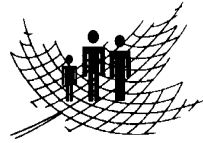


**IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)**



**LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DU STATUT DE RÉFUGIÉ)**

VA0-01624
VA0-01625

IN CAMERA
HUIS CLOS

CLAIMANT(S)

DEMANDEUR(S)

XXXX XXXXXX XXXXXXXX XXXXXXXX XXXXXXXX
XXXXXXXX XXXXXXXX XXXXXXXX

DATE(S) OF HEARING

DATE(S) DE L'AUDITION

March 8, 2001

DATE OF DECISION

DATE DE LA DECISION

March 8, 2001 (rendered orally)
May 14, 2001 (written decision)

CORAM

CORAM

I.W. Clague
Dian J. Forsey

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

Rochelle Appleby
Barrister & Solicitor

REFUGEE CLAIM OFFICER

AGENT CHARGE DE LA REVENDICATION

Nil

DESIGNATED REPRESENTATIVE

REPRESENTANT DESIGNE

Nil

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

Nil

You can obtain, within 72 hours, a translation or a copy of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB, 344 Slater Street, 14th floor, Ottawa, Ontario, K1A 0K1 or by sending a request to the following e-mail address: translation.traduction@irb.gc.ca or to facsimile number (613) 947-3213.

Vous pouvez obtenir la traduction ou une copie de ces motifs de décision dans l'autre langue officielle dans les 72 heures, en vous adressant par écrit à la Direction des services de révision et de traduction de la CISR, 344, rue Slater, 14e étage, Ottawa (Ontario) K1A 0K1, par courrier électronique à l'adresse suivante : translation.traduction@cisr.gc.ca ou par télécopieur au (613) 947-3213.

On March 8, 2001, the Refugee division heard the claim of XXXX
XXXXXX XXXXXXXX XXXXXXXX XXXXXXXX and XXXXXXXX XXXXXXXX
XXXXXXX to be a Convention refugee. On that same day, it rendered its oral decision
and reasons. This is the written version of the oral decision and reasons, edited for
grammar and readability.

ORAL DECISION AND REASONS

MEMBER FORSEY:

XXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX and XXXXXXXX
XXXXXXX XXXXXXXX are both citizens of Mexico who claim Convention
refugee status because of their membership in a particular social group, and that is
lesbian partners who are victims of domestic violence.

Both claimants allege that they have a fear of persecution in Mexico at the hands
of XXXX XXXXXXXX ex-husband, XXXXX XXXXXXXX XXXXX, or his paid
agents, who the claimants allege are policemen.

The principal claimant alleges that she was married in 1987 and had a child in that
marriage in 1990, and divorced her husband in 1992. The parents had joint
custodial rights to their minor child. However, the minor child was with her
mother. In 1995 she renewed her friendship with XXXXXXXX, as they had met
in 1991. Although there was no relationship in 1991, the two women formed a
lesbian relationship in approximately 1996.

The claimants allege that in order for their relationship to begin, XXXXXXXX
had to end a relationship with her then lover, and matters worsened for the
claimants when this former lover, over the next several years, proceeded to tell
XXXX XXXXXXXX ex-husband and their friends, co-workers and family of the
relationship between the two women.

They both allege that although they denied these accusations at that time, the
rumours persisted. XXXXXXXX alleged that in XXXXXX of 1998, she was
attacked by two men in her home at the time when XXXX XXXXXXXX was visiting
her sister. She stated that their roommate was present and also attacked. She
alleged that she reported this incident to the police and at that time informed the
police that she believed the attackers were sent by XXXX XXXXXXXX ex-
husband. She further alleged that the

policemen said, "You are lesbian and you got what you deserve." XXXX XXXXXX alleged that her former husband phoned her on the night of this attack on XXXXXXXX, and said that this incident would not be the last that would happen. She alleged that this command furthered and confirmed her suspicions that he was responsible for the attack.

In June 1998, XXXX XXXXXX alleged that she received a visit from her ex-husband, at which time he informed her that he had sent someone to carry out an investigation on the relationship between the two women. She further alleged at that time he threatened that he had proof of their relationship and took their minor child with him. He later threatened to get custody of the child and accused her of corrupting and perverting the child. She later approached her ex-husband to inform him that she maintained legal custody; however, he refused to return the child or let the claimant visit with the child. She alleged that on one other occasion she took the child from his home without his knowledge, and her ex-husband came and recovered the child and that the child continued to live with her ex-husband from that time to the present.

Both claimants allege that in 1999 they were attacked in their home by two men who beat, held and gagged XXXX XXXXXX and brutally sexually assaulted and raped XXXXXXXX. XXXXXXXX alleged that she was unconscious during this whole incident.

At the hearing, the claimants allege that these men showed their badges and identification, and threatened the claimants to not report this incident to the police because in fact they were the police and that they had been paid to do this to them. XXXX XXXXXX alleged that while these men were raping XXXXXXXX she noticed that their t-shirts bore the emblem of the "P.G.R".

She further alleged at the hearing that her ex-husband called on the same night in question and told her that, "This is just the beginning. Things will not stay like this." Neither of the women went to the police or any other authority to report the beating and rape, nor did they seek medical attention at a hospital or clinic. XXXXXXXX declared that they did not seek medical attention for fear of being examined and because they would have to explain what had happened to them, and that they were both overwrought with the experience. XXXXXXXX further stated at the hearing that one of the men was one of the same men who attacked her in the prior incident of XXXXXX 1998.

The claimants allege that they left for Monterrey at the end of March, following these incidents, to seek employment and to seek further information about living there. The claimants stayed there for approximately one week, during which time

they encountered XXXX XXXXXXXXX ex-husband while leaving the technical institute where they were seeking resources to live there. The claimant alleged that her former husband was standing by his car with three other men, and the sighting of them caused the claimants to return to the university, where they stayed for approximately 12 hours.

The claimant alleged at the hearing that they reported the appearance of her ex-husband to the director of the technical institute and that he advised that, knowing her ex-husband, he could not believe that he would harm her, and asked her not to cause a spectacle at the institute. The claimants returned to Querétaro without incident with XXXX XXXXXXXXX ex-husband. They did not return at that time to the hotel for their belongings.

Further evidence adduced at the hearing stated that XXXX XXXXXXXX alleged that in 1998, she had a meeting with her supervisor and was subsequently forced to resign her position. She alleged that her superior informed her that there had been a meeting of the directors and that she would be forced to resign because of her lack of morals; that was being a lesbian. The claimant further stated that she attempted to gain other employment, but was told that because she was a lesbian that she need not apply. She further stated that she believes this happened because of her appearance and because of the fact she looked like a lesbian.

The claimants then left Mexico, after another attempt to live elsewhere, where their parents resided, to no avail. They left Mexico in XXXXX and came to Canada to claim Convention refugee status. XXXX XXXXXXXX stated that since she has been in Canada her ex-husband has remarried, but she stated that she believed that her ex-husband is fearful that if she pursues custody of the minor child, that, because he is a Venezuelan without status in Mexico, he will fear repercussions by the Mexican authorities. She speculated that this was why he will stop her at every turn and turn violently against her.

Counsel submitted that both claimants allege a fear of persecution at the hands of XXXX XXXXXXXXX ex-husband and/or the agents that he would hire to harm them. They allege that they cannot get state protection because the agents hired by her ex-husband were members of the police force and that the police force in Mexico are corrupt. They further allege that they cannot receive protection because they are lesbian women and the state cannot or will not protect them, and that they cannot live elsewhere in Mexico and be safe.

The determinative issues in this claim are: the credibility of the claimant, whether their fear of persecution is discrimination or persecution, whether there is

adequate state protection, and if there is an Internal Flight Alternative available for them.

The panel found the claimants to be credible witnesses. Their evidence was free of any major inconsistencies, notwithstanding the day and-a-half of testimony. Both claimants answered questions in a straightforward manner, and even during the very personal and sensitive issues which were needed to be explored at the hearing. There were no major discrepancies which were central to the claim, and any minor discrepancies were cleared up to the satisfaction of the panel during the course of the hearing. Any omissions between their PIF and their *viva voce* evidence were addressed at the hearing to the satisfaction of the panel. Therefore, the panel has no reservation in accepting the central aspects of the claims as credible and trustworthy.

In this particular case, the panel addressed the nature of the harm feared by the claimants, and is further guided by the *IRB Guidelines on Gender-Related persecution*.¹ Although the guidelines are absent of mentioning lesbian women, it is obvious that the guidelines would also be applicable to lesbian women, in a clear reading of the language.

The panel finds, based on their evidence, which the panel found to be credible, that the sexual abuse and rape of the principal claimant's lover in the claimant's presence was a form of degrading treatment and violence inflicted because of the claimant's gender and her sexual orientation, and was therefore serious enough to amount to a well-founded fear of persecution.

The panel has also considered the profile of the claimants in determining whether or not the claimants' fear of persecution in the future is objective or reasonable. The principal claimant has told us in no uncertain terms that she will be stalked and harassed by her former husband and his agents. The panel finds that since the claimants have been exposed as lesbians, and therefore are not now able to live quietly in the quadrant, as they had in the past, that they are endangered further by her former husband.

Also noteworthy is the fact that the principal claimant declared that her appearance would easily identify her as a lesbian. The panel finds that the claimant's own strong self-identity places her at a greater risk of detection by the agents hired by her former husband, and would cause her to be regarded as not

¹ IRB Chairperson's *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*, Ottawa, Canada, March 1993, updated November 1996.

conforming to the societal norms as a mother and wife. The panel finds that her partner would face the same detection, as they are now further committed to each other. The panel, therefore, is satisfied that both claimants in this particular case suffered persecution in the past and would be likely to suffer persecution again in the future by their agents of persecution, given the persuasive and trustworthy evidence to support the claimants' allegations.

With respect to state protection, the panel finds that, notwithstanding the documentary evidence which indicates that the government has created the Family Violence Assistance Centre (C.A.V.I.) to provide psychological assistance, emergency medical care and legal support to victims of domestic violence, and placed C.A.V.I. under the attorney general in the Federal District, and that the government has made amendments to the *Penal Code* which includes a provision on sexual harassment, the law requires that the victims initiate and provide the existence of damages or of personal harm to initiate prosecution for sexual harassment. The panel accepts that the protection and mechanisms offered by the government to combat domestic violence and violence against women in general is not perfect. However, for protection to be successfully implemented, the government has to address the attitudinal problems existing in a broad number of police officers, lawyers, and judges. While the panel finds that there is an encouraging improvement from previous years when police were more severely criticized for their indifference to complaints by victims of domestic violence, nevertheless the particular facts of this claim of the ongoing, severe abuse and continuous harassment of these claimants by the agent of persecution leads the panel to conclude that protection could not or would not be available to them at this time in Mexico.

Clearly, when an influential person can hire the state police or perpetuate a crime of such brutality as described by the claimants, then the panel does not find that state protection is adequate, given the particular circumstances of this claim.

The panel finds that on a balance of probabilities that there is a reasonable chance and a serious possibility that the claimants would be persecuted for a Convention reason, should they return to Mexico, by reason of their membership in a particular social group as gay lesbian women who are victims of domestic violence.

The panel would wish to note that this does not mean that all women or all lesbian women in Mexico could not be able to obtain state protection, but in this case it is

reasonable that the claimants were fearful of seeking state protection, given that one of the agents of persecution was the police.

The panel further took into consideration the consequences for XXXX XXXXXX of such exposure of a police report whereby she would have to disclose her lesbian relationship, given the custody battle between her and her former spouse. The documents indicate that custody could be removed from the custodial parents if moral codes are at issue. The panel finds that in this particular case and circumstances the claimant has established that they are unwilling, due to their fear, to seek the protection of the authorities in Mexico, and that they have provided clear and convincing proof that, given their particular circumstances, the state is therefore unable to protect them.

The panel has considered whether or not a viable Internal Flight Alternative for the claimants exist anywhere in Mexico. The claimants both testified that the principal claimant's former husband and his agents would seek them out wherever they went because he would not tolerate the mother of his child living in a lesbian relationship openly anywhere in Mexico, and that any attempt by her would reactivate his violent nature and persecutory measures.

I just want to add to that the custodial parent would also, in the opinion of the panel, deny access to the claimant to the child for the reasons described, by his nature.

The principal claimant further testified that she would, if she returned to Mexico, seek legal custody of this child; an action which would bring the unwanted attention of the agents of persecution.

The documentary evidence before the panel is inconclusive on the matter of custodial rights in the case of a lesbian partner in a former heterosexual relationship. However, the panel considered the overall credibility of the claimants and the benefit of doubt is given to the claimants in this regard. The panel further notes that the claimants attempted to relocate elsewhere in Mexico, but were sought out by the agents of persecution. Therefore, given several of the facts, the panel is satisfied that there is no viable IFA for the claimants anywhere in Mexico at this time.

For all of the above reasons, and after considering all of the evidence, and in particular the submissions of counsel and the psychological report presented to the counsel, the panel finds that the claimants have established a well-founded

fear of persecution for a Convention reason should they return to Mexico.
Therefore, the panel determines that both claimants are Convention refugees.

I would ask my colleague if he would like to add something to these reasons.

PRESIDING MEMBER:

I have nothing to add. I concur with the reasons and the decision.

--- PROCEEDINGS CONCLUDED

“Dian J. Forsey”

Dian J. Forsey

DATED at Toronto, Ontario, this 8th day of May 2001.

Concurred in by:

“I.W. Clague”

I.W. Clague

DATED at Vancouver, B.C., this 14th day of May 2001.

**REFUGEE DIVISION - PARTICULAR SOCIAL GROUP - SEXUAL ORIENTATION - LESBIANS -
DOMESTIC VIOLENCE - WOMEN REFUGEES - GENDER - GENDER-RELATED PERSECUTION -
CHILDREN - CUSTODY - STATE PROTECTION - INTERNAL FLIGHT ALTERNATIVE - FEMALE -
POSITIVE - MEXICO**