

**Date: 20080207**

**Docket: IMM-820-06**

**Citation: 2008 FC 161**

**Toronto, Ontario, February 7, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**ORLANDO QUIROS CASCANTE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a young man from Costa Rica who claims protection on the basis of well-founded fear as a homosexual transvestite who is HIV/AIDS positive. The Applicant's claim is that he is a member of a social group of persons experiencing all three attributes. It is obvious that a central feature of the Applicant's claim is whether he can receive state protection in Costa Rica for persecution and risk with respect to each of these attributes and, indeed, for the three on an accumulated basis.

[2] The RPD found that the Applicant is who he claims to be, that is, a homosexual transvestite who is HIV/AIDS positive. In reaching a conclusion on state protection, the RPD chose to follow a Jurisprudential Guidelines precedent and doing so, without critical evaluation, found that the precedent applied to the Applicant's claim. It is not disputed that, in fact, the precedent only speaks to treatment of homosexuals in Costa Rica and does not address state protection with respect to transvestites and persons who are HIV positive. As a result, I find that the RPD's application of the precedent constitutes a reviewable error.

[3] In addition, on the state protection issue the RPD found that:

There are legislative, enforcement and correctional institutions and arms of the different levels of government to protect transvestites' victims of corruption. It is well known that such victims are entitled to state protection in Costa Rica.

(Decision, p.8)

It is not disputed that the reference footnoted from making this statement has no such expression contained within it. Therefore, I find that the RPD's statement, upon which it relied in rejecting the Applicant's claim, is capricious.

[4] As a result, I find that the RPD's decision is patently unreasonable.

**ORDER**

Accordingly, I set aside the RPD's decision and refer the matter back for re-determination before a differently constituted panel.

“Douglas R. Campbell”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-820-06

**STYLE OF CAUSE:** ORLANDO QUIROS CASCANTE v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 6, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** FEBRUARY 7, 2008

**APPEARANCES:**

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