

Federal Court



Cour fédérale

Date: 20150128

Docket: IMM-6782-13

Citation: 2015 FC 112

Toronto, Ontario, January 28, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

JEYAPIRATHAP JEGATHEESWARAN

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a Member of the Immigration and Refugee Board dated September 13, 2013 wherein the Applicant's claim for refugee protection was denied.

[2] The Applicant is an adult male Tamil citizen of Sri Lanka. He claims that, prior to leaving Sri Lanka for Germany in October 2010, he had been detained a number of times by

authorities in Sri Lanka on allegations that he was associated with the LTTE. On those occasions he alleged that he was beaten and tortured and that he secured his release by paying a bribe. He claimed asylum in Germany. That claim was rejected. Several months later, in August 2011, he entered Canada and claimed refugee protection.

[3] Applicant's Counsel made essentially three arguments:

- The Member made a number of errors in factual findings, made findings unsupported by the evidence and came to a number of unreasonable conclusions;
- The Member inconsistently applied the burden of proof upon the Applicant in respect of considerations under section 96 of IRPA;
- The Member did not consider subsections 97(1)(a) and (b) of IRPA even though the Applicant, in his PIF, checked off boxes indicating they should be considered.

[4] Respondent's Counsel conceded that the Member made certain erroneous findings of fact and conclusions and did, on occasion, appear to apply the wrong test in considering section 96 of IRPA. Counsel argued however, that, taken as a whole the decision arrived at the right result and was reasonable. Counsel said that a section 97 analysis was unnecessary.

[5] I am satisfied that there were sufficient erroneous and unreasonable findings of fact and sufficient confusion as to the test to be applied in considering section 96 of IRPA that the matter should be returned for reconsideration by a different Member. At that time section 97 of IRPA should also be considered.

[6] No Party requested a certified question.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The matter is returned for redetermination by a different Member;
3. No question is certified;
4. No order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6782-13

STYLE OF CAUSE: JEYAPIRATHAP JEGATHEESWARAN v MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: WEDNESDAY JANUARY 28, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: JANUARY 28, 2015

APPEARANCES:

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