



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA2-15177

2003 CanLII 55276 (I.R.B.)

CLAIMANT(S)

DEMANDEUR(S)

XXXXXXXXXX
(a.k.a. XXXXXXXXXXXXXXXXXXXXX)

DATE(S) OF HEARING

February 7, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

March 7, 2003

DATE DE LA DÉCISION

CORAM

S. Alidina

CORAM

FOR THE CLAIMANT(S)

Max Berger
Barrister and Solicitor

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Peter Smith

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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XXXXXXXXXX, a 24-year-old citizen of Peru, claims to have a well-founded fear of persecution at the hands of the former government of Fujimori's corrupt officers and the police in Peru by reason of his imputed political opinion. In addition, he claims to be a person in need of protection, as a person in danger of being tortured or at risk of losing his life or being subjected to cruel and unusual treatment or punishment in Peru.

ALLEGATIONS

The claimant alleges that:

1. He and his family left Peru because of the threats to his life from agents of Fujimori, the former president of Peru.
2. His father worked for XXXXXXXXX as a chief of XXXXXXXXX and as a chief of the program of XXXXXXXXX.
3. He reported to Mr. XXXXXXXXX who was the President of XXXXXXXXX and he was in charge of the budget of the entire corporation.
4. After the change of the presidency, the claimant received a citation from the new government asking him to provide declaration of misappropriation of funds from XXXXXXXXX.
5. Subsequent to the receipt of the citation, the claimant was threatened on two occasions to leave the country or be killed, and his sister was

kidnapped and threatened too. She managed to escape from her kidnappers unharmed when the car she was forced into met with an accident.

6. Fearing these threats, the entire family left Peru. His father and sister went to the USA; his mother—who is a permanent resident of Canada—and he fled to Canada.

ANALYSIS

The determinative issues in this claim are: nexus, agents of persecution, credibility, and state protection.

Identity

The identity of the claimant has been established to the satisfaction of the panel. In this respect, reference is made to the supporting documents, namely, a certified copy of the passport, claimant's identity card and his driver's license from Peru.

Nexus

Fujimori, the former President of Peru resigned on November 20, 2001. After Alejandro Toledo's inauguration as the new President of Peru on July 28, 2001, the congress set up 64 investigative commissions to launch investigations into the misdeeds of the Fujimori government and one of the misdeeds identified was the misappropriation of budgets.

The documentary evidence¹ indicates that the claimant's father was employed by the XXXXXX XXXXXXXXXXX XXXXX XXXXXX (XXXXXXXXXX), a decentralised organisation of the Presidential Ministry, for over a year. His services to XXXXXXXXXXX included being the Chief of XXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX. The claimant's testimony concurs with the documentary evidence² that the President of XXXXXXXXXXX was XXXXXXXXXXX. The claimant testified that his father reported to XXXXXXXXXXX who managed the budget of the Corporation. The claimant further indicated that XXXXXXXXXXX was a close acquaintance of Fujimori. XXXXXXXXXXX had complete control over the permits to make expenditures related to the Corporation, including expenditures from his father's department budget, provided these permits had his father's signature. After the change of the presidency, a commission was set by the new government to investigate the misappropriation of the budgets and one of the persons to be asked to make a declaration was the claimant's father. Many of the expenditures were never brought to his father's attention; therefore, when the investigations into the misappropriation of funds began, the father realised that his signatures were forged. Upon his father's receipt of the first citation from the commission, the claimant's family started receiving death threats from members loyal to

¹ Exhibit C-2.

² Exhibit R-4.

the former government of Fujimori for fear of being investigated and possibly prosecuted.

As per Ward,³ political opinion is any opinion on which the machinery of the State is engaged. In this case, people loyal to Fujimori form an opposition to the present government and, therefore, are an anti-government entity and, therefore, a component of the “state machinery”.

Based on the above reasons, on a balance of probabilities, the panel finds that the claimant’s father’s evidence, in regards to the misappropriation of funds by XXXXXXXXX from his department, is interpreted to be an imputed political opinion against the former government of Fujimori. The panel finds, in this case, that a political opinion was imputed to the claimant’s father and, therefore, the claimant has established a nexus to the Convention refugee definition.

Credibility

The panel finds the claimant to be a credible witness. His testimony was generally straightforward and trustworthy. He never tried to embellish his story to gain advantage in support of his claim. The panel, therefore, believes his allegations in support of his claim.

³ Klinko, Alexander v. M.C.I. (F.C.T.D., no. IMM-2511-97), Rothstein, April 30, 1998

His evidence, generally, agreed with the documentary evidence entered as exhibits during the hearing. For example, he testified that XXXXXXXXX was appointed as the head of the XXXXXXXXX, and he was charged for misappropriation of funds in XXXXXXXXX which concurs with the documentary evidence.⁴

Furthermore, the claimant's demeanour during the hearing indicated his fear and frustrations as he narrated how his assailants had threatened to kill him if he did not leave Peru like his sister and father had. The claimant, in his testimony, and the counsel, in his submissions, explained to the panel's satisfaction some minor inconsistencies and implausibilities in his evidence.

Agents of Persecution

The agents of persecution in this case are individuals who were involved in corruption in the government of Fujimori. They are motivated to harm the claimant's family because the claimant's father had received a citation from the government to make declarations against some members of the Fujimori government. His father's declaration would expose XXXXXXXXX and several other corrupt members of the Fujimori regime.

The documentary evidence indicates that:

The targets of investigations into the misdeeds of the Fujimori era have long been complaining that they are victims of 'witch hunt' and 'political

⁴ Exhibit C-2, Newspaper article of XXXXXX, 2001 and Exhibit R-4, Response to Information Request PER40590.E, November 29, 2002.

persecution'. For almost as long, this has been dismissed as the most obvious line of defence of people who would like to see it all go away.⁵

The panel finds that the agents of persecution in this case were individuals involved in corruption during the Fujimori government. They are motivated to drive the claimant and his family out of Peru because of the knowledge the claimant's father has about their involvement in corruption. The citation he had received from the present government would enable him to denounce their corruption.

State Protection

The claimant, in his testimony, indicated that he had two encounters with the same three individuals, and his sister was once kidnapped on one occasion. When asked if he filed any report with the police, he stated that he did not. His father told him that things would get worse if he made denunciations against the people loyal to the Fujimori government. The claimant also testified that his father is presently negotiating with the state authorities to return to Peru from the USA to provide evidence against the individuals involved in corruption in Fujimori's government, provided the state authorities would guarantee his safety in Peru. The claimant stated that it is over three weeks since this discussion began—but to date, the claimant's father has not been given any guarantees that state protection will be provided to him should he return to provide evidence they were seeking. The claimant testified that he feared the individuals loyal to

⁵ Exhibit R-2, Latin American Weekly Report, November 6, 2001.

the Fujimori administration; as well, he feared that the state authorities would not be able to provide him adequate state protection in Peru.

The documentary evidence indicates that:

Peru is a multiparty republic that has emerged from a decade of authoritarian government and is undergoing a process of democratic transformation. Although it had made significant institutional improvements during the year, the human rights record remained poor in several areas and longstanding problems remained. Police and prison security forces committed seven extrajudicial killings. Impunity remained a problem, and in some cases, the police and security forces threaten or harass victims, their relatives, and witnesses in an attempt to keep them from filing charges of human rights violations. According to Amnesty International, several victims have been too scared to follow through with judicial proceedings against their abusers, who subsequently were released without being charged.⁶

The same document indicates that:

Many individuals associated with the Fujimori administration are the targets of criminal investigations. Anticorruption legislation enacted in 2000 gave judicial authorities expanded powers to detain witnesses and suspects. Many of those detained under these laws complain that the cases against them are politically motivated, and some of the investigations appeared to have politically partisan overtones.⁷

In regards to being able to obtain protection from the judiciary in Peru, the same document indicates that:

The Constitution provides for an independent judiciary; however, in practice the judiciary has been subjected to interference from the executive. It is also subject to corruption and is notably inefficient. Public confidence in the judiciary remains low.⁸

⁶ Exhibit R-1, U.S. Department of State, Country Reports on Human Rights and Practices – 2001.

⁷ Exhibit R-1, U.S. Department of State, Country Reports on Human Rights and Practices – 2001.

⁸ Exhibit R-1, U.S. Department of State, Country Reports on Human Rights and Practices – 2001..

In regards to judges being corrupted and still in power since the government of Fujimori, the documentary evidence indicates that:

Former TV commentator Jorge Morelli goes further in this direction, claiming that a majority of judges corrupted by Montesinos remain in their posts, and justice minister Fernando Olivera does not look like he is willing to waste the opportunity to use them.⁹

Based on the aforementioned documentary evidence, the panel finds if the claimant were to be returned to Peru, he will be subjected to impunity from his assailants as well as the police who commit serious human rights abuses. Furthermore, because of the existence of the same corrupt judiciary, any evidence given by his father could expose the judges who are still in power since the Fujimori era; and the judgement could affect the claimant and the entire family.

Therefore, based on the evidence adduced, the panel finds, on a balance of probabilities, that in this case the claimant does not have adequate state protection should he return to Peru.

The panel, therefore, concludes that the claimant has rebutted the presumption of state protection and has clearly established that, in his case, the government of Peru is not able to adequately protect him.

⁹ Exhibit R-2, Latin American Weekly Report, November 6, 2001.

Conclusion

Based on the evidence adduced and the documentary evidence, the panel finds that there is a serious possibility that the claimant will be persecuted at the hands of the agents of Fujimori should he return to Peru.

Accordingly, for all the abovementioned reasons, the Refugee Protection Division determines that XXXXXXXXXXXX is a Convention refugee.

"S. Alidina"

S. Alidina

DATED at Toronto this 7th day of March 2003.

**REFUGEE PROTECTION DIVISION - NEXUS - POLITICAL OPINION - CORRUPTION - STATE
PROTECTION - MALE - POSITIVE - PERU**