

CANADA / JUDGMENT

TA8-22230

COURT

Refugee Protection Division

DECIDED

10 June 2010

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RPD File No. / N° de dossier de la SPR : TA8-22230 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Claimant(s) XXXX XXXX XXXX Demandeur(e)(s) d'asile Date(s) of Hearing May 27, 2010 Date(s) de l'audience Place of Hearing Toronto, Ontario Lieu de l'audience Date of Decision June 10, 2010 Date de la décision Panel Robert Bafaro Tribunal Counsel for the Claimant(s) Rodney L. Woolf 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 DECISION

[1] XXXX XXXX XXXX (hereinafter referred to as "the claimant ") is a citizen of Trinidad and Tobago and Saint Vincent (St. Vincent) and the Grenadines claiming refugee protection under sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).¹ The claimant's identity as a national of St. Vincent and the Grenadines is established by the true certified copy of his St. Vincent and the Grenadines passport.² The claimant's identity as a national of Trinidad and Tobago is established by the claimant's testimony and by the citizenship laws of Trinidad and Tobago.³ ALLEGATIONS

[2] A summary of the allegations is as follows:

[3] The claimant, a Minister with several churches, alleges a well founded fear of persecution on the grounds of his homosexual orientation. He is a citizen of both St. Vincent and the Grenadines and Trinidad and Tobago. His problems started in 1993 when he was accosted and beaten up by a group of young men. In XXXX 1999, while the claimant was on the beach with a friend, he and his friend were attacked and beaten by a group of young men. Following this incident, the claimant went to the police to make a complaint. The police told him to leave the station. His friend subsequently died six months later in part due to the beating he sustained. In 2001, the claimant was attacked with a knife by the husband of one of his female friends. The husband told the claimant to stay away from women or he would kill him. In 2002, fearing for his life, the claimant returned to Trinidad and Tobago. In XXXX 2005, he moved in with his partner. In XXXX of 2006, after returning home from a gay party, the claimant's car was stopped by several men who beat him up and told him that homosexuals were not welcome and that they would kill them. In XXXX 2007, the claimant and his partner went to Tobago to see if they could live there. As the claimant was walking with his partner along the road, he was accosted by a group of young men who beat them up

with sticks. In XXXX 2007, two men tried to run down the claimant's partner with their car. The claimant called the police but they refused to assist and told him that he must be homosexual and that he should leave town. On XXXX, 2007, the claimant and his partner were attacked again by four men. In XXXX of 2008, the claimant's house was firebombed by some men. He called the police but no one showed up to investigate. On XXXX, 2008, on the way home, some people tried to run the claimant and his partner off the road and fired gun shots at them. The claimant left Trinidad in XXXX 2008 and after arriving in Canada claimed refugee protection on October 23, 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 St. Vincent and the Grenadines or Trinidad and Tobago. Therefore, I find that the claimant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the IRPA.

ANALYSIS

Countries of Reference

- [5] I find that the claimant's passport⁴, issued by the government of St. Vincent and the Grenadines and expiring on XXXX, 2015, prima facie establishes that the claimant is a citizen of St. Vincent and the Grenadines. I also find that the claimant is a citizen of Trinidad and Tobago by birth in accordance with the citizenship law of Trinidad and Tobago.⁵
- [6] The Supreme Court of Canada in Ward⁶ held that a claimant has a burden of showing a well founded fear of persecution in all countries of which the claimant is a national. The Supreme Court of Canada also held that in considering the claim of a refugee who enjoys the nationality in more than one country, the Board must investigate whether the claimant has a well-founded fear of persecution in each and every country of nationality. In order for this claim to succeed, the claimant must establish a well-founded claim against both St. Vincent and the Grenadines and Trinidad and Tobago. Objective Basis of claim against St. Vincent and the Grenadines
- [7] The definition of a Convention refugee or a person in need of protection is "forward looking". Where a claimant was subjected to persecution in the past it does not automatically lead to the conclusion that the claimant will endure persecution in the future. In order for past persecution to establish a valid basis for a prospective fear of persecution, there must be sufficient evidence to establish continuity of risk.⁷
- [8] The claimant testified that in 1988, after spending six years in Trinidad, his father took him back to live in St. Vincent. The claimant said that as far back as 1989, he started to fool around with a young man and became sexually involved with him. He said that the

community knew that he had gotten involved with young boys in the past and people started harassing him, calling him names, and spitting on him. The claimant testified that in 1993 he was beaten up by a group of young men. He explained that he had his own personal driver and that young men began to harass the driver saying that he was driving around a homosexual. These young men broke the windows in the car and the driver then decided to quit his job. When the driver left the car behind, a group of young men approached the claimant and teased him saying that he was being driven to have sex with young boys so that he would be able to afford to buy an expensive car. The claimant said that the boys began trying to take the wheels off the car and that he confronted them and was trying to secure the car when they started to hit and beat him.

- [9] The claimant testified that in 1999, after being intimate with a friend on the beach, a group of young people approached the claimant and asked him what he was doing there. The claimant said that the young men asked him to move and he refused. He said that the young men then severely beat him and his friend.
- [10] The claimant testified that in 2001, a female friend of his was having domestic problems with her husband. The claimant said the husband constantly beat her and he told her that she should leave her husband. The claimant said that when he was coming from church, his female friend's husband confronted him and accused him of having a relationship with her and said that he would kill him. The claimant said that he told his female friend's husband to leave her alone at which point the husband pulled out a knife and slashed him. The claimant said that as a result of the injuries sustained by the knife wound, he had to go to a hospital where he got seven to eight stitches in order to close the wound. The claimant said that following this incident, he continued to have problems on account of his homosexual orientation. He said that he was constantly harassed on the street and that one of his children had to drop out of school because she was being harassed on his account.
- [11] The claimant testified that if he were to return to St. Vincent or Trinidad that he would be killed and that his life would be in serious danger. He testified that as a gay minister he would not be accepted upon his return. The claimant testified that he has had recent communications with his partner. He said he speaks to his partner two to three times a day. He said that he sends his partner money so that he can stay with other people because people have been trying to break into house where he and his partner used to live and they are pelting the house with stones. The claimant testified that this incident happened last week. Review of the Documentary Evidence for St. Vincent and the Grenadines
- [12] The United States Department of State, Country Reports on Human Rights Practices in St. Vincent and the Grenadines⁸ states: The law does not criminalize homosexuality, and there are no laws that prohibit discrimination against a person on the basis of sexual orientation. Although no statistics were available, anecdotal evidence suggested there were some societal discrimination against gays and lesbians. Although no statistics were available, anecdotal evidence suggested there was some societal discrimination against persons with HIV/AIDS.

- [13] A Response to Information Request, Number VCT103276.E9 states: Sources indicate that consensual homosexual acts are illegal in Saint Vincent and the Grenadines ...In 23 September 2009 correspondence with the Research Directorate, a representative of Caribbean Vulnerable Communities (CVC), a coalition of community leaders and non-governmental organizations (NGO's), which provides services for people vulnerable to HIV infection, stated that as of September 2009 these laws are still in effect and are enforced. The Representative was aware of cases in which men were prosecuted for committing homosexual acts. Sources report that homosexuals in Saint Vincent and the Grenadines face discrimination. The United States Department of State Country Reports on Human Rights Practices for 2008 states that there are no laws prohibiting discrimination based on sexual orientation. According to the CVC Representative, homosexuals are subject to "scorn" and are discriminated against in the workplace without any legal recourse ... Similarly, the President of the Human Rights Organization of Saint Vincent and the Grenadines was quoted in an article by Caribbean Media Corporation (CMC) as saying that societal attitudes towards homosexuality were causing a "closet lifestyle" and that homosexuals get married to hide their sexual identity. The CVC representative indicated that homosexuals in Saint Vincent and the Grenadines do not encounter regular physical violence or mob violence. He maintained that many homosexuals encounter verbal abuse, which sometimes escalates into physical fights between the two parties.
- [14] However, I find that there is no persuasive evidence before me to suggest that the laws against buggery and consensual homosexual acts are systematically or in a widespread fashion being applied to members of the homosexual community in St. Vincent and the Grenadines. Furthermore, I find that there is no persuasive evidence before me to lead me to believe that homosexuals in St. Vincent and the Grenadines are being systematically or in a widespread fashion prosecuted and imprisoned by the authorities pursuant to these sections of the Criminal Code. I find that it is reasonable to expect that if this were in fact occurring in St. Vincent and the Grenadines at the present time, it would have been reported in all of the major human rights reports on St. Vincent and the Grenadines.
- [15] Based on my review of all of the evidence, I find, on a balance of probabilities, that there is no more than a mere possibility that the claimant would face serious harm amounting to persecution if he were to return to St. Vincent and the Grenadines. I find that there is no persuasive evidence before me to suggest that members of the homosexuality community in St. Vincent and the Grenadines are at the present time being subjected to serious mistreatment or serious discrimination rising to the level of persecution. Although the documentary evidence indicates that members of the gay and lesbian community do face societal discrimination, there is nothing in the documentary evidence to establish that members of the homosexual community are being persecuted at the present time. In assessing the objective basis of the claimant's fear of returning to St. Vincent and the Grenadines, I have also taken into consideration the claimant's testimony indicating that his partner, who is still in St. Vincent and the Grenadines, has had to move to different locations because young men in the community have been harassing him, trying to break into the

house where they both used to live together, and have been pelting the house with stones. Although I find that these actions taken by the community against the claimant's partner amount to discrimination on account of his partner's homosexual orientation, I find that they do not rise to a level of severity amounting to persecution.

- [16] For the same reasons as above, I find that the claimant does not face, on a balance of probabilities, a risk to his life, or a risk of cruel and unusual treatment or punishment or to a danger of torture if he were to return to St. Vincent and the Grenadines. Objective basis of Claim against Trinidad and Tobago
- [17] The claimant testified that in 2002, he returned to Trinidad on the advice of his father who told him that she go back to Trinidad because if he stayed in St. Vincent someone might kill him. The claimant testified that in 2003, he met his current partner and then decided to move in with him in 2005. The claimant said that after he and his partner moved into the church house he found graffiti written on the walls of the house saying that gays had to die. He said that the house was also broken into and some household effects were stolen. The claimant testified that in 2006, after he was returning from a gay club where he worked as a security guard, he was confronted by a group of men who got out of a car and told the claimant that he was protecting gays in his work as a security guard. The claimant said that the men then severely beat him up, and as a direct result, he suffered a mild stroke.
- [18] The claimant testified that he and his partner then decided to go to Tobago because a friend invited them to come to Tobago to see if they could live there in peace. The claimant said that he stayed there with his partner for one to two weeks. He said that people from the community approached them and told them that gays from Trinidad were not welcome in Tobago. The claimant said that these people subsequently beat them up. The claimant said that his partner's hand was injured and he required hospitalization. The claimant said that he and his partner returned to Trinidad and his partner was admitted to a hospital where he was treated for 10 days.
- [19] The claimant testified that when they returned to Trinidad, he continued to have problems. He said that his partner and a friend had gone down to the beach where some men had tried to run them down with their car and had told his partner that he was gay and that he should get away from there. The claimant said that his partner called him on his cell phone to let him know what was going on. The claimant said that he went to meet them and they returned to his house. He said that the men pursued him, his partner, and his partner's friend all the way to his house and that when they arrived, the group of men pelted his house with stones and bottles.
- [20] The claimant testified that there was another incident in XXXX 2007. The claimant said that he and his partner were returning home very late one evening and were waiting at a taxi stand when a group of young men started attacking them by throwing stones and bottles at them. The claimant said that he and his partner ran away.

- [21] The claimant said that in XXXX 2008, after he, his son, who is also gay, and his partner were returning home from having dinner, they were supposed to be picked by a taxi, but the driver called them and said he would not be able to pick them. The claimant said that they all went to get on a bus, and as they were walking through a village on their way to the bus stand, people from the village started calling them gay, began pelting them with stones, and fired off gun shots.
- [22] The claimant testified that if he were to return to St. Vincent or Trinidad, he would be killed and that his life would be in serious danger. He testified that as a gay minister he would not be accepted upon his return. The claimant testified that he has had recent communications with his partner. He said he speaks to his partner two to three times a day. He said that he sends his partner money so that his partner can stay with other people because people have been trying to break into the house where he and his partner used to live and they are pelting the house with stones. The claimant testified that this incident happened last week.
- Review of the Documentary Evidence for Trinidad and Tobago
- [23] The Department of State Report¹⁰ for Trinidad and Tobago states: Although the law criminalizes consensual homosexual relations, providing penalties of up to 10 years' imprisonment, the government generally did not enforce such legislation. ... LGBT rights groups reported that there remained a stigma related to sexual orientation in the country. HIV/AIDS was viewed as a significant medical concern for this government and society. Incidents of violence against this group were usually isolated events, and the Ministry of Labor partnered with the ILO to launch an HIV anti-discrimination program in the workplace."
- [24] Response to Information Request, number TTO103215.E11states: Societal attitudes Gay Times refers to a "prevailing homophobic attitude in society", which leads many homosexuals to lead double lives. ... Legislation and judiciary Homosexual activity is illegal in Trinidad and Tobago. Specifically, Section 13 of the Sexual Offences Act, 1986 declares that buggery is an offence; buggery is defined as "sexual intercourse per anum by a male person with a male person"... The Immigration Act of Trinidad and Tobago includes a provision that prohibits homosexuals from entering the country.... Homosexuals are not only prohibited from entering the country, but can be deported as well if they are determined to be persons who "practice..., [assist] in the practice of or [share] in the avails of prostitution or homosexuality" ... As of the spring of 2009, Sections 13 and 16 of the Sexual Offences Act and Paragraph 8(1)(e) of the Immigration Act remained in effect ... According to the London-based Gay Times, these laws are not enforced, nor have they led to any prosecutions in recent years; Country Reports on Human Rights Practices for 2008 indicates that "the government generally did not enforce [these laws]". Similarly, on 16 March 2007, The Independent reported that in spite of legislation barring homosexuals from entering the country, "no one has ever been turned away at immigration". ...

- [25] Counsel also provided some documentation regarding the human rights situation in Trinidad and Tobago as it relates to the treatment of homosexuals. A newspaper article from the Daily Express¹² states: Prejudice is an issue in Trinidad. As it is seen, Gays are only accepted if they are in the theatre or in fashion...However, outside of these areas gays and lesbians face ridicule, prejudice, and discrimination in almost every facet of society...If sodomy is still part of our laws, we definitely have a long way to go. Lawmakers, teachers, clergymen and all people in authority also cannot use the despicable terms directed at gays. ...
- [26] Another Daily Express newspaper article¹³ that counsel relies on states: ...homosexuality is actually illegal in Trinidad and Tobago ... Section 13 of the Sexual Offences Act, 1986 criminalizes "buggery" ... This section, strengthened in 2000, states that a person guilty of committing buggery is liable on conviction to imprisonment. And under Article 8(18/1) of the Immigration Act, homosexual men and women are not even allowed to enter the country. However, these laws are not enforced.
- [27] I find, on a balance of probabilities, based on my review of all of the evidence, that the claimant faces no more than a mere possibility of persecution if he were to return to Trinidad and Tobago. I find that there is no persuasive evidence before me to suggest that homosexuals in Trinidad and Tobago at the present time face widespread or systematic mistreatment rising to the level of persecution. On the contrary, I find that the preponderance of the evidence suggests that homosexuals face discrimination and prejudice in Trinidad and Tobago.
- [28] For the same reasons as set out above, I find that the claimant does not face, on a balance of probabilities, a risk to his life, or a risk of cruel, and unusual treatment or punishment or to a danger of torture should he return to Trinidad and Tobago.

Conclusion

- [29] I find that the claimant is neither a Convention refugee nor a person in need of protection. Accordingly, I reject his claim for protection. (signed) "Robert Bafaro" Robert Bafaro June 10, 2010 Date REFUGEE PROTECTION DIVISION / RELIGIOUS PRACTICE / SEXUAL ORIENTATION / HOMOSEXUALS / HARASSMENT / COUNTRY OF REFERENCE / DISCRIMINATION / MALE / NEGATIVE / SAINT VINCENT AND THE GRENADINES / TRINIDAD AND TOBAGO 1 As enacted by S.C. 2001, c. 27. 2 Exhibit R-2, Certified true copy of St. Vincent and the Grenadines passport received from Citizenship and Immigration Canada (CIC). 3 Exhibit R-1, National Documentation Package, Trinidad and Tobago, March 24, 2010, tab 3.2, Trinidad and Tobago, Citizenship of the Republic of Trinidad and Tobago Act (amended 2000), July 31, 1976. 4 Exhibit R-2. 5 Exhibit R-1, tab 3.2, Citizenship of the Republic of Trinidad and Tobago Act. 6 Canada (Attorney General) v. Ward, [1993] S.C.R. 689 7 Mileva v. Canada (Minister of Employment and Immigration), [1991] 3 F.C. 398 (C.A.); (1991), 15 Imm. L.R. (2d) 204 (F.C.A.); Sman, John v. M.C.I. (F.C.T.D., no. IMM-2950-00), Pelletier, August 20, 2002; Bishara, Samuel Goubrial v. M.E.I. (F.C.T.D. no. IMM-2633-93),

Jerome, July 29, 1994. 8 Exhibit R-3, National Documentation Package, Saint Vincent and the Grenadines, March 17, 2010, tab 2.1, United States Department of State, Country Reports on Human Rights Practices for 2009, section 6, "Societal Abuses, Discrimination, and Acts of Violence Based on Sexual and Gender Identity". 9 Exhibit R-3, tab 6.1, Response to Information Request, VCT103276.E, October 8, 2009. 10 Exhibit R-1, tab 2.1, 2009 Human Rights Report: Trinidad and Tobago, Country Reports on Human Rights Practices, March 11, 2010, Section 6: "Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity". 11 Exhibit R-1, tab 6.1, July 30, 2009. 12 Exhibit C-2, Daily Express, June 11, 2008. 13 Exhibit C-2, Daily Express, September 11, 2008.

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