

Date: 20071019

Docket: IMM-4685-06

Citation: 2007 FC 1084

Toronto, Ontario, October 19, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**CHESTER DIRK FERDINANDS
SHANIKA HIMANI FERDINANDS
GAYAN DIVAKE FERDINANDS (By his litigation guardian)
ENAKSHI DIYANA FERDINANDS (By her litigation guardian)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Chester Ferdinands and his family claimed refugee protection in Canada on grounds of religious and political persecution in Sri Lanka. They say that their problems arose from renting out part of their house to a young Tamil family. This upset Bhuddist neighbours and political groups who demanded the eviction of the Tamils and threatened the applicants.

[2] A panel of the Immigration and Refugee Board dismissed the applicants' claims because of a lack of credible evidence. Part of their hearing took place by videoconference. The applicants argue that they were denied a fair hearing because of the poor functioning of the videoconference

equipment. In addition, they submit that the Board made a number of errors in its fact-finding. They ask me to order a new hearing before the Board.

[3] In my view, the applicants received a fair hearing. However, the Board's conclusion is not supported by the evidence. Therefore, I will allow this application for judicial review.

I. Issues

1. Did faulty videoconference equipment result in an unfair hearing?
2. Did the Board err in finding that there was a lack of credible evidence supporting the applicants' claims?

[4] The applicants also argued that the Board had failed to consider the claims of the entire family and had erred in comparing Mr. Ferninands' testimony with his personal information form (PIF) when the latter was not made an exhibit in the proceedings. These issues had not been raised prior to the hearing and the Minister, therefore, had no opportunity to respond to them. In the circumstances, I decline to deal with them.

II. Analysis

1. *Did faulty videoconference equipment result in an unfair hearing?*

[5] The applicants argue that there were technical difficulties during their teleconference that resulted in confusion and, ultimately, in unwarranted adverse credibility findings being made against them. They suggest that these problems were compounded by the fact that the Board refused to allow their counsel to question them first.

[6] I have reviewed that transcript of the hearing and cannot see any such difficulties. Nor do I see any occasions where the applicants, or their counsel, objected to the manner in which the hearing was unfolding or expressed any difficulty in understanding questions. I can find no basis for concluding that the videoconference compromised their right to a fair hearing.

2. *Did the Board err in finding that there was a lack of credible evidence supporting the applicants' claims?*

[7] The applicants argue that the Board erred in finding that Mr. Ferdinands' testimony was vague and inconsistent. They submit that these difficulties, if any, related to insignificant areas of the evidence and should not have resulted in a dismissal of their claims.

[8] The following are the grounds for the Board's negative credibility findings:

- Mr. Ferdinands mentioned that churches had been burned but was unable to identify where this happened;
- Mr. Ferdinands testified that he feared the Liberation Tigers of Tamil Eelam (LTTE) but he was unclear whether this was because the LTTE was protecting his Tamil tenant or because the LTTE suspected Mr. Ferdinands of providing information to security forces;

- Mr. Ferdinands gave various answers to the question whether he knew that his tenant was a member of the LTTE;
- Mr. Ferdinands could not explain why a letter from his lawyer referred to the tenant as a long-time friend of the Ferdinands family when Mr. Ferdinands testified that he had not known the tenant long and wanted him out of the house.

[9] Having made these findings, the Board found that Mr. Ferdinands was not a refugee but an “immigrant in disguise”. Further, it concluded that it could not give any weight to the other documentary evidence tendered by the applicants.

[10] The applicants point out that Mr. Ferdinands did identify some locations where churches had been burned. The Board clearly erred on that issue. The other findings of the Board appear to have some support in the evidence.

[11] However, I fail to see how those findings give rise to a conclusion that Mr. Ferdinands’ evidence should be dismissed in its entirety and the corroborating documentary evidence disregarded completely. The problems pointed out by the Board do not touch the main thrust of the applicants’ claim to have feared reprisals from persons who disapproved of the Ferdinands’ Tamil tenants and regarded the Ferdinands as LTTE sympathizers. There remained a substantial amount of evidence supporting that claim that was not discussed by the Board.

[12] Where, as here, there is evidence that supports the main pillars of an applicant’s claim, the Board must consider whether that evidence is sufficient to support a conclusion that the applicant has a well-founded fear of persecution, notwithstanding that there may be problems in some areas of

his or her testimony: *M.M. v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 1110 (F.C.A.)(QL).

[13] In my view, the Board committed a reviewable error in its analysis of the evidence and the applicants are entitled to a new hearing before a different panel. 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 allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4685-06

STYLE OF CAUSE: CHESTER DIRK FERDINANDS, ET AL v. THE
MINSITER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: June 13, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: October 19, 2007

APPEARANCES:

Jegan N. Mohan FOR THE APPLICANTS

Kareena R. Wilding FOR THE RESPONDENT

SOLICITORS OF RECORD:

MOHAN & MOHAN FOR THE APPLICANTS
Toronto, On.

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, ON