Date: 20080729

Docket: IMM-4489-07

Citation: 2008 FC 927

Ottawa, Ontario, July 29, 2008

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

SARANGA KODITHUWAKKU M. WEERASINGHE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, a 27 year old Sinhalese citizen of Sri Lanka, seeks judicial review of a Refugee Protection Division (the Board) decision dated September 2007, in which he was found to be neither a Convention refugee nor a person in need of protection. The Board concluded that the applicant did not establish sufficiently the credibility of his allegation. For the reasons that follow, I will dismiss this application for judicial review.

I. Facts

[2] The applicant left Sri Lanka to work in the United Kingdom in April 2004 and returned to Sri Lanka in February 2006. Upon his return, and following in the footsteps of his family's political activism, the applicant started working for the municipal campaign of Sirisena Cooray, an ex-minister for the United National Party (UNP) and a good friend of the applicant's father. Since the UNP was barred from participating in the municipal elections by the Election Commission for a technicality, the UNP made an alliance with the Independent Party and all the political workers of the UNP worked for the Independent Party.

[3] The applicant alleges that he began to receive threats as soon as the agreement was negotiated. On March 15, 2006, the police came to his house at night and beat him severely. The applicant claims that they were accompanied by the thugs of Mr. Silva, the Minister of Labour and a member of the Sri Lanka Freedom Party (SLFP) that has ruled Sri Lanka since 1994. He further explained that he could not obtain a medical report, because he needed a police report which he could not get as the police were precisely the ones responsible for his injuries. On the advice of Mr. Cooray, he moved to Kolonnawa.

[4] On May 20, 2006, the Independent Party won the municipal elections for Colombo. Shortly thereafter, the applicant was again beaten up by Mr. Silva's thugs; he lost consciousness, only to wake up at Mr. Cooray's residence.

[5] In August 2006, the applicant went to the Municipal Council Office where he overheard a conversation between the mayor and one of Mr. Silva's thugs. The latter apparently bribed the mayor to break his party's alliance with the UNP and form a new one with the SLFP. They noticed that the applicant had overheard their conversation. The applicant left the office running and immediately went to see Mr. Cooray.

[6] Mr. Cooray telephoned the mayor, who denied taking any money from the thug. Nevertheless, the mayor told Mr. Cooray that he would break his alliance with the UNP and form a new one with the SLFP, as he feared for his life. He also told Mr. Cooray that if he or Mr. Silva's men ever saw the applicant again, they would kill him. As a result, the applicant went into hiding as instructed by Mr. Cooray. After his departure from Kolonnawa, Mr. Silva's thugs came to his residence and beat his family members.

[7] The applicant left Sri Lanka on October 5, 2006 to come to Canada where he asked for refugee status thirteen days later.

II. The impugned decision

[8] The Board member had a number of credibility concerns that lead her to reject the applicant's claim for refugee status.

[9] Although the letters sent by Mr. Cooray and his staff confirmed that the applicant worked for them, the Board member pointed out that they did not corroborate the problems that the applicant allegedly had with his party's opponents. Therefore, she questioned the credibility of these events that caused the applicant to leave Sri Lanka. The Board member could not understand why Mr. Cooray's letter did not mention anything that happened or the special role that the applicant had for him. She rejected the applicant's explanations in this regard as she expected that, given their special relationship, Mr. Cooray would have written more than a generic note of thanks. She also doubted that Mr. Cooray, even if he went into hiding in Australia, was difficult to find and thus she believed that the applicant should have obtained a more detailed letter.

[10] The Board member drew a negative inference from the applicant's inability to explain why he knew the name of Mr. Silva's thug who bribed the mayor. She considered that the applicant's explanations were incoherent and insufficient. Therefore, she concluded that the thug was a fictional character of a made-up story.

[11] The Board member did not believe that the applicant had witnessed the conversation between the mayor and the thug. She could not understand how it could have taken place in the presence of the applicant. In her view, these men would not have had a loud secret conversation in front of a window of a busy mayor's office.

[12] As the applicant's passport shows that he entered Sri Lanka on February 8, 2006 but not that he left in October 2006, the Board member concluded that there was no evidence to prove that the

applicant was residing in Colombo when he witnessed the mayor being bribed in August 2006. The applicant did not have any travel documents and his driver's license and National Identity Card were both issued before 2004.

[13] The Board member then concluded that his three attempts to obtain a visitor visa to come to Canada confirmed the lack of credibility of his story. Although it is not sufficient in itself, the Board member stated that, in light of the general lack of credibility, this element was relevant.

[14] As she found that there was an absence of credibility on central elements of the applicant's story, the Board member rejected the applicant's claim for refugee protection.

III. Issue

[15] While counsel for the applicant challenged quite a number of the Board's findings, the issue to be determined on this application for judicial review can be broadly summarized with the following question: Did the Board err in assessing the applicant's credibility and the plausibility of his story?

IV. Analysis

[16] Prior to the decision reached by the Supreme Court of Canada in *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, 329 N.B.R. (2d) 1, findings of fact were reviewed by this Court on a

standard of patent unreasonableness. As a result of that decision, however, the standards of patent unreasonableness and reasonableness have been collapsed into a single standard of reasonableness, in recognition of the fact that these standards were often difficult to distinguish in practice. That being said, the Court stressed that this move towards a single reasonableness standard did not pave the way for a more intrusive review by the courts and that deference was still inherent to the standard of reasonableness. To quote from Justice Bastarache's reasons (at para. 47):

> […] Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[17] There is all the more reason to heed this warning since section 18.1(4)(d) of the *Federal Courts Act* (R.S., 1985, c. F-7) was not displaced by the decision of the Supreme Court in *Dunsmuir*; indeed, the interplay between that section and the common law standards of review was not addressed by the Court, as it was not at issue in *Dunsmuir*. As a result, this Court can intervene only if it considers that the tribunal based its decision or order on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the material before it. See *Da Mota v. Canada (MCI)*, 2008 FC 386, [2008] F.C.J. No. 509 at paragraph 14 (QL); *Obeid v. Canada (MCI)*, 2008 FC 503, [2008] F.C.J. No. 633 (QL); *Naumets v. Canada (MCI)*, 2008 FC

522, [2008] F.C.J. No. 655 (QL); *Mendez* v. *Canada (MCI)*, 2008 FC 584, [2008] F.C.J. No. 771 (QL).

[18] There is no need to go individually through the various reasons given by the Board member to conclude that the applicant was not credible. While there is no doubt a presumption of truth attaching to the allegations sworn to be true by an applicant (*Maldonado* v. *Canada (M.E.I.)*, [1980] 2 F.C. 302, 31 N.R. 34), it is entirely reasonable for the Board to decide adversely with respect to the applicant's credibility on the basis of contradictions and inconsistencies in his story or on the basis that it is simply implausible.

[19] The Board examined the two letters produced by the applicant written by Mr. Cooray and his private secretary. Although the applicant claimed to have been a special assistant to Mr. Cooray, these letters were nothing more than generic thank-you letters sent to all of the participants who helped with the campaign.

[20] The applicant, in his own narrative, explains that he moved his residence on the instructions of Mr. Cooray, that he was somehow taken to Mr. Cooray's residence after having been attacked by thugs, and that he went into hiding until he fled Sri Lanka again as instructed by Mr. Cooray. Given this allegedly special relationship between the applicant and Mr. Cooray, and the fact that he was a close family friend, the Board could find it implausible that these letters made no mention of the particular events faced by the applicant in August or of the role that he allegedly played for Mr. Cooray.

[21] Considering the close relationship between the applicant and Mr. Cooray, it also seems implausible that the applicant could not locate Mr. Cooray in Australia to obtain a more detailed letter supporting his claim. And failing that, one would think he could at least have sought a more detailed letter from another official of the UNP. All of these issues, combined with the absence of any evidence of the treatment the applicant would have received as a result of the numerous assaults he claims to have been subjected to, served to impugn his credibility.

[22] In those circumstances, it was reasonable for the Board to find that these letters failed to show that the applicant was anything more than a normal worker for Mr. Cooray's campaign and fell far short of corroborating the applicant's story of alleged persecution.

[23] At paragraph 20 of his memorandum, the applicant cites the case of *Amarapala* v. *Canada (MCI)*, 2004 FC 12, 128 A.C.W.S. (3d) 358, in support of his argument:

> It is well established that a panel cannot make negative inferences solely from the fact that a refugee claimant failed to produce any extrinsic documents to corroborate a claim. But where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration for a panel if the Board does not accept the applicant's explanation for failing to produce that evidence. See *Singh v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. 755 per O'Reilly J. at paragraph 9.

[24] It is trite law that the Board has the discretion to evaluate the plausibility of a story or testimony of a claimant and to make an adverse finding of credibility on that basis. It is clearly within the purview of the Board to determine the credibility to be given to an applicant's testimony as well as that of the evidence which he produced in support of his case. In the present instance, the

Board's decision is based on various elements of implausibility, only one of which is the letter by Mr. Cooray which was considered insufficient to support the applicant's claim.

[25] One of the other key factors in the Board's decision was the applicant's inability to provide plausible, credible answers with regards to how he knew the name of the thug who bribed the mayor in his office, and the context in which he would have witnessed the mayor being bribed. Having carefully read the transcript, I am unable to find that the Board member's conclusion on these two points falls outside the range of possible and acceptable outcomes on the basis of the facts that were before her. On the basis of that transcript, I must agree with the Board member that the applicant appeared to get tangled up in his explanations as to how he found out the thug's name. Even more implausible is the applicant's story that he would have overheard from the mayor's office waiting room the thug screaming and threatening the mayor and that he would have seen the thug open a briefcase full of money. Once again, the Board member can not be faulted for having found it "hard to believe" that these men would have been so careless as to have discussed such a secret deal in front of a window, where the staff and other people waiting to see the mayor could have seen them through the open blinds.

[26] In addition, the Board took issue with the fact that the applicant was unable to prove that he was actually in Colombo in August 2006, when he would have allegedly witnessed the mayor being bribed. The applicant's passport indicates an entry to Sri Lanka in February 2006, but does not show that he left in October 2006, as he claims. He could provide no plane ticket or boarding pass to support his claim and all of the identity documents presented were issued before 2004.

[27] In evaluating the applicant's claim the Board considered his general lack of credibility as well as the context of the applicant's three failed attempts to obtain a Canadian visa from within Sri Lanka in order to visit his brother in Canada. Considering these facts, it was not unreasonable for the Board to question whether the applicant had actually returned to Sri Lanka from England in order to establish himself, as he alleges or whether he might have left Sri Lanka before August 2006, the date of the alleged persecutory events.

[28] While the applicant may not agree with the Board's assessment of the evidence adduced and would prefer assessments more favourable to his claim to refugee status, he failed to demonstrate how the Board's assessments are perverse, capricious or unreasonable.

[29] It is true that the Board member made a factual error when she stated that the applicant was persecuted by the JVP instead of the SLFP. However, this error does not in and of itself warrant allowing the application for judicial review. Indeed, it is not material to the outcome of the file.

[30] For all the foregoing reasons, I accordingly dismiss this application for judicial review.

ORDER

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

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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