

Federal Court



Cour fédérale

Date: 20120223

Docket: IMM-4995-11

Citation: 2012 FC 251

Ottawa, Ontario, February 23, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MAYOORAN SELVALINGAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision made by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 4, 2011, wherein it was determined that the applicant was not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) nor a person in need of protection pursuant to section 97 of the Act. For the following reasons, the applicant's application for judicial review is dismissed.

I. Background

[2] The applicant is a Tamil male from the North of Sri Lanka. He was 24 years old when he sought refugee protection in Canada in February 2010.

[3] The applicant's claim is based on a fear of the LTTE, the Sri Lankan military and a paramilitary organization called the EPDP. He alleged that he faced persecution at the hands of Tamil militants and at the hands of the Sinhalese military. In his Personal Information Form (PIF), the applicant recounted the following events.

[4] In 2001, the applicant was forced, along with all the students at his school, to listen to speeches given by LTTE members. On their way back home after school, all the students were intercepted by soldiers who checked their IDs and ordered them to stand under the sun for one or two hours before letting them go.

[5] In June 2006, the applicant's father was abducted by the Tamil militant group EPDP and released only upon the payment of a bribe. In August of the same year, the applicant's brother was arrested by the military and was beaten up while in detention.

[6] The applicant's situation worsened in 2007. He recounted having been stopped at least 10 times by the military on his way to and from work. On a few occasions, he was slapped.

[7] In April 2007, he was arrested by the military following a bomb explosion that occurred in front of his house. He was accused of "knowing the person (tigers) who set the bomb." While he

denied having any information, he was beaten up and, at one point, pushed against the wall; the last incident resulted in broken teeth.

[8] He and his brother decided to flee Sri Lanka but his father could not afford to send them both away. The father chose to send the applicant's brother away because he was the eldest. His brother left in June 2007, came to Canada and was accepted as a Refugee.

[9] In December 2007, the applicant, along with a friend, was arrested again by the military and was detained for an hour. The military checked their IDs and when they found that his friend was from Jaffna, they were both "assaulted with the butt of the gun."

[10] At the hearing before the Board, the applicant stated that he had also been arrested by the military in September 2007. He stated that he was intercepted on his way back home after work, beaten up and detained for one hour.

[11] The applicant fled Sri Lanka in March 2008 and went to the United States. He was detained upon arrival in the United States and remained in detention for a period of one year and seven months. While in the United States, he filed a Refugee claim which was rejected. However, he appealed the decision, won the appeal and his file was sent back for re-determination. He was released from detention before the redetermination of his case but he left for Canada before the hearing date.

II. The decision under review

[12] The Board found that there was not a serious possibility that the applicant would be persecuted for a section 96 Convention ground if he were to return to Sri Lanka. Further, the Board held that the applicant was not a person in need of protection under paragraph 97(1)(a) or (b) of the Act.

[13] The Board made several negative credibility findings. It found that the applicant lacked credibility at the refugee hearing because he gave a testimony that was vague and lacked clarity; he provided only limited information and failed to provide any document to corroborate his allegations. However, for the purpose of this decision, it is not necessary to further expand on the negative credibility findings of the Board.

[14] The Board conducted a separate section 96 and section 97 analysis.

[15] With respect to the section 96 analysis, the Board found that listening to a one time speech from the LTTE in school in 2001 did not constitute persecution by the LTTE. Further, the Board held that the applicant's experiences at the hands of the military did not amount to persecution considering the volatile situation in Sri Lanka at the time. The Board stated that the applicant's experiences with the military may have amounted to discrimination or harassment but did not rise to the level of persecution. The Board also found that the applicant's behaviour was not consistent with a subjective fear for his life and that he was forum shopping.

[16] In addition, the Board found that the applicant had not established that he was a person of interest for the military in light of what was going on in Sri Lanka at the time. Based on the documentary evidence about the actual situation in Sri Lanka, the Board acknowledged that Tamils can still suffer injustice and harassment, sometimes with the knowledge of government, but concluded that the applicant failed to establish that he would be subject to a serious possibility of being persecuted in the future.

[17] The Board also assessed the applicant's claim under section 97 of the Act. First, the Board found that the evidence did not suggest that he would face any danger of torture within the meaning of article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Second, the Board found that the applicant had not established that it was more likely than not that he would face a risk to his life or a risk of cruel and unusual treatment or punishment should he return to Sri Lanka. The Board noted the important change of circumstances in the political environment of Sri Lanka. While the Board acknowledged that the situation is not completely resolved, it found that, given the applicant's profile and his personal circumstances, he had not established that he would be personally targeted for any reason or that he would be of particular interest to the military or to any other group should he return to Sri Lanka today.

[18] Finally, the Board found, in the alternative, that an internal flight alternative (IFA) was available to the applicant. The Board noted that the applicant's parents and sisters continue to reside in Sri Lanka and have not had any problems. The Board concluded that the applicant did not refute the possibility that he could find a place to live and employment in Colombo or Kandy. The Board

indicated that country conditions in Sri Lanka had recently improved and registration requirements had been eased in a number of locations, making it easier for the applicant to relocate.

III. Issues

[19] The applicant raised several issues but they all boil down to whether the Board's findings and conclusions are reasonable.

IV. Standard of review

[20] Neither the applicant nor the respondent made any arguments about the applicable standard of review. However, it is well established in jurisprudence that the applicable standard of review is reasonableness where the issues concern questions of fact and credibility (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*], *Tellez Picon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 129 at para 6 (available on CanLII); *Osman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 921 at para 28 (available on CanLII) or IFAs (*Vargas v Canada (Minister of Citizenship and Immigration)*, 2008 FC 367 at para 20 (available on CanLII); *Medina v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1148 at paras 13-14 (available on CanLII)).

V. Analysis

[21] The applicant attacked the Board's credibility findings on several fronts, but I do not find it necessary to expand on the applicant's arguments since this application would have failed even if the Board had not made any negative credibility findings.

[22] The applicant also challenged the Board's analysis under section 96 of the Act. He argued that he did not need to show that he had been personally targeted or persecuted in the past or that he would himself be persecuted in the future to trigger protection. Rather, it was sufficient to show that his fear resulted from persecution committed or likely to be committed against members of a group to which he belongs. The applicant relied on *Salibian c Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 at 258, 73 DLR (4th) 551, to support this argument.

[23] At the hearing before the Board, counsel for the applicant argued that being a young Tamil male from the north was sufficient to trigger Refugee protection. He based his assertion on the allegation that the government still considers Tamils as a potential danger because they could help the LTTE regain life and become a threat again. However, at the hearing before the Court, the actual counsel for the applicant took a different approach. She acknowledged that all Sri Lankans did not face a similar risk and that being a young Tamil from the North was not sufficient to trigger Refugee protection. However, she argued that the relevant "particular group" was the group composed of young Tamils suspected of having links with the LTTE. She argued that the documentary country conditions evidence establishes that Tamils suspected of having links to the LTTE are still at risk of persecution and that the applicant fits this profile.

[24] In my view, there is a fatal flaw in the applicant's argument because I consider that the evidence could not reasonably support the proposition that upon return to Sri Lanka, the applicant would be considered as a person suspected of having or of having had any links with the LTTE. The applicant's sole encounter with the LTTE in 2001 and his arrests and detention in 2001 and 2007 have to be examined within the context of the political situation in Sri Lanka at the time. Moreover, the risk that must be examined is prospective and, therefore, it must also be analyzed in light of the

changes in the situation in Sri Lanka. This is exactly what the Board did and, in light of the evidence, it was entirely reasonable for it to conclude that the applicant had not established that he was neither of special interest to the LTTE or the military before he left nor that he would be if he was to return to Sri Lanka. Furthermore, considering the applicant's allegation that he had personally been subjected to persecution, it was not unreasonable for the Board to examine that allegation and its conclusion that the incidents encountered by the applicant did not amount to persecution is reasonable.

[25] Further, it was also reasonable for the Board to conclude that the applicant had not established that he would face a risk of torture upon his return to Sri Lanka. It was also reasonable for the Board to conclude that it was unlikely that the applicant would face a personalized risk of danger to his life, or risk of cruel and unusual treatment or punishment given that he had not established, in light of the actual circumstances in Sri Lanka, that he would be targeted or be of any particular interest to the government.

[26] Moreover, nothing in the evidence supports a conclusion that the applicant would be at any risk from the LTTE or the EPDP.

[27] Therefore, the Board's reasoning and conclusions are defensible in respect of the law and of the facts (*Dunsmuir*, above, at para 47), and the Court's intervention is not warranted. Considering this finding, there is not need to go further and examine the Board's conclusions with respect to the existence of an IFA.

[28] The parties did not propose any question for certification and no such question arose in this case.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed. No question is certified.

“Marie-Josée Bédard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4995-11

STYLE OF CAUSE: MAYOORAN SELVALINGAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: February 8, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** BÉDARD J.

DATED: February 23, 2012

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