



RPD File No. / N° de dossier de la SPR : TB8-06876

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 19, 2018 November 28, 2018	Date(s) de l'audience
Place of Hearing	Heard by videoconference in Vancouver, BC and Toronto, ON	Lieu de l'audience
Date of Decision and reasons	December 4, 2018	Date de la décision et des motifs
Panel	Craig Costantino	Tribunal
Counsel for the Claimant(s)	Xiao Hong Chen Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

[1] XXXX XXXX (the “claimant”), a 47-year-old citizen of China, claims refugee protection against China pursuant to Sections 96 and 97 of the *Immigration and Refugee Protection Act* (“Act”).¹

ALLEGATIONS

[2] The allegations set out in answer to question 2 of the claimant’s Basis of Claim (BOC)² form are significantly less than what the claimant alleged in testimony at his hearing.

[3] In summary, the claimant’s BOC states that the claimant’s father and he were gay and had suffered mistreatment and prejudice at the hands of the Chinese Government, particularly in the demolition of their home in XXXX without compensation. They were not compensated because they were gay. The claimant protested the demolition and thereafter was detained by the Public Security Bureau (PSB) in XXXX 2013.

[4] Following his release from detention, and left homeless, the claimant relocated to Shenzhen where he “disguised” himself as heterosexual by getting married. He lost his job in Shenzhen after it was discovered that he was gay and he became a street vendor to make a living. He was thrown out of accommodation because the landlord learned he was gay. Finally, the claimant came to Canada to live in a more tolerant society.

[5] In his BOC, the claimant stated that his parents were divorced when he was three and he grew up with his father. His father would bring back his gay partners to the same bed that he and his father shared, and that the claimant’s father brought him with him when he attended “the club

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit 2.

of homosexuals.” The claimant became a homosexual under his father’s influence and their “homosexual activities could not be accepted by the society and [his] father was often taken to the local police station for interrogation.”

[6] In his hearing, the claimant stated that his father took him with him to his partner’s homes and handed him over to be sexually abused in exchange for money. Some of the individuals who sexually assaulted the claimant as a child were public officials who feared that they would be exposed by the claimant and his father. His father had tried to blackmail some of these officials, and these officials would like to make the claimant and his father disappear.

[7] The claimant also testified that he went to Shenzhen to be with his same-sex partner, a man with whom he had a relationship from about 2010. Unable to support themselves, they turned to prostitution at a public park where “homosexual gatherings” took place in order to support themselves. They were arrested and detained several times by the PSB for engaging in prostitution, during which they were belittled because of their sexual orientation, forcibly tested for Human Immunodeficiency Virus (HIV) infection, and sexually assaulted.

DETERMINATION

[8] I find that the claimant is neither a Convention³ refugee, nor a person in need of protection, as defined in Sections 96 and 97 of the *Act*⁴. I find that the claimant is not a reliable and trustworthy witness, and that he provided no credible evidence to establish his claim.

³ *1951 Convention Relating to the Status of Refugees*: Office of the United Nations High Commissioner for Refugees, “Handbook on Procedures and Criteria for Determining Refugee Status”, under the 1951 Convention.

⁴ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96 and 97(1).

ANALYSIS

Identity

[9] I accept that the claimant is a Chinese citizen based on his documentation and testimony.

Credibility

[10] The claimant's BOC and sworn testimony have a presumption of truthfulness.⁵ However, when assessing credibility the panel is entitled to rely on its rationality and common sense.⁶ In this case I find that there is reason to doubt the claimant's truthfulness. In particular, I noted significant and material contradictions, inconsistencies, omissions in the evidence which the claimant was unable to adequately explain.

[11] Chairperson's Guideline 9: "Proceedings before the Immigration and Refugee Board (IRB) involving Sexual Orientation and Gender Identity and Expression" was taken into consideration in my assessment of the claimant's credibility and the merits of his claim, and they do not weigh in his favor. Rather, I find that the claimant relied on the most sensational and outrageous stereotypes and ignorant assumptions and beliefs about the behavior of gay men to ground his claim in the absence of any experience, understanding or empathy for the very real discrimination, prejudice and difficult life experiences endured by many Lesbian, Gay, Bisexual Transgender and Intersex (LGBTI) people in China and throughout the world.

[12] I find that the claimant improvised his testimony through two sittings of his hearings, adding more and more serious allegations as the hearing went on, far exceeding the initial allegations set out in his BOC and in frequent contradiction of what he had already said at his hearing.

⁵ *Maldonado v. M.E.I.*, [1980] 2 F.C. 302, 31 N.R. 34 (C.A.).

⁶ *Shahamati, Hasan v. M.E.I.* (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994.

[13] The two most significant omissions and contradictions between the claimant's BOC and his testimony are that in his hearing, he alleged that he was prostituted by his father to public officials who pose a serious threat to the claimant and his father out of fear that they could expose them, and that the claimant was left with no other option but to work as a prostitute in Shenzhen, along with his same-sex partner who was never even mentioned in the BOC, where he was detained and subjected to severe mistreatment by the PSB on several occasions. Even more significantly, the claimant testified that he was detained by the PSB for prostitution and sexually assaulted in custody at the second sitting of his hearing, after having testified at the first sitting that he had never had any other problems or dealings with the PSB after having been detained in Beijing in XXXX 2013 for protesting the demolition of his apartment.

[14] The claimant's explanation for not mentioning such serious and material allegations in his BOC was that he had not felt comfortable disclosing them. While the allegations are indeed very serious, I do not find that anything about the claimant's demeanour, language or actions and inaction are consistent with having suffered the nature and degree of abuse that he claims to have suffered. He has not sought out any support from peer support groups, counselling or medical attention since arriving in Canada that would either corroborate that he suffered this kind of abuse, or otherwise indicate that he was negatively impacted by it. Rather, the claimant appeared to equate pedophilia, prostitution and "homosexual gatherings" and "activities" at public parks with typical homosexual behaviour. He expressed little pain or regret for being put in such situations and expressed inconsistent and remarkably understated blame of his father for benefitting from his sexual exploitation as a child.

[15] Likewise, the claimant's testimony about coming to terms with his sexual orientation did not present consistently with genuine experience, but rather betrayed a confused misunderstanding about the real experience of gay people. The claimant testified that he had become gay because his father had beaten him if he associated with girls. He did not feel any form of sexual attraction for either gender until he was 18 or 19 years old. Whereas he testified at the first sitting of his hearing that he had only had one sexual partner in his life, he testified at the

second sitting that he had previous partners. He did not provide a satisfactory explanation for this discrepancy.

[16] Even more strangely, after having testified about his fears of public officials who had assaulted him as a child and could now be exposed by him, working as a prostitute alongside his partner as a result of having no other means to support himself and being repeatedly brutalized by the PSB including being sexually assaulted in detention, the claimant then testified that he came to Canada because same-sex marriage is legal here in contrast to China, and he wanted to bring his partner here. Likewise, his counsel submitted that the basis upon which I should find the claimant to be a refugee is cumulative discrimination amounting to persecution.

[17] Ultimately, the only evidence submitted by the claimant that could even theoretically support his claim, apart from his identity documents, is a document that established that he and his father owned a small apartment unit in XXXX as of 2011. It is not established that the apartment was demolished, let alone with no compensation. As the claimant testified and is well-known, the Chinese Government has demolished scores of buildings in modernizing the country including areas that the claimant himself referred to as “shantytowns”. If the claimant’s home was demolished, I do not find that it was destroyed for a discriminatory or persecutory purpose. According to the claimant’s testimony, the apartment was a small unit in a building with approximately 30 other units, not an ancestral home. In his BOC, the claimant claims that neighbours were more or less compensated but he and his father were left out because of their sexual orientation. Yet at the hearing, the claimant suggested that the whole building was primarily occupied by gay individuals as it was the quarters for a XXXX XXXX XXXX for which his father worked as a XXXX. I find on a balance of probabilities, taking into account the claimant’s numerous other credibility issues, and the lack of any corroborative evidence, that the claimant was again relying on stereotypes about the nature of the homosexual community to lend credence to his fabricated claim about the reasons for demolition of his property. The property may have been destroyed but the claimant has not established on a balance of probabilities that this is so, let alone that it was demolished for a discriminatory or persecutory reason.

[18] In addition to providing vague, changing and contradictory testimony about his experiences as a gay man, his past persecution by the PSB and his reasons for fearing future persecution, I did not find that the claimant credibly established his sexual orientation or was able to credibly explain why he was married to a woman in 2014. I accepted the purported marriage certificate into evidence but also find this document to be at odds with the claimant's allegations as it states that the claimant and his wife married in XXXX on XXXX XXXX, 2013, whereas the claimant alleged that he stayed in Shenzhen after leaving XXXX. The claimant did not provide his hukou claiming it was lost when his home was destroyed. Given the claimant's general lack of credibility and the contradictions between his work and residential history as set out in his visa application, BOC and at his hearing, I do not find the claimant's explanation to be reasonable, and I find that he has not provided credible and trustworthy evidence to establish his residential and work history.

[19] The claimant testified that his wife approached him at the public park in Shenzhen where "homosexual gatherings" took place and she offered to marry him and help him to leave Canada. He later testified that she cheated him by borrowing money to support a gambling habit but ultimately introduced him to the smugglers that helped him escape China and come to Canada. Ultimately, the claimant was evasive in answering whether he was legally married, saying he signed a document that his wife asked him to sign. Clearly this testimony is at odds with what the claimant wrote in his BOC, and is also at odds with his later testimony about working as a prostitute. The claimant tried to amend his evidence to include his dismissal from a factory in Shenzhen when it was discovered he was gay, his marriage and his prostitution but there is far too much to plausibly reconcile, particularly given that the claimant has not submitted a shred of evidence to substantiate even a single element of his claim.

[20] I find that the claimant's claim has no credible basis, and that his claim is clearly fraudulent. I find that the country conditions for LGBTI in China is such that there are undoubtedly many people who suffer discriminatory treatment that could arise to persecution. As stated above, I find that the claimant relied on the most sensational and outrageous stereotypes

and ignorant assumptions and beliefs about the behaviour of gay men to ground his claim in the absence of any experience, understanding or empathy for the very real discrimination, prejudice and difficult life experiences endured by many LGBTI people in China and throughout the world. The claimant's pursuit of his claim is an affront to those genuine victims of discriminatory and persecutory treatment.

CONCLUSION

[21] I find that the claimant fabricated his claim, and that he provided no credible evidence to establish it. There is no credible basis for the claim. The claim is rejected.

(signed) “Craig Costantino”
Craig Costantino

December 4, 2018
Date