



RPD File No. / N° de dossier de la SPR : TB1-19826

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	March 19, 2013	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	April 9, 2013	Date de la décision
Panel	Edward C. Robinson	Tribunal
Counsel for the Claimant(s)	Lorne Lichtenstein Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) du tribunal
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

[1] XXXX XXXX, a citizen of Russia, claims refugee protection pursuant to Sections 96 and 97(1) of the *Immigration and Refugee Protection Act*¹ (IRPA).

ALLEGATIONS

[2] The specifics of the claim are set out in the narrative to the claimant's Personal Information Form² (PIF). The following is a summary.

[3] The claimant claims protection based on her membership in a particular social group. She alleged that she faced harassment, physical abuse and threats on her life due to her sexual orientation. The claimant was born in Kazakhstan where she spent the earlier years of her life but in 1999 she moved to Russia and in 2002 she obtained her Russian citizenship. As she became older even though boys were interested in her she realized that she wasn't reciprocal to them but thought she simply hadn't met the right boy as yet. She alleged that she is Russian Orthodox Christian but it persecutes lesbians like her. She enrolled in university and after 3 years at university she met, XXXX XXXX, a Muslim girl from a strict Muslim family. She alleged that in early XXXX 2011 her parents were away and she invited XXXX to her home. They ended up drinking and kissed. They avoided each other for a while but in late XXXX 2011 XXXX gave her a letter stating that she realized she couldn't live without the claimant. In the beginning of XXXX 2011 they became lovers and would exchange letters. She alleged that XXXX mother came across one of the letters she had sent XXXX and a "terrible scandal broke out". XXXX then told her family that the claimant had blackmailed her into lesbianism. XXXX family began spreading rumours that she was a lesbian and the claimant's own mother "hit me several times" and her sister accused her of bringing shame on the family. The claimant alleged that she fell into depression. She read on the internet that Canada treats minorities with equality and she started dreaming about living in Canada and to study English.

[4] The claimant alleged that on XXXX XXXX, 2011 she received a call from a female student inviting her to meet somewhere and when she got there she was attacked by the girl, six other female students and a male. The female students beat her up and held her down while the male student raped her. She sought medical treatment and was diagnosed with a brain concussion. The police were called and an officer attended but when he heard that the claimant was a lesbian he was

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, sections 96, 97(1) (a) and 97(1) (b).

² Exhibit C-1.

unsympathetic, lost interest in the case and quickly left the hospital saying that if he needed additional information he would contact her.

[5] On XXXX XXXX, 2011 the claimant went shopping. She alleged that she was confronted by XXXX brother and another individual. They had a gun. He threatened the claimant if he saw her again he would harm her. She went back to the police but when she explained why they had confronted her, the police told her to come back when she had something more serious to complain about.

[6] Fearing for her life and safety she left her country and came to Canada on XXXX XXXX, 2011 and filed for refugee status on November 22, 2011.

DETERMINATION

[7] I determine that the claimant is neither a Convention refugee nor a person in need of protection and reject her claim.

Chairperson's Gender Guideline

[8] The panel considered the *Chairperson's Guidelines* on gender-related violence.³ The Chairperson's guidelines help to assess the key evidentiary elements in determining to what extent, women making a gender-related claim of fear of persecution, successfully rely on any Convention ground, and under what circumstances does gender violence constitute persecution. The *Chairperson's Guidelines* also highlight, that women refugee claimants may face special problems in demonstrating that their claims are credible and trustworthy. Factors that may affect their ability to provide evidence include difficulty in providing testimony on sensitive matters, cross-cultural misunderstandings as well as social, religious and economic differences. The *Chairperson's Guidelines*, was used to help assess the circumstances of this claim and to understand and apply the added sensitivities necessary to properly assess, whether any credibility issues are the result of such difficulties, or an attempt to fabricate evidence.

³ Guideline 4, *Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guidelines issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, *Update*, November 1996, as continued in effect by the Chairperson on June 28, 2002 under the authority found in Section 159(1)(h) of the *Immigration and Refugee Protection Act*.

[9] As such, the panel reminds itself that the *Gender Guidelines* specifically state that female refugee claimant must demonstrate that the harm feared is sufficiently serious to amount to persecution. The *Gender Guidelines* (issued on March 9, 1993 by the Chairperson of the Immigration and Refugee Board pursuant to paragraph 159(1)(h) of the *Immigration Act* and entitled, *Women Refugee Claimants Fearing Gender-Related Persecution*, indicate that in the context of a gender-based claim, the Board should be particularly sensitive to a female applicant's difficulty in testifying. However, the *Gender Guidelines*, in and of themselves, are not intended to serve as a cure for all deficiencies in the applicant's claim or evidence. The applicant bears the onus of proving her claim. "The Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth".⁴

[10] Also, the *Guidelines* are an aid for the CRDD panel in the assessment of the evidence of women who allege that they have been victims of gender-based persecution. The *Guidelines* do not create new grounds for finding a person to be a victim of persecution.⁵

ANALYSIS

[11] The determinative issues are lack of credibility and the claimant's failure to establish her story of being a lesbian with a well founded fear of persecution.

Identity

[12] The claimant's identity, as a citizen of Russia, is established by the oral testimony and the personal documents on file, including a passport⁶. The claimant failed to provide sufficient credible and trustworthy evidence to establish herself as a lesbian and that she was persecuted.

Credibility

[13] The credibility concerns were based on the evidence the claimant provided. The court ruled in *Maldonado*⁷ that the sworn testimony of the claimant is presumed to be true, unless there is a valid reason to doubt its truthfulness. I make an adverse finding of credibility based on

⁴ As Justice Pelletier indicated in *Newton v. M.C.I.* (2002), 182 F.T.R. 294, at paragraph 18.

⁵ As Justice Pelletier indicated in *Newton v. M.C.I.* (2002), 182 F.T.R. 294, at paragraph 17.

⁶ Exhibit R/A-2, Minister's information, certified true copy.

⁷ *Maldonado, Gilma Yanira v. M.E.I.* (F.C.T.D., no. A-1165-92), Gibson, January 26, 1994. **Reported:** *Maldonado v. Canada (Minister of Employment and Immigration)* (1994), 23 Imm. L.R. (2d) 220 (F.C.T.D.).

exaggerations and embellishments of her allegations. For example the claimant wrote that she was lured to a secluded place by a co-student where she was physically attacked by group of students. The females in the attack then held her down and the lone male among the group proceeded to sexually assault her. She went home but didn't seek medical treatment or went to the police that day. Not understanding why the claimant could be so viciously attacked and beaten by a group of six people and raped "in a cruel manner" that she waited until the following day before seeking medical treatment, the panel was asked why she didn't go to the doctor the same day. She replied that "I hope to feel better in the morning but actually it just got worse". I find her explanation unreasonable. While it is possible for the claimant to choose not to seek medical treatment after such an attack, even when I apply the Chairperson Gender Guidelines, which I have done, I find that if indeed she was raped on a balance of probabilities she would have sought medical attention the same day.

[14] For example, she didn't say it was too late at night, she was confused, she was threatened or anything like that she simply said that she hoped to feel better in the morning. This was after she was attacked by multiple people, hit in the head with something that looked like a stick⁸ and then raped. She wants me to believe that she didn't seek medical attention because she was hoping to feel better in the morning. We are talking about, among other things a hit in the head with an object and rape. That makes little if any sense to me. I therefore find on a balance of probabilities that she was not raped by anyone. She made up this belated story to bolster her claim for refugee status which undermines her credibility. In finding that she was not raped I note that there is no mention of the incident of rape in her first PIF narrative.⁹ The medical report while it speaks about "bruises, scratches and grazing of the skin in the area of the external genitals and internal surfaces of the thighs"¹⁰ says nothing to support the allegation of rape. It simply states that "according to the patient she was beaten because of her sexual orientation".¹¹ Absolutely nothing is written in the medical report about her being raped or more importantly that she was examined and or treated for rape and it is certainly not mentioned in her original PIF narrative.¹² I note that she wrote in her amended PIF narrative that she was too ashamed to tell the doctor that she was raped. While it is possible that she could be so ashamed and didn't want to talk about it including to the doctor I find

⁸ Exhibit C-2, amended PIF narrative but 'baseball bat' in C-1, original PIF narrative.

⁹ Exhibit C-1.

¹⁰ Exhibit C-3, pg. 2, para. 6.

¹¹ Exhibit C-3, pg. 2, para. 7.

¹² Exhibit C-1.

on a balance of probabilities that if she was indeed raped she would have at least told the doctor. This is an intelligent and educated woman with 15 years education¹³ who I find on a balance if she was a victim of rape she would have said it to the doctor and sought treatment for the rape. Documentary evidence before the panel indicates that “members of the medical profession assisted assault victims and sometimes helped identify an assault or rape case, doctors were often reluctant to provide testimony in court”. Also “according to the Russian Federal State Statistics Service (RosStat), through November, 4,462 rapes were reported to authorities, compared with 4,907 for 2010. However, women were unlikely to report cases of rape by persons they knew. Additionally, according to NGOs, many women did not report rape or other violence due to fear of social stigma and lack of government support”.¹⁴ I therefore find on a balance of probabilities that if she was indeed sexually assaulted the doctor would have identified her case as such.

[15] In addition, she was asked why she hadn't reported the attack against her, the same day it occurred - XXXX XXXX, 2011 - to the police. She replied “Because I was shocked, humiliated and I didn't know what to do”. Again this explanation makes little or no sense at all when considered in light of her answer to why she didn't seek medical attention the same day when she was attacked. For example, according to her testimony she didn't go to the doctor that same day because she was hoping to feel better the next morning. On one hand, that was based on a ‘deliberate’ and ‘calculated’ decision not to do something which suggests that she knew what she was doing. She said she was hoping that she would feel better the next morning.

[16] But on the other hand when it comes to her decision not to make a report to the police that same day, she didn't because she was shocked, humiliated and didn't know what to do. I understand and apply the Chairperson Gender Guidelines but still she can't have it both ways. Either she knew what she wanted to do which was to wait until morning hoping to feel better, rightly or wrongly, or she is shocked and didn't know what to do. Which is not what she did, she made the decision to wait in hope she would feel better and if she did that would be the end of it. For example, according to her testimony she went to the doctor because she didn't feel any better, she felt worse.

[17] Seeing an inconsistency between the two statements (1) making the decision not to seek medical treatment because she hoped to feel better by the next morning (2) but at the same time not

¹³ Exhibit C-2, pg. 4, box 6.

¹⁴ Exhibit R/A-1, Item 2.1, United States. 24 May 2012. Department of State. "Russia." *Country Reports on Human Rights Practices for 2011*.

going to the police because she was in shock and didn't know what to do. She was asked to explain. She said at first she was thinking to kill herself but she went home and just waited for the morning to come. When she was asked what she was waiting until morning for, she again said that she was hoping to feel better.

[18] I find her explanations unsatisfactory. If indeed she was in shock and didn't know what to do, as she testified, in terms of going to the police on a balance of probabilities she would not make the decision to remain home in hope of feeling better in terms of seeking medical treatment the next morning. For in one breath she knew what to do which was not to go to the doctor in hope she will feel better by the next day, but in the other breath, she didn't know what to do. I find that when she told me that she was shocked and didn't know what to do, on a balance of probabilities she was making up that story which undermines her credibility. To prove that it was not true that she didn't know what to do. I note that when she was thinking about killing herself she also thought about what it would do to her family and she decided against it. She said "I somehow pulled myself together and went home".¹⁵ I therefore reject her allegation that she didn't report the incident to the police that same day because she was so shocked and humiliated she didn't know what to do. Everything she did after the incident suggests that even though she was 'humiliated and shocked' she knew what she was doing therefore on a balance of probabilities if she didn't go to the police it was not because she didn't know what to do.

[19] Another instance that showed that the claimant was engaging in embellishment was when she testified that the police didn't take her report and the police didn't take a written statement from her. She was asked specifically if she had reported the second incident of attack to the police and she said "Yes, I did go to the police but they didn't open the case". At this point counsel interjected and cautioned the claimant to listen carefully to the question before answering. He told her that she was being asked if the police took her report not if they investigated her complaint. She was then asked if the police had taken a report from her. This time she said yes. So I asked her why she had said earlier that the police didn't take a report from her but now says they did. She replied that she understood the word 'report' to mean if they had "opened the case." I find her explanation unreasonable. Not only did I use the word "report" but I also asked if they had taken a written statement from her and she said no to that as well. I therefore find on a balance of probabilities that

¹⁵ Exhibit C-2, PIF narrative, p.g. 5, para. 32.

she knew that I meant ‘report’ when I said ‘report’ and that the question was not about if the police had ‘opened the case’ which undermines her credibility. At any rate, the taking of a report, the taking or giving of a statement by a complainant is the first step in an investigation of this nature. Therefore I find on a balance of probabilities that she tried to mislead me by saying that the police didn’t take her report which also undermines her credibility.

[20] In fact, she later admitted that not only did she give the police a report which she signed but she also wrote out what happened, herself, and gave it to the police. She said that she gave the police the names of the people who attacked her. She even told the police that she was attacked because she is a lesbian. She was asked that if both times when she made reports to the police they asked her questions and she signed statements and she said yes.

[21] However, she said with respect to the first incident when the police found out that she was attacked because she is a lesbian he became indifferent and lost interest “and he quickly left the hospital” saying that if he needed further information he would call her. She testified that the police never called her and the individuals who attacked her weren’t arrested. She was asked if she placed a followed-up call to the police and she said no. And she added that she was quite sure that the attackers would be punished. I therefore don’t believe the claimant that the police officer lost interest in her case and quickly left the hospital. Yet I am mindful that country documentation states

“Openly gay men were targets of skinhead aggression, and police often failed to respond out of indifference. Several gay rights organizations were outspoken about discrimination encountered by LGBT persons”.¹⁶

So although she testified that the officer became indifferent, lost interest and quickly left the hospital, if that was the case, why she would be so optimistic about the police doing their job? She said that she was “Quite sure that the attackers would be punished” and gain “I believe the police would do their job.” At the same time I am aware of documentary evidence which indicates “Many law enforcement personnel and prosecutors did not consider spousal or acquaintance rape a priority and did not encourage reporting or prosecuting such cases. NGOs reported that local police officers sometimes refused to respond to rape or domestic violence calls until the victim’s life was directly threatened”.¹⁷ But there is no evidence that she reported the alleged rape.

¹⁶ Exhibit R/A-1, Item 2.1.

¹⁷ Exhibit R/A-1, Item 2.1.

[22] After carefully examining the evidence before me in its totality I reject the claimant's allegation that the police didn't do their job. If the claimant's complaint stating that she was physically assaulted (the medical report does not state the number of attackers and there is no independent evidence to verify the number), it merely stated that "she was beaten",¹⁸ had indeed occurred I find on a balance of probabilities that the police would duly conduct their investigations and took the appropriate action. I note that there is no police report to show what the police did or did not do. The claimant's credibility problems do not permit me to rely on her allegations that the police didn't do their job. This means on a balance of probabilities that she has not rebutted the presumption of state protection. For example, even if she was attacked in the manner she said she was and a police officer conducted himself in the manner she said they he did, that does not mean that state protection is not available to the claimant in her country. For example, documentary evidence indicates that the government is taking steps to ensure that police officers are held accountable:

The Ministry of Internal Affairs, the Federal Security Service (FSB), and the Office of the Prosecutor General are responsible for law enforcement at all levels of government. The FSB is responsible for security, counterintelligence, and counterterrorism, and also for fighting crime and corruption. The national police force under the Ministry of Internal Affairs is organized at the federal, regional, and local levels. According to Yuriy Draguntsov, director general of security for the Ministry of Internal Affairs, 1,166 staff members were convicted of criminal misconduct in the first half of 2011, an increase of 25 percent from the same period the previous year. During this period, 35,000 officers (an increase of 9 percent) were registered in connection with crimes, and 60,500 crimes and infractions were committed (an increase of 21 percent). As of December 1, more than 10,000 employees (a 20 percent increase) were recommended for dismissal, while approximately 1,880 (a 19 percent increase) police officers were fired.¹⁹

[23] The claimant testified that she recognized all the individuals who attacked and threatened her in the incidents of XXXX XXXX & XXXX XXXX, 2011, she said that "we were from the same university" and that she gave the names of her attackers to the police and that the police didn't investigate her complaints. That is a serious allegation. But she didn't do anything else. She testified that she thought the police would investigate her complaint and arrest the agents of persecution who she had identified but she said they didn't. She was asked that if she really believed that the police would do their job but they didn't, why she hadn't gone to follow-up with

¹⁸ Exhibit C-3, pg. 2, para. 7.

¹⁹ Exhibit R/A-1, Item 2.1.

the police. She replied “I was afraid that there wasn’t any interest and I didn’t know what to do.” There goes the “I didn’t know what to do” explanation again. Noting that she said that she was afraid the police wouldn’t have any interest in her case she was asked “Isn’t that the more reason to go to the police to find out what is happening?” She replied that she was totally alone and she didn’t have any support and “I didn’t know what to do”. The panel notes that again she didn’t know what to do. Not understanding why she felt so alone, and I bear in mind the Gender Guidelines, I note that she had a supportive mother, for example when she was being interviewed by the police at the hospital she writes “My mother was by my side all the times”²⁰ and there are Lesbian, Gay, Transsexual and Bisexual (LGTB) organizations in her country. She was asked if she knew of any LGTB organization she could contact and she said no. However she guessed that such an organization may exist in Moscow. Bear in mind, we are talking about an educated lesbian woman who spends time on the internet. But, as she said, she doesn’t know what to do and is only guessing that there is an LGTB organization in Moscow. I find on a balance of probabilities that the claimant has a problem speaking the truth.

[24] At this point counsel interjected and asked the claimant if there are gay clubs in Russia, she said that she heard of one. He asked where is the club and she said in Moscow. Counsel then asked if that doesn’t suggest that there is some kind of organization for gay and lesbian. She replied, “Well, knowing what I have heard, this club is being attacked by the police and homophobic people.” Counsel then cautioned the claimant to be careful in the answers she give because she had said earlier that she didn’t know of any organization that help gays and lesbian but she now says that she heard about a gay club in Moscow. I find that the claimant was willing to exaggerate her testimony and reject her explanation that she didn’t follow-up with the police because she was afraid the police didn’t have any interest in her case and she was all alone and didn’t know what to do. According to documentary evidence there are several LGTB organizations that help gay and lesbians:

There are several organizations offering support services to the LGBT community in Russia. The inter-regional Russian LGBT Network provides legal and psychological assistance, monitors violations of human rights, and aims at eliminating discrimination based on sexual orientation and gender identity. It was formed in 2006 and has regional offices in St. Petersburg, Tyumen, Pskov, Tomsk, Kemerovo, Omsk, Arkhangelsk, Perm, Volgograd, Khabarovsk and Krasnoyarsk Krai, the

²⁰ Exhibit C-2, pg. 5, para. 33.

Republic of Karelia and Tartarstan. In 3 August 2009 correspondence with the Research Directorate, a representative from Project Gay Russia stated that many of the LGBT organizations in Russia are not registered and are composed of only a few people.

The LGBT Center "Together" in Moscow, a non-profit public organization, operates a free telephone hotline for gay and bisexual men, provides counselling and self-help groups, maintains two websites and publishes two national periodicals for the gay and lesbian community.

In 1 August 2009 correspondence with the Research Directorate, a representative from the St. Petersburg *Kriliya* (Wings) LGBT Center Administrative Board stated that their organization provides counselling and support through e-mail, through their 24-hour office telephone line, or personally.

The Project Gay Russia Representative did not have any knowledge of formal shelter services for LGBT individuals experiencing threats or harassment and noted that help for LGBT victims to relocate to other parts of Russia might be possible only through "individual initiatives" (Project Gay Russia 3 Aug. 2009). According to the *Kriliya* Representative, some *Kriliya* members have provided voluntary shelter to LGBT individuals fleeing from the Muslim republics of the Russian Federation and have helped homosexuals who experienced threats or harassment to relocate in cases of emergency.

Neither Project Gay Russia nor *Kriliya* receive funding from the Russian government (Project Gay Russia 3 Aug. 2009; *Kriliya* 1 Aug. 2009). However, according to the *Kriliya* Representative, the Russian LGBT network received a grant from the European Commission through ILGA-Europe.²¹

[25] I remind myself that not only is protection offered by police agencies to be considered but other state agencies as well.²² Protection can be provided not just by state-run agencies such as the police but also by non-governmental agencies which receive state funding.²³ Some Federal Court decisions, however, hold a contrary view.²⁴ The panel however notes that some Federal Court decisions have expressed reservations in this regard, however, stating that it is the

²¹ Exhibit R/A-1, Item 6.1, RUS103141.E. 2 September 2009. Situation and treatment of homosexuals; legislation, state protection and support services.

²² *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C., no. IMM-822-06), O'Reilly, March 26, 2007, 2007 FC 320. **Reported:** *Flores Carrillo v. Canada* (Minister of Citizenship and Immigration, [2008] 1 F.C.R. 3 (F.C.)); *Flores Carrillo, Maria Del Rosario v. M.C.I.* (F.C.A., no. A-225-07), Létourneau, Nadon, Sharlow, March 12, 2008, 2008 FCA 94. **Reported:** *Flores Carrillo v. Canada* (Minister of Citizenship and Immigration), [2008] 4 F.C.R. 636 (F.C.A.), para. 34; *Gutierrez, Alejandro Sanchez v. M.C.I.* (F.C., no. IMM-237-08), Mactavish, August 26, 2008, 2008 FC 971; *Gonzalez, Karla del Carmen Hernandez v. M.C.I.* (F.C., no. IMM-2265-08), Hughes, November 13, 2008, 2008 FC 1259; and *Albor, David Ramirez v. M.C.I.* (F.C., no. IMM-2359-09), Boivin, December 1, 2009, 2009 FC 1231.

²³ *Virag, Istvan Pal v. M.C.I.* (F.C.T.D., no. IMM-2761-02), Simpson, June 2, 2003, 2003 FCT 698; *Karoly, Szalo v. M.C.I.* (F.C., no. IMM-1566-04), Blais, March 24, 2005, 2005 FC 412; *Mendez, Luz Maria Sonia Carrera v. M.C.I.* (F.C., no. IMM-1806-08), Pinard, December 22, 2008, 2008 FC 1385.

²⁴ *Garcia, Debora De Araujo v. M.C.I.* (F.C., no. IMM-5987-05), Campbell, January 24, 2007, 2007 FC 79. **Reported:** *Garcia v. Canada* (Minister of Citizenship and Immigration), [2007] 4 F.C.R. 385 (F.C.); *Naumets, Nina v. M.C.I.* (F.C., no. IMM-2071-07), Mosley, April 22, 2008, 2008 FC 522.

police force that has the primary responsibility to protect a nation's citizens and, unless there is evidence to the contrary, alternative institutions do not constitute avenues of protection *per se*.

[26] I find if she was indeed dissatisfied with the handling of her complaints by the local police on a balance of probabilities that she knew where to go. While she testified that the police and prosecutor's office are connected and that if one goes to report the police to the prosecutor's officer the person would be sent back to the police. She was asked how she knew this and she said that she heard it from other people. I find that the claimant has a responsibility to seek protection from a higher authority if the local police weren't doing their job. She was asked "Which is higher the police or the prosecutor office and she said the prosecutor office. Asked if she had approached the prosecutor office and she said no. Asked why not, she said "Because there is no point". I find her explanation unreasonably speculating. She had not tested the higher authority by approaching them. Doubting the effectiveness of the protection offered by the state when one has not really tested it does not rebut the existence of a presumption of state protection.²⁵ A claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state.²⁶ A claimant must show that they have taken all reasonable steps in the circumstances to seek protection, taking into account the context of the country of origin, the steps taken and the claimant's interactions with the authorities.²⁷ A claimant is required to approach the state for protection if protection might reasonably be forthcoming or, alternatively, if it is objectively reasonable for the claimant to have sought protection.²⁸ However, a claimant is not required to risk their life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness.²⁹

[27] Even though the claimant testified that she went to the police, as well, the police went to her (at the hospital) I note that she didn't present copies of her police reports. She testified that she made complaints to the police who took her complaints in writing; she signed her statements but there isn't one copy of a police report. Why there are no police reports? She was asked that question a couple of times. Her first answer "I didn't know that I would need copies." I find her explanation unreasonable and in rejecting it also finds that it undermines her credibility.

²⁵ *Ramirez, Leticia Lizet Del Rio v. M.C.I.* (F.C., no. IMM-1301-08), Lagacé, October 31, 2008, 2008 FC 1214.

²⁶ *Camacho, Jane Egre Sonia v. M.C.I.* (F.C., no. IMM-4300-06), Barnes, August 10, 2007, 2007 FC 830.

²⁷ *Peralta, Gloria Del Carmen v. M.C.I.* (F.C.T.D., no. IMM-5451-01), Heneghan, September 20, 2002; 2002 FCT 989.

²⁸ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

²⁹ *Ibid.*

[28] For example, she knew it was important to bring a medical report so why she wouldn't know it was also important to bring a police report. She simply said that she didn't know that she would need them. She was asked why she brought a medical report she replied because she had it at home, she had it with all of her other documents. Asked if she had a police report among her other documents and she said no. I remind myself that at first when she was asked about not having the police report she said that she didn't know it was needed but later on in her testimony she blamed it on the police. She said because the police refused to open an investigation and told her to come when she had a more serious case. But she testified before me that she gave signed statements to the police about both incidents which would suggest that the police have a record of her complaint, at least the first incident. Any way, why would they take signed statements from her while telling her to come back when she has a more serious case to report? That makes no sense to me. I therefore find on a balance of probabilities that if indeed she had made complaints to the police she should have received copies of her reports. But I also find on a balance of probabilities that if she had received and or could receive copies of her complaints but she realized these reports would not support her allegations that the police didn't assist her she would not submit them or she simply didn't request them for whatever reason.

[29] But whether she received them but didn't submit them or she didn't request them, she provides no corroborative evidence that she even went to the police. The Court has indicated that, if corroborating documents can be provided, there is an expectation that the claimant should do so. It is reasonable for the Board to draw a negative inference from the applicant's lack of effort in acquiring evidence to corroborate the central element of his claim since Rule 34 of the Refugee Protection Division Rules clearly states that the applicant must provide such documents.

[30] In light of the finding that many aspects of the applicant's claim were not credible, it is entirely reasonable for the Board to attach great importance to documentation which would have supported the allegations.³⁰ In the *Kante*³¹ decision, the Court affirmed that the claimant must come to a hearing with all of the evidence that he or she is able to offer and believes is necessary to prove the claim.³² The claimant did not provide a reasonable explanation for not providing the Board with the police reports. The panel draws a negative inference relating to the claimant's efforts to seek

³⁰ *Luzi, Tshomba Ngongo v. M.C.I.* (F.C., no. IMM-4183-03), Pinard, June 28, 2004, 2004 FC 916.

³¹ *Kante, Abdoulaye v. M.E.I.* (F.C.T.D., no. IMM-2585-93), Nadon, March 23, 1994.

³² *Ibid.*

state protection because the claimant did not provide the Board with a reasonable explanation as to why he did not provide the Board with these documents

[31] Noting that the claimant's problems were largely with XXXX relatives and associates in and around the areas of the university. For example, many of them were attending the university that the claimant attended. She was asked if she would be safe if she relocated to Moscow. She didn't say that she couldn't get away from the group which were threatening her instead she said if not that group then another group. She was asked when her problems as a lesbian started in her country and she said XXXX 2011. She was asked if before that she had no problems as a lesbian and she said "Except with myself I couldn't admit that I am a lesbian." She also said that if she went somewhere else as soon as they found out who she is it would be the same situation. I find her explanation unreasonable there is no persuasive evidence before me that the claimant would not be able to obtain help from the police in Moscow if she needs it. I therefore find on a balance of probabilities that her problems were with a small group of people and in the area where she was having the problems moving to Moscow she would be safe from this group.

[32] Quite frankly there is really no persuasive evidence to say that the claimant is really a lesbian. Yes, she presented documentation to indicate that she volunteered at or in some activities associated with 519 Club,³³ photographs with her partner³⁴ and other women and men at a gay parade,³⁵ the medical report which states that she said that she was beaten because of her sexual orientation,³⁶ letter from the male (gay) minister where she attends church,³⁷ but nothing that is conclusive to suggest that she is a lesbian. I find them insufficient evidence to establish the claimant as a lesbian or to sufficiently compensate for the evidence that raised credibility concerns about the claimant's identity and story.

[33] She presented a story about XXXX and XXXX Muslim family, XXXX brother who threatened her with a gun, her co-student and the other students who attacked her, the young man who raped her, and the police officer/s who took her reports but didn't do anything. The only thing to 'support' her evidence is counsel's oral submissions. He highlighted the claimant's letter from the pastor, the photograph of her partner who couldn't stay for the Hearing because of school, the

³³ Exhibit C-3, pp. 5 & 9.

³⁴ Exhibit C-3, pg. 7.

³⁵ Exhibit C-3, pg. 8-9.

³⁶ Exhibit C-3, pg. 2.

³⁷ Exhibit C-3, pg. 6.

medical report, her association with Club 519, and that she made reports to the police but received no help. He also referred to the 29 articles including the attack on a gay club in Moscow.³⁸ I remind myself that with respect to materials brought before the Board, it does not mean that the Board accepts that evidence as truthful or credible. No such conclusion should be drawn from the acceptance of evidence as a part of the record. The weight and credibility to be given to that evidence are still matters to be assessed by the Board.³⁹

[34] Local failures to provide effective policing do not amount to a lack of state protection unless they are part of a broader pattern of state inability or refusal to provide protection.⁴⁰ For example, the Court has stated that when the agent of persecution is not the state, the lack of state protection had to be assessed as a matter of state capacity to provide protection rather than from the perspective of the effectiveness of local apparatus in providing protection in a given circumstance. Thus, in the absence of evidence pointing to a more general policy by which the state's protection is not extended to the target group, a refusal to provide protection at the local level does not constitute a refusal to provide protection.⁴¹ The claimant testified that she was attacked by some of her fellow university students, beaten and raped as well she was attacked by XXXX brother and an accomplice threatened her with a gun that if he ever saw her again she would be harmed but there is no persuasive evidence before me that any of this happened to the claimant.

[35] The Federal Court of Appeal has also pointed out in *Orelien*⁴² that

“One cannot be satisfied that the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so.”

[36] Case law also exists to support that a panel may reject testimony even if it is un-contradicted if that evidence does not accord with the probabilities affecting the case as a whole. In this respect the British Columbia Court of Appeal stated in *Faryna vs. Chorny*⁴³ that

³⁸ Exhibit C-4, pp 1-61.

³⁹ *Addo, Samuel v. M.E.I.* (F.C.A., no. A-614-89). Mahoney, Hugessen, Gray, May 7, 1992.

⁴⁰ *Zhuravlev, Anatoliy v. M.C.I.* (F.C.T.D., no. IMM-3603-99), Pelletier, April 14, 2000. **Reported:** *Zhuravlev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

⁴¹ *Mejia, Alberto v. M.C.I.* (F.C., no. IMM-2757-03), Pinard, June 30, 2004, 2004 FC 925.

⁴² *Orelien, Joseph v. M.E.I.* (F.C.A., no. A-993-90), Heald, Mahoney, Stone, November 22, 1991. **Reported:** *Orelien v. Canada (Minister of Employment and Immigration)* [1992] 1 F.C. 592 (C.A.); (1991), 15 Imm. L.R. (2d) 1 (F.C.A.).

⁴³ *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.). at 357.

“In short the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”

[37] I also note and considered the case of *Sheikh*⁴⁴ which states:

... even without disbelieving every word [a claimant] has uttered, a...panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim... In other words, a general finding of a lack of credibility on the part of the [claimant] may conceivably extend to all relevant evidence emanating from his testimony.

[38] For the reasons that have been outlined above with regard to my negative determinations, I determine, on a balance of probabilities, that the claimant has not been a credible or trustworthy witness with regard to specific material aspects of her evidence and that she has not submitted documentary evidence that is credible, reliable or trustworthy which includes her medical report. A medical opinion is only as valid as the truth of the facts on which the opinion is based. If a panel does not believe the underlying facts, it may discount a medical report in light of that finding.⁴⁵ In light of all the credibility problems noted, I give this document the appropriate weight in terms of establishing the claimant's allegations.

[39] I have also given consideration to whether she would be personally subject to a risk to her life or to cruel and unusual treatment or punishment if returned to Russia and, based on my analysis and findings, I find that there is no such risk.

CONCLUSION

[40] I find the claimant to be a Russian citizen.

[41] I find that she did not establish a well-founded fear of persecution or that it is more likely than not that she would face personal risk if returned to Russia.

⁴⁴ *Sheikh, Abdulhakim Ali v. M.E.I.* (F.C.A., no. A-521-89), MacGuigan, Iacobucci, Desjardins, July 4, 1990. **Reported:** *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.); 11 Imm. L.R. (2d) 81 (F.C.A.), at 244, per MacGuigan, J.A.

⁴⁵ *Danailov (Danailoff), Vasco (Vassil) Vladimirov v. M.E.I.* (F.C.T.D., no. T-273-93), Reed, October 6, 1993.

[42] I therefore conclude that she is neither a Convention refugee nor a person in need of protection.

[43] Based on the foregoing analysis and, after considering all of the evidence, I reject the claim.

(signed)

‘ Edward C. Robinson ’

Edward C. Robinson

April 9, 2013

Date