

Date: 20070727

Docket: IMM-3618-06

Citation: 2007 FC 791

Ottawa, Ontario, July 27, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

VASANTHANAYAKI KANDASAMY

Applicant(s)

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Vasanthanayaki Kandasamy from a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) rendered on May 30, 2006, wherein Ms. Kandasamy's claim to refugee protection was denied. She now seeks to have her claim reconsidered because of arguable errors in the Board's treatment of the evidence.

Background

[2] Ms. Kandasamy is a 33-year-old unmarried Tamil from the Jaffna area of Sri Lanka. Her claim to refugee protection was based on an alleged history of persecution by the Liberation Tigers

of Tamil Eelam (LTTE) and by Sri Lankan government forces stemming as far back as 1995.

Although she professed to have been approached by the LTTE in an effort to recruit her in early 1990, most of her concerns had to do with persecution at the hands of Sri Lankan forces and their Tamil collaborators.

[3] Ms. Kandasamy offered evidence of mistreatment (including torture) and a series of arrests and detentions by Sri Lankan government forces between 1996 and 2004. On the several occasions that she claimed to have been detained, she was able to secure release by the payment on her behalf of bribes. It was following the last of these episodes that she left Sri Lanka arriving in Canada through the United States on April 26, 2005. She immediately sought protection at the border alleging that she feared both the LTTE and the Sri Lankan army.

The Board Decision

[4] Although the Board accepted that Ms. Kandasamy was a Tamil from Sri Lanka, it rejected her claim to protection on the basis of credibility concerns. The Board decision identified numerous contradictions, omissions and implausibilities in the evidence she offered in support of her claim.

[5] The Board expressed considerable scepticism about the initial claim as documented in Ms. Kandasamy's Personal Information Form (PIF) to the effect that she was the only member of her family to have been targeted by the Sri Lankan authorities on four apparently unrelated occasions over a period of eight years. The Board also took account of Ms. Kandasamy's failure to disclose in her PIF that, for most of the time when she was not in custody, she was in hiding. She

offered the excuse in testimony that she was not aware that this evidence was important. However when she was confronted by a PIF reference which stated that she was in hiding for a time following her last detention in 2004, she was unable to offer a plausible explanation.

[6] The Board expressed scepticism about the absence of any apparent linkages among Ms. Kandasamy's various detentions as set out in her PIF. It was only when this issue was put to her that she offered some evidence to connect the events. The Board was unconvinced by this late explanation.

[7] The Board decision also reflects a concern about the plausibility that Ms. Kandasamy's sister, who had never experienced any similar problems, would be sent abroad while Ms. Kandasamy remained in Sri Lanka at considerable risk. On this point, the Board drew the following plausibility inference:

... I do not find it plausible that the claimant's parents would have sent her sister abroad in 2002, because maybe she could be arrested, and not the claimant who had been already arrested and tortured at least twice and for whom they had to pay substantial amounts of bribe money. It was the claimant who had allegedly been hiding, and not her sister. It was the claimant who was allegedly in danger to be arrested, since the authorities were actively searching for her, and not her sister. Confronted with that implausibility, the claimant changed her testimony stating that her parents tried to send her abroad after each arrest, but were, each time, cheated by dishonest smugglers. I do not give any credence to this obviously adjusted answer.

[8] When she was questioned further about the apparent coincidence that she was the only member of the family to be targeted, she explained that one sister was married and the other was “a little bit fat” and did not “go out that much”. The Board found these explanations unconvincing.

[9] The Board also noted a number of responses to questions concerning Ms. Kandasamy’s passport and national ID card which the Board found to be inconsistent with other aspects of her evidence. For example, a significant credibility concern had to do with Ms. Kandasamy’s evidence that she personally attended at the government passport office at the same time she claimed that the army was searching for her and she was in hiding.

[10] The Board rejected Ms. Kandasamy’s story of abuse and summed up its views of her evidence in the following passage:

Considering all the above, I reject the claimant’s testimony as devoid of all credibility. I do not believe that she was arrested by the CID, the army and the pro-government Tamil groups, detained and mistreated. I do not believe that she had to hide, while in Sri Lanka, and that she fled her country in order to escape persecution.

[11] After summarizing the country condition evidence, the Board also rejected Ms. Kandasamy’s allegations of generalized risk as a Tamil with the following conclusions:

The claimant was never involved in politics. I reject her allegations that she was arrested in the past and had problems with the authorities and pro-government Tamil groups. She never had problems with the LTTE. She insists that she was not a member of the LTTE or of any other Tamil group. She is not a high-profile rebel wanted by the army, by the police or by a rival LTTE group. Based on the documentary evidence, I do not consider that, in the present circumstances, women of the claimant’s age and profile face

a reasonable risk of persecution by the LTTE or other Tamil militant groups or by the Sri Lanka army or the police, just because of their Tamil nationality. I do not consider that people with the claimant's profile would personally face a serious risk of torture, a risk to their lives, or a risk of cruel or unusual treatment or punishment in Sri Lanka.

Issues

- [12] (a) What is the standard of review for the issues raised by the Applicant?
- (b) Did the Board commit any reviewable errors in its assessment of the evidence?

Analysis

[13] The issues raised on behalf of Ms. Kandasamy in this application are evidence-based. The first issue concerns a factual error by the Board. The second issue concerns the Board's treatment of evidence of generalized risk faced by Tamils in Sri Lanka. Having concluded that the Board's factual error was not material to the outcome of the claim and that the Board made no error in its treatment of the evidence of generalized risk, it is unnecessary to carry out a functional and pragmatic assessment.

[14] There is no doubt that the Board made a factual error when it found that Ms. Kandasamy had failed to mention a fear of the LTTE early in her testimony. The transcript of her evidence clearly discloses that she volunteered this point under questioning by the Board. This was, however a relatively minor issue in the case because Ms. Kandasamy's primary fears related to her alleged history of abuse at the hands of the army and other pro-government forces. Her only evidence of actual contact with the LTTE concerned an early attempt at recruiting her which she said she able to

successfully avoid. Nevertheless, she speculated that, if she returned to Sri Lanka and refused to join the LTTE again, “they might kill me”. Given the relative insignificance of this error to the Board’s overall negative credibility assessment and its peripheral significance to Ms. Kandasamy’s claims of actual abuse by pro-government forces, I find that it is not material to the outcome of the proceeding because there remained a sufficient and, in this case, compelling basis for the Board’s conclusion: see *Iteka v. Canada (Minister of Citizenship)*, [2007] F.C.J. No. 504, 207 FC 368 at para. 16.

[15] Ms. Kandasamy also contends that the Board was unfairly selective and cursory in its treatment of the evidence of generalized risk that she claimed to face as a Tamil in Sri Lanka. She referred to country condition reports which contained anecdotal evidence of forced recruitment of children and adults by the LTTE and to abuse of women held in custody by government forces. It was contended that the Board had a duty to consider this evidence before it rejected her claim to protection.

[16] In my view, the significance of the evidence of generalized risk was so slight that it did not require specific mention in the Board’s decision. It was reasonable for the Board to find that Ms. Kandasamy did not fit the profile of a person who would be at risk of harm from the LTTE or from the government – particularly in the face of the categorical rejection of her evidence of actual persecution. After all, if she had never been the target of persecution, it was reasonable to conclude that she was unlikely to be victimized if she returned to Sri Lanka.

[17] The fundamental problem with Ms. Kandasamy's argument on this issue is that the Board would be essentially obliged to extend refugee protection to every Tamil claimant who professed a fear of recruitment by the LTTE or of abuse by government forces simply by pointing to evidence that such practices exist at some level in Sri Lanka. To my thinking, evidence of a generalized risk of persecution must be considerably more persuasive and specific to a claimant's profile than the kind of evidence relied upon by Ms. Kandasamy before it would arguably justify a favourable protection finding. The evidence relied upon here by Ms. Kandasamy was not "so important or vital" that a failure to acknowledge it constitutes a reviewable error: see *Jones v. Canada (Minister of Citizenship)*, [2006] F.C.J. No. 591, 2006 FC 405 at para. 37.

[18] In the result, this application for judicial review is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

“ R. L. Barnes ”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3618-06

STYLE OF CAUSE: VASANTHANAYAKI KANDASAMY
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: May 24, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** BARNES, J.

DATED: July 27, 2007

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