



IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)

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

IN CAMERA
HUIS CLOS
T98-04159

CLAIMANT(S)

XXXXXX XXXXXXXXXXX XXXX

DEMANDEUR(S)

DATE(S) OF HEARING

March 13, 2000

DATE(S) DE L'AUDIENCE

DATE OF DECISION

**March 13, 2000 (rendered orally)
March 30, 2000 (written reasons)**

DATE DE LA DÉCISION

CORAM

Elena Schlanger

CORAM

FOR THE CLAIMANT(S)

**El Farouk Khaki
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE CLAIM OFFICER

Nil

AGENT CHARGÉ DE LA REVENDICATION

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S REPRESENTATIVE

Nil

REPRÉSENTANT DU MINISTRE

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

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XXXXXX XXXXXXXXXX XXXX, (also known as XXXXXXXXXX), you are a 27-year-old citizen of Mexico who claims Convention refugee status because of your gender and sexual orientation. You allege a fear of persecution in Mexico at the hands of the Mexican police because (1) you are a bisexual man who prefers relationships with men and (2) you are a transvestite.

You have appeared here today dressed as a woman and you allege that you enjoy doing so and do so most of the time except when you are at work. You allege that although you were married and have a son, you first began going out in drag in 1995 with your friend XXXX. You allege that you became the target of the police as a result of coming across transvestites who were being beaten by the police in September 1997. You attempted to assist them and as a result ended up being detained, raped and beaten. You were subsequently targeted by the police for further abuse, a second rape and bribery as they had learned that you had a wife and son.

You allege that your reporting to the police resulted in further police abuse rather than protection. You allege that you subsequently came to Canada on October 5, 1997. You allege that your wife and son came to Canada in December 1998, because she wanted to see for herself that you were a transvestite, as she thought that you just wanted to leave her. After making a refugee claim, she withdrew it on August 8, 1998 and left Canada in December 1999. You have not had any contact with her since her departure.

The determinative issues in your claim are (1) your identity as a bisexual man and a transvestite, (2) your credibility and (3) the adequacy of state protection.

Although you experienced some difficulty in relating the sequence of the violence perpetrated against you by the police, overall, I found your testimony to be credible. I have taken into consideration the Gender Guidelines¹ as well as your psychological and

¹ 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; Updated, November 1996.

medical reports² that document some of the aggression perpetrated against you. I find that you are a bisexual and a transvestite who has been targeted by the police because of your gender and sexual orientation.

In determining whether adequate state protection would be available to you as a bisexual transvestite in Mexico, I have carefully taken into consideration the copious documentary evidence submitted by your counsel and the Refugee Claim Officer (RCO). I will not go over all the specific documentary evidence cited by your counsel, detailing the persecutory assault perpetrated by the police and others in Mexico against sexual minorities.

Your counsel pointed out the documents outlining the particular risk for transvestites.³ There are numerous examples of the particular targeting of transvestites by the police in Mexico. The Department of State Report⁴ further speaks of the impunity of the police in Mexico, particularly with regards to sexual minorities. The first openly gay legislator,⁵ Patria Jimenez speaks of the crimes spurred by homophobia in Mexico and in particular relates the case of a transvestite assassinated by public works inspectors. She clearly states that when the victim is gay, the authorities do little or nothing. She further indicates that it is this hopeless situation that has driven Mexico's sexual minorities to seek asylum in Canada or the United States.

Having considered your particular circumstances, within the context of the documentary evidence, I find that there is more than a mere possibility that you would be persecuted in Mexico because of your membership in a particular social group, that is, a bisexual man who prefers men and being a transvestite.

² Exhibits C-3 and C-4.

³ Exhibit C-2.

⁴ Exhibit R-3, item 2, Country Report on Human Rights Practices for 1998, United States Department of State, February 26, 1999.

⁵ Exhibit C-2, item 1, "First in her Class", Frontiers Magazine, June 25, 1999.

Accordingly, the Refugee Division determines that XXXXXX XXXXXXXX
XXXX is a Convention Refugee.

"Elena Schlanger"
Elena Schlanger

DATED at Toronto this 30th day of March 2000

**KEYWORDS - REFUGEE DIVISION - PARTICULAR SOCIAL GROUP - SEXUAL ORIENTATION –
GENDER - STATE PROTECTION - MALE – BENCH REASONS - POSITIVE - MEXICO**