

Federal Court



Cour fédérale

Date: 20130521

Docket: IMM-6995-12

Citation: 2013 FC 522

Vancouver, British Columbia, May 21, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MATHIYALAGAN THIRUCHELVAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mathiyalagan Thiruchelvam (the Applicant) seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 6, 2012, wherein the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection (the Decision).

[2] For the following reasons, the application will be dismissed.

[3] The Applicant is a 37-year-old male and a citizen of Sri Lanka of Tamil ethnicity from Jaffna. He left Sri Lanka on September 20, 2010, due to his fear of persecution by the Sri Lankan armed forces and paramilitary groups.

[4] The Applicant decided to leave Sri Lanka when a paramilitary group demanded that he pay 300,000 rupees. When he told them that he could not pay this amount, he was told to contact his sister in Canada to ask for the money. He was given two weeks to meet this demand. The Applicant states that he knew that his life would be in danger if he did not pay, so he contacted an agent and fled on September 20, 2010. He reached Canada in January of 2011.

[5] The Port of Entry Notes (POE Notes) dated January 18, 2011, show that the Applicant said that his only previous arrest or detention occurred in 2007 when he was arrested and detained for one day during a general roundup (the 2007 Arrest). Although the Applicant subsequently filed a Personal Information Form (the First PIF) and an amended PIF, the 2007 Arrest was not mentioned in either document.

[6] The Applicant's First PIF is dated February 14, 2011. As noted above, it does not refer to the 2007 Arrest but it does provide new information about a detention by the army at a checkpoint (the Checkpoint Detention). This incident was not referred to in the POE Notes.

[7] Ten months later, in an amended PIF dated December 20, 2011, the Applicant provided a lengthy list of previously undisclosed events which included an assault, three detentions, torture and two murders. Details follow:

- October 2005: At a funeral of his murdered school principal, the Applicant was assaulted by members of a paramilitary group.
- December 2005: The Applicant witnessed the explosion of an army tractor. Army personnel from a nearby camp ran towards the explosion and started shooting indiscriminately. The Applicant was captured and was left kneeling by the side of the road for over three hours. His parents eventually secured his release.
- May 5, 2006: Army personnel and paramilitaries forcibly entered the Applicant's home and ransacked the house. The Applicant was taken to a camp known as a "torture camp". There, he was stripped naked, assaulted and tortured. He was locked in a dark room with other people and was not given food or water (the Torture Detention). After eight days, his father paid 75,000 rupees for his release. He was ordered not to associate with the Tamil Tigers and was told that he would not be released if arrested again.
- July 2006: The Applicant saw men on motorcycles shoot his cousin and another young man.
- February 2007: The army found human arms buried in the teacher's training school in the Applicant's neighbourhood. The Applicant and others were rounded up and brought to the school grounds where he was made to kneel on the ground with his hands behind his back. He was required to look up at the sun for an entire day. A church pastor negotiated their release.

[8] The Applicant's father swore an affidavit on December 12, 2011 in support of his son's refugee claim (the Father's Affidavit). However, even though the amended PIF said that the Applicant's father had paid for his release from the Torture Detention and had secured his release in 2005, neither event was mentioned in the Father's Affidavit (the Father's Omissions).

[9] The Applicant explained the long delay in disclosing the New Events in several ways. He said he was afraid harm would have come to him and to his family if he had disclosed the New Events at an earlier time (the Fears). He also said that he disclosed the New Events because an interpreter reassured him that it was safe (the Interpreter's Assurance). Lastly, he filed a Psychiatric Report prepared by Dr. Richard S. Stall, dated January 16, 2012 (the Report) to explain the delay.

[10] The Report followed one interview with the Applicant. It recited the New Events and the Applicant's reasons for delaying their disclosure. The Report concluded that in Sri Lanka, and during his early time in Canada, the Applicant had suffered from severe symptoms of Post Traumatic Stress Disorder (PTSD). However, at the time of the interview, they had decreased to a mild level. Dr. Stall also concluded that the Applicant was credible.

[11] The Report concluded that it was "likely" that at the time of his POE interview and First PIF, the Applicant could not disclose "details" about his past traumatic experiences due to the PTSD. Notably, the Report does not say that the PTSD precluded the Applicant from recalling and describing the New Events. It only explains that details might have been omitted. In other words,

the Report does not explain the Applicant's failure to mention the New Events until he prepared his amended PIF.

The Decision

[12] The Board rejected the Applicant's explanations for his failure to make timely disclosure of the New Events. It said that his Fears did not make sense because in the POE Notes and the First PIF he had already described the 2007 Arrest and the Checkpoint Detention. The Board also concluded that the Interpreter's Assurance did not justify the disclosure of the New Events because the same interpreter had assisted with the preparation of the First PIF.

[13] Because these explanations were not satisfactory, the Board concluded that the Applicant's amended PIF was not credible and this conclusion was supported by the Father's Omissions.

[14] It is significant that these conclusions were reached independently of any consideration of whether or not the Applicant suffered from PTSD.

[15] The Board ultimately discounted the Report because it was based on the New Events which it found, for the reasons described above, not to be credible.

[16] In my view these conclusions were open to the Board and the negative credibility finding was reasonable.

[17] I am also satisfied that the language used in paragraph 65 of the Decision involves a finding of fact about the Applicant's profile and does not show that the Board mistook the test to be used when deciding an application under section 96 of the Act. The test is correctly stated in paragraph 71 of the Decision.

[18] There is no question for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that upon reviewing the material filed and hearing the submissions of counsel for both parties in Toronto on May 1, 2012, the Application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6995-12

STYLE OF CAUSE: MATHIYALAGAN THIRUCHELVAM
v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 1, 2013

**REASONS FOR ORDER
AND ORDER:** SIMPSON J.

DATED: May 21, 2013

APPEARANCES:

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Ms. Sally Thomas FOR THE RESPONDENT

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