

Federal Court



Cour fédérale

Date: 20101231

Docket: IMM-1985-10

Citation: 2010 FC 1338

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 31, 2010

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

SOKSOURSDEY CHED

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Ms. Ched is a citizen of Cambodia. In her Personal Information Form (PIF), she states that while visiting her daughter in Canada, she was informed that her husband, head of the Ministry of the Interior's central office in Kandal Province, and their two sons, aged 16 and 12, had been arrested by the Cambodian National Police. She alleges that her husband, a long-time activist in the main opposition party led by Sam Rainsy, has been falsely accused of espionage

and conspiracy, having been [TRANSLATION] “framed” by his assistant at the Ministry. This assistant is allegedly the nephew of Cambodia’s chief of police, Prime Minister Hun Seng’s right-hand man. She testified that her family has disappeared; she does not know where they are.

[2] On March 16, 2010, a member of the Refugee Protection Division (the panel) determined that Ms. Ched was neither a Convention refugee nor a person in need of protection. The panel did not believe the claimant’s story, being of the view that [TRANSLATION] “this story was fabricated for the purposes of this claim”.

II. The panel’s decision

[3] The panel found the applicant not to be credible because her testimony was [TRANSLATION] “inconsistent, laborious, implausible, unlikely and weak”. Ms. Ched had failed to answer the panel’s questions and had been unable to provide simple details that were essential to her narrative.

[4] The panel relied on the following to support its non-credibility finding.

[5] She had no documents, such as an indictment, to show that there had been a “serious accusation”. “No more is known”, the panel declared. The panel was surprised at Ms. Ched’s testimony that the entire family was arrested in similar situations. The panel reasoned as follows:

[10] If he is arrested for espionage, the panel is of the opinion that it is implausible that all the family, including the claimant and her children, would be arrested at once, if they are not involved in his activities. The panel explained to the claimant that the whole family is not usually arrested when someone is accused of a crime, and that, based on the documentary evidence, it appears that the situation is similar in Cambodia. The claimant had no response. Her lawyer made reference to documents from Amnesty International that discuss the assassination of an opponent and his son and of the expulsion of another opponent and his entire family; however, she could not establish that arresting the entire family when someone is accused of espionage or of any other charge, would be a common practice in Cambodia. The panel is therefore of the opinion that this is not plausible.

[Emphasis added.]

[6] The panel asked her how she learned that her children had been arrested and found her testimony to be “laborious”, adding:

. . . She finally explained that the police officers allegedly allowed them to call her sister, who then alerted her. This is a new fact that was omitted in her narrative. That part of the testimony was weak and led the panel to have serious questions about the credibility of this allegation.

[Emphasis added.]

[7] The panel added that Ms. Ched testified that her family had disappeared three years ago “but she hardly expended any effort to try and find them”. The panel drew two conclusions: first, that “[t]his [was] not the behaviour of an individual whose close relatives [had] been arrested by the State and then disappear[ed]”; and (2) her testimony lacked consistency since she had “[f]irst

of all, . . . maintained that she did nothing to try and find out what really happened to her family”, but then changed her testimony “and alleged that she had asked her sister to do something”. The panel went on to write:

Her sister allegedly contacted two NGOs in Phnom Penh who told her not to do anything because filing an official complaint with the authorities could bring her problems. This simple visit by her sister in June 2007 allegedly brought about her arrest. The panel was therefore informed, halfway through the hearing that the claimant’s sister was allegedly arrested on June 12, 2007, and was never seen again. Why was this fact omitted from her Personal Information Form (PIF)? The claimant stated she had already completed her PIF at that point. Could she not have amended her narrative three years ago by telling her lawyer about it, or telling the panel at the start of the hearing? She allegedly did not think of it. The panel rejects this explanation. The fact that her sister disappeared is very important. Had it really taken place, the panel is of the opinion that the claimant would have mentioned it before the start of the hearing. Furthermore, the change in her testimony undermines her credibility. In summary, the panel concludes that the claimant’s sister was never arrested and the panel does not believe that she approached any NGO whatsoever. This part of the testimony is not credible.

[Emphasis added.]

[8] The panel criticizes the claimant for never having initiated any enquiries in Canada to find out what happened to her family. The panel noted that Ms. Ched had testified that she had asked for advice on November 30, 2009, from a Cambodian association. The panel protested, “Why did she wait three years? The claimant had no answer.”, and found as follows:

[14] The panel is aware that the claimant does not have extensive education, but if she is

resourceful enough to claim refugee status, the panel is of the opinion that she would also have been able to approach Cambodian authorities through lawyers or human rights organizations by writing a letter or filing a complaint in order to find her family. The claimant did not demonstrate that she made any effort whatsoever. This is not the behaviour of someone who suddenly lost everything that was dearest to her in the world. In similar circumstances, people fight back; they try to contact the authorities, human rights organizations, lawyers. It appears that the claimant did absolutely nothing.

[Emphasis added.]

III. Analysis

A. *Standard of review*

[9] According to case law, a decision based on a lack of credibility is a question of fact. Since the Supreme Court of Canada's reform of standards of review in *Dunsmuir v. New Brunswick*, 2008 SCC 9, a question of fact is reviewable on the standard of reasonableness through paragraph 18.1(4)(d) of the *Federal Courts Act*, which authorizes this Court to set aside a decision of a federal board, commission or other tribunal if the decision is based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. The Supreme Court made this qualification in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, since paragraph 18.1(4)(d) is a legislative indication from Parliament on how to deal with a finding of fact. Notably, the Court must afford the federal board, commission or other tribunal a high degree of deference.

B. *The applicant's argument*

[10] The applicant submits that the panel

- erred in law by requiring evidence corroborating her testimony;
- found to be implausible some parts of her testimony, for example, that her entire family was arrested, including her children, who had nothing to do with their father's activities. In her view, this conclusion is capricious since it is based on speculation or a hypothesis not supported by the evidence;
- based its decision on Canadian paradigms or North American experience and logic when it found that Ms. Ched had done absolutely nothing to find her family; and
- ignored the documentary evidence from Cambodia on the treatment of people involved in opposition parties.

C. Conclusion

[11] I find that this application for judicial review must be dismissed. The panel's decision was based on the lack of credibility of the applicant's testimony. She had to satisfy the Court, which owes the panel's findings of fact considerable deference, that the panel had made its non-credibility finding in a perverse or capricious manner or without regard for the evidence before it. The assessment of the evidence is within the Refugee Protection Division's discretion and expertise.

[12] The respondent correctly submits that a plain reading of the transcript shows that the applicant is not credible. The panel's decision is reasonable. First, the applicant repeatedly adjusted her testimony on important elements of her story, for example, the fact that she had

asked her sister to file a complaint with the authorities and that police officers had allowed her children to call her sister, evidence she had failed to mention in her Personal Information Form. Second, she contradicted herself regarding who had told her that her children had been arrested, her sister or her husband's work friend, and third, she failed to show that it is common practice in Cambodia to arrest the entire family of an accused.

[13] Moreover, the panel was aware that there are problems with the law in Cambodia (panel's file, page 171). The panel did not ignore this evidence. I am also of the view that there was nothing unreasonable in the way the panel assessed the summons Ms. Ched received from Cambodian police in October 2007.

[14] For these reasons, this application for judicial review cannot be allowed.

JUDGMENT

THIS COURT ORDERS that this application for judicial review is dismissed. No question of general importance was proposed.

“François Lemieux”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1985-10

STYLE OF CAUSE: SOKSOURSDEY CHED v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 17, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Lemieux J.

DATED: December 31, 2010

APPEARANCES:

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