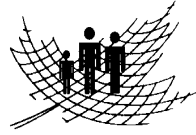


**IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)**



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

VA0-03441

IN CAMERA
HUIS CLOS

CLAIMANT(S)

DEMANDEUR(S)

XXXXXXXXXXXXXX

DATE(S) OF HEARING

DATE(S) DE L'AUDITION

June 20, 2001

DATE OF DECISION

DATE DE LA DÉCISION

July 16, 2001

CORAM

CORAM

Fred Hitchcock

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

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DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

Nil

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

Nil

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These are the reasons for the decision of the Convention Refugee Determination Division with respect to the refugee claim made by XXXXXXXXXXXXXXX. The hearing for this claim was held pursuant to section 69.1 of the *Immigration Act*,¹ on June 20, 2001, at Vancouver, British Columbia.

ALLEGATIONS

The claimant is a 31-year-old single woman born in Chile and she is a citizen of that country. She alleges a well-founded fear of being persecuted in Chile due to being a member of a particular social group, visually impaired.

The major issues identified by the panel at the hearing are the following: credibility, objective basis, and discrimination versus persecution.

EVIDENCE OF THE CLAIMANT

The claimant provides a summary of her allegations of persecution against her in Chile in the opening paragraph of the narrative in question 37 of her Personal Information Form (PIF)² as follows:

The following events are examples of the discrimination and persecution I faced daily in Chile because of my disability. I am blind and I have a guide dog, XXXX, for assistance. I was denied many services available to the public in Chile because of my visual impairment and because of my guide dog.

The use of public transportation was always difficult. For example, I once fell while trying to get on the bus and the bus driver kept going and almost ran over me. When I got my guide dog, XXXX, I had to continually fight with the bus drivers to be allowed on the bus. I was denied entry into restaurants and malls because of my disability and my guide dog.

The laws in Chile do not protect me from discrimination based on my disability. After I was fired from my job I went to a human rights organization to see what could be done. I was told that there are no laws in Chile to protect me. The discrimination I faced pervaded my every day life to the extent that I could not use public services and I could not maintain employment.

¹ *Immigration Act*, R.S.C. 1985, C. I-2, as amended.

² Exhibit 1.

In the claimant's narrative she lists the continuation of events of discrimination against her due to her being visually impaired. These events occurred from March 1976 to April 22, 2000.

The major emphasis of the claimant's claim of discrimination amounting to persecution is in respect to what occurred to her from November 1999 to March 20, 2000.

November 1999

While I was on the subway, the driver said through the loudspeaker, "All animals are not allowed to travel by subway", referring to my guide dog.

XXXXXX, 2000 at 7:30 p.m.

One of my work mates and I went to a restaurant called XXXXX to have some ice cream. We were pushed away and treated very badly by the manager XXXXXXXX because animals were not allowed in the restaurant.

Monday, XXXXXX, 2000

I called the media to complain about this situation at the restaurant. Two television stations, "XXXXXXXXXX" and "XXXXXXXXXX" came to my work place to interview me.

Monday, XXXXXX, 2000

I complained to the "Servicio Nacional del Consumidor" which is a consumer's complaints office about the situation at the restaurant. Two months later I received letters from the restaurant and the office saying that they had acted according to the law.

Tuesday, XXXXXX, 2000

A news report about the situation at XXXXX Restaurant appeared on Megavision, Channel 9.

Wednesday, XXXXXX, 2000

I was called to the Human Resources Chief's office at "XXXXXXXXXXXX XXX" who are the official owners of "XXXXXXXXXX", the radio station I was working for. They ordered me to take home my guide dog due to some changes that were going to be done at the office. Of course, this measure was permanent.

February, 2000

A week later I sent a letter to some of the principals at radio XXXXXXXX explaining why I did not want my guide dog to leave the office.

XXXXXX, 2000

I was called to the Human Resources department and was given a letter notifying me that I was being fired within 30 days for reasons to do with the employer's needs according to article 1, clause 1 of the Labor Code.

XXXXXX, 2000

I went to the corporacion de Asisstencia Judicial, an official organization for Human rights in Chile, but I was told that the radio station had a legal right to fire me.

XXXXXX, 2000

XXXXXXX, a journalist from the newspaper "XXXXXXX" visited me at work because she was notified at the Corporacion de Asistencia Judicial that I had been fired. An article about me appeared in the Saturday, XXXXXX, 2000 edition of the paper.

XXXXXX, 2000 to XXXXXX, 2000

I was intimidated at work many times by being called to the office of the XXXX of the Human Resources Department, XXXXXX. I was continually questioned about what I was doing and watched by people from the radio station. I wasn't allowed to receive any visitors at work because they were afraid of me appearing in the media again.

The claimant alleges that she became so frustrated and depressed over the continuation of instances of discrimination against her for being visually impaired that she finally decided to move to Canada from Chile on XXXXX, 2000, arriving at Vancouver, British Columbia, on August 16, 2000. The claimant originally resided with a cousin, XXXXX, in Victoria, British Columbia. The claimant made her refugee claim on September 13, 2000.

The claimant states she did extensive research prior to leaving Chile at the Canadian Embassy in Santiago, Chile, and also on the Internet. She states she fully intended upon arriving in Canada to make a refugee claim, even though her visitor's permit stated she was here merely on a visit.

ANALYSIS

The claimant presented her oral testimony in a very credible and trustworthy manner. She was articulate and is obviously well-educated, having a university degree and being a qualified XXXX of English as a second language.

The only area of the claimant's oral and written testimony that I had difficulty in accepting was her description of being terminated from her disability pension when she received employment and then not being granted the right to her disability

pension when she had been terminated from her employment with the radio station. She states she made official inquiries from the Disability Department of a government ministry in Santiago. She was told that she was not eligible to be able to receive the disability pension again due to regulations, but she was not allowed to see what these regulations were and was told that this information was only given to social workers or other government staff.

The claimant said she did not make attempts to find out more details of the so-called regulation from a supervisor or a manager of this government department. I found this response to be implausible. In other instances, the claimant has been very tenacious in her activism towards her rights as a visually impaired person. She has not hesitated in other instances to contact the media or write correspondence to be published in attempts to obtain specific rights that she appropriately believed should be offered to disabled people.

However, as stated above, this was the only area of concern that I had with the claimant's extensive oral testimony. In all other incidences described she was very forthright and credible, and she had extensive documentation to support her allegations, and these are included in Exhibit 4, dated June 6, 2001.

OBJECTIVE BASIS

Included in Exhibit 3 are specific articles that deal with discrimination against the visually impaired in Chile, as well as recent legislation that has been passed to promote integration of the disabled into society. The U.S. Department of State *Country Report on Human Rights Practices* of Chile for 2000, includes on page 9 of 12 one paragraph titled, "People With Disabilities":

A 1994 law promotes the integration of the disabled into society. The government's national fund for the handicapped has a small budget to encourage such integration. The 1992 census found that 288,000 citizens said that they had some form of disability.

The disabled still suffer forms of legal discrimination. For example, blind persons cannot become teachers or tutors.

Although a 1994 law requires that the new public buildings provide access for the disabled, the public transportation system does not make provision for wheelchair access, and subway lines in the Santiago metropolitan area provide facilitated access for the disabled only in some areas.

The following article titled, "*Government Implementation of the Standard Rules as Seen by Member Organizations of Inclusion International, ILSMH Chile,*" dated 1997. "*Legislation,*" describes legislation that protects the disabled:

The right of persons with disabilities are protected by general legislation. According to the government, the rights of persons with disabilities are protected by a combination of special and general legislation.

General legislation applies to persons with different disabilities with respect to education, employment, the right to marry, the right to parenthood, family, political rights, access to court of law, the right to privacy and to property rights.

The following benefits are guaranteed by law to persons with disabilities: health and medical care, training, rehabilitation and counselling, financial security, employment, independent living, and participation in decisions affecting themselves. According to the government, the benefit of financial security is not guaranteed by law.

Included in Exhibit 4, Tab 4, is a newspaper article from the XXXXXXXXXXXX, dated XXXXXXX, 2000, titled, "*Blind Teacher Blames Loss of Job Because of her Dog.*" This newspaper article supports the claimant's testimony of her being terminated from her employment with a Christian radio station called XXXXX, and we quote from that article:

Beginning on the XXXXXXX 2000, XXXXXX (29 years of age) will have to start knocking on doors again in search of new work with her guide dog, a Labrador by the name of 'XXXX' "although", she thinks to herself, "it would be better to become a street vendor so that I wouldn't need to depend on others".

Two years ago, the evangelical radio station, "XXXXX", decided to hire this young English teacher who lives in a world without shapes or colours because of congenital damage to her retinas.

According to XXXXXX, her employers decided that the inconvenience of having a guide dog in the office when weighed against the "needs of the business" justified their withdrawing her opportunity to work.

XXXXXXXXX, who no longer trusts them, wants them to demonstrate to the employment inspectors that there was no other reason other than the inconvenience of having a dog in the office.

"In my job as a telephone operator at the radio station, I was overqualified. I am fluent in another language other than my mother tongue; I have never missed a day of work; I was always very punctual, disciplined and respectful," says the teacher.

The job inspectors have written evidence of what transpired. Amongst this evidence is a letter in which XXXXXX replies to a missive sent by her employers in which they ask her to take her dog out of the office. Since their solution (of taking the guide dog out of the office) would have caused a serious challenge to XXXXXX, she decided to send her employers a letter suggesting other more mutually workable solutions with XXXXXX offering to cover any of the costs.

Some time later, XXXXXX was notified by mail that her job was terminated.

XXXXXX is a labour lawyer representing some disabled people. For her, the issue of discrimination cannot be acknowledged as that (discrimination) just because someone was fired, but also because Chilean society is not prepared to accept people who they feel are other than mainstream ("strange, different or apart from the society").

"When a worker with these characteristics becomes a burden to the business, the employer is evidently obliged to fire the employee, because of lack of financial support from the government or the social infrastructure", emphasized the specialist.

In Chile, 70% of the disabled population are prepared and willing to work and only 40% reach that goal.

Also included in Exhibit number 4, Tab 8, is a letter of petition written by the claimant to the radio station, specifically addressed to XXXXXXXXXXXX, and XXXXXXXXXXXX, and XXXXXXXXXXXX. In this letter, the claimant responds to concerns that she received from her employer because of having her seeing-eye dog with her at her employment.

The claimant provided solutions that she felt would resolve this conflict, including "buying a piece of carpet or rug mat of a colour that goes with the colour of the carpet of the office so as XXXX can lay down without damaging the carpet." She also proposed to be "transferred to another office far from the public, which could be the one used by the donation collectors."

Regardless of this constructive petition, the claimant was given a letter of termination from the radio company, dated XXXXXX the XX, 2000, which includes the paragraph:

This decision has been made based on the Article 161, section 1 of the *Labour Code*. This is "needs of the business." Article 162 from the *Labour Code* establishes that the worker must be given a dismissal notice 30 days in advance. Thus, we are complying with this rule from the *Labour Code*.

The claimant states she was very emotionally upset by this letter of termination. She stated she had given several years of her own personal time as a volunteer to help collect money for this Christian radio station, and she believed she was originally hired due to the employer's empathy towards the disabled.

She states she felt further saddened when after she had agreed to media interviews in respect to her being fired from this position that she was being shunned from people that had previously been her friends in her Christian community. She states that her efforts to obtain human rights for the visually impaired were considered inappropriate by some of her evangelical Christian friends. She states some of these friends believe it was both inappropriate and not Christian to be making such complaints.

The claimant is credible in her testimony in respect to seeking advice from lawyers at human rights organizations. She has made submissions to the National Consumer Services, and she has also made formal complaints in respect to not being allowed access to public transportation while she is the company of her seeing-eye dog.

The claimant has testified that she has considerable difficulty in obtaining employment and therefore has limited resources to financially support herself. She also claims that she would not be successful in a further application for a disability pension. This leads to the assessment of the claimant's claiming to have so many years of accumulation of discrimination that it amounts to persecution.

DISCRIMINATION VERSUS PERSECUTION

The United Nations High Commissioner for Refugees (UNHCR) *Handbook*,³ which, although not binding, has been considered by the Supreme Court of Canada to be a persuasive authority, provides as follows:

³ UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, reedited Geneva, January 1992, (c) Discrimination. Number 54.

Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution.

This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his or her right to earn their livelihood and the right to practice religion or access to normally available educational facilities.

Number 55:

Where measures of discrimination are in themselves not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce in the mind of the person concerned a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger when a person has been a victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

The claimant has given examples in her written and oral testimony of discrimination for a period of 24 years from 1976 to the year 2000. She has given examples of discrimination in respect to attempting to obtain transportation, either by bus or by taxi, when she is in the company of her seeing-eye dog. She has given many examples of difficulties in obtaining employment due to being visually impaired, and she also gave examples of difficulties in obtaining higher education.

At the same time, the claimant, in Question number 17 of her PIF, states she received a XXXXX degree as English as a second language which she attended university during 1989 to 1993 to obtain. Also, she has an extensive work history with four different positions as XXXXXX English as a second language in Santiago. Her most recent employment in Santiago was the two-year position with the Christian radio station, where she was a telephone operator and occasionally a host of the radio program.

I have no reason not to accept that the claimant has had extensive discrimination against her, due to being visually impaired. But at the same time she has given many examples of where she has, due to her tenacity, been able to overcome some of these obstacles. I appreciate her frustration and depression over the circumstances of

being terminated from the Christian radio station and the subsequent responses to friends and colleagues from her Christian community due to her making formal complaints of how she had been treated.

Case Law⁴

In Radulescu, Petrisor et al. v. M.E.I. (F.C.T.D., No. 92-A-7164), McKeown, June 16, 1993, the court has stated at page 2:

Both the United Nations Handbook and Hathaway declare that the loss of ability to earn a living at the extreme level or which is systemic can be tantamount to the deprivation of life or cruel, inhuman or degrading treatment and this constitutes persecution.

Although the claimant did not receive the advancements and promotions which he felt he deserved, he was able to obtain employment in his chosen profession and left that profession by his own volition. Although the claimant did not have the opportunity to attend university as he desired to do, the claimant was able to complete his class three diploma as an engraver.

It is settled law that the definition of a Convention refugee is forward-looking and that the CRDD is obliged to evaluate the evidence of the conditions in the claimant's country of origin at the time of the hearing,¹ having regard as well to the claimant's personal experiences, and those of persons similarly situated.²

¹ Mileva v. M.E.I., [1991] 3 F.C. 398 (C.A.).

² Chan, Kwong Hung v. Canada (M.E.I.) (S.C.C., no. 23813), Major, Sopinka, Cory, Iacobucci; La Forest, L'Heureux-Dubé, Gonthier (dissenting), October 19, 1995, paragraph 135.

I believe that if the claimant returned to Chile, she has means of a livelihood.

Counsel submitted three case decisions for the panel's consideration as follows: 1997, CRDD number T95-07647, indexed as T.N.L.(Re). This was a positive decision in respect to a claim of an HIV-positive claimant, who was a citizen of Poland, and that he was denied adequate housing and medical and dental services due to his medical status.

I do not accept that this case is particularly relevant to the claimant's claim as, although she had difficulty or would have difficulty in the future of obtaining housing

⁴ CRDD V94-02496, Daggett, October 7, 1996.

due to having a seeing-eye dog, she had been residing with her parents in their residence and she could return to reside with them.

Also, the claimant was able to obtain various positions of employment, even though she was terminated from her most recent job because she brought her seeing-eye dog to her employment.

In the case of *Xie*,⁵ the claimant stated he could not legally obtain work due to his political opinion. It was held that systematic government interference with the opportunity to find work must be viewed as a serious restraint on an individual's freedom. In this case the Board was criticised for ignoring evidence of this interference.

In this claimant's case there has been no government interference in her being allowed employment and the positions of which she either was not accepted employment or terminated were from either a private radio station or education facilities. The claimant confirms that she was given employment at different schools in Santiago, including the XXXXXXXXX, but these were part-time positions.

The case of *He*,⁶ the applicant was a citizen of China, who claimed a well-founded fear of persecution on the basis of her political opinion. As a result of her participation in pro-democracy demonstrations the applicant was arrested and detained for over one month until she signed a coerced confession. Her teaching job was terminated thereafter and her request for a work card that would permit her to do other work was denied.

Again, in this claimant's case she has not been denied employment due to her political opinion, nor has there been any direct political interference with her ability to obtain employment.

⁵ *Xie v. Canada (Minister of Employment and Immigration)* [1994], F.C.J. No. 286.

⁶ *He v. Canada (Minister of Employment and Immigration)* (1994), 25 Imm. L.R. (2d) 128 (F.C.T.D.).

Immigration and Refugee Board, Ottawa, Canada, in December 1991 produced a framework of analysis of “Discrimination as a Basis for a Well-founded Fear of Persecution.”⁷

Basic Considerations

1. Everyone is entitled to the basic rights and freedoms embodied in the Universal Declaration of Human Rights and other international instruments, and their non-discriminatory application.
2. Persecution may result if an act of discrimination infringing on these rights is systematic, and it seriously affects the physical, moral, or intellectual integrity and human dignity of the claimant.
3. Persecution may also result where the discriminatory measures are not serious but are "cumulative."
4. Discriminatory laws in a given country are not, by themselves, sufficient to warrant a grant of refugee status; the claimant must adduce credible evidence of facts that would support a well-founded fear of persecution.
5. The claimant need not show that he or she has been singled out by discriminatory measures; a well-founded fear of persecution may be based on what has happened to members of the group to which the claimant belonged.

This framework analysis also includes different levels of “type of right or freedom threatened.”⁸ In this claimant’s circumstances the claimant’s level of discrimination were primarily under the “third level,” which includes the right to work, right to adequate standard of living, right to education.

The claimant’s written and oral testimony reveals that in Chile she definitely has the right to work and she has in the past been able to obtain employment.

She has and would have difficulties in obtaining a place to reside due to her having the seeing-eye dog with her. However, as mentioned above, she had resided with her parents in the past and this would be an option for her if she were to return to Chile.

She has had difficulties in obtaining education in her field of choice but, regardless, she has attended university and obtained a XXXXX degree of English as a second language after completing four years of university.

⁷ IRB Framework of Analysis, "*Discrimination as a Basis for a Well-founded Fear of Persecution*", December 1991.

⁸ James C. Hathaway, *The Law of Refugee Status* (Toronto: Buatterworths, 1991), pp. 108-117.

Having assessed the framework of analysis of discrimination as a basis for a well-founded fear of persecution, I do not find that in this case the number of cumulative instances of discrimination have amounted to persecution. I sympathise with the claimant in her frustration of enduring many years of discrimination in Chile due to her being visually impaired. I also believe that, if she were to return to Chile, she would in all probability face further instances of discrimination but these do not amount either individually or cumulatively to a well-founded fear of persecution.

However, the claimant is well-educated, articulate, and tenacious, and I believe she would be able to find further employment. At the same time, I empathise with her emotional testimony of how surprisingly shocked she has been here by her experiences in Canada due to most citizens' acceptance of people who are visibly impaired and using the services of a seeing-eye dog.

The claimant presently has a further XXXXX position as English as a second language in Victoria and she has her own apartment where she had no difficulty in being allowed to have her dog, XXXX, reside with her.

DETERMINATION

Though I found the claimant to be consistently trustworthy and credible in the majority of her testimony, I do not accept she has a well-founded fear of persecution if she returns to Honduras. I therefore determine that XXXXXXXXXXXXXXX is not a Convention refugee as defined in section 2(1) of the *Immigration Act*.

“Fred Hitchcock”

Fred Hitchcock

DATED at Vancouver, B.C., this 16th day of July 2001.

REFUGEE DIVISION - PARTICULAR SOCIAL GROUP - DISABILITY - DISCRIMINATION - CUMULATIVE GROUNDS - PERSECUTION - FEMALE - NEGATIVE - CHILE