

Federal Court



Cour fédérale

Date: 20170509

Docket: IMM-2135-16

Citation: 2017 FC 469

Ottawa, Ontario, May 9, 2017

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

KAJAN MURUGATHAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Kajan Murugathas sought refugee protection in Canada based on his fear of persecution by the Eelam People's Democratic Party (EPDP). He says that the EPDP targeted him after his cousin joined the Liberation Tigers of Tamil Eelam (LTTE).

[2] A panel of the Immigration and Refugee Board rejected Mr Murugathas's claim primarily on the basis of credibility. Mr Murugathas contends that the Board's findings were unreasonable. He asks me to quash the Board's decision and order another panel to reconsider his claim.

[3] I cannot find a basis for overturning the Board's decision. Accordingly, I must dismiss this application for judicial review.

[4] The sole issue is whether the Board's decision was unreasonable.

II. Background

[5] Mr Murugathas's refugee claim was based on the following allegations.

[6] In Sri Lanka, while working as a door-to-door insurance salesman, and later as a taxi driver, Mr Murugathas claims that he was stopped and accused of being an LTTE supporter. He says he was detained and beaten, and his car was damaged. He asserts he was pressured to join the EPDP, and when he refused, he was again accused of being an LTTE supporter.

[7] He also states that the military police arrested and tortured him. The police told him that they thought he was an LTTE sympathizer and that they knew his cousin was an LTTE member. They released Mr Murugathas a few weeks later after his father paid a bribe. His father complained to the police, but was not taken seriously.

[8] After the military began visiting his neighbours and friends to inquire about him, Mr Murugathas went to Suthumalai and then to Colombo. After eventually leaving Sri Lanka, he arrived in the United States and made an asylum claim, but he did not mention his cousin in his claim. He later abandoned his US claim and travelled to Canada.

III. The Board's Decision

[9] The Board found multiple credibility issues with Mr Murugathas's version of events, including the following:

- He claimed he got his passport by giving an agent his photograph, and that his father took care of the other documents; however, passports can only be issued in person.
- His passport used his legal name, but it would have been very difficult to leave Sri Lanka under his own name as security is very stringent. It is unlikely he would have avoided questioning.
- He gave inconsistent testimony about what he did with the passport he used to enter the US.
- He said he omitted mentioning his cousin in his US claim because he was not asked any questions; however, in response to questions posed by US officials, in lieu of referring to his cousin he stated, "I really don't know [why they stopped me]... but I know they arrested me because I am Tamil". By contrast, his Canadian basis of claim form states that his cousin's actions were the primary basis for his fear of persecution.
- He claimed he was harassed by the army while canvassing for HNB Assurance. He originally stated he was threatened by two men, but later said it was one.
- To show employment with HNB, he produced an identity card with an issue date of 30-12-3011. He claimed the card was issued months after he began working there because he was awaiting the results of the exam he wrote in September 2011. However, it is unlikely that an identity card would be issued on the last day of December and with an incorrect year of issuance.
- He claimed he was tortured using cigarette burns two or three times over a few days in 2013. He stated that a lit cigarette was placed against his shoulders,

cheeks, and hands, but that he was allowed to pull away. He said that the wounds blistered, but after he applied an ointment to them, they healed without a scar. However, others in similar situations were left with scars. He did not file any medical evidence.

[10] Due to the numerous inconsistencies and ambiguities, the Board found that Mr Murugathas lacked credibility. In particular, it found that Mr Murugathas did not have a cousin in the LTTE.

[11] The Board also found that Mr Murugathas's abandonment of his US asylum claim showed a lack of subjective fear of persecution. Further, the Board did not believe that his alleged motivations for coming to Canada – his desire to reunite with his aunt and his concerns about language – sufficiently explained his conduct given that he also had family in the US.

[12] Finally, the Board did not accept that Mr Murugathas's underlying profile, being a young Tamil male from northern Sri Lanka, was sufficient to give rise to a reasonable chance of persecution without any proof of family ties to the LTTE.

IV. Was the Board's Decision Unreasonable?

[13] Mr Murugathas submits that the Board erred in its credibility findings by failing to consider the evidence as a whole. Additionally, he contends that most of those findings pertained to his travel, not to his risk in Sri Lanka.

[14] I disagree. The record shows that the Board considered the evidence in its totality, including Mr Murugathas's testimony about his travel arrangements. The Board was entitled to

weigh that testimony in assessing Mr Murugathas's overall credibility. On the evidence, I cannot conclude that the Board's findings were unreasonable.

[15] Mr Murugathas also asserts that the Board erred when it found that his decision to leave the US and travel to Canada displayed a lack of subjective fear of persecution.

[16] The Board was entitled to consider the significance of the fact that Mr Murugathas had failed to pursue his US claim, especially since he had already passed the preliminary credible fear interview. While Mr Murugathas may have had reasons to prefer living in Canada, the Board's conclusion that his conduct showed a lack of subjective fear of returning to Sri Lanka was not unreasonable.

[17] Finally, Mr Murugathas states that the Board failed to assess the cumulative impact of all aspects of his profile, including the perception that he supports or associates with the LTTE.

[18] The documentary evidence before the Board, including United Nations High Commissioner for Refugee eligibility guidelines, shows that persons with links to the LTTE are most at risk on return to Sri Lanka. However, once the Board concluded that Mr Murugathas's claim to have a cousin in the LTTE was not credible, and with no other evidence to tie him to the LTTE, it was not unreasonable for the Board to find that he lacked a risk profile that made him susceptible to persecution on his return to Sri Lanka.

V. Conclusion

[19] The Board's conclusions were not unreasonable on the evidence before it. I must, therefore, dismiss this application for judicial review. Neither party proposed a question for certification, and none is stated.

JUDGMENT IN IMM-2135-16

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
and no question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2135-16

STYLE OF CAUSE: KAJAN MURUGATHAS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 23, 2017

JUDGMENT AND REASONS: O'REILLY J.

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