

Date: 20070731

Docket: IMM-4665-06

Citation: 2007 FC 803

Ottawa, Ontario, July 31, 2007

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

KAILA YASMEIRA PARIS ROMERO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] Ms. Romero's application to the Immigration and Refugee Board, that as a lesbian she would be persecuted/at risk in Panama, was rejected by the Board. The Board found there to be discrimination but not persecution. The Board found that state protection existed in Panama even

though the Applicant never attempted to seek state protection. This is the judicial review of that Board decision.

II. FACTUAL BACKGROUND

[2] The Applicant had a lesbian relationship which ended in turmoil. She left Panama for her undergraduate education but returned for post-graduate studies and thereafter set up her own consulting business. She says that she faced discrimination in school, from her family and church, and that discrimination continued when she returned to Panama.

[3] The Applicant contacted her former lover and as a result, her ex-lover's father threatened to kill her. She alleged that the father tried to convince the police that she had forced her ex-lover into a sexual relationship. She went into hiding for two weeks until the police determined that she had done nothing wrong. The death threats continued so the Applicant left the country – she never reported the threats to the police because she thought that the police would not protect homosexuals.

[4] The Board's decision turns on two findings. The first is that the Applicant may have shown discrimination but not persecution, noting that she had not been expelled from school, had returned from Costa Rica, had done post-graduate work even when her sexual preference was known, had built a successful business and was living with her family until she left for Canada.

The second finding is that there was no failure of state protection since she never sought it. There was no evidence that if she had sought it, it would have been withheld. Finally, the documentary evidence confirms that homosexuals could access state protection.

III. ANALYSIS

[5] The Court is aware of a pending appeal on the issue of whether state protection is a legal or factual presumption. This case does not turn on that issue. I adopt the standard of review of reasonableness as discussed in *Chaves v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 232 (QL).

[6] The Applicant has been unable to overcome the finding of absence of persecution. The Applicant's conduct is arguably inconsistent with that of a person who fears persecution in Panama. The Board's conclusion, based on the facts referred to in paragraph 4, is entirely reasonable.

[7] As to the issue of state protection, *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 has outlined that state protection is a presumption which can be rebutted on the basis of clear and convincing evidence.

[8] The documentary evidence establishes that Panama is a democracy with a functioning police and judicial system. There are no reported incidents of harassment against people in the gay-pride parades and that the laws against homosexuality are not enforced (see U.S. DOS Report).

[9] The Applicant relies on two factors – the absence of more positive information that Panama would protect homosexuals and the Applicant’s belief that there was no such protection.

[10] As to the first point, it was not unreasonable for the Board to conclude, in the absence of any negative information, that state protection was available.

[11] As to the second point, the Applicant never sought out state protection even when the police concluded that she had done nothing wrong in respect of her ex-lover. The only evidence she proffered was her own unsubstantiated feeling.

[12] Generally, the more democratic the country and the more developed the organs of state apparatus, the greater the burden on an applicant to invoke this apparatus before concluding that there is no utility in seeking state protection.

[13] It was not unreasonable for the Board to conclude that state protection was available in the face of the documentary evidence and the absence of convincing evidence of its unavailability as a futility.

IV. CONCLUSION

[14] Having concluded that the Board’s decision was reasonable, this application for judicial review will be dismissed.

[15] Given the basis upon which the Court reached its conclusion, there is no question to be certified as was done in *Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 320.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4665-06

STYLE OF CAUSE: KAILA YASMEIRA PARIS ROMERO

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 25, 2007

**REASONS FOR ORDER
AND ORDER:** Phelan J.

DATED: July 31, 2007

APPEARANCES:

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