

Federal Court



Cour fédérale

Date: 20150108

Docket: IMM-1385-13

Citation: 2015 FC 25

Ottawa, Ontario, January 8, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SUKIRTHAN MAYILVAGANAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Sukirthan Mayilvaganam, a Tamil male from the north of Sri Lanka, claims to fear persecution by the Eelam People's Democratic Party (EPDP) who questioned him in 2010 about any connections he might have had to the Liberation Tigers of Tamil Eelam (LTTE). Concerned about further trouble from the EPDP, Mr Mayilvaganam left Sri Lanka in the fall of 2010 and

travelled through a number of different countries before arriving in Canada in late 2011, where he claimed refugee protection.

[2] A panel of the Immigration and Refugee Board rejected Mr Mayilvaganam's claim on the basis that his profile did not match those of persons at risk of persecution or other serious harm in Sri Lanka. In particular, it found that persons suspected of having ties to the LTTE were most at risk of persecution. It was not satisfied that Mr Mayilvaganam would be associated in any way with the LTTE and therefore dismissed his claim.

[3] Mr Mayilvaganam argues that the Board's decision was unreasonable because it failed to acknowledge that Sri Lankan authorities and other groups disproportionately detain, question, and mistreat Tamil males. In addition, the Board overlooked the fact that he risks further questioning from the EPDP, an organization known for arbitrary detention, which had already suspected him of having a connection to the LTTE. Finally, Mr Mayilvaganam submits that the Board failed to conduct a proper analysis of risk under s 97 of the *Immigration and Refugee Protection Act*, SC 2002, c 27 [IRPA]. He asks me to quash the Board's decision and order another panel to reconsider his claim.

[4] I can find no basis for overturning the Board's decision. The Board thoroughly reviewed the documentary evidence relating to persons at risk in Sri Lanka. Its conclusion that Mr Mayilvaganam was unlikely to face a risk of persecution or other mistreatment in Sri Lanka was not unreasonable on that evidence. In the circumstances, a separate analysis under s 97 was not required.

[5] There are two issues:

1. Was the Board's decision unreasonable?
2. Should the Board have conducted a separate analysis under s 97 of IRPA?

II. Issue One – Was the Board's decision unreasonable?

[6] Mr Mayilvaganam argues that the Board unreasonably failed to recognize that Tamil males are more likely to be arrested arbitrarily in Sri Lanka and, once detained, are exposed to a risk of mistreatment. This, in his view, amounts to a risk of persecution in itself.

[7] Further, Mr Mayilvaganam maintains that the Board did not take adequate account of the fact that the EPDP said they would return to question him again; therefore, he faces a possibility of detention and mistreatment on the part of the EPDP, who obviously regard him as having some kind of connection to the LTTE.

[8] Additionally, Mr Mayilvaganam suggests that the Board set the bar too high when it rejected his claim. The Board found that he did not fit the profile of a person targeted in the past such that he would be targeted in the future. However, the burden on applicants is merely to show more than a mere possibility of persecution – they do not have to prove that they will actually be targeted in the future. Accordingly, Mr Mayilvaganam says that the Board misstated the burden of proof.

[9] I am not persuaded by Mr Mayilvaganam's submissions.

[10] The Board carefully reviewed the documentary evidence, which consistently states that there is a risk of persecution for those persons who are suspected of having current or past ties to the LTTE. The Board reasonably found that Mr Mayilvaganam did not fall within this category. True, he had been questioned previously by the EPDP in that connection, but he had been released unharmed. While the EPDP said they would return to question him again, there was no evidence that it had subsequently sought him out or tried to contact his remaining family in Sri Lanka.

[11] The Board's ultimate conclusion was that Mr Mayilvaganam's claim was not objectively well-founded. The statement that Mr Mayilvaganam disputes simply expressed the Board's finding that past questioning would not necessarily lead to future targeting. As I read it, the Board was not stating the burden of proof on Mr Mayilvaganam; it was merely making a finding of fact.

[12] Therefore, based on the law and the facts before it, I am satisfied that the Board's decision represented a defensible outcome.

III. Issue Two – Should the Board have carried out a separate analysis under s 97 of IRPA?

[13] Mr Mayilvaganam maintains that the Board erred in failing to consider whether he was at risk of death, or cruel and unusual treatment or punishment under s 97 of IRPA.

[14] I disagree.

[15] The Board's finding that Mr Mayilvaganam was unlikely to experience a risk of persecution if he returned to Sri Lanka was sufficient to dispose of the question whether he was at risk of death, or of cruel and unusual treatment or punishment. It was unnecessary for the Board to make a separate finding.

IV. Conclusion and Disposition

[16] The Board thoroughly reviewed the relevant documentary evidence and found it unlikely that Mr Mayilvaganam would face a risk of persecution or other mistreatment if he returned to Sri Lanka. That conclusion was not unreasonable on the evidence. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance will be stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1385-13

STYLE OF CAUSE: SUKIRTHAN MAYILVAGANAM v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 24, 2014

JUDGMENT AND REASONS: O'REILLY J.

DATED: JANUARY 8, 2015

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