all approached the claimant together. In the claimant's second narrative, only two robbers are mentioned and one is described as telling the "other" to kill the claimant. This last description seemed to make the most sense as it would help explain how the claimant got out of the backseat so easily if there was only one other person in the backseat with him. When asked to clarify these three very different descriptions, he stated that his earlier oral testimony was correct. He said that the first narrative was written by a volunteer as a summary only and was therefore not entirely accurate and the second problem was due to the fact that in his interview with the Immigration Officer at the time that he made his claim, he was asked to focus on the driver and that he meant to say that there were four robbers. I do not find these explanations to be satisfactory. The claimant affirmed in writing that his first narrative had been interpreted to him and was accurate. If the description of the four robbers approaching him together was inaccurate, I would have expected the claimant to notice and change that prior to signing the affirmation. Also, regardless of what happened during his discussion with the Immigration Officer, the second narrative was actually just a translation of the statement that the claimant made on his own in his own hand-writing in Spanish. The claimant's hand-written story/second narrative reads entirely (and as noted previously makes more sense) as if there were only two robbers. If there were actually four I would have expected the claimant's hand-written story/second narrative to reflect that. I find that these discrepancies with respect to the number of robbers and how they interacted with the claimant to further undermine the claimant's credibility.

When the claimant was asked why he had not produced a copy of the denunciation that he had allegedly made to the authorities, he said that he had sent his parents to attempt to obtain a copy but that they were unsuccessful due to privacy restrictions. The claimant also stated that he did not want to make attempts to obtain a copy through Mexican consular officials in Canada as they might be involved in this plot or at the very least, the Consulate would notify the Public Ministry office that he had dealt with and they were definitely involved in the plot. When asked how he knew that the Public Ministry was involved, he stated that his parents began receiving threatening calls several weeks after he left

Mexico as a direct consequence of them going to the Public Ministry. As noted at the hearing, while the claimant's first narrative was signed at approximately the same time as these threats, there was no mention of threats or the Public Ministry being involved in the second narrative which was prepared months later. After the claimant stated that the second narrative was simply a translation of his earlier statement made at the time that he made his claim, he was asked why he had affirmed that it was complete and correct when it was apparently not. The claimant stated that he had simply forgotten the threats that had occurred after his parents visited the Public Ministry. I do not find these explanations satisfactory. It is one thing to be a one-time random victim of crime with no later contact with the criminals; it is entirely another to subsequently find not only a continuing interest in the claimant and his family but also that the very authorities who would ordinarily protect the claimant were somehow involved. To "forget" to add such major details in the claimant's written story makes absolutely no sense and further undermines the claimant's credibility.

The only document that the claimant did produce was a "Notice to Appear".⁴ As noted at

the hearing, this document does not indicate what the matter is about or in what capacity the claimant is being called. I find that without further information, this document does not assist the claimant.

Given the serious inconsistencies, discrepancies and outright implausibility with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such, his claim fails.

CONCLUSION

The claimant alleged that he is the victim of crime. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

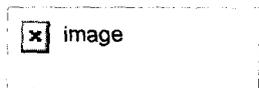
David McBean

January 6, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, claimant’s PIF.
- 4 Exhibit C-3, Notice to Appear.

RPD File No. / N° de dossier de la SPR : TA8-06740



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-07289

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing November 26, 2008 **Date(s) de l'a**

Place of Hearing TORONTO **Lieu de l'a**

Date of Decision January 7, 2009 **Date de la**

Panel David McBean]

Counsel for the Claimant(s) No counsel **Conseil(s) du / de demandeur(e)(s)**

Tribunal Officer Nil **Agent(e) des tr**

Designated Nil **Représent**

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant lived in the Federal District. Starting in 2001, he became a [redacted] at the [redacted] of the Federal District. The claimant had to pay an initial fee and then a daily fee to [redacted] in order to carry out his business. While not a part of the government, [redacted] exercised effective control over the [redacted] in the area and was [redacted].

On [redacted] 2004, [redacted] men demanded that the claimant and others leave the locations that they had been occupying. After the claimant refused, the men returned the next day to beat the claimant and destroyed his [redacted]. While the claimant complained to the authorities, he was never called back as a witness. The claimant relocated to another area within the Federal District but far from the [redacted]. On [redacted], 2006, [redacted] men once again beat the claimant and destroyed his [redacted]. Once again, he reported the matter to the authorities. On [redacted], 2006, [redacted] held a meeting of [redacted] in order to encourage support of the [redacted]. The claimant attended, angry that his fees had not been used to [redacted] and [redacted] however [redacted] ordered him to leave. [redacted] men again beat the claimant and destroyed his [redacted] on [redacted], 2006 warning him to not to go to the authorities or face death. The claimant decided to sell his business. On [redacted], 2007, the claimant heard from his parents that men had come to their house to pass a message that [redacted] had marked him for death as soon as he came out of hiding. In [redacted] 2007, the claimant attempted to enter Canada at Pearson International Airport but was turned back to Mexico. The claimant again attempted to enter Canada on [redacted], 2007, flying to Quebec and this time was successful. He made a refugee claim on [redacted], 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility**s.19(1)**

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared internally and to the Personal Information Form 3 (PIF) and the other documents available. For example, many questions were raised about the meeting that the claimant allegedly attended in 2006. It seemed rather odd that the claimant would attend in the first place for his stated reason of obtaining a refund on the fees that he had paid (the equivalent of \$1,000 CDN initially and \$2,000 CDN), as he had stopped paying the fees after the 2004 incident. It was unclear why the claimant would wait so long to raise the issue. Even more problematic was the claimant's description of the meeting. After describing a few basic events, the claimant was prompted several times before he said that the attendees had been asked to hand in their voter cards to the organizers. When asked why the organizers would need the attendees' voter cards, the claimant said that this was just a figure of speech and that the organizers were actually asking for the attendees' votes. When it was then pointed out that the PIF stated that the organizers wanted the actual cards, the claimant then said that the organizers did want the cards and that the cards would be returned to the attendees at the polling station in order to ensure that they would vote. As pointed out at the hearing, the scheme of holding on to the voter cards and returning them at whichever polling station each attendee would eventually vote, was not mentioned in the PIF. The claimant stated that he simply failed to mention the ultimate use of the cards in the PIF. I do not find these explanations satisfactory. Apart from it making little sense to attend the meeting when he did, the claimant provided dramatically different and contradictory descriptions of what happened at the meeting from moment to moment and from question to question. At first, no mention is made of anyone wanting voter cards despite several prompts; then the organizers did want the voter cards; and later, the organizers wanted the votes, not the actual voter cards; and finally, the organizers wanted the actual voter cards so that they could ensure that the attendees would one day vote. Each new description directly contradicted the previous one and it seemed that the claimant was simply making up his evidence as he went along without even attempting to hide glaring contradictions. I find that these repeated omissions and contradictions seriously undermine the claimant's credibility.

The claimant was asked more than once if anything happened between 2006 and 2007 and he responded "no" each time. As pointed out at the hearing, the claimant's PIF stated that men came to his parents' house in 2007, threatening to kill the claimant. The claimant stated that his PIF was in error and the correct year for that incident was 2008. I do not find this explanation satisfactory. The claimant affirmed both orally and in writing that his PIF had been interpreted back to him in Spanish and that it was accurate. It makes little sense that the claimant would not notice that this event was misstated as happening in 2007 when he was still in Mexico as opposed to 2008, just after he had made his refugee claim in Canada. In actual fact, the claimant's story made more sense if the incident was in 2007 as prior to that he had been only told that he would be killed if he went to the

authorities. This new threat carried no pre-conditions and would better explain why the claimant then attempted to leave the country twice. I find that this contradiction in dates to further undermine the claimant's credibility.

s.19(1) The claimant stated that he was waiting for a number of documents to arrive that would substantiate virtually every aspect of his claim. These documents included his credentials as a , medical documents with respect to his injuries and documents from the authorities dealing with the complaints that he had filed. When asked why they were not present, the claimant stated that he had only asked for them to be sent a month or so prior to the hearing. I do not find this explanation satisfactory. The claimant had been in Canada almost a year prior to his hearing so he was by no means rushed after arrival. The claimant filed his PIF in May and that document specifically directed the claimant to "Attach copies of any medical, psychological, police or other documents to support your claim. Any additional documents you obtain must be received by the IRB **no later than 20 days** prior to your hearing..." [emphasis in original].⁴ Even with that very clear direction, the claimant took no steps to obtain the documents. In August the claimant attended Assignment Court for unrepresented claimants at the IRB where he received the same direction regarding obtaining documents yet still took no steps to do so. The claimant stated that only a month or so prior to the hearing did he ask his brother to send the documents to Canada that had been sitting in the claimant's house in Mexico. Even with a month to do this, the documents had not arrived. It is within my specialized knowledge that there are mail and courier services available in Mexico that one can use to send documents to Canada without much difficulty. The claimant simply did not make reasonable efforts to obtain the documents that were allegedly just sitting at his home in Mexico, and I find that the absence of these reasonably available documents further undermines the claimant's credibility.

While documents not present at the hearing were a problem, documents that were present at the time that the claimant first attempted to enter Canada in 2007 presented other difficulties. The suspicions of the Immigration Officer who interviewed the claimant were aroused as the claimant was in the possession of a number of business cards from the United States of America (USA) as well as a number of USA phone numbers, and he had more items from the USA in his wallet than from Mexico. Furthermore, when the claimant's story of his history in Mexico and how he knew , the person who met him at the airport in Canada, was compared to account of the same information, there were dramatic differences in content. Differences included from where the two knew each other, when and how long they knew each other, the claimant's occupation (the claimant stating that he was a and stating that the claimant was a), whether or not they played on a together, whether they went to school together, etc. The Immigration Officer also noted that the claimant misrepresented the money that he had exchanged to come to Canada. Due to all these factors, the Immigration Officer decided that the claimant was not a genuine tourist and denied the claimant entry into Canada. When asked why there were all these problems at the Airport on the first

s.19(1) occasion that he tried to come to Canada, the claimant said that he could not recall anything about misrepresenting money, he was a collector of business cards and just happened to have American cards in his wallet; and since he had family in the USA, he had American phone numbers. He said that he thought that he needed to lie to the Immigration Officer about knowing very well the person who had to meet him at the airport or he would be denied entry. [redacted] was actually the brother of the claimant's ex-girlfriend who did not actually know the claimant well. In the course of both of them lying to the Immigration Officers, they became confused with respect to the details and told dramatically different stories. I do not find these explanations satisfactory. It does not make sense to be a collector of worn American business cards which the claimant just happens to take along on international trips. It does not make sense for the claimant to have more American items in his possession than Mexican. It is not reasonable if the claimant had nothing to hide for him to lie repeatedly to Canadian Immigration officials. If the person meeting the claimant was someone he did not know well, the claimant could simply have said so. If the claimant came to Canada fearing death he could have said so. The claimant did not provide a reasonable explanation as to why he lied repeatedly. I find that these discrepancies and repeated lies further undermine the claimant's credibility.

A few months later, the claimant reappeared in Canada when he flew in on a group tour. While there was some confusion at the hearing as to where the claimant entered Canada, it actually appears to be Quebec City. At the time, the Immigration Officer noted somewhat dryly in the FOSS notes that the claimant was in possession of the "...perfect tourist kit to pass through Immigration process...".⁵ While the claimant was only granted permission to be in Canada from [redacted], 2007 to [redacted] 2008, the claimant made no efforts to extend that permission and stayed past that date. When asked why he would stay illegally in Canada and not make a claim until [redacted], 2008, the claimant said that he was unfamiliar with the process and only after forming a closer relationship with the people with whom he was living, did they tell him about the refugee process in approximately [redacted] 2008. When asked why he waited until [redacted] to make a claim, the claimant was often unresponsive, made a number of evasive answers and eventually said that he did not know. I do not find this explanation satisfactory. The claimant allegedly feared for his life yet made no mention of this to Immigration officials and attempted to enter Canada twice as a "tourist". Once granted permission to enter the claimant made no efforts to attempt to extend his stay and even after being allegedly told about the refugee system in [redacted] did not initiate his claim until two months later. I find that none of this behaviour is consistent with a man fleeing death. I find that the claimant's behaviour not only demonstrates a lack of subjective fear but further undermines his credibility.

In general, the claimant's story did not make sense on many levels. Apart from the problems noted above, the timelines involved just did not make sense. Great gaps of months or even years would occur and then out of the blue, men would come and beat the claimant. For example, nothing happened between 2004 and 2006 and suddenly the claimant was beaten even though he had relocated far away

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from the area he was told to stay away from. The claimant had no theory as to why this was. When the claimant was asked why nothing happened to him personally after 2007 (using the PIF timeline) or 2006 (if the oral timeline is used) until he left Mexico in 2007, he said that he never went out much. I do not find this explanation satisfactory. If [redacted] was indeed motivated to harm the claimant, it makes no sense that she would wait for years at a time before sending men to beat him. If he was indeed

marked for death, it makes little sense that not going out much would protect him. I find that these unexplained and implausible gaps in the timeline further undermine the claimant's credibility.

Given the serious inconsistencies, discrepancies, implausibilities and outright lies with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such, his claim fails.

CONCLUSION

Since I do not believe the claimant with respect to the events described in his PIF, his claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

January 7, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, PIF.

4 Exhibit C-1, Personal Information Form, p. 9.

5 Exhibit R-2, Immigration Notes dated April 21, 2008.

RPD File No. / N° de dossier de la SPR : TA8-07289



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-07397
TA8-07408

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	May 8, 2009 July 2, 2009 August 18, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	January 8, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Byron Thomas	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS AND DECISION s.19(1)

[1] , (the claimant), and his wife, | (the female claimant), citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] After living illegally in the United States of America (USA), the claimant returned to Mexico in | 2005 to live with his wife in | . In | 2006, the claimant began working for | , a employing well | s owned by | , the of Mexico. The claimant quickly realized that working conditions were poor at the | In | 2006, the claimant began speaking with other workers about the possibility of | as the claimant perceived the existing union in place at the | to actually represent the interests of the owner rather than the workers. The claimant met with | coworkers in late | 2006 to strategize. They decided to | for a possible claim to a labour board and to | . However, in | 2006, the claimant was informed by security guards that he was barred from the | and had been fired. When he contacted a union representative he was told that he got what he deserved for his actions. Undeterred, the claimant continued to | outside the | and continued to talk to workers. On | , 2006, | , his son and security guards approached the claimant outside the | . The security guards held him while | threatened him. After being released the claimant walked towards the main road and was stopped by a Judicial Police vehicle with no license plates. Three officers emerged, two of them beating the claimant and one put a gun to the claimant's head threatening him with death for challenging | . After recuperating, the claimant managed to hail a taxi in order to go to the hospital to receive treatment for his injuries. After being released the next day, the claimant went to the local police to file a denunciation. After hearing the facts of the case, the officer that spoke with the claimant said that he would not accept the

¹ As enacted by S.C. 2001, c. 27.

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denunciation out of fear for both of their lives. Two weeks later the claimant traveled to [redacted] to attempt to file a denunciation there given that it was a much larger city. While the claimant was able to file the denunciation with the Federal Police with respect to the federal officers that had beaten him, the claimant was told that there would have to be an investigation to corroborate his version of events. The next day the female claimant called to say that two federal officers had gone to their home and after being told that the claimant was not there forced themselves inside. They searched for the claimant, shoved his mother and fondled the female claimant. They said they would teach the claimant a lesson for going to the police. The claimant did not return home, but instead moved to [redacted], where he moved in with [redacted] and found a job with a friend. The female claimant moved to her parents' home in [redacted]. On [redacted], 2007, the claimant received a call from his cleaning lady that two federal officers had just visited his apartment looking for him. The claimant did not return to the apartment but instead traveled to [redacted]. The claimant called his wife to obtain a birth document and learned that she had received a phone call enquiring about him. The claimant obtained a passport on [redacted], 2007, and came to Canada on [redacted], 2007. Soon after, federal policemen visited the claimant's mother looking for him. Five months later the female claimant's parents began receiving calls asking for the claimant's whereabouts. The callers said that they would rape the female claimant if they did not learn the whereabouts of the claimant. The female claimant moved to her sister's house in [redacted] and came to Canada on [redacted] 2007. Both claimants filed refugee claims on [redacted], 2008. Since that time the claimant's mother has continued to receive calls enquiring about him and Judicial Police officers visited his sister looking for him and his wife. In [redacted] 2008, the Judicial Police knocked on the claimant's mother's door but she did not answer. The claimant's sister also saw a Judicial Police vehicle parked outside her home.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of

cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Mexico were accepted at the hearing given that copies of their Mexican passports were on file.²

Credibility s.19(1)

[5] In post-hearing written submissions, counsel submitted that the claimants presented as credible witnesses. However, I disagree. It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared to the Personal Information Forms³ (PIFs) and the other documents available. For example, in his oral testimony, the claimant stated that he met with coworkers in 2006 and they decided, amongst other things, to , although they did not actually begin to until 2006, a few weeks before the claimant was fired. However, as noted at the hearing, the PIF appears to indicate that there was no delay after their late- meeting in the group conducting their activities. The claimant stated that his oral testimony was correct, that they began in when they were of workers. The claimant also presented what purports to be a newspaper article⁴ from the " " that dealt with his activities at . However, as noted at the hearing, the article is written in an awkward style. Despite a particular writer being given a byline the writer starts off using "we", switches to the use of "I" and returns to the use of "we". The claimant stated that it was likely a community newspaper and that he did not have the original, the people who had the original had moved away and his mother had not attempted to get a replacement copy. More importantly, the article is dated , 2006, and describes the claimant as already having achieved a

² Exhibit R-2, certified copies of passports received from Citizenship and Immigration Canada (CIC).

³ Exhibits C-1 and C-2 as modified by C-3 and C-7.

⁴ Exhibit C-4, Spanish original at page 44

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the majority of the workers at . As noted at the hearing, the claimant testified more than once that while he had met with a small number of coworkers in , they actually took no action to involve the other workers in their cause until at least after the article was written. The claimant stated that the article contains information from someone else who had been fired and that he did not know anything about it until he read the article. I do not find the claimant's explanations satisfactory. The article simply cannot be reconciled with the claimant's stated timeline of events. It makes no sense at all for someone to write a news article, even with information gained from a third party, describing the claimant as getting the majority of the workers at the on his side before he had actually even approached the workers. Given the oddities about the article and the fact that it simply does not match the claimant's story, I find, on a balance of probabilities, that the article is a forgery. I further find that the claimant's reliance upon this forged document not only casts doubt on the other documents presented but undermines his credibility.

[6] In oral testimony, the claimant identified the union in place at the as the " " however the claimant also stated that the same union was referred to using the acronym "i ", even though that appeared not to match the words in Spanish. The claimant also stated that while the union was headquartered in they had an office within the itself with people on site. During a subsequent sitting the claimant stated that was national and was local and it was the local body . However, as noted at the hearing, in the PIF the claimant specifically stated that it is the " ' that The claimant stated that he would have looked the name up when he was preparing the PIF and did not generally pay much attention to union names since he usually simply used the term "union". I do not find the claimant's explanations in this area satisfactory. I do note that there is mention in the claimant's documentary evidence⁵ of a union that appears to be involved with with the name given as the , however this appears to be a different name and it is unclear whether it refers to any organization at the claimant's particular .

⁵ Exhibit C-8

Generally, throughout this area of testimony the claimant could explain little about the workings of the union. The claimant is not unsophisticated, has 12 years of education and lived in at least three countries. The alleged pivotal event in his life was

where they had a physical presence. Given the circumstances, I would have expected the claimant to quite easily and consistently give the correct name for the union that I find that the fact that he could not further undermines his credibility. s.19(1)

[7] In oral testimony, the claimant stated that when confronted him outside the , he threatened to have him killed. However, as noted at the hearing, the PIF does not mention that threatened the claimant with death. The claimant stated that while the PIF may not mention it, did threaten him with death. When the claimant was asked if said "anything else" he stated no. However, it was then noted that in the document the claimant stated was obtained from the Public Ministry⁶,

is not only described as threatening the claimant with death, but the lives of his family are threatened as well. The claimant said that he had not mentioned that earlier since he was nervous and that not all details may be in the PIF as he may have thought them unimportant at the time. I do not find the claimant's explanations satisfactory. This was the one pivotal meeting with the powerful figure that has allegedly marked the claimant for death. The PIF is written in such a way that does not really indicate that even the claimant was threatened with death, let alone his entire family. Had specific death threats been issued I would have expected the PIF to be written in a way that said just that. Furthermore, given that the death threats against his family would be quite chilling, I would have expected the claimant to included this fact in his PIF and have recalled the threat spontaneously rather saying more than once that did not say anything else. I find that these discrepancies further undermine the claimant's credibility.

[8] The claimant's PIF and the Public Ministry document indicate the Judicial Police officers who beat the claimant near the specifically stated that they were acting on behalf of . However, when asked to give details about this incident during the first sitting the claimant made no mention of the officers stating that they were there on

⁶ Ex C-4, Spanish at page 26

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behalf of . It was only when he was questioned again on the issue during the second sitting that he mentioned this. When asked why he had not mentioned this during his earlier testimony, the claimant stated that he had been excited and thought that he had said it. I do not find the claimant's explanation satisfactory. The standard order of questioning was varied at Counsel's request in order to put the claimant more at ease by having Counsel question the claimant first. This was the one time that the claimant was physically abused by the authorities and the event during which he learned that controlled at least some of the authorities. If this really was true I would have expected that the claimant would have mentioned the officers explicitly saying that they were acting on behalf of as one of the most important pieces of his testimony. While I understand that the claimant was excited and nervous, given the circumstances of the hearing which were altered to put him at ease, I find the fact that he failed to mention the officers telling him that they were there on behalf of when given a chance by Counsel to repeat what the officers had said to him to further undermine the claimant's credibility.

[9] The claimant presented what he says is a medical certificate⁷ to substantiate his medical treatment after the incident with the Judicial Police. However, as noted at the hearing, the certificate itself has several odd things about it. The claimant stated that he was discharged on , 2006; however, the document is dated , 2006, at a time he was still under medical care. The claimant stated that the document would have been prepared when he was admitted and examined. The claimant did not know why the margins of the document appeared to have been covered or obscured by what appeared to be something blank. Furthermore, it was noted that on the original document presented at the hearing there is faintly written what appears to be “ ”. This notation is not visible on the photocopy provided since the writing appears to have been mostly erased at some time. As noted at the hearing (01) is the country code for Canada and the USA. The claimant stated he did not know what this apparent FAX number referred to. While all of these things did seem odd, even if the document is genuine it does little to assist the claimant as it does not state how the listed

⁷ Exhibit C-4, Spanish at page 24

injuries were caused. Given that the injuries described could have occurred in a number of different circumstances I give this document less weight.

[10] The claimant also presented what is alleged to be a document⁸ from the Public Ministry detailing his complaint. However, as declared at the hearing, it is within my specialized knowledge that documents from the Public Ministry normally have a file number and that file number is typed near the beginning of the document, near the top of the front page. While Counsel did point out that there is some form of file number contained within the text more than half-way down of the first page in Spanish I also noted that it was within my specialized knowledge that the file number did not appear to follow a familiar format. The claimant stated that the Public Ministry had typed the document and he had no knowledge of file numbers or their format. I do not find this situation satisfactory. Apart from the file number being in an odd format it makes no sense at all for the only reference to the actual file number to be buried well down within the text of the document. As stated previously, normally the file number would be contained in a far more prominent location. I find that these irregularities cast doubt on the authenticity of this document and when coupled with the other credibility concerns that I have identified above and below, I find, on a balance of probabilities, that this document is a forgery as well and that the claimant's reliance upon it further undermines his credibility.

[11] In the claimant's testimony at the first sitting, he stated that after he left Mexico his mother received phone calls asking for the claimant and saw a Judicial Police vehicle but had no direct contact with the officers. However, in a later sitting he stated that his mother had indeed had direct contact with police officers after the claimant left. While this was now consistent with his PIF, it was inconsistent with his previous testimony. When asked why he had stated that his mother did not have direct contact with officers at her house the claimant stated that he did not do well at hearings, was nervous and was not paying attention to the questions. I do not find the claimant's explanations satisfactory. The standard order of questioning was changed at Counsel's request in order to put the claimant more at ease. His questions to the claimant were not difficult. It makes little sense for the claimant to only recall in those circumstances that his mother received calls

⁸ Exhibit C-4, Spanish at page 26

and saw a vehicle but say that there was no incident of direct contact if she had in fact specifically been visited by officers after he left. I find that this contradiction in the claimant's testimony to further undermine his credibility.

[12] When questioned by Counsel, the claimant stated that he knew his wife was threatened with harm after he left Mexico. When Counsel asked if he knew with what specific harm his wife was threatened, he said that did not know. However, as noted at the hearing, the PIF states that the aggressors specifically threatened to rape the female claimant. In response, the claimant stated that there may be a difference between the threat and what actually happens. However, when asked if that was the case why he had not said something to the effect that "the threat was rape but who knows what they would have done" the claimant stated that he thought that he had already stated that his wife was threatened with rape. I do not find the claimant's explanations satisfactory. As noted previously, Counsel was allowed to question first in order to put the claimant at ease. Counsel asked the claimant directly if he know the substance of the threat made against his wife and he said that he did not know. Given the seriousness of the threat of rape, I find that it was reasonable in the circumstances for the claimant to have recalled this incident, especially when directly prompted by counsel. For the claimant not to remember this when asked directly makes no sense at all. I find that this discrepancy further undermines the claimant's credibility.

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[13] When asked why he did not make a claim upon arrival in Canada in 2007, the claimant said that he was told that if he found an employer he could be sponsored, although that did not work out, and several people said one to two months after he arrived in Canada that the refugee system was not for everyone and that he had little chance of success in making a claim. It was only after immigration enforcement officers went to the claimant's dwelling in 2008 looking for someone else did the claimants make refugee claims. I do not find the claimant's explanation for the more than one year delay in making a claim satisfactory. The claimant is not unsophisticated and his own evidence is that he was aware of the refugee system not long after his arrival in Canada. While acquaintances may have provided reason to doubt his chance of success, if the claimant truly feared a powerful figure who sent Judicial Police officers to track him in more than

one city in Mexico it makes little sense for the claimant not to have made further efforts in investigating the refugee system, particularly after his permission to remain in Canada expired. I find that this not only demonstrates a lack of subjective fear, but that it also further undermines the claimant's credibility.

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[14] As noted at the hearing, the description of the claimant's dealings with both American and Canadian Immigration authorities evolved over time. In the initial version of the PIF, the claimant was in the USA for "business" prior to returning to Mexico. The PIF was then amended to state that the claimant was in the USA illegally. Then the PIF was amended to indicate that the claimant actually stayed in multiple locations in the USA. The claimant stated that the interpreter at the Immigration office had told him what to write and that perhaps he had made errors in the initial versions of the PIF. In oral testimony the claimant stated that he had actually been taking [redacted] in a pick-up truck to [redacted]. Despite allegedly having no passport the claimant managed to enter the USA approximately eight times at a legal border crossing. The claimant theorized that the American driver that always accompanied him was friends with Customs officials and that their vehicle was never chosen for inspection and he was never asked by anyone to produce documents. As noted at the hearing, by reputation it seems that security along the Mexican-USA border would be stricter than what the claimant alleged. It is implausible that he would be able to cross the border so many times with a pick-up truck load of shoes for sale and never be asked to produce some form of documentation. Furthermore, the question in the PIF dealing with residence and status is clearly worded. I also note that the claimant used an address in [redacted] where he never actually lived on one of his Immigration forms⁹. The claimant stated that he used that address because it matched the one on his driver's license. Therefore, it appears that the claimant was quite aware of the information that he was disclosing on various forms. It makes no sense for the claimant to innocently make the errors that he made on the PIF.

[15] With respect to the claimant's dealings with Canadian Immigration officials, as mentioned previously, the claimant stated that on [redacted], 2008, immigration enforcement officers came to his dwelling searching for someone else and not him. After discovering

⁹ Exhibit R-2, page 5 of 6

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he had no status, the claimant provided the immigration enforcement officer with an account of why he left Mexico. He was then advised to go to an immigration office on his own in order to make a refugee claim on _____, 2008. However, as noted at the hearing, there is an admissibility document¹⁰ dealing with the claimant dated March 29, 2008, apparently prepared by the same officer that came to the claimant's dwelling. The claimant initially thought that the document would have been created after he initiated his claim; however, as noted at the hearing, the document is dated prior to the time that the claimant says the officer went to his house. The claimant stated that the document was not mentioned when the officer visited his house and that at no time was he detained. In the claimant's initial testimony, the claimant stated that he was given no documents by the immigration officer that he spoke with at his dwelling. However, after a break in the proceedings the claimant then produced a business card¹¹ that he said was given to him by the officer at the house. However, as noted at the hearing, the date handwritten on the card is April 3, 2008, 1:00, which is different from the previously stated time for the appointment. The claimant then stated that he had actually been given two business cards by the officer and that the second one with the correct appointment date was taken away from him by someone at the Immigration office. When asked why he earlier said more than once he was not given any documents by the immigration enforcement officer if, in fact, he was actually given two business cards with appointment times on them, the claimant said that he had not remembered earlier and that his wife reminded him during a break in the hearing. I do not find the claimant's explanations in this area satisfactory. It should have been a fairly simple thing to remember whether or not the immigration officer provided something in writing and instead the claimant gave shifting and inconsistent testimony. Furthermore, the claimant's description of this entire chain of events is simply implausible. While Counsel submitted that assuming the date on the report is correct this is simply a case of an immigration enforcement officer exercising discretion, in these circumstances this would mean that an immigration enforcement officer went to a house looking to detain someone, found a different person (i.e. the claimant) living illegally in Canada, by sheer coincidence this person is someone the officer had recently written an admissibility report about, make no mention of the report to the claimant, regardless of the

¹⁰ Exhibit R-2
¹¹ Exhibit C-11

report make no effort to detain the claimant, counsel him about using the refugee system, and simply trust that the claimant would go of his own volition at a later date to an appointment at an immigration office, an appointment which apparently was not transcribed into any computer system as the claimant stated that no one was expecting them when they arrived. I find that the claimant's inconsistent and generally implausible accounts of dealing with both American and Canadian immigration officials to further undermine his credibility.

[16] I realize that the claimants have presented a number of notarized statements¹² from friends and family members. However, these people are not objective sources and given their relationship to the claimants they would obviously have an interest in helping them bolster their claims. I also note the presence of what appears to be a fairly simply produced flyer¹³ and blank pages¹⁴ with signatures on them. However, I would note that these documents are fairly easy to produce and there is no way to verify if they were indeed produced in the manner the claimant alleged. I also note the presence of a photograph¹⁵ of what appears to be a police vehicle in front of a door. However, there is no way of telling whether the photograph is of the events the claimant alleged or simply a police vehicle in front of a door. I give all of these items little weight.

[17] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. While I do note that the female claimant testified briefly her testimony did nothing to overcome the credibility concerns noted above. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimants alleged happened to them, actually happened and as such the claims fail with respect to section 96 of the *IRPA*.

[18] There being no other evidence that the claimants would be at risk of any of the harms delineated under section 97 of the *IRPA* the claims pursuant to that section fails as well. In coming to this conclusion I am mindful of the psychological report¹⁶ on file that

¹² Exhibit C-4 pp. 31-43
¹³ Exhibit C-4, Spanish at page 15
¹⁴ Exhibit C-4 pp. 17-19
¹⁵ Exhibit C-6
¹⁶ Exhibit C-4, p. 54

deals with both claimants. However, the diagnosis in the report is based on a story that I simply do not believe. Whatever the claimants' actual psychological problems, no evidence has been presented that they could not obtain treatment for such difficulties in Mexico.

Compelling Reasons

[19] In counsel's written submissions he references "*compelling reasons*" [emphasis in original] that the claimants should not be returned to Mexico. It is unclear if Counsel is referencing the doctrine of compelling reasons. However, if this is what is intended, I find that this doctrine had no applicability in this case. For that doctrine to apply the claimants would have originally had to have been in a situation that would have seen them succeed in their claims but due to a change in circumstances the conditions that gave rise to the successful claims no longer exist. Since I simply do not believe the claimant's story, this doctrine does not apply.

"Mexican Woman Deported to her Death"

[20] Counsel also submitted post-hearing a news article¹⁷ that deals with the unfortunate case of a former refugee claimant who was found murdered in Mexico. I do not see how this article applies to this file. The article notes that the murder may or not be related to the circumstances described in her refugee claim and PRRA application. However, there does not appear to be any suggestion that the woman was targeted for the simple fact of having made a refugee claim in Canada, which unfortunately does happen sometimes in other countries. Given that I do not believe the claimants' story, this article is not relevant.

¹⁷ Exhibit C-13

CONCLUSION

[21] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

January 8, 2010

Date

RPD File No. / N° de dossier de la SPR : TA8-07399

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 30, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	June 9, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Matthew J. Wells	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative (s)	N/A	Représentant(e)(s) désigné(s)
Counsel for the Minister	N/A	Conseil du ministre

000812

DECISION

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[1] _____, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was born in 1984 and grew-up in _____, Poland. Her father was extremely abusive to the entire family from as far back as she can remember. As a result, he was jailed for one year in 1987. The claimant's mother reported further abuse to the police in 1989 but did not follow through out of fear and the charges were dropped. The claimant's father was perpetually drunk and harmed or threatened everyone including the claimant's grandparents. Incidents included setting the family outhouse on fire with the claimant's mother inside, drinking until late hours then requiring everyone to wake up and serve him, breaking a glass door with his hand, openly wishing family members were dead, forcing children to hold heavy objects for hours, whipping an beating the children and even forcing one of the claimant's sisters to lick up some lotion that she had spilled on the floor. After one severe beating the claimant's sister refused to participate in gym class at school because she was ashamed to undress. While her injuries became known to the school authorities nothing was reported. Other incidents included the claimant's father turning on the gas from the stove while ordering everyone to lay down to await the results, scalding the claimant's brother, forcing the children to eat inedible soup, spreading nails on the floor, abusing the family cat and on one occasion began destroying so many things that the neighbours called the police who came and took him away. The children were forced to watch pornographic movies. The claimant in particular had to go to bed with her father who demanded that she sexually satisfy him while he sexually abused her. In _____ the claimant informed the authorities about the abuse and other matters and the claimant's father was charged, convicted and sentenced to a year and a half in jail followed by mandatory addiction treatment in an institutional setting. The media publicized the matter and the claimant felt ashamed that her classmates knew that her father had raped her. Other prisoners came to know that the claimant's father sexually molested his own child so they physically abused him in return, even repeatedly lighting newspapers between his toes. A few months after his release, the claimant's father began drinking again, this time behaving even worse. The claimant's father blamed her for destroying his life. Incidents included threatening everyone with a running chainsaw, smearing feces on the faces of several people (the police came but merely remarked that he is crazy) and on one occasion beat everyone, then went to the police to confess that he had had killed his family. The police found that the family had not been killed and released him after detaining him overnight after which he began the beatings anew. Finally when the claimant was 18 years of age, her mother was being abused but she managed to escape. However, the claimant and her sister were not so lucky and the claimant's father began to beat them. The neighbours called the police who came to the

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house. While the claimant's father initially said that he was only disciplining his children, he then smashed the claimant's sister's face in front of the officers. The officers took him to another room to talk to him. Then in front of their father, the officers asked the claimant and her sister if they wanted to press charges and out of fear they said no and simply indicated that they wanted to leave. While leaving with the officers the claimant's father threatened them from a balcony. The claimant stayed at the house of one of her mother's friends and did not go out. However, since [redacted] is a small town, the claimant knew that she would have contact with her father if she did not move away. After two months, in [redacted] 2003, the claimant moved to [redacted] and enrolled in university. The claimant's mother took the children and left to go live with the claimant's maternal grandfather. The claimant's father did not accept this and ordered everyone home and tried to break into the grandfather's house. The claimant feared that her father would track her down and changed addresses on a number of occasions. However, her father would always learn her new phone number and call to threaten her. In 2007, the claimant attempted to come to Canada under the [redacted] program but her application was denied. After Canada dropped visa requirements for Polish citizens traveling to Canada the claimant flew to Toronto on [redacted], 2008, and made a refugee claim in Hamilton on [redacted], 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Poland was accepted at the hearing given that a certified copy of her Polish passport was on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious embellishments in the claimant's and the witness's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF), particularly with respect to the testimony involving the police. For example, both the claimant and the witness testified that the claimant's family frequently called the police about his abuse and they usually did nothing in response. However, as noted at the hearing, there is no

mention in the PIF that the police were called frequently and that they did nothing. Both the witness and the claimant stated that the PIF only contained examples and the family actually called the police many times that were not mentioned. I do not find these explanations satisfactory. The directions for filling out the narrative are quite clear in that all steps to obtain protection from the authorities are to be detailed. The PIF narrative itself is minutely detailed. Some of the incidents involved the police and the descriptions of what the police officers did each time they were called are minutely detailed as well. If the police had really been called frequently and they did nothing to help the claimant or her family, I would have expected the PIF to at least say just that. I find that since it did not, that the claimant and the witness embellished their testimony and, on a balance of probabilities, that the claimant's family did not in fact contact the police frequently and with the police doing nothing.

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[6] Also, the claimant stated orally that she did not call the police in [redacted] about the telephone threats that she had been receiving since her friend whose father was a policeman, advised her that the police would think the phone threats were none of their business and that they would not help her. However, as noted at the hearing, this fact was not mentioned in the PIF. The claimant stated she did not remember why she had not stated this in the PIF. I do not find this lack of an explanation satisfactory. Once again, the directions for filling out the PIF narrative are quite clear in that if the claimant did not attempt to contact the authorities, the reasons for not doing so should be detailed. Given the way the PIF narrative was minutely written, had the claimant been advised by someone who would appear to know what they are talking about to not bother contacting the authorities, I would have expected the PIF narrative to say just that. I find that once again the claimant was embellishing her evidence and that, on a balance of probabilities, that this "advice" was never really given.

State Protection

[7] Even if I were to accept the rest of the claimant's evidence as true, which I do not necessarily do, the claim fails as I find that the claimant has failed to rebut the presumption of state protection. There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing" proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁵ Evidence that protection being offered is not necessarily perfect⁶ is not clear and convincing proof of the state's inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.⁷

[8] When the state in question is a democratic state, the claimant must do more than simply show that

they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁸ The more democratic the state's institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁹ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁰

[9] The documentary evidence shows that Poland is a functioning, parliamentary democracy with free and fair elections.¹¹ I find that Poland is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Poland is in a state of complete breakdown.

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[10] The claimant's father has not seen her since she left home in 2003. While he has called her periodically to threaten her whenever he was able to get her phone number (the claimant theorized through her sister), it would appear that he has never actually traveled to [redacted] to attempt to harm the claimant in the close to five years that she lived there. Even if her father came somehow to know that she had returned to [redacted] and even if despite the close to five years of not traveling to [redacted] in the past, he now decided to attempt to harm the claimant and actually did travel to [redacted], the claimant could always call the authorities. While counsel mentioned in post-hearing submissions that domestic violence against women continues to be a problem in Poland, this case is by no means a "typical" domestic violence case between spouses. It should be noted that the claimant fears her father who the police arrested, charged and the courts later convicted him for, amongst other things, sexually molesting her. As the claimant herself noted, men who sexually molest children (particularly their own) are not popular. The Polish government appears to agree since a law was recently passed providing for mandatory chemical castration for those who rape victims under the age of 15¹². Awareness campaigns have been undertaken with respect to domestic violence, there are shelters and crisis centres and thousands of offenders have been prosecuted.¹³ No evidence was presented that the claimant's father has any sort of influence over the authorities in [redacted]. In fact, it appeared that the claimant's father is aware that he would be arrested if he attempted to harm the claimant as an adult given his threats included a threat not to tell the authorities (indicating that he did not want to have to deal with them), that the claimant thought he would leave if he heard her calling the police and that if he stayed for the police to arrive, he had told her that he would have a better life in jail since he would not have to work. While the claimant also stated that if her father was arrested, he would then send a friend to harm her; I do not see why the authorities, when confronted with a situation where a stranger sent by the claimant's father (who has a criminal record for, among other things, sexually abusing her), would then ignore the situation.

[11] I find that the claimant has not established, on a balance of probabilities, that adequate state

protection is not available. As such the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well. In coming to these decisions I am mindful of the psychological/counseling evidence on file. However, no evidence was presented that the claimant could not obtain treatment in . . . s.19(1)

CONCLUSION

[12] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean

David McBean

June 9, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1.
- 5 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 6 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 7 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 8 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

10 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

11 Exhibit R-3, *National Documentation Package*, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.

12 Exhibit R-3, tab 2.1, *Country Reports on Human Rights Practices for 2009*, section 6, "Children".

13 Exhibit R-3, tab 2.1, *Country Reports on Human Rights Practices for 2009*.



RPD File No. : TA8-07399



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (May 18, 2010)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-07724

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 21, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	May 28, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Luis Branco	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000820

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimant worked as a _____ for a _____ company in _____ . In _____ 2004, he was robbed by two men while transporting _____ pesos (approximately CDN\$ _____) to be deposited at a bank. While the police investigated, they were unable to apprehend the robbers and the claimant never saw them again. In _____ 2005, the claimant was robbed by one man while transporting _____ pesos. An ambulance came and the claimant's cuts that he had sustained during a struggle with the robber were treated at the scene. The police also came to the scene but were not able to locate the robber and the claimant never saw the robber again. In _____ 2006, the claimant quit his job as he had become too fearful of being robbed a third time. He came to Canada in _____ 2006. After being detained by the Canada Border Services Agency, he made a refugee claim in April _____ 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

I accept the claimant's identity as a citizen of Mexico as a copy of his Mexican passport is on file.²

Nexus

The claimant was a victim of crime and generally fears crime. As such, he has failed to establish a nexus to the Convention Refugee definition and his claim pursuant to section 96 of the *IRPA* fails.

Generalized Risk

The claimant was robbed on two occasions by random criminals. No evidence was presented that those criminals had any continuing interest in the claimant after they robbed him. The claimant quit

his job as a _____ so he would not be targeted in the future on that basis. While the claimant expressed fear of general crime and violence in Mexico, the risk of general crime and violence is a risk faced generally by others in Mexico. As the risk is faced generally by others in Mexico it is excluded from my consideration pursuant to section 97(1)(b)(ii) of the *IRPA*. The claimant has no other reason to fear to returning to Mexico and as such his claim pursuant to section 97 of the *IRPA* fails.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

May 28, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

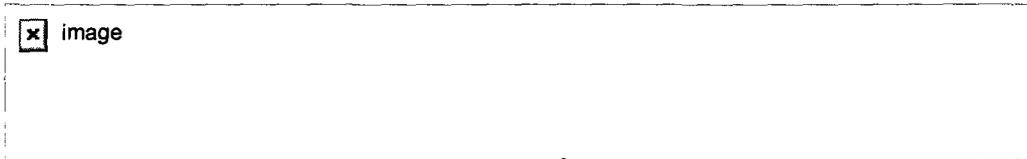
2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

RPD File No. / N° de dossier de la SPR : TA8-07724



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-08905

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	November 7, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	November 14, 2008	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000824

Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

As there was no counsel to represent the claimant, the member reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process.

ALLEGATIONS

According to the Personal Information Form2 (PIF) narrative, the claimant in . On , 2007, a fight that culminated in a murder being committed. As a result of the claimant releasing the to the authorities, the claimant was targeted by (“ ”), the man implicated in the killing. On , 2007, the claimant was assaulted outside a café by three men sent by . The claimant was taken to the hospital as a result. On , 2007, found the claimant while both were driving their respective vehicles. The claimant ducked to avoid . gunfire but crashed his vehicle into a . The claimant moved to the next day. On , 2007, found the claimant again in similar circumstances, with shooting at and crashing his vehicle into the claimant’s vehicle. The authorities being of no assistance, the claimant fled to Canada on , 2007, and made his refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a certified true copy of his Mexican passport was on file.³

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility

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It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared to the PIF and the other documents⁴ available. For example, in oral testimony, the claimant did not see the actual killing. It was only after police came to the [redacted] that the claimant went outside and saw the body. However, as pointed out at the hearing, the PIF narrative states that the claimant and his staff witnessed the murder. The claimant said that his PIF was not translated properly and was incorrect. I do not find this explanation satisfactory. The claimant affirmed in writing on the PIF and orally at Assignment Court on September 3, 2008, and at the beginning of the hearing that the PIF had been translated to him from English into Spanish so that he could understand the contents and that those contents were completely true and accurate. The claimant presented no evidence as to why the translation would be so faulty in this instance; he simply insisted that he did not witness the murder. I find that this discrepancy in whether or not the claimant actually witnessed a murder directly, a fact that would logically put him at greater risk of persecution, to undermine his credibility.

In oral testimony and in the interview notes,⁵ made by the immigration officer at the time that the claimant made his claim, [redacted] came to the [redacted] on [redacted], 2007, and hit the claimant but not seriously enough to require medical attention. As pointed out at the hearing, the PIF makes no mention of [redacted] coming to the [redacted], but instead describes an entirely different event that is alleged to have occurred on [redacted]. In the PIF it states that three men were sent by [redacted] to attack the claimant outside [redacted]; the claimant was injured and taken to the hospital. When asked to explain the two totally different accounts of the events for that day, the claimant once again said that the PIF was poorly translated and not correct. Once again, I do not find this explanation reasonable as no evidence was provided as to why the event could be described so differently. The claimant's PIF was apparently accurate for the first 30 questions, including name, place of birth and where the claimant lived. The PIF narrative seemed correct with respect to the names involved and most of the dates; however, at points in the story where exceptional events occurred, virtually all of the specific details changed from one version to the next. It is one thing for minor variations to occur when translating languages (e.g. "pink" versus "red"), however, to entirely misstate as in this case the actors, the location and the result of an

incident, makes no sense at all. No evidence was presented as to why the narrative should suddenly be so “wrong” in places. I find that this major discrepancy between the accounts of what happened when the claimant was first attacked to further undermine his credibility.

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In oral testimony, the claimant stated that he did file a complaint with the authorities regarding the _____, 2007, incident and that he had a copy of it with his belongings in Mexico. When asked why he did not present this copy, he said that he had not thought that he would need it. The directions for filling out the PIF narrative are quite clear, “Attach copies of any medical, psychological, police or other documents to support your claim. ...” The claimant made his claim almost a year and a half ago and I find it would have been reasonable for the claimant to have requested that this document be sent to sent to him at some point, if it really did exist. I find that its absence further undermines his credibility.

In oral testimony, the claimant stated that _____, with two other people, came to his house on _____, 2007, pointed a gun at him and hit him. As pointed out at the hearing, the notes made by the immigration officer state only that _____ (_____) came to the house; no mention is made of other people, and only _____ pointed a gun at the claimant, not that he hit the claimant as well. The claimant said that the immigration officer’s notes were only a summary of what was discussed. I do not find this explanation persuasive. The immigration officer’s notes, while not lengthy, do provide a number of details about each incident that was mentioned. It makes no sense to include the number of details that are present (such as _____ having a gun) yet omits the others; especially that _____ allegedly hit the claimant. I find that this discrepancy with respect to the description of what happened on _____, 2007 to further undermine the claimant’s credibility.

The claimant stated in oral testimony that he complained again to the authorities after _____ visited his house on _____, 2007 and that he was given a copy of the complaint. When asked why he had not presented the document, he said that he was unsure where it was with his belongings in Mexico. I do not find this explanation satisfactory. Once again, the direction in the PIF are quite clear; if the document did actually exist, I would have expected the claimant to make some effort to obtain the document in the year plus that he was in Canada prior to his hearing. To simply say he was unsure as to where the document was specifically, does not make sense as surely his family could have been asked to look for it. I find that the absence of this document further undermines the claimant’s credibility.

The claimant was asked if anything else happened to him on _____, 2007, or at any other time in _____ and he said “no”. As pointed out at the hearing, the PIF states that rather than coming to the claimant’s house on _____, there was instead an incident while the claimant was driving his car. In the PIF it states that _____ shot at the claimant’s car from another vehicle, the claimant bent over and crashed his car into a _____. The claimant said that the PIF was incorrect and that the incident with the car happened after he moved to _____. However, as pointed out at the hearing, unlike

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in oral testimony where there was only one incident in a car and that incident happened in [redacted] the PIF makes it quite clear that there were two separate incidents in cars, one in [redacted] and one in [redacted]. Furthermore, the notes of the immigration officer do not mention any incidents in cars. in any city, at any time. The claimant once again stated that the immigration officer's notes were only a summary of what was discussed. Again, I do not accept this explanation. It makes little sense for the immigration officer to record an incident where the claimant was only threatened, yet omits an incident or incidents involving wild highway carnage where the claimant was being shot at. The claimant could not provide any explanation why the PIF differed so dramatically from his oral testimony. If find that these discrepancies with respect to the number of incidents in a car (zero, one or two) and where these incidents took place (solely [redacted] or both [redacted] and [redacted]) to further undermine the claimant's credibility.

Given the numerous contradictions, omissions, inconsistencies and other discrepancies on major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened.

CONCLUSION

The claimant alleged that he is the victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

November 14, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit C-1, question 31.

3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

4 Exhibit R-2.

5 Exhibit R-2, “Interview Record”, p. 7.

RPD File No. / N° de dossier de la SPR : TA8-08905



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-09073

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	October 29, 2008	Date(s) de l':
Place of Hearing	TORONTO	Lieu de l':
Date of Decision	December 30, 2008	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	No counsel	Conseil(s) du / d demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tr
Designated	Nil	Représent

Representative(s)

désigné

Counsel for the Minister

Nil

Conseil du

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, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

The claimant lived in _____ and provided _____ at a company that _____ and provided _____ to various organizations. On _____, 2007, the claimant was _____ with which the owner of the company, _____ (“_____”), had asked the claimant to be careful, as it had information which showed _____ that were being hidden from the _____ in Mexico. _____ (“_____”), the former _____ of _____, approached the claimant and demanded the information in the _____. While the claimant initially refused, _____ said that he had _____ authorization and the information was provided to him. _____ then disappeared. The claimant learned that _____ was using the information to blackmail _____ and _____ then blamed the claimant for the problem. _____ ordered the claimant to get the information back, with the penalty for failure being death. The claimant was then almost run over by a car and threatened at gunpoint by two men who said that he had two weeks to find the information from the _____. The claimant reported the incident to the authorities and did not return to work. While the claimant did hear that _____ was then arrested, he was released 10 days later. The claimant was assaulted by _____ men again; however, this time when he went to report the incident to the authorities, he was told that _____ had immunity in the courts. The claimant moved to the _____ where he was found and threatened again. Failing to get help from the authorities in _____, he fled to Canada on _____ 2007, making a refugee claim on _____, 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or on a balance of probabilities, that he would personally be subjected to a danger of torture, or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant alleged that he is a victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Credibility s.19(1)

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when his oral testimony was compared to the Personal Information Form 3 (PIF) and the other documents available. For example, in the PIF, the claimant seemed to be aware in advance that the information in the [redacted] was being hidden from the [redacted] prior to accessing it; however in oral testimony, the claimant stated that he only knew that the information was important and only found out about its true nature after it was stolen. When confronted with this discrepancy, the claimant simply maintained that he only knew the information was important but did not realize that it showed evidence of impropriety. I do not find this explanation satisfactory. The claimant affirmed both orally and in writing that his PIF was accurate. Whether or not the claimant knew that the information contained in the database contained evidence of impropriety is a significant point as it would definitely have influenced his thinking in who should have access to the information. I find that this unexplained discrepancy undermines the claimant's credibility.

In the PIF, after the claimant provided [redacted] the information contained in the [redacted], [redacted] came to know that the information was missing as he could not find it. After some clarification, the claimant stated that he gave [redacted] a copy of the information contained in the [redacted], in this case, a form of spreadsheet, by [redacted]. While this made logical sense, it made no sense that [redacted] would then be unable to find the [redacted] through his [redacted] as only a copy had been given out. The claimant was asked to explain how this could be at least three times before he finally said that he suspected that [redacted] had [redacted] to the [redacted] and had subsequently erased the information. As pointed out at the hearing, that explanation made no sense at all since if [redacted] actually had such complete access to the [redacted] whereby he had the authority to erase all of the information contained therein, there would have been no need for him to go through the claimant to obtain a copy of the information as he would already have access to it. In general, the PIF was written as if the [redacted] was like a library book that could be physically picked up and carted away. Given today's technology, this whole transaction made no sense at all. I find that these discrepancies with respect to how the claimant allegedly provided the information, whether or not [redacted] would have noticed it "missing" and whether or not [redacted] actually had access to the information, to seriously undermine the claimant's credibility.

In oral testimony, [redacted] never personally came to the claimant's office; he always called since they did not have a personal relationship. These calls included a polite call where [redacted] was looking for the " [redacted] " which he could not find wherein the claimant admitted to [redacted] of the information [redacted] for [redacted], and then a second angry call wherein [redacted] accused the

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claimant of working with [redacted] in order to extort money from [redacted]. As pointed out at the hearing, this contrasts with the PIF where the first call is not mentioned and most importantly, the confrontation between [redacted] and the claimant is described as taking place in [redacted] office, i.e. face to face. When asked to explain this contradiction, the claimant stated that he wrote the PIF with what information he remembered at the time and had now thought about it for over a year and he now remembered that [redacted] had only spoken to him over the phone. I do not find this explanation satisfactory. The claimant affirmed both orally and in writing that his PIF was accurate. The claimant had been in Canada for one and a half months when he signed his PIF so he would have more than enough time to “think about” what had happened to him. The claimant stated quite clearly in oral testimony that he always spoke to [redacted] by phone as they did not have a personal relationship. It makes little sense then for the claimant to be mistaken as to whether or not [redacted], the agent of persecution, confronted him in person in his office or over the phone. I find that this discrepancy with respect to where and how the claimant was confronted to further undermine his credibility.

The claimant stated several times that he went to the police to complain about “[redacted]” after the incident with the men in the car. In fact, the claimant used the name “[redacted]” several times rather than “[redacted]”. When asked why he would get the name of the alleged agent of persecution wrong, the claimant said that he was nervous and confused and had misspoken. I do not find this explanation satisfactory. It is true that we all misspeak occasionally. However, to get the name of the person who had marked the claimant for death wrong and then repeat the mistake several times even after specifically being asked to clarify the name makes no sense at all. It appeared that the claimant had simply forgotten the name of the alleged agent of persecution and I find that this discrepancy further undermines the claimant’s credibility.

During the hearing, the claimant produced what purports to be a denunciation that the claimant made to the authorities in Mexico. As noted at the hearing, the document4 did not mention a file number and as per our evidence on file5 and through the panel’s declared specialized knowledge, all complaints would have file/reference numbers. The claimant stated that he did not know the procedures that the authorities would follow. It was also noted that the evidence available states that such a document would only be provided to the person concerned or their legal representative, not to the claimant’s father, as the claimant alleged. Most tellingly, the handwritten time of receipt on the face of the document is 11:30 [redacted], 200[cut-off]. However on page two, it refers to the claimant working until [redacted], the next day in the future. The claimant stated that this could not be correct since his last day of work was [redacted], he complained on [redacted] and [redacted] was a Saturday. Unfortunately, [redacted], 2007, was actually a [redacted]. Regardless of the actual days of the week, the document somehow talked about a future day in the past tense. Given the inconsistency within the document with respect to dates, a method of retrieval that should not have been allowed and most of all, the lack of a file number that such a document must have, I find that the document is not genuine and the fact that the claimant

presented such a document further undermines his credibility.

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In general, the claimant's story was generally implausible. If [redacted] could actually locate someone anywhere in Mexico, it would make far more sense for [redacted] to use these all-knowing resources to find [redacted] directly rather than continually following and threatening the claimant and directing him to find [redacted]. Also, if [redacted] is so powerful that he can avoid prosecution for sending thugs out to harm claimant and potentially murder him, it made little sense that he would be afraid for the [redacted] to look at his books. The claimant stated that since financial transactions were being concealed, narco-traffickers would have to be involved and they would not be happy that someone would be looking at the books and therefore [redacted] would want to avoid the attention of the authorities. Apart from this theory never being mentioned in the PIF, it seems quite a stretch and it makes little sense.

Given the serious inconsistencies, discrepancies and outright implausibility with respect to several major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and as such, his claim fails.

CONCLUSION

The claimant alleged that he is the victim of crime based on a criminal vendetta. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. Since I do not believe the claimant with respect to the events described in his PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

December 30, 2008

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, PIF.
- 4 Exhibit C-2, claimant's denunciation.
- 5 Exhibit R-1, *National Documentation Package*, June 27, 2008, item 9.10, *Response to Information Request*, number MEX102725.E, April 17, 2008.

RPD File No. / N° de dossier de la SPR : TA8-09073



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-09146
TA8-13838

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	September 9, 2010 November 12, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	February 7, 2011	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Milan Tomasevic	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Hungary were accepted at the hearing given that certified copies of their Hungarian passports were on file.³ Also accepted for the purposes of this decision is that the claimants would be at least perceived to be Roma.

Credibility

[5] In post-hearing submissions,⁴ counsel for the claimants stated that the claimants' testimony should be found credible. I disagree. It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared to the Personal Information Form⁵ (PIF) and the other documents available. For example, in oral testimony, the male claimant testified about various things that happened to him during his school years. However, as noted at the hearing, despite being given several opportunities to do so he omitted the incident wherein a bed sheet was thrown on him and he was beaten. The claimant stated that this happened a long time ago and that he had not remembered it. I do not find this explanation satisfactory. This was the only incident from the claimant's school years that was specifically described in the PIF. The way the PIF was written suggested that this seemed to be the

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit PH-1.

⁵ Exhibitd C-1 through C-3.

most serious single incident from that time period. Given the circumstances, had it really happened I would have expected the male claimant to have remembered it during his testimony. I find that this omission undermines the claimants' credibility.

[6] In oral testimony, the claimant stated that he had complained about the treatment that he received in school to both the teacher and the principal and that there was no effective response. However, as noted at the hearing, there is no mention of the claimant seeking help from either the teacher or the principal and that their response was not effective. The claimant stated that the person who filled out the original PIF with him did not ask about that and when he filed his amended PIF he was not focused on this time period. I do not find the claimant's explanations satisfactory. The directions for filling out the PIF narrative are quite clear in that all efforts to seek protection are to be detailed. Even if this was somehow not clear when the claimant filled out his original PIF, his PIF was extensively amended on numerous points (including information in questions 1 through 30) with the assistance of current counsel. Had these events really happened, I would have expected some mention of them, particularly in the amended PIF. I find that this discrepancy further undermines the claimants' credibility.

[7] In oral testimony, the male claimant stated that while detained by the police he was hit three to four times on the back with a phone book so no marks would be left and this made his back sore, but he was not otherwise hurt. However, as noted at the hearing, the PIF describes the claimant as being beaten badly. The claimant stated that he could not help much in explaining the apparent contradiction other than he had in fact lived through it. I do not find the claimant's explanation satisfactory. At the hearing, the physical mistreatment of the male claimant by the police seemed somewhat minimal. It therefore made little sense that such an incident would be described in the PIF as being beaten badly. I find that this discrepancy further undermines the claimants' credibility.

[8] In oral testimony, the male claimant stated that there had been a number of times where the police acted improperly with him and that he had been hit by the police on a number of occasions. However, as noted at the hearing, while the PIF at question nine does mention that the male claimant was arrested three times, the narrative only mentions the previously mentioned single incident wherein the police hit him. The claimant stated that he could not include everything in his PIF since it would make the document far too lengthy. I do not find the claimant's explanation satisfactory. As noted previously, the directions for filling out the PIF are quite clear in that all

efforts to obtain protection are to be detailed and if efforts are not made the reasons should be detailed as well. If the claimant really had more than one negative interaction with the police, particularly more than one incident where he was hit, I would have expected him to mention these incidents in the PIF. I find the fact that he did not to further undermine the claimants' credibility.

[9] In oral testimony, the male claimant stated that he was pushed and most seriously was spat upon by people in general while he was waiting for and riding buses. However, as noted at the hearing, in the PIF the male claimant was beaten many times by skinheads (and others) while waiting for buses. The claimant stated that he was used to beatings and that it was more serious to be spat upon and could not explain why he said that he said that he was pushed rather than beaten. I do not find the claimant's explanation satisfactory. The claimant's oral testimony simply cannot be reconciled with his PIF. If the claimant really was beaten by skinheads and others many times it makes no sense for him to state orally that he instead was pushed and spat upon by the general public. I find that this discrepancy further undermines the claimants' credibility.

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[10] In oral testimony, the male claimant stated that starting in 2005 had beaten him two to three times per week. However, as noted at the hearing, while the female claimant's narrative and the male claimant's amended narrative mention that the male claimant was beaten on some occasions, there is no mention of such a high number of beatings. The male claimant stated that mentioning the high number of beatings would not have changed the content of the PIF since the amended PIF does mention . I do not find the claimant's explanation satisfactory. Had the male claimant really been beaten two to three times per week for several years, a truly high number of beatings, I would have expected such a detailed amended PIF narrative to explicitly mention this. I find the fact that it did not to further undermine the claimants' credibility.

[11] As noted at the hearing, in the notes⁶ of the Immigration officer made at the time that the male claimant made his claim there is no mention of at all. The male claimant stated that the Immigration officer actually cut-him off stating that he had enough information already. I do not find the claimant's explanation satisfactory. While only seven typed lines long, the statement made to the Immigration officer is actually very detailed. If really loomed as large in the male claimant's life as he testified, it makes no sense that he would not mention at the very start of

⁶ Exhibit R-2.

this statement and instead mention some of the more mundane things that he did. I find that this omission further undermines the claimants' credibility.

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[12] As further mentioned at the hearing, the male claimant's original PIF makes no mention of . The claimant stated that the person helping him fill-out his PIF told him that he had given enough information for the PIF and the rest could be described at the hearing. I do not find the claimant's explanation satisfactory. The original narrative is one and a quarter pages long and quite detailed. Once again, if had really loomed as large in the claimant's life as the male claimant testified, constantly beating him and forcing his partner into prostitution, I would have expected some mention of this in the original PIF, rather than many other details which were often more mundane. I find that this discrepancy further undermines the claimants' credibility.

[13] In oral testimony, the male claimant stated that when his then father in law attacked him he used an open hand to slap him so that he would not leave any visible injuries that would require medical attention or involve the police. However, as noted at the hearing, in the PIF, the claimant is described as receiving a "big beating". The male claimant stated that one could still be hit hard by an open hand and that while he was hurt in that he had difficulty eating and swallowing, there would be no outward signs of harm. Counsel for the claimants submitted that this was a simple difficulty in translation. I do not find these explanations satisfactory. The way that the incident was described in the PIF simply did not match the male claimant's testimony about being slapped with an open hand. If the claimant really had been slapped with an open hand I would have expected the PIF to have been written differently. I do not see how some error in translation could turn being slapped with an open hand, even repeatedly, into a "big beating". I find that this discrepancy further undermines the claimants' credibility.

[14] The female claimant testified orally that she experienced a number of problems in school and work as a result of racism. However, as noted at the hearing, these problems are not mentioned in the female claimant's PIF. The female claimant stated that she was not treated as badly as the male claimant. I do not find the claimant's explanation satisfactory. Even if the female claimant had experienced relatively less racism than the male claimant alleged, I would still have expected the problems that she testified about orally to be mentioned at least briefly in the PIF, particularly since the claimants were granted a postponement to amend the male claimant's PIF. If the female claimant's PIF was incomplete, even after it had been previously amended, I would have expected it

to have been further amended to include this information. I find that this discrepancy further undermines the claimants' credibility.

[15] As noted at the hearing, it seemed odd given the circumstances that the claimants allegedly found themselves in that the male claimant would be the first one to come to Canada as opposed to the female claimant coming first. The female claimant stated that they decided that the male claimant would come first since he knew people in Canada and that she did not. Odder still was that even though the female claimant knew that the male claimant had made a refugee claim before she arrived in Canada, she did not make a claim until after she had been in Canada for over a month. The female claimant stated that the person who was initially supposed to help her disappeared and she did not know what to do and that the PIF was incorrect in stating that she did tell the Immigration officer at the airport that she wanted to make a refugee claim but was somehow allowed out of the airport without further processing. I do not find the claimant's explanations satisfactory. Even if it did make sense to the claimants for the male claimant to come to Canada first, it makes little sense that the female claimant would not know how to file a refugee claim given that she knew the male claimant already had. It makes little sense for an Immigration officer to allow the claimant into Canada without further processing after stating a desire to make a refugee claim. It makes even less sense for the PIF to somehow incorrectly state this even after the narrative had already been amended to correct other information and a further postponement was given to amend the male claimant's narrative. Had this point been incorrect, I would have expected the information to have been amended too. While the delay was not extremely lengthy, I find in these circumstances that the delay in claiming not only demonstrated a lack of subjective fear, but further undermines the claimants' credibility as well.

[16] Given the serious discrepancies, omissions and other problems with respect to major issues, I find the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened, actually happened. In coming to this conclusion, I am mindful of the psychological report⁷ with respect to the female claimant on file. However, this report is based on a story that I simply do not believe so I give it little weight. Whatever the female claimant's actual difficulties, no evidence was presented that further psychological help could not be obtained in Hungary.

⁷ Exhibit PH-1.

Profile as Roma/State Protection

[17] Even though I disbelieve the events that the claimants recounted orally and in the PIF, I turn now to the general situation for Roma people in Hungary. While I do note that problems exist for people of Roma ethnicity, I find even based on the general profile of the claimants as Roma, the claims fail as the claimants have failed to rebut the presumption of state protection.

[18] There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁸ Evidence that protection being offered is not necessarily perfect⁹ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police, and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that a claimant is unable to avail herself of protection.¹⁰

[19] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection that is directly proportional to the level of democracy of that state.¹¹ The more democratic the state’s institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.¹² Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹³

[20] The documentary evidence shows that Hungary is a country of 10 million people with a functioning, multi-party parliamentary democracy with free and fair elections.¹⁴ I find that Hungary

⁸ *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.

⁹ *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).

¹⁰ *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

¹¹ *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

¹² *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

¹³ *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

¹⁴ Exhibit R-1, *National Documentation Package*, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.

is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Hungary is in a state of complete breakdown.

[21] There is no question that racism exists in Hungary and while efforts to combat racism have achieved mixed results, serious efforts are being made. Although progress has been made, some areas worsened such as extremist violence and harsh rhetoric against ethnic and religious minority groups. Extremists increasingly targeted Roma, resulting in injuries and four deaths. The police sometimes use excessive force, particularly against Roma. Discrimination against Roma in education, housing, employment, and access to social services continued.¹⁵

Police

[22] Despite the fact that there are reports that the police sometimes use excessive force against Roma, the objective documentary evidence states that if complaints are made, action is taken. The Parliamentary Commissioner for National and Ethnic Minority Rights (Minority Ombudsman) takes complaints based on a government agency's decision, proceedings or negligence, a violation that has taken place of a complainant's national or ethnic minority rights, or the direct threat of such a violation is imminent. The Protective Service of Enforcement Agencies (Protective Service) of Hungary's Ministry of Interior has a mandate to prevent and investigate crimes committed by authorities such as the police, border guard and civil defense, and national and local fire stations. The Protective Service investigates such crimes as abuse of office and crimes committed by those acting in an official capacity.¹⁶

[23] In 2004, some police personnel were investigated and disciplined for their involvement in the death of suspects, including some Roma. These actions led the Council of Europe Commissioner of Human Rights to declare that despite continued reports of police violence, in particular against Roma and in country areas, there has been a significant change in official attitudes in Hungary towards such occurrences. Disciplinary and criminal proceedings are now brought to the Commissioner for Human Rights against police officers responsible, and convictions

¹⁵ Exhibit R-1, Item 2.1.

¹⁶ Exhibit R-1, Item 10.2, Response to Information Request. number HUN100494.E. 22 September 2005.

and dismissals are frequent.¹⁷ While I am mindful that there are some reports that suggest police are not held to account in every instance, this is definitely not a situation of police acting with impunity.

[24] In 2006, the authorities conducted 203 criminal investigations into allegations of police misconduct during demonstrations that year. In eight cases the court rejected the charges. Prosecutors terminated their investigations in 171 cases, mainly because authorities could not identify the individual perpetrators since many police were wearing masks and helmets without visible identification. There are reports that authorities were instructed not to wear badges specifically so they could not be identified, which is against the law.¹⁸ The prosecutor pressed charges of causing bodily injury in 20 cases and of that that number, the court made legally binding rulings in 10 cases with the remaining 10 cases awaiting action. One case remained under investigation, while three were transferred to the military prosecutor's office. Furthermore, in civil proceedings arising from the 2006 demonstrations, the Budapest municipal court issued seven verdicts during 2009, ordering police authorities to pay 7,850,000 forint (approximately \$37,000 Canadian at today's exchange rate) to compensate eight demonstrators who were either beaten or illegally detained in 2006.¹⁹

[25] In 2009 the Office of the Prosecutor General received 18 complaints of police use of force during interrogation. The complaints resulted in 17 indictments of 11 police officers. There were also complaints filed by some Roma which were under investigation or working their way through the courts. There was evidence that Roma could pursue complaints even without the involvement of the state prosecutor as the law permits.²⁰ There were also instances where higher courts have intervened sometimes to decrease sentences, sometimes to increase sentences and even to overturn a previous acquittal.²¹

¹⁷ Exhibit R-1, Item 2.4, Council of Europe. 29 March 2006. Commissioner for Human Rights. *Follow-Up Report on Hungary (2002-2005)*.

¹⁸ Exhibit R-1, Item 2.5, International Helsinki Federation for Human Rights (IHF). 2007. "Hungary." *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2007 (Events of 2006)*.

¹⁹ Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009*.

²⁰ Exhibit R-1, item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009*.

²¹ Exhibit R-1, Item 2.3, Amnesty International (AI). 2009. "Hungary." *Amnesty International Report 2009*.

[26] Taken as a whole, I find that while the objective documentary evidence indicates that police do still commit abuses against people, including the Roma, it is reasonable to expect authorities to take action in response to these cases.

Programs for Inclusion

[27] The Hungarian government generally does not condone racism or discrimination by the authorities or the public. The state has undertaken serious and a substantial effort to ensure the future existence of the Roma, and other minorities, is protected. There are a number of programs to help Roma people find work, get education, and find housing. Hungary has laws to combat discrimination wherever it is faced by Roma. The 1993 law for the protection of minorities was reinforced in 2003 with the law on equal treatment and promoting equal opportunity. Then in January 2005 the Equal Treatment Authority was established to supervise proper implementation of the law and is empowered to put a stop to contraventions and to impose fines and penalties under other legislation as applicable.²²

[28] In 2006, a state secretary responsible for equal opportunities in the Ministry of Social Affairs and Labour was established to supervise the execution of the tasks of Roma integration. The Ministry established a Department for Roma Integration to coordinate governmental tasks. The Ministry pays attention to the enhancement of the labour market opportunities of the Roma population, operates a scholarship scheme for young Roma, and cooperates with organizations for the protection of the rights and interests of Roma people. Further, in 2009 the Prime Minister's Office had a state secretary responsible for Roma affairs, and the ministries of education, culture and economy had ministerial commissioners to coordinate the tasks which served the promotion of the social integration of the Roma and the improvement of their living conditions.²³

[29] In April 2007, Hungary adopted the Strategic Plan of the Decade of Roma Inclusion Programme. The overall objectives of the program include four priority areas (among others) including education, employment, housing and health care, each with regard to the enforcement of

²² Exhibit R-1, Item 2.4, Council of Europe. 29 March 2006. Commissioner for Human Rights. *Follow-Up Report on Hungary (2002-2005)*.

²³ Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*.

equal treatment²⁴ Most ministries and county labour affairs centers had special officers for Romani affairs focused on the needs of the Romani community. The Ministry of Education and Culture continued to offer financial incentives to encourage schools to integrate Romani and non-Romani children in the same classrooms and to reintegrate Roma inappropriately placed in remedial programs. The Ministry of Social Affairs and Labour operated a program to finance infrastructure development in Romani communities. The Ministry of Justice and Law Enforcement operated an anti-discrimination legal service network that provided free legal aid to Roma in cases where they encountered discrimination based on their ethnicity. Roma, like the other 12 official minorities, are entitled to elect their own minority self-governments (MSGs), which organize minority activities and handle cultural and educational affairs. The president of each MSG also has the right to attend and speak at local government assemblies.²⁵

Programs for Inclusion

[30] There is no doubt that under-employment of Roma people is a serious problem that has serious social implications. To address this, Hungary has implemented a number of programs. The government opened 200 positions in public administration for Romani college graduates. By the end of 2009, 122 applicants passed the mandatory civil servant entry exam and awaited placement in various national and county offices.²⁶ Since 2003, billions of forints have been dedicated to employment and opportunity programs to promote employment and training to unemployed Roma. In 2003 an affirmative action program was created and a significant number of Roma were found both permanent and temporary public-sector jobs.²⁷ In 2006, the Regional Training Centre in Pecs carried out a complex program in employment with assistance from the National Council for Adult Education to improve the chances of Roma people. Since 2003 there have been 55 complex programs under the auspices of labour centres to help those in long-term unemployment situations, including Roma people and programs continued in 2008. The government runs a number of programs to improve the employment prospects of Roma people that assist with finding

²⁴ Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*

²⁵ Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*

²⁶ Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009.*

²⁷ Exhibit R-1, Item 2.4, Council of Europe. 29 March 2006. Commissioner for Human Rights. *Follow-Up Report on Hungary (2002-2005).*

employment, offer training sessions to help them develop marketable skills, provide financial incentives to employers who hire minorities, and provide Roma desk officers in every labour exchange centre and employment office. Employers are fined for acting in contravention to the principle of equal treatment which disqualifies them from state aid for two years. For example, in 2008 a company was fined for refusing to hire Roma people as cleaners on account of their ethnicity.²⁸ Under these kinds of programs tens of thousands of Roma people have found employment.²⁹

[31] I am mindful that there has been criticism that some of these measures have been sometimes short-term and can only help a limited number of people at one time.³⁰ However, when looked at as a whole I find that Hungary has been making serious efforts and that progress has been made.

Education

[32] Segregation of Roma students has definitely been a serious problem as it lowers education standards and rates for Roma students and contributes to under-employment and poverty. However, wide-ranging programs have been set-up to address segregation through facilitating access to kindergarten, introducing stricter requirements how local authorities draw the boundaries between catchment areas and organize the composition of classes within schools, and the drawing up of new cognitive tests designed to take better account of cultural differences and socioeconomic disadvantage in testing children's development.³¹ However, the efforts of the central authorities are frequently hampered by the manner in which local authorities interpret the measures and translate them into practice. Flaws in the assessment system allow for further segregation and parents of Roma and non-Roma contribute by moving their children to preferred schools.

[33] According to the European Roma Rights Centre (ERRC), desegregation efforts by the national government in Hungary have been amongst the strongest in the Central European region including efforts to subsidize schools that integrate Roma and non-Roma students in the same classroom, reintegrate Roma students inappropriately placed in remedial programs, getting schools

²⁸ Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

²⁹ Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*

³⁰ Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*

³¹ Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*

to accept disadvantaged children in order to prevent non-Roma parents from withdrawing their children from certain schools, and a scholarship program for young Roma which in 2007-2008 had 11,352 recipients.³² Also, on 19 November 2008, the Supreme Court upheld a ruling in a school segregation lawsuit against primary schools in Hajdúhadháza, according to which two primary schools of the municipality violated the law in an act of illegal segregation and the Ministry of Education and Culture issued a statement agreeing with the judgment.³³

Housing

[34] The Roma population is concentrated in economically disadvantaged rural areas and urban slums. Access to public housing can be contingent upon financial resources which many Roma people do not have and Roma people are generally not aware of their rights or judicial recourse available to them.³⁴ The government has stated their aim is to reduce segregation in housing by eliminating Roma ghettos. A program was introduced to refurbish social housing and encourage Roma living in segregated settlements outside towns and villages to move into the refurbished social housing inside the town or village. Further, to ensure that the principle of desegregation is taken into account in the award of state or European Union funding for various projects, the authorities are introducing an equal opportunities subsidy policy. To receive funding for urban development projects, whether or not these are directly related to desegregation efforts, a town will be required to submit a desegregation plan aimed at the elimination of segregated living in the town.³⁵ I am mindful of reports of occasional resistance from local authorities and individuals when a Roma family has sought to move into a new neighbourhood, sometimes resulting in damage. Attitudinal change is not quick or universal, however the work of the authorities is ongoing and persistent. While progress is slow, progress is being made.

[35] In 2007, the United Nations reported that the Hungarian government was financing housing renovations in nine Romani localities, "dramatically improving living conditions for some families".³⁶ The Ministry of Social Affairs and Labour earmarked a total of 2.875 billion forints for the implementation of the Housing and Social Integration Programme for Residents of Roma

³² Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

³³ Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

³⁴ Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

³⁵ Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle)*.

³⁶ Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

Colonies in 30 municipalities of the country. Eleven municipalities were awarded support under the call for applications announced at the end of 2007 for the third time.³⁷ The NGO Roma Civil Rights Foundation (RCRF) accused some municipalities of using a variety of methods to prevent Roma from moving to more desirable neighbourhoods such as auctioning off social housing units to the highest bidder, or evicting Roma from housing under renovation and providing inadequate compensation. However, the authorities will take action against such tactics. For example, in 2009, the Budapest Court fined the 2nd district of Budapest about 400 Euros per capita for having evicted 40 Roma, half of whom were children, from housing that they were occupying without entitlement.³⁸

Recourse

[36] There is no question that the world-wide economic downturn has had an effect on Hungary. Far-right extremists have used this opportunity to blame minorities, including the Roma, for recent events. Violence and violent rhetoric increased as did societal discrimination as is reflected by misinformed comments of some politicians. Families have been deprived of access to social housing by discriminatory rules and practices of local authorities and Roma children are still sometimes confronted with segregation in schools, which has a devastating impact on education outcomes for these children and leaves them with limited future life choices and employment prospects. There has been a sharp rise in racism in public discourse and anti-Roma discourse appears to be becoming increasingly virulent and wide-spread.³⁹

[37] However, the documentary evidence indicates that the government remains dedicated to the protection and enhancement of the lives of the Roma people. Throughout 2009, the fight against the *Magyar Garda* (Hungarian Guard) continued. On December 15, the Supreme Court upheld an earlier appeals court decision dissolving the far-right paramilitary group. The Hungarian Guard was formed in 2007 following violent anti-government demonstrations in 2006. It was formed to preserve Hungary's "traditions and culture". The Hungarian Guard staged marches in various towns wearing uniforms depicting "Gypsy crime" as a threat to security. The court ruled that the

³⁷ Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*

³⁸ Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

³⁹ Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle).*

Hungarian Guard curtailed the freedom and the rights of others and "triggered a risk of violence" during its rallies.⁴⁰ Prior to the Supreme Court ruling, the Guard continued to take in new members despite being banned. During one ceremony on private property, police arrived and initiated legal proceedings against 176 people for participating in a banned organization. In November before the Supreme Court decision, in Sajobabony, Roma people attempted to break up a Hungarian Guard assembly during a Jobbik party political rally. After a group of Roma people assaulted one of the organizers, Jobbik and the Magyar Garda members proceeded to the Romani section of town. Several clashes and damage to vehicles resulted. Police responded by establishing several checkpoints leading into town.⁴¹

[38] Between June and August 2008, a series of physical attacks against Roma people resulted in the killing of nine persons and injuries to many others. In response, the national police chief doubled the number of detectives in the special unit assigned to the case to 100. On August 21, 2008 police arrested four suspects and no additional attacks of this nature occurred after the arrests. When non-governmental groups criticized the investigation into the crimes, police ordered an internal disciplinary proceeding to identify the alleged mistakes, and these resulted in disciplinary measures against two police officers.⁴²

[39] On some occasions leaders in authority, including the Parliamentary Commissioner for Civil Rights, made some disparaging remarks with respect to Roma people. In each case there was investigation and consequences. There has been effort to bolster public relations efforts to garner support for tolerance such as efforts to encourage public personalities to speak out against racism. The Ministry of Justice and Law Enforcement operated the Roma Anti-discrimination Customer Service Network, a legal service network that provides free legal aid to Roma in cases where they encountered discrimination based on their ethnicity.⁴³ With the expansion of the Roma Anti-Discrimination Customer Service Network in 2008 there were 30 lawyers at 47 municipalities in the country and the coordination of the program in the Ministry is ensured by a desk officer for Roma

⁴⁰ Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009*.

⁴¹ Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009*.

⁴² Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009*.

⁴³ Exhibit R-1, Item 2.1, United States (US). 11 March 2010. Department of State. "Hungary." *Country Reports on Human Rights Practices for 2009*.

affairs. Clients can obtain information on the customer service contact details of Network lawyers 24 hours a day. There was a nation-wide campaign promoting the network and toll-free number. Since 2004 the Network has handled more than 7,200 cases.⁴⁴

[40] There is also recourse to the Equal Treatment Authority. Since 2005 it has provided individuals with a direct avenue of redress for violations of the prohibition of discrimination in a variety of public- and private-law relationships. In the first year, there were nearly 500 complaints lodged and the number has risen steadily every since. There are also other remedies such as seeking compensation through the courts, or turning to one of the Parliamentary Commissioners where public authorities are concerned.⁴⁵ There is also the Roma Police Officers' Association in Hungary and Roma people are able to file a complaint to the association. The complaints mostly concern discrimination in employment, discriminatory treatment, and discrimination by law enforcement authorities or police officers.⁴⁶

[41] Taking all of this into account, I find that there is recourse for Roma people who face discrimination in Hungary. It is reasonable to expect the state would be reasonably forthcoming with serious efforts at protection should they be sought. Unfortunately, as noted by the Council of Europe's European Commission against Racism and Intolerance (ECRI), it is a failure of the local authorities in implementing centrally enacted legislation that is at the heart of much of the discrimination experienced by Roma in daily life.⁴⁷ However, others note that Hungary has one of the most advanced systems for minority protection in the region. Despite these efforts, funding sometimes fails to reach groups with the greatest needs.⁴⁸ However, as noted above, Hungary is a democracy. Freedom House notes in its 2009 report that democratic institutions are robust and likely to hold despite reckless party politics, illiberal rhetoric, high-profile corruption, and radicalization on the political Right aimed at the minority Roma population.⁴⁹ The burden is on the claimant to provide clear and convincing evidence that the state protection available would not be

⁴⁴ Exhibit R-1, Item 13.2, Hungary. 4 June 2009. *Third Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.*

⁴⁵ Exhibit R-1, Item 13.3, Council of Europe (COE). 24 February 2009. European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Hungary (Fourth Monitoring Cycle; and Exhibit R-1, Item 13.10, Response to Information Request HUN103232.E. 15 October 2009.*

⁴⁶ Exhibit R-1, Item 10.1, Response to Information Request HUN103091.E. 21 April 2009.

⁴⁷ Exhibit R-1, Item 13.11, Response to Information Request HUN103267.E. IRB. 16 October 2009.

⁴⁸ Exhibit R-1, Item 13.10, Response to Information Request HUN103232.E. 15 October 2009.

⁴⁹ Exhibit R-1, Item 2.2, Freedom House. 2009. Balázs Aron Kovács and Bálint Molnár. "Hungary." *Nations in Transit 2009.*

adequate. Evidence shows that state's efforts are serious, that progress is slow but that there are positive signs and there are results and I find that adequate protection is available. As a result, the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that would indicate that the claimants would be subject to the risks delineated in section 97 of the *IRPA*, the claims pursuant to that section fail as well.

Compelling Reasons

[42] Counsel for the claimants submitted that the doctrine of compelling reasons applies in this case. I disagree. For the compelling reasons doctrine as set-out in subsection 108(4) of the *IRPA* to apply there must have been some change in circumstances and there is none here. More importantly, I simply do not believe the claimants' particular story in the first place and I find that the situation for Roma in general is not appalling or atrocious.

CONCLUSION

[43] I find that the claimants are not Convention refugees or persons in need of protection.

(signed)

"David McBean"

David McBean

February 7, 2011

Date



RPD File No. / N° de dossier de la SPR: TA8-09360

TA8-09361

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

September 30, 2008

Date(s) de l':

Place of Hearing

TORONTO

Lieu de l':

Date of Decision

November 17 , 2008

Date de la

Panel

David McBean

7

**Counsel for the
Claimant(s)**

Rev. Daniel Earl McLeod

**Conseil(s) du / d
demandeur(e)(s)**

Tribunal Officer

Nil

Agent(e) des tr

Designated Representative(s)	Nil	Représent dési
Counsel for the Minister	Nil	Conseil du

s.19(1)

and his wife , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (*IRPA*).

ALLEGATIONS

The claimants lived in Mexico City. Their store was robbed on several occasions. On one occasion, was kidnapped. The claimants were watched and threatened by the Judicial Police. was carjacked at gunpoint, beaten and left far away from home. After several trips back and forth to Canada the claimants came to Canada for the final time on , 2007, making refugee claims on 2008.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or, on a balance of probabilities, that they would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing as copies of their Mexican passports were on file.²

Nexus

The claimants alleged that they are victims of crime based on a criminal acts committed by Judicial Police officers acting outside of their lawful duties. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.

Credibility

Despite having an extremely brief narrative, numerous concerns with respect to credibility became apparent when the claimants' testimony was compared to the Person Information Forms³ (PIFs) and the Immigration Officer's (IO's) notes made at the time that they made their claims. For example, initially testified that in 2004 he was stopped by judicial police officers, driven to an unknown location, robbed and punched a few times. When asked if they did anything else to him the claimant answered "no". When it was pointed out that the PIF stated that this incident happened at gunpoint, the claimant stated that the incident mentioned in the PIF and in the IO's notes was not the same incident about which he had just testified. For the first time, the claimant stated that there were actually two significant

incidents that happened to him in 2004. One, described in the PIF and the IO's notes where an unknown criminal held him at gunpoint and a separate never-before-described incident where the claimant was stopped by the Judicial Police, driven away, robbed and punched. When asked why he had not mentioned the incident with the Judicial Police to the IO, the claimant testified that he was under too much pressure to do so. When asked why the incident was not mentioned in his PIF, he stated that he had only made a denunciation to the authorities about the incident with the criminal and did not do so with respect to the incident with the Judicial Police. I do not find either of these explanations satisfactory. The claimants made their claims three years after the last significant incident in Mexico. They had travelled to Canada on numerous occasions in the meantime and on the final occasion were in Canada nine months before making claims. An interpreter was provided in person at the Immigration office, so there should have been no confusion. There does not appear to be any valid reason why the claimant would feel so much pressure that he would forget such a major incident involving the Judicial Police, the very people who should be protecting him from crime, but remember instead another incident where it appeared that he was simply the victim of random crime. With respect to the PIF, the directions for completing the narrative are quite clear: the claimants are to include all incidents that caused them to flee, not just the ones that they might be able to document.

It should be noted that while the claimant stated that he had requested a copy of the denunciation made with respect to the incident with the criminal, it had not arrived in time for the hearing, so the "documentable" incident was not even documented. I also note that even once the claimant made it clear that there were actually two different incidents, he did not consistently describe the incident wherein he was carjacked by a criminal. In the PIF and IO's notes, the claimant mentioned that he was beaten, while in oral testimony he omitted this fact, even though he was specifically asked if the criminal had done "anything else" to him. Only after this omission was pointed out did the male claimant state that he had, in fact, been beaten. The claimant could not provide an explanation for why the omission occurred. Throughout this portion of the testimony, it seemed like the claimant was inventing facts as he went along. If anything, it appeared that he invented the fact that there were two incidents rather than one to cover the fact that he had omitted the reference to "at gunpoint". Unfortunately, the credibility concerns snowballed from there. I find that these omissions, whether incorrectly describing the events where the claimants' van was "car-jacked" by a criminal, and much more seriously, the total omission in the PIF and the IO's notes of the claimant's only serious personal contact with the Judicial Police to seriously undermine the claimants' credibility.

s.19(1)

was also asked about the only other serious incident described in his PIF, where he was robbed and kidnapped for a few hours. When asked when it occurred, he said it was prior to the incident when the criminal carjacked his van. As pointed out at the hearing, the Immigration Officer's detailed notes make it quite clear that the kidnapping took place after the incident with the van. Far more importantly, he was repeatedly asked who he believed was responsible for his wife's kidnapping and

only after much prompting, did he speculate that the Judicial Police were somehow involved. As pointed out at the hearing, while the PIF is somewhat imprecise on the point, the IO's notes make it quite clear that the claimants believed that the very same Judicial Police officers who had been conducting surveillance outside their home had been the ones who had kidnapped. When was asked about the same incident, she provided vague, confusing testimony with respect to who had kidnapped her. However, she did eventually say that she believed it was the Judicial Police who had kidnapped her and that she had told her husband this belief. simply could not provide a satisfactory explanation as to why only after repeated prodding, did he speculate that the Judicial Police were involved even though his wife had told him just that, and both claimants stated quite clearly to the IO that the Judicial Police were involved. It makes no sense that anyone could be so vague in testifying about the apparently quite well-known identities of their spouse's kidnappers. I find that this discrepancy with respect to the timing of the incident, and far more importantly, the discrepancy with respect to whom the perpetrators were, to seriously undermine the claimants' credibility. s.19(1)

It should be noted that the credibility concerns were not limited to testimony. During testimony she spoke for the first time about being robbed by a uniformed police officer. When asked why she had not mentioned this in the PIF or to the IO, stated that she had, in fact, mentioned that she had been robbed several times and had simply omitted all details about those events as she wanted to elaborate at the hearing. I do not find this explanation satisfactory. It makes no sense at all to mention being robbed several times but omit the fact that at least on one occasion that the robber was a uniformed police officer, when the very agents of persecution responsible for the majority of the claimants' problems, are also alleged to be the police. I find that this omission further undermines the claimants' credibility.

The claimants have been to Canada approximately five times to deal with their son's criminal case after the last significant alleged harm happened. The claimants returned to Mexico on four of those occasions. After arriving for the final time in 2007, they lived here until 2008, before finally making refugee claims, months after their Temporary Resident Visas had expired. When asked why they repeatedly failed to claim during any of their previous visits, repeatedly returned to Mexico where they allegedly feared for their lives and then after arriving in Canada for the final time, they delayed nine months in making their claims, the claimants could only state that they lacked knowledge of and feared the refugee process. As pointed out at the hearing, the claimants' son came to Canada in early 2006 and made a refugee claim. According to the claimants, their son did not tell them about the process or if he had, they did not pay attention to him and, in general, they remained fearful. I do not find these explanations satisfactory. The claimants were sophisticated enough to repeatedly travel to Canada, often connecting through the USA. They had multiple contacts with Canadian Immigration authorities and a son who had made a refugee claim. It makes no sense at all that if they truly had anything to fear in Mexico that they would repeatedly fail to make a claim, repeatedly return to Mexico

and then overstay in Canada past their Temporary Resident Visas expiring without making any enquiries whatsoever during their repeated contacts with Canadian Immigration officials, as to how they could remain in Canada and protect themselves. I find that this behaviour not only demonstrates a lack of subjective fear, but further undermines the claimants' credibility.

Given the numerous contradictions, inconsistencies and other problems, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened.

CONCLUSION

The claimants have alleged that they are victims of crime based on criminal acts committed by the Judicial Police acting outside their lawful duties. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. Since I do not believe the claimants with respect to the events described in their PIFs and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

“David McBean”

David McBean

November 17, 2008

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1 and C-2.

RPD File No. / N° de dossier de la SPR : TA8-09360

TA8-09361



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-10888

TA8-10948

TA8-10949

TA8-10950

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) **Demandeur(e)(s)**

Date(s) of Hearing January 19, 2010 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision March 19, 2010 **Date de la décision**

Panel David McBean

Counsel for the Claimant (s) Viktor S. Hohots **Conseil(s) du / de demandeur(e)(s)**

Tribunal Officer N/A **Agent(e) de**

**Designated
Representative(s)**

s.19(1)

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

REASONS AND DECISION

[1]] (“the claimant”), his wife, , and their minor sons,]
and ‘ citizens of the Czech Republic, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant was racially taunted by other kids at school when he was a child. By the time he was a teenager, the claimant was even beaten. One time, about 10 years ago, when he was walking with his then-pregnant wife, some skinheads fought him and he suffered a cut which required stitches. While the claimant was able to overcome racism to find a job, he was fired even though he was a good worker. The claimants came to Canada on 2008. They made refugee claims on , 2008.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimants’ identities as citizens of the Czech Republic were accepted at the hearing given that copies of their Czech passports were on file.² Also accepted for the purposes of the hearing was the fact that the claimants either are, or would be perceived to be of Roma ethnicity.

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant’s evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, with respect to the incident where the claimant was allegedly attacked by five skinheads in approximately 1998, the claimant stated that while he did seek medical treatment, he was not treated properly. The claimant felt that he was improperly refused an x-ray for his head injury because he was Roma. He also stated that the medical facility refused to give him a medical report at the time since he was Roma. However, as noted at the hearing, there was no mention of either of these problems in the PIF. The claimant stated he did not know that he should have

put these details in the PIF and that he planned to give details at the hearing. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that all significant events are to be included and the directions go on to state that details with respect to medical treatment and related reports are to be included as well. The claimant stated he was quite sure that he had received negligent medical care and was refused a report that he should have received based solely on his ethnicity. It therefore makes little sense for him not to include these events in his PIF. I find that their omission undermines the claimant's credibility.

[6] In his oral description of the same incident, the claimant stated that there were witnesses across the street that must have seen what happened, but when they were questioned later, they denied having seen anything. However, as noted at the hearing, this portion of the incident is not mentioned in the PIF. The claimant stated that he did not know why he had not written about it in the PIF. I do not find this lack of an explanation satisfactory. It is one thing to be attacked by racist thugs in isolation. It is another thing entirely to have "regular" people pretend that they did not see anything even though they saw the attack. This is significant since it escalated the claimant's problem from simply fearing thugs to a situation where "regular" people would not only, not come to the claimant's assistance, but would not even vouch for what actually happened. I find that this discrepancy further undermines the claimant's testimony.

[7] During oral testimony, the claimant stated that he stopped going to and calling the police after the above-noted incident. The way that he stated this gave the impression that he would normally have called the police for incidents after that, but did not do so due to his negative experience. He went on and testified that he had been attacked many times, both before and after that incident. However, when I attempted to clarify how many times that the claimant was attacked he gave vague and evasive answers in response to repeated questions on the point. Usually the answers attempted to minimize the nature of what had happened to the claimant. Eventually the claimant stated that he meant that while he would continue to call the police after 1998, he would not go to the police station. He stated that the police would never do anything when he called them, but would simply tell him to go home. However, as noted at the hearing, the PIF does not mention that there were any specific attacks directed at the claimants where there were ineffective or non-responsive police. The claimant stated that the attacks were lesser after 1998 and that he had not realized that he had to write all these things down. I do not find the claimant's explanations satisfactory. In the claimant's initial testimony in this area, it seemed obvious that while he stopped calling the police, he would have done so but for his past experiences. It appeared he would have needed to call the police given that he was "attacked" many times. It was at that point it appeared the claimant realized that he was going to be challenged on these points since his PIF did not appear to match what he was saying. He then attempted to minimize the "attacks" by stating he was merely chased or pushed. He even contradicted himself having said earlier that he stopped calling the police and then later said he only stopped going to the police but continued to call them. The evidence in this area should have not been this problematic. If the claimant was attacked with any

seriousness before or after 1998, I would have expected that these attacks to be specifically mentioned in the PIF, given that the directions for filling out the narrative are quite clear in that all significant incidents are to be included. This is particularly true for incidents where the authorities failed to respond properly. Conversely, if the claimant had not experienced any truly serious problems after 1998, I would not have expected his initial oral testimony to suggest that this was anything but the case. I find that these discrepancies further undermine the claimant's credibility.

[8] In the claimant's initial oral testimony he stated that skinheads would hurt "us" (i.e. the claimant and his wife) and the kids. When asked to clarify what he meant, he stated that they would push the kids but not hurt them as much since they were only kids. When asked again during later testimony if his children had experienced problems at the hands of skinheads, he said that skinheads had called them names and had thrown stones at them. When it was pointed out that he had earlier said they had been pushed by skinheads, the claimant stated that pushing was less than beating. Then it was pointed out that the claimant's PIF does not mention his children having specific problems with skinheads, and while the female claimant's PIF4 did mention them being called names by skinheads, it mentions pushing in the context of the adults being pushed and the children being present, but there is no mention of the skinheads throwing stones. The claimant stated he did not know why he had not included the information and that his children's experiences were not like attacks. I do not find the claimant's explanations satisfactory. Once again, the evidence in this area should not have been this difficult. To have your own children subjected to racism would be a terrible thing. One would expect the details of that racism to be uppermost in a parent's mind. It makes little sense for the claimant to fail to mention these details in his PIF and then vary with respect to the details (pushing versus name-calling and stone throwing). It makes no sense at all for the claimant to then attempt to explain all this by saying none of this was like an attack, particularly the allegations that the children were specifically pushed and had stones thrown at them. I find the discrepancies in this area further undermine the claimant's credibility.

[9] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him and his family, actually happened.

Profile as Roma/State Protection

[10] Even though I disbelieve the events that the claimants recounted orally and in their PIFs, I turn now to the general situation for Roma people in the Czech Republic. While I do note that problems do exist for people of Roma ethnicity, I find even based on the general profile of the claimants as Roma, the claims fail as I find that the claimants have failed to rebut the presumption of state protection.

[11] There is a presumption that a state is capable of protecting its citizens. The claimants may rebut

this presumption by providing “clear and convincing” proof of lack of state protection. The claimants must approach the state for protection, providing that state protection might be reasonably forthcoming.⁵ Evidence that protection being offered is not necessarily perfect⁶ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimants are unable to avail themselves of protection.⁷

[12] When the state in question is a democratic state, the claimants must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimants is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁸ The more democratic the state’s institutions, the greater the onus is on the claimants to show that they have exhausted all courses of action available.⁹ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁰

[13] The documentary evidence shows that the Czech Republic is a functioning, parliamentary democracy with free and fair elections.¹¹ I find that Czech Republic is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Czech Republic is in a state of complete breakdown.

[14] The documentary evidence further indicates that the government generally respected and protected the rights of its citizens.¹² While there is no question that Roma do face discrimination and that there have been demonstrations and even some attacks at the hands of skinheads, neo-Nazis and other extremists,¹³ there is legislation in place that provides protection for the Roma and other groups including anti-discrimination and hate-crime legislation. The Czech constitution prohibits discrimination based on national, racial or ethnic background as well as other pieces of legislation governing employment and education as well as *The Charter of Rights and Freedoms*. An anti-discrimination bill which would harmonize Czech legislation with that of the European Union was passed on June 17, 2009. Furthermore, the Czech Republic is a member of the European Union, which has had a positive impact on the country by setting standards concerning human rights, as well as access to the European Court of Human Rights and access to multi lateral programs such as the Decade of Roma Inclusion. I do note that some observers have questioned the degree of positive impact that these measures have had.¹⁴

[15] To address acts of discrimination the authorities introduced the Roma Police Assistant (RPA)

program in 2003. The purpose of employing RPA's is to assist in building better relations and trust between the Roma and the police. The RPA's assist police in their investigations, assist in accompanying Roma who are victims of crime to file police reports and in helping obtain social services for such victims. A program of hiring Minority Liaison Officers (MLOs) was also begun in 2004 with the focus on crime reduction and lessening social exclusion. Several observers have commented that these programs have been helpful and represent progress in the relationship between Roma and the authorities, which has not been one of trust over the years. Furthermore, in the mid 1990's, the Ministry of the Interior initiated programs to combat extremists by allowing the police to closely monitor such group activities and created an anti-extremist department within the police itself, which is showing signs of success. The police have arrested neo-Nazis and they have been prosecuted, including a case where a Romani had been murdered. The police also successfully prevented or broke up extremist clashes and demonstrations. The government is also trying to recruit Roma as police officers, with a number of drives being conducted in Prague and Brno. While there has been a good response to these drives, many applicants are screened out due to a lack of a secondary school diploma. However, to counter-act this problem, the police and other organizations offer assistance to people who want to complete their education so that they can then join the police force. Furthermore, the police are trained on how to deal with minorities and extremists. The police are making other efforts such as participating in day camps, seminars and school visits in order to foster better relations with Roma children. While statistics are difficult to come by given privacy laws, as of 2006, there were an estimated 61 Roma police officers in Czech Republic.¹⁵

[16] The judiciary has prosecuted hate crimes committed against Roma people on several occasions. The documentary evidence notes that "the judicial proceedings on racial crime have increased in recent years due to the efforts of NGO's ..."¹⁶ The Czech Ombudsman was created in 1999 and is known as the Public Defender of Rights. The Ombudsman investigates allegations of public sector mistreatment of Roma and may take corrective action or issue advice or recommendations. The Ombudsman has successfully intervened in areas such as housing but has yet to receive any formal complaints against the police.¹⁷ There is a new independent and transparent mechanism to investigate police misconduct.¹⁸ There are other government and non government agencies available to assist the Roma, including 400 Roma NGO's, the Czech Trade Inspectorate (to deal with unfair business practices or consumer discrimination), and the Social Inclusion Agency to address the social integration of the Roma into Czech society, including housing, health care, employment, social services and cohesion.¹⁹

[17] While the claimants did present what purports to be an extract²⁰ from a school reader, there is no information on the face of the document to actually confirm that the document actually emanates from an actual school reader, or more importantly, what year it was published and where it was used, if anywhere. Given the circumstances I give this document little weight. Also presented was a copy of *Notice of Decision*²¹ stating that three people had been granted status as Convention refugees. Given

that no other information was provided about this decision, particularly the basis for the decision, I do not see how this assists the claimants.

[18] In summary, I find that the preponderance of the documentary evidence indicates that the Czech Republic government is making very serious efforts to provide protection to the Roma whether as a victim of a hate crime, to assistance in obtaining social services or inclusion into Czech society. While there is discrimination against Roma people and even some incidents of violence, I find that the Czech government in recent years is making very serious strides to have this discrimination overcome.

[19] I find that the claimants have not established, on a balance of probabilities, that adequate state protection is not available. As such the claims pursuant to section 96 of the IRPA fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the IRPA, the claims pursuant to that section fail as well.

CONCLUSION

[20] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

March 19, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit C-2.

5 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.

6 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).

- 7 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 8 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 10 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 11 Exhibit R-1, *National Documentation Package*, September 25, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.
- 12 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.
- 13 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.
- 14 Exhibit R-1, tab 13.12, *Issue Paper*, Czech Republic: “Fact –Finding Mission Report on State Protection”, *Immigration and Refugee Board*, June 2009.
- 15 Exhibit R-1, tab 13.12, *Issue Paper*.
- 16 Exhibit R-1, tab 13.12, *Issue Paper*.
- 17 Exhibit R-1, tab 13.12, *Issue Paper*.
- 18 Exhibit R-1, tab 2.3, “International Helsinki Federation Annual Report on Human Rights Violations”, March 27, 2007.
- 19 Exhibit R-1, tab 13.12, *Issue Paper*.
- 20 Exhibit C-5.
- 21 Exhibit C-6.

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RPD File No. : TA8-10888

TA8-10948

TA8-10949

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-11103
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	(a.k.a.)	s.19(1) Demandeur(e)(s) d'asile
Date(s) of Hearing	September 24, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	September 27, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Deobarran Charran	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] (a.k.a.), a citizen of Trinidad and Tobago, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Trinidad. In 2006, an man that the claimant knew nothing about approached her with flowers and said that he wanted to have a relationship. The claimant stated that she was not interested since she already had a relationship. However, the man continued his pursuit of the claimant and followed her around. The claimant called the police about 3-4 times and while they responded each time the man escaped by running away as soon as he saw the police approaching. In 2006, the man approached the claimant and stated that he would one day kidnap her and take her by force. Fearing the worst the claimant's father suggested that she marry her Canadian boyfriend and go to Canada. The claimant traveled to Canada in 2006. After the sponsorship application was refused, she made a refugee claim in 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

ANALYSIS

Identity s.19(1)

[4] The claimant's identity as a citizen of Trinidad and Tobago was accepted at the hearing given that a certified copy of her passport from Trinidad and Tobago was on file.³

Objective Basis/State Protection

[5] The claimant last had contact with the man that she fears in 2006. Despite this man stating that he knew where she lived, her family has not had any contact with him since 2006 either. It appears that he has lost interest in the claimant so there does not appear to be an objective basis to the claimant's fear. Even if he were to somehow still be interested in harming the claimant and even if he somehow came to know that she had returned to Trinidad after more than four years away the claimant could always call upon the authorities for protection. They had always responded to her aid in the 3-4 times that she called them in the past and the man seemed to fear the authorities as he would always run away when he saw them. I find the claimant has failed to rebut the presumption of state protection, and as such, the claim pursuant to section 96 of the *IRPA* fails.

Generalized Risk

[6] The claimant also stated that she feared general crime in Trinidad. However, while crime can indeed be a problem, it is a risk generally faced by others and as such is precluded from my consideration by section 97(1)(b)(ii) of the *IRPA*. Even if the claimant were to face greater targeting because of her stay in Canada, her Canadian son or other factors, this merely alters the degree of the risk, not the general nature of it. While counsel made reference to an article⁴ that indicates that East Indian Trinidadians are more likely to face kidnappings than other groups, this appears to be related to the victims' wealth and status rather than race/ethnicity. There being no other evidence that the claimant is at risk of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit C-2, p. 47, "The Kidnapping of Indians in Trinidad Continues".

No Credible Basis

[7] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[8] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

September 27, 2010

Date



RPD File No. / N° de dossier de la SPR : TA8-11137
TA8-11168
TA8-11169
TA8-11170
TA8-11171

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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

s.19(1)

Date(s) of Hearing **October 2, 2009** **Date(s) de l'audience**

Place of Hearing **Toronto, Ontario** **Lieu de l'audience**

Date of Decision **October 2, 2009 (rendered orally)** **Date de la décision**
October 16, 2009 (written reasons)

Panel **David McBean** **Tribunal**

Counsel for the Claimant(s) **John Campion** **Conseil(s) du / de la / des demandeur(e)(s) d'asile**

Tribunal Officer **N/A** **Agent(e) de tribunal**

Designated Representative(s) **Représentant(e)(s) désigné(e)(s)**

Counsel for the Minister **N/A** **Conseil du ministre**

s.19(1)

[1] _____, (the claimant), his spouse, _____, their minor children, _____ and _____, and the claimant's mother, _____, are citizens of Portugal claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*¹ .

ALLEGATIONS

[2] The claimants generally fear poverty and rising crime rates in Portugal due to a faltering economy.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing of a serious possibility of persecution on a Convention ground, or that they would on a balance of probabilities, personally be subjected to a danger of torture or a risk to their life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows:

IDENTITY

[4] The claimants' identities as citizens of Portugal were accepted at the beginning of the hearing as copies of their Portuguese passports were on file.²

¹ As enacted by S.C. 2001, c. 27.

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

NEXUS

[5] As conceded by counsel, there does not appear to be a nexus or connection to any of the five Convention grounds. As I find there is no nexus, their claims pursuant to section 96 of the Act must fail.

CONSOLIDATED GROUNDS, SECTION 97 (1)

[6] The claimants have provided evidence that they do fear crime and at least one claimant has witnessed a specific crime, and while generalized crime is of course very distressing and regrettable, there is no evidence that the claimants are being, in particular, personally targeted within the meaning of our legislation.

[7] As well, the situation of poverty, once again a very distressing thing to deal with, but as with generalized crime, it is a problem that is faced by all citizens of Portugal. I find that both of these situations come within the exception for generalized risk and therefore cannot lead to a successful claim in this area.

[8] There being no other evidence which would indicate that the claimants are at risk of any of the harms delineated in section 97 of the Act, their claims pursuant to that section fail as well.

NO CREDIBLE BASIS

[9] I find that pursuant to subsection 107(2) of the Act, that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for these claims.

CONCLUSION

[10] As such, the Refugee Protection Division rejects these claims. The claimants are not Convention refugees or persons in need of protection.

[edited for syntax and grammar]

(signed)

“David McBean”

David McBean

October 16, 2009

Date



RPD File No. / N° de dossier de la SPR: TA8-11251

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 3, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	March 6, 2009	Date de la décision
Panel	David McBean	Le juge
Counsel for the Claimant(s)	No counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

000881

Representative(s)

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Counsel for the Minister

Dechen Goff
Counsel for the Minister of Public Safety

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s.19(1)

a citizen of Italy, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant was born in [REDACTED], a suburb of [REDACTED], Italy. As a teenager, he emigrated with his parents to the United States (U.S.) in 1970. In the mid-1980s he was sleeping at a cousin's place when the police entered and [REDACTED]. The claimant pled guilty to [REDACTED] and [REDACTED]. The claimant served [REDACTED] of a [REDACTED] sentence. These convictions ultimately led to the claimant being deported to Italy in [REDACTED]. Returning to [REDACTED] he encountered men who threatened him with violence if he did not pay them "protection" money. The claimant fled to Canada on [REDACTED] 2006 and made a refugee claim on [REDACTED] 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

The claimant's identity as a citizen of Italy was accepted at the beginning of the hearing as a copy of his Italian passport was on file.²

Article 1F(b) Exclusion

Counsel for the Minister intervened in person at the hearing with respect to the issue of whether or not the claimant should be excluded pursuant to Article 1F(b) in that he may have committed a serious non-political crime(s) in the U.S. While counsel for the Minister asked a number of questions on the issue, she withdrew the intervention at the conclusion of the evidentiary portion of the hearing. While I am mindful of the fact that I may still find a claimant excluded even without the Minister's participation, I specifically make no findings on the issue of exclusion.

Nexus

The claimant alleges that he is a victim of crime due to extortion attempts by criminals. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Internal Flight Alternative (IFA)

Even if I were to accept the claimant's evidence as truthful, which I do not necessarily do, the claim still fails as the claimant has a viable IFA in Rome. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable, which has been adjusted for the purpose of section 97 as follows:

- i. The Board must be satisfied on a balance of probabilities that the claimant does not face a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment in the part of the country to which it finds an IFA exists. Section 97(1)(b)(ii) of the *IRPA* requires that the risk would be faced in every part of the country.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, the claimant did not express any fear of any harm befalling him should he relocate to Rome. No evidence was presented that the men who the claimant encountered in [redacted] would have the motivation or resources to locate and follow the claimant to Rome. I find that, on a balance of probabilities, the claimant would not face a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of torture in Rome.

s.19(1)

With respect to the reasonableness of the claimant moving to Rome, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁴ The claimant would be returning through the international airport just outside of Rome so he would not need to return to [redacted]. The claimant has extensive work experience not only as a [redacted] in the U.S., but also as a [redacted] in Toronto. He managed to gain this experience working in English, his second language. In Rome he would be able to work in Italian, his first language. While the claimant did express a general concern that he did not know anyone in Rome, this is a challenge faced by many people when they relocate and is not a barrier to the relocation itself. I find that it would not be unduly harsh for the claimant to relocate to Rome. The claim pursuant to section 97 of the *IRPA* therefore fails as well.

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

Other methods of attaining status in Canada

The claimant stated that he may soon be sponsored by his girlfriend and he may also gain status in Canada as an entrepreneur. While these efforts may lead to the claimant attaining status in Canada, they are the responsibility of another Department and I have no jurisdiction to consider them.

CONCLUSION

The claimant has alleged that he is a victim of crime. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds. As I find that the claimant has a viable IFA in Rome, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*. I find that there was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

“David McBean”

David McBean

March 6, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit M-1, information received from Citizenship and Immigration Canada (CIC).
- 3 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
- 4 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

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RPD.15.7 (October 2007)

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RPD File No. / N° de dossier de la SPR: TA8-12432

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s)
Date(s) of Hearing	January 27, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	April 3, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	No counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant

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Representative(s)

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Counsel for the Minister

Nil

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s.19(1)

a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

The claimant was the of ‘], a . The Federal Police and the Revenue Department attempted to build a case against , one of customers. While the claimant eventually agreed to cooperate with the authorities, he feared powerful connections.

the claimant survived an assassination attempt by an intruder who possessed a note that was intended to be the claimant’s fake suicide note. Soon after, the authorities and the claimant’s lawyer abandoned him. ran over the claimant with a truck in 2006, causing him to spend the next five months in a hospital; The claimant received many threats and his brother was attacked in 2007. The claimant’s car was destroyed in 2007. Four lawyers refused to take the claimant’s case because of the powerful connections of . was set on fire on , 2008 and the claimant fled to Canada a few days later to make a refugee claim.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant’s evidence when his oral testimony was compared internally and to the PIF, an

Immigration document made at the time that he made his claim,³ and a translation of a statement

that the claimant made in Spanish in his own handwriting also at the time that he made his

s.19(1) claim.4 For example, while claimants are not required to document every aspect of their claim, if documents are reasonably available they should be presented. In this claim, there appeared to be numerous areas where it should have been quite easy for the claimant to document his claim. In fact, the claimant stated that he actually had obtained documents that would substantiate many of the most important aspects of his claim, such as the existence of his alleged business, his alleged extremely lengthy stay in a hospital, etc., and that these documents were allegedly here in Canada. However, the claimant stated that he gave all of these crucial documents to a lawyer in Canada, did not keep copies of any of the documents and no one has filed them with the IRB. Other documents, such as e-mails from and information from the claimant's accountant were still in Mexico. I do not find the claimant's explanations for the utter lack of documentation in this matter to be satisfactory. The directions for filling out the PIF are quite clear in that all documents that would support the claim are to be attached to the PIF or at least submitted to the IRB no later than 20 days prior to the hearing date. The claimant filled out his PIF in July 2008 and affirmed that the contents were translated to him so he had half a year after he made his claim to obtain the relevant documents. The claimant attended Assignment Court in early December 2008 where he was instructed both orally and in writing in Spanish about the requirements for presenting documents. With all of these instructions in mind, it makes no sense for the claimant to give all documents that he did obtain to a lawyer and then have no trace of the documents at the hearing. In fact, there is no evidence anywhere in the file that any lawyer is actually involved in this claim. I find that the lack of these reasonably available documents to undermine the claimant's credibility.

Documents would have been helpful at the hearing as there were noticeable inconsistencies in the claimant's evidence with respect to some fairly basic points. Even the claimant's tenure with was in doubt. In oral testimony, the claimant worked there from 2006 to 2008. In the PIF at question 7, the tenure is listed as 2006 to 2007. In the notes of the Immigration Officer (IO), the tenure is given as 2007 to 2008. When these discrepancies were put to the claimant, he stated that he had made an

error when dealing with the IO in that he gave his employment dates as consecutive between jobs rather than as concurrent and that his own PIF was simply wrong. I do not find these

explanations satisfactory. The PIF is actually consistent with the Immigration document; the claimant was consecutively employed with and then with ; the two jobs did not overlap so that should not have been a source of confusion with respect to the claimant's employment history. The claimant also affirmed both orally and in writing that his PIF had not only been interpreted back to him but that it was also correct. To not notice his employment history with a job that allegedly caused him so many problems was wrongly described makes no sense. It appears that the claimant simply gave three very different versions of when he worked for . As stated previously, given his

s.19(1)

involvement with [redacted] was the key to his claim, I find that the dramatically different dates with respect to this involvement, varying at key points in the claim, to further undermine the claimant's credibility.

In oral testimony, [redacted] approached the claimant and initially convinced him not to help the authorities. The authorities then filed a written complaint against the claimant and then only after that written complaint was filed did the claimant change his mind and began to help the authorities. As noted at the hearing, in the version contained in the PIF, [redacted] never approached the claimant; the claimant agreed to help the authorities when they first came to him as he knew that they would file a complaint against him if he did not cooperate and there is no mention of a written complaint being made against the claimant. When asked to explain the discrepancies, the claimant stated that while he had attempted to obtain a copy of the written complaint made against him, he had been unsuccessful in obtaining a copy. He also stated that he had copies of e-mails from [redacted] on the point but had not thought them relevant. He also stated that he did not mention that the authorities had filed a written complaint against him in his PIF as he thought it was too superficial of a detail to include. I do not find the claimant's explanations satisfactory. To have copies of alleged e-mails that would document this aspect of the claim, which would have shown at least some evidence of the existence of [redacted] her relationship with the claimant and the sequence of events, but to not submit them makes no sense. Also, the claimant did not simply omit the fact that the authorities had laid a written complaint against him, which one would think would have been quite important, but the claimant's PIF says exactly the opposite in that the claimant cooperated as he knew he would then face a complaint if he did not. Throughout, it appeared that the claimant simply told two dramatically different versions with respect to how he became involved with the authorities. I find that these discrepancies further undermine the claimant's credibility.

In the PIF, the claimant went to [redacted] weeks prior to the trial date and the murder attempt against him occurred one week prior to the trial date. As noted at the hearing, in oral testimony, the claimant went to stay at an [redacted] building one week prior to the trial date and the murder attempt occurred a couple of days later. When asked to explain these discrepancies, the claimant stated that his oral testimony was to be preferred and that his PIF was inaccurate as he had been told to be "brief". When it was noted that that explanation made no sense as the PIF was allegedly "wrong", not missing details, the claimant said that perhaps it had been improperly interpreted, even though he had affirmed both orally and in writing that the PIF had been properly interpreted and that it was correct. When it was also noted that the PIF made no mention of the assassin being armed with a knife, as was stated in oral testimony, the claimant once again stated that he was told to be brief. It was also noted that in the translation of the declaration that the claimant made in Spanish at the time that he made his claim, the claimant stated that he lived with the authorities for one month, rather than a couple of weeks or a couple of days. The claimant stated that this detail was

unimportant. I do not find the claimant's explanations satisfactory. One would think that one of the most significant events in the claimant's life would have been to be taken into live there for a time and then face an assassination attempt even while in [redacted] For such an important event, it makes no sense for significant discrepancies to emerge on a number of points. If the claimant was [redacted] I would expect that information to be consistent, not sometimes described as an [redacted] If the claimant started living in this place prior to the trial, I would expect the timing to be described consistently, not as "one month prior", "three weeks prior" and "one week prior". I would expect the timing of the murder attempt to be consistent as well, not after two weeks or after a couple of days. Also, given the level of detail already included in the PIF, if the assassin menaced the claimant with a knife, I would have expected that detail to be included as well. As it was, the claimant gave dramatically different descriptions with respect to place, timing of entry to place, timing of murder attempt and description of murder attempt and could give no real explanation as to why the details were so different in each telling of the story. I find that these discrepancies further undermine the claimant's credibility.

s.19(1) In oral testimony, the claimant stated that the first thing that happened to him after the assassination attempt was that his car was destroyed in [redacted] 2006. When it was noted that his PIF stated that his car was destroyed much later in [redacted] 2007, the claimant stated that he had been confused and that the first incident was actually that his brother had been beaten. Later, the claimant stated that he had actually been mistaken in both of these descriptions and that [redacted] had actually run him down with a truck first. It was also noted that the incident wherein the claimant's car was destroyed was not included in the declaration that the claimant made in Spanish at the time that he made his claim. The claimant stated that he had not included mention of the incident as the declaration was intended to be brief. I do not find the claimant's explanations for these discrepancies to be satisfactory. The claimant's declaration in Spanish is actually quite detailed and if there was an incident wherein the claimant's car was destroyed I would have expected him to include it. More importantly, the claimant inexplicably and repeatedly got the timeline of most of the significant events that had happened to him in the wrong order. These events took place over the course of a couple of years and I would have expected that he would be able to recount them in the correct order. I find that the fact that he repeatedly changed the timeline of events and even omitted mention of one event wherein it would have been reasonable for him to do so, to further undermine the claimant's credibility.

The first mention of the claimant being "gay" was when he described the murder attempt in the [redacted] bathroom, thinking that initially someone was playing a joke because of his sexual orientation. The claimant went on to state that he had experienced numerous problems because of his sexual orientation and that he will have numerous difficulties should he return to Mexico because he is gay. As noted at the hearing, the claimant never mentioned being gay or that he had experienced problems as a result of being gay or that he would, in the future, experience problems as a result of being

gay or that being gay played a role in his thinking during the events that had been described up until that point to either the IO at the time that he made his claim, in the detailed handwritten statement that he made in Spanish or anywhere in the PIF. The claimant stated that he had not realized that he could make a claim on that basis earlier. I do not find the claimant's explanation satisfactory. Regardless of what directions the claimant may or may not have been given at the time that he made his claim, the directions in the PIF are quite clear in that "**all the significant events and reasons** that have led you to claim refugee protection" [emphasis in the original] are to be included. There is no limitation as to types of reasons. To not mention such a significant part of the claimant's reasons for leaving Mexico anywhere despite being given repeated opportunities to do so in a variety of methods make no sense at all. It actually appeared that the whole issue of sexual orientation was fabricated on the fly during the hearing, drawing upon my earlier attempt to give an example of "Particular Social Group". It appeared that the claimant used this fabrication to attempt to bolster his claim knowing that at that point of the hearing that his testimony with respect to the events that had been at least previously mentioned had not gone very well at all. I find that this total omission of what one would think have been a central theme of the claimant's experiences in Mexico to further undermine the claimant's credibility.

Given the numerous contradictions, omissions, inconsistencies and other discrepancies on major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

Since I do not believe the claimant with respect to the events described in his PIF, his claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well. There was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

"David McBean"

(signed)

David McBean

April 3, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Ibid.

4 Exhibit R-3, Translation of Declaration.

RPD File No. / N° de dossier de la SPR : TA8-12432



RPD.15.7 (October 2007)

Disponible en français

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RPD File No. / N° de dossier de la SPR: TA8-12483

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 6, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	April 8, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	No counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated	Nil	Représentant désigné

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Representative(s)

dési

Counsel for the Minister

Nil

Conseil du

s.19(1)

a citizen of Peru and permanent resident of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (*IRPA*).

ALLEGATIONS

The claimant was born in and remains a citizen of Peru. At the age of four, she moved with her family to Mexico where she became a permanent resident. As part of a wealthy family, she faced problems in Mexico at the hands of criminals and gangs. The claimant visited Peru several times but feared gangs and criminals in Peru as well. She came to Canada on , 2008, and made a refugee claim on . 2008.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Peru and a permanent resident of Mexico was accepted at the beginning of the hearing due to the documentation on file.²

Country of Reference

Claimants with more than one citizenship (or equivalent) are required to show that they would be at risk in all countries of citizenship for their claim to succeed. Given the particular circumstances of the claimant, the focus of the hearing was on Peru.

Nexus

The claimant fears general crime in Peru. As such, her claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

Section 97 – Exception under Section 97(1)(b)(ii)

Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails as a result of the exception for "generalized risk" contained in section 97(1)(b)(ii) of the *IRPA*. The claimant left Peru permanently at age four; however she has been back on several occasions to visit relatives, four times in the last ten years or so. No mention is made of potential

s.19(1)

problems in Peru in the notes of the Immigration Officer made at the time that the claimant made her claim.³ In the Personal Information Form⁴ (PIF) the entire focus is on the claimant's experiences with gangs and criminals in Mexico. There is only one brief mention that there are gangs in Peru as well and the claimant expresses concern that something similar to what happened in Mexico might happen in Peru as well. In oral testimony, the claimant stated for the first time that she had been mugged during her second last visit to Peru in 2006. The claimant speculated that she had been targeted by the muggers and would be targeted by other criminals in the future due to the fact that her Mexican accent would make criminals perceive her as a "tourist"; the perception of her being a tourist would lead criminals to believe that she would possess more money than the average person and that this would lead to an increased risk of being targeted for crime.

At best, the claimant has been a victim of random crime, a risk faced generally by all citizens of Peru. No evidence has been presented to confirm the claimant's own speculation that the perception of her being a tourist and therefore having more money would lead to an increased risk of crime. More importantly, even if this were the case, the fact that some individuals may be targeted more frequently for crime because of their perceived wealth thereby increasing the degree of risk does not change the nature of the risk involved, a risk that is faced generally by all citizens.⁵ Given that section 97(1)(b)(ii) explicitly removes situations of generalized risk from consideration, the claim fails.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there is no credible or trustworthy evidence on which a favourable decision could be made and therefore there is no credible basis for the claim.

Other Methods of Obtaining Status in Canada

While the claimant asked me to delay making my decision to allow her more time to allow other Immigration processes to conclude, the IRB has a mandate to process claims simply, quickly and fairly. While the claimant may succeed in gaining status through her new husband in Canada and/or through an application for status as a medical professional, those are two

separate applications which are the responsibility of another Department over which I have no jurisdiction.

CONCLUSION

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The claimant fears general crime in Peru and as a result, her claim pursuant to section 96 of the *IRPA* fails as it lacks a nexus to the refugee Convention grounds. Since the claimant's fear of crime is excluded from consideration pursuant to the generalized risk exception and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, the claim pursuant to section 97 fails as well. There is no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

“David McBean”

(signed)

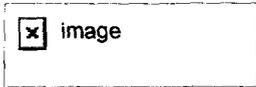
David McBean

April 8, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, copy of passport received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit R-2.
- 4 Exhibit C-1, Personal Information Form.
- 5 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.

RPD File No. / N° de dossier de la SPR : TA8-12483



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-12673

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	August 14, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	August 21, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	Bola Adetunji Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N. Cassano	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)
Counsel for the Minister	N/A	Conseil du ministre

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s.19(1)

[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in Mexico City. In _____ 2006, while attending _____, the claimant met _____, the son of _____, a _____ in the Federal District and a _____ with _____ (a _____). In _____ 2006, they began dating, eventually moving in together after two months. In _____ 2006, the claimant accepted a _____ that attacked corruption in Mexico. _____ did not like this as it attacked his father. On _____, 2006, they had a fight wherein _____ pushed the claimant down some stairs. The claimant's arm was broken and she spent five days at the _____. The claimant did try moving to _____ to stay with a friend that she had met over the Internet, but _____ found her after three days so she returned to Mexico City. In _____ 2008, _____ beat the claimant and she terminated the relationship. The police and _____ bodyguards began to harass and follow the claimant. On _____, 2008, _____ and his bodyguards entered her dwelling destroying the contents. On _____, 2008, the claimant and a friend were arrested on false robbery charges and detained four to five hours, with the police making threatening comments. _____ continued to harass the claimant. On _____, 2008, she attempted to file a denunciation, however, it did not proceed and the police laughed at her due to _____ father. On _____, 2008, _____, his bodyguards and the police entered the claimant's dwelling forcibly. _____ beat and raped the claimant. The claimant spent three days in hospital. The claimant moved in with a friend and came to Canada on _____, 2008. She filed a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of her Mexican passport was on file.³

Credibility**s.19(1)**

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form4 (PIF) and the other documents available. For example, as the Refugee Protection Officer noted, the claimant's situation as described in her PIF, even as amended, is a fairly simple one of domestic violence and stalking at the hands of the claimant's former boyfriend. However, the claimant testified orally that she was actually at risk because she "knew too much" about the criminal activities of both her ex-boyfriend and his father, a [redacted] with [redacted]. She stated that she had specific information that both her boyfriend and his father worked with [redacted] and [redacted] at half a dozen different named [redacted] to [redacted].

However, as noted at the hearing, absolutely none of this was included in the claimant's original PIF or the amended PIF. The claimant stated that she only put in her PIF the specific reason why she left and concentrated on things that her ex-boyfriend had done to her and most particularly on the most recent events. I do not find the claimant's explanation satisfactory. At times in the claimant's testimony the "knowing too much" aspect of the claim seemed to be the main reason why the claimant had to flee. Even if it was a dual reason along with her ex-boyfriends personal obsession it makes absolutely no sense at all for there to be no mention of such a major motive for the claimant to be persecuted. Also, the claimant was represented by experienced counsel. Had she really feared for her life at least in part because of her knowledge of extensive major criminal activities, I would have expected some mention of that in her amended PIF, particularly since there were many other amendments made on numerous points, some dealing with information not previously disclosed. I find that the omission of this entire area to greatly undermine the claimant's credibility.

[6] In the claimant's amended PIF, an incident is described wherein the claimant's arm was broken. When asked why she had not included this in her original PIF narrative, she stated that she had mentioned the incident to the person who helped prepare her PIF, but was told not to include it and that she should only mention the last events that caused her to leave her country. I do not find the claimant's explanation satisfactory. The claimant had stated previously that her original PIF was focused on things that her ex-boyfriend had actually done to her. This incident was one of two incidents where the claimant was seriously harmed and had to go to a hospital. To omit all mention of it in her original narrative makes little sense. I find that this discrepancy further undermines the claimant's credibility.

[7] The claimant presented no documents to corroborate any aspect of her claim. While it is true that claimants are not required to document every aspect of their claim, if documents are reasonably available, they should be presented. The claimant allegedly stayed in hospitals on two occasions yet produced no medical documents. Medical documents would have been helpful to establish the facts relating to her alleged stays in the hospital as the claimant stated that she had made a mistake in the

immigration documents with respect to the number of days that she had been hospitalized and the correct figure was in her PIF (i.e. two versus three days). As noted at the hearing, it is within my specialized knowledge that other claimants from Mexico do manage to obtain medical documentation to support their claims. The claimant stated that the medical documents did exist, but that she had no one in Mexico that could help her obtain them. It was also noted that the claimant presented no documents s.19(1) to corroborate the fact that she was even in a relationship with someone, never mind the son of an . The claimant stated that while information about her ex-boyfriend's father could be found , all documents that would show that she was actually in a relationship with his son were in Mexico and she could not obtain them as she had no one to help her. At this point, I would have thought it would have been fairly easy to establish just where these documents were, who had access to them and who the claimant could call upon for assistance. However, what followed was a series of confusing and evasive statements by the claimant with respect to where she had lived. She eventually blamed an improper PIF translation for the fact that her PIF indicated that she lived in the same dwelling from birth until just a few weeks before leaving Mexico. However, as noted at the hearing, she gave exactly the same information to CIC on a different form 5 weeks before she filled out her PIF. Throughout this portion of the claimant's testimony it appeared that the claimant was making evidence up as she went along as to why she could not call anyone in Mexico to send her documents. I find that medical documents would have reasonably been available had they existed and more importantly, I find that documents showing that the claimant lived with the son of a would have been reasonably available as well. I find the fact that no documents were presented to further undermine the claimant's credibility.

[8] In oral testimony, the claimant stated that she only went to the authorities in 2008 and never went to them again because after that the police began attacking her in concert with her ex-boyfriend. However, as noted at the hearing, the police had actually already been allegedly involved in persecuting her in that, among other things, in 2008, they allegedly falsely imprisoned her and threatened to molest her. The claimant stated that she had not yet been raped. I do not find the claimant's explanation satisfactory as it explains nothing. If problems at the hands of the police were indeed the reason why the claimant stopped going to the police, it makes no sense for the events to take place in the order that they did. I find that this discrepancy further undermines the claimant's credibility.

[9] In the claimant's amended PIF, the claimant stated that she fled to only to be found there by her ex-boyfriend three days later. When asked why this information was not contained in her original PIF narrative, the claimant stated that she had been told to concentrate on the events that precipitated her actual departure. When it was pointed out that the directions for filling out the narrative are quite clear in that all efforts to relocate to another area of the country are to be included, the claimant stated that while she had signed a declaration stating that the PIF had been fully interpreted to her and that it was accurate, the claimant stated that the PIF had never been interpreted to her and because of her

s.19(1)

lack of English she had no idea what she was signing. I do not find the claimant's explanation satisfactory. While the claimant is only in her early 20s, she has 15 years of education and has worked in a number of jobs. To blindly sign a legal document that contains the claimant's request to a foreign government to protect her life makes little sense. The omission of this incident also makes little sense as the claimant had earlier stated that the original PIF was focused on things that her ex-boyfriend had actively done and here he had actively tracked her to another city. Even if the omission did make sense, the incident described is implausible. The claimant said that she went to stay with a friend in _____, a large city. This friend was hers alone and her ex-boyfriend did not know the friend. The claimant stated that she did nothing to come to any official attention while she was in _____. When asked how it would be possible for her ex-boyfriend to find her, the claimant stated, as she had in her amended PIF, that he used political connections in _____ to find her. When it became obvious that it would be impossible to use political connections to find someone in the claimant's alleged circumstances, the claimant then stated that she may have been followed. I do not find the claimant's explanation satisfactory. The amended PIF is written in such a way that the claimant's ex-boyfriend "found" her on the third day. There is no suspicion expressed that she was followed, only that state resources and influence were used. It is implausible that the claimant's ex-boyfriend would have been able to find her in the manner that she described. I find that this discrepancy and the general implausibility of the incident to further undermine the claimant's credibility.

[10] The claimant stated that she did not know about the Canadian refugee system when she came to Canada and only made her claim after finding out further information. The claimant provided vague and evasive testimony about what she knew to tell the immigration officer upon arrival and where she learned that information from. As noted at the hearing, the claimant was specifically asked by the immigration officer upon arrival if she had any reason to fear returning to Mexico and she said that she did not.⁶ While the claimant stated that she did remember giving that answer, she said that she did so because she feared being sent back and was in "shock". I do not find the claimant's explanation satisfactory. No medical or psychological evidence has been presented that would indicate that the claimant would have been unable to answer such a basic question accurately at the time. As noted previously, the claimant is not unsophisticated. The claimant did not provide any meaningful explanation why she could not answer the question truthfully. If the claimant was only lacking information about the refugee system and that was the reason she did not make a claim upon arrival, to be asked such a direct basic question and not tell the truth makes no sense at all. I find that this discrepancy further undermines the claimant's credibility.

[11] Given the serious discrepancies and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and therefore, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate

that the claimant is, on a balance of probabilities, at risk of any of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

CONCLUSION

[12] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

August 21, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1, PIF.
- 5 Exhibit R-2, Schedule 1, “Background Information” and CIC Etobicoke In-person Refugee Intake “Record of Examination.”
- 6 Exhibit R-2, Field Operations Support System (FOSS), dated July 8, 2008.

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RPD File No. : TA8-12673

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RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

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RPD File No. / N° de dossier de la SPR : TA8-12941

TA8-12980

TA8-12981

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(s)

Date(s) of Hearing

January 19, 2010

Date(s) de

Place of Hearing

Toronto, Ontario

Lieu de

Date of Decision

April 9, 2010

Date de

Panel

David McBean

**Counsel for the
Claimant(s)**

Aisling Eileen Bondy
Barrister and Solicitor

**Conseil(s) du
demandeur(s)**

Tribunal Officer

N/A

Agent(e)

**Designated
Representative**

Représentant(e)(s)

Counsel for the

N/A

Conseil c

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Minister

Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Country of Reference s.19(1)

[4] While claimants are required to establish their claim against all countries of citizenship, as stated at the hearing, the focus of the hearing was on the situation in Portugal. Given my findings that follow, I do not need to consider the situation in Angola.

Identity

[5] The claimants' identities as citizens of Portugal were accepted at the hearing given that certified copies of their Portuguese passports were on file.³

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, while I am mindful that claimants are not required to document all aspects of their claim, if documents are reasonably available, they should be presented. As noted at the hearing, the claimant's identity card⁵ listed her marital status as single and the only document that linked name to the claimant was identity card⁶ where was listed as his father. The claimant stated she was listed as single since she never married and had no other documents to show that she had been in a relationship since they had only lived common-law and he was never on title for the apartment that she owned. The claimant also stated that she had no police reports since the police in Portugal do not provide reports. However, as noted at the hearing, it is within my specialized knowledge gained from hearing other claims from Portugal that the police in Portugal actually do provide police reports. The claimant simply insisted that the police would not provide any reports. I do not find the claimant's explanations satisfactory. The claimant still has several close relatives in Portugal, so I would expect that some form of documents showing a decade long relationship would be reasonably available. I also find that, on a balance of probabilities, had the events transpired as the claimant testified that police reports would have been available, particularly with respect to the incident where the claimant was injured by acid and the hospital contacted the police on her behalf. I find the fact that the claimant failed to provide any of these documents to undermine her credibility.

[7] Even more problematic were the documents actually presented by the claimant. I do note that the claimant provided a Canadian medical report⁷ which states that the evidence of her injuries are

“compatible” with her story, so it would appear that the claimant was indeed injured by some form of acid. However, as noted at the hearing, two medical documents⁸ from Portugal from two different dates state that the claimant’s acid burns were caused by an “accident”. The claimant stated that she could not explain this and only the hospital would know why the reports were written that way. Counsel submitted that there could be several different reasons why the reports referred to an accident, including simple mistake, someone providing a summary, personnel changing or even improper perceptions of domestic violence. I do not find any of these explanations satisfactory. The claimant told the hospital staff that she was attacked and they contacted the police on her behalf. It makes no sense for subsequent records of her history to refer to an “accident” rather than an “attack”. The hospital staff would have no motivation to falsify this information and if anything would have great motivation to ensure that the records were accurate given that the police were notified. I find, on a balance of probabilities, that while the claimant was injured at some point by acid, it was from an accident, not an attack. I find that her misrepresentation of the circumstances of her injury to further undermine the claimant’s credibility.

s.19(1)

[8] Throughout the PIF and the claimant’s testimony, _____ was described as very violent. He never wanted the claimant to leave and whenever it looked like she might, he would look for her and beat her and this happened many times. He even threatened the claimant with death if she managed to separate from him. However, as noted at the hearing, _____ also signed two separate permission forms for the claimant to leave Portugal with the children on two separate occasions. The claimant stated that thought that she and the children would simply be going on a vacation and did not know that they hoped to stay in Canada. I do not find the claimant’s explanation satisfactory. The claimant’s description of _____ behaviour in their relationship was extreme. It makes no sense for him to repeatedly beat her every time she tried to make arrangements to leave him and then turn around and sign two separate permission letters allowing her to do just that even if she had told him she was only going to be gone a few weeks. I find this discrepancy further undermines the claimant’s credibility.

[9] The claimant stated that she did not make a refugee claim in _____ 2008, when she attempted to enter Canada as a visitor since she did not know the process, she was frightened, her children were crying, and she did not understand what was happening and no one asked her if she was afraid of returning. I do not find the claimant’s explanation satisfactory. The claimant has 11 years of education and was able to plan two separate trips to Canada and managed to get the paperwork completed in order to have her children accompany her. The claimant reported her abuse and fears to the authorities in Portugal on several occasions, so it did not appear that she was ashamed to admit that she was being abused. When confronted with the reality of having to return to Portugal, it makes no sense for the claimant not to say something to the Canadian officials to the effect that she is afraid of returning. I find that this failure to claim on her previous trip to Canada not only demonstrated a lack of subjective fear but further undermines the claimant’s credibility.

s.19(1)

[10] Even stranger were the claimant's actions when she returned to Canada in 2008. Once again, the claimant did not state that she feared for her life in Portugal, but again tried to enter as a visitor. She testified that she knew no one in Toronto at the time other than one person who has since disappeared. However, as noted at the hearing, the immigration documents⁹ indicate that her tickets were purchased from a Toronto travel agency and she was found in possession of several Toronto phone numbers when she arrived at the airport. The claimant insisted that she had used a Portuguese travel agency and the numbers were for contacts that she had not met yet. As further noted at the hearing, the claimant apparently showed the immigration officer a reservation for the [redacted] in Toronto, however, when the hotel was contacted they had no record of the claimant having a reservation. The claimant stated she did not know what happened. I asked the claimant more than once about how long she actually intended to stay in Canada and she gave vague responses. I then asked if she had indeed wanted to stay only three weeks as per what she had told the immigration officials at the time, why was she in possession of winter clothing that was not consistent with a three week visit to Toronto in [redacted]. The claimant stated that perhaps the officials wrongly assumed that something was amiss as she had simply brought coats for the children in case they got cold. Finally, as noted at the hearing, the immigration officers noted that there was an entry in the claimant's diary stating that she wanted a work visa in Canada. The claimant stated that she did not know what that meant. Counsel submitted that the claimant's actions when she attempted to enter a second time should not be held against her and in fact they demonstrated that she had a subjective fear of returning to Portugal. I do not find these explanations satisfactory. It is obvious that the claimant intended to deceive the Canadian immigration officials when she arrived. However, rather than simply admit this deception, the claimant in her testimony continued to try to follow the story that she had told the immigration officials in stating that experienced immigration officials mistook a few coats for clothing not consistent with a short summer stay, that her hotel reservation mysteriously did not exist, etc. Once again, it appeared that the claimant was quite able to tell the authorities in Portugal about her abuse. When confronted with all of the problems in her story at the airport and told that she would then be detained and that she faced the possibility of returning to Portugal, yet again, it makes no sense at all for the claimant to not mention that she was afraid of returning to Portugal. I find that the claimant's history of deception, which continued into the hearing and the fact that once again she failed to make a refugee claim when I would have expected her to do so, to further undermine her credibility.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her and her children, actually happened and as such, the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *IRPA*, the claims pursuant to that section fail as well. In coming to this decision, I am mindful of the psychological evidence¹⁰ on file with respect to both the claimant and her daughter. However, I also

note that these reports were prepared based on the story that the claimants told, a story which I simply do not believe. Whatever the claimants' actual psychological problems, no evidence has been presented that they could not obtain treatment for such problems in Portugal.

CONCLUSION

[12] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

April 9, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

4 Exhibit C-1.

5 Exhibit R-2. **s.19(1)**

6 Exhibit R-2.

7 Exhibit C-4, item 2, Medical report from Dr. _____, dated _____, 2008, p. 12.

8 Exhibit C-4, item 1, Hospital report with translation, pp. 9-10.

9 Exhibit R-2, Immigration officer's notes dated July 2, 2008.

10 Exhibit C-4, item 3, Psychological report on the claimant from Dr. _____, dated _____, 2009, p. 14; and item 4, Psychological report on the claimant's daughter from Dr. _____, dated _____, 2009, p. 18.



RPD File No. : TA8-12941

TA8-12980

TA8-12981



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-13318
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 9, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 9, 2010 (Bench decision) December 3, 2010 (Written reasons)	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Sol Gombinsky	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] On November 9, 2010, the panel heard the claim of [redacted] to be a Convention refugee. At the conclusion of the hearing, the panel rendered an oral negative decision. These are the written reasons which have been edited for syntax and grammar, with added references to the appropriate documentary evidence and case law as needed.

[2] [redacted], a citizen of the Philippines claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*.¹

ALLEGATIONS

[3] The claimant was born and raised in [redacted], Philippines. In 1997 while minding his [redacted] he got into a confrontation with two men from the [redacted] who had been [redacted]. The claimant went to [redacted] and he heard from his mother that people she did not know and assumed were from the [redacted] were looking for him. He was advised by his mother to stay in [redacted] and not return to [redacted] and he did not return. The claimant came to Canada in 2002 and a short period of time after his employer was raided by officials from immigration; the claimant made a refugee claim in 2008.

DETERMINATION

[4] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a convention ground or that he would on a balance of probabilities personally be subjected to a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

IDENTITY

[5] The claimant's identity as a citizen of the Philippines was accepted at the beginning of the hearing as a copy of his passport from the Philippines was on file.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

INTERNAL FLIGHT ALTERNATIVE (IFA)

[6] Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails as I find that the claimant has a viable IFA in Manila. In *Rasaratnum*² the Federal Court of Appeal set out a two prong test to be used in determining if an IFA is viable.

- The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable in all of the circumstances including those particular to the claimant for him to seek refuge there.

s.19(1)

[7] With respect to the first prong of the test, the claimant would return to the so there would be no need to return to his former home town where he faced threats by the . Even when the events in question were fresh in everyone's minds the claimant lived in safely from 1997 to 2002 and did not face problems. Given the lack of problems then and the passage of time, I find on a balance of probabilities that the claimant would not face problems in in 2010.

[8] With respect to the reasonableness of the claimant moving to I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high. As stated previously, the claimant previously resided in and no evidence was presented that he could not live there reasonably now, in fact the claimant conceded that if it were not for his fears for the he could move to . I find that it would not be unduly harsh for the claimant to relocate to and as such the claim pursuant to section 96 of the *Immigration and Refugee Protection Act* fails.

[9] I do note that counsel referenced crime and corruption in the Philippines, however, even if the claimant were to experience general crime this is a risk faced generally by others and is precluded from my consideration by section 97(1)(b)(ii) of the *Immigration and Refugee Protection Act*. Even if the claimant were to face increased targeting for crime due to his long stay abroad this merely alters the degree of the risk, not the nature of it. There not being any other evidence which

² *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

would indicate that the claimant is at risk of any of the risks delineated in section 97 of the *Immigration and Refugee Protection Act*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[10] I find that pursuant to subsection 107(2) of *the Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence upon which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[11] The claimant is not a Convention refugee or a person in need of protection and there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

December 3, 2010

Date



RPD File No. / N° de dossier de la SPR : TA8-14262

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	October 15, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 13, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	N/A	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] (the claimant), a citizen of Hungary, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA). Given the claimant was unrepresented, I reviewed the hearing procedures and other issues at the beginning of the proceedings.

ALLEGATIONS

[2] The claimant was born to Roma parents in . During his school years, he was humiliated and ostracized and forced to sit in the last row. He was unable to become a so became an . However, he could only find a job in a as a . In 2002, he began a relationship with a white woman, however her family did not accept him and the relationship eventually broke down. One time, three racist Hungarians approached the claimant and threatened him. The claimant fainted. While he reported the matter to the police, they made fun of him and said he was lucky that he was not beaten. After seeking medical attention, the claimant was diagnosed with panic attacks and prescribed medication. The claimant had regular appointments with a psychiatrist, although lesser over time. The claimant never received appropriate treatment from any of the medical personnel that he consulted. The claimant came to Canada on , 2008, and made a refugee claim on 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Hungary was accepted at the hearing given that a certified copy of his Hungarian passport was on file.²

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

Credibility

s.19(1) [5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated, as per his PIF narrative, that he had never been able to find work as a . However, as noted at the hearing, in his employment history in his PIF and in his employment history in the Citizenship and Immigration Canada (CIC) documents,⁴ the claimant did have a job as a . The claimant stated that those documents referred to a job where he was a different type of and that he was in that job. I do not find the claimant's explanation satisfactory. If the claimant was actually a in the job in question, I would not have expected him to consistently state that he worked as a " " in his employment history. It appeared that the claimant was attempting to falsely state that he could not work in his chosen profession, when in fact he had at least one job where he had. I find that this discrepancy undermines the claimant's credibility.

[6] The claimant stated in oral testimony and his PIF that he had difficulty finding work. However, as noted at the hearing, the claimant's employment history lists eight different jobs. The claimant stated that he did have difficulty in finding work and that he always had to start at the bottom and usually stayed there. I do not find the claimant's explanation satisfactory. The claimant's employment history in his PIF listed eight different jobs in the last ten years. He was employed virtually continuously during that time with only one period of unemployment. Given his lack of experience and lack of education (Grade eight plus vocational training), his employment history was actually quite good. Once again, it appeared that the claimant was falsely stating that he was never able to find much in the way of work when he actually had. I find that this discrepancy further undermines the claimant's credibility.

[7] In oral testimony, the claimant stated that during the incident when the racists threatened him and he fainted, the racists robbed him while he was unconscious. However, as noted at the hearing, the fact that the claimant was robbed during this incident is not mentioned in the PIF. The claimant stated that the PIF must not have been translated properly. I do not find the claimant's

³ Exhibit C-1.

⁴ Exhibit R-2.

explanation satisfactory. The PIF is detailed and the vast majority of it appeared to be correct. I do not see how some error in translation could be responsible for the omission of the fact that the claimant was robbed. This was an important fact. If the claimant was not robbed, and he fainted before anything serious happened, the fact that the police laughed the incident off was not necessarily due to racism; they may simply have felt that no crime had occurred. However, if the police had laughed off the fact that he was robbed, that would have been another matter. Given the claimant affirmed that the PIF had been read back to him in Hungarian, I would have expected him to notice such a key fact was missing. I find that this omission further undermines the claimant's credibility.

[8] The claimant was given two opportunities⁵ to state what had happened to him when he spoke with an Immigration Officer. However, as noted at the hearing, in neither place does the claimant mention that he was attacked and robbed by racists. The claimant stated that he did not know why he had not mentioned this. I do not find this unexplained omission satisfactory. I realize that the statements made to the Immigration Officer are brief, however, this was the most important incident that happened to the claimant and the only time where he was in such danger. Given the wording of the questions, had the incident really happened, I would have expected the claimant to have mentioned it to the Immigration Officer, rather than only the general comments that he did make. I find that this discrepancy further undermines the claimant's credibility.

[9] Given the serious discrepancies with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened. As noted at the hearing, the claimant has closely shaved dark hair and a noticeably light skin tone. The claimant stated that not all Roma people have dark skin. However, when pressed with respect to how someone who did not know him would perceive him as Roma the claimant correctly conceded that no one would be able to tell that he was Roma by looking at him and that they would have to discover this fact through other means. Given my findings noted above, I find on a balance of probabilities that not only would no one would perceive the claimant to be Roma, but that he is not in fact Roma. As a result, the claim pursuant to section 96 of the IRPA fails. There being no other

⁵ Exhibit R-2, Schedule 1, page 3 of 6, Record of Examination, p.5.

evidence that the claimant would be at risk of the harms delineated under section 97 of the IRPA, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[10] I find that pursuant to subsection 107(2) of the IRPA that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[11] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim

(signed)

“David McBean”

David McBean

December 13, 2010

Date



RPD File No. / N° de dossier de la SPR: TA8-14576

TA8-14577

TA8-14578

Private Proceeding / Huis clos

s.19(1)

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

December 10, 2008

Date(s) de l'audience

Place of Hearing

Toronto

Lieu de l'audience

Date of Decision

February 16, 2009

Date de la décision

Panel

David McBean

Counsel for the Claimant(s)

Ian Hamilton
Barrister and Solicitor

Conseil(s) du / de la demandeur(e)(s)

Tribunal Officer

S. Golden

Agent(e) des tr

s.19(1)

**Designated
Representative(s)**

**Représent
dési;**

Counsel for the Minister

N/A

Conseil du

s.19(1)

and
citizens of France, claim refugee protection pursuant to sections 96 and 97(1) of the
*Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

The claimants, all minors, lived with their parents outside of . The claimants' father drank heavily and was physically and emotionally abusive to the claimants' mother. While their father did not physically abuse the claimants, he would disrupt their lives by being loud, thereby interfering with their ability to sleep and he would rudely shoo them out of the room if he wanted to watch TV. While not expressed in the Personal Information Forms (PIFs)², the claimants' expressed orally that they were afraid that their father would eventually become physically abusive to them. Their mother was concerned that the children's father was an inappropriate role model. The claimants travelled to Canada with their mother on , 2008. They all attempted to make refugee claims on , 2008; however, their mother did not have her claim referred to the Immigration and Refugee Board (IRB) due to the way that she obtained status in France. While she was present at the hearing to give testimony as a witness, only the claims of the three children were referred to the IRB and it is those claims that are before me.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. In coming to this conclusion I have considered the Chairperson's Guideline dealing with Child Refugee Claimants.³ My reasons are as follows.

ANALYSIS

Identity

The claimants' identities as citizens of France were accepted at the beginning of the hearing, as a copy of their French passports were on file.⁴

State Protection

Even if I accept the claimants' evidence as true, which I do not necessarily do, the claims fail on the issue of state protection. States are presumed capable of protecting their citizens.⁵ That presumption can be rebutted by providing clear convincing evidence that, on a balance of probabilities, state protection would be inadequate. Claimants are expected to approach the state for protection if such protection could be reasonably seen as forthcoming.⁶ In this case, neither the claimants nor anyone on their behalf have made any attempts to obtain assistance from the police or any other organization, and their treatment at the hands of their father has not involved any incidents of violence. However, they do fear that his behaviour might escalate to that point and may be faced with having to deal with the French authorities in the future. I note that counsel for the claimants made reference in his submissions to the situation of women in France who feared domestic violence. In his opinion, there is likely a correlation between the situation for women and the situation for children in any given country. Counsel did not actually present any evidence that such a correlation actually exists, so I prefer to examine the objective documentary evidence which actually deals with the issue of children directly. For example, the United States Department of State Report⁷ reads as follows under the heading "Children":

"The government was strongly committed to children's rights and welfare; it amply funded systems of public education and medical care. The Ministry for Family Affairs oversees implementation of the government's programs for children.

Public schooling is provided free through the age of 18, and education is compulsory for citizens and noncitizens from the ages of six to 16. Although not compulsory, preschool and kindergarten for children under age six is free and widely available. According to the government's statistical service, during the 2003-04 school year, the most recent year for which data was available, attendance by children remained at 100 percent from age three to age 13; however, for children age 14, 15, and 16, attendance dropped to 99.6, 98.6, and 97.3 percent, respectively. Most children completed the equivalent of high school.

Although not common, child abuse occurred. There are strict laws against child abuse by parents or guardians, and the government generally enforced the law effectively and prosecuted abusers. The law provides for a government children's advocate, a position charged with defending and promoting children's rights as defined by law.

The government provided counseling, financial aid, foster homes, and orphanages for victims, depending on the extent of the problem. Various NGOs also helped minors seek

justice in cases of mistreatment by parents.” [emphasis mine throughout].

I also note that the claimants’ mother was asked if she was aware of anyone similarly situated to her family and what their experiences were and she spoke of another mother and child that had been forced to leave a family home. While she did not describe a problem-free life for this family, she did say that the French authorities found them a new place to live.

I find that France has instituted laws and other programs to deal with instances of child abuse and that these laws and other programs are being effectively used to deal with any significant problems that are reported to the authorities.

The claimants testified that due to their cultural background, it would be shameful for them to report their father to the authorities. While I can understand that it would be a very difficult thing for a child to report a parent to the authorities, this difficulty does not prevent such a thing from happening. All three children have only ever lived in France and Canada. While it has been stated that their experience in France was in an “insular” culture, they have been exposed to “western” influence throughout their lives. [redacted], now age 15, spoke ably and eloquently to me, a Canadian “authority”, about his own and his siblings’ experiences at the hands of their father and their need to be protected from him. I find that it would be reasonable for them to approach the authorities, even though all the claimants are minors.

s.19(1)

Counsel also noted concerns that there was a general feeling of hostility towards immigrants in France. The claimants are not actually “immigrants” as they were all born in France and are all French citizens, however I would take his comment to be one that dealt with perceived immigrants and racial minorities generally. There is no doubt that there have been some problems in this area, however, the objective documentary evidence states that the authorities are actively dealing with these problems. For example:8

Citizens may report cases of discrimination based on age, gender, national origin, ethnicity, family situation, sexual orientation, physical disability, state of health, religious conviction, or group affiliation to the independent High Authority for the Fight against Discrimination and for Equality (HALDE). At year's end the HALDE had received 6,222 discrimination claims, 50 percent of them relating to employment discrimination. Other efforts included internal testing carried out by the Sorbonne-affiliated Discrimination Observatory, establishing forums for women executives, and recruitment counseling to avoid hiring practices based upon preconceived and discriminatory candidate profiles.

On May 10, a Paris court fined four discotheques \$4,440 (3,000 euros) for discriminatory admission policies. At intervals, the NGO, "SOS Racism" sent similarly dressed couples of North African, Sub-Saharan African, and European origin to try to gain admittance into a given establishment. Bouncers consistently admitted the European-origin couples but refused the others on the pretext that the nightclubs were full.

On August 23, President Sarkozy met with a high school student of Angolan origin who was subjected to racist comments from his teacher, who was given a one-year suspended prison sentence and fined \$2,664 (1,800 euros).

On September 12, a Marseille court sentenced a local building contractor to two years in prison without the possibility for parole and a \$73,000 (50,000 euros) fine for exploiting 28 Polish laborers. Working with accomplices, the employer recruited individuals in their home country to come to Marseille where they were paid less than half the legal minimum wage, with further salary garnishing to reimburse travel expenses. The judgment also proscribed the contractor from returning to work in the construction industry for five years.

A Socialist Party internal commission expelled parliamentarian and Languedoc-Roussillon regional president Georges Freche, a founding member of the party and deputy since 1973, for his November 14 racist comments, which were "incompatible" with the party's values, about the national soccer team. Freche's expulsion followed a \$22,200 (15,000 euros) fine he received on January 25 for earlier discriminatory comments.

The government attempted to combat racism and discrimination through programs that promoted public awareness and brought together local officials, police, and citizen's groups. Some public school systems also operated antidiscrimination educational programs.

According to news reports, during the year there was increasing focus on diversity in the workplace among large financial firms and banks. More first-generation citizens of minority background were being hired in upper-management level positions. The shift appeared to be a response to the diversity of the clientele and the large hiring increases to compensate for en masse retirement.

Most importantly, I note that in the previously quoted passages that deal directly with the treatment of children and child abuse, no mention is made of any "exception" for visible minorities. Given the claimants' own circumstances and the objective evidence available, I find that it would be reasonable for them to approach the authorities for protection should they require assistance and that they have failed to rebut the presumption of state protection.

CONCLUSION

Since I have found that there is state protection available for the problems and potential problems alleged by the claimants, their claims fail pursuant to section 96 of the *IRPA*. There being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

“David McBean”

DAVID McBEAN

February 16, 2009

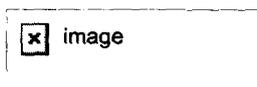
Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibits C-1, C-2, C-3.
- 3 Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues (September 1996).
- 4 Exhibit R-2.
- 5 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.
- 6 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.
- 7 Exhibit R-1, Item 2.1, United States, 11 March 2008, Department of State, “France”, *Country Reports on Human Rights Practices for 2007*.
- 8 Exhibit R-1, Item 2.1, United States, 11 March 2008, Department of State, “France”, *Country Reports on Human Rights Practices for 2007*.

RPD File No. / N° de dossier de la SPR: **TA8-14576**

TA8-14577

TA8-14578



RPD.15.7 (October 2007)

Disponible en français



RPD File No. / N° de dossier de la SPR: TA8-14912

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	October 5, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 3, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Daniel Martin Woods	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] (the claimant), a citizen of Trinidad and Tobago, claims refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*.¹

ALLEGATIONS

[2] The claimant was born and raised in Trinidad and Tobago. The claimant came to Canada in 1988. Back in Trinidad, his father was a staunch supporter of the political party who helped with election campaigns. In early 2005, the claimant's father was visited by thugs from a rival party, who severely beat him and asked where the claimant was, calling him a rat. The claimant's father eventually died from his injuries on . 2005. On 2005, the claimant's daughter and a friend were kidnapped by five men and held for a week. The men stated that they were looking for the claimant. The claimant's daughter reported the matter to the authorities but moved to the United Kingdom soon after. The claimant made a refugee claim on , 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Trinidad and Tobago was accepted at the hearing given that a certified copy of his passport from Trinidad and Tobago was on file.²

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

Credibility

s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that the men who had menaced his family were actually looking for a different [redacted] and that this other [redacted] must have done something to provoke the men. However, as noted at the hearing, the fact that the men were searching for a different person with the same name as the claimant was not mentioned in the PIF. The claimant said that he did not know why this was not mentioned in the PIF. I do not find this unexplained omission satisfactory. The entire PIF narrative is written in a way that political activities are the source of the claimant's problems. While there is one reference to the claimant being a "rat", this reference is not expanded upon in any way. If the claimant was a victim of mistaken identity, I would have expected this to have been mentioned in the PIF. Given that this was the source of at least some of the claimant's problems, I find that this omission undermines the claimant's credibility.

[6] The claimant presented no documents to corroborate the fact that he helped his father with political activities. This may be reasonable given the passage of time since the 1980's, the claimant's young age at the time and the apparently low-level activities engaged in. However, the claimant presented no documents that his father was beaten by anyone and that he died of his injuries or that his daughter and another person were kidnapped. The claimant stated that he had tried and failed to get documents with respect to his father but failed and did not know if he had reported the matter to the authorities and while he did know his daughter had reported the kidnapping to the authorities, he was unsure if privacy concerns would have prevented him from obtaining documents with respect to his daughter. I do not find these explanations satisfactory. One would think that both matters would have come to the attention of the media and allegedly occurred not that long ago. Even if there were privacy concerns from non-media sources, the claimant's daughter could have provided an authorization, as could the administrator of the claimant's father's estate. I find, on a balance of probabilities, that documents relating to both of these alleged incidents and the manner that they occurred would have been reasonably available and the fact the claimant did not present these documents further undermines his credibility.

³ Exhibit C-1; and
Exhibit C-2, an amended PIF narrative.

[7] Both of the aforementioned incidents allegedly occurred in 2005, after the claimant had been in Canada for approximately 17 years. When asked why he did not make a refugee claim in 2005, instead of waiting until 2008, the claimant stated that he had made an application to stay in Canada on Humanitarian and Compassionate (H&C) grounds around that time and did not realize he could also apply for refugee status, even though as he later testified, the H&C application was simply based on long-term residence in Canada, not the events described in this claim. I do not find the claimant's explanation for the delay in making a claim satisfactory. Even if the claimant had an H&C application ongoing at the time, if the claimant had really found out that his father was severely injured and his daughter kidnapped by men looking for him in 2005, I would have expected the claimant to make enquiries as to how he could avoid returning home to face death as a ground unto itself rather than attempting to rely on an application to stay based on long residence, which of course has no assurance of success. I find that the three year delay in making a refugee claim in these circumstances not only demonstrated a lack of subjective fear but also further undermines the claimant's credibility.

[8] In the claimant's PIF, the claimant's daughter and a friend were kidnapped for a week by five men looking for the claimant. However, as noted at the hearing, in a one page statement⁴ made to an Immigration Officer at the time that the claimant made his claim, there is no mention of the claimant's daughter being kidnapped. The claimant stated that he must have forgotten the kidnapping at the time that he made the statement. I do not find this explanation satisfactory. For a parent to have their own child kidnapped would indeed be a frightening thing. This was one of only two incidents in Trinidad that caused the claimant to fear for his life. The hand-written statement takes up an entire page and is quite detailed. Given the circumstances, had the claimant's daughter really been kidnapped, I would have expected the claimant to have mentioned this in the statement and I find the fact that he did not to further undermine his credibility.

[9] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened. As a result, pursuant to section 96 of the *Immigration and Refugee Protection Act*, the claim fails.

⁴ Exhibit R-2.

Section 97/Generalized Risk

[10] The claimant also mentioned a high crime rate in Trinidad and Tobago. However, crime is a risk faced generally by others and as such is precluded from my consideration by subsection 97(1)(b)(ii) of the *Immigration and Refugee Protection Act*. Even if the claimant were to face increased targeting due to his lengthy stay in Canada and thereby a perception of wealth, this merely alters the degree of the risk, not the generalized nature of it.⁵ There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *Immigration and Refugee Protection Act*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[12] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim. Therefore, the Refugee Protection Division rejects his claim.

“David McBean”

David McBean

December 3, 2010

Date

⁵ *Prophète v. Canada (Citizenship and Immigration)*, 2009 FCA 31 (2009).



RPD File No. / N° de dossier de la SPR: TA8-15425

TA8-15454

TA8-17644

TA8-17645

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

March 19, 2009

Date(s) de l'aud

Place of Hearing

Toronto, Ontario

Lieu de l'aud

Date of Decision

May 12, 2009

Date de la

Panel

David McBean

**Counsel for the
Claimant(s)**

No Counsel

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) des tr

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**Designated
Representative(s)**

**Représent
dési**

Counsel for the Minister

N/A

Conseil du

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(the male claimant), his common-law partner,
 (the female claimant) and their daughters, and
 (the minor claimants), all citizens of Mexico, claim
 refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee
 Protection Act*.1

ALLEGATIONS

The claimants lived in the City of . On , 2007, the male claimant travelled to , to aid in the search for his nephew, , who had not returned home. He learned the next day that his nephew had been detained by the authorities for allegedly selling drugs. When they met, denied selling drugs and said that he was merely a parties where drugs were sold. These parties were organized by a man known as the “”, a man who was able to bribe the authorities. The male claimant searched for and eventually found the on , 2007. The reassured him that this was simply a game and that would soon be released. They met again on and the same reassurances were made, however, on , when the male and female claimants met the , there was anger. Not only had not been released but two of the drug selling establishments run by the had been shut down by the authorities. The threatened the claimants that if he found them responsible, he would harm them. The male claimant came to Canada on , 2007. Men surrounded the family home for two months. One day, men blocked the female claimant’s way and threatened her at gunpoint in an attempt to find the male claimant. The female claimant came to Canada on , 2007. They made refugee claims on , 2008. Their daughters, the minor claimants, arrived in Canada on , 2008 and made refugee claims soon after.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the hearing, as copies of their Mexican passports were on file.²

Nexus

The claimants fear a criminal vendetta and as such, their claims pursuant to section 96 of the *Immigration and Refugee Protection Act* fail for lack of a nexus to the Convention refugee definition.

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared internally and to the Personal Information Forms³ (PIFs) and the other documents available. For example, there was a distinct level of **s.19(1)** implausibility throughout the evidence. In oral testimony, the male claimant stated that the [redacted] was in charge of the drug trade for a certain area of the city. However, as noted at the hearing, it seemed quite odd for someone that important to drive himself around the city in a single vehicle, with one to three other people and that a single unknown stranger such as the male claimant, could just simply wander into town and almost immediately be told all the places where the [redacted] frequents, including where his drugs are sold and then and then simply walk up and start discussing drugs and imprisonment. The male claimant stated that the [redacted] was merely an [redacted] and that he had to ask around to get information about him and that he usually had to wait a few hours for him to show up. I do not find the male claimant's explanations satisfactory. Regardless of the seemingly small or non-existent entourage surrounding the [redacted], it makes little sense that the male claimant would have been allowed to do the things that he allegedly did. If the [redacted] was truly powerful, it should have been far tougher for the male claimant to find out information about him, never mind learn his schedule and then find him. It made no sense at all that the male claimant would then be able to just walk up to him as a stranger and immediately start talking about sensitive issues. I find that these implausibilities undermine the claimants' credibility.

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In oral evidence, the male claimant stated that he knew the [redacted] was powerful because while he was looking for him, someone was shot several times in the back, in the street outside one of his parties, yet his men faced no consequences from the authorities. As noted at the hearing, this information was not contained in the PIF. The male claimant stated that the person who helped him fill out his PIF said that only things that had to do with him directly should be included and that this fact was not important. I do not find the male claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that details as to what happened to similarly situated people are to be given. The male claimant affirmed that his PIF had been interpreted to him and that it was complete. This was significant evidence that the [redacted] and his men were not only capable of murder but also that they could act with impunity against someone who had angered them. Had this really happened, I would have expected some mention of this to be made in the PIF since the male claimant soon found himself in the same situation. The fact that it was not mentioned further undermines the claimants' credibility.

In the male claimant's initial oral testimony, he stated that the female claimant accompanied him on his penultimate meeting with the [redacted] and that while the [redacted] mocked him, he still promised assistance in having [redacted] released. In the final meeting, the male claimant went alone and the [redacted] angrily threatened to kill him, as he thought that the male claimant had denounced him to the authorities, who had in turn shut down his establishments between the penultimate and final meetings. However, in later oral testimony, the male claimant stated that the female claimant came with him on the last meeting and the [redacted] threatened that if he found out it was the claimants who had leaked the information to the authorities, he would kill them. When it was noted that the two accounts seemed different, the male claimant provided very confusing and evasive testimony. The male claimant attempted to explain that the female claimant accompanied him on the last visit and that the [redacted] initially blamed him for the raids, which the male claimant denied. As well, the [redacted] replied that if he found evidence that it was the claimants who were responsible for the raids, he would kill them. I do not find the male claimant's explanation satisfactory. This was a pivotal event in the male claimant's life and one that I would normally expect to be easily recalled. Either the male claimant went alone to meet the [redacted], only to be threatened with death, or he was threatened in the company of the female claimant. Either the [redacted] blamed the male claimant for the arrests directly or he suspected the male claimant and made a conditional threat. The male claimant was trying to reconcile two irreconcilable versions of events. Given the evasiveness of the testimony, it appeared that the male claimant had mistakenly added an intervening third meeting with the [redacted] in his earlier testimony and when he later gave testimony that more closely matched his PIF (i.e. the second oral version), he then began inventing testimony as he went along, in a vain attempt to explain two irreconcilable stories. I find that these discrepancies with respect to the alleged turning point in the claimants' lives to further undermine their credibility.

In oral testimony, the male claimant stated that after he returned to [redacted], he spoke with his [redacted]

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mother in _____, who told him that strange men kept asking for and looking for him. As noted at the hearing, this was not mentioned in the PIF. The male claimant responded that he did not know how to fill out the PIF. I do not find the male claimant's explanation satisfactory. As noted previously, the male claimant affirmed that the PIF was not only interpreted to him but that it was complete and accurate as well. The directions for filling out the PIF narrative are quite clear in that all significant events are to be included. The fact that people were searching for the male claimant was significant, as it indicated that the _____ had a continuing interest in locating and harming him. I find that this omission further undermines the claimants' credibility.

The male claimant arrived in Canada in _____ 2007 and the female claimant in _____ 2007. The male claimant's permission to remain in Canada legally expired in _____ 2007. The male claimant stated that he met someone at a New Year's Eve party and this person told him about the refugee system in _____ 2008. The female claimant's permission to remain in Canada expired in _____ 2008. However, despite both claimants having no legal basis to be in Canada, they did not make refugee claims until the end of _____ 2008. The male claimant stated that he thought that they could eventually go back and that they did not know or trust the system. In later testimony, the female claimant stated that she attempted to convince the male claimant that the information that he had learned about the refugee system was not true. I do not find the claimants' explanations satisfactory. It makes no sense for the claimants to be fearful for their lives, be vulnerable to deportation as their legal status in Canada had expired, have knowledge of the refugee system since at least _____ 2008 and yet make no claim for refugee status until _____ 2008. When asked what changed in _____ 2008, the male claimant only mentioned socio-economic factors. It appeared that the female claimant's attempt to "shoulder the blame" was concocted in an attempt to explain away the lengthy unreasonable delay in claiming. In any event, if the claimants were actually afraid for their lives, I would have expected them to have made claims much earlier than they did, regardless of any distrust of the system. I find that this lengthy delay in claiming not only demonstrates a lack of subjective fear but also further undermines the claimants' credibility.

The female claimant testified as well. However, her oral testimony differed dramatically from the information contained in her PIF. In oral testimony, everything was fine for the month after the male claimant left. Then, for three weeks, she was followed to various locations by various vehicles. The female claimant stated several times that she never interacted on any occasion with the people in the vehicles and she experienced no other problems after the male claimant left. However, as noted at the hearing, the female claimant's PIF states that her house was surrounded (although I believe the proper expression should have been her house was under surveillance) for two months after the male claimant left, then men cut her off, demanded information about her husband and at gunpoint, threatened her with death should he not appear within five days. The female claimant stated that her PIF was incorrect on all of these points and that she did not know why it said what it did. I do not find the female claimant's

explanation satisfactory. Being threatened at gunpoint would have been one of the most significant events in the female claimant's life. The surveillance and the threat were the only events that happened to the female claimant alone. She affirmed that her PIF had not only been interpreted to her but that it was complete and accurate. To not notice that virtually all of the single paragraph devoted to her sole experiences was almost totally wrong, particularly with respect to being threatened at gunpoint, makes absolutely no sense at all. I find that these contradictions further undermine the claimants' credibility.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to numerous major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *Immigration and Refugee Protection Act*, their claims pursuant to section 97 of the *Immigration and Refugee Protection Act* fail.

No Credible Basis

I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there was no credible or trustworthy evidence on which a favourable decision could have been made, that therefore there was no credible basis for the claims.

CONCLUSION

The claimants fear a personal criminal vendetta and as a result, their claims pursuant to section 96 of the *Immigration and Refugee Protection Act* fail, as they lack a nexus to the Convention refugee definition. Since I do not believe the claimants with respect to the events described in their PIFs and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *Immigration and Refugee Protection Act*, the claims under that section fail as well. There was no credible basis for the claims.

For all these reasons, the Refugee Protection Division therefore rejects their claims.

“David McBean”

David McBean

“May 12, 2009”

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, certified true copies of the claimants' passports, received from Citizenship and Immigration Canada (CIC).
- 3 Exhibits C-1 through C-4, the claimants' Personal Information Forms.

RPD File No. / N° de dossier de la SPR: TA8-15425

TA8-15454

TA8-17644

TA8-17645



RPD.15.7 (October 2007)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-16311

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 14, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 14, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	George J. Kubes Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	K. Genjaga	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)
Counsel for the Minister	XDECHEN GOFF (not present – documents only)	Conseil du ministre

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[1] a citizen of Germany, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS BY THE CLAIMANT

[2] After his last release from prison in Germany in 1993, he founded a company. The claimant and his family faced problems in because his wife was a “gypsy”. A client, , who was involved in the , invested a large amount of money with the claimant in 1997. Despite the claimant’s warnings, the investment went sour. In 2001 and associated thugs threatened to cut off the claimant’s fingers if did not get the money back. In 2002 suggested that the claimant open an in another person’s name. The claimant then dealt with real and fake clients at request. The commissions were funneled to . The police stated that the claimant should have reported threats but did not understand that the claimant did not out of fear for his family. The claimant was convicted of in 2008 and sentenced to two and a half years in prison. The claimant received calls threatening that his wife would be harmed while he was in prison. The claimant’s now ex-wife feared her new husband who threatened to kill her and often sought safety with the claimant. The claimant came to Canada on , 2008. The claimant made a refugee claim on , 2008.

ALLEGATIONS BY THE MINISTER

[3] The claimant was last in prison in Germany after being convicted of “ ”. The claimant was sentenced to three and a half years in prison and was ordered to pay costs of the proceedings. The claimant had allowed a woman to be . The woman was threatened, with the claimant not only not telling everyone to leave or summoning the authorities, but actually participating.

[4] More recently, the claimant was convicted of “ ” and sentenced to three and a half years in prison. The claimant is currently wanted in Germany as he has not served his sentence.

[5] The claimant misrepresented himself when he entered Canada as he failed to declare his criminal record or that he is currently wanted in Germany.

DETERMINATION

[6] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of

probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons for decision are as follows.

ANALYSIS

Identity

[7] The claimant's identity as a citizen of Germany was accepted at the hearing given that a certified copy of his German passport was on file.²

Exclusion – Article 1F(b) –

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[8] While the claimant has served his sentence for this conviction, the Federal Court of Appeal has decided that this does not necessarily prevent the operation of the exclusion clause.³ Counsel for the Minister provided extensive information⁴ about the claimant's involvement in this crime. The equivalent offence in Canada would be s. _____ of the *Criminal Code*,

which is punishable by a maximum of 14 years in prison. Given the length of the possible maximum sentence, it appears Parliament considered the offence to be serious. Given that a German court imposed a sentence of three and a half years (plus costs), it appears that they considered the crime to be serious as well given that this is a significant custodial sentence. The court records provided present a chilling picture of the claimant's participation in a horrific night in 1989 for the victim in that he not only allowed others to threaten, _____ the victim in his apartment, but he also participated in sexually assaulting the victim as well. The claimant was approximately 22 years old at the time so he was old enough to appreciate the nature of his actions. Despite the length of time since the offence occurred and the fact that the claimant has served the sentence imposed, I find that there are serious reasons to believe that the claimant has committed a serious non-political crime and is therefore excluded pursuant to Article 1F(b) of the Convention for this crime alone.

Exclusion – Article 1F(b) –

[9] Even if my analysis above were to be determined incorrect, I find in the alternative that the claimant is excluded separately for this offence as well. The equivalent offence in Canada would be s. _____, which is punishable by a maximum of 14 years. Given the length of the possible maximum sentence, it appears Parliament considered the offence to be serious. It appears from the German court record⁵ the sentence imposed would actually have been longer had the claimant not confessed, thereby shortening the trial considerably, and had offered to make restitution. Given that even in these circumstances a German court imposed a sentence of two and a half years, it appears that they considered the crime to be serious as well given that this is a significant

term. While the claimant vaguely referred to serving real and fake clients in his Personal Information Form (PIF),⁶ the court records⁷ presented indicate that the claimant induced numerous people who were unwilling or financially unable to [redacted] and in at least some cases forged their signatures. The claimant has not served his sentence and is currently wanted by the German authorities.

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[10] While Counsel for the Claimant referred to the concept of “duress”, I do not see how it is applicable here. The initiating individual transactions took place from [redacted] 2002 through [redacted] 2003.⁸ The claimant has 14 years of education and was employed in the [redacted]. He has traveled internationally on numerous occasions and speaks numerous languages including German, English, Czech, French and Spanish.⁹ He is anything but unsophisticated. Even if I were to accept the claimant’s evidence as true, which I do not necessarily do, with respect to the threats from [redacted], it makes little sense that the claimant would feel so threatened that he wouldn’t be able to arrange for his own safety and that of his former wife with the authorities in fairly short order, rather than conducting fraud over such a long period of time.

[11] I find that there are serious reasons to believe that the claimant has committed a serious non-political crime and is therefore excluded pursuant to Article 1F(b) of the Convention for this crime alone.

Inclusion - State Protection

[12] Even if I were to accept the claimant’s evidence as true, which I do not necessarily do, the claim fails with respect to inclusion as I find that the claimant has failed to rebut the presumption of state protection. There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.¹⁰ Evidence that protection being offered is not necessarily perfect¹¹ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.¹²

[13] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.¹³ The more democratic the state’s institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.¹⁴ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens.

unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁵

[14] The documentary evidence shows that Germany is a functioning, parliamentary democracy with free and fair elections.¹⁶ I find that Germany is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Germany is in a state of complete breakdown.

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[15] While the claimant stated orally that he had spoken to a police officer about threats once and was cut-off, he never attempted to complain about this, go to a different officer or a higher ranking one which I find would have been more than reasonable in the circumstances. The claimant conceded if he faced harm and was able to summon the authorities they would be respond to his aid. While he did state that and his men would come after him in a situation where he would be unable to summon the authorities, no country can be expected to provide 24-hour bodyguards to protect people. I find that it would be reasonable for the claimant to go to the authorities to seek protection should he face harm and I find that protection would be forthcoming.

[16] The claimant and his wife divorced several years ago but share custody of their children. While the claimant did initially state that some people may make racist remarks, he stated his fear of returning to Germany was based solely on and his men and was not related to the ethnicity of his family. On an objective basis, while there is no doubt that racism exists in Germany and even acts of violence can occur, the objective documentary evidence¹⁷ indicates that such problems are not at all widespread amongst the population. While there were just over a thousand violent incidents based on race in 2008, given the size of the population, there is no more than a mere possibility of this happening to the claimant should he be perceived to be linked to Roma family members. Even if he were to experience violence, based on race or at the hands of her new husband, he could always call upon the authorities for help.

[17] I find that the claimant has not established, on a balance of probabilities, that adequate state protection is not available. As such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[18] I find that pursuant to subsection 107(2) of the *IRPA* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[19] I find the claimant is excluded pursuant to Article 1F(b), is not a Convention refugee or person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

July 14, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 *Jayasekara v. Canada (Minister of Citizenship and Immigration)*, [2009] 4 F.C.R. 164 (F.C.A.).

4 Exhibit M-2.

5 Exhibit M-2, p. 33.

6 Exhibit C-1.

7 Exhibit M-2, p. 27.

8 Exhibit M-2, pp. 27-32.

9 Exhibit C-1.

10 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.

11 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).

12 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

13 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

14 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

15 *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

16 Exhibit R-3, *National Documentation Package*, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.

17 Exhibit R-3, DOS.



RPD File No. : TA8-16311



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-16520

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	January 22, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	June 25, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Max Berger Barrister and Solicitor	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)**DECISION**

[1] _____, a citizen of the Czech Republic, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant was born in 1945. The claimant's paternal grandfather was a Rom, and while her father spoke Romanes with him, she was not taught Romanes so she could better integrate into Czech society. However, the family did observe Roma customs. The claimant suffered psychological and physical abuse at the hands of her classmates in school. In 1969 she married a Czech man and moved to the town of _____. The claimant's husband would beat her and call the claimant and her children racist names. The claimant faced racism from the general public. Her daughter _____ married a Yugoslavian Rom who is Muslim who faced problems because of all three characteristics. The claimant's daughter came to Canada and became a refugee. The claimant obtained a divorce in 1994. Starting in 1995, the claimant was attacked by skinheads eight times. Each time two to four skinheads would approach her outside a store and throw her shopping bags to the ground. On one occasion she was helped by an older woman who had already had a same-sex relationship. They moved-in together in 1996 and after that the claimant faced homophobic insults. They both faced problems of skinheads throwing their shopping bags on the ground and when they took the garbage out skinheads would sometimes scatter the garbage on the ground. In 2002, the claimant was hospitalized with bleeding in her brain due to the stress of her experiences and received shoddy medical care, worse than that given to others. That same year, the claimant was taking out her garbage when two men that she did not see pushed her to the ground. The claimant lost a number of teeth and broke her jaw in the fall. The doctor who treated her said that since she did not see her attackers there was no use in going to the police. In 2007, the claimant visited her daughters in Canada who had been accepted as refugees. She returned to the Czech Republic. In _____ 2008, the claimant received the first of nine anonymous threatening letters sent from various towns. It was clear from the letters that the writers knew that her daughters had married Roma men and that she had visited them in Canada. The claimant reported the letters to the police but did not receive protection. The claimant's door was urinated on six times. The claimant returned to Canada on _____, 2008 and made a refugee claim on _____ 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a risk to life or a risk of cruel and unusual treatment or punishment or to a danger of upon return to her country. I have considered all of the evidence in the context of the

Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Czech Republic was accepted at the hearing given that a certified copy of her Czech passport was on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, in oral testimony the claimant stated that she was bisexual, albeit with more of a preference for women. She stated that her sexual orientation has made her problems worse from the time that she attended school and she received insults as "Gypsy lesbian whore". However, as noted at the hearing, there is no mention in the PIF of the claimant experiencing problems due to her sexual orientation from her childhood onwards. The claimant stated that it was prohibited at the time. Furthermore, the claimant stated that if she were to return to the Czech Republic today she would face huge problems on the basis of her sexual orientation and that her life would be at risk on that basis alone. However, as noted at the hearing, the documentary evidence⁵ on file does not mention that people of minority sexual orientations are subject to violence or discrimination. The claimant stated that this evidence is wrong and that there is violence and discrimination based on sexual orientation. I do not find the claimant's explanations satisfactory. I prefer the independent, objective evidence on file to the dramatically different evidence of the claimant. If there were problems based on sexual orientation whether violence or discrimination, I would have expected the documentary evidence to make at least some comment on that. While I am mindful of counsel's submissions that the claimant's situation must be looked at as a whole and that sexual orientation may make other problems "worse", this simply was not the claimant's evidence which was on the basis of sexual orientation alone, she would face violence and discrimination. I find that the claimant was simply concocting her testimony in an attempt to invent a ground to base her claim on. I find that this undermines her credibility.

[6] In the PIF, in 2002, the claimant was pushed by two men that caused her to fall and break a number of teeth. The claimant did not present a document from the Czech Republic to corroborate this event as the person treating her had told her to not bother reporting it to the police and that no medical report would be provided. However, as noted at the hearing, it is within my specialized knowledge that claimants are able to obtain medical reports from the Czech Republic. The claimant stated that this was

not her experience. It was further noted that while the claimant confirmed in oral testimony that the incident occurred in 2002, in the notes⁶ made at the time that the claimant made her claim, the date listed is 2007. The claimant stated that the incident occurred in 2002 and 2007 was when she had an operation on her teeth. I do not find the claimant's explanations satisfactory. I am mindful that counsel submitted a medical note created in Canada confirming that the claimant had lost her teeth at some point. However, as properly noted by counsel, an examination in Canada can do little to ascertain the cause of the teeth missing. As noted earlier, I would have expected the claimant to be able to produce documentation from the Czech Republic to corroborate the timing of her injury. More importantly, the claimant's interview with an immigration officer took place with an interpreter present, so there should have been no confusion with respect to dates. If the claimant really had been injured five years earlier than her dental surgery, I would not have expected the immigration officer's notes to be written the way that they were. I find that these discrepancies further undermine the claimant's credibility.

[7] The claimant's description of the incident where she lost her teeth also varied over time. In the PIF, the claimant is pushed by two men that she did not see. In the claimant's initial oral testimony, she stated that she did see who pushed her and that the men were skinheads. In later testimony, the claimant stated that she was initially called a "gypsy whore" prior to being pushed and the skinheads added "what a lesbian" as they left. When asked why none of this was included in her PIF, the claimant stated that she wanted to forget the incident and remembered details as time passed. I do not find the claimant's explanations satisfactory. Despite having one grandparent who was a Rom, the claimant is to any casual observer "white". For her attackers to insult not only her ethnicity, but also her sexual orientation (which also would not be obvious to the casual observer), would indicate prior knowledge of the claimant on their part. If the claimant really did see that her attackers were skinheads and they made such specific insults, I would not have expected the PIF to be written the way that it was, in that the attackers were described only as two men that the claimant did not see. I find that this discrepancy further undermines the claimant's credibility.

[8] The claimant came to Canada in 2007 to visit her daughters whom she knew had been granted status as Convention refugees. However, as noted at the hearing, the claimant returned to the Czech Republic without making a refugee claim herself. The claimant stated that she had not been attacked since 2002, things were somewhat calm and that she thought people had forgotten about her. I do not find the claimant's explanations satisfactory. The claimant explicitly knew about the refugee process in Canada. She allegedly experienced a lifetime of problems based on her ethnicity and sexual orientation. Even if there were no serious attacks for a number of years, given the claimant's alleged experiences and knowledge of the refugee system, I would have expected her to make a claim during her previous trip to Canada. I find the fact that she did not to further undermine her credibility.

[9] The claimant stated that after she returned to the Czech Republic, she began receiving anonymous

letters, mostly typed on the same typewriter, with postmarks from different towns. As noted at the hearing, it seemed quite odd that in the past skinheads would openly abuse the claimant, yet here someone went to the trouble of mailing her anonymous threats from various towns so as to avoid detection. The claimant stated that she knew her life was in danger and she was sure that skinheads were behind the letters. However, as further noted at the hearing, the police report⁷ provided specifically states that the claimant does not know who is behind the letters. The claimant stated that she told the police that it was the skinheads and the police told her that this must be a large organization to obtain information about her daughters in Canada. I do not find the claimant's explanations satisfactory. The police report states that the claimant read over the report after it was prepared and agreed with the contents. If the claimant was really being menaced by what she was sure were skinheads, I would have expected her to say just that. More importantly, I find that the claimant's evidence in this area is simply implausible. It makes no sense at all for skinheads and other people to openly abuse and discriminate against the claimant throughout her life and then switch to using anonymous typed threats sent from various towns to avoid detection. Had someone really been interested in harming the claimant, I would have expected the claimant to be threatened directly, not by anonymous letters sent from various towns. I find that these discrepancies further undermine the claimant's credibility.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened. Since the claimant's claim to perceived Roma ethnicity is based solely on her testimony, which I simply do not believe, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well. In coming to this decision, I am mindful of the fact that the claimant's daughters were accepted as Convention refugees. However, since only the *Notice of Decision*⁸ was provided one can only speculate as to the reasons for that decision, which may very well have little to do with the claimant. As a result I gave this document little weight.

NO CREDIBLE BASIS

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[12] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

June 25, 2010

Date

1 As enacted by S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

4 Exhibit C-1.

5 *National Documentation Package, September 25, 2009, tab 2.1, United States Department of State, Country Reports on Human Rights practices for 2008, February 25, 2009.*

6 Exhibit R-2, Immigration officer's notes dated September 3, 2008.

7 Exhibit C-2.

8 Exhibit C-3.

 image

RPD File No. : TA8-16520



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (May 18, 2010)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-16991

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	August 24, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 14, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	David Benning	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, a citizen of Grenada, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Grenada. In 1981, at the age of 15, she began dating _____. The relationship was not good as he began to cheat on the claimant. In 1987, _____ became a _____. The claimant came to Canada in 1988 to visit family. While the claimant was in Canada, _____ began using his job as a _____ to aid in his own personal vendettas. He was fired from his _____ in the early 1990s when he shot at someone who had troubled his brother. The claimant tried to break-up with _____ over the phone from Canada but he refused to accept this, however he did start dating someone else. The claimant returned to Grenada in 1992 and _____ quickly found her. Despite the claimant's initial resistance, she re-established a relationship with him. The relationship deteriorated as _____ became verbally and physically abusive. The claimant remembered that her aunt and grandmother received no help when they were abused, and given that _____ still had friends in the police, she did not report anything. The claimant received threats from the other woman that _____ was dating who was now pregnant. The other woman tried several times to run the claimant over with her car. _____ still beat the claimant and when she became a Christian that made matters worse. The claimant saw an opportunity to escape when her mother in Canada became seriously ill. _____ allowed her to go to Canada which she did in _____ 1998. While in Canada, an immigration consultant advised to the claimant to wait at least five years before making a claim. The claimant spent much of her time caring for her mother. In 2008 the claimant's sister called from Grenada to say that _____ was now the _____ for their area and that he was demanding to know where the claimant was. The claimant made a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

s.19(1)

[4] The identity of the claimant as a citizen of Grenada was accepted at the beginning of the hearing as a copy of her passport from Grenada was on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, the claimant stated orally and in the PIF that the reason why she never reported abuse to the authorities was because he was a former and that he still had friends on the force. However, as noted at the hearing, in a statement⁵ made to an Immigration Officer at the time that she made her claim there is no mention that is a former. The claimant stated that she had not thought of that point at the time. I do not find the claimant's explanation satisfactory. The claimant had been in Canada for approximately 10 years by the time that she spoke to the Immigration Officer so she should not have been in any state of confusion or panic. The central thrust of the claimant's evidence was that not only abused her but he also abused his authority as a and despite being fired he still had friends on the force and that was one of the main reasons that she never reported him to the authorities. Even though the statement to the Immigration Officer is fairly brief, I would have expected some mention of past job and ongoing connections to the had these really existed. I find that this discrepancy undermines the claimant's credibility.

[6] In the PIF and in oral testimony, "other woman" tried several times to run the claimant over with her vehicle. However, as noted at the hearing, this was not mentioned in the

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit C-1.

⁵ Exhibit R-2, Record of Examination.

statement made to the Immigration Officer. The claimant stated that she had forgotten lots of things at the time. I do not find the claimant's explanation satisfactory. Once again, while the statement to the Immigration Officer is fairly brief, these murder attempts appeared to be some of the most significant things that had happened to the claimant. It makes no sense at all for the claimant to have told the Immigration Officer that the "other woman" had threatened her to leave so that she could take her place and yet somehow forget to mention the far more significant fact that the other woman had actually tried to kill her on several occasions. I find that this discrepancy further undermines the claimant's credibility.

[7] The claimant stated that she didn't make a claim upon her arrival in 1998 because she thought she had made a claim previously, that an immigration consultant had advised her soon after she arrived to wait five years and she felt that it would have helped if she waited. When asked why she did not make a claim after five years instead of waiting the 10 years that she actually did, the claimant stated that she had been caught up in her mother's illness and had forgotten to make a claim. I do not find the claimant's explanations for this significant delay in claiming to be satisfactory. In oral testimony and in a statement appended to the claimant's PIF the claimant stated that she was under the impression that she had filed a refugee claim in Canada in 1988 with the assistance of a counsel. Despite there being no record of this in any computer system, it appeared that the claimant was aware of the refugee process. However, as noted at the hearing, it is within my specialized knowledge that when the claimant arrived in 1998 that under the *Immigration Act* then in force there was no bar with respect to making more than one refugee claim. The claimant had allegedly been plotting to flee Grenada for years before she came. Given this and her apparent knowledge of the refugee system it makes no sense for the claimant to fail to make a claim upon her arrival in Canada in 1998. Even if the claimant received somewhat odd advice to wait five years before claiming, it makes no sense for the claimant to have "forgotten" to make a claim when it was her own evidence that she had remembered to make an application to stay in Canada on Humanitarian and Compassionate grounds and that this other application was the reason (along with the fact that her old passport was expiring) that she had renewed her passport in 2006. It makes no sense at all for the claimant to be so involved with mother's illness to the extent that she forgot about making a claim and yet be able to launch an application to stay on a different basis and even take other related outside steps such as having her passport renewed. I find that the 10 year delay in

making the claim not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

[8] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened. As a result, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[9] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[10] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

October 14, 2010

Date

RPD File No. / N° de dossier de la SPR : TA8-17614

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

March 12, 2010

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

March 26, 2010

Date de la décision

Panel

David McBean

**Counsel for the Claimant
(s)**

Marcelino Barron

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) de

**Designated
Representative(s)**

N/A

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

REASONS AND DECISION

[1] _____, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in _____, a small city of _____ people in Poland. Her mother lost her job in 2006 and began to drink heavily and bring strange men home. The claimant faced abuse from her mother and problems from her “guests” and, at times, the claimant would have to leave the house to get away from the partying. The claimant learned in _____ 2008 that she would soon be losing her job as a _____. A man named _____ (“_____”) told her that he could get her a job as a _____ in Belgium. The claimant decided to take the job and traveled to Belgium in early 2008. Instead of being met by the expected family she was met by two men who took her to what turned out to be a _____. There she learned that _____ had _____ and that she would be expected to work as a _____. The claimant was repeatedly beaten, even at times with a belt. After about a week she managed to escape from the _____. She traveled back to Poland. The claimant spoke anonymously with a worker at the Women’s Rights Centre in _____. The worker told the claimant that she was lucky that she wasn’t raped and/or killed. She also advised the claimant that the _____ and that she could not obtain protection. The claimant contacted some people that she had met on a previous trip to Canada and left Poland on _____, 2008, and made a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson’s *Gender Guidelines*2 and I accept that the circumstances which give rise to women’s fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant’s identity as a citizen of Poland was accepted at the hearing given that a copy of her Polish passport was on file.3

Internal Flight Alternative (IFA)

[5] Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails as I find that a viable IFA exists in Warsaw. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

s.19(1)

[6] With respect to the first prong of the test, the claimant would be returning to the international airport in Warsaw, so there would be no need for her to return to her hometown of . The claimant has been out of Poland for almost a year and a half so it is extremely unlikely that and the men related to him are actively looking for her and would instead, unfortunately, have moved on to other victims. Even if and the other men were to hold a residual interest in finding the claimant it is unclear how they would find her. Warsaw is a large, major city and while the claimant speculated that and the other men would talk to other criminals and be able to obtain her location in that fashion, this once again seems extremely unlikely. However, even if I am incorrect on these two points and and the other men do hold some continuing interest in the claimant, they are able to find her in Warsaw and they are motivated to travel there to do her harm over the loss of the

I find that the objective documentary evidence⁵ on file shows, on a balance of probabilities, that state protection is available in Warsaw and there is no serious possibility of her being persecuted. I prefer this objective evidence to the claimant's account of the advice given to her anonymously by someone at a Women's Rights Centre in that no protection would be available to her no matter where she went. The objective documentary states that Poland prohibits all forms of through its criminal code. Penalties range from one to 15 years in prison. The authorities arrested, tried and convicted a number of over the last few years. The government continues to provide training to judges, prosecutors and law enforcement officials in this area. The government increased its funding to a specialized shelter for victims of and there are a number of non-specialized shelters able to assist as well. The government engaged in a number of campaigns as well.⁶ Despite the claimant's misgivings about the police in Warsaw, I find on a balance of probabilities that she has failed to rebut the presumption of state protection in Warsaw and that she faces no serious possibility of persecution there.

[7] With respect to the reasonableness of the claimant moving to Warsaw, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁷ While

5 Exhibit R-1, *National Documentation Package*, November 30, 2009.

6 Exhibit R-1, tab 7.3, United States Department of State, *Poland (Tier1), Trafficking in Persons Report 2009*.

7 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

8 Exhibit R-2, Schedule 1, "Background Information".

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RPD File No. : TA8-17614

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RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-18021

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 21, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	June 17, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la cour
Designated Representative (s)		Représentant(e)(s) désigné(s)
Counsel for the Minister	N/A	Conseil du ministre

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DECISION

s.19(1)

[1] a citizen of the Czech Republic, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*). The claimant, to use the term that the claimant used to describe himself at an initial sitting on March 26, 2010, is “crazy”. While no formal psychological evidence was presented, it was obvious from the claimant’s interactions with the interpreters and with me that he is having some psychological issues and as a result, a designated representative was appointed to represent his best interests. I thank _____, who works for the City of Toronto in the claimant’s assisted living building for taking on this responsibility.

ALLEGATIONS

[2] According to the Personal Information Form (PIF), the claimant is from the Czech Republic and is Roma. In 1991, the claimant was in a dispute with a co-worker who ended up hitting him on the head with a metal bar. The claimant fought back to defend himself. After seeking medical attention the claimant went to the police who initially tried to throw him out but after seeing the medical report attempted to offer him a drink. Nothing came of this as investigations could only be instigated upon government order. The claimant’s divorce took 15 years and concluded with the claimant changing his own family name to a different one (despite men not usually doing this). In 2002, the claimant was walking through a park with a guitar when a skinhead asked him to play music. When the claimant refused an altercation ensued and the claimant hit the skinhead’s head with his guitar. As a result, eight skinheads followed the claimant on to a train but the conductor intervened by calling the police. The skinheads left and the police took the claimant to the bus station so he could not be attacked again. While they took a report they told the claimant that they were under orders not to investigate skinhead attacks. The claimant was attacked in a dorm when he was held by the throat. The police did not come. Another time he was attacked in the dorm by a drunken person. When the claimant attempted to lay a complaint with the police he was asked for 500 Czech Crowns (about CDN\$25), he turned around and left. The claimant stated orally that Czech people in general are more likely to attack Roma people since Canada imposed a visa on Czech people since so many Czech Roma people made refugee claims in Canada. He also stated that he fears returning to the Czech Republic since after the Czech Republic joined the European Union the country is not safe as there are no police or army personnel defending its borders with other countries.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or

punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Czech Republic was accepted at the hearing given that a certified copy of his Czech passport was on file.² Despite the claimant often referring orally to Roma people as a group which seemingly did not include himself, I accepted for the purposes of the hearing that the claimant is or would be perceived to be Roma.

Credibility

[5] It is virtually impossible to assess the claimant's credibility in the traditional sense. No documents were presented to corroborate anything that the claimant alleged. While I realize that claimants are not required to document all aspects of their claim, here documents would have been very valuable since the claimant's testimony varied so greatly from one moment to the next. The claimant affirmed in writing that the events contained in his PIF were true. Then he stated orally that they were not true. At various times he stated the alleged events were true and almost immediately said that they were not true. While the claimant was able to testify to at least some of the events mentioned in his PIF, the details varied greatly. For instance, it may be a very good thing from the claimant's perspective that the police essentially did nothing in the incident wherein he was hit on the head by a metal bar. In oral testimony, the claimant not only put his attacker "on the floor" but that his own blood dripped into his attacker's mouth while he was down there. While the details are murky, it may be that the claimant was lucky to escape being charged himself. Also, while the claimant stated more than once that the police are under "orders" not to investigate skinheads, the claimant consistently stated that the skinheads would run away if the police were called. This makes no sense if the police are under orders not to investigate skinhead problems. Given, as noted at the hearing, that there is no evidence in the objective documentary evidence that the police have orders not to investigate skinhead activities and it is the claimant's own evidence that the skinheads will run away when the police come, I simply do not believe that such orders exist. Furthermore, given that the claimant's mental state, lack of consistency in testifying about what, if anything happened to him and the lack of corroborating documents, I find on a balance of probabilities that none of the significant events that the claimant alleged happened to him actually happened.

Profile as Roma/State Protection

[6] Even though I disbelieve the events that the claimant recounted orally and in his PIF, I turn now to the general situation for Roma people in the Czech Republic. While I do note that problems do exist for

people of Roma ethnicity, I find, even based on the general profile of the claimant as Roma, this claim fails as the claimant has failed to rebut the presumption of state protection.

[7] There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.³ Evidence that protection being offered is not necessarily perfect⁴ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.⁵

[8] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of that state.⁶ The more democratic the state’s institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁷ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.⁸

[9] The documentary evidence shows that the Czech Republic is a functioning, parliamentary democracy with free and fair elections.⁹ I find that Czech Republic is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Czech Republic is in a state of complete breakdown.

[10] The documentary evidence further indicates that the government generally respected and protected the rights of its citizens.¹⁰ While there is no question that Roma do face discrimination and that there have been demonstrations and even some attacks at the hands of skinheads, neo-Nazis and other extremists,¹¹ there is legislation in place that provides protection for the Roma and other groups including anti-discrimination and hate-crime legislation. The Czech constitution prohibits discrimination based on national, racial or ethnic background as well as other pieces of legislation governing employment and education as well as *The Charter of Rights and Freedoms*. An anti-discrimination bill which would harmonize Czech legislation with that of the European Union was passed on June 17, 2009. Furthermore, the Czech Republic is a member of the European Union, which has had a positive impact on the country by setting standards concerning human rights, as well as access to the European Court of Human Rights and access to multi lateral programs such as the Decade of

Roma Inclusion. I do note that some observers have questioned the degree of positive impact that these measures have had.¹²

[11] To address acts of discrimination the authorities introduced the Roma Police Assistant (RPA) program in 2003. The purpose of employing RPA's is to assist in building better relations and trust between the Roma and the police. The RPA's assist police in their investigations, assist in accompanying Roma who are victims of crime to file police reports and in helping obtain social services for such victims. A program of hiring Minority Liaison Officers (MLOs) was also begun in 2004 with the focus on crime reduction and lessening social exclusion. Several observers have commented that these programs have been helpful and represent progress in the relationship between Roma and the authorities, which has not been one of trust over the years. Furthermore, in the mid 1990's, the Ministry of the Interior initiated programs to combat extremists by allowing the police to closely monitor such group activities and created an anti-extremist department within the police itself, which is showing signs of success. The police have arrested neo-Nazis and they have been prosecuted, including a case where a Romani had been murdered. The police also successfully prevented or broke up extremist clashes and demonstrations. The government is also trying to recruit Roma as police officers, with a number of drives being conducted in Prague and Brno. While there has been a good response to these drives, many applicants are screened out due to a lack of a secondary school diploma. However, to counter-act this problem, the police and other organizations offer assistance to people who want to complete their education so that they can then join the police force. Furthermore, the police are trained on how to deal with minorities and extremists. The police are making other efforts such as participating in day camps, seminars and school visits in order to foster better relations with Roma children. While statistics are difficult to come by given privacy laws, as of 2006, there were an estimated 61 Roma police officers in Czech Republic.¹³

[12] The judiciary has prosecuted hate crimes committed against Roma people on several occasions. The documentary evidence notes that "the judicial proceedings on racial crime have increased in recent years due to the efforts of NGO's ..."¹⁴ The Czech Ombudsman was created in 1999 and is known as the Public Defender of Rights. The Ombudsman investigates allegations of public sector mistreatment of Roma and may take corrective action or issue advice or recommendations. The Ombudsman has successfully intervened in areas such as housing but has yet to receive any formal complaints against the police.¹⁵ There is a new independent and transparent mechanism to investigate police misconduct.¹⁶ There are other government and non government agencies available to assist the Roma, including 400 Roma NGO's, the Czech Trade Inspectorate (to deal with unfair business practices or consumer discrimination), and the Social Inclusion Agency to address the social integration of the Roma into Czech society, including housing, health care, employment, social services and cohesion.¹⁷

[13] While the claimant stated orally that he felt that Czech people would be more likely to attack

Roma people because of Canada's imposition of visa requirements, this allegation, as noted at the hearing, is simply not supported in the documentary evidence.

[14] In summary, I find that the preponderance of the documentary evidence indicates that the Czech Republic government is making very serious efforts to provide protection to the Roma whether as a victim of a hate crime, to assistance in obtaining social services or inclusion into Czech society. While there is discrimination against Roma people and even some incidents of violence, I find that the Czech government in recent years is making very serious strides to have this discrimination overcome.

[15] I find that the claimant has not established, on a balance of probabilities, that adequate state protection is not available. As such the claim pursuant to section 96 of the IRPA fails.

Risk of Invasion

[16] While the claimant stated that he feared returning to the Czech Republic since its borders were no longer actively defended by the police or army after the country joined the European Union, the risk of invasion is a risk generally faced by others and is therefore precluded from my consideration by section 97(1)(b)(ii) of the IRPA. There being no other evidence that the claimant is at risk of any of the harms delineated in section 97 of the IRPA the claim pursuant to that section fails as well.

CONCLUSION

[17] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

June 17, 2010

Date

- 1 As enacted by, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 4 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 5 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 6 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 7 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 8 *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 9 Exhibit R-3, *National Documentation Package*, March 31, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.
- 10 Exhibit R-3, tab 2.1, *Country Reports on Human Rights Practices for 2009*.

- 11 Exhibit R-3, tab 2.1, *Country Reports on Human Rights Practices for 2009*.
- 12 Exhibit R-3, tab 13.1, *Issue Paper*, Czech Republic: “Fact –Finding Mission Report on State Protection”, *Immigration and Refugee Board*, June 2009.
- 13 Exhibit R-3, tab 13.1, *Issue Paper*.
- 14 Exhibit R-3, tab 13.1, *Issue Paper*.
- 15 Exhibit R-3, tab 13.1, *Issue Paper*.
- 16 Exhibit R-1, tab 2.3, “International Helsinki Federation Annual Report on Human Rights Violations”, March 27, 2007.
- 17 Exhibit R-3, tab 13.1, *Issue Paper*.



RPD File No. : TA8-18021



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (May 18, 2010)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-18183
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	(a.k.a. ,)	Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	November 24, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 26, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] a citizen of Portugal, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant is slightly mentally challenged. She did not get very far in school and endured teasing and insults as a result of being mentally challenged. While she did work at a , she endured teasing and insults there as well. She came to Canada in 1997 and made a refugee claim after coming to the attention of the authorities in 2008. She fears returning to Portugal as she may be forced to beg on the streets as the has now closed and her family has stated that they will not provide a home for her.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would, on a balance of probabilities, personally be subjected to a danger of torture, or a risk to her life, or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this decision, I considered whether the claimant required the appointment of a designated representative. However, given that the claimant appeared to appreciate the nature of the proceedings I did not appoint one. As there was no counsel to represent the claimant, I reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process. My reasons for the decision are as follows.

Identity

[4] The claimant's identity as a citizen of Portugal was accepted at the beginning of the hearing as a copy of her Portuguese passport was on file.²

¹ As enacted by S.C. 2001, c. 27.

² Exhibit R-2, certified copy of passport received from Citizenship and Immigration Canada (CIC).

Objective Basis of Claims/Discrimination versus Persecution

[5] There is no question that the claimant expressed a subjective fear of returning to Portugal. However, I cannot see where this fear is objectively founded. While the claimant did state that she faced verbal abuse, she never faced any physical harm. While both the claimant and her employer in Canada (who testified on her behalf at the hearing) stated that it would be difficult for her to find a job given that she is mentally challenged, I do not see where this rises to the level of persecution. I would note that the claimant has been employed in Canada almost continuously since her arrival in Canada and she has been able to live and work in a city where the dominant language is English, not Portuguese. Should the claimant face some difficulty upon her return to Portugal, I note that the documentary evidence states:

The constitution and law prohibit discrimination against persons with disabilities in employment, education, access to health care, or the provision of state services, and the government effectively enforced the law...

The Ministry of Labor and Social Solidarity oversees the National Bureau for the Rehabilitation and Integration of Persons with Disabilities, which is responsible for the protection, professional training, rehabilitation, and integration of persons with disabilities, and for the enforcement of related legislation.³

[6] While the claimant's employer did state that the real situation may be different from the information contained in the documentary evidence, no evidence was presented to support this position beyond speculation. As I noted at the hearing, if persons with mental or psychological disabilities did generally face problems with respect to persecution, it would be reflected in the documentary evidence.

[7] While it is unfortunate that the claimant has faced discrimination in the past, I find that her experiences, even looked at collectively, merely amount to discrimination and do not rise to the level of persecution. Going forward, I find that the claimant does not face a serious possibility of persecution, and even if she faces discrimination, there are methods of dealing with that. As such, her claim pursuant to section 96 of the *IRPA* fails. There

³ Exhibit R-1, *National Documentation Package*, March 30, 2009, tab 2.1, United States Department of State, *Country Report on Human Rights Practices for 2008*, section 5, "Persons with Disabilities".

being no other evidence which would indicate that the claimant is at any risk of any of the risks delineated in section 97 of the *IRPA*, her claim pursuant to that section fails as well.

Humanitarian and Compassionate Consideration

[8] While reference was made in the Personal Information Form (PIF) and at the hearing to the claimant's strong ties to Canada and good behaviour, I have no jurisdiction to consider these factors since they are the responsibility of another Department to which a separate application must be made.

No Credible Basis

[9] I find that pursuant to subsection 107(2) of the *IRPA*, that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[10] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

November 26, 2009

Date



RPD File No. / N° de dossier de la SPR : TA8-18951

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	September 28, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 13, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Joseph L. Salsbury	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, a citizen of Trinidad and Tobago, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Trinidad and Tobago. To escape a high crime rate she came to Canada on _____ 1998. During her time in Canada the claimant has heard that the situation has only gotten worse in Trinidad and Tobago. She does not feel that the police will be able to protect her if she were to return and she feels that she will be targeted by criminals given that her decade-plus stay in Canada will lead to a perception of her being wealthy. The claimant believes that she will be kidnapped, raped and murdered. She made a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. In coming to this decision, I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Trinidad and Tobago was accepted at the hearing given that a certified copy of her passport from Trinidad and Tobago was on file.³

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act*, Immigration and Refugee Board, Ottawa, March 9, 1993; *Update*, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

Credibility

[5] In post-hearing submissions⁴ counsel urged that I find the claimant credible. However, it was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁵ (PIF) and the other documents available. For example, in oral testimony the claimant stated that she not only feared crime in general but Black people in particular. She recounted several instances of facing negative experiences at the hands of Black people long ago, such as being bumped into in stores and being stared at. Now that the perpetrators were older they may do worse. She even gave the names of several of the perpetrators. However, as noted at the hearing, the PIF does not mention that the claimant fears Black people nor does it mention any negative experiences at their hands. The claimant said that she did not know why she had not included these points in her PIF, that she could not remember everything and that she had a lot on her mind when she filled out her PIF. I do not find these explanations satisfactory. In oral testimony, Black people figured prominently in the claimant's alleged fears. It makes no sense for the claimant to somehow forget who she was afraid of when filled out her PIF. It makes even less sense that the claimant would have no trouble orally describing events where specific named Black people stared at her and even shoved her in stores and these particular named people would do worse today and yet not remember any of this at the time that she filled out her PIF. I find that these discrepancies undermine the claimant's credibility.

[6] As noted at the hearing, the claimant did not make a refugee claim until over 10 years after her arrival in Canada. The claimant stated that at the time of her arrival she did not know about the refugee system and over time hoped to become a permanent resident by a separate application. I do not find these explanations satisfactory. The Immigration system allows for multiple simultaneous applications for different reasons. Even if the claimant had another Immigration application in process, I would have expected that if she truly feared returning to Trinidad and Tobago she would have researched the situation and made a refugee claim much earlier, rather than waiting all of the years that she did. I find that her behaviour not only demonstrated a lack of subjective fear but also further undermines her credibility as well.

⁴ Exhibit PH-1.
⁵ Exhibit C-1.

[7] Given the serious discrepancies with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened. As a result, the claim pursuant to section 96 of the *IRPA* fails.

Section 97/Generalized risk

[8] The claimant also mentioned a high crime rate in Trinidad and Tobago. However crime is a risk faced generally by others and as such is precluded from my consideration by section 97 1(b)(ii) of the *IRPA*. Even if the claimant were to face increased targeting due to her lengthy stay in Canada and thereby a perception of wealth, this merely alters the degree of the risk, not the generalized nature of it.⁶ There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[9] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[10] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim

(signed)

“David McBean”

David McBean

December 13, 2010

Date

⁶ *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. / N° de dossier de la SPR : TA8-19089
TA8-23444
TA8-23445
TA8-23446
TA8-23447

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s) s.19(1) Demandeur(e)(s) d'asile

Date(s) of Hearing July 22, 2010
September 16, 2010 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision November 19, 2010 **Date de la décision**

Panel David McBean **Tribunal**

Counsel for the Claimant(s) El-Farouk Khaki
Barrister and Solicitor **Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Designated Representative(s) **Représentant(e)(s) désigné(e)(s)**

Counsel for the Minister N/A **Conseil du ministre**

s.19(1)

[1] (herein "the male claimant"), his wife, (herein "the female claimant"), and their sons, , and , citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (*IRPA*).

ALLEGATIONS

[2] The claimants lived in the state of , Mexico. On , 2008, the male claimant was on his way to his son school. The male claimant saw two men beating a teenager outside the school. When he attempted to intervene the men began to beat him as well and pointed a gun at him stating that he should not bother the , a . The claimant went inside the school and called the authorities on his cellphone. Eventually the noise stopped outside. No one responded to his call so the claimant called the authorities again. Once again no one came and he eventually returned home. On , 2008, the male claimant's truck was stolen. Thinking it was a simple robbery he reported the theft to the Public Ministry. However, on , 2008, the claimant received a call threatening death from someone stating that they were part of the and that he should not have reported the theft to the authorities. From until the end of the male claimant received approximately a dozen threatening calls. On , 2008, the male claimant went to the Public Ministry to complain about the threats however he was told that unless he could identify the callers they could do nothing. The Public Ministry contacted the police about the earlier assault however no record could be found about the incident. On , 2008, the male claimant returned to the school to see if there had been any witnesses to the assault. A maintenance man said he knew the two men were and and that they were very dangerous. The maintenance man warned the claimant to leave the country or face death. The male claimant moved to an aunt's house in ' and the continued to threaten him via cellphone. After four days his aunt happened to answer the cellphone and innocently told the caller where the male claimant was. The male claimant immediately moved to his mother's house in and his aunt began receiving threats. On 2008, the male claimant was abducted from a street corner by three men in an SUV. They beat and threatened him

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

s.19(1)

and stated that they were bringing him back to their . . . Only one man guarded the male claimant in the back of the SUV. The male claimant managed to jump out at traffic light and ran to freedom. The claimant went to a hospital to have his injuries treated. The male claimant initially went to his grandmother's house and then joined his wife and children, who had not experienced problems in The claimants did not have enough money for everyone to travel to Canada. The male claimant moved out after a week, living in . . . for a month. The male claimant eventually flew to Canada on . . . , 2008. He made a refugee claim on . . . 2008. Starting around the end of . . . the female claimant began seeing suspicious vehicles around her house with men wearing sunglasses during the day and balaclavas at night. Three times people approached her claiming under suspicious circumstances that they wanted to speak to the male claimant. On . . . 2008, the female claimant was walking with her youngest child when she was accosted by two men who shoved her against a wall. They demanded to know where the male claimant was and while they threatened her, they left. On the night of . . . 2008, a man in a balaclava kicked in the door to the house and threatened the female claimant at gunpoint, demanding to know where the male claimant was. While he attempted to rape her, he did not but threatened to do so later. He pushed the female claimant and left. After seeing more suspicious vehicles, the female claimant and the minor claimants left out the back of the house on . . . 2008, traveled to Canada on . . . 2008 and made refugee claims upon arrival.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. I have considered all of the evidence in the context of the

Chairperson's *Gender Guidelines*² and I accept the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Mexico were accepted at the hearing given that certified copies of their Mexican passports were on file.³

Credibility s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared to the Personal Information Forms⁴ (PIFs) and the other documents available. For example, in oral testimony the male claimant was asked repeatedly whether he knew anything about the two men assaulting the boy during the original altercation. The male claimant said that he did not. However, as noted at the hearing, in the PIF the two men identified themselves as belonging to the during the altercation. The claimant stated that the information in the PIF was correct, however he did not know at the time who the men were personally and that the claim in general was about the . I do not find the claimant's explanations in this area satisfactory. Intervening in a simple assault is one thing, intervening and finding out that men from in Mexico is involved is entirely another and would be quite chilling. In these circumstances, I would have expected the male claimant to mention that the men identified themselves as part of the and that this was the reason that he was to be afraid. I find that this discrepancy undermines the claimants' credibility.

[6] In oral testimony, the male claimant stated that during the initial confrontation he was hit with a gun once, he was pushed out of the way and then he left to notify the authorities. However,

² Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, Immigration and Refugee Board, Ottawa, March 9, 1993; *Update*, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

³ Exhibit R-2, Information from CIC.

⁴ Exhibits C1 through C-5.

as noted at the hearing, in the PIF he was punched and beaten what appeared to be a large number of times. The male claimant stated that while they attempted to hit him he was able to move out of the way and that the event did not unfold exactly as the PIF described. I do not find the claimant's explanations satisfactory. The male claimant affirmed both orally and in writing that the PIF had not only been interpreted to him but that it was also accurate. Either the claimant was hit once and shoved out of the way or he was punched and beaten extensively. The two accounts simply cannot be reconciled the way that they were stated and I find that this discrepancy further undermines the claimants' credibility.

[7] In oral testimony, the male claimant confirmed that he had told his wife that he had intervened in a problem at the [redacted] and that he had been physically assaulted during the altercation. However, as noted at the hearing, in a statement⁵ made in handwritten Spanish at the time that the female claimant made her claim she stated that the male claimant had been verbally [emphasis mine] attacked at the [redacted]. The male claimant said that he did not know why the female claimant would say this and assumed that she was more focused on the events that had happened to her directly. In later testimony, the female claimant stated that she may have forgotten what had happened to her spouse as she was detained by Immigration upon arrival and her ill son was taken to seek medical care and that she did not see bruises the day of the incident. I do not find these explanations satisfactory. To have one's spouse physically assaulted by dangerous criminals is a terrible thing. Had this really happened, even if the female claimant were more focused on her own problems and suffering from stress and distraction, I would have expected that the female claimant would have mentioned the physical assault or an assault in general, rather than specifying a verbal one instead. I find that this discrepancy further undermines the claimants' credibility.

s.19(1)

[8] In oral testimony, the male claimant stated that the [redacted] of the [redacted] that had assaulted him had never been caught by the authorities. However, as noted at the hearing, in the Record of Examination⁶ prepared at the time that the male claimant made his claim, the male claimant stated that the two men had been arrested by the authorities after the incident at the school and after they were released they began to harass him. The male claimant stated that they had been

⁵ Exhibit R-3.

⁶ Exhibit R-2.

s.19(1) arrested and used their connections to be released. However, as further noted at the hearing, there is no mention in the PIF that these men were arrested in the first place or that they used connections in order to be released. The male claimant stated that he did not think that this information was necessary for the PIF. As further noted, the claimant said in earlier testimony that the of the had never been arrested. The male claimant stated that he never saw any actual report of this. I do not find the explanation in this area satisfactory. Either the two men were arrested or they were not. The male claimant simply gave irreconcilable testimony because whether or not he believed they were arrested was not dependent on an official report being published. Given the level of detail contained in the PIF if the men had actually been arrested and then used their connections to obtain release I would have expected some mention of this to have been made in the PIF since it would have indicated the men's power. I find that these discrepancies further undermine the claimants' credibility.

[9] In oral testimony, the male claimant was asked more than once whether or not he experienced problems at the hands of the authorities. He stated that believed the authorities had passed on his telephone number to the and that an officer came to his house after his vehicle was stolen and asked for a bribe, but there were no other problems. As noted at the hearing, the information about an officer approaching the claimant for a bribe is not mentioned in the PIF. The claimant stated that he felt he did not need to include it. However, as further noted at the hearing, in a psychological report⁷ prepared with respect to the male claimant it is stated that the police were suspiciously inquiring about his personal information and that he refused to divulge this information. The male claimant stated he did not think it necessary to provide such details. When pressed as to why he had not specifically mentioned this in earlier oral testimony the male claimant stated that he did not think it was a "problem" that he turned down their request. When pressed as to why this information was not in the PIF the male claimant stated he did not think it relevant since he felt that it was normal to be suspicious of the police. I do not find these explanations satisfactory. If the male claimant had been asked for a bribe by a police officer I would have expected this to be mentioned in the very detailed PIF narrative, particularly since the directions for filling out the narrative specifically state that details should be given re: requesting protection from

⁷ Exhibit C-13.

the authorities, the results and any reason why the claimant did not want to approach the authorities. More importantly, if the claimant really felt that the police were acting suspiciously to the extent that he refused their request for information, I would have expected him to mention this orally and I definitely would have expected to mention this in such a detailed PIF narrative. I find that these discrepancies further undermine the claimants' credibility.

s.19(1)

[10] In oral testimony, the male claimant said that on 2008, two people came out of an SUV and forced him to get in. As the testimony progressed the claimant eventually stated he was unsure if there was a third person, although he never saw more than two men at a time. However, as noted at the hearing, the PIF states that three men kidnapped him and forced him to get into an SUV. The claimant stated that he never saw three men together and deduced that there were three. I do not find the claimant's explanation satisfactory. The PIF makes it quite clear that the claimant saw three men who came for him, as he described them all as wearing civilian clothes. It appears that the claimant made up "deducing" the number after he realized he had stated the wrong number of men. It should have been fairly easy to recall whether it was two or three men who had come to kidnap him and I find that this discrepancy further undermines the claimants' credibility.

[11] The female claimant also testified orally. She repeatedly stated that the men conducting surveillance of her house after the male claimant left were always in cars with dark tinted windows and that she could only see their shadows, not their features. However, as noted at the hearing, in her PIF it states that the men conducting surveillance always wore sunglasses during the day and balaclavas at night. The female claimant stated that she had subsequent encounters with these men and that she had peeked out the window at night to see them in balaclavas and had not mentioned this earlier since she had not seen the men's faces. I do not find these explanations satisfactory. The female claimant was given numerous opportunities to describe these men conducting surveillance and she consistently stated in oral testimony that she was unable to see them because of the tinted windows of their cars. This contrasts greatly with the PIF where the men are described as wearing sunglasses during the day and balaclavas at night so it seemed from that account that the female claimant was actually quite able to see these men. To say that she somehow saw balaclavas while peeking out the windows does not explain why she did not say this earlier. I find that this discrepancy further undermines the claimants' credibility.

[12] In the PIF and in oral testimony the female claimant stated that she had been pushed once during the incident on the way to the supermarket and pushed one time again in the final incident when the man broke into her house. However, as noted at the hearing, in the psychological report⁸ the female claimant is described as experiencing physical beatings [emphasis mine]. The female claimant stated that she had been pushed and harmed, that she had almost been sexually assaulted in the final incident and that she had said that she had suffered beatings because she felt that she had suffered that. I do not find these explanations satisfactory. It appeared that the female claimant had embellished her statements that she made to the psychologist, given the psychologist's statement of "beatings" goes beyond what the claimant alleged actually happened to her. Regardless of the terminology, as noted at the hearing, the above-mentioned incidents where the female claimant was intercepted on her way to the supermarket and where the man broke into her house were not mentioned in the statement⁹ that the female claimant made in Spanish at the time that she made her claim. The female claimant stated that she was most concerned about her children, was experiencing stress and that she had blocked out and tried not to remember many things. I do not find the claimant's explanations satisfactory. The psychological report mentioned no memory problems on the part of the female claimant. I can understand if a claimant is reluctant to disclose to a strange government official that they had been threatened with sexual assault. However it makes no sense, even in the circumstances of the claimant, to provide a detailed statement in Spanish including details about men conducting surveillance and coming to the house and yet leave out all mention of the two times where she faced harm. I find that these discrepancies further undermine the credibility of the claimants.

[13] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimants alleged happened to them, actually happened. As a result, the claims pursuant to section 96 of the *IRPA* fail. In coming to this conclusion I am mindful of the psychological evidence on file, however it is based on a story which I simply do not believe.

⁸ Exhibit C-13.

⁹ Exhibit R-3.

Generalized Risk/Section 97

[14] The male claimant mentioned a high general crime rate in Mexico and that some relatives have even experienced unrelated problems at the hands of the _____ at unofficial checkpoints. However, crime is a risk faced generally by others and as such is precluded from my consideration by section 97(1)(b)(ii) of the *IRPA*. Even if, as counsel submitted, the claimants were to face increased targeting for crime due to a perception of wealth for spending time in Canada this merely alters the degree of the risk, not the generalized nature of it.¹⁰ There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *IRPA*, the claims pursuant to that section fail as well.

NO CREDIBLE BASIS

[15] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

CONCLUSION

[16] I find the claimants are not Convention refugees or a persons in need of protection and that there is no credible basis for the claims.

(signed)

“David McBean”

David McBean

November 19, 2010

Date

¹⁰

Prophète, Ralph v. M.C.I. (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31

RPD File No. / N° de dossier de la SPR : TA8-19249

TA8-19301

TA8-21528

TA8-21529

TA8-21530

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

s.19(1) Demandeur(e)(s)

Date(s) of Hearing

February 12, 2010

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

April 14, 2010

Date de la décision

Panel

David McBean

**Counsel for the Claimant
(s)**

Viktor S. Hohots

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) de

001002

s.19(1)

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

N/A

Conseil du

s.19(1)

REASONS AND DECISION

[1] (“the female claimant), (the male claimant), their minor daughters and their minor son claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The female claimant was forced to attend a “ ” school despite doing well in the In 2008, the female claimant was attacked by skinheads while coming home from grocery shopping. They threw her to the ground by grabbing her hair and as they threatened her she fell into unconsciousness. The female claimant’s teeth were broken as a result of this incident so she subsequently went to a dentist. In 2008, the male claimant was attacked at a bus stop by skinheads who beat and kicked him. The male claimant suffered a brain injury but did not seek medical attention as he was afraid of losing his job. While he reported the incident to the police, they said that this was normal and that they would not do anything. In 2008, the male claimant was laid off from his job because of his Roma ethnicity. The female claimant, who had always had trouble finding a job given her Roma ethnicity found a job as a in a store. However, the claimant was fired after two months as customers complained about her presence. The minor claimants were called names at school and in the park. Other parents would even remove their children when the minor claimants were there. The adult claimants were refused service at restaurants and faced discrimination even attempting to go swimming.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimants’ identities as citizens of the Czech Republic were accepted at the hearing given that certified copies of their Czech passports were on file.² It was also accepted for the purposes of the hearing that the claimants are or would be perceived to be of Roma ethnicity.

Credibility

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[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the female claimant stated that she was attacked by three skinheads in 2008. Two skinheads watched her as one beat her. However, as noted at the hearing, the notes⁴ made by the immigration officer at the time that she made her claim, the female claimant stated that she was approached by a single skinhead and that this single skinhead attacked her. The claimant stated that she had been confused when she spoke to the immigration officer, that she did not have her family beside her and that she was upset. Also noted at the hearing was the fact that in a handwritten declaration⁵ made in her own language the female claimant only referred to a single skinhead approaching her. The female claimant stated that she had been confused at the time she wrote her statement. I do not find the claimant's explanations satisfactory. Either there was one skinhead or there were three. The notes of the immigration officer and the claimant's own statement were written in such a way that there would not have been two other skinheads in any capacity. This incident should have been foremost on the female claimant's mind given that it was the one time that she experienced severe violence. I find that these discrepancies with respect to the number of skinheads that beat the claimant to undermine the female claimant's credibility.

[6] The female claimant told the immigration officer that the skinhead who attacked her came at her with a knife. However, as noted at the hearing, the claimant's oral testimony and her PIF had not mentioned a knife. The claimant stated that the skinhead had a knife, but it was in his pants. However, as further noted at the hearing, the notes of the immigration officer actually state that the skinhead came at her with "knife in hand". The female claimant stated that she was not stabbed, that the skinhead had put the knife in his pants during the attack and that she had forgotten to mention the knife in her earlier oral testimony and in the PIF. I do not find the claimant's explanations satisfactory. Once again, either the female claimant was menaced by a knife or she was not. It is one thing to be beaten by someone, another thing to be threatened (implicitly) with stabbing. Even the female claimant's explanations appeared to change moment by moment as new information came out. At first there was no mention of a knife. Then there was a knife but it was in the skinhead's pants. Then it was in the skinhead's hand followed by his pants. The female claimant simply never gave consistent evidence on this point which should have been a fairly easy thing to get correct. I find that these discrepancies further undermine the female claimant's credibility.

[7] The female claimant told the immigration officer that the skinhead(s) told her that she should not tell anyone about the incident "or else". However, as noted at the hearing, in oral testimony, the claimant only mentioned that the skinhead(s) who attacked her had only insulted her and did not mention that she had been threatened not to go to the authorities. The claimant stated that she did not know why she had not mentioned this portion of the incident earlier. I do not find this lack of an explanation satisfactory. A threat to not go to the authorities would indicate the level of security that her

attacker felt so it is significant. The claimant gave her previous oral testimony in such a way that there could only have been insults and no warning, which if there had been, I would have expected her to recall it. I find that this discrepancy further undermines the female claimant's credibility. s.19(1)

[8] In oral testimony, the female claimant stated that after she returned home following the 2008 incident, the male claimant attempted to summon an ambulance. However, the authorities were not nice on the phone and refused to send an ambulance. The claimant felt that the authorities refused to send an ambulance since she was of Roma ethnicity and that she lived in a Roma neighbourhood. However, as noted at the hearing, the PIF makes no mention of this happening and simply stated that the female claimant went to see the dentist since her teeth were broken. The female claimant stated that she had forgotten this portion of the incident. I do not find the female claimant's explanation satisfactory. The female claimant was quite clear in her testimony that but for racism on the part of the authorities an ambulance would have taken her to the hospital. This would have been especially significant since it was the one time that the female claimant faced serious violence and was injured. To have the emergency authorities fail her due to racism should have loomed large in her mind so it makes little sense that she would have forgotten this. I find that this discrepancy further undermines her credibility.

[9] The female claimant presented no documents from the dentist to substantiate that she had at least been injured and required treatment by a dentist. The claimant stated that she was not given a document at the time of the treatment and that when she tried to follow up a week later, the dentist refused to give her a document because, at least possibly, the female claimant was Roma. However, as noted at the hearing, this portion of the incident was not contained in the PIF. The claimant stated that she had forgotten this portion. I do not find the claimant's explanation satisfactory. The directions for filling out the narrative are quite clear in that not only are medical treatments are to be detailed, but copies of medical documents in support of the claim are to be attached to the PIF. If the claimant truly believed that she was denied a copy of the report from the dentist due to possibly racist reasons, given the level of detail in the PIF, I would have expected her to mention that. I find the fact that she did not to further undermine her credibility.

[10] The female claimant stated that she did not go to the police to report this incident since her sister's brothers-in-law were attacked more brutally than her and the police refused to take their complaint. However, as noted at the hearing, this incident is not mentioned in the PIF. The female claimant stated that she did not know why she did not include this incident in her PIF. I do not find this lack of an explanation satisfactory. Once again, the directions for filling out the PIF narrative are quite clear in that attempts to obtain state protection are to be detailed and if no efforts were made the reasons for that should be given. If indeed the female claimant thought that reporting the only incident of severe violence that she faced would have been fruitless given her relatives obtained no protection even though they had experienced worse problems, I would have expected the PIF to say just that. I find the fact that

it did not to further undermine the female claimant's credibility.

[11] In the female claimant's handwritten statement⁶ that she made in her own language at the time that she made her claim, she stated that her children would come home from school crying because the other children would call them names and beat them. In oral testimony, she stated that this happened two or three times. However, as noted at the hearing, there is no mention in the PIF of the children being beaten. The female claimant stated that she had forgotten to write this in her PIF. I do not find this explanation satisfactory. I would have expected that the fact that the children were beaten for racist reasons to be uppermost in the mind of their mother. For her to somehow forget them being beaten when filling out the PIF makes no sense at all. I find that this discrepancy further undermines the credibility of the female claimant.

[12] Problems with respect to credibility were not limited to the female claimant's testimony. For example, when the male claimant testified that when he was attacked by skinheads at a bus stop, he was knocked unconscious, sustained an injured nose and a bleeding head. However, as noted at the hearing, the PIF states that the male claimant suffered a brain injury, and this was the only injury mentioned. The male claimant stated that this was a faulty translation. It was further noted that in a handwritten statement⁷ made in his own language to immigration officials, the claimant's only stated injury was a broken nose. When asked why the three descriptions of his injuries were not consistent and why in particular his PIF failed to mention anything other than a "brain injury," the male claimant stated that he had forgotten the rest. I do not find the male claimant's explanations satisfactory. Describing the injuries he sustained in the attack should not have been this difficult. Each telling of the story contained something different when I would have thought that it should have been fairly easy to remain consistent. Even when trying to clarify whether or not the claimant's nose had actually been broken or was simply a little swollen and bleeding, the male claimant provided vague and evasive testimony. I find that these discrepancies to undermine the male claimant's credibility.

[13] In oral testimony, the male claimant stated that during the attack he fell unconscious and when he woke up his attackers were gone. However, as noted at the hearing, in the handwritten statement⁸ that he made in his own language to the immigration officials, he stated that he managed escape his attackers by running away as his attackers shouted threats after him. The claimant stated that he had been confused when he arrived in Canada and did not know why he wrote what he did. In later questioning by his own counsel, the male claimant stated that he was chased during the incident and then was later unconscious. I do not find the male claimant's explanation satisfactory. Either the incident ended with the claimant unconscious and the attackers leaving on their own, or the incident ended with the male claimant running away while the attackers shouted after him. I do not see how any degree of confusion could lead to such a dramatic contradiction, particularly since the claimant wrote the statement in his own language. Despite his later testimony about being chased during the incident, this simply does not

square with how his handwritten statement is written or how he initially described the incident. I find that this discrepancy with respect to how the incident ended to further undermine the male claimant's credibility.

[14] In oral testimony, the male claimant described going to the police to report the incident. Unfortunately, he did not obtain satisfaction, with the gist of his testimony that while the officer he spoke with took his report, the officer told him nothing would be done about it. However, as noted at the hearing, the PIF states that the police refused to even take a report. The male claimant stated that there may have been a report. I do not find the male claimant's explanation satisfactory. This should not have been as difficult an area as it was. Either the police refused to take a report or they took the report and did nothing. These two versions simply cannot be reconciled and I find that this discrepancy further undermines the male claimant's credibility.

[15] When asked why, if he was not satisfied with his treatment by the police, did he not complain to a higher ranking officer, the claimant stated this would have been fruitless given that he was aware of statistics posted on the Internet which showed a certain percentage of police officers were actually skinheads. However, when pressed to produce these statistics the male claimant stated that he did not know where they were. In later testimony he stated that friends told him that there were skinheads in the police and that he was personally aware that a local police officer was a skinhead. The claimant also said that he was aware of friends in his local area not being helped by the police because they were Roma and that he had personal friends in Prague who had been attacked by racists and not helped by the police there. When asked why he did not include any of these things in his PIF since, the claimant stated this was the reason he did not trust the police and furthermore, the reason why he did not attempt to relocate to Prague, the male claimant stated that he did not realize that he should have included them and if he had the PIF would have been extremely lengthy. I do not find the male claimant's explanations satisfactory. The directions for filling out the PIF narrative are quite clear in that all efforts to obtain state protection or to seek refuge in another part of the country are to be detailed. If neither is sought the reasons are to be provided as well. Here, the male claimant stated that he was aware that there were skinheads in the local police and personally knew of at least one of them. If this were true it would make sense for the claimant not to want to go to the authorities. If it were true that the claimant had personal friends in Prague who had been attacked and were not helped by the police, it would make sense that he would not want to relocate there. However, it makes no sense for the claimant to not mention these things despite very clear directions in the PIF to do so. I find that these omissions further undermine the male claimant's credibility.

[16] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that both claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimants alleged happened to them, actually

happened.

Profile as Roma/State Protection

[17] Even though I disbelieve the events that the claimants recounted orally and in their PIFs, I turn now to the general situation for Roma people in the Czech Republic. While I do note that problems do exist for people of Roma ethnicity, I find even based on the general profile of the claimants as Roma, the claims fail as I find that the claimants have failed to rebut the presumption of state protection.

[18] There is a presumption that a state is capable of protecting its citizens. The claimants may rebut this presumption by providing “clear and convincing” proof of lack of state protection. The claimants must approach the state for protection, providing that state protection might be reasonably forthcoming.⁹ Evidence that protection being offered is not necessarily perfect¹⁰ is not clear and convincing proof of the state’s inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimants are unable to avail themselves of protection.¹¹

[19] When the state in question is a democratic state, the claimants must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimants is to prove an absence of state protection is directly proportional to the level of democracy of that state.¹² The more democratic the state’s institutions, the greater the onus is on the claimants to show that they have exhausted all courses of action available.¹³ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁴

[20] The documentary evidence shows that the Czech Republic is a functioning, parliamentary democracy with free and fair elections.¹⁵ I find that Czech Republic is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Czech Republic is in a state of complete breakdown.

[21] The documentary evidence further indicates that the government generally respected and protected the rights of its citizens.¹⁶ While there is no question that Roma do face discrimination and that there have been demonstrations and even some attacks at the hands of skinheads, neo-Nazis and other extremists,¹⁷ there is legislation in place that provides protection for the Roma and other groups including anti-discrimination and hate-crime legislation. The Czech constitution prohibits discrimination based on national, racial or ethnic background as well as other pieces of legislation

governing employment and education as well as *The Charter of Rights and Freedoms*. An anti-discrimination bill which would harmonize Czech legislation with that of the European Union was passed on June 17, 2009. Furthermore, the Czech Republic is a member of the European Union, which has had a positive impact on the country by setting standards concerning human rights, as well as access to the European Court of Human Rights and access to multi lateral programs such as the Decade of Roma Inclusion. I do note that some observers have questioned the degree of positive impact that these measures have had.¹⁸

[22] To address acts of discrimination the authorities introduced the Roma Police Assistant (RPA) program in 2003. The purpose of employing RPA's is to assist in building better relations and trust between the Roma and the police. The RPA's assist police in their investigations, assist in accompanying Roma who are victims of crime to file police reports and in helping obtain social services for such victims. A program of hiring Minority Liaison Officers (MLOs) was also begun in 2004 with the focus on crime reduction and lessening social exclusion. Several observers have commented that these programs have been helpful and represent progress in the relationship between Roma and the authorities, which has not been one of trust over the years. Furthermore, in the mid 1990's, the Ministry of the Interior initiated programs to combat extremists by allowing the police to closely monitor such group activities and created an anti-extremist department within the police itself, which is showing signs of success. The police have arrested neo-Nazis and they have been prosecuted, including a case where a Romani had been murdered. The police also successfully prevented or broke up extremist clashes and demonstrations. The government is also trying to recruit Roma as police officers, with a number of drives being conducted in Prague and Brno. While there has been a good response to these drives, many applicants are screened out due to a lack of a secondary school diploma. However, to counter-act this problem, the police and other organizations offer assistance to people who want to complete their education so that they can then join the police force. Furthermore, the police are trained on how to deal with minorities and extremists. The police are making other efforts such as participating in day camps, seminars and school visits in order to foster better relations with Roma children. While statistics are difficult to come by given privacy laws, as of 2006, there were an estimated 61 Roma police officers in Czech Republic.¹⁹

[23] The judiciary has prosecuted hate crimes committed against Roma people on several occasions. The documentary evidence notes that "the judicial proceedings on racial crime have increased in recent years due to the efforts of NGO's ..."²⁰ The Czech Ombudsman was created in 1999 and is known as the Public Defender of Rights. The Ombudsman investigates allegations of public sector mistreatment of Roma and may take corrective action or issue advice or recommendations. The Ombudsman has successfully intervened in areas such as housing but has yet to receive any formal complaints against the police.²¹ There is a new independent and transparent mechanism to investigate police misconduct.²² There are other government and non government agencies available to assist the Roma, including 400

Roma NGO's, the Czech Trade Inspectorate (to deal with unfair business practices or consumer discrimination), and the Social Inclusion Agency to address the social integration of the Roma into Czech society, including housing, health care, employment, social services and cohesion.²³

[24] While the male claimant's father testified about the general situation in the Czech Republic in the early 1990's until the time that he left in 1997 and stated that in his opinion the situation had gotten worse, I place little weight on this opinion. As the father of the male claimant, he would obviously have an interest in having the claimants succeed in their claims. Also, no evidence was presented that he possesses any journalistic expertise with respect to the current situation in the Czech Republic, a country he has not lived in for over a decade. I prefer the objective documentary evidence to his testimony.

[25] Counsel however, did present a package²⁴ dealing with generally more current events. Some of the items are rather dated, such as "The Skinhead International",²⁵ which appears to have been written in 1995. Many of the items appear to emanate from an Internet source "romea.cz". It is unclear how objective this source is given its name, however, in the vast majority of articles where criminal acts are described, the authorities are taking action against the offenders.²⁶ I do note there was an incident where a senator made inappropriate racist statements and she was not prosecuted due to Parliamentary immunity.²⁷ While unfortunate in its application in this instance, Parliamentary immunity is a concept not unknown in Canada. It should be noted that hate speech was prosecuted by the Czech authorities in other situations.²⁸

[26] In summary, I find that the preponderance of the documentary evidence indicates that the Czech Republic government is making very serious efforts to provide protection to the Roma whether as a victim of a hate crime, to assistance in obtaining social services or inclusion into Czech society. While there is discrimination against Roma people and even some incidents of violence, I find that the Czech government in recent years is making very serious strides to have this discrimination overcome.

[27] I find that the claimants have not established, on a balance of probabilities, that adequate state protection is not available. As such the claims pursuant to section 96 of the IRPA fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the IRPA, the claims pursuant to that section fail as well.

[28] As the claims of the minor children rely entirely on the evidence of their parents, and no persuasive evidence was adduced to differentiate their claims from that of theirs, their claims must also fail.

CONCLUSION

[29] For all these reasons, the claims are rejected. The claimants are not Convention refugees or

persons in need of protection.

(signed)

“David McBean”

David McBean

April 14, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1.
- 4 Exhibit R-2, Canada Border Services Agency, Immigration Canada, dated October 5, 2008, page 2 of 4.
- 5 Exhibit R-3.
- 6 Exhibit R-3.
- 7 Exhibit R-3.
- 8 Exhibit R-3.
- 9 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 10 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 11 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 12 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).

- 13 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 14 *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 15 Exhibit R-1, *National Documentation Package*, September 25, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.
- 16 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.
- 17 Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*.
- 18 Exhibit R-1, tab 13.12, *Issue Paper*, Czech Republic: “Fact –Finding Mission Report on State Protection”, *Immigration and Refugee Board*, June 2009.
- 19 Exhibit R-1, tab 13.12, *Issue Paper*.
- 20 Exhibit R-1, tab 13.12, *Issue Paper*.
- 21 Exhibit R-1, tab 13.12, *Issue Paper*.
- 22 Exhibit R-1, tab 2.3, “International Helsinki Federation Annual Report on Human Rights Violations”, March 27, 2007.
- 23 Exhibit R-1, tab 13.12, *Issue Paper*.
- 24 Exhibit C-6.
- 25 Exhibit C-6, p. 58.
- 26 Exhibit C-6, pp. 3, 5, 8, 10, 12, 16, 23, 29 and 50.
- 27 Exhibit C-6, p. 27.
- 28 Exhibit C-6, p. 16.



RPD File No. : TA8-19249

TA8-19301

TA8-21528

TA8-21529

TA8-21530



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-19574

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	May 5, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	July 16, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Mir Kamal	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la
Designated Representative(s)	N/A	Représentant(e)(s) de la

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in and worked part-time in a . On , 2008, some people stopped the claimant and demanded that he pay them money. When the claimant refused, the claimant was threatened with death. He reported the matter to the police the next day but they took no action. On the following day the claimant was kidnapped. The claimant was thrown into the street wearing only pants. While the claimant attempted to move a couple of times, he found that the situation was the same wherever he went with respect to corruption and crime. Tired of unemployment and his particular problems the claimant came to Canada on , 2008, and made a refugee claim on , 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Credibility

[5] While counsel stated in his post-hearing submissions that the claimant's testimony was "consistent", I disagree. It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, in oral testimony, the claimant stated that four named relatives all experienced problems at the hands of criminals in the same and in fact, his cousin was even kidnapped from the same as well. However, as noted at the hearing, none of this information was contained in the claimant's PIF. The claimant stated that the focus of his PIF had only been on himself. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear in that all

significant events are to be included, not only with respect to the claimant, but to family and similarly situated persons as well. While the claimant stated that he thought that would mean only close family members, no such limitation is included in the directions in that the reference is to similarly situated persons in addition to family. If other family members had experienced problems in the same and one relative was kidnapped just as the claimant was, I would have expected some mention of these facts in the PIF. I find that the fact that these incidents are omitted entirely undermines the claimant's credibility.

s.19(1)

[6] In further oral testimony, the claimant stated that his cousin told him that when he () was kidnapped, he was taken to some form of police station and that the authorities were openly involved in his kidnapping. As noted at the hearing, this information is not contained in the PIF. The claimant stated that the focus of the PIF was only on himself. I do not find the claimant's explanation satisfactory. To have criminals causing problems in a public area is one thing. To have the police openly involved in the criminal activities is another. For the claimant to know that the police were openly involved in crime and kidnapping in the , the same crimes that happened to him and yet not state this in the PIF, makes no sense at all. I find that this omission further undermines the claimant's credibility.

[7] In oral testimony, the claimant stated that the criminals who initially approached him knew specific details with respect to his family. However, as noted at the hearing, the PIF just mentions that the criminals threatened the claimant and his family. The claimant stated that the knowledge of his family was implicit and he was trying to be concise. I do not find the claimant's explanation satisfactory. It is one thing for criminals to make general threats against someone's "family" as it would not be much of a gamble for the alleged criminals to assume that the claimant would have some form of family. However, it is another thing entirely for the criminals to know in advance specific details about the claimant's family; this would mean that the situation would be far more than just random spur of the moment crime; instead the criminals had conducted surveillance of the claimant in advance and would therefore be in a much better position to carry out their threats. I find that this omission of such significant information further undermines the claimant's credibility.

[8] Furthermore, in oral testimony the claimant stated that after his spouse learned that he had gone to the Public Ministry to file a denunciation she exclaimed, "now they know where we live". However, as noted at the hearing, given that the claimant had stated that the men who initially approached him knew specific details about his family, one would have assumed that these men would already know where he lived. The claimant stated that perhaps the criminals had been "just talking" and really did not know much information. I do not find the claimant's explanation satisfactory. The criminals were in possession of far too specific information to be "just talking". If they knew specifics about the claimant's family, they would almost certainly know where he lived and it made no sense for the

claimant's spouse to later become concerned about the claimant speaking to the Public Ministry. On the other hand, if the criminals really had no idea where the claimant lived, it made no sense for them to know such specific information about the claimant's family that they allegedly did. I find that this discrepancy further undermines the claimant's credibility.

[9] In oral testimony the claimant stated that it was the police that kidnapped him. He said that he knew this even though he did not ask to see their identification as he saw their badges and guns. However, as noted at the hearing, the PIF does not mention that the police were the actual kidnappers. The claimant stated that he was trying to be concise: I do not find the claimant's explanation satisfactory. There is a big difference between being kidnapped by criminal thugs and being kidnapped by the police themselves. While the claimant did go on to state that the police are often involved in crime in Mexico, it makes absolutely no sense at all for the claimant to have been openly kidnapped by the police who had their badges and guns in view and yet make no mention of this at all in the PIF. I find that this omission further undermines the claimant's credibility.

[10] In the notes⁴ of the immigration officer made at the time the claimant made his claim, there is mention of the claimant complaining to the police and that they followed up the complaint by coming to his house to seek further information. However, as noted at the hearing, there is no mention that they then kidnapped the claimant as part of that follow-up. The claimant stated that he had just answered the specific question posed to him. When it was pointed out that this was not the case of a limited specific answer to a specific question and that even in the general text of the opening paragraph, there is no mention of this information; the claimant stated that he possessed no proof of police involvement and that he feared the police. I do not find the claimant's explanation satisfactory. If the claimant was indeed kidnapped and harmed by the police, it makes absolutely no sense at all for the claimant to mention the mundane activities of the police following up his complaint and then not go on to say that the police went on to kidnap and abuse him. I find that this omission further undermines the claimant's credibility.

[11] I do acknowledge that after the hearing the claimant submitted a number of letters allegedly from family members and others close to him to "corroborate" his story. However, apart from these letters allegedly originating from non-objective sources, these letters do little to help explain the credibility problems noted above. I give these letters little probative value.

[12] Given the serious discrepancies and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and therefore the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject to the risks enumerated under section 97 of the

IRPA, the claim pursuant to that section fails as well.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[14] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

July 16, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1, PIF.

4 Exhibit R-2, CIC Etobicoke In-person Refugee Intake “Record of Examination”.

 image

RPD File No. : TA8-19574

 image

RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-21219
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s) s.19(1) Demandeur(e)(s) d'asile

Date(s) of Hearing September 4, 2009 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision November 2, 2009 **Date de la décision**

Panel David McBean **Tribunal**

Counsel for the Claimant(s) Richard Odeleye
Barrister and Solicitor **Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer N. Cassano **Agent(e) de tribunal**

Designated Representative(s) N/A **Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister N/A **Conseil du ministre**

REASONS AND DECISION

s.19(1)

[1] _____, a citizen of Barbados, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Barbados. As a child he was effeminate, playing with dolls and make-up and imagining that he might one day be "_____". While the claimant wanted to be a girl his mother's new boyfriend did not approve of his activities and attitudes, stating that he would grow-up to be a "faggot". In 1995, when the claimant was approximately 10-years-old, it was decided that he should live with his Uncle _____. Initially the claimant was quite happy as his Uncle _____ indulged him in whatever he wished to do. However, the relationship took a dramatic turn for the worse when Uncle _____ started sexually touching the claimant and having sex with him all the while threatening to send him back to his mother. This continued until Uncle _____ got married when the claimant was 14 years old. At age 16, the claimant came out to his best friend _____ who turned out to be gay as well and they had sex. As the claimant grew older the claimant met other gay men and attended secret gay parties. The claimant's neighbours knew that he was gay and called him names, spat at and threw bottles at him. _____ moved away to avoid these incidents. On _____, 2003, the claimant and his friend _____ were walking down the street when a group of boys threw rotten eggs at them. While the claimant and _____ attempted to report the matter to the authorities, the police made anti-gay comments and ran them out of the police station. On _____, 2007, the claimant was cornered by two men. They made anti-gay comments, beat him and smashed his head into a fire hydrant causing blood to spout out of his head. While the police did come to the scene, they simply took the claimant to the hospital and did nothing further. Later the claimant began to secretly date _____. The claimant and _____ would have sex at _____ place whenever _____ roommate, named "_____", who is a _____ and the _____ of the "_____", was away. On _____, 2008, the claimant and _____ were having sex at _____ place when "_____" unexpectedly returned, catching them in the act. _____ stabbed the claimant three times in the lower

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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back. The claimant fled as went after . The claimant went to a friend named place. Fortunately happened to be a nurse and was able to stitch up the claimant's wounds. The claimant heard through others that was in critical condition in the hospital and that and had vowed to kill him for being a homosexual. The claimant came to Canada on : , 2008 and was detained by Canadian Immigration authorities upon arrival. After being released on , 2008, he was detained again later in . He made a refugee claim on , 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Barbados was accepted at the hearing as a copy of his Barbadian passport was on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in the claimant's original PIF narrative,⁴ he stated that because of his sexual orientation he had been "stoned" by others. However, as noted at the hearing, the claimant's second narrative⁵ makes no mention of the claimant being stoned by others. The claimant stated that he did not know why there was a reference to stoning in the original narrative and that

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, PIF.

⁴ Exhibit C-1.

⁵ Exhibit C-1(b).

he was simply told to sign the PIF. I do not find the claimant's explanation satisfactory. To have stones cast upon oneself by others is not only traumatic, but a very particular form of persecution. The claimant signed a declaration that his original PIF was correct as far as it went as he included a note that further details were to follow. However, this is not an additional detail, this is a form of persecution that simply disappeared in the new narrative. The claimant eventually stated that he prepared the narrative with the assistance of his original counsel so there should have been no confusion at what should be included in the narrative. Furthermore, throughout this area of testimony, the claimant repeatedly paused for long periods of time and it appeared at the time that he was searching for an explanation that simply was not there. I find that this contradiction with respect to the manner that the claimant was allegedly persecuted to undermine the claimant's credibility.

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[6] In the claimant's oral testimony, he stated that the incident where his head was smashed into a fire hydrant took place during 2007. However, as noted at the hearing, the PIF states that the incident happened on 2007. The claimant stated that he could not remember exactly when the incident occurred. Furthermore, the claimant alleged that during this incident, he was beaten by two men and had his head smashed into fire hydrant causing blood to spout out of his head. While it did seem odd that the claimant was not admitted to the hospital when treated, more importantly no medical document was presented to corroborate the fact that the claimant had at least been treated for injuries. The claimant stated that he did not know that he was required to provide such a document. I do not find the claimant's explanations satisfactory. With respect to the date of the incident, I would be able to understand that with the passage of time, the claimant would not be able to remember the date down to the exact day. However, the claimant's PIF gave a specific day in and the claimant's oral testimony indicated a date nine months earlier, a significantly large gap and a significantly different time of the year. Given that the incident was not overwhelmingly long ago (less than two years if the date in the PIF is used), I would have expected the claimant to be closer in his estimation of the date of the incident. With respect to the lack of a medical note, I am mindful that claimants are not required to document all aspects of their claim. However, when documents are reasonably available they should be presented. As noted at the hearing, the directions for the PIF narrative are quite clear in that medical

documents are specifically to be included. The rest of the claimant's PIF is quite thorough and he has been represented by counsel. For him to state that he did not know that medical documents should be presented makes no sense. I find that the contradiction with the date of the incident, coupled with the lack of corroborative medical documents, which I find would have reasonably been available, further undermine the claimant's credibility.

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[7] In oral testimony, the claimant stated that he went to the police each time he was threatened or injured. However, as noted at the hearing, in the PIF the claimant states that he could not go to the police after being stabbed by [redacted] because he previously received no help and was actually told by the authorities that he deserved whatever abuse he got. The claimant stated that he had previously been to the police many times. I do not find the claimant's explanation satisfactory. While counsel submitted that the claimant's PIF made sense within itself, this does not explain what the claimant said orally. If the claimant felt at some point that he should no longer bother going to the police and that is why he did not go after being stabbed by [redacted], I would have expected him to say something to that effect, that at first he went every time, but stopped going after he found it did not help. It makes no sense at all for the claimant to say that he went to the authorities each and every time he was threatened or injured, when actually he did not, especially since this was the case with the most serious incident that happened to him. I find that this discrepancy further undermines the claimant's credibility.

[8] The claimant was stabbed in the back three times by a [redacted] and orally described his injuries as serious. He then went to his friend [redacted] place to hide and [redacted], who worked at a [redacted] and was in [redacted], was able to care for his wounds. When asked why he did not go to a hospital even if just for follow-up, the claimant stated that he did not go in Barbados because he was in hiding and did not go in Canada since [redacted] had been able to "do the job". I do not find the claimant's explanation satisfactory. Had the claimant not been seriously injured it would have made sense [redacted] would be able to provide sufficient treatment in their own home. However, the claimant stated that he had been seriously injured and it makes no sense for someone to sustain serious injuries from being stabbed in the back three times by a [redacted], seek only informal treatment in a home by a [redacted] and never

visit a hospital, even if only for a follow-up. Either the claimant was greatly embellishing the nature of his injuries or his account is simply implausible. In either case, I find that this further undermines the claimant's credibility.

[9] As noted at the hearing, the claimant was detained by Canadian Immigration officials upon his arrival in Canada. While the claimant did state that it was his intention to make a refugee claim at an inland immigration office, his entire testimony dealing with why he delayed making a claim for several weeks, was vague, confusing and evasive. The claimant said at various times that he told immigration officials that he intended to return to Barbados and that he was just here to visit a friend; at other times he said he would have stated that he did not wish to return home, and at other times he was not sure. It is inconceivable that if the claimant's admissibility to enter Canada was being considered, for him not to be asked if he planned to return to Barbados. It then makes no sense that in his dealings with immigration officials, in being asked about the possibility returning home, for the claimant not to indicate that he was afraid of returning. The claimant was allegedly known to be gay by members of the public in Barbados, so there should have been no issue with respect to disclosing his sexual orientation to officials in the country where he was intending to seek refuge. For the claimant to not mention that he wanted to make a refugee claim until several weeks had passed after his arrival in Canada, even though he would have had extensive dealings with Canadian immigration officials during that time, makes no sense at all. While short delays in making a refugee claim are usually not determinative in and of themselves, I find that given the particular circumstances in this case the delay in claiming further undermines the claimant's credibility.

[10] As noted at the hearing, in all of the immigration documents⁶ produced around the time that the claimant made his claim, there is no mention of the claimant being gay. Instead, on page 3 of 6 of Schedule 1, Background Information, it states that the claimant is afraid to return to Barbados because of "Discrimination, war, torture". The claimant stated that he had verbally told the immigration officer that he was gay and the immigration officer did not write that down. Later the claimant stated that while he had in fact written the document himself, he still told the immigration officer verbally that his fear was based

⁶ Exhibit R-2.

on sexual orientation. Regardless of who wrote the document, I do not find the claimant's explanation satisfactory. Discrimination, war and torture are all general harms. For the claimant to make no mention of the very rationale for his claim at any point in all of the immigration documents, makes absolutely no sense at all. In his submissions, counsel urged me to nevertheless find that the claimant is gay, based on the documents that the claimant presented that were created in Canada. However, as the Refugee Protection Officer (RPO) observed, one does not have to be gay to put in an application to volunteer at the [redacted] so I give that document little weight. The claimant also presented various Internet profiles, one from a site originating in the [redacted] indicating that he was gay. However, all of these profiles were created well after the claimant made his refugee claim. Even the one from the Caribbean indicated that the claimant created this profile in [redacted] 2009, long after the claimant made his claim. While the claimant stated that he had previous earlier profiles, he provided no evidence to corroborate that fact, so once again, I give these documents little weight given that anyone could have created them without actually being gay. While the claimant also presented photos of himself embracing a man in Canada and a man appeared at the hearing prepared to state orally that he is the claimant's same-sex partner, I note that none of this would be difficult to fabricate should someone desire to manufacture evidence. Given all of the concerns noted above, I find on a balance of probabilities that the photos and the potential evidence of the witness to be falsely conscripted. Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that the claimant is gay, or that any of the significant events that the claimant alleged happened to him, actually happened, and as such, the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant would be at risk of any of the harms enumerated in section 97 of the IRPA, the claim pursuant to that section fails as well.

CONCLUSION

[11] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

November 2, 2009

Date



RPD File No. / N° de dossier de la SPR : TA8-21408
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	December 16, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	February 11, 2011	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	N/A	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, a citizen of the Dominican Republic, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in the Dominican Republic. According to his amended narrative, he was an _____ of the _____ and was a _____ often _____. The claimant received a number of threats from powerful people. The claimant also worked for _____. In 2003 he discovered _____ was attempting to leave the country with fraudulent documents. Even though _____ had powerful connections, the claimant refused _____ offer of a bribe and he was arrested. The claimant was threatened and received no help from the authorities so he quit his job. On _____, 2003, the claimant was driving when a man approached him on foot at an intersection carrying a baseball bat. The claimant _____. When the claimant reported the matter to the police he was arrested. It turned out that the dead man was _____ and now his family and connections started to threaten the claimant. The police beat the claimant and treated him badly. While ultimately acquitted, the claimant was ordered to pay the deceased's family _____ (a little under _____ CAD at today's exchange rate). The claimant continued to receive threats and people would park outside of the claimant's relatives' houses. In _____ 2007, someone shot at the claimant. The claimant moved to the city of _____ but continued to receive threats. He traveled to the United States in _____ 2007. The claimant traveled to Canada on _____, 2007. He made a refugee claim on _____, 2008. The claimant's family continued to receive threats. In _____ 2010 someone shot out the windows of the claimant's parents' home and threatened worse would happen. In _____ 2010, the claimant's brother's car was set on fire and worse was threatened.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Dominican Republic was accepted at the hearing given that a certified copy of his passport from the Dominican Republic was on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that he did not hit the man at the intersection; the man dodged out of the way of the claimant's car and

However, as noted at the hearing, in the original PIF, the man in the intersection jumped out of the path of

The claimant stated that the oral version was correct. It was further noted at the hearing that in the notes⁴ of the Immigration officer, made at the time that the claimant made his claim, it also states that it was the claimant's vehicle that ran over the man. The claimant stated that he had been nervous and perhaps been misunderstood. I do not find the claimant's explanations satisfactory. As noted at the hearing, the Immigration officer was assisted by an experienced IRB accredited interpreter appearing in person. The notes are clear that the claimant

and I do not see how this could be incorrectly stated due to nervousness. More importantly, the claimant's original Personal Information Form, prepared with the assistance of counsel, stated exactly the same thing in that . While the claimant stated the original PIF had never been translated back to him, he did sign a declaration

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, as amended by Exhibit C-2

⁴ Exhibit R-2

stating that it had and the interpreter signed a similar declaration. Even if the narrative had never been translated back to him, given that the claimant had time to prepare his PIF it makes no sense that such an egregious error could be made. I find that these discrepancies undermine the claimant's credibility.

s.19(1)

[6] In the amended narrative and in oral testimony the man who was , the powerful man that the claimant caused to be arrested earlier. However, as noted at the hearing, in the notes of the Immigration officer and in the original PIF the dead man was simply a pedestrian. The claimant stated that he had been nervous and did not explain things well. I do not find the claimant's explanation satisfactory. Had there been any sort of existing connection between the claimant and the deceased it would have been a fairly simplistic thing to mention this to the Immigration officer and in the original PIF. It makes absolutely no sense for this connection to not have been mentioned. I find that these discrepancies further undermine the claimant's credibility.

[7] In the amended PIF, the deceased is a powerful person. In oral testimony, the claimant stated that the deceased was not only powerful, but also connected to a criminal gang. However, as noted at the hearing, in the notes of the Immigration officer and in the original PIF, the deceased was simply an ordinary pedestrian and the claimant feared harm from the otherwise unremarkable grieving family. The claimant stated that the deceased was indeed a "pedestrian" and that he had not thought the other facts were relevant. I do not find the claimant's explanation satisfactory. The claimant's story both to the Immigration officer and in the original PIF was a simple one. The claimant feared the grieving family who still held him responsible for the traffic death even though the court had acquitted him. Had the deceased really been powerful with connections to a criminal gang I would have expected the claimant to have mentioned these important details in both documents. I find the fact that he did not to further undermine his credibility.

[8] The claimant testified that the police had not treated him well, in that they did not do anything to help him even though he was threatened more than once in their presence and he suspected they allowed the father of the deceased access to him. However, as noted at the hearing, in the amended PIF the police beat the claimant. The claimant stated that he had meant that the police had beaten him verbally. I do not find the claimant's explanation satisfactory. The claimant confirmed that the amended narrative had been interpreted to him. This narrative was allegedly produced to correct deficiencies in the first narrative. It makes little sense in these circumstances

for the narrative to be written the way that it was (“I received pressure from the police who beat me and treated me badly”) if the claimant only received verbal abuse. I find that this discrepancy further undermines the claimant’s credibility.

[9] In oral testimony and in the amended PIF the claimant was shot at in 2007. However, as noted at the hearing, this information was not mentioned in the notes of the Immigration officer or the original PIF. The claimant stated that he had mentioned that he moved to , that he did not want to be too detailed and he had not known what was relevant at the time. I do not find the claimant’s explanations satisfactory. Being shot at was one of, if not the final, significant thing to happen to the claimant before leaving the Dominican Republic. It makes no sense for the claimant to give such detailed answers to the Immigration officer and provide such a detailed PIF and yet omit something that is obviously very significant. I find that these discrepancies further undermine the claimant’s credibility.

[10] As noted at the hearing, the claimant traveled to the United States at least once in 2007, did not make an asylum claim there and then returned to the Dominican Republic. The claimant stated that he was told it would be unlikely that he would receive a positive decision if he made a claim and that he returned to live in a different city than he had before. I do not find the claimant’s explanations satisfactory. The claimant has at least a high school education, a good work history and has traveled extensively internationally. If the claimant truly feared for his life I would have expected in his circumstances to at least try to make an asylum claim. If the claimant truly feared a powerful family with connections to crime, it makes little sense to try living in a different place in such a small country. I find the fact the claimant failed to make a claim in the United States before his final trip and the fact that he returned to the Dominican Republic, not only demonstrates a lack of subjective fear, but also further undermines his credibility.

[11] The claimant stated that he learned about Canada’s refugee system while in the United States. However, he did not make a refugee claim upon arrival, allowed his visa to expire without applying for an extension and only made a refugee claim after being arrested by the Toronto Police Service for having open liquor in a vehicle. The claimant stated that he did not know how to travel around Toronto to get to the Immigration office on his own, that the person who had invited him to Canada was supposed to take him to the Immigration office and never did since she feared getting in trouble for inviting the claimant in the first place and the claimant did not want to get her in

trouble. I do not find the claimant's explanations satisfactory. As mentioned previously, the claimant has traveled extensively internationally so it makes no sense he could not have at least taken a taxi to the Immigration office on his own. Furthermore, even if his host or others would have been in some sort of "trouble" had the claimant made a claim, if the claimant truly feared for his life it makes little sense for the claimant not to have made a claim, even if it involved trouble for others. I find that this delay in claiming to once again demonstrate a lack of subjective fear and once again further undermines the claimant's credibility.

[12] The claimant's amended PIF noted that the claimant was quite involved in _____ and had experienced problems as a result. The claimant testified orally that this was certainly part of the reason why he feared returning to the Dominican Republic. However, as noted at the hearing, this entire aspect of the claim was not mentioned in the notes of the Immigration officer or in the original PIF. The claimant stated that he had not thought this relevant at the time. I do not find the claimant's explanation satisfactory. If the claimant really had the _____ that he eventually claimed and this was really at least part of the reason why he was at risk it should have been a fairly simple matter to state this to the Immigration officer and in the original PIF. I find the fact that the claimant did not to further undermine the claimant's credibility.

[13] I do note the presence of a number of documents⁵ presented by the claimant. While there are photographs that appear to show a house with windows that have holes in them and others that are shattered, and there are photos of a car that had been burned, with a document that states this was due to arson, these documents do not state the circumstances in which the damages occurred so I do not find them very probative. I also note letters from the claimant's former housekeeper and his parents that purport to corroborate his story. However, given these letters are from sources extremely close to the claimant who would have an interest in having his claim succeed, I give them little weight.

[14] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other

⁵ Exhibits C-2 and C-3

evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[15] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[16] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

February 11, 2011

Date



RPD File No. / N° de dossier de la SPR : TA8-21681
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	June 19, 2009 September 18, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 4, 2009	Date de la décision
Panel	David McBean Robert Bafaro Brian Goodman	Tribunal
Counsel for the Claimant(s)	Waikwa Wanyoike Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS AND DECISION

s.19(1)

[1] a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born in . In 1971, at age 17, she became pregnant and married her boyfriend ("I "). Unfortunately, was addicted to alcohol and drugs. While the claimant managed to raise three daughters, the youngest with , she was economically dependant on . became progressively more verbally and physically abusive over time. At age 25, the claimant left for a few months but eventually returned. However, a few months later in a physical confrontation, kicked the claimant in the stomach so hard that she fainted. When she came to, she realized that was asleep and she called for her brother to come get her and the children. However, when the claimant's brother came, woke up and threatened him with a gun in front of the claimant and the children. The claimant went to live with her parents. sought help through and the claimant returned to him after a number of months. However, he eventually stopped going to and the claimant moved out again. When she returned a couple of days later to pick up her clothes, she found them burned on the front lawn. After five months, told the claimant that he had stopped drinking. While the claimant was working at the time, she needed financial support, particularly since her daughter had . Even though blamed the claimant for the , she agreed out of necessity to live with him at her parents' house, with coming and going as he pleased. In 2000, attacked the claimant hitting and choking her. She managed to escape when her daughters intervened. While the claimant went to the authorities to denounce and even followed-up, the authorities kept insisting that they could not locate . While demanded that the claimant withdraw the denunciation, she did not. Earlier, the claimant had made a previous denunciation against however, his sister, who is a managed to free him. When the claimant attempted to follow-up at

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

this earlier time she was told that there was no record of her complaint. In 2006, the claimant went to the police to make another denunciation, however, nothing was done. The police stated that since there were no physical injuries they could not act. When the claimant attempted to get a copy of her complaint she was told that there was no record of her having complained. The claimant moved to . Two days before coming to Canada, threatened her and said that if she went to Canada he would kill her. The claimant came to Canada on , 2008. She made a refugee claim on 2008. s.19(1)

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to her life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Mexico was accepted at the hearing given that a copy of her Mexican passport was on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

³ Exhibit R-2, Certified copy of passport received from Citizenship and Immigration Canada (CIC).

s.19(1)

Personal Information Form⁴ (PIF) and the other documents available. At the first sitting of this hearing the claimant presented no evidence beyond her testimony and the Attorney General's document (which I will deal with later as it was problematic in and of itself). This lack of documentation seemed odd given that the claimant had allegedly been in a long term marriage. Then, after all of this was pointed out at the first sitting, the claimant, at the second sitting, presented a marriage certificate⁵ allegedly obtained recently through a computer kiosk in Mexico as proof of her marriage to . During her testimony at the second sitting, the claimant stated that on , 1971, she had a civil marriage and was then married in the church on 1971. However, as noted at the hearing, during the initial sitting, the claimant had stated in oral testimony that she had a religious wedding and that this fact, would have been recorded in a book, at the church, in the small town that she got married in. She said that she did not have a copy since her daughters had not had time to go there to obtain it. She went on to state that a civil ceremony would have resulted in a marriage certificate. The clear implication was that there had been no civil ceremony that would have produced a document and she had no other documents available at the time to prove that she had been married. The claimant stated at the second sitting that there must have been an error in interpretation of her testimony at the first sitting, as she had had two ceremonies. Furthermore, as noted at the hearing, the claimant's second given name was recorded on the marriage certificate as " ", rather than the proper " " as used on all her other documents. The claimant stated that this must have been a typing error. Also, when the address where she was living at the time she was married was questioned, given that it did not seem to match her stated places of residence over time, the claimant gave confusing testimony of her mother's house being located at an intersection, that both streets were renamed and that the address had been changed from one side of the house to the other, on the other intersecting street. I do not find the claimant's explanations satisfactory. The whole thrust of the claimant's testimony at the first sitting was that it was reasonable that she did not have any proof of any type of marriage, given that the religious ceremony was recorded in a book in a far away place which would take her daughters time to get to and that no civil ceremony took place which would have produced a document. For the claimant to suddenly present a marriage

⁴ Exhibit C-1, PIF, as amended by C-2, new narrative.

⁵ Exhibit C-4.

certificate at the second sitting that was allegedly obtained quite simply by typing information into a government computer kiosk, in a shopping mall, simply does not make sense. While there may have been some questions with respect to the actual titles of the documents in question, the far more basic issue here is whether a civil ceremony took place (as per the second sitting) or not (as per the first sitting). Furthermore, the claimant's name on the document was misspelled, using a phonetic Spanish spelling s.19(1) (" ") of the name . While the claimant stated that her marriage occurred prior to the current national identity card system, it is reasonable to expect that the person recording the marriage would have asked to see some supporting identity documents and not simply asked for the claimant's name verbally. Given that the supporting documents would have had her correct name it does not make sense for the name to be misspelled in this fashion. Finally, the claimant's rather confusing testimony about how one house managed to have a variety of addresses over time made absolutely no sense at all and it appeared that the claimant was simply making up evidence as she went along to cover the fact that her timelines with respect to living at various addresses just did not make sense. Given all of these problems, I find on a balance of probabilities that the marriage document presented is a forgery and that the claimant's reliance upon it and these other discrepancies undermine her credibility.

[6] This alone is not fatal to her claim. Whether or not she was legally married to , the claimant alleged that | had physically abused her virtually from the time that they first lived together in 1971, and that it was his threat to kill her before she left Mexico for Canada in 2008 that precipitated her refugee claim.

[7] In attempting to clarify the timeline in the claimant's story, the claimant was asked why her PIF describes an incident in 1995 in which she was choked and that she was aided by her daughters, when the Attorney General's document⁶ states that this incident took place in the year 2000. The claimant stated that she had actually been choked by and aided by her daughters on at least two if not three occasions and that the PIF and the Attorney General's document were referring to separate incidents. When asked why only one incident was described in her PIF, the claimant stated that she could only

⁶ Exhibit C-3.

write so much and that if she included everything her PIF would never be finished. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF narrative are quite clear that all significant incidents are to be included. If the claimant really was s.19(1) choked by on at least two occasions and aided by her daughters, it is reasonable to expect her PIF to say just that, particularly since both alleged incidents seemed quite noteworthy as the incident described in her PIF seemed to result in her separation from and the other incident actually resulted in a complaint to the Attorney General's office. I find that this discrepancy further undermines the credibility of the claimant.

[8] In the claimant's initial oral testimony, she agreed that she and separated approximately in 1995. Then in later oral testimony, she stated that they separated in 1991 or 1992. When confronted with this apparent inconsistency the claimant stated that she had not expressed herself correctly. The claimant then gave confusing and evasive testimony when attempts were made to clarify this point with the claimant actually stating more than one date for the separation. I do not find the claimant's explanations satisfactory. While I am mindful that a number of years have passed since these alleged events, attempting to determine such a significant life event as when she last separated from her husband should not have been as difficult as it was. It appeared at the time that the claimant realized she had simply given different years for the events and rather than simply say that one was wrong and one was right, proceeded to attempt to reconcile two dates that simply could not be reconciled. I find that this discrepancy undermines the claimant's credibility.

[9] The document presented from the Attorney General's office⁷ states that the claimant was 53-years-old at the time the complaint was made (i.e. the year 2000). However, as noted at the hearing, the claimant would have been 46-years-old at the time. The claimant stated that the person recording the complaint at the Attorney General's office made a mistake. Furthermore, the claimant's amended narrative⁸ states that the incident described in the document took place in 2000. However, as noted at the hearing, the Attorney General's document states that the incident took place in 2000. The claimant stated that the PIF was correct and the date given in the Attorney

⁷ Exhibit C-3.

⁸ Exhibit C-2.

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General's document must have been another mistake. Furthermore, the Attorney General document states that the claimant lived at and the incident took place at an address on " ". However, as noted at the hearing, the claimant's PIF indicated that she did not live at that address until the year 2001. Furthermore, in question 7, of Schedule 1, "Background Information", under the heading "Addresses",⁹ it indicates that the claimant did not move to that address until 2001. The claimant stated that she had only given those dates as approximations given the move occurred a long time ago and she only gave the dates at the prompting of others. I do not find the claimant's explanations satisfactory. The claimant was in the best position to recall where and when this event happened. It made little sense that she gave such a specific date of changing addresses in the immigration document if she was really unsure of the actual timing of the move. In filling out the PIF, the claimant would have had the chance to think about where and when things happened (i.e. which house). Even if the claimant realized that she had initially made a mistake, she was well aware that the PIF could be amended as she made amendments on other points. Also, the claimant's age was off by seven years in the Attorney General's document. The vast majority of the information in the document appeared to be consistent so it made little sense that the clerk recording the information would suddenly make a mistake in this area. Finally, and most importantly, the document was allegedly prepared in the year 2000. While the claimant insisted that her PIF was correct in that the incident took place in , the document is equally clear that the incident took place in . It makes absolutely no sense at all for a at the time to describe the event in the way that they did and miss whether it was in the current or past month. Taking into account all of these discrepancies, I find on a balance of probabilities that the Attorney General's document is a forgery and that the claimant's reliance upon this document further undermines her credibility.

[10] The notes¹⁰ of the immigration officer made at the time that the claimant made her claim, indicate that almost ran the claimant over with his car and that the claimant's daughters helped her in what appeared to be that incident. However, as noted at the hearing, this incident is not described in either version of the claimant's narrative. The

⁹ Exhibit R-2, The second page 5 of 6 in Schedule 1.

¹⁰ Exhibit R-2, "Record of Examination", p. 6.

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claimant stated that she had never said this and there must have been an error in interpretation since [REDACTED] had only threatened to run her over, but had never attempted to do so. Furthermore, as noted at the hearing, this is the only incident specifically described in the notes of the immigration officer and that the other events in her PIF are not mentioned. The claimant stated that she was told to be general and that she would be able to get into specifics in her PIF. I do not find the claimant's explanations satisfactory. The vast majority of the information in the immigration officer's notes appears to be consistent with her story, so it did not appear that there were problems with the interpreter. Even if the claimant meant to say this was only something that [REDACTED] threatened to do, it would seem the claimant felt that the fact [REDACTED] made this threat was significant enough to mention, it makes little sense that the claimant did not feel that it was significant enough to mention in her PIF. Conversely, if this was a mere threat by [REDACTED] and not an actual attempt, it makes no sense for the claimant to describe this event specifically and not describe incidents where [REDACTED] actually went beyond threatening. At one point the claimant even stated that [REDACTED] had in fact attempted to run her over and that she had stepped aside at the last second. However, when immediately pressed to confirm whether or not she had said these things to the immigration officer, the claimant, after a few prompts said no. Once again, had [REDACTED] actually attempted to run the claimant over I would have expected this to be mentioned in the PIF given that all significant incidents are to be included. Generally speaking, it appeared that the claimant was making evidence up as she went along in attempting to explain why she told two different stories at different times and she simply could not reconcile the two stories. I find that these discrepancies further undermine the claimant's credibility.

[11] While I am mindful that the claimant submitted post-hearing what appears to be a notarized declaration¹¹ from her daughters in an attempt to corroborate her story, I note the claimant's daughters are hardly an unbiased objective source of information and that they obviously would have an interest in assisting the claimant. Accordingly, I give this document little weight.

¹¹ Exhibit C-5.

[12] In the claimant's original PIF narrative, the last time that [redacted] threatened the claimant in person was on [redacted], 2008. However, as noted at the hearing, in the notes of the immigration officer,¹² a reference is made to a final threat being made one week prior to the claimant coming to Canada, which would place the last threat at approximately [redacted]. The claimant stated this last threat was a verbal one over the phone and that it was a separate threat. When it was noted that no mention of this telephone threat is made in either version of the narrative, the claimant stated that she had already provided a lot of detail and did not think it was necessary to mention this threat and she had been told at the immigration interview to be brief. In later questioning, it was noted that the claimant's amended narrative stated that [redacted] came to the claimant's house two days before she left Mexico and threatened that if she went to Canada he would kill her. The claimant stated that her second narrative was incorrect and that [redacted] had come to her house two weeks prior to her coming to Canada and that this was a problem with interpretation in that she just heard the word "two" and assumed it was correct. I do not find the claimant's explanations satisfactory. This is not the case of the claimant being too brief in the interview with the immigration officer; the threat mentioned there is an extra detail that was not mentioned in the PIF. Given that the claimant thought this threat was significant enough to mention to the immigration officer, I would have expected her to include it in the PIF, particularly after amendments were made to the narrative and given that all significant incidents are to be included in the narrative. This threat is made even more significant given that the claimant testified this is where she learned that [redacted] knew "for sure" that she was planning to go to Canada. With respect to the timing of the last threat made in person, the claimant eventually acknowledged that her narrative had been read back to her in Spanish and that she had affirmed its accuracy. Given that the claimant was producing a new narrative to cure deficiencies in the first one, it makes little sense that she would not catch such a basic error. I find that these discrepancies further undermine the claimant's credibility.

[13] The content and the consequences of the final threat(s) were at issue as well. In oral testimony, the claimant stated that [redacted] was not aware of her plan to go to Canada in his final face to face threat on [redacted], but was aware of her plan to go to Canada in his

¹² Exhibit R-2, CIC Etobicoke In-person Refugee Intake "Record of Examination", p. 6.

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final telephone threat over a week later. However, as noted at the hearing, in the claimant's original narrative, which the claimant had initially affirmed the accuracy of, [redacted] knew of her plan on [redacted]. While giving a different date of occurrence, it was also clear in the second narrative that [redacted] knew of her plan to come to Canada at the time she was last threatened in person. The claimant said that [redacted] was unsure of her plan on [redacted] and was then sure in the [redacted] telephone threat. However, this led to the problem of if [redacted] was going to kill the claimant for moving to Canada, why he simply did not kill her when he had the chance in [redacted], when he at least suspected her of planning to go, or in [redacted] when he knew for sure. The claimant stated that she thought [redacted] was out of town during the phone threat and that she did not know why he did not attempt to kill her during the [redacted] confrontation. I do not find the claimant's explanations satisfactory. The claimant's original narrative was quite specific with respect to the last time that [redacted] threatened her, in that he knew of her plan to come to Canada and that he was specifically threatening her if she carried through with her plan to come to Canada. While giving a different date, the second narrative said essentially the same thing. Throughout her testimony in this area, it appeared that the claimant was once again making up her evidence as she went along in attempt to reconcile the two different incidents which could not be reconciled. If [redacted] had either known of the plan, or seriously suspected it in [redacted] it made no sense for him not to attempt to harm the claimant in [redacted] and instead, wait until she potentially got back to Mexico before attempting to harm her. It made even less sense for him to follow up with a telephone threat while he was out of town. I find that these discrepancies further undermine the claimant's credibility.

[14] I find, on a balance of probabilities, that while [redacted] may have physically abused the claimant during their relationship, the claimant has failed to establish that any physical abuse took place after the early 1990's. I find further that the claimant has failed to establish on the basis of credible evidence that [redacted] threatened the claimant before she came to Canada in 2008.

[15] The claimant stated that she initially came to Canada to seek refuge and had actually discussed the possibility of making a refugee claim with a female friend in Montreal after she arrived in Canada in [redacted] 2008. This friend had even agreed to take

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her to the immigration office since the claimant was unfamiliar with the city. However, she then met a man from Toronto in 2008 at the [redacted], and she moved to Toronto to join him. While she also discussed the possibility of making a refugee claim with this man, she decided instead to go with him to his native Uruguay. Unfortunately, the relationship broke down in 2008, so she did not join him when he left Canada. However, as noted at the hearing, the claimant did not initiate her refugee claim until mid-2008. The claimant stated that she had not made a refugee claim until then as her male friend had not wanted her to, and instead he wanted her to accompany him to Uruguay. I do not find the claimant's explanation satisfactory. The claimant allegedly fled Mexico fearing for her life. She stated that while she did not say so upon arrival in Canada, it was her intention to use Canada as some form of refuge. She not only was aware of the possibility of making a refugee claim, but had actually arranged for a friend to take her to the appropriate immigration office in Montreal in order to make the claim. To then say that a sudden romantic relationship intervened and this prevented her from seeking international protection for her life makes no sense. Even if this were enough to suddenly derail her plans of making a claim in Montreal, it appears she did not forget about the possibility of making a claim as she even discussed the matter with her new boyfriend. However, given that her plan to join him in Uruguay fell apart in [redacted] when their relationship ended, it makes no sense that she would wait several weeks before returning to her original plan of making a refugee claim. The claimant allegedly feared for her life throughout this time and it would be reasonable to expect her to make some efforts to report her fears to immigration authorities before she actually did. I find that the claimant's behaviour in Canada not only demonstrates a lack of subjective fear, but also further undermines the claimant's credibility.

[16] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened or happened when she said they did. There being no remaining credible and reliable evidence to support the claim under either section 96 or section 97 of the *IRPA*, the claim fails.

CONCLUSION

[17] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

Concurred in by

(signed)

"Robert Bafaro"

Robert Bafaro

Concurred in by

(signed)

"Brian Goodman"

Brian Goodman

December 4, 2009

Date

RPD File No. / N° de dossier de la SPR : TA8-22076

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s)
Date(s) of Hearing	September 17, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	September 17, 2009 (rendered orally) September 30, 2009 (written reasons)	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	John Campion	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la cour
Designated Representative(s)	N/A	Représentant(e)(s) de la cour

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] _____, a citizen of Portugal, claims refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act (IRPA)*.¹

Allegations

[2] The claimant fears the general situation of poverty and unemployment in Portugal. He has also experienced interference in his life at the hands of his former spouse who lives in the United States of America (USA).

Determination

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground or that he would, on a balance of probabilities, personally be subjected to a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

[4] The claimant's identity as a citizen of Portugal was accepted at the beginning of this hearing, as a copy of his Portuguese passport was on file.²

Nexus

[5] As conceded by the claimant's counsel, and upon my reading of the file, there is no nexus established to any of the grounds of the Convention refugee definition.

Consolidated grounds - Section 97 of the IRPA

[6] While the claimant has stated that he has experienced interference in his life at the hands of his ex-spouse who lives in the USA, no evidence has been presented that the claimant's ex-spouse would be able, or in fact, be motivated to physically harm him.

[7] The claimant generally fears poverty and unemployment. However, these situations are feared by all people in Portugal and as such are excluded from my consideration due to the exception based on generalized risk.

[8] I find on a balance of probabilities that the claimant does not face any of the risks delineated in section 97 of the *Immigration and Refugee Protection Act*.

No credible basis

[9] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made, and therefore, there is no credible basis for the claim. As such, the claim is rejected.

[10] The claimant is not a Convention refugee or a person in need of protection.

[edited for syntax and grammar]

(signed)

“David McBean”

**David McBean
September 30, 2009**

Date

1 As enacted by S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

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RPD File No. : TA8-22076

 image

RPD.15.7 (February 12, 2009)

Disponible en français

 image

RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA8-22253

TA8-22294

*Private Proceeding / Huis clos***Reasons and Decision – Motifs et décision s.19(1)****Claimant(s)** Demandeur(e)(s)**Date(s) of Hearing** May 20, 2010 **Date(s) de l'audience****Place of Hearing** Toronto, Ontario **Lieu de l'audience****Date of Decision** July 14, 2010 **Date de la décision****Panel** David McBean**Counsel for the Claimant (s)** No counsel **Conseil(s) du / de la demandeur(e)(s)****Tribunal Officer** N/A **Agent(e) de la décision****Designated Representative(s)** **Représentant(e)(s) de la partie****Counsel for the Minister** N/A **Conseil du ministre**

ANALYSIS

Identity

[4] The claimants' identities as citizens of Germany were accepted at the hearing given that certified copies of their German passports were on file.²

Fear of Child Welfare Authorities - Objective Basis

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[5] The objective documentary evidence on file³ does not list any problems in the area of child welfare officials abusing their authority, whether based on race, nationality or any other factor. If they did abuse their power I would have expected the documentary evidence to mention this. I find, on a balance of probabilities, that if the German child welfare authorities thought it best to forcibly apprehend and place him in foster care as it appears they have done, they had good reason to do so. If they attempted to do the same with _____, I find, on a balance of probabilities, that they would have good reason to do so as well. I do note that the claimant recently stated in writing⁴ that in her dealings with the _____ Children's Aid Society they closed her file and stated they were satisfied there were no problems in the current situation. While no independent corroboration from CAS was submitted, assuming this was true I am sure that the claimant would be able to submit this to the German child welfare authorities should she have any further dealings with them. I find that there is no objective reason to fear the German child welfare authorities.

Fear due to Race/Nationality – State Protection

[6] While the claimant alleged that she may face harm due to her race and/or nationality the claim fails as I find that the claimant has failed to rebut the presumption of state protection. There is a presumption that a state is capable of protecting its citizens. The claimant may rebut this presumption by providing "clear and convincing" proof of lack of state protection. The claimant must approach the state for protection, providing that state protection might be reasonably forthcoming.⁵ Evidence that protection being offered is not necessarily perfect⁶ is not clear and convincing proof of the state's inability to protect its citizens, as no government can guarantee the protection of all its citizens at all times. However, where a state is in effective control of its territory, has military, police and civil authorities in place and makes serious efforts to protect its citizens, the mere fact it is not always successful at doing so will not be enough to justify that the claimant are unable to avail themselves of protection.⁷

[7] When the state in question is a democratic state, the claimant must do more than simply show that they approached a member of a police force and that their efforts were unsuccessful. The burden for the claimant is to prove an absence of state protection is directly proportional to the level of democracy of

that state.⁸ The more democratic the state's institutions, the greater the onus is on the claimant to show that they have exhausted all courses of action available.⁹ Moreover, local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens, unless the failures form part of a broader pattern of state inability or refusal to provide protection.¹⁰

[8] The documentary evidence shows that Germany is a functioning, parliamentary democracy with free and fair elections.¹¹ I find that Germany is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. There is nothing in the documentation before the Board to suggest that Germany is in a state of complete breakdown.

[9] The claimant conceded if she faced harm, due to racism or other reasons, the police would respond to her aid. However she felt this would merely be to put on a good public face and they would not help her behind the scenes. I disagree. While there is no doubt that there are some extremists and other racist people in Germany and approximately 1,000 violent incidents occurred in 2008¹² the German authorities prosecuted the offenders and conducted educational campaigns to combat xenophobia. There is nothing in the documentary evidence to suggest, given the size of the population, that violence or other racist acts are widespread or can take place with impunity. I do note that the claimant presented some articles¹³ about incidents in Germany. In one, the President of Iran blamed Germany for the death of an Egyptian woman who was killed in a courtroom. However, the same article states that the perpetrator has been charged with murder, as one would expect if the state took these matters seriously.

[10] I find that the claimants have not established, on a balance of probabilities, that adequate state protection is not available. As such, the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that the claimants would be at risk of the harms delineated in section 97 of the *IRPA*, the claims pursuant to that section fail as well.

No Credible Basis

[11] I find that pursuant to subsection 107(2) of the *IRPA* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

CONCLUSION

[12] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims.

(signed)

“David McBean”

David McBean
July 14, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit R-1, Item 2.1, United States, 11 March 2010, Department of State. "Germany. *Country Reports on Human Rights Practices for 2009*.
- 4 Exhibit C-4.
- 5 *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689.
- 6 *Zalzali v Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (C.A.).
- 7 *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).
- 8 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 9 *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.).
- 10 *Zhuravljev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).
- 11 Exhibit R-1, National Documentation Package, March 24, 2010, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.
- 12 Exhibit R-1, Item 2.1, United States, 11 March 2010, Department of State. "Germany. *Country Reports on Human Rights Practices for 2009*
- 13 Exhibit C-4.



RPD File No. : TA8-22253

TA8-22294



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-23926
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	September 9, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 30, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Dhaman P. Kissoon Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS AND DECISION

s.19(1)

[1] _____, a citizen of Guyana, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant lived in _____ Guyana. Of East Indian descent, he began to _____ the _____, whose supporters are mostly _____, in _____ 2001. While _____ in _____ 2001, the claimant was attacked by _____ of the _____, whose supporters are mostly _____. The claimant's arm was broken and he spent several days in the hospital. While he reported the matter to the police, nothing was done and no one was arrested. While campaigning in _____ 2005, the claimant was warned and beaten again by the same men. Once again the claimant went to the hospital. Once again the claimant reported the matter to the police and once again nothing was done. The claimant came to Canada on _____, 2006. He made a refugee claim on _____, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] While the claimant had no passport, I find on a balance of probabilities for the purposes of this hearing that the claimant is a citizen of Guyana based on the visa

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

information contained in the documents received from Citizenship and Immigration Canada (CIC).²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in the PIF and oral testimony there were two incidents wherein the claimant was attacked. However, as noted at the hearing, in the notes the immigration officer made at the time that the claimant made his claim, it is stated that the claimant was attacked a total of five times.⁴ The claimant stated that the information in the notes of the immigration officer was wrong, although he did not know why. I do not find the claimant's explanation satisfactory. The vast majority of the information in the notes of the immigration officer appears to be quite consistent with the other information provided by the claimant. For the immigration officer to suddenly get wrong the key piece of information related to the claim makes no sense. I find that this inconsistency with respect to the number of times that the claimant was attacked undermines the claimant's credibility.

[6] Also, in the notes of the immigration officer it is stated that the claimant spent a week in hospital after one of the attacks. However, as noted at the hearing in the PIF and in oral testimony, the claimant stated that he spent a few days in hospital after the first attack and was treated in a matter of hours after the second attack. The claimant stated that one of the times could have been a week. I do not find the claimant's explanation satisfactory. The claimant was quite definite in providing this information in his PIF and oral testimony and was also quite definite in the notes of the immigration officer. Had the claimant said something to the effect of "about a week," the information would not be inconsistent. However, by being so definite in each description it makes no sense to later state that one of the descriptions is approximate. I find that this discrepancy with respect to the consequences of the attacks on the claimant to further undermine his credibility.

² Exhibit R-2 and R-3.

³ Exhibit C-1, PIF.

⁴ Exhibit R-2, CIC Etobicoke In-person Refugee Intake, "Record of Examination", p. 5.

[7] The claimant presented no documents from the to substantiate his membership as he stated that he had only ever been given a button. He said that he had no medical documents to corroborate the two visits to the hospital after the two attacks because he had only recently asked an aunt to try to get them and he had not heard back from her. I do not find the claimant's explanations satisfactory. While I am mindful that claimants are not obligated to document all aspects of their claim, if documents are reasonably available they should be presented. Regardless of what he was given at the time, if the claimant had really been an of the for a number of years, I find it would be reasonable that the would be able to supply a document attesting to that fact. Furthermore, on at least one occasion the claimant spent days if not an entire week in a hospital and I find that it would be reasonable to expect that such a stay could be corroborated. I would note that the claimant has been represented by counsel from the time that he made his claim, and the directions for the PIF are quite clear in that medical and other supporting documents are to be attached to the PIF or at least disclosed, no more than 20 days prior to the hearing. For the claimant in this situation to make a claim in 2007 and then make no efforts to obtain documents until just prior to the hearing in 2009 makes no sense. I find that this absence of reasonably available documentation to further undermine the claimant's credibility.

[8] Even more problematic was the one police document⁵ that was actually provided. As noted at the hearing, it is not on letterhead and is simply handwritten on a blank piece of white paper. Furthermore, it was also noted that this document only refers to the 2001 incident and does not mention the 2005 incident even though the police from the same police station were involved in both incidents. The claimant stated that he did not know anything about the document and that he had simply asked his aunt to obtain it. While it did seem odd that a police document would be handwritten on a blank piece of white paper instead of letterhead, far more disturbing are the contents of the document, or rather the lack of content. The claimant stated that he reported both attacks to the same police station. If his aunt really went to the police station to corroborate the two attacks, it makes no sense there would only be a record of the first one and no reference to a second

⁵ Exhibit C-2.

complaint made much more recently. I find that this discrepancy further undermines the claimant's credibility.

[9] The claimant stated that he did not have his passport because the "agent" that he used to come to Canada, took it from him. I do not find the claimant's explanation satisfactory. Throughout this area the claimant was evasive. The claimant had his own validly issued passport with a valid visa to come to Canada. There was no need for an agent to bring the claimant to Canada and no need for the agent to take away the passport. Given that passports often contain information about a person's travels and their status in various countries, it sometimes makes sense not to present a passport. In this situation, the claimant's explanation for lacking a passport just does not make sense as the claimant was simply not able to explain why he would require the use of an agent and I find this further undermines his credibility.

[10] The claimant stated that he did not know that he could make a refugee claim in Canada when he arrived. While he told his aunt here about his problems she gave him no advice. It was not until a cousin in New York advised him to make a claim did he do so, over a year after arriving in Canada. While counsel submitted that this was a reasonable explanation given that in his view the claimant was "unsophisticated" and he had no direct contact with immigration authorities, I do not find the claimant's explanation satisfactory. The claimant came to Canada allegedly fearing for his life. Regardless of his level of sophistication, it does not make sense that the claimant would make no enquiries about how to stay in Canada permanently if he really did fear returning to Guyana. I find that the delay in claiming of more than a year not only demonstrates a lack of subjective fear, but further undermines the claimant's credibility as well.

[11] Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened, and as such, the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant would be at risk of any of the harms enumerated in section 97 of the IRPA, the claim pursuant to that section fails as well.

CONCLUSION

[12] For all these reasons, the Refugee Protection Division therefore rejects the claim.
The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

October 30, 2009

Date



RPD File No. / N° de dossier de la SPR : TA8-24160
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s) s.19(1) **Demandeur(e)(s) d'asile**

Date(s) of Hearing August 25, 2009 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision October 22, 2009 **Date de la décision**

Panel David McBean **Tribunal**

Counsel for the Claimant(s) Andrew Confente
Barrister and Solicitor **Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer N/A **Agent(e) de tribunal**

Designated Representative(s) N/A **Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister N/A **Conseil du ministre**

[1] , a citizen of El Salvador, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant lived in , part of the area in El Salvador. On , 2004, the claimant and a co-worker (" ") were confronted by four gang members after getting off a bus on their way home from work. The gang members demanded money and when the coworker screamed she was stabbed to death. The claimant ran away and was only cut on the shoulder. While the claimant eventually sought medical treatment he did not report the matter to the authorities because he knew that they feared the gangs themselves. In 2005, coworkers told the claimant that gang members were looking for him. The claimant quit his job, abandoned his house and moved to rural to live with his grandparents. The claimant thought that he was safe. However, on , 2007, the claimant's uncle told him that suspicious men were looking for him. The claimant contacted family members in Canada who advised him to come to Canada to claim refugee protection. The claimant traveled through Guatemala, Mexico and the United States. As he had no documents he was put in detention for a month after being detained in Buffalo, New York. After his family posted a bond he was released on , 2007. He made a refugee claim at Fort Erie on , 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

Identity

[4] While the claimant did not present a passport, I find on a balance of probabilities that the claimant is a citizen of El Salvador based on the documents on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and other documents available. For example, while I am mindful of the fact that claimants are not required to document all aspects of their claim, if documents are reasonably available, they should be presented. The claimant stated that he did attempt to get a medical certificate with respect to the treatment that he received in 2004, but his relatives were unsuccessful in obtaining it because of privacy laws. However, as noted at the hearing, he did not attempt to give written, oral or electronic consent to the medical authorities in order to aid in getting a medical certificate. I do not find this situation satisfactory. It may be that privacy laws prevent other individuals, including family members from obtaining a person's medical information. However, I would have expected the claimant to at least make reasonable efforts to get this information and in this instance, I find it would have been reasonable for him to have attempted to provide some form of consent. I find that the lack of medical documentation and more importantly the lack of reasonable effort on the part of the claimant to undermine his credibility.

s.19(1)

[6] The claimant stated that he only knew his murdered coworker as " ". He gave vague and confusing testimony with respect to how he knew she was dead, given the fact that he ran away, but still knew the police had picked up the body, and only then did he say that he found this out through coworkers. Given the vague description of who was and how she died, it would have been preferable to have some form of objective

² Exhibit C-3, five items;
Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, PIF.

document to corroborate that a murder had indeed taken place. However, as noted at the hearing, no death certificate was presented. The claimant stated that family was from far away and he did not have any contact information. Furthermore, as noted at the hearing, no media documents were presented dealing with the murder. The claimant stated that he never looked for them at the time and given that nothing happened for a time period afterwards, he saw no need to and had not made any efforts since. I do not find the claimant's explanation satisfactory. It may be reasonable for the claimant to be unable to obtain the death certificate of a non-relative. It may also be reasonable for the claimant to have thought that he had no need to obtain media reports at the time of the alleged murder. However, given that the claimant had over two years from the time that he made his claim before he had his hearing, he had more than ample opportunity to research the issue and he simply did not do so. One would think that the murder of a woman on the street would be newsworthy and I find on a balance of probabilities that corroborative media reports would have been available had the murder actually taken place. I find that the vagueness of the claimant's testimony with respect to the murder and more importantly the lack of media reports with respect to the alleged incident further undermine the claimant's credibility.

[7] The claimant also gave vague and evasive testimony with respect to the involvement of the police in the death of " ". In answering questions about media reports, the claimant made reference to the fact that even though the police picked up the body, there was no police report available. The claimant then stated that the police had actually not investigated the crime because the victim's family did not file a report. However, when asked to clarify all this, the claimant stated that he did not know why the family would not have filed a report with the police and further stated that he did not know how he knew all of this in the first place. I do not find the claimant's explanation satisfactory. While I am mindful that the alleged event in question occurred over four years ago, the claimant allegedly witnessed at close range the murder of a co-worker and narrowly escaped death himself. One would think that he would be interested in what happened afterwards with respect to the authorities. It made no sense for the claimant to be so vague in this area and I find that this vagueness further undermines his credibility.

[8] In initial oral testimony, the claimant stated that he continued working for another year after the murder, however, as noted at the hearing, the claimant stated later that the murder took place in late _____ and he resigned on _____, which would only be two and a half months. The claimant stated that he was mistaken with respect to his earlier testimony. I do not find the claimant's explanation satisfactory. I would be able to understand given the passage of time, that the claimant would be unable to recall to the exact day or week the time between events. However, it makes little sense to say at one point the time between the narrow escape and the gang members tracking him down and the claimant fleeing town was a year (a long time) or two and a half months (a short time). I find that this discrepancy with respect to the timing of the major events in the claimant's life to further undermine the claimant's credibility.

[9] In oral testimony, the claimant stated that while living on the _____, gang members approached his uncle looking for the claimant. The claimant stated that these men sported highly visible gang tattoos which are notorious in El Salvador so his uncle knew they were gang members. However, as noted at the hearing, the PIF describes these same men simply as men his uncle did not trust. The claimant said that he did not know why the PIF used that description rather than simply state that these were gang members. I do not find the claimant's explanation satisfactory. If his uncle had actually been approached by gang members sporting well-known gang tattoos, I would have expected his PIF to say just that rather than state that they were men who could not be trusted. I find that this discrepancy with respect to who approached the claimant's uncle to further undermine the claimant's credibility.

[10] The claimant stated that he had no passport because he did not happen to have one at the time that he left El Salvador. When asked if he had attempted to obtain one here in Canada, the claimant stated that he had called the El Salvadoran authorities here but no one answered the phone. He stated that he also traveled to the El Salvadoran embassy in _____, but found the door locked and no one would answer the bell even though he had left a voicemail message. I do not find the claimant's explanation for lacking a passport to be satisfactory. The claimant has had over two years to document his claim. To be so easily defeated in attempting to obtain a passport and make no further

efforts in the course of two years on such a key issue as proving his citizenship makes no sense at all. Passports often contain information of past travel and other information. I find the fact that the claimant allegedly exerted almost no effort to obtain one, further undermines his credibility.

[11] When asked about how he became detained in Buffalo, the claimant stated that he actually went first to the Canadian border but found it "closed". He said that no interpreter was provided to him by the Canadian authorities. However, he was able to understand that he was supposed to return to Buffalo to attend at a refugee centre there. I do not find the claimant's explanation satisfactory. While I noted at the hearing that it was within my specialized knowledge that claimants are sometimes directed to return to the United States until Canadian officials have sufficient time to process them, the claimant could not point to any document which stated that he had been "directed back" because Canadian officials were too busy. Furthermore, it makes absolutely no sense for Canadian authorities to not provide a Spanish interpreter, even if by phone. I find that this implausibility with respect to the manner in which the claimant became detained to further undermine his credibility.

s.19(1)

[12] In generally asking why the claimant failed to make an asylum claim in the United States, the claimant stated that he was detained for about a month by the American immigration authorities because he lacked proper documents. He stated that while his Canadian uncle arranged for an American lawyer to represent him, he never met with the lawyer as there was no interpreter. He said that he did not know what his status was when he was paroled into the United States after being released from detention. He stated that at the time of his release on bond, his aunt had been able to obtain his national identity card and that he had been given one American immigration document from that time, but no longer possessed it. He also stated that he wanted to tell the Canadian authorities his story and only spoke to security guards while detained. At the start of the hearing the claimant disclosed a copy of his bond document.⁴ As noted at the hearing, it contained a different date of arrival in the United States (1 '2007) from the one that the claimant had quoted (, 2007). The claimant said that he had only been approximate.

⁴ Exhibit C-4.

Furthermore, it was noted that in paragraph 'C' of the bond document that the facts of his case are set-out in paragraph G(1). However, as noted at the hearing, the claimant only presented the pages that contained paragraphs A through F, and H through J. The claimant stated that he did know why the page containing paragraph G (i.e. the facts of his case) was missing. I do not find the claimant's explanations in this area satisfactory. It makes absolutely no sense at all for the claimant to have a lawyer but never speak to him, or anyone other than low level guards for that matter for an entire month, to be paroled (i.e. released) into the United States with no knowledge of what status he held and to have an immigration document, but then not have it later. Coupled with the fact that the copy of the bond document presented was missing the key page that contained the American authorities' version of the facts of the claimant's situation, it appeared that the claimant was actively attempting to cover up what really happened in his dealings in the United States. I find that this attempt to cover-up what happened to further undermine the claimant's credibility.

[13] In oral testimony, the claimant stated that part of his fear with respect to returning to El Salvador stemmed from the fact that he believed the gangs would attempt to recruit him. However, as noted at the hearing, this was not mentioned in his PIF. The claimant stated that he did not know why he had not included this information in his PIF. I do not find this lack of an explanation satisfactory. If the claimant did indeed fear recruitment by gangs, I would have expected some mention to have been made in the PIF given that the directions for filling out the narrative portion clearly state that the claimant should set out all the reasons that have led to the claim. I find that this omission further undermines the claimant's credibility.

[14] When I questioned the claimant, he stated that he could not move to another city, such as San Miguel, because he did not know anyone there and there were not enough jobs. However, as noted at the hearing, in later questions from counsel, the claimant stated gangs worked together throughout El Salvador and therefore, his persecutors would be able to harm him no matter where he went. The claimant stated he had not been thinking clearly during his earlier testimony. I do not find the claimant's explanation satisfactory. If the claimant could not move to another city, I would have expected him to

say that when I asked him, particularly since he was even asked if there was any other reason beyond that of contacts and jobs and the claimant said 'no'. I find that this omission further undermines the claimant's credibility.

[15] Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened, and as such, the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant would be at risk of any of the harms enumerated in section 97 of the IRPA the claim pursuant to that section fails as well.

No Credible Basis

[16] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made, and therefore, there is no credible basis for the claim.

CONCLUSION

[17] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

October 22, 2009

Date



RPD File No. / N° de dossier de la SPR : TA8-24386
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s) s.19(1) (a.k.a. :)		Demandeur(e)(s) d'asile
Date(s) of Hearing	June 23, 2010 November 23, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	February 28, 2011	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Vania Campana Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, citizen of Mexico and permanent resident of Argentina, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born in _____, Mexico. At the age of five he moved with his mother to her native Argentina and lived in _____. In 2008, the claimant was working as a _____ at a _____. He organized a _____ for an influential man, _____. At the party, _____ and others were discovered consuming drugs and the claimant politely asked them to stop. Later, _____ and another man were found once again consuming drugs. When they refused to leave, security guards attempted to remove them by force and a fight broke out. When the claimant approached _____ he was attacked and threatened. The claimant asked all the guests to leave and although the police came and arrested two people, _____ disappeared. The claimant received several threatening calls on his cell phone over the next week. _____ filed a complaint against the _____, blaming the security guards for the altercation. On _____, two men, one of whom had a knife, got out of a car and attacked the claimant. They said this was payback for having _____ kicked out of the _____. While the claimant was wounded in the arm he escaped, only to receive another threatening call. The claimant moved to the house of a friend of his grandmother in _____. The claimant continued to receive threats on his cell phone and his mother saw the same car lingering outside their house in _____. The claimant traveled to Mexico on _____, 2008 and went to _____ to visit family. On _____, he traveled to _____ to learn more about his father. His father introduced him to _____, who hired the claimant as a _____. The claimant helped _____ to _____ and received large tips. After a couple of weeks the claimant became suspicious of the _____ that he _____. His _____ told him not to ask too many questions, however the claimant assumed that something illegal was involved. On _____, the claimant confronted _____, who suddenly pulled out a gun and said the claimant could either continue working for him or die. The claimant traveled to Canada on _____ 2008, and made a refugee claim on _____, 2008. His mother continues to receive anonymous calls asking for the claimant's whereabouts. His father was subsequently beaten by _____ men.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to either of his countries. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Mexico was accepted at the hearing, given that a certified copy of his Mexican passport was on file.² Also accepted at the hearing was the fact that the claimant was a permanent resident of Argentina and counsel for the claimant properly conceded that in the claimant's circumstances, both Argentina and Mexico were countries of reference for this hearing.

Internal Flight Alternative (IFA) - Argentina

[5] Even if I were to accept the claimants' evidence as true, which I do not necessarily do, the claim fails as I find that a viable IFA exists in Argentina in Buenos Aires. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test (also quoted in counsel's post-hearing submissions)⁴ to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA, must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

⁴ Exhibit PH-1

s.19(1)

[6] With respect to the first prong of the test, the claimant would return to the international airport in Buenos Aires, so there would be no need to return to his former hometown of where lives. It has been almost three years since the incident at the was never charged as a result of the incident and is in fact suing the It seems somewhat unlikely that would still be motivated to harm him. Even if he were, when the claimant was still in Argentina he only received threats on his cell phone which he carried with him and subsequently his mother has received anonymous calls asking about him. While a suspicious car was seen at his former home, no one physically contacted him after he moved to . It seems unlikely that would think to look for the claimant in Buenos Aires, over 500 kilometres away after an absence of almost three years. It seems even less likely that he would find him given that the claimant was not found in Even if the claimant were to be found, the claimant could call upon the authorities for aid. While the claimant speculated that there was overwhelming corruption in the authorities, I do not agree. While there is some level of corruption in all countries, given the warnings to not go to the police, seemed to fear the authorities in , the place where he would have had the most influence. It does not make sense he would have more influence in Buenos Aires. I find, on a balance of probabilities, that the claimant has failed to rebut the presumption that adequate state protection is available in Buenos Aires in the unlikely event that should seek to harm him there.

[7] With respect to the reasonableness of the claimant moving to Buenos Aires, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable, is quite high.⁵ The claimant has 14 years of education and has worked in a variety of jobs, including being a and a so it appears he is quite employable. I find that it would not be unduly harsh for the claimant to relocate to Buenos Aires and as such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

Internal Flight Alternative – Mexico

[8] Even if my findings with respect to Argentina are found to be incorrect, the claim still fails as the claimant has a viable IFA in Mexico in Merida. With respect to the first prong of the test

⁵ Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.).

s.19(1)

stated previously, the claimant would return to the international airport in Merida so there would be no need to return to where lives. Other than losing a , the claimant had not caused damage to in any way. He did not report him to the authorities, did not abscond with any of property and had no hard evidence of any illegal activity. It has been almost two and a half years since the claimant simply left his low level job with . I do not see why would still be interested in harming the claimant at this point. I do realize that the claimant stated that he had heard that his father was beaten and was still asking for him, but the beating would have been when the events were fresh in mind. Apart from the lack of motivation, it makes no sense that would think to look for the claimant in Merida, over 1000 kilometres away from , two and a half years after he left. I find, on a balance of probabilities, that the claimant would not be sought in Merida.

[9] With respect to the reasonableness of the claimant moving to Merida, as noted above the claimant is quite employable and identified no non-claim-related impediments to relocating to Merida. I find that it would not be unduly harsh for the claimant to relocate to Merida and as such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

CONCLUSION

[10] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

February 28, 2011

Date

RPD File No. / N° de dossier de la SPR : TA8-24405

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	February 16, 2010 March 18, 2010	Date(s) de l':
Place of Hearing	Toronto, Ontario	Lieu de l':
Date of Decision	May 17, 2010	Date de la
Panel	David McBean	
Counsel for the Claimant (s)	Aadil Mangalji Barrister and Solicitor	Conseil(s) du / d demandeur(e)(s)
Tribunal Officer	T. Horbay	Agent(e) de
Designated Representative(s)	N/A	Représentant(e)(s) de
Counsel for the Minister	Veronica Bryan Minister of Public Safety and	Conseil du

001080

Emergency Preparedness

(by submitting documentary evidence only)

punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Mexico was accepted at the hearing given that a certified copy of his Mexican passport was on file.²

Nexus

[5] The claimant alleges that he is a victim of a criminal vendetta. I find that there is no nexus to the Convention refugee definition and as such, the claim pursuant to section 96 of the *IRPA* fails.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, while I am mindful that claimants are not required to document all aspects of their claim, if documents are reasonably available they should be presented. In oral testimony, the claimant stated that Jose and his men kill people arriving at the airport and that this was covered in the media. However, when it was noted that he had not presented any media reports to support this allegation, the claimant stated that he did not have personal access to the Internet. The claimant also stated that [redacted] was well known in [redacted] and [redacted] because he was in charge of [redacted] from [redacted], both large cities and that he was famous due to his money and power. However, when asked if he knew [redacted] full name, the claimant stated he did not know the rest of his name and when asked if he had any media reports to substantiate [redacted] existence, the claimant stated that he had not presented any as he had never looked for any and that he had lost direct contact with [redacted] after being arrested in the USA. I do not find the claimant's explanations in this area satisfactory. The claimant was represented by counsel so he did not require personal access to the Internet in order to access media reports. If [redacted] was having people killed upon their arrival back in Mexico, I would have thought it would be fairly easy to find and present evidence to confirm this. Furthermore, as declared at the hearing, it is within my specialized knowledge that narco-traffickers are covered extensively in the Mexican media with some sources even glorifying them. Songs are written chronicling their adventures. If [redacted] was really so powerful, I would have thought once again that it would be fairly easy to document his existence, particularly in the Mexican media. As it was, the claimant provided extremely vague testimony about [redacted] and his activities, which made little sense given that the claimant allegedly regularly bought drugs from him. Given the lack of what I find to be reasonably available documentation and the vagueness of the claimant's testimony, I find that the

claimant's credibility is undermined. s.19(1)

[7] In oral testimony, the claimant stated that [redacted] and [redacted] made their deal directly with each other and the claimant was surprised when they suddenly showed up at his house to do a drug deal. However, as noted at the hearing, there is no mention in the PIF of the claimant being surprised at the others appearing at his house. Instead, the PIF states that the claimant was the neutral party in the deal and that the trade would be made at his house. The claimant stated that he did not know [redacted] just [redacted]. Furthermore, in the notes⁴ of the immigration officer made at the time that the claimant made his claim and as noted at the hearing, the claimant simply states that he "did the drug transaction" and there is no mention of him being surprised when [redacted] and [redacted] showed up to make the exchange. The claimant stated that he had passed along [redacted] phone number and that they had not taken him into account in their deal. I do not find the claimant's explanations satisfactory. Either the claimant was a knowing part of the drug deal or he was not. The notes of the immigration officer and more particularly the PIF are written in such a way that it is obvious that the claimant was not an unwitting bystander who was surprised when two people showed up and started a [redacted]. It appeared that the claimant's oral testimony was concocted in an effort to minimize his apparent involvement in a [redacted] and simply could not be reconciled with the story told in the PIF. I find that this discrepancy further undermines the claimant's credibility.

[8] During the second sitting of the hearing, the claimant stated that he was initially visited at his sister's house in [redacted] by six men, five who came to the door and one who remained with their cars. These men were armed with [redacted] as well as handguns. However, as noted at the hearing, the claimant stated during the first sitting that there were three men who came to see him at his sister's house. The claimant stated these were the men that he saw. It was then further noted at the hearing that in the PIF a "guy" comes to visit the claimant at his sister's house, not three or five plus one in the cars and the PIF does not mention that this "guy" was armed with an [redacted], a handgun or anything else. The claimant stated that they were in the cars and that he had only actually spoken directly with one man. I do not find the claimant's explanations satisfactory. The claimant was either visited by one, three or six men. The numbers simply do not match as the claimant gave three different versions of the same event. If more than one person had visited the claimant, I would have expected the PIF to say just that rather make repeated references to a single "guy". Furthermore, had the person or persons who visited the claimant actually been armed with [redacted] and handguns, I would have expected the PIF to say just that, particularly since the event itself is minutely detailed in the PIF. I find that these discrepancies to further undermine the claimant's credibility.

[9] In oral testimony the claimant stated that he only told the Sherriff that men were trying to kill him, but did not tell him who they were, or why they were after him and that the Sheriff knew nothing about these men. However, as noted at the hearing, this seemed quite odd that the Sheriff would not want to

know what was happening and even odder since the PIF states that the Sheriff, even though he allegedly knew nothing about what was going on other than the ranch had been shot up, told the claimant that he was dealing with extremely dangerous people and therefore he could not protect him. The claimant stated that some people do not want to get involved and that the men were better armed than the police. I do not find the claimant's explanations satisfactory. If the Sheriff really knew nothing about the men hunting the claimant, or their reasons for doing so, it makes no sense for the PIF to be written the way in that the Sheriff seemed to know much more of what the claimant was allegedly up against. I find that this discrepancy further undermines the claimant's credibility.

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[10] The claimant's testimony about what the Sheriff actually knew came up after he was questioned about the police report⁵ on file. It seemed odd that the report, while giving numerous details about the events that happened, would not state who was suspected of being involved or their motivation for attempting to harm the claimant. While the document would make sense if I believed that the Sheriff essentially knew nothing, as I have already said, I do not believe this would be the case. Furthermore, the document itself took an allegedly strange route to get to Canada. The claimant stated that the copy presented had been faxed to him by his sister in _____, which is evidenced by the _____ area code in the fax number at the top of the Spanish version of the report. When asked how it was that he received the document from his sister in _____, the claimant stated that he had left the original with a different sister in _____ and since she knew that the mail takes a really long time to get from Mexico to Canada, she sent it to the other sister in _____ who then sent it to the claimant. However, when it was noted at the hearing that it seemed unlikely that mailing a document from Mexico to the USA and then again to Canada would be faster than sending the document directly from Mexico to Canada, the claimant stated that his sister from Mexico was coincidentally traveling to _____ at the time and that she physically brought the document to _____. When asked why the document was not simply faxed from Mexico to Canada the claimant stated that he wanted to have the original. However, he went on to state that the original had been lost in the mail from _____ to Toronto and could not be found and that all he had was the faxed copy from _____. I do not find the claimant's explanations in this area satisfactory. Apart from the report being strangely silent on the motive for the claimant's problems, the claimant's testimony with respect to how the document got here simply did not make sense. If the claimant simply wanted a faxed copy of the document, I would have expected the document to be faxed from Mexico. Given the importance that the claimant placed upon the document if it had been mailed from whichever point it was allegedly mailed from, I would have expected a secure courier to have been used rather than what was apparently regular mail wherein the document disappeared. I find on a balance of probabilities that the police report was forged in an effort to bolster the claimant's claim and his reliance upon it further undermines his credibility.

[11] In oral testimony, the claimant stated that after he left his father's ranch, men were looking for him near both near his father's ranch and around his brother's house in _____. However, as noted at

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the hearing, in the notes of the immigration officer made at the time that the claimant made his claim, the claimant stated that the men who were looking for him did not know that he had gone to after leaving his father's . The claimant stated that the men knew that he had gone to and that it was the only place to look. I do not find the claimant's explanation satisfactory. If the men had indeed learned that the claimant had returned to , or had at least suspected that enough to search for him there, I would have expected the claimant to tell the immigration officer just that and not say that the men looking for him did not know he had gone to . I find that this discrepancy further undermines the claimant's credibility.

[12] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 97 of the *IRPA* fails.

Exclusion – Article 1F(b)

[13] The claimant pled guilty in an to the offence of , a Felony. The equivalent offences in Canada are (section) and (section). In Canada the maximum punishment is life in prison, indicating that the offences were considered by parliament to be quite serious. According to the documentation provided,⁶ the claimant was sentenced taking into account time already served to a prison term of 77 months to be followed by five years of probation. (The claimant never technically served the probationary period, however he was prevented from doing so due to his deportation to Mexico). This is a lengthy sentence particularly since it involved a guilty plea rather than a trial and that it took into account time already served. The lengthy sentence reflected the involved, i.e. The claimant was represented by State appointed counsel during his criminal proceedings so it could not be said that he pled guilty without knowing his legal situation. Counsel for the claimant encouraged me to ignore the recent decision of the Federal Court of Appeal in *Jayasekara*⁷ and instead look to the earlier Supreme Court of Canada decision in *Ward*⁸ since, for among other reasons, it was decided by a higher court. I do not find counsel's submissions on the point persuasive. As noted in *Jayasekara*, the caselaw that had built up with respect to Article 1F(b) was founded on the eligibility provisions in the former *Immigration Act*. Under the *IRPA* the eligibility provisions changed and the Federal Court of Appeal in *Jayasekara* is the highest court to analyze the issue under the current provisions. I find that *Jayasekara* is good law. While I do note that the claimant did serve the amount of his sentence that he was allowed to serve and he has apparently taken courses to improve himself, I find that these factors are far outweighed by the information noted above. I also note that throughout the hearing the claimant attempted to minimize

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his role in the , however, for the reasons given above in my credibility analysis, I simply do not believe his testimony. I find that there are serious reasons to believe that the claimant committed a serious non-political crime in the USA and as such the claimant is excluded pursuant to Article 1F(b) of the Convention.

NO CREDIBLE BASIS

[14] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION:

[15] I find the claimant is not a Convention refugee or a person in need of protection, that the claimant is excluded pursuant to Article 1F(b) and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

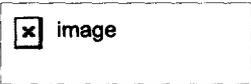
May 17, 2010

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1.
- 4 Exhibit R-2, Officer’s notes, December 11, 2008.
- 5 Exhibit C-3, p. 30.
- 6 Exhibit M-2, Judgment in a Criminal Case, p. 17.
- 7 *Jayasekara, Ruwan Chandima v. M.C.I.* (F.C.A, no. A-140-08), Létourneau, Sharlow, Pelletier, December 17, 2008, 2008 FCA 404.
- 8 *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

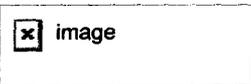


RPD File No. : TA8-24405



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA8-24747
TA8-25029
TA8-25067
TA8-25068

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile
	(a.k.a.	s.19(1)
	(a.k.a.)
	(a.k.a.)
Date(s) of Hearing	July 2, 2009 August 26, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 25, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Luis Antonio Monroy Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	(a.k.a.	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

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[1] (the male claimant), his wife, (a.k.a.), (the female claimant), and their minor children, (a.k.a.), and (a.k.a.), citizens of Mexico, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The male and female claimants met in . After marrying in 2002, they moved to , where the female claimant worked for the . In 2003, a number of personnel were fired from the office for their involvement in : . The female claimant transferred to a now vacant position in . Also transferring in were two senior officials, (" ") and (" "). In 2003, the female claimant learned from another employee that and were allowing the entry of goods without proper documentation and they were allowing trucks to move goods outside of the designated hours of operation. On 2003, and offered the female claimant a part in their smuggling activities which and other items. The female claimant threatened to expose them but they threatened her in return. The next day the female claimant found her car had been vandalized. When she went to the of the he offered to pay for the repairs to the car but advised her not to take action against and and advised her to get away. The female claimant resigned the same day. That evening called the female claimant to threaten her to keep quiet. While the claimants did go to the authorities the next day, they were advised by an official there that they should not lay a formal complaint because of the possibility of reprisals. Despite this, they did report the damage to the vehicle and listed and as possible suspects. On , 2003, the claimants moved back to . In the ensuing years, the claimants lived off the male claimant's earnings as a : . In .

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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2007, (" ") approached the male claimant at () and asked him to (). The male claimant agreed and (). However, he became uneasy as () never asked for written contracts, always paid in cash and the guests were usually heavily guarded and not from the local area. The male claimant came to suspect that he was () at (). In the fall of 2007, () asked the male claimant () at his wedding, with the date eventually being set for (), 2008. During the event the male claimant spoke to the manager who told him that () had paid her in cash and that () was a (). In () 2008, () asked the male claimant () at a luxurious party, but warned him to be discreet as many very important people from () would be there. The party took place on (), 2008, with the female claimant support for the male claimant's (). The claimants were surprised and uncomfortable when () and () took the microphone to welcome the guests. Both () and () noticed and approached the female claimant. One of () bodyguards forced the male claimant at gunpoint to (). () eventually approached the male claimant and threw a roll of money at his feet. Feeling humiliated and intimidated, the male claimant () during a break and the claimants left the party, leaving (). Not long after, () called to threaten the claimants with death for having abandoned the party. The next day the claimants consulted a lawyer who advised them to file a formal complaint. When the claimants' went to the authorities, the person interviewing them got up and said something on a radio. He then advised the claimants not to lay the complaint as it was dangerous. As the claimants drove away they noticed a black car following them. Someone in the black car shot at the claimants and hit one of their rear windows but the claimants managed to get away. The claimants moved to Mexico City the next day and stayed with an aunt. The male claimant traveled to Canada on (), 2008. He made a refugee claim on (), 2008. In early (), men claiming to be friends of the male claimant approached his mother-in-law to enquire about his whereabouts. Without thinking the matter through, she candidly admitted that he had moved to Mexico City. Later she realized this may not have

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been wise so she informed the female claimant. The female claimant and the children came to Canada on _____, 2008 and made refugee claims upon arrival.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Mexico were accepted at the hearing given that copies of their Mexican passports were on file.²

Nexus

[5] The claimants fear a criminal vendetta and as such their claims pursuant to section 96 of the *IRPA* fail for lack of nexus to the Convention refugee definition.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in the PIF, the female claimant received information that _____ and _____ were conducting illegal activities. In oral testimony, she stated that she then went to the _____ office after hours to see what she could find out, but left the area when she saw _____ and _____ vehicles in the parking lot, noting that it was odd that their cars were there "after

² Exhibit R-2, certified copies of passports received from Citizenship and Immigration Canada (CIC).
³ Exhibits C-1 to C-4, PIFs, as amended by exhibit C-5.

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hours". When I pointed out that the fact that she went to the office to conduct an investigation of and , the female claimant denied that she had conducted an investigation and had simply gone there one night and left and when challenged on the point, she stated that her actions were not even akin to "taking a step" in some form of investigation. In written post-hearing submissions, counsel noted that no useful information was gained by this investigation so it is not relevant. I do not find these explanations satisfactory. Despite the female claimant's attempt to minimize her actions, she was conducting an investigation. The claimants originally presented a very detailed narrative. A new detailed narrative was produced with many amendments. The amended PIF simply states that the claimant received the information and then the very next thing that happened is that she is offered a part in the criminal activities. Had the female claimant really conducted some form of investigation, official or otherwise, into the criminal activities and actually gone to the office and noted the cars parked there at a seemingly odd time (which seems to be useful information in and of itself), and given the level of detail included in the PIF, I would have expected some mention of it. That fact that it was not mentioned undermines the claimants' credibility.

[7] In the PIF, and offer the female claimant a part in their criminal activities which they specifically stated included the and other merchandise. However, as noted at the hearing, the female claimant only referred to and offering her a part in general smuggling and it was only late in her testimony that she mentioned . The claimant stated that she generally referred to " ". Counsel submitted that the claimant's initial answer was simply brief and that she gave specific details after she understood what she was being requested to say. I do not find these explanations satisfactory. While any form of smuggling is of course illegal, it is one thing to smuggle consumer products through the Customs process to avoid the payment of duties and taxes and another thing entirely to be involved in the . The fact that she was told of this highly illegal and dangerous activity in the initial offer, indicated that and were fairly confident in their positions. The female claimant was asked numerous times in numerous ways what and told her. Had they really stated right from the

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start that they were involved in the smuggling , I would have expected the female claimant to say just that at a much earlier point in her testimony. I find that the fact that she did not further undermines the claimants' credibility.

[8] In the original PIF narrative, the female claimant simply resigned from her job after she found her car vandalized. However, in the amended narrative, after the car is vandalized, the claimants meet with the of the office who nervously offered to pay for the damages and warned them to stay away from and . Furthermore, the female claimant stated in oral testimony that she was under the impression that the was actually involved in the smuggling activities of and . When it was noted that her belief that the was involved in the smuggling plot was not contained in the amended narrative, the female claimant stated that she had simply not provided that much detail and that she noted that he did not provide protection. When it was noted that this entire transaction was not included in the original narrative at all, the female claimant stated that there was a short amount of time in which to prepare the narrative and that it was simply an inadvertent admission. Counsel submitted that the relevant portion of the transaction is that the claimants did not receive help from the and that had been included in the amended narrative. I do not find these explanations satisfactory. It is one thing for two rogue employees to be involved in smuggling goods through a . It is another thing entirely for the manager of the office that they work for to be "in on it", which would indicate a much more . Had this really been the case, I would have expected some mention of this transaction in the original narrative as one would think the fact that the was involved would be fairly important in the claimants' minds. More importantly, if the female claimant really suspected that the was involved and not simply afraid of his rogue subordinates, I would have expected this information to be included in the detailed amended narrative. I find that these discrepancies, particularly the omission from the amended narrative, to further undermine the claimants' credibility.

[9] After being threatened, the claimants made a complaint to the authorities. However, no copy of the complaint was presented. While the authorities did have a record of the female claimant going to make a complaint, the actual complaint had been destroyed due to age. While the female claimant did state that she kept a copy of the complaint for a number of years, she had since destroyed it. When asked to clarify the contents of the complaint, the female claimant provided confusing testimony and stated, as per the PIF, that she initially mentioned being threatened, but eventually decided to only s.19(1) complain about damage to the vehicle and in a separate paragraph stated that and should be blamed should anything “ever happen” to the claimants. Counsel submitted that it was reasonable for the claimants to not retain a copy of the complaint and that much of what was said was speculation and that it is difficult to remember what one thought or said many years ago. I do not find these explanations satisfactory. It may be that the authorities do not permanently archive complaints, however, it did seem odd that the claimants would not keep a copy forever given that it was kept for seemingly “insurance” purposes. A copy would have been helpful given the confusing nature of the female claimant’s evidence. While it may be understandable for the claimants to not make a complaint re: the smuggling operation or even the threats against them because of a fear of reprisals; however, it made no sense for the claimants to report the damage to the vehicle and then out of the blue append a paragraph stating that if anything ever happens to us blame and , the very men that the claimants wanted to avoid complaining about. This was not a case where the female claimant appeared to have difficulty in remembering what transpired with the authorities, her account simply did not make sense. I find that this further undermines the claimants’ credibility.

[10] The PIF makes it clear that after the female claimant refused to participate in the smuggling operation their car was vandalized and they received a threat by telephone. However, as noted at the hearing, in the notes⁴ of the immigration officer made at the time that the male claimant made his claim, the male claimant makes reference to the female claimant almost being killed in 2003. The female claimant stated that she had felt

⁴ Exhibit R-2, CIC Etobicoke In-person Refugee Intake “Record of Examination”, p. 3.

threatened in 2003 and that the male claimant told her that the interpreter who had assisted the immigration officer, had seemed disinterested at the time. The male claimant stated that he had indeed said that the female claimant was almost killed, but explained that he had thought that if the female claimant had been in the vehicle at the time that it was vandalized, she could have been killed. Counsel submitted that the officer's notes are concise and the information included depends on the officer's writing style and that since the claimants' were shot at in 2008, they might state that they were in danger of being killed in 2003 as well. I do not find these explanations satisfactory. The brevity of the officer's notes, the writing style of the officer and whether or not the interpreter was disinterested are irrelevant, given that the male claimant admitted that he did tell the officer that the female claimant had been almost killed in 2003. However, the fact that the male claimant made that statement is simply not consistent with what I would have expected him to say. The claimants lived in an apartment and their car had been parked overnight in a garage. The car was vandalized overnight and the damage was only discovered the next morning when the female claimant was going to work. If this was indeed more than a random act of vandalism it appeared the vandal or vandals knew where to locate the claimants and more particularly their car. If they were intent on killing or harming the female claimant, it makes little sense that they would go the parking garage where her car was parked to scratch it up and not attempt to do some harm to her directly. The fact that the car was damaged would appear to make it more of a warning. I do not find it reasonable for the male claimant to describe the incident that the female claimant was almost killed, even in light of the alleged attempted shooting five years later. It appeared that the male claimant simply made an untrue statement to the officer. I find that this further undermines the claimants' credibility.

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[11] To say that the description of the male claimant's relationship with [redacted] evolved over time is a bit of an understatement. As noted at the hearing, in the original narrative there is only mention of the male claimant playing one party; the one where [redacted] and [redacted] attended. In the amended narrative, the male claimant actually [redacted] over time for [redacted], making observations about who attended these events. In oral testimony, but not in either narrative, the male claimant stated that while [redacted] in [redacted]

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faced criminals extorting them, however, he did not. The male claimant stated that the most important incident was the final party and that he was simply expanding on the information provided. Counsel submitted that the final party was the important one and that the fact the [redacted] were targeted for extortion did not directly affect the claimant. I do not find these explanations satisfactory. One would think that the degree of relationship between the claimants and the agents of persecution would have an effect on the likelihood that the agents of persecution would remain interested in harming the claimants in the future. In the original narrative, the male claimant works at what appears to be a one-time party for [redacted] and discovers there that it is a [redacted]. Given that the claimants simply ran away during the party, it made little sense that a vendetta would then be launched given that the claimants would have little information that would potentially harm anyone as they only knew that certain people attended a one-time party. However, in the amended narrative, the male claimant worked for [redacted] for a long time and had suspected the [redacted] as he observed a number of things over time. Had this really been the case, I would have expected some mention in the original narrative of [redacted] being some form of a regular client and that the male claimant at least suspected before the final party that [redacted] was involved in [redacted]. Furthermore, the fact that [redacted] faced extortion attempts while the male claimant did not, would seem to indicate that his relationship with [redacted] provided some form of "protection." If the male claimant's relationship to [redacted] was that close and as a result, he was insulated from crime, I would have expected some mention of this in at least the amended narrative. I find that these discrepancies with respect to the relationship between the male claimant and [redacted] to further undermine the claimants' credibility.

[12] Even in doubt was the timing as to when the male claimant discovered that [redacted] was involved with [redacted]. As noted at the hearing, in the original narrative, the male claimant finds this out at the final party (as mentioned previously, the only party mentioned) as a result of things that he overhears. In oral testimony, the male claimant reiterated that the amended narrative was correct in that [redacted] a series of events for [redacted]. He went on to state that while he suspected early on that these were [redacted], he never knew for sure that they were until the final party in [redacted] 2008. However, as

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noted at the hearing, the amended narrative states that on [redacted], 2008, [redacted] at [redacted] wedding, the manager of the banquet hall specifically told the male claimant that [redacted] was devoted to [redacted]. The claimant stated that while he had suspected that [redacted] was a [redacted], he did not know until the final party. He also stated that despite these strong suspicions he felt obligated to [redacted] out of fear. However, as noted at the hearing, this is not noted even in the amended PIF. The claimant stated that he was simply expanding upon the evidence contained in the narrative. Counsel submitted that the timing of when the male claimant knew that [redacted] was involved with [redacted] was not central to the claim. I do not find these explanations satisfactory. Throughout this area of testimony, it appeared that the male claimant was making up evidence as he went along in an attempt to reconcile points that just could not be reconciled. It made sense in the original narrative for the claimant [redacted] the party of [redacted] 2008 since he would not have known that [redacted] were involved. However, when it was noted that the male claimant had worked at a number of parties, he admitted that he had been "suspicious" for some time, but it was only at the end where he knew for sure. However, this led to the problem that it made little sense for the male claimant to keep playing at these parties if he knew that drug trafficking was involved. Furthermore, as noted in later questioning, the male claimant was specifically told that [redacted] was a [redacted] long before the final party, so it made no sense for him to only be "suspicious" at that point. Given such a direct statement, coupled with everything the male claimant had previously observed, his suspicions should have been confirmed and therefore, should have [redacted] at the parties. While the male claimant had stated that he felt afraid to [redacted] at [redacted] parties, this led to the further problem of him being afraid to [redacted] the parties being omitted from both narratives. If the male claimant felt obligated to [redacted] at these parties out of fear, given the level of detail contained in the narrative, I would have expected some mention being made of this. I find that these discrepancies further undermine the claimants' credibility.

[13] In the amended narrative, one of [redacted] bodyguards approaches the male claimant and, at gunpoint, demands that he [redacted] again. The male claimant confirmed orally that this was the only time that a gun was

pointed at him at the party. However, as noted at the hearing, in the notes of the s.19(1) immigration officer made at the time that the male claimant made his claim, the only people referred to are the female claimant's former colleagues (i.e.), that "they" pointed a gun at the male claimant's head and that they warned him to keep quiet about what he might see at the party. The claimant stated that he was intimidated by the immigration officer and as a result said things randomly out of order and did not realize how much detail was required. Counsel submitted that the officer's notes are brief, that the PIF is more detailed as a response to specific questions and the officer's notes may have been affected by matters of interpretation and through the officer's own processing. I do not find these explanations satisfactory. This is not a case of lack of detail; while not exceptionally lengthy, the notes of the immigration officer actually contain a high level of detail. While the claimant stated that he felt intimidated, the vast majority of the information contained in the form appears to be correct. As noted by counsel, the claimant was responding to an open-ended question (i.e. "Why?"), so the information that he gave was of his own choosing, not influenced by the way the question was posed. The descriptions simply did not match. It makes no sense if what really happened, that the claimant was threatened by a bodyguard at gunpoint to that this would somehow come out as one of the main agents of persecution pulling a gun on the claimant to warn him to keep quiet. Given that the immigration officer's notes were generally correct and fairly detailed, I do not see how the interpreter or the officer could somehow get such specific details so very wrong. I find that this contradiction further undermines the claimants' credibility.

[14] The male claimant stated at the hearing that his relatives had received calls asking for him and at least one other call mentioning that his mother had been kidnapped, even though this turned out not to be true. However, as noted at the hearing, the claimants did not amend their narrative to include this information. The male claimant stated that he did not know why he had not amended the narrative to include this information. Counsel submitted that these calls would have occurred not that long ago, after the amended narrative was prepared. I do not find these explanations satisfactory. The claimants were obviously aware that the narrative could be amended as a new narrative was produced a

month before the hearing. The male claimant not only stated that these calls occurred prior to our first sitting, but he felt that they were related to the problems that he had experienced. Given that these calls allegedly occurred over half a year after the claimants left Mexico, they would definitely indicate a continuing interest in the claimants by the agents of persecution. If this was really the case, given the claimants' knowledge that the PIF narrative could be amended, I would have expected a further amendment to include such important information. I find that this further undermines the claimants' credibility.

s.19(1) [15] While I do accept that the female claimant and someone by the name of worked at some point for the ; that her car was damaged in 2003; that she made a complaint to the authorities on some basis in 2003; that the male claimant was a ; that there are instances of corruption in the and that someone by name was arrested for matters not directly linked to the claimants; however, given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events with respect to persecution that the claimants alleged happened to them, actually happened, and as such, their claims pursuant to section 97 of the IRPA fail as well.

CONCLUSION

[16] As the minor claimants base their claims on that of the male and female claimants and membership in a particular social group, namely, the family, their claims must also fail. For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

November 25, 2009

Date



RPD File No. / N° de dossier de la SPR : TA8-24831
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile
		s.19(1)
Date(s) of Hearing	September 15, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	November 16, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Joseph L. Salsbury	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

[1] _____, a citizen of Trinidad and Tobago, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Trinidad. He experienced four incidents of crime, the first being when the claimant was robbed at gunpoint. While he reported the matter to the police nothing was done. The claimant was also robbed while working at a _____ and the robbers threatened to kill him. On another occasion, the claimant was robbed in broad daylight and thrown into a drain by the bandits. Finally, the claimant and his wife were robbed after leaving her workplace. While this incident was reported to the police, to the best of the claimant's knowledge, nothing was done. The police seemed generally unable or unwilling to act. The claimant came to Canada _____ 2002. He made a refugee claim on May 10, 2007. He fears that having spent so much time in such a wealthy country as Canada he will be perceived as wealthy and face an even greater risk of crime should he return to Trinidad.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Trinidad and Tobago was accepted at the hearing given that a copy of his Trinidadian passport was on file.²

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, Certified copy of passport received from Citizenship and Immigration Canada (CIC).

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony the claimant stated more than once that it was black people who had perpetrated all of the crimes committed against him and that black people generally committed crimes against Indian people such as the claimant. However, as noted at the hearing, there is no mention anywhere in the claimant's PIF that the crimes that had been committed against him had been racially motivated or had any racial aspect at all. The claimant stated that at the time that he filled out his PIF he did not want to include information that would make him seem racist. I do not find the claimant's explanation satisfactory. The claimant was represented by licensed counsel at the time that he filled out his PIF. At question 28 of the PIF, the claimant was given an opportunity to indicate the basis for the refugee portion of his claim. The box for "race" was left blank and instead the box for "membership in a particular social group" was ticked. This is further amplified in the narrative where not only is race not mentioned, but the claimant repeats that the Convention refugee aspect of his claim is based on his membership in a particular social group, specifically, "A victim of violent crime in Trinidad". Had the claimant really faced persecution on the basis, wholly or in part, of his race, I would have expected, particularly given his ease in making racially based comments at the hearing, to mention a racial aspect to his experiences in his PIF. The fact that he did not makes no sense and I find that this omission undermines his credibility.

[6] In oral testimony, the claimant stated that he went to the police approximately five times and that the police were predominately black and this fact made him uncomfortable. However, as noted at the hearing, the claimant's PIF makes no mention of the police being predominately black and this made him uncomfortable and only mentions him going to the police twice. The claimant stated that he only realized during the hearing that the police were predominately black and this made him uncomfortable and that he had been crying when he filled out his PIF and had so much to say that he could not think straight. I do not

³ Exhibit C-1, PIF.

find the claimant's explanations satisfactory. The claimant was represented by licensed counsel at the time that he filled out his PIF. The directions for filling out the PIF are quite clear in that all attempts to obtain protection are to be included, as well as any reasons that the claimant did not attempt to obtain protection. If the claimant really went to the police on five occasions, I would have expected him to mention that fact rather than only the two occasions mentioned in his PIF. Furthermore, had the claimant really felt as uncomfortable as he said about the race of the police officers and given that this seemed at the time to be a reason why the claimant was reluctant to go to the police, I would have expected some mention of that in his PIF as well. I find that these discrepancies further undermine the claimant's credibility.

[7] The claimant stated that he was afraid for his life when he arrived in Canada in 2002. However, he spent over four years in Canada before he made his refugee claim. The claimant stated that he did not fully learn about the refugee system until 2007, when he made his claim. I do not find the claimant's explanation satisfactory. During the years that the claimant was here, he applied to stay on Humanitarian and Compassionate grounds based on his ties to Canada, so he was not totally unfamiliar with the immigration system. Had the claimant really feared for his life, I would have expected that he would have made some enquiries with respect to how he could avoid going back to his country based on his alleged fear. I find that this more than four-year delay in claiming not only demonstrated a lack of subjective fear, but further undermines the claimant's credibility as well.

[8] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events with respect to persecution that the claimant alleged happened to him, actually happened, and as such, the claim pursuant to section 96 of the *IRPA* fails.

IRPA Section 97(1)(b)(ii)

[9] The claimant stated that given his seven-year stay in Canada, he would be perceived to be wealthy should he return to Trinidad and be therefore at a greater risk of

crime. There is no question that crime can be a problem in Trinidad. However, this is a risk faced generally by all people in Trinidad. The fact that the claimant would be perceived as wealthy and be more at risk of crime, merely alters the degree of the risk and does not change the nature of the risk in that it is a generalized one and therefore excluded from my consideration.⁴ Therefore the claim pursuant to section 97 of the *IRPA* fails as well.

NO CREDIBLE BASIS

[10] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[11] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

November 16, 2009

Date

⁴ *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. / N° de dossier de la SPR : TA9-00342

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		s.19(1) Demandeur(e)(s) d'asile
Date(s) of Hearing	October 29, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 22, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Adelso Mancía Carpio Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, a citizen of El Salvador, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in _____. He fears the _____, a _____ that has sophisticated operations throughout El Salvador. It is general knowledge that once the _____ (or the other _____) begin extorting money from a person, as they have done from many, one must pay or face death. The claimant was approached by two armed men from the _____ in _____ 2008. They demanded that he pay half of his salary to them every month. The claimant made the payments until _____ 2008. In _____, the claimant pleaded with men from the _____ that could not pay the same amount but they threatened him with death. The claimant knew of others who had been killed for failing to pay. He did not report the matter to the authorities out of fear and the fact that the police are corrupt and unable to deal with the _____. He did not attempt to live elsewhere in El Salvador since the _____ had such a sophisticated country-wide network and menaced people throughout the country. The claimant traveled through Guatemala, Mexico and the United States and arrived in Canada on _____, 2009, and made a refugee claim the same day. The claimant heard from family that men from the _____ had been told that he was out of the country. However, when they heard this they promised to kill him when they found him. The claimant knows this very thing happened to another person who had lived near him in El Salvador.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of El Salvador was accepted at the hearing given that a certified copy of his passport from El Salvador was on file.²

Nexus

s.19(1)

[5] The claimant fears the gang known as [redacted]. There are a number of Federal Court cases, which have held that victims of crime, corruption³ or vendettas⁴ generally fail to establish a link between their fear of persecution and one of the Convention grounds in the definition of Convention refugee. The Immigration and Refugee Board (the Board) has been upheld in its finding of lack of nexus, where the claimant was a target of a personal vendetta⁵ or where the claimant was a victim of crime.⁶

[6] The claimant's fear in this case is not linked to race, nationality, religion, real or imputed political opinion or to membership in a particular social group. While there was some evidence that the police were corrupt and took bribes from the [redacted], I find that the [redacted] or the [redacted] in general have not become so linked to the state apparatus that opposing them could be seen as some form of political opinion. While counsel noted that the [redacted] target those with the ability to pay them money, this is not an immutable characteristic, so this does not qualify as a particular social group. I find that the claimant is a target as a victim of crime or vendetta, and there is no link to a Convention ground. Therefore, the claim pursuant to section 96 of the IRPA fails.

Generalized Risk

[7] Section 97(1) of the IRPA states:

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ *Leon, Johnny Edgar Orellana v. M.C.I.* (F.C.T.D., no. IMM-3520-94), Jerome, September 19, 1995; *Calero, Fernando Alejandro (Alejandeo) v. M.E.I.* (F.C.T.D., no. IMM-3396-93), Wetston, August 8, 1994; *Vargas, Maria Cecilia Giraldo v. M.E.I.* (F.C.T.D., no. T-1301-92), Wetston, May 25, 1994.

⁴ *Marincas, Dan v. M.E.I.* (F.C.T.D., no. IMM-5737-93), Tremblay-Lamer, August 23, 1994; *De Arce v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 74 (F.C.T.D.); *Xheko, Aida Siri v. M.C.I.* (F.C.T.D., no. IMM-4281-97), Gibson, August 28, 1998.

⁵ *Rivera, Omar Martin Farro v. M.C.I.* (F.C.T.D., no. IMM-572-98), Tremblay-Lamer, February 22, 1999.

⁶ *Bacchus, Amit v. M.C.I.* (F.C., no. IMM-4679-03), Mosley, June 8, 2004; 2004 FC 821.

A person in need of protection is a person in Canada whose removal to their country... would subject them **personally**,...

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if...

(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**, [emphasis added]

[8] A generalized risk need not be experienced by every citizen.⁷ The word “generally” is commonly used to mean a “prevalent” or “widespread”.⁸ A generalized risk could be one experienced by a particular group or subset of the country’s population, thus membership in that category is not sufficient to personalize the risk.⁹ Just because the claimant is personally at risk does not mean that the risk could not be faced a generally by others from that country. In recent cases, the claimants feared extortion, violence, threats and reprisals from criminal gangs for failing to comply with their demands, yet were found to be victims of generalized violence and criminality.¹⁰

s.19(1)

[9] According to the documentary evidence on file,¹¹ the] in El Salvador, including the who are one of the , engage in many illegal activities, from drug and arms trafficking to carjacking, grand larceny and trafficking in persons as well as witness tampering, rape, and murder. Any risk faced by the claimant from the would be faced in every part of the country and is faced generally by all people in El Salvador.

[10] A generalized risk does not have to affect everyone in the same way. The Federal Court has upheld the Board in finding generalized risk for various victims of the gangs.^{12 13 14} While counsel

⁷ *Prophete, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Letourneau, Blais, Trudel, February 4, 2009; 2009 FCA 31; *Acosta, Dunis Joel Acosta v. M.C.I.* (F.C. no. IMM-3731-08), Gauthier, March 2, 2009; 2009 FC 213

⁸ *Orsorio, Henry Mauricio Gil v. M.C.I.* (F.C., no., IMM-585-05), October 27, 2005; 2005 FC 1459.

⁹ *Ibid*; *Marcelin Gabriel, Marie Nerland v. M.C.I.* (F.C., no. IMM-1816-09), Pinard, November 19, 2009; 2009 FC 1170.

¹⁰ *Acosta, Dunis Joel Acosta v. M.C.I.*; *Ventura De Parada, Ana Margarita v. M.C.I.* (F.C., no. IMM-1021-09), Zinn, August 27, 2009; 2009 FC 845; *Rodriguez Perez, Henry Sotero v. M.C.I.* (F.C., no. IMM-646-09), Kelen, October 14, 2009; 2009 FC 1029.

¹¹ Exhibit C-2, Exhibit R-1, *National Documentation Package*, July 30, 2010, item 7.2, *Response to Information Request*, number: SLV1003445.FE, June 3, 2010, and others.

¹² *Mejia, Rene Alberto v. M.C.I.* (F.C., no. IMM-3448-05), Blais, January 9, 2006; 2006 FC 12.

¹³ *Velasquez, Ventura Sarai Batres v. M.C.I.* (F.C., no. IMM-2299-08) de Montigny, February 2, 2009; 2009 FC 109.

¹⁴ *Ventura De Parada v. M.C.I.* (F.C., no. IMM-2299-09), Zinn, August 27, 2009; 2009 FC 845.

s.19(1)

for the claimant stated that the risk that the claimant faced was not a generalized one, I disagree. The claimant was quite clear in his evidence that the _____ and the _____ in particular extort an extremely large number of people and conduct their criminal activities throughout El Salvador. Unfortunately, all people are at risk of this crime in El Salvador. It is true that the _____ target people whom they perceive have the capability of paying. However, it would not make sense for them to target people whom they perceived as not have the capability of paying. Even if the claimant were to face even more targeting due to a perception of wealth given his time out of the country, these factors merely alter the degree of the risk, not the generalized nature of it.¹⁵

[11] Therefore, I find that, on a balance of probabilities, the claimant is not a person in need of protection and the claim pursuant to section 97 of the IRPA fails.

CONCLUSION

[12] I find the claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

Dec 22, 2010

Date

¹⁵ *Prophete, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Letourneau, Blais, Trudel, February 4, 2009; 2009 FCA 31.



RPD File No. / N° de dossier de la SPR : TA9-01154
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)s d'asile s.19(1)
Date(s) of Hearing	November 18, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	January 14, 2011	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Michael Campbell	Conseil(s) du / de la / des demandeur(e)s d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)s désigné(e)s
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] _____, who states that he is a citizen of Venezuela, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (*IRPA*).

ALLEGATIONS

[2] The claimant was born and raised in Venezuela. He was sexually abused and raped by his step-father starting at the age of seven. Given that his parents had separated long ago, he moved to his father's house. One of his uncles eventually discovered that the claimant was homosexual and as a result the uncle hit the claimant and cut him. When the claimant's father died his uncles kicked him out of the house as they did not accept his sexuality and felt it damaged the reputation of the family. The claimant moved back in with his mother. He completed a _____ and studied _____. While he worked in a _____ he was fired for not being what they expected. The claimant then worked for his mother for approximately five years. Throughout he faced discrimination and offensive words from others and threats from his family to kill him to clean the good name of the family. The claimant traveled through Mexico and the United States but was detained by American immigration officials in Buffalo when he tried to go to Canada. After being released he worked in New York City for many months. He then traveled to Quebec on _____, 2008, but used a different name at the border. He made a refugee claim on _____, 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

Identity

[4] The claimant's identity as homosexual was accepted at the hearing. While the claimant did not present a passport, given the documents that the claimant did present² I find, on a balance of probabilities, that the claimant is Venezuelan.

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ s.19(1) (PIF) and the other documents available. For example, in oral testimony the claimant stated that it was his father's friend that cut the claimant's arm. However, as noted at the hearing, the PIF states that it was one of the claimant's uncles, who did this. The claimant stated that they had worked together and that he had forgotten to mention involvement in this incident. I do not find the claimant's explanation satisfactory. The PIF was quite definite with respect to who cut the claimant's arm. Had two people actually participated, I would not have expected the PIF to have been written in the way that it was. I find that this discrepancy undermines the claimant's credibility.

[6] Throughout the claimant's oral testimony it appeared that was one of the main agents of persecution that he feared. However, as noted at the hearing, is not mentioned at all in the PIF. The claimant stated that he had been nervous when he filled out his PIF. I do not find the claimant's explanation satisfactory. The claimant had left Venezuela months earlier and had several weeks to fill out his PIF in concert with a licensed immigration consultant. I do not see how nervousness could explain the complete lack of mention of a figure so central to the claimant's life. I find that this discrepancy further undermines the claimant's credibility.

[7] The claimant stated in oral testimony that he actually had two passports. The first he lost while crossing a river to enter the United States when the current pulled it out of his hands. He stated he then obtained a second passport which he used to board a plane from New York City to

² Exhibit C-2

³ Exhibit C-1, as amended by C-1(a)

Buffalo and that this passport had later been left in New York City. However, as noted at the hearing, the PIF states that the claimant never had a passport at any time.⁴ The claimant stated that he told the person filling out the PIF with him about the passports but that person told him it did not matter. I do not find this explanation satisfactory. The claimant swore that his PIF had been interpreted to him and that it was accurate. The question is clearly worded and even if the claimant could not recall all of the particular details of each passport (e.g. date of issue, etc.) I would have expected them to be mentioned here had they existed. I find that this discrepancy further undermines the claimant's credibility.

[8] The claimant stated that he was detained by American authorities at a checkpoint after getting off the plane in Buffalo, that he could not recall details about his detention beyond his bed number, that he did not make an asylum claim in the United States since his rights were taken away for illegal entry, that he did not know on what basis he was released from detention after a bond was paid, that he returned to New York City out of fear and that he left all of his American immigration documents in New York City. As noted at the hearing, on a domestic flight from New York City to Buffalo there would have been a checkpoint in New York City where the claimant boarded the plane, not Buffalo. The claimant stated he has no visa in the passport that he used. Furthermore, as declared at the hearing, it is within my specialized knowledge that while some rights are taken away if someone enters the United States illegally, there is still the possibility of making an asylum claim to prevent deportation. The claimant then stated that official told him to make an asylum claim and that he simply did not want to. As noted at the hearing, this totally contradicted the claimant's earlier testimony. The claimant stated that he wanted to go to Canada. However, when the claimant was asked why he simply didn't walk across one of the Buffalo area bridges into Canada the claimant said he returned to New York City out of fear of being deported. None of the testimony in this area makes any sense. The claimant was extremely vague and evasive throughout this area of testimony. It should have been a fairly simple matter for the claimant to describe how he came to the Buffalo area, how he was detained, how he was released and know whether or not he made an asylum claim. If the lack of a visa in his passport was the problem, he would have been detained in New York City, not Buffalo. If the claimant really had been detained the details of that detention should have been far clearer in the claimant's mind and it makes no sense for him not to know the basis for his release. It made no sense that the claimant was

⁴ Exhibit C-1 PIF, question 13

inconsistent with respect to whether or not he could have made an asylum claim. It made no sense at all that the claimant, who allegedly wanted to come to Canada, would be literally across the Niagara River from Canada after being released and then out of some "fear" return to New York City to work for a number of months. It makes no sense at all for the American authorities to assist him in doing this if he had no status or other permission to remain in the United States. I find that these numerous inconsistencies, attempts at evasion and simple implausibilities to further undermine the claimant's credibility.

[9] Given the serious discrepancies with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened. Even if the police report⁵ that the claimant submitted were found to be genuine, based on the serious problems in the evidence I still find, on a balance of probabilities, that the claimant's story of continuing risk from his family and their associates to not be true.

Internal Flight Alternative (IFA)

[10] While I simply do not believe the claimant's evidence, I turn now to the claimant's profile as homosexual. In *Rasaratnam*,⁶ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

[11] With respect to the first prong of the test, the claimant would return to the international airport in Caracas so there would be no need to return to his former hometown or other areas of the

⁵ Exhibit C-2

⁶ *Rasaratnam v. Canada* (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.).

country. There is no doubt that some incidents of violence and discrimination can and do occur in Venezuela, however the documentary evidence⁷ on file states:

“The constitution provides for equality before the law of all persons and prohibits discrimination based on sex or social condition. On this basis, the Supreme Court ruled in March 2008 that no individual may be discriminated against by reason of sexual orientation in any way that implies treatment in an unequal fashion. This prohibition was generally respected in practice.”

[12] Further, the documentary evidence⁸ states that homosexuality is legal in Venezuela and is home to a thriving gay community. While problems are described in the countryside, “in Caracas things are pretty well liberated”. There are annual gay pride parades in Caracas. While problems are noted in some dealings with the authorities, I find that, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in Caracas.

[13] With respect to the reasonableness of the claimant moving to Caracas, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁹ The claimant has a university level education and several years work experience in several jobs. The claimant stated that the reason why he could not go to Caracas (apart from his family and their associates, allegations which I do not believe) was the general crime rate in Caracas. I note that general crime is a risk faced generally by others in Caracas and as such is precluded from my consideration by section 97(1)(b)(ii) of the *IRPA*. I find that it would not be unduly harsh for the claimant to relocate to Caracas and as such the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is at risk of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

⁷ Exhibit R-1, Item 2.1 DOS

⁸ Exhibit R-1, Item 6.1 and for this entire paragraph

⁹ *Ranganathan v. Canada* (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.).

CONCLUSION

[14] I find the claimant is not a Convention refugee or a person in need of protection

(signed)

“David McBean”

David McBean

January 14, 2011

Date



RPD File No. / N° de dossier de la SPR : TA9-01499
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	(a.k.a.)	Demandeur(e)(s) d'asile
		s.19(1)
Date(s) of Hearing	October 20, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 11, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	No Counsel	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

REASONS AND DECISION

[1] a citizen of the United States of America (USA), claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA). As there was no counsel to represent the claimant, I reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process.

ALLEGATIONS

[2] The claimant was born and raised in , a about two and a half hours . In addition to his full time job, he worked part time as a with the small . As part of his duties he centered around a . Unfortunately, the claimant eventually bore the brunt of a conspiracy launched by various officials and others against him. The claimant was charged with and jailed. However, those conspiring against the claimant were eventually removed from office. As part of a plea agreement, the claimant pled out to and was released. Once released, however, they also publicized the fact that he had been . The claimant's Canadian wife and their young son had moved back to Canada while the claimant was in jail. Upon release he went to live at his mother's house. One night he heard the back door open and he confronted an intruder armed with a knife. The claimant managed to fight off the intruder who escaped. The claimant summoned the authorities who noted that the phone lines to the house had been cut. The claimant was advised to move for his own safety, particularly to Canada, since the gang members would have difficulty in crossing the border. The claimant came to Canada on 2008. He made a refugee claim on 2008.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be

¹ As enacted by S.C. 2001, c. 27.

subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the USA was accepted at the hearing based on his testimony and the documentation on file.²

Nexus

[5] The claimant fears potential violence at the hands of gang members based on
The claimant conceded and I find that there is no nexus to the Convention refugee definition and as such the claim pursuant to section 96 of the *IRPA* fails.

State Protection

[6] Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails on the issue of state protection. While it is unfortunate that the claimant is less trusting of the authorities given his own experiences with the legal system and the high profile corruption allegations leveled against various public figures in no evidence has been presented that the various levels of police in would not assist the claimant if he called upon them. In fact, as conceded by the claimant, if he were to call upon the authorities in he expected that they would respond to his aid as they had in the past after the break-in at his mother's house. Furthermore, while the claimant stated that the would act on an opportunity to kill him should the opportunity present itself, they were not actively pursuing him at this time. While the possibility of the claimant testifying at future criminal proceedings was raised, it was also noted that the witness protection program would be available should that happen. I find on

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

a balance of probabilities that the claimant has failed to rebut the presumption of state protection and as such the claim pursuant to section 97 of the *IRPA* fails.

Humanitarian and Compassionate Consideration

[7] The claimant's situation may be compelling from a Humanitarian and Compassionate perspective. He initially hoped that his wife would be able to sponsor him, however, she became unable to work due to disability and therefore ineligible to go through with the sponsorship. Since then, the claimant had been attempting to support both his wife and youngest son in Canada. However, applications to stay in Canada on a Humanitarian and Compassionate basis must be made separately to another government department, and I have no jurisdiction to consider such grounds.

No Credible Basis

[8] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[9] For all these reasons, the claim is rejected. The claimant is not Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

“December 11, 2009

Date

RPD File No. / N° de dossier de la SPR : TA9-02024

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

June 18, 2009

Date(s) de l':

Place of Hearing

Toronto, Ontario

Lieu de l':

Date of Decision

July 3, 2009

Date de la

Panel

David McBean

**Counsel for the Claimant
(s)**

No Counsel

**Conseil(s) du / d
demandeur(e)(s)**

Tribunal Officer

J. Ross

Agent(e) de

**Designated
Representative(s)**

Représentant(e)(s) de

Counsel for the Minister

Nil

Conseil du

s.19(1)

[1] a citizen of Spain and Peru, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] As there was no counsel to represent the claimant, a Refugee Protection Officer (RPO) reviewed the procedures and the issues with the claimant and the Designated Representative prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process.

ALLEGATIONS

[3] The claimant lived in Peru. The claimant's father died in 2001. His mother is mentally ill and has attempted to harm the claimant on more than one occasion. In 2007, the claimant's aunt sent the claimant's mother to Spain to live. The claimant's brother in Spain took her to a mental institution where she remains on an indefinite basis. In 2007, the claimant was forced to leave the convent that he had been living in as the nuns only accepted children up until the age of 15. The claimant then fell in with a bad crowd who sold drugs. The claimant faced attempts at physical and sexual abuse at the hands of the drug dealers. When the claimant complained to the police in 2008, they arrested three of the drug dealers; however, they were released a few days later. Soon after, in 2008, men broke into the claimant's room and attacked him, only to be scared off by a neighbour. The claimant travelled to Canada on 2008. He made a refugee claim on 2009.

DETERMINATION

[4] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. In coming to this determination, I have considered the Chairperson's *Guidelines on Child Refugee Claimants: Procedural and Evidentiary Issues*.² My reasons are as follows.

ANALYSIS**Identity**

[5] The claimant's identity as a citizen of Spain was accepted at the beginning of the hearing as a copy of his Spanish passport was on file.³

Country of Reference

[6] Claimants must establish their claim with respect to all countries of which they are a citizen. The focus of the hearing and of these reasons is Spain.

Objective Basis/State Protection

[7] Even if I were to accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as there is no objective reason for the claimant to fear going to Spain. No evidence was presented that the drug dealers that caused the claimant harm would attempt or even be able to follow him to Spain. Both the claimant who testified on his own behalf and is now age 17, and the Designated Representative, who also testified, were asked in numerous ways if the claimant had anything to fear in Spain. The claimant would only state that unknown people may attempt to harm him. However, the claimant could identify no reason that anyone in particular would want to harm him, or that there would be any reason for him to be targeted on any basis. These fears appear to be of general crime and are excluded from my consideration pursuant to section 97(1) of the *IRPA*.

[8] Only after it was made clear that I have no jurisdiction to consider Humanitarian and Compassionate factors, did the Designated Representative state that if the claimant's mother were to be released from her mental institution and she managed to find the claimant, she may try to do him harm as her mental illness has caused her to do so in the past. Even if the claimant were to experience problems at the hands of his mother, as conceded by the Designated Representative, the police and related family services agencies in Spain would be there to intervene and provide effective protection. This is confirmed by the documentary evidence which states, amongst other things, that, "The government was strongly committed to children's rights and welfare".⁴ Even if the claimant did have cause to fear his mother, I find that the claimant has failed to rebut the presumption of state protection.

Humanitarian and Compassionate Consideration

[9] There were many reasons noted at the hearing as to why the claimant should be allowed to remain in Canada on a Humanitarian and Compassionate basis. The Designated Representative appeared to express surprise that these factors could not be considered in my decision, however, as I noted at the hearing, I have no jurisdiction to consider them. Applications to stay in Canada due to Humanitarian and Compassionate reasons are the responsibility of another department and must be filed separately.

CONCLUSION

[10] For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

"David McBean"

David McBean

July 3, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 Guidelines issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*, Immigration and Refugee Board, Ottawa, Canada, September 30, 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-3, information received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit R-1, *National Documentation Package*, Spain, March 30, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.



RPD File No. : TA9-02024



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA9-02324

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s) d'asile
Date(s) of Hearing	November 9, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 10, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Maria Pereyra	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

been presented that gang members involved in that attempted theft have a lingering interest in the claimant. Given the passage of eight years I find, on a balance of probabilities, that the people who attempted to steal the claimant's motorcycle would have no continuing interest in him today.

[7] The claimant also mentioned that he was afraid of the general crime rate in Guatemala, however even if the claimant were to experience crime once again in Guatemala this is a risk faced generally by others and is precluded from my consideration by section 97(1)(b)(ii) of the *Immigration and Refugee Protection Act*. Even if the claimant were to face increased targeting for crime due to his long stay abroad this merely alters the degree of the risk not the nature of it.³ There being no other evidence which would indicate that the claimant is at risk of any of the other risks delineated in section 97 of the *Immigration and Refugee Protection Act* the claim pursuant to that section fails as well.

NO CREDIBLE BASIS:

[8] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore, there is no credible basis for the claim.

CONCLUSION:

[9] The claimant is not a convention refugee or a person in need of protection and there is no credible basis for the claim.⁴

(signed)

“David McBean”

David McBean

December 10, 2010

Date

³ *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), *Létourneau, Blais, Trudel*, February 4, 2009, 2009 FCA.

⁴ Edited for syntax, grammar, and the insertion of caselaw.



RPD File No. / N° de dossier de la SPR : TA9-02383

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	October 15, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 10, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Mario D. Bellissimo Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

Reasons and Decision

s.19(1)

[1] , a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant did not have a good relationship with her parents. In 1979, when she was 18 years of age, they forced her to marry . They lived on a farm in that had been gifted to him by his family. Her marriage to was not good from the start as he was an alcoholic and he treated her like a slave. While the claimant raised three children, , abused her mentally and physically, even threatening to smash her head into a wall. The claimant also feared brother, who was violent and had even stabbed his own wife. In 1997, after the children were older, the claimant came to Canada to visit her family for six months in the hopes that the situation would cool down. However, upon her return to Poland in 1998, the claimant found the situation even worse. The claimant never reported her situation to the authorities as she never sustained "serious" injuries and such matters are not generally given consideration. also had contacts with the local police. In 1999, the claimant returned to Canada to stay. Her permission to stay in Canada expired in 1999. In 2001, she initiated divorce proceedings in Ontario and her petition was granted in 2002. In 2003, she was advised to submit an application to stay based on Humanitarian and Compassionate grounds and she did so in 2004, however, this application was eventually turned down. The claimant heard in 2007 that planned to do her harm should she return to Poland. She made a refugee claim on 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Poland was accepted at the hearing given that a copy of her Polish passport was on file.³

Credibility

s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that [redacted] knew all [redacted] members of the local police force as they [redacted]. She went on to state that while these officers did not witness her abuse directly, they were aware of it as they saw her black eyes and other injuries. She stated that after they observed her condition, they turned to each other and left. However, as noted at the hearing, the fact that the local authorities were aware that she was being abused and did nothing in response was not contained in her PIF. The claimant stated that she could not remember everything when she filled out her PIF. I do not find the claimant's explanation satisfactory. The directions for filling out the narrative portion of the PIF are quite clear in that if the claimant made no efforts to obtain protection from the authorities, the reasons why should be explained. The claimant's narrative is quite detailed and is almost seven pages long. While the PIF does mention that [redacted] has friends in the local police force, it only states this in the context of the claimant fearing that [redacted] friends would tell him if she had complained about him. If the police officers had actually observed her injuries and after turning to each other simply walked away, this

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

³ Exhibit R-2, Certified copy of passport received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit C-1, PIF, as amended by C-2.

would give anyone the impression that complaining to them would likely be fruitless. For the claimant, who was represented by counsel when she filled out her detailed PIF, to not mention this makes no sense. I find that this omission undermines the claimant's credibility.

s.19(1)

[6] The claimant stated at the hearing that [redacted] brother stabbed his wife to death and avoided legal consequences by paying off another man to take criminal responsibility for the act. However, as noted at the hearing, the claimant's PIF only indicates that

[redacted] brother stabbed his wife and there is no mention of her being killed, or that he managed to avoid being found responsible. The claimant stated that she had been too ashamed to be part of a family where such a thing had happened and that she had only recently been reminded of the incident when her sister sent her a letter. I do not find the claimant's explanation satisfactory. The claimant stated that she feared not only [redacted] but his brother as well. If the brother had really murdered his wife and somehow gotten away with it, indicating that he might act against the claimant with impunity as well, I would have expected the claimant's detailed seven page narrative to say just that, rather than say he simply stabbed his wife and was convicted in an unrelated break and enter. I find that this discrepancy further undermines the claimant's credibility.

[7] When asked about the possibility of relocating to Warsaw, the claimant stated that she could not get help from the authorities in Warsaw should [redacted] attempt to cause her problems there because they would refer her complaint to the local authorities where

[redacted] lived. When it was noted that the claimant had not lived on the farm for 10 years, she would be living in Warsaw, [redacted] would have traveled to Warsaw and the problems would be occurring in Warsaw, the claimant insisted that she had heard through the media it was no use for women to attempt to escape to another city for the reasons she cited. I do not find the claimant's explanation satisfactory. As conceded by counsel for the claimant, nowhere in the documentary evidence does it indicate that the claimant would be dealt with in the manner that she alleged. It makes absolutely no sense for the authorities in Warsaw to refer complaints to a rural jurisdiction when all of the events were occurring in Warsaw. It appeared the claimant was simply inventing testimony to get around the fact

that her husband only had alleged influence with his friends on the small local police force where he lived. I find that this further undermines the claimant's testimony.

[8] After going to Warsaw twice in order to get two separate visas, the claimant arrived in Canada for good in 1999 and stayed here until 2007 before making a refugee claim. The claimant stated that she made efforts to obtain immigration advice in 2003 and made an application to stay on Humanitarian and Compassionate grounds in 2004, albeit unsuccessfully. I find that this behaviour is not consistent with what one would expect for someone if truly afraid for their life. If the claimant were truly afraid for her life, I would have expected her to make some efforts to obtain protection during the almost eight years of living in Canada, the vast majority of time without status. I am mindful that the claimant has had limited education. However, I note that she was sophisticated enough to ask for and receive a divorce while in Canada; make two separate trips to Warsaw to get two visas (albeit long-expired); run her own business in Canada where she does not speak the dominant language and be represented by counsel (albeit another counsel for several years). I find that this extreme delay in making a refugee claim not only demonstrates a lack of subjective fear, but also further undermines the claimant's credibility.

[9] While I am mindful of several corroborative letters⁵ from various members of the claimant's family, I give these letters little weight given that they are from explicitly non-objective sources who would have an interest in bolstering the claimant's story.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened, and as such, the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well. While I am also mindful of the psychological evidence⁶ on file, I note that this evidence is based on a story I simply do not believe. Even if the claimant does require

⁵ Exhibit C-3.

⁶ Exhibit C-3, p. 15.

further treatment as stated, no evidence was presented that such treatment could not be obtained in Poland.

Internal Flight Alternative (IFA)

[11] Even if my analysis with respect to credibility should prove to be incorrect, the claim still fails as I find in the alternative that a viable IFA exists in Warsaw. In *Rasaratnam*,⁷ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

s.19(1)

[12] With respect to the first prong of the test, the claimant would return to the airport in Warsaw so there would be no need to return to . While counsel made reference to it being difficult for women to leave abusive relationships and that domestic violence still attracts some form of stigma in rural areas, I do not see how these factors would be major factors for the claimant. The claimant did leave her spouse. She has lived in Toronto, a large urban area for the last 10 years and the proposed IFA is Warsaw, another large urban area. After an absence of a decade, would not have any way of knowing that the claimant was returning to Poland. While the claimant speculated that her grandchildren might innocently tell him that they had seen their grandma in Poland, it would be difficult to imagine that they would provide him with a detailed address. Even if were to find out that the claimant had returned and managed to locate her, she could still call upon the authorities for help. While the claimant stated that he was friends with the few local police officers in his rural area, no evidence was presented that he would have any influence in Warsaw. While the claimant stated that she had heard from others

⁷ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

s.19(1)

that any complaint she makes in Warsaw about _____, would be referred to the local police that had jurisdiction in the rural area where he lives, and as I noted earlier, this is simply not supported anywhere in the documentary evidence nor in logic. At that point, the claimant would be living in Warsaw and all the events would be taking place there, so it would be the authorities in Warsaw that would deal with her situation. While the documentary evidence does indicate that domestic violence can be a serious problem in Poland, it also notes that the increase in reports over the last 10 years is primarily due to heightened police awareness, particularly in urban areas, as a result of media campaigns and NGO efforts.⁸ The documentary evidence also notes the existence of shelters for victims of domestic violence, domestic violence centres that offer medical, psychological and legal assistance for victims of domestic violence.⁹ Given the current documentary evidence, I find that, on a balance of probabilities, Warsaw does provide a safe IFA for the claimant. The claimant has provided insufficient evidence to rebut the presumption of state protection in Warsaw.

[13] With respect to the reasonableness of the claimant moving to Warsaw, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.¹⁰ I am mindful that the claimant is 48-years-old, has eight years of education and only farm experience in Poland. However, she has been entrepreneurial enough to start her own _____ business upon her arrival in Canada in 1999 which is still going. The claimant managed to do this in a large city where she did not even understand the dominant language of English. While the claimant stated that employment centres in Poland generally concentrate on helping younger people, no evidence was presented that they would refuse to help the claimant. While the claimant stated that fewer people hire _____ in Poland and when they do, they tend to hire younger people; it should be noted that that there are other jobs that the claimant might perform, even if only at low level. I also note that she would be able to look for and work in Polish, a language in which she is fluent. I find that it would not be unduly harsh for the claimant to relocate to Warsaw and as such her claim pursuant to section 96 of the *IRPA*

⁸ Exhibit R-1, *National Documentation Package*, March 25, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, section 5, "Women".

⁹ Exhibit R-1, tab 2.1, *Country Reports on Human Rights Practices for 2008*, section 5, "Women".

¹⁰ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

fails. There being no other evidence that would indicate that she is at risk of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well.

Compelling Reasons

[14] While counsel did make reference to the doctrine of compelling reasons, I find that it does not apply in either branch of analysis. In the first branch, I simply do not believe the claimant's story. In the second, I find that her treatment, while regrettable, does not rise to that of "appalling and atrocious" for the doctrine of compelling reasons to apply.

CONCLUSION

[15] For all these reasons, the claim is rejected. The claimant is not Convention refugee or a person in need of protection.

(signed)

"David McBean"

David McBean

December 10, 2009

Date



RPD File No. / N° de dossier de la SPR: TA9-02515
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	(A.K.A.)	Demandeur(e)(s) d'asile s.19(1)
Date(s) of Hearing	April 9, 2010 September 17, 2010 October 28, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	December 22, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Jonathan E. Fedder Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	R. Gould	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Mary Kramar	Conseil du ministre



[1] (the claimant), a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Mexico City. From 1980 onwards, he worked as a at an institution that was both a On , 2006, one of the claimant's came to see him. She was upset and suicidal over a dispute with her father over a The claimant comforted her and told her to come back the next day when they would have more of a chance to talk. The next day, a male came to the claimant and asked him to help his girlfriend, who was struggling with bulimia. The claimant knew that and were also in a relationship. and stayed after class and the claimant spoke to them separately. He told that there were many people starving in the world and that he did not understand why she would not eat properly and that she should choose between her boyfriend and became angry and waited outside the room. said the dispute had been resolved. However, when the subject of suicide was mentioned she became upset and the claimant kissed her on the forehead. On 2006, another told the claimant that they had heard a radio report which alleged that the claimant had sexually touched two of his students. The claimant had heard nothing from the police or his , whom he was not on good terms with. The claimant and a union representative attempted to meet with the but they refused given that their lawyers were not present. It was only two months later that the claimant learned that criminal charges had been filed against him that morning. Over time, several meetings took place between the claimant, his non-lawyer union representative, the , and the girls. Each time father would threaten the claimant when they went outside. In 2006, the claimant was summonsed to the offices of the Judicial Police. The claimant retained a lawyer and attended as directed and provided a declaration. In , the claimant began receiving threatening calls. While the claimant reported these calls to the authorities, they took no action. In 2007, the claimant was suspended from his . In 2008, the claimant was attacked near his house by an unknown man who beat him and said that he would pay for what he had done. The claimant did not go to the authorities to report this attack since he thought it would be fruitless given he did not know the identity of his

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

s.19(1)

attacker. The claimant sought psychiatric help in 2008. In 2008, the claimant was arrested and charged with sexually assaulting the two . After being detained for 24 hours, he was released on bail. Over the next several months, the claimant and other witnesses made various declarations. In 2008, a judge found the claimant not guilty of sexual assault. Instead, the judge found that the claimant had inflicted a “moral damage”. The claimant was ordered to pay pesos (a little under Canadian) restitution or serve nine months in jail. The claimant was suspended from for five years. The claimant attempted to appeal the decision but was unsuccessful and was unable to pay the money since he had trouble finding work. As the threats continued the claimant came to Canada on , 2009. While he initially stated that he was a tourist, after some initial questioning he told the Immigration Officers that he was actually fleeing Mexico and made a refugee claim on the day of his arrival.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant’s identity as a citizen of Mexico was accepted at the hearing given that a certified copy of his Mexican passport was on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant’s evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant gave extensive testimony about the and several people, named and unnamed that were part of a group of people that were motivated to harm the claimant and they seemed to be one

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, as amended by C-1(a).

s.19(1)

of the main sources if not the major source of the claimant's problems going forward. However, as noted at the hearing, the PIF only mentions problems at the hands of the family of one of the girls. The claimant stated that his counsel had told him to be concise in his PIF and that he could not have included all of the details. I do not find the claimant's explanation satisfactory. The claimant described a long-standing elaborate dispute with the _____ and those aligned with him and seemed fairly certain in suspecting their involvement of in not only what had befallen him in the past but would also face in the future. Had this really been true, I would have expected extensive explicit mention of the involvement of these people in the claimant's plight and their potential to cause further problems, rather than only referring early on in the PIF to suspecting the _____ being behind the initial allegations. I find that this discrepancy undermines the claimant's credibility.

[6] In oral testimony, the claimant stated that after he was beaten in _____ 2008, he went to the authorities to attempt to file a report but once there he was told that he could not since he did not know the identity of the person that assaulted him. However, as noted at the hearing, in the PIF, the claimant did not go to the authorities to file a report since he thought it would be useless given he did not know the identity of his attacker. The claimant stated that perhaps there had been a faulty interpretation or a problem with his memory and he had confused different events. I do not find the claimant's explanation satisfactory. This was the one time mentioned in the PIF that the claimant was physically harmed. The PIF was not simply silent on the point; it directly contradicted the claimant's testimony about whether or not he approached the authorities. If the claimant really had approached the authorities about such a significant incident only to be turned away, I would have expected the PIF to say just that. I find that this discrepancy further undermines the claimant's credibility.

[7] In information⁴ provided to the Immigration Officer at the time that the claimant made his claim, the claimant stated that the "Ministry" (meaning the Public Ministry/Justice system) had been bribed to take action against him. In oral testimony, the claimant stated that this influenced his conviction. However, as noted at the hearing, none of this information was contained in the PIF. The claimant stated that many things had been left out of the PIF and that he had mentioned corruption. I do not find the claimant's explanation satisfactory. The directions for filling out the

⁴ Exhibit R-2, Claim for Refugee Protection in Canada.

PIF are quite clear in that all efforts to obtain protection from the authorities are to be detailed and if efforts are not made the reasons should be given as well. If the justice system or portions of it had accepted bribes to act against the claimant, this obviously would have affected his dealings with the authorities and the charges against him. It makes no sense that this would be some minor detail to be omitted from a PIF that was extremely detailed on other points. I find that this discrepancy further undermines the claimant's credibility.

[8] The claimant stated orally that his union was bribed to act against him as well. He stated that the local representative provided no help and the union representative appeared once and then abandoned him. However, as noted at the hearing, the PIF does not mention that the union was bribed. Instead the local representative accompanied the claimant when asked and it simply stated that a representative, albeit a non-lawyer, was appointed for him. The claimant stated that he was told to be concise in his PIF and that many things were omitted. I do not find the claimant's explanation satisfactory. If his union or the representatives had been bribed it would quite possibly have affected the outcome of the criminal and administrative proceedings taken against him. I would have expected some explicit mention of this in such a detailed PIF and I would not have expected the representatives' actions to be described in the way that they were if they were actually of no help or had abandoned the claimant. I find that this discrepancy further undermines the claimant's credibility.

[9] In oral testimony, the claimant stated that he did not try living elsewhere in Mexico because he began receiving phone calls from people purporting to be bank employees who knew his personal banking information. However, the claimant knew that these were not bank employees and given the level of information that they had he knew he could be found anywhere. However, as noted at the hearing, none of this is mentioned in the PIF. The claimant stated that the PIF was limited and that he had only a few hours to prepare it. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF are quite clear that if the claimant did not seek refuge in another part of the country the reasons should be given. Given the high level of detail included in the PIF, if these calls had really happened, I would have expected them to have been mentioned in the PIF. I find that this discrepancy further undermines the claimant's credibility.

s.19(1)

[10] The claimant presented a report⁵ to the authorities from . 2008 which described him as receiving numerous threats. The claimant stated orally that he did indeed go to the authorities to report these threats. However, as noted at the hearing, while the PIF does mention that the claimant received threats, there is no mention of him going to the authorities to complain about them in 2008. The claimant stated that he did not think that this information was important enough to be included in his PIF. I do not find the claimant's explanation satisfactory. The directions for filling out the PIF are quite clear in that all attempts to obtain protection from the authorities are to be detailed. This would have been the first time that the claimant succeeded in making a report to the authorities. Given the level of detail contained in the PIF it makes no sense for this report to the authorities not to be mentioned. I find that this discrepancy further undermines the claimant's credibility.

[11] The claimant also presented a report⁶ to the authorities from 2008 which described the claimant being assaulted by two men who warned him to leave the Federal District. The claimant stated orally that the assault was physical as well as verbal. However, as noted at the hearing, none of this was mentioned in the PIF. The claimant stated that he did not recall why he had not mentioned this in his PIF. I do not find the claimant's explanation satisfactory. Apart from the PIF instructions with respect to dealings with the authorities, this was also allegedly the second time that the claimant was physically assaulted. Given the level of detail in the PIF, it makes absolutely no sense at all for the claimant to have not mentioned this incident in the PIF. I find that this discrepancy further undermines the claimant's credibility.

[12] As noted previously, the claimant presented two reports⁷ purporting to be reports that he had made to the authorities in Mexico. Counsel for the Minister attempted to authenticate these documents and the results⁸ indicated that they were not genuine documents. While the claimant maintained they were genuine documents that he had obtained personally, the results indicated that the reports were altered given that the file numbers did not exist, there were problems with the stamps and the named officer was not assigned to that location. The claimant stated he had no power to fabricate documents, that perhaps the stamps had simply changed and the ones used were out of date, that perhaps the officer had changed locations and that the Public Ministry was like the

⁵ Exhibit C-3, pp. 4-7.

⁶ Exhibit C-3, pp. 8-11.

⁷ Exhibit C-3, pp. 4 and 8.

⁸ Exhibit M-3.

s.19(1)

mafia and they had given him what they wanted to give him to make fun of him. Counsel for the claimant questioned the qualifications of the person who reported the results. I do not find these explanations satisfactory. The report was made directly to the counsel for the

I do not see why such a person would not be qualified to approach the authorities to authenticate a document and I see no reason for her to falsify the information. I also note that the findings were not that the stamps were not current or that the officer was not currently in that location. Instead, the findings were that both were problematic and that the file numbers did not exist. Implicit in these findings were that the dates of issue of the documents were taken into account. I find on a balance of probabilities that these documents are forgeries and the fact that the claimant relied on them to further undermine his credibility.

[13] I do note the presence of a letter⁹ from the claimant's spouse. However, given that the source of the document is close to the claimant and has an interest in seeing his claim succeed, I give it little weight.

[14] Given the serious discrepancies with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened.

Prison

[15] At the hearing, the claimant stated that he would be killed almost immediately if he were sent to jail. However, the possibility of incarceration is speculative at this point given that settlement negotiations with respect to the amount to be paid are still outstanding. If the claimant is incarcerated, I do note that prison conditions in Mexico are generally poor.¹⁰ However, there are steps being taken to improve this and complaints of ill-treatment are investigated. I find that there is no more than a mere possibility that the claimant may be harmed if he is somehow sent to jail, even if he is perceived as some form of sex offender.

⁹ Exhibit C-4.

¹⁰ Exhibit R-1, *National Documentation Package*, March 17, 2010, item 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2009*, March 11, 2010.

[16] Given the above findings, the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the IRPA, the claim pursuant to that section fails as well. In coming to these conclusions, I am mindful of the psychological evidence on file.¹¹ However, this evidence is based on a story which I simply do not believe. No evidence was presented that the claimant could not obtain further psychiatric treatment as required in Mexico.

Exclusion – Article 1F(b)

s.19(1)

[17] Throughout the hearing there was confusion with respect to what the finding that the claimant had inflicted “moral damages” actually meant. Since there was repeated references to the being paid to the victim as restitution (with settlement negotiations outstanding) rather than as a fine paid to the court this may have been a civil, rather than a criminal penalty. However, given the unresolved confusion on the matter, I decline to make a finding with respect to exclusion.

NO CREDIBLE BASIS

[18] I find that pursuant to subsection 107(2) of the IRPA that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[19] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim

(signed)

“David McBean”

David McBean

December 22, 2010

Date

¹¹ Exhibit C-3, pp. 1-3.

RPD File No. / N° de dossier de la SPR : TA9-03540

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s)
Date(s) of Hearing	February 19, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	February 19, 2010 (rendered orally) March 5, 2010 (written reasons)	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	John Campion	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la procédure
Designated Representative(s)	N/A	Représentant(e)(s) du demandeur

Counsel for the Minister

N/A

Conseil du

pursuant to section 97 fails as well.

NO CREDIBLE BASIS:

[8] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION:

[9] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

[edited for syntax and grammar]

(signed)

“David McBean”

David McBean

March 5, 2010

Date

1 As enacted by S.C. 2001, c. 27.

2 Exhibit C-1.

3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

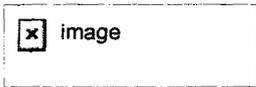


RPD File No. : TA9-03540



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA9-03995
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	April 9, 2010 July 6, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision		Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Yvonne Iwona Kaniak	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre



s.19(1)

[1] _____, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in Poland. In _____ 2008, while working on a farm, he met a man from Ukraine named _____. In _____ 2008, _____ proposed that the claimant travel back and forth to Ukraine carrying _____. The claimant refused. Two days later, three men threatened the claimant and said he should go along with the scheme; however, the claimant ran away. In _____ 2008, the claimant was threatened again. This time he was tied to a tree and beaten and kicked into unconsciousness. While the claimant did go to the police, he was too scared to tell them who had hurt him. At the end of _____ 2008, _____ and the same two men drove the claimant through a forest giving him two options - work for them or die. Despite being beaten, they let the claimant go one last time. The claimant went to Germany in _____ 2008, but after hearing that _____ was in Germany he returned to Poland in _____ 2008. Seeing the other two men lurking about he traveled to Italy in _____ 2008. After three weeks the claimant was shocked to run into one of the three men on the street. The claimant returned to Poland in _____ 2008. He traveled to Canada on _____ 2008 and, after being accused of stealing a car by Canadian authorities, made a refugee claim on _____, 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons for decision are as follows.

ANALYSIS**Identity**

[4] The identity of the claimant as a citizen of Poland was accepted at the beginning of the hearing as a copy of his Polish passport was on file.²

¹ _____ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

Nexus

[5] The claimant fears a criminal vendetta, and as such, the claim pursuant to section 96 of the *IRPA* fails for lack of nexus to the Convention definition.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant described the events of the first violent incident as a beating wherein he was intercepted on his bicycle and beaten and sustained bruises. Despite being prompted several times he stated that nothing else happened, just that his assailants left him with a warning that they would be back. However, as noted at the hearing, the PIF states that the claimant was not only beaten, but that he was tied to a tree and beaten and kicked into unconsciousness. The claimant stated that he did not want to remember the event and that a lot of time had passed. I do not find the claimant's explanation satisfactory. It is one thing for the claimant to be simply beaten and then have the assailants leave the scene of the incident while warning the claimant. It is another thing entirely for the claimant to be tied to a tree, be severely beaten and be left while unconscious. The alleged incident happened two years ago, so it was not an extremely long time ago that the claimant would have forgotten such significant parts of the incident and then get wrong how the incident ended. I find that these discrepancies undermine the claimant's credibility.

[7] In further testimony about the same incident, the claimant stated that he never went to the police about this incident because it would not have done any good as they never get excited about such things. In fact, the claimant stated that he never went to the police at any time in Poland. However, as noted at the hearing, the PIF states that the claimant did go to the police about this incident, although he was too scared to tell them the identities of his assailants. The claimant stated that he did not want to remember the events that happened to him and that perhaps he had mixed things up. I do not find the claimant's explanation satisfactory. This was not a case where the claimant had confused two separate events. He was quite definite in his oral testimony that he had never gone to the police in response to this incident or at any time at all in Poland. His PIF was just

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, PIF.

as definite in saying the opposite. No psychological evidence was presented that could explain such a dramatic contradiction. I find that this contradiction further undermines the claimant's credibility.

[8] The claimant was then asked more than once if anything else happened while he was in Poland and he responded more than once that he did not remember if anything did. However, as noted at the hearing, the PIF indicates there was a second incident of violence where he was driven through a forest, beaten and threatened with death. The claimant stated that he had forgotten this incident. I do not find the claimant's explanation satisfactory. This incident was one of only two violent incidents to allegedly happen to the claimant. It happened only two years ago, so it was still fairly recent and, as stated previously, no psychological evidence was presented that would indicate that the claimant would be unable to recall one of the two significant violent events that had happened to him. I find that this omission further undermines the credibility of the claimant.

s.19(1)

[9] As noted at the hearing, the claimant went to Germany but after hearing was there did not go to the authorities in Germany and instead returned to Poland. The claimant then went to Italy and after seeing one of his assailants there did not go to the authorities in Italy and instead returned to Germany. When asked why he did not seek protection in these countries and instead kept returning to Poland, the claimant stated he did not speak German, he did not want to create problems in these other jurisdictions and that his family was in Poland. I do not find the claimant's explanations satisfactory. If the agents of persecution were really following the claimant to other countries in Europe, I would have expected in the claimant's circumstances that he would have sought assistance in those countries. More importantly, if the agents of persecution were really that intent on finding and harming the claimant it makes no sense that the claimant would return twice to Poland where his assailants were based. I find that this behaviour not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

[10] As noted at the hearing, the claimant did not make a refugee claim for several months after his arrival in Canada. The claimant stated that he did not know English. I do not find the claimant's explanations satisfactory. Either the claimant came to Canada to seek protection or he did not. There is a sizeable Polish community in Toronto that would have been available to help the claimant deal with Immigration authorities. If the claimant truly feared people who had seriously beaten him twice in Poland and apparently tracked him to at least two other countries, I would have

expected him to make immediate efforts to seek Canada's protection, even if he was unsure of the exact words to use. I would have expected these efforts to have been made long before he was charged with stealing a car. I find that this behaviour once again not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened, and as such the claim pursuant to section 97 of the *IRPA* fails as well.

No Credible Basis

[12] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[13] I find that the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

David McBean

Date



RPD File No. / N° de dossier de la SPR : TA9-04685
TA9-04686
TA9-04687

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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

s.19(1)

Date(s) of Hearing August 14, 2009 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision November 6, 2009 **Date de la décision**

Panel David McBean **Tribunal**

Counsel for the Claimant(s) Hamza N. Kisaka
Barrister and Solicitor **Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer N/A **Agent(e) de tribunal**

Designated Representative(s) **Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister N/A **Conseil du ministre**

REASONS AND DECISION

s.19(1)

[1] ("the claimant"), her minor daughter, and her minor son, , citizens of Jamaica, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant and her family lived in Jamaica. On , 2006, she bought some packages of snacks from a local store. Her son vomited after eating one of the snack packages, but the claimant did not suspect that anything was amiss as her son was quite young at the time. The next day she gave her son another two and a half packages and he, by that evening became severely ill. The claimant's daughter also consumed a package and experienced shortness of breath. On , the claimant sought medical attention for her children and was referred to various doctors, culminating in her children being treated at the . In the interim, the claimant confronted the store owner on and he gave her the contact information for the , which was responsible for the production of the snacks. The store owner complained to the company and the claimant complained separately to the who in turn involved the

. After four months, test results showed that the snacks had been contaminated with the . The claimant was aware of other children with similar symptoms and asked the company if they would be recalling the snacks. A company representative said that they would not and threatened her to keep quiet. The claimant reported the matter to the authorities. The claimant publicized her situation on a radio show and immediately received a phone call from another company representative telling her not to speak ill of the company. On , 2006, the claimant received the report from the which, amongst other things, directed the company to compensate her. The claimant went to the company to discuss this but was told that the company would not be accepting liability and that she should remain quiet as

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

s.19(1)

“things could happen” to her and her family. The claimant spoke with a television station which began an investigation. The claimant suspected that the [redacted] had altered the report. She approached a doctor who made what turned out to be an incorrect prescription and later refused to provide a corroborating document. She also approached other officials, including a Member of Parliament who refused to assist in taking action against the company. On [redacted], 2006, the television station called the claimant to say that the story was now going to air. However, the claimant then received a threatening phone call. Afraid, she called the station to retract the story. She called the police and was given a cell phone number for an officer should anyone attempt to do anything to her or her family. The claimant moved her family to her grandmother’s house. The claimant received a call from [redacted] who claimed that he had been sent by the company to access her house. The claimant relayed his contact information to the authorities who called [redacted] and directed him to report to the police station for arrest, although he never did. The claimant appeared on another radio program to publicize her situation. The claimant attempted to contact the police commissioner’s office but no one would speak to her. Eventually it was determined that it would be best if medical treatment was sought overseas and the claimant approached the company once again to discuss compensation. The claimant’s lawyer sent the claimant a letter stating that the company would reimburse her for her expenses overseas. However, the claimant later learned that the lawyer was a part of the corruption behind her case and the lawyer was later fired. The claimants came to Canada on [redacted], 2007 and made refugee claims on [redacted] 2007. After the claimant left, her family began receiving calls enquiring with respect to her whereabouts and her house was broken into with the police still investigating.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Jamaica were accepted at the hearing given that copies of their Jamaican passports were on file.²

Nexus

[5] The claimants fear a criminal vendetta on the basis of the claimant attempting to obtain compensation in a contaminated products case and as such the claims pursuant to section 96 of the *IRPA* fail for lack of nexus to the Convention refugee definition.

Credibility

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, while I am mindful that claimants are not required to document every aspect of their claim, if documents are reasonably available they should be presented. The claimant presented no copies of the radio broadcasts and the alleged TV report that had been prepared with respect to her case. The claimant stated that she had tried to obtain copies but was refused. This may be reasonable as we have no information with respect to whether radio and TV stations in Jamaica keep copies of their broadcasts and/or potential broadcasts. It seemed odd that there were no print media stories on the point, given the claimant's alleged efforts to publicize her story and the fact that she said other children had become ill as well, although the claimant did say that they had received a different diagnosis. I note that in post-hearing submissions, counsel for the claimants stated that the claimant testified in a straightforward manner. However, I disagree, when asked about the general lack of substantive documentation from her own lawyers which would corroborate what had happened, the claimant gave vague and evasive testimony. The claimant stated that while her first lawyer did obtain some form of settlement from the Ministry of Health,

² Exhibit R-2, Certified copies of passports received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, PIF, as amended by C-4, pp.97-100.

documents had allegedly gone missing from her file and that lawyer left the firm and the principal of the firm was later arrested. When asked why no complaint was made to the police or the relevant Law Society in Jamaica, the claimant stated that it was difficult to make complaints against powerful people. She later went to another lawyer but refused to continue with him as he wanted the originals of all the documents. I do not find the claimant's explanations satisfactory. Given that the claimant was allegedly using the media and the police to complain about what appears to be a powerful company, one would think that she would be able to provide some evidence regarding a settlement, a lawyer disappearing with documents and a senior member of the firm being arrested. It also made no sense that she would be unable to continue with another lawyer because he wanted the original copies of some documents, since the claimant would be able to keep certified copies for herself. I find this lack of documentation with respect to her own lawyers to undermine the claimant's credibility.

s.19(1)

[7] Even more problematic were some of the documents actually presented. The claimant presented a letter⁴ allegedly from the _____ in Jamaica which summarizes their dealings with the claimant. The letter contains a detailed account of an attempted break-in at the claimant's home while she was away, where her daughter and cousin were in the house and locked in their bedroom. The police responded and found clear evidence of an attempted break-in but were unable to make an arrest. The claimant stated orally that she believed this incident was linked to her problems with the contaminated snacks in that she thought the perpetrators were attempting to break in to steal documents and samples of the contaminated product that the claimant was known to have. However, as noted at the hearing, this incident is not mentioned in the PIF. The claimant stated that she did not understand that she needed to mention the incident in her PIF, particularly since the police had dealt with the incident. I do not find the claimant's explanation satisfactory. The directions for filling out the narrative portion are quite clear in that all significant incidents are to be mentioned. It makes no sense to exclude instances where the police responded to the scene. The claimant was represented by counsel throughout and amendments were even made to the narrative prior to the hearing. If men

⁴ Exhibit C-4, p.19.

really attempted to break into the claimant's home to steal items directly related to her case, with only children present, I would have expected the incident to have been mentioned in the amended narrative. I find that the fact that it was not undermines the claimant's credibility.

s.19(1)

[8] The police report also mentions that an anonymous note was sent to the claimant on 2006, stating that her life was in danger. A copy⁵ of what would appear to be that note was also presented. However, as noted at the hearing, no mention is made of this incident in the PIF. The claimant stated once again that she did not understand that she needed to mention this incident in her PIF, particularly since the police were dealing with the matter. I do not find the claimant's explanation satisfactory. As I stated above, the directions for filling out the narrative portion of the PIF are quite clear in that all significant incidents are to be included. For the claimant to be warned in writing by an anonymous person from a government organization that her life was in danger and make no mention of it in an extremely detailed three and a half page narrative, makes no sense at all. I find that this discrepancy further undermines the claimant's credibility.

[9] The police report also states, as per the PIF, that the claimant was given a private number to call an officer should she feel that she was in danger. As noted at the hearing, the police report goes on to state that, "There were three attempts made of threats where she had to call such number and we were able to attend to her safety." However, there is no mention of these three incidents in the PIF. The claimant stated again that she had failed to understand that she should have included mention of these incidents in the PIF. Once again, I do not find the claimant's explanation satisfactory. As stated previously, the directions for filling out the narrative are quite clear in that all significant incidents are to be included. If the claimant felt threatened enough to call this private number on three separate occasions in order to summon the police to protect her, these incidents would appear to be quite significant and therefore should have been included. Even the claimant's repeated explanation that she did not think to include incidents where the police responded to her needs did not make sense here, since one would think that she would

⁵ Exhibit C-4, p. 35.

have omitted mention of being given a private number to call in the first place. For the claimant to mention in a very detailed amended narrative that the police gave her a private number to call for protection, and yet, then omit all mention of three subsequent incidents where she was threatened and had to call the number, makes absolutely no sense at all. I find that this discrepancy further undermines the claimant's credibility.

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[10] The police report also gives details with respect to an actual break-in at the claimant's home on _____, 2007. The claimant stated orally that she felt that this incident was related to her problems with the contaminated snacks given that the perpetrator said that he had been told by someone to look for documents in her home. However, the police did not believe that this was related since he stole other items while there. As noted at the hearing, this incident is not mentioned in the PIF. The claimant stated that she had concentrated on her son's medical condition in her narrative. I do not find the claimant's explanation satisfactory. While it is true that the first page of the narrative deals almost exclusively with the originating incident and efforts to seek medical treatment, the next two and a half very detailed pages deal with the various efforts made by the claimant to seek compensation and the various threats made against her. As stated many times previously, the directions for filling out the narrative are quite clear in that all significant incidents are to be mentioned. If there really was an actual break-in at the claimant's home where the perpetrator admitted that he had been told to look for documents, I would have expected some mention of this incident to be included in the PIF. I find that its omission further undermines the claimant's credibility.

[11] The police report also indicates that there was an attempted sexual assault on her daughter on _____, 2007. The claimant stated verbally that she felt that this could be related to her problems with respect to the contaminated snacks. However, as noted at the hearing, once again this incident was not mentioned in her PIF. The claimant stated that her PIF concentrated on the medical situation with respect to her son. I do not find the claimant's explanation satisfactory. An attempted sexual assault on the claimant's young daughter is an extremely serious matter. The claimant stated that she believed it could be related to her story. To make no mention of such an incident in her PIF makes absolutely no sense at all. I find that this discrepancy further undermines the claimant's credibility.

s.19(1) [12] In general, when reading the police report, it felt at times that the incidents described were actually from a different claim given the dramatic additions in content. The claimant is not unsophisticated. She for several years and then while during the day. The claimant was represented by counsel and the direction for filling out the narrative are not only in English, the language of the claimant, but also quite clear in that all significant incidents are to be included. For the claimant to produce a three and a half page detailed narrative that mentions various verbal threats and the fact that the police gave her a private number to call in case of danger, but then omit virtually all reference to more serious incidents that actually took place such as a break-in, an attempted break-in, an attempted sexual assault and three incidents where the claimant actually felt threatened enough to call the police makes absolutely no sense at all. I find, on a balance of probabilities, that the "police report" is actually a forged document conscripted to bolster the claim and that its presentation by the claimant undermines the credibility of the other documents presented and further undermines the claimant's credibility as well. In particular, I note that while a copy of the alleged threatening note was provided, the note itself is typed on a blank piece of paper with a image of a date-stamp reading " within the stamp.⁶ Given my finding that the claimant went to the trouble of forging a much more detailed police report, it would not be much more trouble for this document to be forged as well and I find, on a balance of probabilities that this document is indeed a forgery.

[13] In the claimant's PIF, the company refuses to accept liability for the incident with the snacks and refuses to pay compensation. However, as noted at the hearing, in the documents received from CIC,⁷ there is a print-out from the Immigration Field Operations Support System (FOSS) containing notes about the claimant's visa application. In the notes, it is mentioned that there is a letter on file from the attorneys for the , stating that the company had agreed to reimburse the claimant for travel and medical expenses relating to the treatment of her son

⁶ Exhibit C-4, p. 35.
⁷ Exhibit R-2.

in Canada and that final settlement of the matter was only waiting for the actual quantum of the reimbursement to be determined. The claimant stated that she had never seen this letter and that the company had not agreed to pay and that there was no such agreement. I do not find the claimant's explanation satisfactory. The claimant applied to come to Canada specifically to obtain medical treatment for her son. As part of that application, the claimant had to demonstrate that she had sufficient funds to undertake the trip and more importantly the treatment. The notes specifically indicate that the claimant stated that she was fund-raising within her community in order to have funds available up front given that the company would only be reimbursing her after the fact. As stated previously, the claimant is not unsophisticated. The FOSS notes clearly indicate that the claimant was aware that the company had agreed to reimburse her for her expenses. For her to state that the opposite was true makes no sense at all. I find that this discrepancy to further undermine the claimant's credibility.

[14] The claimant did not make a refugee claim until after she had been in Canada for two months. The claimant stated that she did not know the system and only made a claim after a doctor informed her of that possibility. I do not find the claimant's explanation satisfactory. As noted previously, the claimant is not unsophisticated and speaks English, the dominant language in Toronto. While it is understandable that her son's treatment would be uppermost in her mind, if the claimant really was facing potential death upon return to Jamaica due to repeated incidents, I would have expected her in her own particular circumstances to make some efforts to find out how she could avoid returning to Jamaica long before a chance conversation with a doctor two months after her arrival. I find that this delay in claiming not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility. s.19(1)

[15] While the claimant stated that part of the conspiracy against her involved forgery of the report detailing the snack packages and the uncooperativeness of Dr. in Jamaica, I fail to see how either aspect actually has any sinister intent. The claimant stated that the report initially featured an out-of-date stamp containing the previous name of the issuing authority, that in a subsequent version of the report, the items had been renumbered and in the final version of the report, there was a summary section which the

previous version was said to be incomplete at the time lacked. None of these aspects appear to be sinister, they merely seem to be evidence of bureaucracy. Many bureaucracies are slow to update their forms, stamps and other paraphernalia, so the use of an out-of-date stamp is hardly exceptional. The fact that the final version of a report had more information, or had renumbered some of the same information as an interim version of the report, is hardly exceptional as well. Furthermore, given that the claimant has alleged potential malpractice on the part of the uncooperative doctor, it is understandable that she would not likely be cooperative given that there may be potential liability issues involved. The claimant also presented a DVD which I viewed after the hearing. While the video does show a store, the contents of a store, people discussing where snacks had been kept and a man who identified as a police officer obtaining biographical information from someone who identified themselves as a worker in the store, this does nothing to explain any of the credibility problems noted above.

[16] It seems fairly clear from the evidence that the claimant's children inadvertently consumed a contaminated substance and that her son was injured severely enough that he required medical treatment in Canada. However, with respect to the claimant's allegations that she and her family faced persecution as a result of this incident, given the serious discrepancies, contradictions, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events with respect to persecution that the claimant alleged happened to her, actually happened, and as such, the claims pursuant to section 97 of the *IRPA* fail as well.

IRPA Section 97(1)(b)(iv)

[17] While it appeared that Jamaica lacked the facilities to properly treat the claimant's son, there was no credible evidence presented that would suggest that treatment was unavailable due to any improper reason. It simply appeared that the Jamaican system lacked the means to treat her son due to Jamaica simply being much poorer than Canada. As such, this situation falls within the "medical exception" of the consolidated grounds.

Humanitarian and Compassionate Consideration

[18] Given the medical situation that the claimant's son experienced and the fact that he had to travel to Canada to obtain treatment, this may be a case where the claimants may have grounds to stay in Canada on a humanitarian and compassionate basis. However, humanitarian and compassionate applications are the responsibility of another government department and I no have jurisdiction to consider such grounds.

CONCLUSION

[19] As the claims of her daughter and son rely entirely on the evidence of the claimant and no persuasive evidence was adduced to differentiate their claims from that of the claimant, the claims of her daughter and son must also fail.

[20] For all these reasons, the Refugee Protection Division therefore rejects the claims. The claimants are not Convention refugees or persons in need of protection.

(signed)

"David McBean"

David McBean

November 6, 2009

Date

RPD File No. / N° de dossier de la SPR : TA9-05001

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision s.19(1)

Claimant(s) Demandeur(e)(s)

Date(s) of Hearing July 14, 2009 **Date(s) de l'audience**

Place of Hearing Toronto, Ontario **Lieu de l'audience**

Date of Decision July 16, 2009 **Date de la décision**

Panel David McBean

Counsel for the Claimant (s) No Counsel **Conseil(s) du / de la demandeur(e)(s)**

Tribunal Officer N/A **Agent(e) de la Commission**

Designated Representative(s) N/A **Représentant(e)(s) désigné(s)**

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] As there was no counsel to represent the claimant, I have reviewed the procedures and the issues with the claimant prior to the commencement of the hearing to ensure that the claimant had an understanding of the hearing process.

ALLEGATIONS

[3] The claimant lived in the Federal District. His mother became seriously ill in 2007 and required a lot of money for medical treatment. The claimant obtained two loans from _____ (“_____”). Unfortunately _____ charged the claimant 20% interest and the claimant could not make the necessary payments. _____ made a denunciation against the claimant to the Public Ministry using falsified documents purporting to show a much lower interest rate. The claimant consulted a friend who was a lawyer who managed to find enough documents to show that _____ was committing fraud. The claimant’s friend made a denunciation on his behalf to the Public Ministry against _____ and four men came to the claimant’s house on _____, 2008. They threatened and beat the claimant. The claimant fled to Canada on _____, 2009, and made a refugee claim upon arrival at the airport.

DETERMINATION

[4] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[5] The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

[6] The claimant fears a criminal vendetta and as such his claim pursuant to section 96 of the *IRPA* fails for lack of nexus to the Convention Refugee definition.

Credibility

[7] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form3 (PIF) and the other documents available. For example, the claimant produced no documents to substantiate the fact that he had obtained loans, that he had not paid off the loans, or that a judge ordered him to pay a certain amount. While claimants are not required to document every aspect of their claim, if documents are reasonably available they should be presented. Given that the claimant had multiple dealings with _____ and that all of the transactions were done in writing and _____ actually took the claimant to court to enforce the debt, it does not make sense that there would be no documents available to corroborate these events. Documents would have helped as there were inconsistencies about these events. In oral testimony, the claimant stated that he had actually paid _____ in full and _____ was pretending that the debt had not been satisfied and had failed to destroy documents as required. However, as noted at the hearing, in the PIF, the debt had never been paid in full and the claimant was simply having trouble making payments. The claimant stated that he did not remember why his PIF said that. Also, in oral testimony, the claimant stated that _____ bribed the judge so that no documents would be released about the court order or the enforcement of the debt. However, as noted at the hearing, in the PIF there is no mention of the judge being bribed or that the documents were impossible to get. The claimant stated that he did not know the proper procedures for filling out the PIF. I do not find the claimant's explanations satisfactory. The directions for filling out the PIF narrative are quite clear and the narrative that the claimant produced is quite detailed. Had _____ bribed the judge and made the disclosure of documents impossible, I would have expected there to be some mention of that in the PIF. I also would have expected the narrative to correctly establish what if any debt remained on the part of the claimant. I find that these discrepancies and the lack of what should have been reasonable available documentation to undermine the claimant's credibility.

s.19(1)

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[8] In oral testimony, the claimant stated that he consulted a friend who was a lawyer and this lawyer advised him to flee Mexico. The claimant was asked several times if he did “anything else” with this friend and the response was “no” each time. However, in later testimony, the claimant remembered that he got together with his lawyer friend and they managed to put together enough documents to show that [redacted] had committed fraud and his friend filed a denunciation against [redacted] on his behalf.

When asked why he had not mentioned this earlier despite being prompted several times, the claimant stated that he had forgotten. I do not find the claimant’s explanation satisfactory. Documenting and denouncing the fraud was the precipitating incident that led to the claimant being beaten and marked for death and caused him to flee to Canada. To forget this entire event despite being prompted several times makes no sense at all. I find that this discrepancy further undermines the claimant’s credibility.

[9] The claimant presented no documents substantiating that he had consulted a lawyer, that a denunciation had been filed against [redacted] or that he had sought treatment for his injuries in a hospital. The claimant stated that copies of denunciations are difficult to obtain and that he had left the other documents in Mexico because of fear. I do not find the claimant’s explanations satisfactory. The claimant’s lawyer was a personal friend so he should have been willing to respond to any requests for documentation. As noted at the hearing, other claimants from Mexico do present copies of denunciations and the information that we have on file is that the Mexican authorities in Canada will assist claimants in getting documentation if other methods do not meet with success.⁴ I find that these documents would have been reasonably available and the fact that they were not presented further undermines the claimant’s credibility.

[10] In oral testimony, the claimant stated that [redacted] was a powerful man who had great influence who could bribe judges and other officials. The claimant stated that [redacted] could use these powers to find him anywhere in Mexico and kill him with impunity. However, as noted at the hearing, other than a vague reference to [redacted] being influential, there is no mention in the PIF of [redacted] having such great far-reaching powers and the only reason given for the claimant not wanting to move to another state in Mexico is that he could not leave his ill mother behind. The claimant did not know why his PIF said that. I do not find the claimant’s explanation satisfactory. Either [redacted] was a powerful man who could find and harm the claimant with impunity everywhere or he was not. If he was that powerful I would have expected some explicit mention of that fact rather than a reference to the claimant’s sick mother. I find that this discrepancy further undermines the claimant’s credibility.

[11] In oral testimony, the claimant stated that he was aware of the refugee system in Canada prior to boarding the airplane and that he hoped to both work when he came here in order to support his mother and that he would receive protection. However, as noted at the hearing, in the notes⁵ of the immigration officer made at the time that the claimant made his refugee claim, the claimant was asked repeatedly why he wanted to enter Canada. The claimant stated that he hoped to work here as a roofer and that he

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feared unemployment and the economy in Mexico. When asked why he was making a refugee claim, the claimant stated that this was a fall-back method of gaining entry into Canada in case he was not allowed to enter otherwise. I asked the claimant why he would not have said he actually feared being killed by _____ and the claimant stated that he had met a Colombian citizen on the airplane who told him that Mexican refugee claims have no chance of success and that he would be deported immediately if he told the truth about being afraid. I do not find the claimant's explanation satisfactory. The claimant knew about the refugee system after consulting with his lawyer and his uncle. It makes no sense at all for the claimant to meet a random non-Canadian on the flight to Canada and be so convinced after speaking with him that the claimant felt the need to lie throughout his immigration interview and falsely claim that he only had economic and admissibility concerns when he was really afraid for his life makes absolutely no sense at all. I find that these discrepancies further undermine the claimant's credibility.

[12] Given the serious discrepancies and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to him, actually happened and therefore the claim pursuant to section 97 of the *IRPA* fails.

No Credible Basis

[13] I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

[14] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

July 16, 2009

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1 PIF.

4 Exhibit R-1, *National Documentation Package*, March 18, 2009, tab 9.10, *Response to Information Request*, number MEX102725.E, April 17, 2008.

5 Exhibit R-2.



RPD File No. : TA9-05001



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA9-05027
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)			Demandeur(e)(s) d'asile
Date(s) of Hearing	November 26, 2010	s.19(1)	Date(s) de l'audience
Place of Hearing	Toronto, Ontario		Lieu de l'audience
Date of Decision	January 21, 2011		Date de la décision
Panel	David McBean		Tribunal
Counsel for the Claimant(s)	Michael Campbell		Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A		Agent(e) de tribunal
Designated Representative(s)	N/A		Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A		Conseil du ministre

s.19(1)

[1] _____, a citizen of the Philippines, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in suburban _____. She identifies as lesbian. She met a female doctor with whom she was initially friends with but became more intimate in _____ 2004. All was generally well in the relationship until one day when, due to some miscommunication over a present, the claimant's partner became angry. After another incident the claimant was slapped on the face. When her partner became jealous of the claimant's best friend, her partner slapped her on the face and told her to leave the house. When the claimant refused, her partner slapped her on the face again, cutting her with a ring that she was wearing. The claimant left. Later the claimant's former partner attempted to reconcile, but the claimant said that the relationship was over. The claimant's former partner became angry and stated that she never "loses." The claimant's former partner began spreading lies that the claimant had taken money and jewelry from her and the claimant began receiving anonymous calls stating that she should give these things back. Eventually the claimant went to the police but was told that she should have come far sooner since her injuries were too healed to be examined for a medico legal report. Later the claimant heard that her former partner had contacts in the Philippines National Police and that she should not pursue the matter. The claimant came to Canada on _____, 2006, to work as a _____. In the spring of 2008 she was arrested by Immigration authorities for working illegally in a _____. She made a refugee claim on _____, 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of the Philippines was accepted at the hearing given that a certified copy of her passport from the Philippines was on file.³ Also accepted was the claimant's sexual orientation.

Credibility

s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, in the PIF, the claimant mentioned that her former partner had family members in the However, as noted at the hearing, in the Immigration Documents,⁵ prepared at the time that she made her claim, there is no mention that her former partner had relatives in the The claimant stated that she had been told to write only the important things. Counsel submitted that the passage dealing with her claim is quite brief. I do not find these explanations satisfactory. While only 12 lines long, the claimant's statement is actually quite detailed. It makes more than one reference to the claimant's former partner's friends and family harassing her. The relatives in the police were the reason that the claimant could not obtain satisfaction from the authorities. Given this and the way that the statement was written, I would have expected the claimant to have mentioned not only friends and family of her former partner, but that some of them were in the police. I find the fact that it does not to undermine the claimant's credibility.

[6] In oral testimony, the claimant stated that she feared that her former partner would use her influence to have her arrested and jailed on false charges. She further feared that once in jail, she

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act.*

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit C-1, as amended

⁵ Exhibit R-2

would be raped just as a friend of the claimant had been long ago. However, as noted at the hearing, there is no mention in the PIF of the claimant fearing being falsely jailed and that she would be raped there as a friend had been earlier. The claimant stated that it was actually a friend of a friend that had gone to jail and being raped would not necessarily happen to her. I do not find this explanation satisfactory. At the hearing, this seemed to be one of, if not the, prime fears of the claimant. The directions for filling out the PIF are quite clear in that the experiences of similarly situated people are to be detailed. In these circumstances it makes no sense for the claimant to not mention in a detailed PIF narrative that she feared being falsely imprisoned and raped. I find that this discrepancy further undermines the claimant's credibility.

[7] As noted at the hearing, the claimant was in Canada for approximately two and a half years before she made a refugee claim. The claimant stated that she was hoping to obtain status through other Immigration means. When asked why she did not mention her fears to the Canadian Immigration officials who arrested her in the spring of 2008, the claimant stated that the Immigration officials had not asked her if she feared returning to the Philippines and that she was too nervous to volunteer this information. I do not find these explanations satisfactory. The claimant is not unsophisticated with over 12 years of education and many years of work experience. If the claimant truly feared returning to the Philippines, I would have expected, in her circumstances, to make efforts to stay on that basis, in addition to the other Immigration efforts that she was making. I find this particularly so when she was arrested by Canadian Immigration officials almost a year before she made her claim. Even though the claimant stated she was released after a few hours, I would have expected her to voice her fears to the arresting or detaining officials. I find that the claimant's behaviour not only demonstrated a lack of subjective fear but also further undermines her credibility.

[8] While I do note the presence of a letter⁶ from the claimant's sister which purports to corroborate the claimant's fears, the claimant's sister is someone who appears close to her and as such would be motivated in seeing the claimant's claim succeed. I give this document little weight.

[9] Given the serious discrepancies with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened.

⁶ Exhibit C-2

Profile as Lesbian

[10] While I do not believe the claimant’s story, with respect to the claimant’s general profile as a lesbian, there is no question that some instances of discrimination can occur in the Philippines.

[11] However, as the objective documentary evidence⁷ notes, there are many active LGBT organizations in the Philippines and some hold marches and other events to promote equality and antidiscrimination legislation. Further documentation⁸ states that gay pride parades have been held annually since 1994. Homosexual acts are not criminal and there are proposed laws to fight discrimination. A ban on gays and lesbians serving in the military has not only been eliminated but enlistment has been encouraged. While a party working to end discrimination based on sexual orientation was refused accreditation, that decision is currently under appeal. Furthermore, while there have been problems of violence and discrimination, sometimes even at the hands of the police, the Chair of the Philippines Human Rights Commission has urged people who have experienced problems in this area to come forward and seek assistance. Many other NGO’s are involved in this area as well. I find that even looking at the situation in the Philippines cumulatively; the claimant would not face a serious possibility of persecution on a Convention ground and therefore the claim pursuant to section 96 of the IRPA fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the IRPA, the claim pursuant to that section fails as well.

CONCLUSION

[12] I find the claimant is not a Convention refugee or a person in need of protection

(signed)

“David McBean”

David McBean

January 21, 2011

Date

⁷ Exhibit R-1, Item 2.1 DOS

⁸ Exhibit R-1, Item 6.1

RPD File No. / N° de dossier de la SPR : TA9-05364

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)	(a.k.a.)	Demandeur(e)(s)
Date(s) of Hearing	September 11, 2009 December 4, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	February 1, 2009	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Jane Desmond	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la procédure
Designated Representative(s)	N/A	Représentant(e)(s) désigné(s)

001180

Counsel for the Minister

N/A

Conseil du

s.19(1)

[1] _____, a citizen of Brazil, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in _____. Three years after the death of her former boyfriend due to a stray bullet, the claimant met _____, then age 17, in _____ 2003. Despite the claimant, then age 27, being older, they hit it off immediately. Despite discovering that _____ lived in a shantytown they quickly formed a relationship. While they would do romantic things like have lunch at a restaurant at _____, the claimant expressed fear of going to _____ neighbourhood. _____ reassured the claimant that the drug dealers in the area knew him as a resident so they would not harm him. In _____ 2004, the claimant began to face disapproval from her family. _____ was drafted into the Brazilian Army and became dissatisfied with his situation there and became depressed. However, _____ then became happier and began showing up with large amounts of money every day. The claimant became suspicious and went to _____ house. As the claimant drove up his street she saw him dressed in military fatigues with army weapons in his hand. When she parked near _____ and the scary-looking men that he was talking with, _____ threatened her. When the claimant demanded an explanation _____ screamed at her that he was trying to keep up with her lifestyle. The claimant then realized that _____ was now involved with the _____ that _____. When the claimant met _____ three days later she was nervous since she knew that he was involved with a _____ that included _____ and that the people involved in the scheme were quite influential. While the claimant said that she wanted to breakup with _____ he put a pistol to her neck and said that she could not leave him as she was the cause of him involved in the _____ and that if she did leave he would kill her. While she said that she would not leave so as to appease him, the claimant began to consider her options. An uncle in the _____ advised her that fleeing to another city would be of no use since prominent people were involved and they would be able to find her anywhere in Brazil. The claimant lived as quietly as possible until she was able to come to Canada on _____ 2005. After coming to the attention of Canadian authorities, the claimant filed her refugee claim on _____, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Brazil was accepted at the hearing given that a copy of her Brazilian passport was on file.³

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, while I am mindful that a claimant is not required to document all aspects of their claim, if documents are reasonably available they should be presented. It did seem odd that the claimant was unable to present any documents that would substantiate her relationship with [REDACTED] given that their relationship lasted more than a year. While the claimant says that they never lived together and she could probably ask for pictures to be sent to her if needed, it seemed strange that there was no evidence that the claimant had ever been involved with [REDACTED]. However, more telling is the fact that while the claimant stated that corruption in the military is common and thereby making schemes like [REDACTED] plausible, she did not provide any documents that would support this fact. When asked why she had not presented any documents with respect to corruption in the military the claimant stated that she had not realized that they would be considered important. Even more telling was the lack of documentation with respect to [REDACTED] more recent arrest. The claimant stated orally that [REDACTED] had been arrested by the police and that his house was found to contain a large cache of [REDACTED]. However, [REDACTED] was then released after 48 hours. When asked if there were any media reports about this incident the claimant said that there were not. She went on to say that while her uncle in the [REDACTED] had checked to see if there was a record of this incident he could not find any. I do not find the claimant's explanations in this area satisfactory. It may be reasonable given the passage of time and the fact that they did not live together for the claimant to be unable to provide any documents linking her to someone named [REDACTED]. However, if the corruption in the Brazilian military was as wide-spread in both breadth and reach into the upper levels of the military and this was all as well-known as the claimant alleged I would have expected her to be able to present documents that would corroborate this. Furthermore, if [REDACTED] had really been arrested by the police this would indicate that the police were either not in on the [REDACTED] or were at least not in on it until 48 hours later when they released him. As declared at the hearing, it is within my specialized knowledge that Brazilian news media do report on crime. One would imagine that a [REDACTED] arrested with a [REDACTED] would make for a sensational story and that the police would have publicized this arrest in the two days prior to connections getting him out of jail. It makes no sense for even a well-connected conspiracy to then be able to wipe out all traces of the event in media archives. I find in these circumstances that media

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reports about [redacted] arrest would have been reasonably available. I find the fact the claimant did not present documents corroborating the extreme level of military corruption that she alleged and the fact that she presented no documents to corroborate the arrest of [redacted] to undermine the claimant's credibility.

[6] In oral testimony the claimant stated that she knew when she saw them that the men [redacted] was talking with on the street were powerful drug dealers having seen them many times before when visiting his home. However, as noted at the hearing, while the PIF mentions that [redacted] was speaking with men on the street it does not mention that the claimant not only knew that these men were powerful drug dealers but that she recognized them having seen them before. The claimant stated that perhaps she had been unclear in her PIF. I do not find the claimant's explanation satisfactory. The claimant's narrative is 40 paragraphs long and contains many minute details of her experiences. Had she really recognized these men as powerful drug dealers having seen them before I would have expected her PIF to say just that rather than make a general reference to "men". I find that this discrepancy further undermines that claimant's credibility.

[7] In oral testimony, the claimant stated that powerful members of the military were involved in the [redacted] and she knew this because [redacted] had told her directly. However, as noted at the hearing, while there is a reference in the PIF to powerful members of the [redacted] being involved and this conspiracy also involved members of the army, it does not indicate that the members of the army involved were powerful as well. The claimant stated that members of both the [redacted] and the military involved were powerful. The claimant also later explained that she meant to say that the powerful members of the [redacted] were actually members of the military. I do not find the claimant's explanations satisfactory. In the PIF, much of the claimant's knowledge seems to have been assumed or deduced from looking at the information available. If [redacted] had told the claimant directly and outright that powerful people in the military were involved in the weapons scheme I would have expected the claimant's very detailed PIF to say just that rather than be written in the way that it was. Furthermore, the claimant's later assertion that she "meant" to say that her reference to powerful mafia members in the PIF was meant to mean they were in the army as well simply does not seem to match her earlier testimony or her PIF that described the groups separately. More importantly, this information simply does not explain why her PIF did not state that [redacted] specifically told her that high ranking military figures were involved in the plot. I find that this discrepancy further undermines the claimant's credibility.

[8] In oral testimony the claimant stated that after the first incident, [redacted] became aggressive with her every time that she talked about either ending the relationship or about [redacted] ending his illegal activities and that he had become aggressive with her many times. However, as noted at the hearing, while the PIF states that there was initial confrontation after the first incident wherein [redacted] pointed a gun at the

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claimant; the PIF goes on to state that she then decided to live as quietly as possible so as not to arouse suspicion. The claimant stated that she had concentrated on the important things in her PIF, that she could clarify things at the hearing and that she did not want to write too much. I do not find the claimant's explanations satisfactory. As mentioned previously, the claimant's PIF is minutely detailed. If there really had been numerous aggressive confrontations I would have expected her PIF to say just that. Furthermore, this information is not simply omitted from her PIF, it actually contradicts her description of living as quietly as possible so as not to arouse suspicions. I find that this discrepancy further undermines the claimant's credibility.

[9] In oral testimony, the claimant stated that [redacted] had been asking various family members about her whereabouts since the time that she left Brazil in 2005. However, as noted at the hearing, this was not mentioned in her PIF which was prepared in July 2007. The claimant stated that she did not think it was important to mention that [redacted] had been asking questions about her whereabouts. In later oral testimony, the claimant stated that [redacted] had not only been asking her family questions about her whereabouts but had been issuing threats against her to her family since the time that she left. When asked why she had not mentioned these threats in her PIF, the claimant stated that her story had been difficult to write and that she had simply omitted these threats. I do not find the claimant's explanations satisfactory. It was the claimant's own evidence that she knew well before she prepared her PIF that [redacted] had not only been asking questions about her but had been issuing threats against her since she left. This would have not only indicated a continuing interest in her on the part of [redacted] but it would have been clear evidence that he still intended to do her harm even though the claimant left Brazil years ago, so the information is quite significant. For the claimant to include the level of detail in her PIF that she did but omit this significant and basic information makes no sense. I find that these omissions further undermine the claimant's credibility.

[10] When asked why she did not make a refugee upon her arrival in Canada in [redacted] 2005 the claimant stated that she did not know at the time that she could have done so. When asked why she allowed her permission to stay as a visitor to expire after six months and made no efforts to make a refugee claim the claimant stated that that she did not know how to apply for an extension to her visa, that a friend told her that she would have to return to Brazil, that she did not know where an Immigration office was and that she feared approaching Immigration. It was only when she came to the attention of the authorities in June 2007 that the authorities themselves broached the subject of not returning to Brazil. I do not find the claimant's explanations satisfactory. The claimant has 19 years of education, including a [redacted] degree. She has worked in [redacted] for [redacted] years. Even taking into account that the working language in Toronto is not Portuguese it makes no sense at all for the claimant to fear for her life knowing that [redacted] was still searching for and threatening her in Brazil yet make no efforts to see how she could stay in Canada long-term or at least extend her permission to remain. I find that her behaviour not only demonstrated a lack of subjective fear but further undermines

her credibility.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to her, actually happened and as such the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would be at risk of any of the harms delineated under section 97 of the *IRPA* the claim pursuant to that section fails as well.

CONCLUSION

[12] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

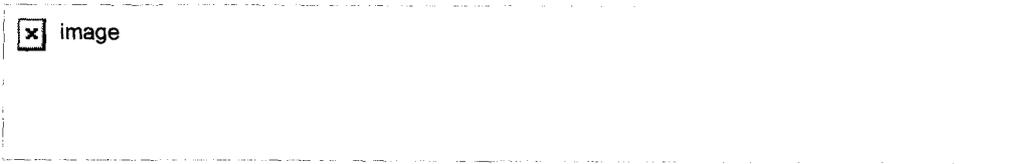
“David McBean”

David McBean

February 1, 2009

Date

- 1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
- 2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.
- 3 Exhibit R-2, certified copy of passport received from Citizenship and Immigration Canada (CIC).
- 4 Exhibit C-1



RPD File No. : TA9-05364



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

s.19(1)

**Designated Representative
(s)**

Représentant(e)(s) dés

Counsel for the Minister

N/A

Conseil du

DECISION

[1] (the claimant), his minor son and his minor daughter citizens of Belize, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant and his wife moved from China to Belize in the 1990's. He and his family ran a successful store and lived behind it. The store was robbed in 1998. The robbers shot at the claimant but missed him and were then scared off by customers. The store was robbed again in the morning of 2007. Three armed men broke into the store. The claimant's wife was shot and killed and his two children were both shot and wounded. After applying for visas, the claimants then traveled to the United States of America on 2007. On 2007, they entered Canada at an unknown location in British Columbia. They filed refugee claims in Toronto on 2007.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Belize were accepted at the hearing given that certified copies of their passports from Belize were on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, while I am mindful that claimants are not required to document all aspects of their claim, if documents are reasonably available, they should be presented. As noted at the hearing, no medical documents were presented to substantiate the claimant's son's injuries. The claimant stated that his daughter had been more critically wounded, that he had forgotten the name of the doctor who had treated his son, that he had been distraught at the time and that he had asked a friend to get the documents but he had not obtained them. I do not find the claimant's explanations satisfactory. His son allegedly spent a week in the hospital because of his injuries. One would expect there to be a record of that. Even if the claimant was distraught at the time the claimant made his refugee claim in 2007, he has had almost three years to document the claim. I would have expected something more than the claimant simply asking a friend to get the medical documents and then have no idea why this friend never obtained them. Had his son really been shot and this resulted in a week-long hospital stay, I would have expected the claimant to be able to document this beyond the pictures of scars that were presented (which could be due to a number of causes) and I find the fact that he did not present medical documents with respect to his son to undermine his credibility.

[6] In oral testimony, the claimant initially stated that the 2007 robbery occurred while he was preparing to open his store for the day. However, in later testimony when he was describing reporting the incident to the police, he said that he went to the police the next day to report the incident that had occurred "last night". When challenged with respect to the timing of the robbery the claimant stated that it had happened at 7:30 a.m. When his comment of the robbery occurring "last night" was put to him, he stated that he meant "yesterday". I do not find the claimant's explanation satisfactory. During the claimant's initial testimony it appeared that he had memorized the narrative portion of his PIF which did state that the robbery occurred just as the claimant was getting ready to open his shop. However, when asked about this significant detail (was the robbery in the morning or in the evening) out of context, the claimant gave a totally contradictory answer. From the way that he testified, I cannot see how "last night" could have been meant as "yesterday [morning]". I find that this contradiction further undermines the claimant's credibility.

[7] The claimant presented no documents from the police or the media to corroborate his story. The claimant stated that the police would only issue documents at the conclusion of the case. He did not present media documents since he did not pay attention to the media at the time of the incident and had not obtained any documents since that time since he did not understand English. I do not find the claimant's explanations satisfactory. It makes no sense for the police to be unwilling to confirm in writing that the claimant had made a complaint or at least given a statement. It makes no sense at all for

a woman to be murdered, her two children shot and seriously wounded and there would be no media coverage. If such a thing had happened, I would have expected documents to be reasonably available from both sources, but particularly from the media, even if the claimant was forced in the three years since he made his claim to conscript someone who spoke English to check for documents. I find that this further lack of documentation to further undermine the claimant's credibility.

[8] In oral testimony, the claimant stated that he did not know the outcome of the police investigation. However, as noted at the hearing, in the PIF, the claimant positively states that nothing ever came from him having reported the matter to the police. The claimant stated that he was not aware of any arrests. However, as further noted at the hearing, in the notes⁴ of an immigration officer made at the time that the claimant made his claim, the claimant stated that one robber was apprehended and two remained at large. The claimant stated that he had heard this from a neighbour and that he had never included this in his PIF since it had never been confirmed. I do not find the claimant's explanations satisfactory. At various times the claimant stated that he did not know if the police accomplished anything (oral testimony), that they did not do anything (the PIF), that they caught one of the robbers and two were still at large (immigration notes). None of these three versions can be reconciled by a lack of confirmation of truth. If any of them were true, I would have expected the claimant to consistently express one of the versions consistently even if he had to include a proviso with respect to how he came to know the information. I find that these repeated contradictions further undermine the claimant's credibility.

[9] In the claimant's initial oral testimony, he stated that he had not heard from the robbers since the robbery. However, in later testimony, he stated that he had received a threatening call two weeks later. When asked why he had not mentioned this call earlier, the claimant stated that perhaps he had misunderstood the earlier questions. I do not find the claimant's explanation satisfactory. The claimant was asked more than once whether or not the robbers had contacted him after the robbery and each time he said that they had not. This is significant since it would indicate a continuing interest on the part of the robbers in the claimant. I do not see how the claimant could have misunderstood more than one question on the same point so badly. I find that this discrepancy further undermines the claimant's credibility.

[10] In oral testimony, the claimant stated that he had not been treated appropriately by the police due to his race. However, as noted at the hearing, there is nothing in the PIF to suggest that the police were racist in their treatment of the claimant. The claimant stated that his narrative concentrated on the events that happened and the injuries that people received and that he had not thought to have mentioned this. I do not find the claimant's explanation satisfactory. The directions for filling out the narrative are quite clear in that all attempts to obtain protection are to be detailed including the results. If the claimant had received improper treatment from the authorities due to race, I would have expected his narrative to say

just that, rather than a simple reference to nothing coming from the police report. I find that this discrepancy further undermines the claimant's credibility.

[11] Given the serious discrepancies, contradictions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. In coming to this decision, I am mindful of the documents on file with respect to the claimant's wife and daughter. However, even if these documents are genuine, given the credibility concerns noted above, I simply do not believe their injuries were sustained in the manner alleged by the claimant.

Generalized Risk

[12] Apart from fearing the men that allegedly robbed him, the claimant expressed a fear of criminals in general. While there is no doubt that crime can occur in Belize, crime is something that can happen to all citizens in Belize and since it is a risk faced generally by others, section 97(1)(b)(ii) of the *IRPA* prevents me from considering it. While the claimant may be targeted more frequently by criminals should he return to run a successful business, this merely alters the degree of the risk and not the nature of it.⁵ There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA* the claim pursuant to that section fails as well.

[13] The minor claimants base their claims on that of the claimant and membership in a particular social group, namely, the family and no persuasive evidence was adduced to differentiate their claims from his, their claims must also fail.

CONCLUSION

[14] I find the claimants are not Convention refugees or persons in need of protection

(signed)

“David McBean”

David McBean

June 16, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit R-2, CIC Etobicoke In-person Refugee Intake, “Record of Examination”.

5 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. : TA9-05594

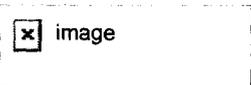
TA9-05595

TA9-05596



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (May 18, 2010)

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Counsel for the Minister

N/A

Conseil du

s.19(1)**REASONS AND DECISION**

[1] _____, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in _____ Poland. In _____ 2002, he started his own _____ . His car was broken into and a valuable package was stolen. Soon after, his car and all the packages inside were stolen. Then he received a threatening phone call. The anonymous caller stated that he would have to pay a large amount of money in order to keep working as a _____ or face violence. The claimant did not have the required amount of money and, valuing his kneecaps, quit being a courier in _____ 2002. The claimant came to Canada in _____ 2004. He made a refugee claim in _____ 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS**Identity**

[4] The claimant's identity as a citizen of Poland was accepted at the hearing given that a certified copy of the claimant's Polish passport was on file.2

Nexus

[5] The claimant fears a criminal vendetta. Since there is no nexus to the Convention refugee definition, the claim pursuant to section 96 of the IRPA fails.

Objective Basis/Generalized Risk

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[6] Even if I were to accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as there is no objective basis for the claimant to fear returning to Poland. The claimant experienced no problems in Poland after he stopped his [redacted] in [redacted] 2002. This makes sense, as the anonymous caller who threatened him said that he would be harmed if he kept up his [redacted] and did not pay extortion money. Given that he quit the business, the man or men attempting to extort the claimant lost interest in him and he managed to live peacefully in Poland for the next year and a half before coming to Canada in 2004. That man (or men) would not have any knowledge of the claimant returning to Poland six years later, or have any interest in monitoring whether or not he returned, so he faces no risk from him (or them).

[7] While the claimant did express some concern that should he return to Poland, he may face extortion attempts from other criminals, the risk of extortion by criminals is a generalized one faced generally by others in Poland and, as such, is precluded from my consideration by section 97 of the IRPA. Even if the claimant were perceived to be wealthy given that he has spent several years abroad, this simply changes the degree of the risk, not the generalized nature of it.³ As such, the claim pursuant to section 97 of the IRPA fails.

CONCLUSION

[8] For all these reasons, the claim is rejected. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

March 17, 2010

Date

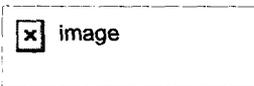
1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

3 *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.



RPD File No. : TA9-05694



RPD.15.7 (February 12, 2009)

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RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA9-06053

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 30, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	April 1, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	No Counsel	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la Commission
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)

Chairperson's *Gender Guidelines*² and I accept that the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[5] The claimant's identity as a citizen of St. Vincent was accepted at the hearing given that a copy of her passport from St. Vincent was on file.³

Credibility

s.19(1)

[6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, the claimant was asked several questions about the manner in which she was abused by . Apart from general physical abuse, the claimant stated that he also cut her with a knife. When pressed on the issue if he had ever used some other weapon she mentioned that . had lashed her foot with a stick. However, as noted at the hearing, the PIF indicated that had shoved a pointed stick through her arm. The claimant stated that he had done that as well and that it was actually a broomstick that he had used. She stated that she had meant her earlier testimony to refer to specific other scars that she had received. I do not find the claimant's explanation satisfactory. The claimant was asked open-ended questions about the weapons that allegedly used. There should have been no confusion with respect to other specific injuries. If had indeed shoved a pointed broomstick through the claimant's arm I would have expected her to say that as one of the first things that came to mind rather than seemingly forget it until challenged on the point. I find that this discrepancy undermines the claimant's credibility.

[7] I am mindful of the fact that claimants are not required to document all aspects of their claim. However, if documents are reasonably available they should be presented. The claimant stated that no documents existed that would corroborate her five year relationship (two years common-law) with . She said she had no medical documents to corroborate her medical treatment since she was treated quickly and released. While these statements seem odd, the documents⁵ that were presented were extremely problematic in and of themselves. The claimant stated orally that despite the frequent, serious incidents of abuse she never went to the police because she was scared of . However, as noted at the hearing, in both an alleged letter from the claimant's sister and another letter from a police officer in , the claimant is described as having made reports to the police in the past, however she never followed through with the court process out of fear. The claimant stated she had spoken to the police officer in question as a neighbour and had never gone to the police station. I also declared at the hearing my specialized knowledge from adjudicating other claims from St. Vincent that the police in St. Vincent

generally use letterhead in written communications and provide detailed return contact information including a phone number, as opposed to the letter on file which is on a plain piece of paper with no detailed return contact information. The claimant stated that she did not know why the letter looked like that. I do not find the claimant's explanations satisfactory. If the claimant had made any sort of contact with the police in any capacity I would have expected her to mention that in her initial testimony. Conversely, if she had only spoken casually to an officer as a neighbour I would not have expected both letters to mention "reports" made to the police or that she failed to follow through with the court process rather than failed to attend at the police station to lay a formal complaint. Given the dramatic contradictions between the letters and the claimant's testimony and the fact that the letter from the police officer simply is not in the format that one would expect such a letter to be in, I find on a balance of probabilities, that both letters are forgeries. I find that these discrepancies in the evidence and the claimant's reliance on forged documents to further undermine her credibility.

s.19(1)

[8] The claimant did not make a claim upon arrival in Canada in 2002 and did not make one until 2007. The claimant stated that she was not aware of the refugee process and did not become aware until 2007 when the father of a child that the claimant conceived in Canada informed Canadian immigration authorities about her whereabouts and lack of status in Canada. I do not find the claimant's explanation satisfactory. The claimant stated that she came to Canada in 2002 as she feared for her life. It makes little sense when asked for the purpose of her trip in 2002 when she arrived at the airport that the claimant did not mention fear. It makes even less sense that the claimant would then live five years in Canada, the vast majority of that time without status, and make no efforts to see if she could stay validly in Canada and not be returned to St. Vincent to face death. I find that this behaviour not only demonstrates a lack of subjective fear but also further undermines the claimant's credibility.

[9] In oral testimony, the claimant stated that the last time that she heard from [redacted] was in 2002 before she left for Canada. In the eight years since he has continuously asked her family about her whereabouts and to this day he has no idea that the claimant is in Canada and actually believes that the claimant may be dead given the lack of information about her. However, as noted at the hearing, the PIF states that [redacted] called the claimant several times in 2007 in the few weeks prior to her filing her refugee claim and demanded that she return to St. Vincent or face death. The claimant stated that she had forgotten these calls. It was then noted that in the notes of the Immigration officer made at the time that the claimant made her claim in 2007 she stated that she had not heard from [redacted] since 2002. The claimant stated she must have forgotten the calls at the time. I do not find the claimant's explanations satisfactory. Either [redacted] came to know the claimant was in Canada and threatened her over the phone while she was here or he did not. It makes no sense that the claimant would not only forget that [redacted] had located her here and called her several times but then go on to state that since he hasn't heard about her in eight years he thinks she may be dead. It makes absolutely no sense for the claimant to not only forget these calls today, three years after they were made, but forget them when she spoke to the

Immigration officer when they would have been occurring in the two to three weeks prior to the interview with the Immigration officer. I find that these discrepancies further undermine the claimant's credibility.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events the claimant alleged happened to her, actually happened and as such the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would be at risk of any of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[11] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[12] For all these reasons, the claim is rejected. The claimant is not a Convention Refugee or a person in need of protection. There is no credible basis for the claim.

(signed)

"David McBean"

David McBean

April 1, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2

4 Exhibit C-1.

5 Exhibit C-2

6 Ex R-2, Record of Examination

RPD File No./ N° de dossier de la SPR : TA9-06053



RPD File No. : TA9-06053



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TA9-07669

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s)
Date(s) of Hearing	March 2, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	April 20, 2010	Date de la décision
Panel	David McBean	
Counsel for the Claimant (s)	Yvonne Iwona Kaniak	Conseil(s) du / de la demandeur(e)(s)
Tribunal Officer	N/A	Agent(e) de la
Designated Representative(s)	N/A	Représentant(e)(s) du

Counsel for the Minister

N/A

Conseil du

REASONS AND DECISION

s.19(1)

[1] _____, a citizen of Poland, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant lived in a small village near _____, about _____ kilometres from _____. The claimant worked as a _____ on the weekend. He noticed the security guards at the _____, who _____, dealing drugs to the patrons. The claimant complained to the local prosecutor who laid charges against the security guards. One day, the police took the claimant to the police station and beat him up. They threatened him that if he did not withdraw his report they would kill him. The claimant contacted his aunt in Canada and made arrangements to travel here on _____ 2009. The claimant made a refugee claim on _____, 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Poland was accepted at the hearing given that a certified copy of his Polish passport was on file.²

Credibility**s.19(1)**

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, while I am mindful that claimants are not required to document all aspects of their claim, if documents are reasonably available they should be presented. The claimant presented no documents to indicate that he was at least a [redacted] that he mentioned or that, more importantly, that he sought and obtained medical treatment for his injuries after being repeatedly beaten for the better part of a day. The claimant stated that he simply did not have documents proving he was a [redacted] and was unable to obtain his medical documents from the prosecutor to whom he had given them. When asked why he simply did not contact the medical facility directly to obtain another copy of the documents the claimant stated that he had forgotten the name of the doctor and he did not know if he could request documents over the phone. I do not find the claimant's explanations satisfactory. The claimant worked as a [redacted] for some time so one would think that his family in Poland would be able to provide documentation to show where he had worked. Furthermore and more importantly, those same family members should have been able to go to the medical facility where the claimant received treatment and obtain some document confirming that the claimant had indeed been treated there. I find that the absence of these reasonably available documents, particularly the medical document, to undermine the claimant's credibility.

[6] The claimant stated that [redacted] were charged and that these charges were covered by the local media. However, as noted at the hearing, the claimant presented no media articles to corroborate his story. The claimant stated that he did not know that he was required to provide the media articles. I do not find the claimant's explanation satisfactory. From at least the time that the claimant prepared the PIF, he was represented by a member of the Canadian Society of Immigration Consultants. The claimant was quite clear in his oral testimony that the drug charges against [redacted] were covered in the local media, much as one might expect given the sensational aspect to the story. However, I would also expect that such media coverage would be quite easily documented. Given the claimant was represented by licensed counsel, I find the fact that the claimant presented nothing from the media to corroborate his story despite such articles being reasonably available to further undermine his credibility.

[7] The one purportedly original document⁴ that the claimant did present to corroborate his involvement with the prosecutor's office was problematic in and of itself. As noted at the hearing, the document stated that charges were commenced against someone on [redacted], 2009, a date long after the claimant had left Poland and even longer after the original charges had allegedly been laid. The claimant stated that this document related to a subsequent matter and that his mother had not seen the documents relating to the earlier matters. Also declared at the hearing was my specialized knowledge

s.19(1)

that Polish authorities usually communicate by way of formal letterhead, rather than the plain piece of paper presented with an ink stamp on it. The claimant stated that the Prosecutor's office would not talk to his mother re: other matters and this was the format that this particular document was normally created in. I do not find the claimant's explanations satisfactory. The claimant was allegedly the main witness in a major drug case where [redacted] were charged with drug offences. It makes no sense that the claimant would not be able to obtain any documents from the Prosecutor that he allegedly cooperated with and only have an odd looking technical document from a subsequent matter. I find that documents from the Prosecutor's office would have been reasonably available and that the document presented is, on a balance of probabilities, a forgery. I find that the lack of authentic documents and the reliance upon a forged document to further undermine the credibility of the claimant.

[8] The claimant stated in oral testimony that after charges were laid, he went to live with a friend. However, people claiming to be "friends" of the claimant would appear looking for him. When the claimant called the Prosecutor for assistance he received none. However, as noted at the hearing, none of these facts are contained in the PIF. The claimant stated that he thought he had told his counsel of this. I do not find the claimant's explanation satisfactory. The claimant's narrative is only ten typed lines long. The claimant stated both orally and in writing that the PIF had been interpreted back to him and that it was complete, true and accurate. To miss an entire series of events where people are looking for the claimant, where the claimant calls the Prosecutor for assistance and where the Prosecutor did nothing makes no sense. I find that this discrepancy further undermines the claimant's credibility.

[9] In oral testimony, the claimant stated that after an initial visit to Canada he returned to Poland and was beaten by two men in a park. The claimant was shown a picture of his father by his assailants who said his father would be harmed should he testify against the [redacted]. However, as noted at the hearing, once again this entire event was not contained in his PIF. The claimant stated that he thought that he had told his counsel this information. I do not find this explanation satisfactory. As noted previously, the claimant's narrative is 10 lines long and the claimant affirmed both orally and in writing that it had not only been interpreted back to him, but that it was also complete and accurate. To somehow omit all mention of the claimant being somehow found in a park, being beaten (for what would be the second time) and given a warning about harm coming to his family should he testify makes absolutely no sense at all. I find that this omission further undermines the claimant's credibility.

[10] I do note that the claimant stated that he did not like talking about the events that had happened to him. However, no psychological evidence was presented that would indicate that the claimant was incapable of relating his past, particularly in his PIF. I also am mindful of counsel's speculation that the reason that the claimant was generally unable to present documents to corroborate his story was due to her belief that since Poland was so poor, there were generally no photocopiers in Poland outside of some found in [redacted] and perhaps [redacted]. This belief seems to fly in the face of reality. Poland is a

member of the European Union, a union of first world European countries. According to the documentary evidence on file,⁵ as of 2008, Poland had 44 million cell phone users (26th in the world), 79 radio stations, 75 television stations, it's own Internet country code (".pl") and over 18 million Internet users (18th in the world). The thought that there would be an utter lack of photocopiers outside of the biggest cities is somewhat bizarre and is a thought which I simply do not believe in or accept.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[12] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favorable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[13] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

April 20, 2010

Date

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

3 Exhibit C-1.

4 Exhibit C-2.

5 Exhibit R-1, *National Documentation Package*, November 30, 2009, tab 1.3, United States, Central Intelligence Agency, "Poland: The World Factbook", October 28, 2009.



RPD File No. : TA9-07669



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA9-08816
Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)s d'asile
		s.19(1)
Date(s) of Hearing	December 10, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	January 28, 2011	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Michael Campbell	Conseil(s) du / de la / des demandeur(e)s d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)s désigné(e)s
Counsel for the Minister	N/A	Conseil du ministre

[1] _____, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born and raised in the Federal District. In _____ 2008, he was living in _____ as a _____. He needed to borrow money to make _____. The claimant borrowed _____ pesos (approximately _____ CAD) from "_____" (_____) on certain terms. However, the claimant soon found himself unable to pay back the money. _____ proposed that the claimant work off his debt at _____ pesos per day by allowing him _____ of _____ with the claimant as _____ for several days. On the first day the claimant _____ to several places. Eventually a man with a briefcase joined him _____. As they drove back to _____ the men bragged that they belonged to _____ and that the claimant should solve his money troubles by selling drugs. The claimant dropped them off at their desired destination and waited two hours for them to reappear. Suddenly a number of police vehicles arrived to arrest _____ and others. The claimant left quickly. The claimant's neighbours soon began to see suspicious people in the area and he began to receive threatening calls on his cell-phone, both wanting the money still owed and blaming him for the apprehension of _____. On _____ 2008, the claimant was driving slowly downtown, looking for a place to park. Suddenly a man punched him through the open window. The man grabbed him and put a knife to his throat and called him a snitch. The claimant escaped when the still moving _____ brushed against another vehicle, forcing the man to let go. The claimant returned home to find his house trashed. He quickly sold or gave away his belongings and received a call promising death. The claimant came to Calgary, Alberta, on _____, 2008. He made a refugee claim in Toronto on _____, 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Mexico was accepted at the hearing given that a certified copy of his Mexican passport was on file.²

Credibility

s.19(1)

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in the PIF, and the man who joined him told the claimant that they were members of however, as noted at the hearing, despite being given more than one opportunity to describe orally what was said, the claimant omitted this information. The claimant stated that this had not come to mind at the time. I do not find the claimant's explanation satisfactory. It would be one thing to fear a small-time loan shark and drug dealer. It would be another thing entirely to be afraid of someone who belonged to. Had this really been the case I would have expected the claimant to have remembered this information when given more than one opportunity to testify about it. I find this omission undermines the claimant's credibility.

[6] As stated at the hearing, it is within my specialized knowledge that Mexican media provide extensive coverage about drug cartels, the authorities fighting against them and figures prominently in many of these reports. However, when the claimant was asked why he had not presented any media reports to corroborate the arrest of, the claimant stated that while he looked on the Internet, he did not know why there were no reports to be found. I do not find this lack of an explanation satisfactory. Had there really been a police raid involving a number of police vehicles and the arrest of members of in a major Mexican city, I would have expected media coverage to be quite extensive and be quite reasonably available. I find the fact that the claimant could not produce any media reports to corroborate this incident to further undermine his credibility.

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, as amended by Exhibit C-2.

[7] The claimant did not make a claim upon arrival in Canada and instead waited almost six months to do so. As noted at the hearing, according to the Immigration notes⁴ on file, the claimant was asked through an interpreter upon his arrival in Calgary whether he had been persecuted or feared returning to Mexico. The claimant's recorded response was, "No sir, not at all." The claimant stated that at the time he claimed to be a tourist, since did not know about Canadian authorities, that he had been traumatized by the Mexican police, that he feared being returned to Mexico and only found out about the Canadian refugee system six months later when he told a friend that his visa was expiring. I do not find the claimant's explanations satisfactory. There is nothing in the claimant's PIF that would suggest that the claimant was so traumatized by the Mexican authorities that he would be unable to answer questions honestly to Canadian authorities. The claimant was asked a very direct question and, given the claimant's circumstances, I would have expected the claimant to have answered very differently had he really feared harm. Furthermore, had the claimant really feared harm, I would have expected him to make efforts to prolong his stay in Canada far sooner than right before his visa was set to expire. I find that this delay in claiming and most importantly, this discrepancy with respect to what he said upon arrival, not only demonstrates a lack of subjective fear but also further undermines his credibility.

[8] When the claimant did make a claim, he made a statement⁵ that described what had s.19(1) happened to him. However, as noted at the hearing, the statement makes no mention of The claimant stated that the statement was intended to be brief and that he would expand on it later. I do not find the claimant's explanation satisfactory. While not overly long, the statement is fairly detailed and specifically makes reference to the person to whom he owed money and "his accomplices and relatives." As noted earlier, to be afraid of a lone drug dealer and his accomplices and family members is one thing; to be afraid of _____ would be another. Given the way the statement was written, had _____ been involved, I would have expected their involvement to be specifically mentioned. I find that this discrepancy further undermines the claimant's credibility.

[9] Given the serious discrepancies, omissions and other problems with respect to major issues. I find that the claimant was generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other

⁴ Exhibit R-2, Information Received from CIC.

⁵ Ibid.

evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[10] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[11] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

January 28, 2011

Date

RPD File No. / N° de dossier de la SPR : TA9-14677

TA9-14718

TA9-14719

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s)

Date(s) of Hearing

March 2, 2010

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

April 20, 2010

Date de la décision

Panel

David McBean

7

**Counsel for the Claimant
(s)**

Sol Gombinsky

**Conseil(s) du / de
demandeur(e)(s)**

Tribunal Officer

N/A

Agent(e) de

Designated

Représentant(e)(s) de

Representative(s)

Counsel for the Minister

N/A

Conseil du

s.19(1)

REASONS AND DECISION

[1] (“the claimant”) and her minor sons,
and citizens of Portugal, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*1 (*IRPA*).

ALLEGATIONS

[2] The claimant lived in a small town from She dated for two years from 1999 to 2001, but broke-up with him when she met her current common-law spouse who lived in Canada. was not happy with this. While he would not be as much of a problem whenever the claimant’s partner visited from Canada, he would harass her in the streets most often when her partner was not around. After the birth of her first child, became angrier. He began to knock on her door and chase her in the street. After the birth of the claimant’s second child, threatened to harm the claimant and her sons if she did not return to him. The claimant came to Canada on , 2007. She made a refugee claim on , 2009.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. I have considered all of the evidence in the context of the Chairperson’s *Gender Guidelines*2 and I accept that the circumstances which give rise to women’s fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of Portugal were accepted at the hearing given that certified copies of their Portuguese passports were on file.³

Internal Flight Alternative (IFA)

[5] Even if I were to accept the claimants' evidence as true, which I do not necessarily do, these claims fail as I find that a viable IFA exists in Lisbon. In *Rasaratnam*,⁴ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

s.19(1)

[6] With respect to the first prong of the test, the claimants would return to the [redacted] airport in [redacted] so there would be no need to return to their former hometown where [redacted] lives. According to the claimant, [redacted] comes from a poor family and usually does not stay long in jobs himself. Given [redacted] lack of resources and influence and the claimants' absence from Portugal for several years, it seems extremely unlikely that he would come to know that the claimants had returned to Portugal and were living in [redacted]. While the claimant speculated that [redacted] would learn this by asking around her hometown, it is unlikely that the claimant's mother would let this information get to him given the past history.

[7] Even if [redacted] were to somehow come to know that the claimants were living in [redacted] and he decided to travel the [redacted] hours by car necessary to get there, find and travel to the claimant's specific address, the claimant could always call upon the authorities for help. When asked what would happen if she called the authorities should [redacted] be menacing her with a weapon outside her door, the claimant conceded that the authorities would respond and arrest him, although she did express a concern with respect to the length of time it takes for court proceedings. While counsel submitted that domestic violence can be a problem in Portugal, I do not see how this situation could be considered "domestic violence" at this point. The claimant has not been in any sort of relationship with [redacted] for nine years. She has two children with her current partner and no children from [redacted]. While the claimant may not have had good experiences in her hometown and surrounding area, (l

s.19(1)

(), the objective documentary evidence shows that the situation would be quite different in in that rape, including spousal rape, is prosecuted. Cases of violence against women are prosecuted and there are safe houses and emergency hotlines.⁵ I find on a balance of probabilities that the claimant has failed to rebut the presumption that adequate state protection is available in in the unlikely event that should seek to harm her there.

[8] With respect to the reasonableness of the claimants moving to , I note that the threshold for the claimants to show that relocation to the proposed IFA would be unreasonable is quite high.⁶ I am mindful that the claimant's partner actually lives and has status in Canada and may not join her in Portugal, as well as the fact that she has no relatives in . While the claimant does not have advanced education (it appears the number of years is misstated in the Personal Information Form (PIF), the information in the immigration documents seems more correct at nine years with a certificate earned), the claimant has worked previously in a and as a . No evidence has been presented that independent childcare could not be arranged for the minors in while the claimant worked. While the jobs that she might be qualified for would not likely be high paying, I find that it would not be unduly harsh for the claimants to relocate to and as such the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is at risk of the harms delineated in section 97 of the *IRPA* the claim pursuant to that section fails as well. The minor claimants base their claims on that of the claimant and membership in a particular social group, namely, the family and no persuasive evidence was adduced to differentiate their claims from that of the claimant, the claims of the minor children must also fail.

CONCLUSION

[9] For all these reasons, the claims are rejected. The claimants are not Convention refugees or persons in need of protection.

(signed)

“David McBean”

David McBean

April 20, 2010

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002

pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

3 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

4 *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

5 Exhibit R-1, *National Documentation Package*, March 30, 2009, tab 2.1, United States Department of State, *Country Reports on Human Rights Practices for 2008*, February 25, 2009.

6 *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).



RPD File No. : TA9-14677

TA9-14718

TA9-14719



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français

RPD File No. / N° de dossier de la SPR : TB0-02055

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)
Date(s) of Hearing	May 27, 2010	Date(s) de l'
Place of Hearing	Toronto, Ontario	Lieu de l'
Date of Decision	June 2, 2010	Date de la
Panel	David McBean	
Counsel for the Claimant(s)	N/A	Conseil(s) du / c demandeur(e)
Tribunal Officer	N/A	Agent(e) de
Designated Representative (s)	N/A	Représentant(e)s dés
Counsel for the Minister	N/A	Conseil du

001225

s.19(1)

[1] _____, a citizen of Italy, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant grew up in _____, Italy. In 1982, his father died and soon after, when he was a teenager, his remaining family moved to the United States of America (USA). Eventually the claimant learned that his father was killed at the hands of the mafia, particularly the _____. The claimant lived in Philadelphia for over 20 years before being ordered removed from the USA. Despite being terminally ill with cancer, the claimant's mother visited him in jail as he waited for removal. There she told him that she had had an affair with a member of the _____ family and that the claimant was actually the product of this affair. She feared for his life should he be returned to Italy. After being removed to Italy, the claimant's American wife joined him to help with his efforts to return to the USA. On the way to the US embassy, they were accosted by four men who asked about the claimant's family background. They contacted the claimant again at home this time saying that they were from the _____ family and that since the claimant was a blood relation he had to join them. They also mentioned that there was an old debt that needed to be paid and that working it off would be the safest thing to do. Under threats of death to the claimant and his wife, the claimant collaborated with the _____ family, _____, _____, and _____, and doing other things. While the claimant attempted to change residences, the men found him and claimed that they could find him anywhere in Italy. The claimant flew to Canada on _____ 2010, and after being detained by Immigration officials made a refugee claim on _____, 2010.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS***Identity***

[4] The claimant's identity as a citizen of Italy was accepted at the hearing given that a certified copy of his Italian passport was on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form3 (PIF) and the other documents available. For example, in oral testimony, the claimant described the men of the family gradually getting to know him from seeing him at his uncle's business. As they gradually got to know him they asked him to do some tasks and took care of his needs. However, as noted at the hearing, in the PIF the claimant is aggressively confronted by men from the family. The claimant stated that he was often confused about his life. I do not find this explanation satisfactory. Either members of the family gradually got to know the claimant in a friendly way or the claimant was approached aggressively with threats almost from the start. I do not see how the claimant could be "confused" and give these two dramatically different descriptions with respect to how he first encountered the agents of persecution and the nature of their relationship. I find that this contradiction undermines the claimant's credibility. s.19(1)

[6] While not mentioned in the narrative, the PIF records that the claimant travelled to Mexico in 2009. When apprehended by the American authorities after attempting to enter the USA, he filed an asylum claim which was rejected. However as noted at the hearing, given that his oral testimony was that he was on good terms with the family to this point, it was unclear what he would base his asylum claim on since there did not seem to be anything that he needed to be afraid of. The claimant stated that he had left Italy with to thousand euros that belonged to the and not him and that he had to stay in the family because of blood. However, as noted at the hearing, there is no mention in the PIF that the claimant stole to : thousand euros and this was at least part of the reason that the claimant was at risk of harm. The claimant stated that he had trouble remembering things chronologically and that he had forgotten. I do not find this explanation satisfactory. This is not a case where the incident was out of place chronologically, this was an outright omission. The claimant's PIF is quite detailed about the reasons that the claimant allegedly faces harm. Had the claimant actually run off with to : thousand euros of mafia money that did not belong to him, I would have expected some mention to be made of this in the PIF. I find that this omission further undermines the claimant's credibility.

[7] In a statement to an Immigration officer,⁴ the claimant stated that he was afraid to return to Italy since his mother borrowed a lot of money from a woman named who was part of the mafia. However, as noted at the hearing, there is no mention in the statement of the claimant being a blood relative of a crime family and therefore being forced to join them as per the PIF. Neither is there mention in the statement of the claimant running off with mafia money

as he had mentioned in his oral testimony. The claimant stated that his mother had indeed borrowed a lot of money for unknown reasons from the same people who menaced him. I do not find this lack of an explanation satisfactory. While the statement to the Immigration officer is fairly brief, it contains a large number of details. Had the claimant really been obligated to join the mafia because of blood ties and had he really run off with mafia money I would have expected these details to be mentioned in the statement to the Immigration officer. I find that their omission further undermines the claimant's credibility.

[8] The claimant also mentions in the statement to the Immigration officer that he was hit by cars. However, as noted at the hearing, there is no mention of the claimant being hit by cars in the PIF. The claimant stated that he was depressed, claustrophobic, and had a tough time remembering things chronologically. He confirmed that he had been hit by cars and that he had had to seek medical attention as a result. I do not find this explanation satisfactory. Once again, this is not an error in chronology, it is an outright omission. The directions for filling out the PIF narrative are quite clear in that not only are all significant events to be included but details of medical treatment as well. This would obviously have been a significant incident since it would have been the only time that the claimant was actually harmed by the agents of persecution. Had the claimant really been hit by cars and sought medical attention as a result I would have expected there to be some mention of this in the PIF. I find this omission to further undermine the claimant's credibility.

[9] Also in the statement to the Immigration officer the claimant stated that he faced a risk of harm since people knew that his wife was from the USA and that she had money and jewellery. The claimant stated that his wife was attractive and that men would see her and follow them and he was afraid they would snatch her jewellery and money. He further stated that he always looked out the window to see if everything was OK before they opened the door. While the claimant initially stated that this portion of the risk came from criminals in general, he then stated it could be related to the agents of persecution. However, as noted at the hearing, none of these facts are contained in the PIF. The claimant stated he did not know why he had not included these facts in the PIF. I do not find this lack of an explanation satisfactory. If the claimant felt that these men following him and his wife were somehow related to the agents of persecution I would have expected this to be mentioned in such a detailed PIF. I find that this omission further undermines the claimant's credibility.

[10] Given the serious discrepancies, omissions, and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened, and as a result the claim pursuant to section 96 of the IRPA fails.

Generalized Risk

s.19(1)

[11] While I do note that street crime can happen in [redacted] and that if one were to walk around displaying jewellery there is the risk that it will be stolen, this risk is generally faced by everyone in Italy and is therefore precluded from my consideration by section 97(1)(b)(ii) of the IRPA. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the IRPA, the claim pursuant to that section fails as well.

NO CREDIBLE BASIS

[12] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION

[13] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

June 2, 2010

Date

- 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27.
- 2 Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
- 3 Exhibit C-1, Personal Information Form.
- 4 Exhibit R-2, Information received from CIC, Claim for refugee protection in Canada, page 10.



RPD File No. : TB0-02055



RPD.15.7 (February 12, 2009)

Disponible en français



RPD.15.7 (February 12, 2009)

Disponible en français



RPD File No. / N° de dossier de la SPR : TA7-10850

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	August 20, 2009	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 16, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Roderick H. Mcdowell Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	R. Gould	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre



[1] _____, a citizen of Guatemala, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant is a Mormon. After doing _____ work in _____ he returned to his native Guatemala in _____ 2003. In _____ 2003, he became reacquainted with _____ (“_____”), a friend that he had grown-up with in Guatemala City. The two became estranged after _____ joined the _____, a powerful _____, in 1999. _____ enjoyed the _____ lifestyle. However, when they met in _____ 2003, the claimant attempted to convince _____ to leave the _____ and rejoin the Mormon Church. From _____ through _____ 2003, the claimant received approximately six anonymous phone calls insulting him and his attempts to get _____ to rejoin the church. _____ actually attended church four times during this time period. On _____ 2003, _____ and the claimant were in the claimant’s house. Two men burst in smashing things. They threatened the claimant that he should not be attempting to get _____ to leave the _____ as he was their leader and they had spent a lot of time getting him to join the _____. The _____ left with _____ threatening to kill the claimant and his family. On _____ 2003, _____ approached the claimant at church and said that he was tired and did not know what to do. They went to the claimant’s home. At 7:00 p.m., the same two men came into the claimant’s home and held the claimant at gunpoint and said that they would kill him. They put a bag over his head and this is the last time that the claimant saw _____ and does not know what happened to him. The claimant was driven for 30 minutes and then forced to walk a short distance. When the bag was removed from his head, he found himself in some form of warehouse, with candles, a stone table that resembled an altar and approximately _____ A _____ named _____ came forward with a knife and someone said to him “We’re going to see if you are going to be a man today”. It was obvious the _____ wanted _____ to kill the claimant. _____ slashed the claimant on the wrist and hand. Suddenly the claimant was hit on the back of the head and he passed out. When he came to, he was lying in the street in front of his church. A stranger

¹ _____ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

found him and assisted in walking him home. The claimant's family took him to a clinic for treatment. The claimant had cuts to his hand and wrist, bruises on his body and continued to suffer headaches for a month. The claimant flew to Mexico on _____, 2003. After traveling north and paying a " _____," the claimant entered the United States illegally and arrived at his brother's place in Los Angeles, California on _____, 2003. In _____ 2004, the claimant approached a lawyer whose name he cannot remember to discuss a possible asylum claim, but found that he could not afford the quoted fee. The claimant's sister and her family traveled to Canada in _____ 2005 and were granted refugee status on separate grounds in _____ 2006. The claimant, while still in California dated a member of his church in 2005, who he hoped to marry and be sponsored by her, but the relationship ended later that same year. Given the awkwardness of attending the same church, the claimant traveled to Florida in _____ 2006 to join a second sister. The claimant traveled to Canada and made a refugee claim on _____, 2007.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimant's identity as a citizen of Guatemala was accepted at the beginning of the hearing as a copy of his Guatemalan passport was on file.²

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

Internal Flight Alternative (IFA)

[5] Even if I were to accept the claimant's evidence as true, which I do not necessarily do, the claim fails as there is a viable IFA in Escuintla. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable:

- (i) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
- (ii) Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there. s.19(1)

[6] With respect to the first prong of the test, the claimant's last contact with the was in late 2003, almost six years ago. The claimant's family in Guatemala has not had any problems or contact with the gang since he left. While counsel speculated that perhaps the gang members thought he was dead, I do not agree with counsel's speculation. The claimant suffered defensive wounds to his hands, general bruising and was knocked unconscious. One does not need to be a medical expert to determine if someone is still breathing or if their heart is still beating. Given that the claimant woke up on his own without medical assistance, it would appear that he was not injured so severely that one would mistake him for being dead. I am mindful that gangs are a problem throughout Guatemala. However, if the gang did not kill the claimant when they literally had him at their mercy in 2003, it does not make sense that they would suddenly become interested in searching for, locating and harming him after six years have gone by, particularly if he went to another city such as Escuintla, two hours away from Guatemala City, where he would not see the same people on street. I find on a balance of probabilities that there is no serious possibility of the claimant being persecuted in Escuintla as the gang would not be motivated to seek him out.

[7] With respect to the reasonability of the claimant moving to Escuintla, I note that the threshold for the claimant to show that relocation to the proposed IFA would be

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

unreasonable is quite high.⁴ I note that the claimant completed part of his university education and has worked at a variety of jobs, albeit at a low level. The claimant stated that he would not have any non-gang related problems living in Escuintla and I find that it would not be unduly harsh for him to relocate there and therefore, the claim fails with respect to section 96 of the *IRPA*. There being no other evidence that the claimant would personally be, on a balance of probabilities, at risk of any of the grounds enumerated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

CONCLUSION

[8] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

October 16, 2009

Date

⁴ *M.C.I. v. Ranganathan, Rohini* (F.C.A., no. A-348-99), Létourneau, Sexton, Malone, December 21, 2000. **Reported:** *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).



RPD File No. / N° de dossier de la SPR: TA7-11631

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 25, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	January 28, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Joseph Farkas	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated Representative(s)	Nil	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Nil	Conseil du ministre

s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

The claimant lived in and worked as the for his uncle, who was an On , 2006, the claimant's uncle was murdered. The motive for the murder was unclear, although the claimant did recall some suspicious activity. In 2007, the claimant received an anonymous threatening phone call wherein the caller demanded information about his uncle's contacts in While the claimant attempted to report the call to the authorities, they told him to wait as the call may have been a prank. About three months later, the claimant received a second threatening call, with the caller once again demanding information about contacts in . Once again the authorities told the claimant to wait as there had been such a long gap between calls. A week later, a threatening note was nailed to the front door of the claimant's family's home. Realizing that "they" knew his address, the claimant decided to leave the country on , 2007. The claimant made a refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant alleged that he is a victim of crime based on being criminally harassed by the unknown people who murdered his uncle. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

Internal Flight Alternative (IFA)

Even if I were to accept all of the claimant's evidence as true, which I do not necessarily do, the claim pursuant to section 97 of the *IRPA* fails as the claimant has a viable IFA in the Federal District. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable, which has been adjusted for the purpose of section 97 as follows:

- i. The Board must be satisfied on a balance of probabilities that the claimant does not face a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment in the part of the country to which it finds an IFA exists. Section 97(1)(b)(ii) of the *IRPA* requires that the risk would be faced in every part of the country.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, it has been almost three years since the claimant's uncle was murdered. The murderers stole the uncle's laptop and cellphone which would have logically contained the majority of his business contacts. Any other contact information that the claimant would have had in his own memory would, of course, have deteriorated over time. Also, given the ever-changing nature of the business world, there is of course, no guarantee that any business contacts from early 2006 would still be in business or still have the same contact information. Whatever additional contact information the claimant would be able to recall from early 2006 would appear to have limited value almost three years later, so it is unlikely anyone would be highly motivated to find and harm the claimant in order to obtain this information. Even at the time of the murder, the murderers did not seem to place much priority in obtaining information from the claimant as they waited almost a year before making the first phone call. With the second phone call not being made for another three months and then an anonymous note a week later, the murderers did not seem very motivated in following up with the claimant. While not mentioned in the PIF, the claimant did state at the hearing that his parents received two further phone calls in the year-and-a-half that the claimant has been in Canada. Given that almost three years have passed since the murder, one would think that either

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

the claimant or his parents would have actually come into contact with an actual human being at some point if the murderers were truly interested in finding and harming the claimant. It may be, as the authorities in _____ speculated, that someone was pulling an extended prank on the claimant.

s.19(1)

Even if the calls and the note were not pranks, given the fairly minimal efforts that the murderers have made in contacting the claimant, it appears extremely unlikely that they would follow him to another major city, such as the Federal District. Even if they were somehow interested in following the claimant, as the claimant himself noted, it is not always easy to track people in Mexico. There is no comprehensive personal database in Mexico, and access to the main existing databases requires a court order and/or written permission from the public prosecutor's office.⁴ Even if the murderers were motivated enough to attempt to track the claimant and they succeeded in finding him in the Federal District, there was no evidence presented that the authorities in the Federal District would be unable or unwilling to assist him.

I find that, on a balance of probabilities, the claimant would not face a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of torture in the Federal District.

With respect to the reasonableness of the claimant moving to the Federal District, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁵ The claimant would arrive at the international airport in the Federal District so he would not have to return to _____. The claimant has 16 years of education and has held several jobs, some of them at the same time that he was attending university, so it would appear that he should be able to find a job. I am mindful of the psychological evidence on file, in that Dr. _____ diagnosed the claimant as suffering from either "Depression, anxiety"⁶ or "Post-traumatic Stress Disorder" and that one day the claimant may contemplate suicide.⁷ However, no evidence has been presented that the claimant would be unable to obtain psychiatric treatment in the Federal District. The claimant did express concern at the level of crime in the Federal District, however, there is nothing in the objective documentary evidence which would suggest that the crime rate in the Federal District is beyond what one would expect in a large metropolitan area and there is no indication that the authorities would be unable or unwilling to

⁴ Exhibit R-1, *National Documentation Package*, item 2.4, *Issue Paper*, Mexico, Situation of Witnesses to Crime and Corruption, section 3.3, "Traceability of Individuals Fleeing Violent Situations", *Immigration Refugee Board (IRB)*, February 2007.

⁵ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

⁶ Exhibit C-6, medical report dated February 15, 2008 from Dr. _____

⁷ Exhibit C-2, psychiatric report from Dr. _____ dated February 19, 2008.

protect him, should he experience crime there. More importantly, crime is a risk faced generally by others and therefore excluded under section 97(1)(b).

I find that it would not be unduly harsh for the claimant to relocate to the Federal District.

CONCLUSION

The claimant has alleged that he is a victim of crime based on being criminally harassed by the murderers of his uncle. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention Refugee grounds. As I find that the claimant has a viable IFA in the Federal District, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)


David McBean


Date



RPD File No. / N° de dossier de la SPR: TA7-12639

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s) d'asile
Date(s) of Hearing	August 27, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	October 30, 2008	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Thore Lederer	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	D. Rose	Agent(e) des tribunaux
Designated Representative(s)	Nil	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Nil	Conseil du ministre



s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (*IRPA*).

ALLEGATIONS

The claimant worked in a in . A co-worker, (“ ”), tried to get the claimant involved in the use of counterfeit money in 2004. Apparently and , another worker at the , imported this counterfeit money from out of state. The claimant refused to become involved and after repeated visits from , went to the administration of the mall to complain. Nothing was done, however, and began to threaten the claimant. The windows of the claimant's house were broken, so the claimant filed a report with the police. Later, three men beat the claimant and a car was outside the claimant's house. The claimant quit his job out of fear. While (was arrested and jailed after being found with drugs and counterfeit money, the claimant's windows were broken again. The claimant relocated to a relative's house in

Hearing that someone was looking for him with a gun at his old residence in his home state, the claimant fled to Canada in 2005. After staying in Canada for one year and hearing that the situation was then calm, he returned to Mexico in 2006. Eventually, the claimant heard that (was free and looking for him. The claimant returned to Canada on , 2007, and made a refugee claim on , 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant's identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

Nexus

The claimant has alleged that he is a victim of crime based on being criminally harassed by his former co-workers. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Convention grounds.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

Internal Flight Alternative (IFA)

With respect to section 97 of the *IRPA*, even if I accept all of the claimant's evidence as true, which I do not necessarily do, the claim fails as the claimant has a viable IFA in the Federal District. In *Rasaratnam*,³ the Federal Court of Appeal set out a two-prong test to be used in determining if an IFA is viable, which has been adjusted for the purpose of section 97 as follows:

- i. The Board must be satisfied on a balance of probabilities that the claimant does not face a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment in the part of the country to which it finds an IFA exists. Section 97(1)(b)(ii) of the *IRPA* requires that the risk would be faced in every part of the country.
- ii. Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for him to seek refuge there.

With respect to the first prong of the test, it should be noted that the claimant never personally experienced any problems after he moved to _____, even though the events were current in _____ and _____ minds. During the year that the claimant was in Canada the first time, the claimant's wife lived for periods in the Federal District and _____. Even though _____ and _____ were alleged to have contacts in _____ she had no problems there. The claimant did not know if _____ and _____ had any contacts in the Federal District and she had no problems there either. When the claimant heard that _____ was free again, he went to hide at this mother-in-law's place in _____ – the city in which _____ lived. The claimant experienced no problems there either. In general, the claimant fears what appears to be two low-level criminals who attempted to profit by paying for items with counterfeit bills while working at a _____, who caused most of the claimant's problems, was actually arrested and jailed for a significant period of time by the local authorities in _____ his main location and where theoretically he would have the most power. Given _____ previous arrest and the lack of problems experienced elsewhere by the claimant and his wife, it would appear that neither _____ nor _____ possesses the motivation and/or the ability to cause the claimant problems in any other city, particularly the Federal District. In fact, when the claimant was asked why he could not relocate to the Federal

³ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

District, the only concern that he expressed was that there was a lot of crime and kidnapping there. When asked about police protection in the Federal District, the claimant did express some concerns about corruption. However, he eventually did state that he expected that the authorities in the Federal District would attempt to assist him, should he experience problems.

I find that, on a balance of probabilities, the claimant would not face a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of torture in the Federal District.

s.19(1) With respect to the reasonableness of the claimant moving to the Federal District, I note that the threshold for the claimant to show that relocation to the proposed IFA would be unreasonable is quite high.⁴ The claimant would be returning to the international airport in the Federal District so he would not have to travel back to He has 14 years of education and worked in several jobs so finding a new job should not be that difficult. His wife was born in the Federal District and still has family and in the area who may assist in the resettlement process. While the claimant did express concern that there was crime in the Federal District, there is nothing in the objective documentary evidence which would suggest that the crime rate in the Federal District is beyond what one would expect in a large metropolitan area, and there is no indication that the authorities would be unable or unwilling to protect him, should he experience crime there. In fact, the claimant stated that the authorities would attempt to protect him. More importantly, crime is a risk faced generally by others and therefore excluded under section 97(1)(b).

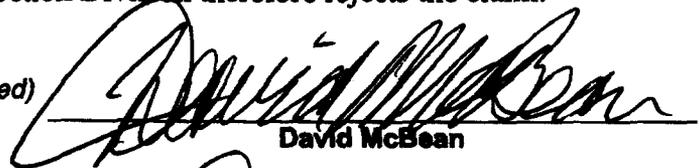
⁴ *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.).

CONCLUSION

The claimant has alleged that he is a victim of crime based on being criminally harassed by his former co-workers. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Refugee Convention grounds. As I find that the claimant has a viable IFA in the Federal District, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)


David McBean


Date

CONCLUSION

The claimant has alleged that he is a victim of crime based on being criminally harassed by his former co-workers. As such, his claim under section 96 of the *IRPA* fails for lack of nexus to any of the Refugee Convention grounds. As I find that the claimant has a viable IFA in the Federal District, the claim also fails with respect to the grounds enumerated under section 97 of the *IRPA*.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

"David McBean"

David McBean

October 30, 2008

Date



RPD File No. / N° de dossier de la SPR : TA7-12642

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)		Demandeur(e)(s) d'asile
Date(s) of Hearing	May 13, 2008	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	July 25, 2008	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Patrick Roche Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	L. Heathfield	Agent(e) des tribunaux
Designated Representative(s)	Nil	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Nil	Conseil du ministre



s.19(1)

, a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

The claimant ran a in . In 2004, he began to receive . In 2007, the claimant received a request from (“ ”), the for the , for . While the claimant delivered the , he did not receive payment in the usual course. Instead, proposed that the claimant submit an inflated invoice to the , with and the claimant pocketing the extra proceeds. The claimant refused to participate. After repeated requests by to submit a new invoice, two uniformed police officers inspected the claimant’s on , 2007. While there, they discovered where he kept his invoices. Five days later, the two officers returned out of uniform, beat the claimant and stole some of his invoices. After the claimant reported the matter to the authorities, threatened him with death. The claimant moved to to stay with his friend (“ ”). After a week, told the claimant that two men had come looking for him. The claimant then moved to , renting a place from (“ ”). Soon after, told the claimant that two men had come looking for him there as well. After reporting to the authorities and consulting a lawyer, the claimant returned to his home in . After discussing the matter with his wife, he came to Canada on , 2007 and made a refugee claim upon arrival.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

Identity

The claimant’s identity as a citizen of Mexico was accepted at the beginning of the hearing as a copy of his Mexican passport was on file.²

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

Nexus

The claimant fears a criminal vendetta which does not provide a nexus to the Convention refugee definition. As such, the claim pursuant to section 96 of the *IRPA* fails.

Credibility

It became apparent that there were a number of problems with respect to the claimant’s testimony and the documents related to the claim. There were numerous, serious contradictions and omissions when the claimant’s oral evidence, Personal Information Form³ (PIF) and the two documents from the Public Ministry were compared to each other. For example, in the PIF the claimant stated that two police officers visited his on . These same officers, then out of uniform, assaulted him on , 2007. In the Public Ministry document from ⁴ it is stated that three people got out of the vehicle and assaulted him. The claimant attempted to explain this discrepancy by stating that there were originally three people in the car, but only two of them assaulted him. I do not find this explanation satisfactory as it does not match the way either document is written – the PIF states the same officers as before (i.e. “two officers”) or Public Ministry document (i.e., “three people got out from the vehicle...beat the witness”). Given that the number of officers was small and could be easily identified, I find that this discrepancy in the number of officers that attacked the claimant to undermine the claimant’s credibility.

s.19(1)

Apart from the number of officers present during the beating, the identity of the third officer was also problematic. The third officer that either sat in the car (oral testimony) or participated in the beating and is described as “perpetrator” (September Public Ministry Document) was stated to be (“ ”),

of the . Apart from contradicting the PIF with respect to the number of officers involved, the involvement of in this crime was not mentioned in the PIF. When asked why he had not mentioned involvement, the claimant stated that it was an oversight and that he had forgotten. In both oral and post-hearing submissions, counsel cautioned that a claimant should not be penalized for minor omissions or providing elaborative detail at the hearing. Counsel gave as an example, a claimant who stated in the PIF that he had been attacked by a gang of skinheads and then at the hearing, elaborated by

³ Exhibit C-1, Personal Information Form (PIF).

⁴ Exhibit C-2, p. 5.

giving the name of the gang. I do not see this as either a minor omission or an elaborative detail. It would be one thing for the claimant to say that he knew the name of one of the two officers that had originally visited his [redacted] it is another matter entirely to omit the personal involvement, depending on which version of events to be used either directly by beating the claimant or indirectly by sitting in the car, [redacted] I find that this omission of [redacted] involvement to further undermine the credibility of the claimant. **s.19(1)**

Neither Public Ministry document makes any mention of the actual motivation for the occurrence of all the alleged crimes, i.e., the kickback scheme. This is especially troubling in the first Public Ministry document from [redacted] While [redacted] name is mentioned as “mastermind” and the actual assault is described in quite a lot of detail (e.g., colour of the car, threats, time of day, type of blows, etc.), there is no mention of the illegal scheme that prompted the violence and nothing, other than the word “mastermind” to tie [redacted] to the assault. Counsel submitted that even in Canada, the evidentiary threshold used to start criminal investigations and trials is generally quite low and that one should be cautious in assuming to know the practices of the authorities in other countries. The claimant stated that by simply mentioning [redacted] name, he would be invited to a meeting with him to sort all of the problems out. I do not find either point persuasive. Since there is a great level of detail in the document on many minor points, it makes little sense to omit the attempted fraud that ended up leading to the alleged assault. With nothing else to tie [redacted] to the assault, it also makes little sense to mention his name in connection with it. I find that this omission of information that one would logically expect to be present further undermines the claimant’s credibility.

With respect to the claimant’s experiences in [redacted] both his PIF and the [redacted] Public Ministry document⁵ state that people (described as “two” in the PIF and “several” in the Public Ministry document) came looking for him on one occasion. In oral testimony, the claimant stated that the people came looking for him on four occasions. When confronted with this discrepancy, the claimant stated that the Public Ministry officials had typed the document quickly and that he just had to say they came once to start the investigation and that his PIF was simply in error. I do not find either explanation satisfactory. A single visit from unknown individuals may not be looked at seriously but repeated visits may be looked at more seriously.

⁵ Exhibit C-2, p. 10.

If the people had visited four times, one would expect that they would tell the authorities just that, rather than once. More importantly, the claimant affirmed both orally and in writing that his PIF had been interpreted to him and that it was complete true and accurate. I find that this discrepancy in the number of times that people came looking for him in [redacted] to further undermine his credibility. [redacted] s.19(1)

Both Public Ministry documents make reference to threats made against the claimant's family. However, there is no mention in the PIF of any threats made against members of the claimant's family; there are only threats made against the claimant himself. When confronted with these discrepancies the claimant stated that there had not actually been any threats made against his family; he falsely included the allegations in the two Public Ministry documents in order to protect his family. I do not find this explanation satisfactory. I do not see how lying to the authorities about threats being made to the claimant's family would somehow result in them being better protected. If members of the family were thought to be in danger, it makes no sense for them to stay in the same residence and not even change their telephone number. I find the discrepancies regarding the existence of threats to the claimant's family further undermines the claimant's credibility.

Even though the claimant left Mexico some time ago and his business has since closed, the claimant stated that his family continues to receive calls asking about him. The claimant stated that an anonymous caller keeps calling insistently for him, day and night and sometimes during the early hours of the morning. As pointed out at the hearing, these insistent calls are not mentioned in the PIF. While the RPO observed that the claimant should not be faulted for not mentioning calls that occurred after his PIF was written, counsel did note that the RPD Rules do provide for amendments to be made. In fact, an amendment to the PIF was made (the colour of the vehicle used in the [redacted] incident was changed from "black" to "white", which then became consistent with the information contained in the Public Ministry document) at the beginning of the hearing. When asked why he did not also amend the PIF to include reference to these insistent anonymous calls the claimant stated that he did not think that the information was relevant. I do not find this explanation satisfactory. It is one thing for the claimant to fear harm based on residual anger from someone who has not attempted any form of contact in the months that the claimant has been away. It is another thing for there to be insistent and persistent attempts at finding the claimant, which would indicate a much greater likelihood of harm. The

claimant's amended PIF was supposed to be complete true and accurate and I find that this omission from the PIF as amended to further undermine the claimant's credibility. **s.19(1)**

While the claimant did provide a medical document from 2007, it does not mention who was responsible for his injuries or the manner in which he received them, which could be from anything. Given the numerous inconsistencies, omissions and contradictions in the various times that the claimant has told his story, I find that the claimant was generally lacking in credibility. I simply do not believe, on a balance of probabilities, any of the significant events that the claimant alleges happened to him, actually happened. Since I do not believe the claimant with respect to the events described in the PIF and there being no other evidence that would indicate that the claimant is, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, his claim under that section fails as well.

CONCLUSION

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

"David McBean"

David McBean

July 25, 2008

Date



RPD File No. / N° de dossier de la SPR : TA7-15245

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	May 13, 2009 May 15, 2009	Date(s) de l'audience
Place of Hearing	TORONTO	Lieu de l'audience
Date of Decision	May 20, 2009	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Robin Edoh	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	Nil	Agent(e) des tribunaux
Designated Representative(s)	Nil	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Nil	Conseil du ministre

, a citizen of Italy and Nigeria, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

The claimant moved from Nigeria to , Italy in 1997. She began a romantic relationship with the owner of her dwelling, (“ ”), in 1999. They married in 2001. However, children did not like this as was years-old at the time and the claimant was only years-old. Over time, the relationship deteriorated with coming home drunk, being abusive and demanding sex. In one incident in 2005, he and his children slapped and beat the claimant. The claimant hid at her friend place for a short time but returned to house. would use the threat of withdrawing his sponsorship for Italian citizenship against the claimant to force her to stay with him. The claimant became an Italian citizen in 2005. She also began an affair with Mr. (“ ”), a Nigerian man whom she met while staying at . The claimant discovered that she was pregnant in 2007 and knew that was the father as she had not been intimate with recently. When learned of the pregnancy, he threatened to kill the claimant if he discovered that the baby was not his. The claimant was afraid; even though was now 75-years-old, he had connections in the mafia. As a result of the pregnancy, the claimant was threatened by and her own father so she could not return to Nigeria. The claimant came to Canada on , 2007, and after being detained upon arrival made a refugee claim on 2007.

DETERMINATION

I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected on a balance of probabilities to a danger of torture, or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. My reasons are as follows.

ANALYSIS

Country of Reference

To be successful, claimants must establish their claim with respect to all countries that they are a citizen of. The focus of the hearing and the focus of these reasons for the decision is on Italy.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

Identity

The claimant's identity as a citizen of Italy was accepted at the beginning of the hearing as a copy of her Italian passport was on file.²

Credibility

It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared internally and to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, the claimant stated that she received a number of injuries in the 2005 incident where [redacted] and his children beat her after she finished cleaning a bathroom. She stated that, among other things she was covered in blood and that her eye was damaged to the extent that it still required care two years later. However, as noted at the hearing, while the incident is mentioned in the PIF, there is no mention of her being injured at all, never mind the apparently severe injuries that she allegedly sustained. The claimant provided evasive testimony and the question was repeated numerous times before the claimant stated that there was actually blood in her eyeball to this day. I do not find the claimant's explanation satisfactory. If the claimant had been severely injured during the incident, I would have expected her to mention that in the PIF. More importantly, given that the claimant is fluent in English and the question was a fairly simple one, it made no sense for her to take as long as she did in the evasive manner that she used to answer the question. I find that this discrepancy undermines the claimant's credibility.

s.19(1)

The claimant has had a number of opportunities to tell her story. The fact that [redacted] was in the mafia and threatened to use mafia connections to track, find, and harm the claimant no matter where she went, was not mentioned to the immigration officer when the claimant arrived in Canada in [redacted] 2007. It was not mentioned at all in her original PIF filed in January 2008. It was not mentioned at all in the amendments to her PIF filed by her former counsel in May 2008. All information about [redacted] being in the mafia and having mafia connections was mentioned for the first time in July 2008, when current counsel filed further amendments to her PIF. When asked why this information was not mentioned earlier, the claimant stated that she had told her previous counsel about the information and thought that it had been mentioned. I do not find the claimant's explanation satisfactory. Once mentioned, the fact that [redacted] was allegedly a member of the mafia was one of the most significant aspects of the claim. Instead of

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1 PIF, as amended by Exhibits C-2 and C-4.

the agent of persecution being a regular citizen in his 70s, he was now a mafia figure who could find and harm the claimant anywhere that she went and he could do this harm with impunity. The directions for filling out the PIF narrative are quite clear in that all significant incidents and details are to be included. The claimant affirmed in writing that her PIF was complete and accurate as originally filed. To not notice, or notice, and then not insist on an immediate correction, the total omission of the very basis for the ability of the alleged agent of persecution to hurt her makes absolutely no sense at all. I find that this omission further undermines the claimant's credibility. **s.19(1)**

In oral testimony, the claimant was asked for " " full name as it is not mentioned in the PIF or in the letter from . The claimant could not provide an immediate answer, became evasive and had to be asked several times before she actually gave a response. As noted at the hearing, while the " " " is set in ' ' . is not actually an Italian name, at least not in that form. While the claimant eventually gave an African surname for that would explain the form of the name, it did not explain why she could not provide the surname in response to what should have been a simple question. I find that this evasiveness further undermines the claimant's credibility.

The claimant stated that she did not call the police or the ' as told her that he knew people in the police. When asked why this had never been mentioned in any version of her story, including the final amended one, she stated that she meant that he was in the mafia and had connections everywhere. I do not find the claimant's explanation satisfactory. The claimant amended her PIF twice and affirmed that it was complete and correct. Either knew people in the police directly as she initially testified, or he had unknown connections as a member of the mafia as she testified after being challenged. Her second statement does not explain at all her definite first statement. I find that this contradiction with respect to the alleged connections of the agent of persecution to further undermine the claimant's credibility.

In oral testimony, . made all arrangements for the claimant to flee Italy and brought her to the airport in . However, as noted at the hearing, the claimant stated to the immigration officer upon arrival, that it was actually who brought her to the airport. When asked to explain, the claimant stated that since the immigration officer had become suspicious about her travelling without her spouse during the holidays while pregnant, she made up the fact that brought her to the airport. When it was noted that these suspicions did not arise until later in the interview, the claimant stated that she was scared at the time. I do not find the

claimant's explanation satisfactory. It made no sense for the claimant to lie with respect to who brought her to the airport, if indeed it was just a friend and the immigration officer had not yet become suspicious of the claimant's answers. The point is important as this information showed how the claimant managed to flee Italy. I find that this contradiction in the manner in which she fled to further undermine the claimant's credibility. **s.19(1)**

The claimant stated that [redacted] told her to flee to Canada in order to make a refugee claim. However, as noted at the hearing, the claimant did not make a claim upon arrival; she instead told a different story about coming for a visit. Only after being detained for some time did she file a claim. When asked why she did not tell the immigration officer upon arrival that she was afraid for her life and wanted to make a claim, she said that [redacted] had told her that she could not make the claim at the airport and that she was scared of being deported. I do not find the claimant's explanations satisfactory. Counsel conceded in his submissions that everything that the claimant said to the immigration officer was false. If the claimant had simply stated the same admission, that would have been one thing; however, she attempted to adopt at least some of this false information in her own testimony before me. For example, when asked if she really knew a [redacted] as she stated to the immigration officer, the claimant seemed confused at the mention of the name. She eventually said that he did exist and that this was actually a friend of [redacted] and that is why she was unable to provide further information when pressed for it by the immigration officer. However, as noted at the hearing, if this was actually [redacted] friend and not the claimant's, it would have made sense for the claimant to say just that to the immigration officer, rather than continue with the charade of knowing the man. Had this explanation been true, I would have expected the claimant to use it with the immigration officer. I find the fact that the claimant lied repeatedly to the immigration officer and then attempted to explain the lies with an explanation that just does not make sense further undermines the claimant's credibility.

The claimant presented a letter allegedly written by her father.⁴ As noted at the hearing it was an odd letter to read. It starts in a friendly tone and then degenerates into death threats. The claimant's spouse is referred to as "Mr. [redacted]". Even the phrase "...This is the voice of my your father, [redacted]" is used. When asked why her father would write a letter in this manner the claimant stated that her father was mad at her. Counsel submitted that the claimant's father was not an educated man. I do not find these explanations satisfactory. Apart from the bizarre shift in tone, it made little sense for the claimant's father to not only reverse her spouse's names

⁴ Exhibit C-5, item 3.

(as the claimant had done in the original version of her PIF), but that he would feel the need after such a lengthy marriage to use his full formal name, rather than “ ” or “Mr. ”. It made even less sense for the claimant’s father to feel the need to identify himself as “ ” in the body of the letter. It made no sense at all for the words “this is the voice of my your father” to be used. It appeared that the claimant wrote the letter herself and just forgot to erase the word “my” when referring to her father. I find on a balance of probabilities that the letter is a forgery. I find that this forgery not only casts doubt on all of the documents presented, but further undermines the claimant’s credibility as well.

While counsel submitted that any difficulties in the claimant’s testimony had to be viewed in light of the abuse that she experienced in Nigeria, of allegedly having her genitals mutilated and her father pouring scalding water on her during the procedure, no actual medical evidence was presented to corroborate this happening. The only evidence presented was a photo⁵ of the claimant with what appears to be orange and black substances smeared on her thighs. This photo does not explain anything. Most importantly, no independent psychological evidence was presented to show that the claimant would have any difficulty in testifying at the hearing, or have difficulty in telling her story in any of the previous opportunities.

Given the serious inconsistencies, discrepancies, omissions and other problems with respect to numerous major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and as such her claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks enumerated under section 97 of the *IRPA*, her claim pursuant to section 97 of the *IRPA* fails as well.

No Credible Basis

I find that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could have been made and therefore there was no credible basis for the claim.

CONCLUSION

Since I do not believe the claimant with respect to the events described in her PIF her claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that would indicate that the claimant is, on a balance of probabilities, subject personally to any of the risks

⁵ Exhibit C-6.

enumerated under section 97 of the *IRPA*, the claim under that section fails as well. There was no credible basis for the claim.

For all these reasons, the Refugee Protection Division therefore rejects the claim.

(signed)

"David McBean"

David McBean

May 20, 2009

Date



RPD File No. / N° de dossier de la SPR: TA8-03007
TA8-03059
TA8-03060

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s) d'asile

Date(s) of Hearing

October 31, 2008

Date(s) de l'audience

Place of Hearing

TORONTO

Lieu de l'audience

Date of Decision

December 30, 2008

Date de la décision

Panel

David McBean

Tribunal

**Counsel for the
Claimant(s)**

Bola Adetunji
Barrister and Solicitor

**Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer

Nil

Agent(e) des tribunaux

**Designated
Representative(s)**

**Représentant(e)(s)
désigné(e)(s)**

Counsel for the Minister

Nil

Conseil du ministre



s.19(1)

, his spouse and their son
, citizens of Mexico, claim refugee protection pursuant to sections
96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

worked in a in On , 2006, he
travelled to , on business. While driving home he was stopped by two
vehicles. Six armed men emerged from the vehicles and after identifying themselves as police
officers, forced him into one of their vehicles. protested that they “had the wrong guy”
but his protests fell on deaf ears and his assailants abused and beat him until he was unconscious.
He then awoke in a hospital and a couple of days after being released, he filed a complaint with
the authorities. was then told that people had been looking for him at work and a
threatening note had been slipped under the door. He also received threats by telephone and his
house was ransacked. With more people looking for him, he relocated his wife and son to a
ranch far away in . travelled to Canada on , 2007. His wife and son
joined him in Canada on , 2007. They all filed refugee claims on
2008.

DETERMINATION

I find that the claimants have not satisfied the burden of establishing a serious possibility of
persecution on a Convention ground, or that, on a balance of probabilities, that they would
personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual
treatment or punishment upon return to their country. My reasons are as follows.

Identity

The claimants' identities as citizens of Mexico were accepted at the beginning of the
hearing as copies of their Mexican passports were on file.²

Nexus

The claimants alleged that they are victims of crime based on some form of extortion
attempt made by police officers acting outside of their lawful duties. As such, their claims under

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds.

Credibility

s.19(1) It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared to the Personal Information Forms³ (PIFs) and the other documents available. For example, in the copy of the denunciation⁴ that the claimant had made to the authorities, described being in in order to run some errands. In the PIF,⁵ was in to scout new business locations and had apparently concluded negotiations for a specific place. In oral testimony, the claimant was also in to scout new business locations but had not concluded negotiations on a number of points. When asked why these three descriptions appeared to be quite different as to why the claimant was away from his usual area, he said that he had just described the day's events slightly differently in the PIF and in oral testimony, and simply had not told the Public Ministry the purpose of his visit in the denunciation. I do not find these explanations satisfactory. The claimant was either running general errands or specifically attempting to rent a place for business. Those negotiations had either concluded or they had not. The claimant had to have a reason to be driving along a deserted road at night and it makes no sense to describe the reason for his trip so differently on three separate occasions. I find that these discrepancies with respect to the purpose of the trip to undermine the claimants' credibility.

was repeatedly asked what the men who stopped him said to him. He repeatedly said "insults" and nothing else. However, as noted at the hearing, in the PIF the men allegedly identified themselves as Judicial Police and criticized for failing to pull over when directed. The claimant stated that he had forgotten that they had said that. I do not find this explanation to be satisfactory. It is one thing to be stopped and beaten by criminals, it is another thing entirely to be stopped and beaten by the Judicial Police, the very people who are supposed to protect the claimants from criminals. Given that the claimant was prompted numerous times with respect to whether or not the alleged agents of persecution said anything else to him, I find that this was not simple forgetfulness and that this omission further undermines the claimants' credibility.

³ Exhibits C-1 to C-3, claimants' PIFs.

⁴ Exhibit C-4, claimant's denunciation.

⁵ Exhibit C-1.

s.19(1)

In oral testimony, stated that he saw that the vehicle in front had no licence plate but did not see whether the vehicle in back had one or not. As pointed out at the hearing, in the denunciation made to the Public Ministry, both vans were described as not having licence plates.

stated that at the time that he wrote the denunciation, he had just assumed that the rear vehicle had no licence plates. I do not find this explanation satisfactory. He either saw that both vehicles lacked licence plates or he did not. The denunciation is quite detailed and if he did not actually observe the rear vehicle, it would have made more sense for that detail to have been included. I find that this discrepancy in the description of the vehicles that the alleged agents of persecution used to further undermine the claimants' credibility.

Through a number of questions and answers, described his treatment at the hands of the men who stopped him to include hitting, kicking, putting a gun to his head and putting him in one of their vehicles. However, he was repeatedly asked if they did anything else to him or if there was anything other than being outnumbered by armed men that prevented him from fleeing and said "no". As pointed out at the hearing, both the PIF and the denunciation state that the assailants handcuffed , which of course, would have impeded any attempt to flee. Despite written proof to the contrary being noted, denied that he said that he was handcuffed when he made the denunciation or when he filled out his PIF. He said that he did not know why those two documents would say such a thing. I do not find this somewhat odd denial satisfactory. It makes no sense for this information to spontaneously appear in two documents emanating from the claimant if it were not actually true. This is particularly so for the PIF, which affirmed both orally and in writing was correct. It actually appeared that had forgotten that he was allegedly handcuffed during the incident and was attempting to cover-up his lack of familiarity with his story. I find that this contradiction further undermines the claimants' credibility.

In both oral testimony and the PIF, was beaten both before and after being put into assailants' vehicle. However, as noted at the hearing, in the denunciation the beating started only after he was put into the vehicle. insisted was insisted he was beaten both before and after he was placed in the vehicle and did not know why the denunciation said what it did. Once again, it makes no sense for a document that emanated from the claimant to spontaneously describe the event in question incorrectly. I find that this unexplained discrepancy further undermines the claimants' credibility.

In the notes⁶ made by the Immigration Officer at the time that the claimants made their claims and in oral testimony, the men wanted money from the claimant's business. In the denunciation, the men wanted money but there is no mention of the money coming from the business. In the PIF, there is no mention at all of the men wanting any money from any source.

s.19(1)

stated that he thought that he had mentioned the money issue when he prepared the Spanish version of his PIF and that it had been mistakenly omitted. I do not find this explanation satisfactory. The claimant affirmed both orally and in writing that the PIF had been translated back to him and was complete, true and accurate. It makes no sense at all that if the agents of persecution told the claimant the motive for their crime that he would fail to mention it in his PIF. I find that his discrepancy with respect to the motive of the alleged agents of persecution to further undermine the claimants' credibility.

In addition to the problems noted above with respect to the denunciation, it was also noted at the hearing that there was no file number on the document. According to the documentary evidence on file⁷ all such documents should have a file number listed on them. The claimant did not know why there was no file number as he said that this was the first time that he had ever filed a denunciation and therefore unfamiliar with the procedures. Given the number of inconsistencies between the denunciation's contents and the claimant's story and the unexplained fact that it was missing the required file number, I find that the denunciation is not a genuine document and the fact that the claimants' produced it in evidence further undermines their credibility.

In oral evidence, stated that the note slipped under the door threatened both the claimant and his family. However, as noted at the hearing, in the PIF⁸ the note is specifically quoted and only refers to and not his family. stated that he assumed the note meant his family as well. I do not find this explanation satisfactory. When he initially testified to the note's content's used the phrase "me or my family", there was no assumption. It appeared that simply got the quote wrong. Furthermore, in oral testimony stated that he was referred to in the note as a "son of a bitch". However, as noted at the hearing, the direct quote from the note in the PIF is that he was a "mother fuc...". The claimant stated

⁶ Exhibit R-2, CIC Etobicoke In-person Refugee Intake Record of Examination.

⁷ Exhibit R-1, *National Documentation Package*, June 27, 2008, item 9.10, *Response to Information Request*, number MEX102725.E, April 17, 2008.

⁸ Exhibit C-1.

that the PIF was incorrect and that in the note, long since destroyed, he had been called “a son of a bitch”. The claimant affirmed both orally and in writing that the PIF had been interpreted to him and that it was accurate, which in this case was quite interesting as there no equivalent in Mexican Spanish for the unfortunately all too common Canadian/American term “mother fucker” and it makes no sense for the PIF to quote the note as saying such a thing. I find that these discrepancies regarding the threatening note to further undermine the claimants’ credibility.

s.19(1) In oral testimony, a Mexican Immigration official brought in a person suspected of having drugs in his stomach to [redacted]. After undergoing X-Rays, it was noted that there appeared to be foreign objects (i.e. not food) in the person’s stomach. [redacted] described receiving a call stating that the caller knew that he had not only filed a denunciation with respect to his earlier mistreatment but that he also wanted the [redacted] relating to the person with objects in his stomach destroyed. As noted at the hearing, the PIF only mentions that [redacted] received death threats via phone. Absolutely no mention is made of Mexican Immigration officials, an international drug smuggler, the [redacted] being involved in the investigation of international drug smuggling or the agents of persecution being interested having the files destroyed. [redacted] stated that he had mentioned these details in the Spanish version of the PIF that he had prepared and did not know why they were not mentioned in the actual PIF. As noted previously, the claimant affirmed both orally and in writing that the PIF had been interpreted back to him and that it was complete and accurate. To entirely omit the entire plot involving international drug smuggling and all the attendant details makes absolutely no sense at all and I find that this serious discrepancy further undermines the claimants’ credibility.

In oral evidence, [redacted] stated that his spouse and son left Mexico after suspicious vehicles started appearing in the hamlet where they were staying. As noted at the hearing, this information is not contained in the PIF and [redacted] could provide no explanation for its omission. Given that the PIF was interpreted to the claimant and was affirmed as accurate it makes no sense to omit the specific reason for [redacted] wife and son to leave Mexico at the time they did, if there was indeed a reason. I find that this omission further undermines the claimants’ credibility.

[redacted] arrived in Canada on [redacted], 2007, and was given permission to stay for six days. He made no attempts to extend that permission to stay as [redacted] stated he knew no English. [redacted] spouse and son arrived in [redacted] of 2007 and no refugee claims were made until [redacted]

s.19(1)

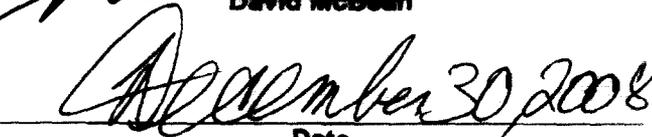
2008. When asked why there was such a delay in Canada with respect to filing the claims, [redacted] stated that they did not know that the refugee system existed. Despite there being a Mexican community in Toronto, [redacted] stated that he spoke to no one in Spanish from the time that he arrived until the claimants made their claims 10 months later. When asked how the claimants were able to go about their daily lives, [redacted] stated that he used a dictionary for assistance. When asked why then the claimants made their claims when they did, [redacted] stated that their son had been ill and in talking with their Canadian doctor about the high cost of medicine for out-of-pocket payments, the doctor mentioned the refugee system. The claimants then did some research and made their claims. I do not find the [redacted] explanations for delay to be satisfactory. It is bizarre to think that the claimants would meet no Spanish people in Toronto for 10 months, communicate with the use of words from a dictionary and then “coincidentally” hear about the refugee system through a doctor. To make no efforts to regularize one’s status for 10 months makes no sense at all for someone fearing death, and I find that this significant delay in claiming not only demonstrates a lack of subjective fear, but also undermines the claimants’ credibility as well.

Given the numerous serious contradictions, inconsistencies, omissions and other problems throughout the claimants’ evidence, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened.

CONCLUSION

The claimants have alleged that they are victims of crime. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. Since I do not believe the claimants with respect to the events described in their PIFs, and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed) 
David McBean

Date

CONCLUSION

The claimants have alleged that they are victims of crime. As such, their claims under section 96 of the *IRPA* fail for lack of nexus to any of the Convention grounds. Since I do not believe the claimants with respect to the events described in their PIFs, and there being no other evidence that would indicate that the claimants are, on a balance of probabilities, subjected personally to any of the risks enumerated under section 97 of the *IRPA*, their claims under that section fail as well.

For all these reasons, the Refugee Protection Division therefore rejects the claims.

(signed)

"David McBean"

David McBean

December 30, 2008

Date



RPD File No. / N° de dossier de la SPR : TA8-06108

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	s.19(1)	Demandeur(e)(s) d'asile
Date(s) of Hearing	July 13, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 1, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Maureen Silcoff (Barrister and Solicitor)	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre



s.19(1)

[1] _____, a citizen of Peru, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimant was born in 1989 and raised in Peru. Before the claimant was even born, his father was a _____. In 1982 his father participated in the _____, a noted member of the _____, a noted _____. To lessen the opportunity for revenge, the claimant's father was relocated to _____. In 1985 he was sent to _____. His cleaning lady quit after a month and stated that while she was a member of the _____, they had not killed the claimant's father since he was an honest officer and not abusive. However, that same year the _____ carried out an attack on the area where the claimant's father's house was located and two officers were killed. An investigation determined that the attack was directed at the claimant's father, after which he was transferred to _____.

[3] A long time passed. The claimant's father applied for a _____ in 2006 due to his work against the _____. While this was initially granted by an _____ the police administration did not agree so the claimant's father filed a _____. As a result of the complaint, the events of 24 years ago suddenly became public knowledge. In late 2007 or early 2008 the claimant and his father began receiving threatening calls promising to avenge the death of _____ and that they would know how it would feel to lose a loved one. The media began doing stories about the claimant's father's case and his work against the _____. The claimant attempted to go to Canada for safety but his visa application was refused.

[4] At the end of _____ 2008 two people got out of a car that had been following the claimant. One stated that they knew who the claimant's father was and that they would avenge the death of _____. The other threw the claimant to the ground where he was punched and kicked. Upon hearing a police siren the assailants ran off and the claimant was left unconscious. The claimant woke up in hospital and his father reported the threats and attack to his superiors. They were transferred to _____ in _____ 2008. However, after 20 days they received another death threat and the claimant received threatening calls. The claimant traveled to Miami, Florida, where

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

coincidentally he had spent the last six months of 2006, on 2008. He traveled to Canada on 2008, and made a refugee claim the same day. His father continued to receive threatening calls after the claimant made his claim.

DETERMINATION

[5] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to his country. My reasons are as follows.

ANALYSIS

Identity

[6] The claimant’s identity as a citizen of Peru was accepted at the hearing given that a certified copy of his Peruvian passport was on file.²

Credibility

s.19(1)

[7] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant’s evidence when the oral testimony was compared to the Personal Information Form³ (PIF) and the other documents available. For example, in oral testimony, it was only when the claimant’s father complained recently about being refused a that his history of became public within the police. However, as noted at the hearing, in the PIF there had already been an armed plot by the against the claimant’s father in 1985 where officers died and the and the police seemed to know his history at the time. The claimant stated that after the complaint, new people found out about his father’s history.

[8] In later testimony, the claimant stated more than once that while there had been media coverage of what his father had done in the 1980s at the time, there had been no media coverage in recent years after his father made his complaint. The claimant stated that they were trying to manage the situation within the police force. However, as noted at the hearing, the claimant’s PIF,

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).
³ Exhibit C-1 as amended by Exhibit C-2

which was been amended more than once, states that there was recent media coverage after his father made his complaint. The claimant stated that his father's name was still

However, as further noted at the hearing, the PIF actually stated that the media coverage was specifically about his father's case ("The media began doing stories about my father's case and his past work against the [redacted]). The claimant stated that he had not been thinking clearly. **s.19(1)**

[9] I do not find these explanations satisfactory. Either the [redacted] knew from the 1980s what the claimant's father had done, or they did not. It seemed quite odd that "new" people would only find out more recently after he made his complaint. More importantly, it made no sense at all for the claimant to be confused as to whether or not his father had recently been in the media about his history. The PIF and the oral testimony were both quite definite (at least as originally put) and they were irreconcilable. Had the media been doing stories about his father in recent years, this should have been foremost in the claimant's mind as it would have drawn the matter into the spotlight and the claimant should not have been confused on the point. As it was, the claimant appeared to change his answer from moment to moment as each new fact came out. I find this discrepancy to undermine the claimant's credibility.

[10] In oral testimony and the PIF, the claimant and his father began receiving threatening calls in late [redacted] 2007. However, as noted at the hearing, in the documents received from Immigration⁴ the date is given as [redacted] 2006. The claimant stated he must have been confused at the time that he made his claim. I do not find this explanation satisfactory. The claimant returned to Peru from the United States in mid-[redacted] 2006 and left Peru in [redacted] 2008. The threats either began soon after his arrival or soon before his departure. In the circumstances, it made little sense for the claimant to be off by a year when relating his story to the Immigration officials. I find that this discrepancy further undermines the claimant's credibility.

[11] The claimant stated orally that when he was physically assaulted in [redacted] 2008, his lip was bruised, his nose was broken, and he ended up unconscious. However, as noted at the hearing, while the medical document⁵ provided with respect to the same incident does mention that the claimant received cuts and bruises, it does not state that his nose was broken or that he was

⁴ Exhibit R-2, Schedule 1, Background Information.

⁵ Exhibit C-2, p. 16

unconscious. The claimant stated that he was unsure what the medical note said, that he was not a doctor and was unsure if his nose was broken, and that he had sustained the other injuries mentioned in the note. I do not find the claimant's explanation satisfactory. It seemed odd that the claimant was unsure what the doctor had said in the medical report. More importantly, either the claimant's nose was broken or it was simply bruised. It made little sense in the circumstances for the claimant not to know which had happened. Also, given the detailed way that the note was written and the fact that the claimant was being treated for a head injury, it made no sense for the medical note not to mention that the claimant had been unconscious. I find that these discrepancies not only further undermine the claimant's credibility, but call into question the authenticity of the documents that he presented. **s.19(1)**

[12] As stated at the hearing, [redacted] is a [redacted] in Peru that has combated the [redacted] on many occasions and it seemed strange that they had not become involved in the claimant's case. While this was originally presented as specialized knowledge I gained from adjudicating other hearings with respect to Peru, it was later realized that there are references to [redacted] in the documentary evidence.⁶ While counsel and the claimant initially speculated that [redacted] may have ceased to exist since they are not mentioned in the current Department of State Report on Human Rights,⁷ I do not accept this speculation. If a Human Rights report does not mention an [redacted] all I can assume is that there were no significant Human Rights issues specifically with respect to that group. Had [redacted] actually been disbanded I would have expected counsel to find that information quite easily. Instead, in post-hearing submissions⁸ counsel states that [redacted] [*sic*, by coincidence a former name of the organization] is part of the police and does not specifically offer protection to people. Attached is a letter from the claimant's father which actually states that he had not involved [redacted] in what had happened, given that they may have been infiltrated.

[13] I do not find this explanation satisfactory. It is one thing to generally state that the claimant and his father believed that the [redacted] had infiltrated the police and the court. It is another to believe that the specific [redacted] within the police has been compromised as well. The directions for filling out the PIF narrative are quite clear in that all attempts to seek protection from

⁶ Exhibit R-1, including items 3.4 and 10.2.

⁷ Exhibit R-1, item 2.1

⁸ Exhibit PH-1

the authorities are to be detailed and if attempts are not made, the reasons should be given as well. Here, there was no reference to _____ in the PIF or in the documents⁹ originally presented from the claimant's father. Had the claimant's father really suspected that _____ had been infiltrated and that was why he did not involve them, I would have expected him to say that in one of the original documents and the claimant to state that in his PIF. While I am mindful that documents from family members cannot be discounted outright, it actually appeared that the claimant's father may have been fabricating documents to bolster his son's claim and therefore did not want to involve other parts of the police. I find that this discrepancy not only further calls into question the authenticity of the documents that the claimant presented but also further undermines his credibility.

[14] At the time that the claimant made his refugee claim in Canada he was in possession of both English and Spanish versions of a document "Petition for Refuge."¹⁰ It states why the claimant is in need of protection. However, as noted at the hearing, while the document is dated _____ 2008, it does not mention the incident where the claimant was assaulted in _____ 2008. The claimant stated that his father decided that it would be safer not to mention that incident, that his father knew the rules here, and that his father would send the rest of the details later. I do not find the claimant's explanation satisfactory. The claimant is an adult in his early 20s and he signed the document himself. The document is three typed pages long in English. It sets out in great detail why the claimant should be granted refuge. It mentions that the claimant is at risk, the reasons why he is at risk and that he has received threatening calls. It makes absolutely no sense at all for there to be no mention of the claimant being assaulted if that had indeed happened. I find that this omission of the only act of violence that the claimant experienced is significant and, given the problems noted above, I find on a balance of probabilities that the claimant falsely concocted all of the documents that he presented on his own behalf. I find his reliance upon these false documents to further undermine his credibility.

[15] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, that any of the significant events that the claimant alleged happened to him, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no

⁹ Exhibit C-2

¹⁰ Exhibit R-2

other evidence that the claimant would be at risk of the harms delineated in section 97 of the *IRPA*, the claim pursuant to that section fails as well.

No Credible Basis

[16] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* that there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claim.

CONCLUSION:

[17] I find the claimant is not a Convention refugee or a person in need of protection and that there is no credible basis for the claim.

(signed)

“David McBean”

David McBean

October 1, 2010

Date



RPD File No. / N° de dossier de la SPR : TA8-23122
TA8-23124
TA8-23125
TA8-23179

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		Demandeur(e)(s) d'asile
		s.19(1)
Date(s) of Hearing	October 29, 2009 March 23, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	May 25, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Byron Thomas Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre



[1] (the claimant), his wife (the female claimant), and their sons , , citizens of Peru, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The claimants lived in , Peru. The claimant formed a business with two other men that gave on a variety of matters. In 2005 the claimant's began working with the in , The claimant traveled the 500 kilometres from to , once or twice a month, staying in a hotel when he was away from . The male claimant worked closely with the and such as the of various towns. The male claimant generally concentrated his efforts in areas of where were . However, down in the an adjacent valley area, the

[3] In 2006, the male claimant began to use his spare time to think of ways for the to for greater profit. While the was quite lucrative for , the male claimant knew that the themselves actually made little money from the . The claimant began and in an effort to .

[4] In 2006, the claimant was confronted by two men in a restaurant who told him that he should stop telling lies, leave the area, and never come back. On , 2006, a local leader, , visited the claimant at his hotel and calmly told him that he was infringing upon the territory of the , that the wanted him to stop telling people about , and that he should leave the and not return. While the claimant had thought the had been much reduced, it now appeared that they were getting stronger and now involved in the drug trade.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

s.19(1)

[5] On 2006, two men on a motorcycle stopped the taxi that the claimant was traveling in. They threatened him at gunpoint and told him to stop telling lies. They also told him he should leave and not return and that he was a traitor for working for the . After taking his National Identity Card they bragged that they now knew where he lived. The claimant was punched in the chest and hit on the back of the neck with the gun. While the taxi driver drove the claimant to the police station, he refused to come in. The claimant was told by the police to make a report at the the next day, which he did although nothing happened as a result. Although the claimant continued to travel to to work with the , he decided to wait out local elections before returning to the .

[6] In 2007 the claimant returned to the with his assistant, , and met with various local officials but he received a cool reception. When the claimant returned to his hotel he received a telephone threat from the . He later received a threatening note. On , the claimant traveled to the one last time to advise everyone that he would be abandoning his plans in the . However, the claimant's vehicle was pursued by men with guns in a pick-up truck. The men started shooting at the claimant's vehicle and attempted to force it off the road. Thanks to the skilled driving of , the claimant managed to escape when the attackers drove into a ditch. The claimant returned to . The claimant spoke with (and who each advised him that the was getting stronger and working with drug traffickers. named several of the people involved with the drug trade and the . The claimant began to receive threatening calls and letters in . While the claimant reported this to the authorities he was told that there was nothing that could be done.

[7] On 2007, the claimant discovered a box that had been left outside their front door which contained a dead dog with foam in its mouth. There was also a threatening note which stated that the claimant would die in a similar manner and contained details about the school of one of his sons. The police came and took photos and took a report. The claimant's wife and children moved to her brother's home in , about 200 kilometres away while the male claimant went to his parents' house.

s.19(1)

While there, he received a threatening call. The police referred the claimant to a organization, and on , the claimant spoke with who told him that there was no way that the family could be protected and that he should leave and avoid . Later that day the claimant received a call from a reporter in , who asked him about his problems. While the claimant asked that the reporter not publish anything he did not realize the reporter would treat their conversation as an interview.

[8] On , the claimant traveled to to join his family. Just after a taxi dropped the claimant and his brother-in-law off at a place that the claimant might rent, a car appeared with three men who began shooting at the claimant. The claimant protected himself with his briefcase which was stuffed with papers. While the briefcase was riddled with bullets, the papers had prevented their penetration and the claimant was unscathed. On , the claimant received a call from a second reporter asking him to confirm the contents of an article that the first reporter had published, which the claimant subsequently obtained a copy of. The claimant reported the shooting to the local police and was told that the matter would be referred to in .

[9] Upon returning to , at told the claimant that they could not protect him and that the claimant and his family should leave Peru. After staying in a hotel, the claimants traveled through Colombia and the United States and arrived in Canada on , 2007, making refugee claims upon arrival. After the claimants left, the claimant's parents and the female claimant's brother received written and telephone threats. In 2008, two men in police uniforms came to the claimant's parents' home in an attempt to get information about the claimant but the police later stated that no officers had been sent to the home. The claimant's work colleagues have received suspicious calls asking for information about him. Unknown persons went to the claimant's parents' home in , and 2009 enquiring about the claimant.

DETERMINATION

[10] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[11] The claimants' identities as citizens of Peru were accepted at the hearing given that certified copies of their Peruvian passports were on file.²

Credibility s.19(1)

[12] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Forms³ (PIF) and the other documents available. For example, in a denunciation⁴ allegedly made in . . . about the incident where the claimant was stopped in a taxi, the claimant states his theory behind the motivation of the incident in that he had received threats from unknown people at meetings that he had been holding with local officials with respect to his business. However, as noted at the hearing, by this time the claimant had already been threatened by the men in the restaurant and been warned by . . . at his hotel, specifically about the . . . The claimant stated that he would have told the police the details at the time, perhaps these details were not important at the time, and eventually said that perhaps he had mentioned these threats but failed to provide details. I do not find the claimant's explanations satisfactory. The denunciation is quite detailed in its description of the incident and the surrounding details. It quite specifically states that the claimant had received threats from unknown people at

² Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

³ Exhibits C-1 through C-5 – Personal Information Forms.

⁴ Exhibit C-6, Page 17- Police Report

s.19(1)

the meetings that he had been holding. This is not a case of vagueness or lack of detail. Given that the claimant was already specifically warned by the men in the restaurant and specifically warned him of the at the hotel, if these things had really happened I would have expected them to have been mentioned in the denunciation rather than a reference to unknown people at meetings. I find on a balance of probabilities that the denunciation is a forgery and this not only calls into question the authenticity of the documents presented in support of the claim but also undermines the claimant's credibility.

[13] As noted previously, the claimant stated that he had been initially warned by two men in a restaurant. However, as noted at the hearing, in a statement made to an Immigration Officer at the time that the claimants made their claims,⁵ the claimant stated that he had been threatened by two men in the "streets". The claimant stated that he did not know why the Immigration Officer wrote that. I do not find this unexplained contradiction satisfactory. This was a significant incident wherein the claimant first learned that his activities were not popular with everyone and that he actually faced threats. If the claimant had indeed been threatened in a restaurant, which would indicate that the men doing the threatening were fairly bold, I would have expected him to say that and the Immigration Officer to record, in the detailed statement, just that, rather than have the threats take place in the streets, which would indicate that the men doing the threatening were trying to remain more anonymous. I find that this discrepancy further undermines the claimant's credibility.

[14] After being threatened in the restaurant (or the streets) the claimant's taxi was stopped by men on a motorcycle, he was threatened, hit, and his National Identity Card was stolen. However, as noted at the hearing, this incident is not mentioned in the statement to the Immigration Officer. The claimant stated that while he had mentioned the incident to the Immigration Officer, he did not know why the Officer failed to write it down. Furthermore, as also noted at the hearing, in the claimant's initial oral description of this incident he failed to mention that he had been punched in the chest. The claimant stated he did not recall why he failed to mention being punched in his initial oral description of the

⁵ Exhibit R/A- 2, Schedule 1- Citizenship and Immigration Canada Documentation- Background Information.

incident. He also felt that the statement may be a summary of what was said. I do not find the claimant's explanations satisfactory. It seemed odd that during the claimant's initial oral description of the incident, which was quite detailed, he failed to mention being punched. More disturbing is the lack of mention of this incident in the statement that is recorded in the Immigration document, as the statement is actually extremely detailed. This incident was quite significant as not only was the claimant physically attacked at gunpoint, but this was also how the agents of persecution learned where the claimant lived in . If such an event really happened I would have expected the claimant to mention it to the Immigration Officer and given the level of detail in the statement, had it been mentioned I would have expected it to have been included. I find that this discrepancy further undermines the claimant's credibility.

s.19(1) [15] In the claimant's statement to the Immigration Officer it is noted that after the incident wherein he was warned in and before the incident wherein the claimant returned to the and was chased by a vehicle shooting at his, the claimant received threats at his home in . However, as noted at the hearing, there is no mention of this in the PIF. The claimant stated that he did receive calls on his cell phone during this time period in . I do not find the claimant's explanation satisfactory. The claimant's narrative plus addendum are 13 pages long. If the claimant did actually receive threatening calls during this time period, I would have expected some mention of this and not the minute details of the other things that were going on during this time period. I find that this discrepancy further undermines the claimant's credibility.

[16] In oral testimony and in the PIF, when the claimant was winding up his affairs in the his vehicle was chased by men with guns, however he managed to escape due to the driving skills of his assistant, . However, as noted at the hearing, the claimant's psychological report⁶ appears to suggest that the claimant was the one driving. The claimant stated that the psychological report was incorrect and that this may be due to a translation issue, perhaps the use of plural rather than singular. Counsel suggested that this was perhaps an error in phrasing. I do not find these explanations satisfactory. Once

⁶ Exhibit C-6, Item 23, Page 69- Psychological report.

again this was a significant incident where the claimant was chased by men in a vehicle shooting at him. He was either the one driving, where the claimant would have some control of the situation, or he was an essentially helpless passenger, dependent on the skills of another. Had this incident actually happened I would have thought that the claimant would have been able to describe it consistently with each telling and I do not see how phrasing or translation would alter the description to this extent. I find that this discrepancy further undermines the claimant's credibility.

[17] In oral testimony, the claimant stated that the dead dog that was left outside his door was actually left outside the door to his specific dwelling and that the agents of persecution would have had to break in to a common parking compound in order to get to the door. However, as noted at the hearing, the threatening note⁷ that was allegedly left with the dog states, "See how we can get into your house". The claimant did not know why the note said that.

s.19(1)

[18] As the testimony continued, the claimant emphasized the high crime rate in and noted that the entry door to his own dwelling could easily be kicked in. However, as noted at the hearing, the claimant failed to mention in this portion of his testimony that the door to his dwelling was actually unlocked the night that the dog was left outside. The claimant stated that he had not mentioned that as he thought he was speaking about his dwelling in general. In later testimony it was noted that the claimant stated to the Immigration Officer that the agents of persecution "broke into my apartment". The claimant stated that this was a difference in terminology and that the agents of persecution had broken into a common parking area.

[19] I do not find the claimant's explanations satisfactory. It seemed odd that the agents of persecution would track the claimant to , go to where he lived, go to the trouble of killing a dog, stuffing it into a box, break into the claimant's parking compound, and then simply leave the dog outside the claimant's door without doing anything else. However, it makes little sense for them to leave a threatening note boasting how easy it is for them to enter the claimant's dwelling when they had not actually done so. The note would only

⁷ Exhibit C-6, Page 29- Threatening note.

have made sense if the dog was actually found in the dwelling. Furthermore, it was clear from the questions and the answers that it was the night of the dog being left at the door that was the night being referenced. I would have expected the claimant to have mentioned, as he had in other testimony, that the door to his dwelling was unlocked on the night in question during this portion of the testimony. It makes no sense at all for the Immigration Officer to record in a detailed statement that the agents of persecution broke into the claimant's apartment when actually they had not. I find that these discrepancies further undermine the claimant's credibility. s.19(1)

[20] In the claimant's original narrative and in the majority of his testimony the claimant stated the name of the organization that became involved with his case was . However, as noted at the hearing, the name of the organization formerly known as had actually changed to several years earlier. The claimant said that he used the two names interchangeably. It was also noted that in some of the documents⁸ presented in support of the claim, it appeared that the name was used even though the name had long since been changed to . The claimant stated he did not know why the documents referred to the old name. The claimant also stated that had become famous in their earlier fight against the Counsel submitted that this was akin to someone saying "Revenue Canada" rather than the current "Canada Revenue Agency".

[21] I do not find these explanations satisfactory. This is not a case of someone abstractly referring in general to an omnipresent organization. is a very specific organization. The claimant only dealt with what would be years after the name was changed. Given the claimant's experiences I would have expected his testimony and PIF to use the term . Even more disturbing were the supporting documents that the claimant presented. As noted at the hearing, while the complaint from ⁹ appears to use an rather than an , the complaint from ¹⁰ definitely uses an . The claimant stated that perhaps the writer got used to the

⁸ Exhibit C-6, Pages 32 and 40.

⁹ Exhibit C-6, Page 32.

¹⁰ Exhibit C-6, Page 40.

s.19(1)

old name. I do not find this explanation satisfactory. Even if the first document can be explained by messy printing, which does not appear to be likely, the document at page 40 is allegedly the police complaint from when the claimant was shot at in . It notes his complaint is being formally referred to what should be . Given that this document would have been formally referred up to a group, I would have expected the officer doing the typing to get the name of the group correct. I find that these discrepancies further undermine the claimant's credibility.

[22] The claimant noted that the police photos of the crime scene in the incident with the dog were high quality since they were taken with a digital camera. However, as noted at the hearing, this seemed odd given that the copy of the complaint from the same incident is hand-written rather than typed, and the copy of the complaint with respect to the shooting incident in is hand-typed on what appears to be a very old typewriter. The claimant stated that he did not know why this was. When it was further noted that the complaint from was not only hand-typed but appeared to be on plain paper rather than letterhead, the claimant stated the authorities in used plain paper too.

[23] I do not find these explanations satisfactory. Even though the population of is by the claimant's estimation only , I would have expected the complaint document to be typed on something other than an ancient typewriter with barely legible results. More disturbing were the documents from , . This case allegedly went up to a organization. The crime scene investigators allegedly had a digital camera to take photos. It makes little sense for the record of the complaint to be only hand-written rather than computer generated, even in 2007. Given these discrepancies and the concerns noted above with respect to the spelling of I find on a balance of probabilities that these documents are forgeries which not only calls into question the authenticity of all the other documents that the claimant presented but further undermines his credibility.

[24] Also problematic was the newspaper article¹¹ allegedly written about the claimant's problems. The claimant stated that the article writer had met him previously when he had

¹¹ Exhibit C-6, Page 35 - Newspaper article.

s.19(1)

traveled to _____ and the accompanying photo of the claimant at his desk was from _____ that earlier time. The article refers to the claimant as an _____ businessman who _____ after the threats started moved his family to _____ and after the incident with the dog began _____ to sell-off his belongings in _____, the claimant's old hometown in _____. However, as noted at the hearing, the claimant moved to _____ a long time ago, his business was in _____ his family never traveled to the area where he did business, and he did not appear to have any belongings in _____ or elsewhere outside _____ to sell.

[25] The claimant stated that he told the reporter not to publish an article. It was further noted that the article states that after the incident wherein the claimant's taxi was stopped by men on a motorcycle there were no further threats until the incident with the dog. However, as noted at the hearing, there is no mention of the incident wherein the claimant was chased by men shooting at his vehicle. The claimant stated that he did not write the article.

[26] I do not find these explanations satisfactory. If I have understood the claimant correctly, I am to believe that a reporter in a city _____ km away from _____ somehow came to know within days that a dog had been left on the claimant's doorstep in _____, that this reporter was able to obtain police crime scene photos in short order and that, despite this reporter allegedly knowing the claimant from his past visits to _____, get numerous details wrong about the claimant's life when there was no need for him to mention these details if he did not know them. Furthermore, the article is written in a way that states quite clearly that there were no problems between the taxi incident and the incident with the dog. This makes little sense since the claimant or other sources would have told the reporter about the car chase or, if no one had told the reporter this, there was no reason to emphasize that there were no problems during that time period ("Even though they did not receive any threats for the next few months, he decided not to continue with the project. The whole problem returned from the past when after one year..."). I find on a balance of probabilities that the newspaper article is a forgery and further undermines the claimant's credibility. Given my findings above with respect to the police reports, I find on a balance of probabilities that all of the claimant's documents are forgeries or were conscripted from friendly sources to support the claimant's story.

s.19(1)

[27] The female claimant generally relied upon the male claimant's testimony, however even in her brief testimony there were concerns. She noted that it had been a long trip to Canada with children and that she had been nervous when she spoke with the Immigration Officer. This might explain why in her statement¹² to the Immigration Officer she was uncertain as to whether the date that the male claimant was shot at was either , or despite it being a recent event that allegedly occurred a week after the dates cited. However, the statement also says, "We asked for protection, but they could not help us because we did not know the names of the people doing this". As noted at the hearing, the claimants' evidence was that they feared the in general and the authorities could not protect them as the would be able to harm the claimants wherever they went in Peru. The female claimant stated that she did not know why the statement said that.

[28] I do not find this lack of an explanation satisfactory. The alleged inability of the authorities to protect the claimants did not appear to have anything to do with the claimants not knowing the names of the specific agents of persecution. Instead, it was the power of the . Even with the female claimant's experiences I would have expected her to be able to articulate this rather than provide incorrect information about lacking names. I find that this discrepancy further undermines the claimants' credibility.

[29] Given the serious discrepancies, omissions, and other problems with respect to major issues, I find that the claimants were generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimants alleged happened to them, actually happened and as a result the claims pursuant to section 96 of the *IRPA* fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *IRPA*, the claims pursuant to that section fail as well. In coming to this conclusion I am mindful of the psychological report on file. However, this report is based on a story which I simply do not believe. No evidence was presented that the claimants could not obtain treatment in Peru for whatever issues they actually do face.

¹² Exhibit R/A- 2, Schedule 1- Citizenship and Immigration Canada Documentation- Background Information.

NO CREDIBLE BASIS

[30] I find that pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act* there is no credible or trustworthy evidence on which a favourable decision could have been made and therefore there is no credible basis for the claims.

CONCLUSION

[31] I find the claimants are not Convention refugees or persons in need of protection and that there is no credible basis for the claims.

(signed)

“David McBean”

David McBean

May 25, 2010

Date



RPD File No. / N° de dossier de la SPR : TA9-03220

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)		s.19(1) Demandeur(e)(s) d'asile
Date(s) of Hearing	April 20, 2010	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	June 25, 2010	Date de la décision
Panel	David McBean	Tribunal
Counsel for the Claimant(s)	Daniel M. Fine Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) de tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

s.19(1)

[1] a citizen of Mexico, claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] In 2006, the claimant was attending . While spending in her hometown of she met They started to get to know each other. The claimant returned to to continue her studies and visited her there. They started a formal relationship in 2006, despite living in separate cities. moved to in 2006. However, in 2007, the relationship began to deteriorate with making up reasons for the claimant not to see her friends. At one point. pushed the claimant violently against a wall, although he later apologized. The claimant realized that was in the habit of making strange telephone calls and she discovered a variety of drugs in his car. told her that this was none of her business. The claimant soon realized that was both the seller and user of drugs, and she saw him injecting himself with heroin. became even more controlling over the claimant. used heroin more and more and in 2007 beat the claimant, forced her to have sex and left her unconscious. When the claimant woke up she went to to be with her family and seek medical attention. The claimant moved to to live with her uncles. However, after three months she saw walking on a nearby street so she moved to her cousin's place in the Federal District. began calling her there and said that if she did not return to him he would tell people that she was involved in his drug business. The claimant did not go to the authorities out of fear. Instead, she traveled to Canada on , 2008. attacked the claimant's house in 2008, setting a fire that caused extensive damage. The claimant made a refugee claim on 2009.

DETERMINATION

[3] I find that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that she would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[4] I have considered all of the evidence in the context of the Chairperson's *Gender Guidelines*² and I accept the circumstances which give rise to women's fear of persecution are often unique to women. My reasons are as follows.

ANALYSIS

Identity

[5] The claimant's identity as a citizen of Mexico was accepted at the hearing given that a certified copy of her Mexican passport was on file.³

Credibility

s.19(1) [6] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form⁴ (PIF) and the other documents available. For example, it did seem odd that the claimant was not able to present any documents to corroborate the fact that she had been in a relationship with for one and one-half years. This might be explained by the fact that they never married and only lived common law. However, far more problematic were the documents that the claimant actually presented. As noted at the hearing, the medical note⁵ provided speaks only to a cervical sprain and does not mention any of the other injuries that she allegedly received. The claimant stated that her father, that she did not tell this doctor that she had been sexually assaulted or beaten unconscious and that this doctor only examined her neck injury. I do not find the claimant's explanations satisfactory. It is one thing for the claimant to not want to tell a strange doctor that she had been forced to have sex. However, it makes little sense not to tell the doctor that she was unconscious because of this incident, which is a serious injury. Furthermore, given that the claimant stated that she had bruises all over this would have been obvious to the examining doctor. There is nothing on the medical note which indicates that the doctor was only consulted with respect to the claimant's neck injury. In these circumstances, I would have expected the note's

² Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, Immigration and Refugee Board, Ottawa, March 9, 1993; *Update*, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the *Immigration and Refugee Protection Act*.

³ Exhibit R-2, Information received from Citizenship and Immigration Canada (CIC).

⁴ Exhibit C-1, as amended by C-2.

⁵ Exhibit C-6, item 3.

description of the claimant's injuries to more closely match the claimant's descriptions, especially with respect to the extensive bruising. I find this discrepancy to undermine the claimant's credibility. **s.19(1)**

[7] The claimant also presented a newspaper article⁶ and a letter⁷ from a public official to corroborate the fact that [redacted] had set a fire at her parents' house. However, as noted at the hearing, both documents indicate that the cause of the fire was an electrical short circuit. The claimant stated that her parents had seen [redacted] in the area but were afraid to name him as a suspect. I do not find the claimant's explanation satisfactory. According to the newspaper article, firefighters, civil protection, municipal police and the Mexican police all came to the scene. Given the level of response one would think that the authorities themselves would determine the cause of the fire and discover that it was arson rather than rely on the claimant's parents telling them it was a simple short circuit. Furthermore, even if the claimant's parents feared naming [redacted] as a suspect, it makes little sense for them to actively invent a cause for a fire they actually did not see start. Instead, I would have expected them to keep silent on the issue of [redacted] and let the authorities draw their own conclusion about the fire, even if it were to be an "unknown" arsonist. I find that this discrepancy further undermines the claimant's credibility.

[8] [redacted] alleged dealings with and relationship to the police were also problematic. In the amended narrative, [redacted] is said to know the police and the claimant stated orally that this statement was to mean that the police knew and respected him. However, as noted at the hearing, there is no mention of this in the original narrative. The claimant stated that she did not know why this had not been included in the original narrative. Furthermore, in oral testimony the claimant stated that [redacted] would not care if someone denounced him as several people already had and since he was friends with the police nothing came of the denunciations. However, as noted at the hearing, the fact that [redacted] was able to avoid the consequences of several denunciations due to being friends with the police was not mentioned in the PIF. The claimant stated that she did not know why this was not mentioned in the PIF. Still further, in late testimony the claimant stated that [redacted] introduced the [redacted] to her as his friend. However, as noted at the hearing, this was not mentioned in her PIF either. The claimant stated that she was unsure of the extent of [redacted] friendship with the

⁶ Ibid., item 1.

⁷ Ibid., item 2.

s.19(1)

and that she did not know why she had not mentioned this in her PIF. I do not find the claimant's explanations satisfactory. The claimant confirmed in writing that the original PIF had been interpreted to her and that the contents were complete and accurate even though she seemed to dispute this at the hearing. The directions for filling out the narrative are quite clear in that all efforts to obtain protection from the authorities are to be detailed and if efforts are not made the reasons should be given. If [redacted] really had such a relationship with the authorities in that he not only was friends with the [redacted] but was on such friendly terms with the police that he was able to avoid the consequences of several denunciations it makes little sense that the original PIF narrative did not say just that. It makes even less sense that the final narrative as amended would only include a passing reference to [redacted] knowing the authorities rather than the far more extensive relationship that the claimant alleged in oral testimony. I find that these discrepancies further undermine the claimant's credibility.

[9] As noted at the hearing, the claimant did not make a refugee claim when she arrived in Canada in [redacted] 2008, and instead received a six-month Temporary Resident Visa. The claimant stated that she was not really thinking of staying in Canada at the time she arrived and was hoping that things would calm down in Mexico. It was further noted that the claimant did not make a claim until [redacted] 2009, several months after her Temporary Resident Visa expired in [redacted] 2008 with no application to extend her status. The claimant stated that she was afraid and did not know at the time that there was more than one way for her to extend her stay in Canada. I do not find the claimant's explanations satisfactory. The claimant has a university education and is by no means unsophisticated. She previously obtained a visa from the United States and traveled there on more than one occasion which gave her experience in dealing with immigration officials. If she really was fleeing for her life it makes little sense for her not to enquire early on as to how she could avoid returning to Mexico. It makes even less sense for the claimant to allow her Temporary Resident Visa to lapse during [redacted] 2008, which is the same month that [redacted] allegedly set fire to her parents' home. By this time it would have been obvious that things would not be calming down so it makes no sense at all for the claimant to then delay even further months until [redacted] to seek protection. I find that the claimant's delay in claiming not only demonstrated a lack of subjective fear but also further undermines her credibility.

[10] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimant was generally lacking in credibility. I simply do not believe that, on a balance of probabilities, any of the significant events that the claimant alleged happened to her, actually happened and as a result the claim pursuant to section 96 of the *IRPA* fails. There being no other evidence that the claimant would be at risk of the harms delineated under section 97 of the *IRPA*, the claim pursuant to that section fails as well. In coming to this decision, I am mindful of the psychological evidence⁸ on file. However, this report is based on a story which I simply do not believe. No evidence was presented that the claimant could not obtain treatment for whatever psychological issues that she does face. I am also mindful of the documents on file with respect to the claimant's neck injury and the fire at her parents' house. However, even if these documents are genuine, given the credibility concerns noted above I simply do not believe the events took place in the circumstances alleged by the claimant and were due to other causes in the normal course of daily life. I also note the presence of a letter⁹ from a friend which purports to corroborate the claimant's story. However, this document is explicitly from a friend who would have an interest in bolstering the claimant's story so I gave this letter little weight.

CONCLUSION

[11] I find the claimant is not a Convention refugee or a person in need of protection.

(signed)

“David McBean”

David McBean

June 25, 2010

Date

⁸ Exhibit C-3.
⁹ Exhibit C-7.



RPD File No. / N° de dossier de la SPR: TA9-05387
TA9-05389
TA9-05390

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

s.19(1)

Claimant(s)

Demandeur(e)(s) d'asile

Date(s) of Hearing

August 17, 2010
June 8, 2010

Date(s) de l'audience

Place of Hearing

Toronto, Ontario

Lieu de l'audience

Date of Decision

December 3, 2010

Date de la décision

Panel

David McBean

Tribunal

**Counsel for the
Claimant(s)**

Mordechai Wasserman
Barrister & Solicitor

**Conseil(s) du / de la / des
demandeur(e)(s) d'asile**

Tribunal Officer

N/A

Agent(e) de tribunal

**Designated
Representative(s)**

Représentant(e)(s) désigné(e)(s)

**Counsel for the
Minister**

N/A

Conseil du ministre



s.19(1)

[1] (the male claimant), his wife, (the female claimant) and their daughter, (the minor claimant), all citizens of El Salvador, claim refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*.¹

ALLEGATIONS

[2] The male claimant was born in El Salvador. His father had a nearby farm that he in 1967. The male claimant's father experienced many problems over the years, particularly during El Salvador's civil war, including extortion attempts by the police. However, after the 1992 peace agreement, the problems stopped. The male claimant in 2002. In 2006, the asked the male claimant to However, the male claimant was not interested. On 2007, the male claimant's workers said that they had observed non-local men watching the farm for about a month. When the male claimant attempted to file a denunciation with the local authorities in , he was refused, as no crimes had been committed. While the authorities promised increased patrols, none were observed. On , 2007, the male claimant was traveling to the farm to pay his employees. Five masked men intercepted and robbed him. They had weapons the police used, boots that the police wore and some had police uniform pants. While he was warned to keep quiet, the male claimant returned to the police station and spoke to the same officer as before. The officer refused to identify himself and refused to accept a denunciation for lack of evidence, even though the male claimant's statement should have been enough evidence on its own. The officer became angry when the male claimant threatened to go to a different police station and said that this was the only jurisdiction that he could report the matter. On , 2007, the male claimant found an anonymous note at a gate at the farm threatening him with death if he did not pay \$ The male claimant learned that the police had visited the farm the night before and that officers were seen around the same gate. The male claimant brought the letter to the police in but was advised by an officer that the matter was not in their physical jurisdiction. The male claimant told the officer about the robbery and previous difficulties in The officer in contacted the station in and the male claimant was told to go to the station in .

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

s.19(1)

When he did, he spoke yet again with the same officer as before, who was now quite rude and blamed the male claimant for causing trouble. The officer took the threatening letter and told the male claimant to return in a week for a copy of the report. On [REDACTED], 2007, the male claimant returned and spoke to a different officer. This officer also refused to identify himself and said that there was no record of a denunciation or a threatening letter. On [REDACTED], 2007, the male claimant received an anonymous call where he was threatened and ordered to pay \$ [REDACTED]. The caller threatened the male claimant's wife and daughter and described details of their daily schedule. On [REDACTED] 2007, the male claimant and his family moved to a relative's house and took security precautions. On [REDACTED] 2007, they moved to a different relative's house. On [REDACTED] 2007, the female claimant noticed three men watching the [REDACTED] that she worked at. When the male claimant picked her up after work, the three men followed them in a vehicle. The female claimant tried to contact the police emergency number for 45 minutes but could not get through. They got away when they went through a stop sign. On [REDACTED] 2007, the male claimant was intercepted by three masked men on his way to the farm. Once again they had police style weapons and boots. They reminded the male claimant of the letter and the phone call and said that he would not escape the next time, however, barking dogs scared them away. On [REDACTED] 2007, the male claimant reported the theft to the police at [REDACTED] but made no mention of the previous problems. The disinterested officer gave the male claimant a copy of the denunciation and the male claimant found that it had not been filled out properly or professionally. The female claimant had stopped working the day that the claimants had been followed and only returned to work to resign. The claimants left El Salvador on [REDACTED] 2007. After traveling through the United States, where they had visas, they arrived in Canada on [REDACTED], 2007 and made refugee claims the same day. People keep contacting the claimant's parents asking about his whereabouts.

DETERMINATION

[3] I find that the claimants have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that they would personally be subjected, on a balance of probabilities, to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment upon return to their country. My reasons are as follows.

ANALYSIS

Identity

[4] The claimants' identities as citizens of El Salvador were accepted at the hearing given that a certified copy of their passports from El Salvador were on file.²

Credibility

[5] It was apparent throughout the hearing that there were a number of serious discrepancies in the claimants' evidence when the oral testimony was compared to the Personal Information Forms³ (PIFs) and the other documents available. For example, in oral testimony, the male claimant s.19(1) mentioned that before he was asked to he had agreed to let the of people at his farm and that this However, as noted at the hearing, in the PIF, there is no mention of this The male claimant stated that when he filled out the PIF, he was focused on being asked to and that this had occurred at a different time from the I do not find this explanation satisfactory. I am mindful of the fact that counsel for the claimants noted in his post-hearing submissions⁴ that the male claimant did mention that a took place in his lengthy statement⁵ given to the Immigration Officer at the time that he made his claim. However, I also note that in that same statement, the male claimant said that the was the event that caused him to be perceived as being and was therefore the source of his problems from the The PIF narrative is seven densely typed pages long and is extremely detailed. Under these circumstances, it makes little sense for the male claimant to only mention in his PIF that he was asked to which few people would have known about given he declined and instead, I would have expected that the claimant would have mentioned this in his PIF, particularly since the male claimant had stated at another time that it was essentially the source of his problems. I find that this discrepancy undermines the claimants' credibility.

[6] In later questioning, it was noted that while the farm is mentioned in the statement made to the Immigration Officer, the fact that the male claimant was asked to was not. The male claimant stated that he had been told to mention only the key incidents

² Exhibit R-2, information received from Citizenship and Immigration Canada (CIC).

³ Exhibit C-1, C-2 and C-3.

⁴ PH-1, post-hearing submissions.

⁵ Exhibit R-2.

s.19(1)

that had happened to him. I do not find this explanation satisfactory. The statement to the Immigration Officer is two pages long and minutely detailed. In the PIF, the fact that the male claimant was asked to _____ was the triggering incident that caused the claimants' problems. The male claimant amplified this in his oral testimony. Had the male claimant really been asked to _____ and he believed that this was the source, in whole or in part of his problems, I would have expected there to be some mention of this in such a detailed statement to the Immigration Officer. I find that this discrepancy further undermines the claimants' credibility.

[7] As noted at the hearing, it seemed somewhat odd that the claimants could be chased by a vehicle for 45 minutes, at 60-70 km/hour, covering close to 50 km, not be able to get through to the emergency number during that time and while their assailants were attempting to stop the claimants during the chase that their assailants were never actually able to catch the claimants and somehow the claimants managed to get away after all that by going through a stop sign. The male claimant confirmed that is what happened. However, as further noted at the hearing, this entire incident was not mentioned in the male claimant's statement to the Immigration Officer. The male claimant stated that he was told only to concentrate on key incidents in his statement to the Immigration Officer. In separate testimony, it was noted to the female claimant that this incident was not mentioned in her statement to the Immigration Officer either. The female claimant stated that she was told to focus on important events and that she was more concerned with the threats to her and her daughter and that as a Latin American, she assumed that others would understand what she was trying to say. I do not find these explanations satisfactory. The incident seemed rather odd, if it had indeed taken place in the way that the claimants described. However, far more importantly, the claimants' explanations for omitting it in their separate detailed statements to the Immigration Officer did not make sense. To somehow consider being chased for a very long period of time by men intent on stopping and potentially harming you would be a terrifying thing. This would have been one of the most significant things to happen to the male claimant and the only actual significant incident that the female claimant was involved in, therefore, it makes little sense for both of them not to mention this incident when they both gave such detailed statements to the Immigration Officer. It makes even less sense for the male claimant to mention in his statement that both he and the female claimant stopped working yet failed to mention this incident, since it

was the trigger for the female claimant to stop working. I find that these discrepancies further undermine the claimants' credibility.

[8] The male claimant presented what appeared to be a police report⁶ with respect to the final time that he was accosted by men on the way to the farm. However, as noted at the hearing, there is no file number on the document. The male claimant stated that no investigator was assigned either. It was also noted at the hearing that not only a gun was seen in the robbery but the fact that it was actually pointed at this head was not mentioned in the report. The male claimant did not know why this was not mentioned. Finally, as also noted at the hearing, the report states that the crime and place as "Threats and robbery" and "of residence". The male claimant stated that this must have been a mistake given that he was robbed when traveling and not at his residence in s.19(1)
As further noted at the hearing, the PIF and the police report go into great detail about the male claimant being robbed during this incident, yet the statement made to the Immigration Officer does not mention that the male claimant was robbed during this incident. The male claimant stated that the main point of the incident was that he was threatened and that the robbery was not the prime purpose and that it had been done to cover-up the prime purpose. I do not find these explanations satisfactory. If the male claimant had indeed been robbed during this incident, even if it was only somewhat incidental to the main purpose of the incident, I would have expected the male claimant to mention this in such a detailed statement made to the Immigration Officer. The police report simply did not match the male claimant's story on key points and it makes no sense in the circumstances described by the male claimant for any police or government document such as this to not at least have some form of file number on it. I find, on a balance of probabilities, that the police report is a forgery. I find that this not only casts doubt on the other documents presented, but that the claimants' reliance upon it and the other discrepancies mentioned further undermine the claimants' credibility.

⁶ Exhibit C-5, pp. 15-19.

s.19(1) [9] The female claimant presented a letter⁷ purporting to be from her former place of employment. As noted at the hearing, while the letter does indicate that the writer did observe a vehicle leave behind the claimants' car in , it gives the female claimant's final day of work as , 2007, even though she never returned to do actual work after the day of the incident. The female claimant stated that , 2007 was the day that she officially resigned and she did not know why the letter failed to mention that she had been off work before that. I do not find the female claimant's explanation satisfactory. The letter is quite detailed in its recounting of events. Had the female claimant really not returned to do actual work after the incident and only returned to resign on , I would have expected that to have been mentioned in the letter. I find the fact that it was not to further undermine the claimants' credibility.

[10] I do note the presence of various declarations on file of various declarations⁸ in support of the claimants. However, they are from sources close to the claimants who would obviously have an interest in furthering their claims. As such, I give the declarations little weight.

[11] Given the serious discrepancies, omissions and other problems with respect to major issues, I find that the claimants were generally lacking in credibility. I simply do not believe, on a balance of probabilities, that any of the significant events that the claimants alleged happened to them, actually happened. As a result, pursuant to section 96 of the *Immigration and Refugee Protection Act*, the claims fail. There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *Immigration and Refugee Protection Act*, the claims pursuant to that section fail as well.

⁷ Exhibit C-6, pp. 7 and 8.

⁸ Exhibits C-4, C-6 and C-7.

CONCLUSION

[12] I find the claimants are not Convention refugees or persons in need of protection. Therefore, the Refugee Protection Division rejects their claims.

“David McBean”

David McBean

December 3, 2010

Date