Federal Court



Cour fédérale

Date: 20130621

Docket: IMM-4243-12

Citation: 2013 FC 698

Ottawa, Ontario, June 21, 2013

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

PARTHIPAN BALASUBRAMANIAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Parthipan Balasubramaniam (the Applicant), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision of the Immigration and Refugee Board (the Board) rendered on April 5, 2012, wherein the Board concluded that the Applicant does not have a well-founded fear of

persecution and is not a person in need of protection as contemplated by sections 96 and 97 of the *IRPA*.

[2] For the reasons that follow this application is dismissed.

II. Facts

[3] The Applicant is a 28 year old Sri Lankan citizen of Tamil ethnicity. He grew up in the Vavuniya district of Northern Sri Lanka. His parents, who are farmers, continue to live in the family home in Poonthoddam, Vavuniya, with his two brothers and his sister.

[4] In July 2008, the Applicant was abducted by people he alleges were members of the Eelam People's Democratic Party [EPDP]. They came to his family home in a white van and brought him to an unknown location where they questioned, beat and tortured him for five or six days. The Applicant was injured to his eyesight as a result of the incident. He claims that his abductors suspected he had ties with the Liberation Tigers of Tamil Eelam [LTTE] because he had an uncle who had been forced to join the LTTE. The Applicant explained that he had never met this uncle and that he was killed in 2007.

[5] The Applicant's two younger brothers were also said to have been taken and beaten by the EPDP in 2008. They have not experienced any problems since then.

[6] The Applicant also claims the Sri Lankan Army picked him up at his home in April 2009 and brought him to the Pampaimadu army camp. There they accused him of supporting and recruiting for the LTTE. When he denied the allegations, he was tortured. He was released after five days.

[7] The army allegedly visited the Applicant at his home on a number of other occasions after his detention. Twice he was taken back to the army camp to be interrogated. They told him that they still believed he was an LTTE supporter and that they could make him disappear.

[8] In March 2010, the Criminal Investigation Department [CID] purportedly came to his home in order to question the Applicant and his family on why the Army was interested in him. They allegedly told him that under the Emergency Laws, he could be detained for 10 years if they suspected he was connected to the LTTE. The family had no choice but to pay 100,000 Sri Lankan rupees to prevent his detention.

[9] In early December 2010, the Applicant claims his family home was once again invaded, this time by the Karuna group, who accused the Applicant of providing food and shelter to the LTTE with the help of his relatives living abroad. They told the Applicant that he was being watched and would be killed if they discovered any evidence that he was assisting the LTTE.

[10] After this last incident, the Applicant and his family decided that he was no longer safe in Sri Lanka. They sold a portion of their land to finance the C\$30,000.00 cost of fleeing to Canada. With the assistance of an agent, the Applicant alleges he left Sri Lanka on January 25, 2011 and

travelled with his own passport after bribing customs. The Applicant claims the agent took all his travel documents from him in Guatemala.

[11] The Applicant was detained in Mexico for four months and in the U.S.A. for two months before arriving in Canada in September 2011. He did not claim asylum in any of the countries he traveled through.

[12] The Applicant contends that members of the Karuna group visited his family after his departure for Canada. Upon discovering that the Applicant had fled the country, they beat his father in front of his mother and then detained him at their camp. His mother had to arrange for someone to pay 50,000 rupees in exchange for his release. Members of the Karuna group allegedly continue to harass the Applicant's family and neighbours over his whereabouts. The Applicant alleges to be at greater risk of harm upon return now that he has fled and claimed refugee status in Canada.

III. Impugned decision

[13] The Board determined that the Applicant is neither a Convention refugee nor a person in need of protection as contemplated by sections 96 and 97 of the *IRPA*. The determinative issues were the credibility of the evidence adduced and the objective basis of the Applicant's prospective fear.

A. Negative credibility findings

- [14] The Board based its negative credibility findings on a number of observations:
 - (a) The Board found that information provided by the Justice of the Peace's [JP] letter regarding the July 6, 2008 abduction and the motive and timing of the Applicant's departure were inconsistent with the narrative in his Personal Information Form [PIF]:
 - (i) The JP's letter stated that the incident happened on July 6, 2008 and was committed by "unknown persons", while the PIF did not provide a specific date and specified the EPDP as the perpetrators;
 - (ii) Although the Applicant stated that the JP knew his family personally,
 including all of the Applicant's experiences, the letter did not provide any
 details about the incidents involving the army, the CID or members of the
 Karuna group;
 - (iii) The JP's letter did not mention that two and a half years lapsed between the July 6, 2008 abduction and the Applicant's decision to flee abroad, but could imply that the Applicant made his decision to go abroad soon after the July 6, 2008 incident; and
 - (iv) Contrary to the Applicant's PIF, the JP's letter specifies that the Applicant fled after having more problems with the same group of unknown persons that abducted him on July 6, 2008.
 - (b) The medical certificate also indicates that the abduction occurred on July 6, 2008 and was perpetrated by "unknown persons";

- (c) The Applicant failed to properly explain the discrepancies between his PIF, the JP's letter and the medical certificate;
- (d) The Applicant's explanation for why the JP only mentioned the July 2008 incident in his letter was not compelling. The Board found that the JP could have written about the other incidents without implicating the army;
- (e) The Applicant said his family went to the JP for all their needs but was unable to provide any examples of other situations when they had sought his assistance;
- (f) While the Applicant indicated that his family may have been suspected of having ties with the LTTE because his uncle had been forced to join them, he failed to adequately explain why he was the only member of his family being forced to flee;
- (g) The Board found that the if he had been arrested on suspicion of helping the LTTE he would not have been released from detention unless the army was satisfied he had no LTTE ties;
- (h) The Applicant was unable to provide any corroborative objective evidence regarding his alleged detentions and torture by the army, the CID or the Karuna group purported to have occurred after the July 2008 incident. The Board gave little probative weight to the Applicant's mother's letter:
 - (i) Due to credibility concerns regarding the Applicant and;
 - (ii) The absence of details and of any medical or other corroborative documents regarding the attack on the Applicant's father.
- (i) The Board was not provided with a passport or documents related to arrangements for his travel to Canada or proof of the land transaction his father made to finance his trip;

- (j) The Applicant failed to provide objective evidence that he lived in Sri Lanka until January 2011; and
- (k) The Applicant was detained for four months in Mexico and two months in the United States and failed to claim asylum in those countries.

[15] The Board concluded that the Applicant "failed to provide sufficient, credible and trustworthy evidence to establish that he experienced what he [had] alleged regarding the army, the CID and the Karuna" (Applicant's Record, Board's Reasons, para 42). The Board did not find that the Applicant was suspected of having ties with the LTTE in the past or that he would be suspected of having such ties were he to be returned to Sri Lanka.

B. Lack of objective basis for prospective fear

[16] Despite its credibility concerns related to the Applicant's claim of being targeted by the army and other pro-government groups, the Board then considered whether the Applicant, as a young Tamil male originating from the north "would face a reasonable chance of persecution for a Convention ground if returned" to Sri Lanka (Applicant's Record, Board's Reasons, para 53).

[17] Citing a 2010 report from the United Nations Commissioner for Refugees [UNHCR], the Board noted that since the end of the civil war "general conditions in Sri Lanka no longer justify protection based simply on Tamil ethnicity" (Applicant's Record, Board's Reasons, para 52). [18] With respect to the situation faced by returning asylum seekers, the Board noted that "there [are] conflicting reports about the treatment of returnees" (Applicant's Record, Board's Reasons, para 56). After considering the documentary evidence, the Board ultimately found that returnees are not being specifically targeted. While the evidence did show that some returnees setting up businesses had been harassed and targeted for extortion, the Board felt that the Applicant would be able to return to his former occupation as a tutor without facing more than a mere possibility of persecution. The Board also noted that the Applicant would not, on a balance of probabilities, be suspected of having links to the LLTE if returned to Sri Lanka.

[19] The Board also noted documentary evidence indicating an increase in reports of abductions for the purpose of extortion in the north of Sri Lanka, but determined that these incidents were criminal rather than political in nature and that the risk was faced by citizens perceived as having money. The Board found the risk to be a generalized one faced by a large number of other citizens. The Board thus found that the Applicant could not be considered a person in need of protection under subsection 97(1) of the *IRPA* on the basis of this threat.

[20] Ultimately, the Board concluded that the Applicant does not have a well-founded fear of persecution and is not a person in need of protection as contemplated by sections 96 and 97 of the *IRPA*.

IV. Legislation

[21] Section 96 and subsection 97(1) of the *IRPA* provide as follows:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care. premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

 (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

 (iii) la menace ou le risque ne résulte pas de sanctions légitimes sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. V. Issues and standard of review

A. Issues

- 1. Did the Board err in applying the wrong standard of proof in its analysis of the objective component of the fear of persecution invoked by the Applicant under section 96 of the IRPA?
- 2. Was the Board's credibility assessment reasonable?
- 3. Did the Board fail to consider relevant evidence before it?
- 4. Did the Board err in its understanding of generalized risk?

B. Standard of review

[22] The standard of review applicable to the first issue is that of correctness (see *Nageem v Canada (Minister of Citizenship and Immigration)*, 2012 FC 867 at para 14 [*Nageem*]; *Paramsothy v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1000 at para 19).

[23] A credibility finding is a question of fact that is reviewable on a reasonableness standard (see *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 11).

[24] The third issue deals with the Board's appreciation of the evidence before it and is reviewable on a standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v Gondara*, 2011 FC 352 at para 38).

[25] The fourth issue is reviewable on a standard of correctness (see *Innocent v Canada* (*Minister of Citizenship and Immigration*), 2009 FC 1019 at para 36).

VI. Parties' submissions

A. Applicant's submissions

1. Incorrect test

[26] The Applicant first contends that the Board applied an incorrect standard for the likelihood of persecution. The correct test is whether there is a serious possibility (i.e. more than a mere possibility but not necessarily more than a 50% chance) of persecution if a claimant is returned to their country of origin pursuant to *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 [*Adjei*]. The Applicant cites a number of instances in the decision where the Board incorrectly evaluates the Applicant's chances of persecution on a balance of probabilities standard namely paragraphs 20, 53 and 57 of the Board's decision.

[27] The Applicant contends that this error was fatal and cannot be remedied by the fact that the correct test was articulated at other points in the decision. The Applicant relies on the Federal Court of Appeal's decision in *Naredo v Canada (Minister of Employment & Immigration)*, [1981] FCJ No 1130 (CA) [*Naredo*]. In *Naredo*, the Court held that when two tests for determining refugee

protection are conflated, one correct, the other incorrect, the decision cannot stand because it is impossible to determine which test was applied to the facts.

2. Credibility findings

[28] The Applicant submits that the Board's treatment of the evidence was "perverse and unreasonable" and presents his submissions based on each piece of evidence evaluated.

a. The letter from the Justice of Peace

[29] The Applicant argues that the Board erred in making an adverse credibility finding on the basis of what the JP's letter did not say while ignoring what it did state (see *Bagri v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 784, 168 FTR 283 at para 11 [*Bagri*]; *N.N.N. v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1281 at para 73). What is more, after questioning the JP's credibility by stating that the Applicant's father had instructed him what to write in the letter, the Board later preferred the JP's evidence over the Applicant's.

[30] The Applicant also contends that the Board failed to provide any reasons for not accepting the Applicant's explanation as to why the JP's letter did not mention the Applicant's mistreatment at the hands of the army, the CID and the Karuna group (namely, that the JP feared retribution). [31] Finally, the fact that JP's letter said that "unknown persons" in a white van abducted the Applicant does not contradict his claim that members of the EPDP were involved; the information is just less specific.

[32] In sum, the Applicant argues that the Board erroneously ignored his own testimony because it faulted the JP's letter adduced to support his claim.

b. The medical certificate

[33] The Applicant also posits that the Board failed to provide any reasons for rejecting the Applicant's explanation as to why the doctor did not name the EPDP in his letter. The Applicant argues that the Board committed the same error of impugning the Applicant's credibility based on what the medical certificate did not say, as it did with the JP's letter.

c. Timing of the Applicant's departure from Sri Lanka

[34] The Applicant submits that the Board erred in concluding that the Applicant had failed to prove that he stayed in Sri Lanka until January 2011. The Board did not provide adequate reasons for not accepting the Applicant's uncontradicted sworn statement that he left in January of 2011. The Applicant asserts that the "absence of evidence is not a sufficient basis to reject uncontradicted evidence which is not inherently implausible" (Applicant's Record, Board's Reasons, page 332, para 31).

d. The mother's letter

[35] The Applicant maintains that the Board incorrectly stated that he failed to provide objective corroborating evidence for his claim. The letter from the Applicant's mother corroborated his story but was improperly given little probative weight because the Board did not find the Applicant credible. In doing so, the Board erred by assessing the mother's letter as "self serving" evidence (see *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at paras 25-28).

3. The Board ignored relevant evidence

[36] The Applicant claims that, in finding that the situation for Tamils in Sri Lanka has improved since the war ended the Board selectively relied on dated inapplicable documentary evidence, while ignoring more recent country condition reports submitted by the Applicant. For example, the Board accepted information from one source stating that Emergency regulations were relaxed in May 2010, but ignored a more recent report indicating that those regulations were replaced with "equally draconian laws [...] to continue the same kind of arbitrary detentions and mistreatment" (Applicant's Record, page 333, para 35).

4. Generalized risk

[37] Finally, the Applicant contends that the Board misunderstood the concept of "generalized risk" as it relates to protection claims, by failing to differentiate between a risk faced by Tamils and

one faced by all Sri Lankans. The Applicant maintains that "[t]here was no evidence before the panel that all Sri Lankans face extortion". In fact, the allegation is to the effect that the only evidence before the Board dealt with the targeting of Tamils by militant groups supporting the government (Applicant's Record, page 333, para 36). The Board, according to the Applicant, incorrectly concluded that the risk of extortion he could potentially face upon his return would be attributable to his having perceived wealth, since he his returning from Canada and that this risk is faced by all citizens. He should therefore be excluded from protection.

B. Respondent's submissions

[38] The Respondent submits that the Board made findings regarding the credibility and plausibility of the evidence which were reasonably open to it based on the record and that the "Applicant's position simply amounts to a disagreement with the manner the evidence was assessed and weighed" (Respondent's Memorandum of Argument, para 2).

1. Correct test

[39] The Respondent maintains that the Board applied the correct test for refugee protection. After citing a number of examples where the Board correctly articulates the test, namely paragraphs 17, 18, 19, 59 and 62, the Respondent asserts that when you look at the decision as a whole, it is clear that the Board applied the correct standard of proof of a "reasonable chance" or "more than a mere possibility". The Respondent cites *Newfoundland and Labrador Nurses' Union v* *Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 16, in support of this global assessment approach.

[40] The Respondent also notes that when the Board stated, at paragraph 53 of its decision, that it "finds on a balance of probabilities that the authorities would not have an interest in pursuing [the Applicant] and finds on a balance of probabilities that he is not a person who would attract undue attention or reprisal from militant organizations or security forces if returned to his family", it was making a credibility finding and not describing the applicable legal test.

2. Credibility findings

[41] While the Applicant claims that the Board made a credibility finding based on what the JP's letter did not say, the Respondent insists that this is incorrect. The Board looked at the JP's letter, the medical documents and the letter from the mother, and found that they were inconsistent with the Applicant's story, or at least, that they did not corroborate his claims of continuous targeting. The Respondent maintains that, because the "Board did not believe the Applicant, it reasonably required corroborative documents, which the Applicant failed to provide" (Respondent's Memorandum of Argument, para 25).

[42] Regarding the question of when the Applicant left Sri Lanka, the Board noted that Mr. Balasubramaniam did not provide any objective evidence that he remained in Sri Lanka until January 2011. The Respondent asserts that, contrary to what the Applicant submits, "the Board did not have to accept [the Applicant's] uncontradicted testimony [on this issue] if it is not "consistent with the probabilities affecting the case as a whole'" (Respondent's Memorandum of Argument, para 28).

[43] Finally, the Respondent argues that the Board did not err in assigning little weight to the Applicant's mother's letter given the Applicant's general lack of credibility. The Respondent relies on *Nasim v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1199 (CanLII) and *Waheed v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 329 (CanLII), among other decisions, in support of his position.

3. The Board did not ignore relevant evidence

[44] The Respondent submits that the Board did not ignore the country conditions evidence adduced by the Applicant. It acknowledged the problems that continue to prevail and remarked that the situation was not perfect. The Board decides how it weighs the evidence adduced before it. The Respondent also argues that, because the "Board did not have credible, claimant specific evidence to find that the Applicant possessed a fear of persecution, [...] [t]he Board was not obligated to go through the fruitless exercise of considering the objective aspect of [the Applicant's] claim by reviewing the documentary evidence in detail" (Respondent's Memorandum of Argument, para 33). The Respondent cites *Rahaman* v *Canada* (*Minister of Citizenship and Immigration*), 2002 FCA 89 [*Rahaman*], among others, as supporting the principle that country reports alone are normally insufficient to uphold a claim.

4. Generalized risk

[45] The Respondent maintains that the Board properly understood the concept of generalized risk and did not confound Sri Lankans with Tamils. The Board took note that there are still cases of extortion, particularly in the North, but emphasized that the targets are not just Tamils but any citizen with money. It therefore concluded that such a risk, even if real for the Applicant, would still be faced by others generally. The Respondent concludes that this determination is well founded and correct.

VII. Analysis

1. Did the Board err in applying the wrong standard of proof in its analysis of the objective component of the fear of persecution invoked by the Applicant under section 96 of the IRPA?

[46] The Court agrees with the Respondent that the Board did not apply an incorrect standard of proof for a "well-founded fear of persecution" in its section 96 analysis. First, as noted by both parties, the test was correctly articulated on numerous occasions throughout the decision. For example, at paragraph 21 of its decision, the Board states that it found "on a balance of probabilities that the claimant would not face more than a mere possibility of persecution if returned to Sri Lanka". Second, the two instances where the standard of proof appears to be misstated as that of on a balance of probabilities are references to the evidentiary burden for proving a reasonable chance of persecution (see *Nageem* cited above, at para 24; *Adjei* cited above, at para 5). That is to say,

when the Board stated at paragraphs 53, 57 and 62 of its decision that the "claimant has not established, on a balance of probabilities, that should he return to Sri Lanka he faces persecution", or would attract undue attention the Board most likely just omitted to include the phrase "a serious possibility of" before the word "persecution". The Court having carefully reviewed the decision as a whole as prescribed by the Supreme Court of Canada in Newfoundland Nurses cited above is convinced that the correct test was applied.

2. Was the Board's credibility assessment reasonable?

[47] The Court finds that the Board's credibility assessment was reasonable in the present instance for the following reasons.

[48] Determining the credibility of an applicant is factual in nature. "The jurisprudence is clear in stating that the Board's credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference" (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13).

[49] While the Board accepted that the Applicant's story was internally consistent, its negative credibility finding was primarily based on inconsistencies with the corroborating evidence he adduced.

[50] The Applicant argues that the Board's negative credibility finding is unreasonable because it was based on what the JP's letter and medical certificate failed to state (see *Bagri*, cited above,

at para 11). The Court disagrees. The Board clearly found inconsistencies based on the information that *was* in the JP's letter. For example, the Board noted that the JP's letter indicated that following the Applicant's abduction by unknown persons on July 6, 2008, he decided to leave Sri Lanka when the "same group had gone to his door step again and made inquiries and warned and vanished off" (see Board's Reasons, para 26). It was certainly open to the Board to find that this statement contradicted the Applicant's story that he left Sri Lanka after a visit from members of the Karuna group.

[51] Given its credibility finding, the Board determined that the Applicant had not adduced sufficient corroborative evidence to support his claim of being tortured and harassed at the hands of the army, the CID and the Karuna group on the suspicion that he had LTTE ties. "The jurisprudence holds that where a claimant's story is found to be flawed because of credibility findings, the lack of documentary corroboration is a valid consideration for the purposes of further assessing credibility" (see *Matsko v Canada (Minister of Citizenship and Immigration)*, 2008 FC 691 at para 14).

[52] The Board decided to assign little weight to another piece of documentary evidence which corroborated the Applicant's claim, his mother's letter. The Board found the letter did not provide sufficient details regarding the father's alleged beating at the hands of the Karuna group and was not accompanied by any medical or other corroborative evidence. The Applicant argues that the Board erred by preferring the JP's letter to the mother's, simply because the latter came from a relative. The Court disagrees. It is Board's prerogative to weigh the evidence and the Court will not intervene unless there are significant mistakes in the Board's findings. In the present case, the Board provided reasonable motives for giving the mother's letter little probative value. This Court's role is

not to reweigh the evidence but to ensure that the conclusion drawn by the board was one that was reasonably available.

3. Did the Board fail to consider relevant evidence before it?

[53] The Applicant argues that the Board relied on dated information in evaluating current conditions in the North of Sri Lanka while ignoring more current reports. The Respondent submits that the Board did not selectively rely on dated information and underlines that the Board acknowledged that the situation in Sri Lanka was not perfect and continued to evolve. The Respondent further contends that, given the Board's credibility findings, it was not even obliged to conduct a serious analysis of the objective country condition reports because they are not, by themselves, a sufficient basis on which the Board can uphold a claim (see *Rahaman*, cited above).

[54] The Respondent is correct in stating that a lack of credible evidence regarding the subjective element of a section 96 claim is a fatal flaw (see *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 292 at para 33; *Tabet-Zatla v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1778 at para 6 (TD)). The case at bar can be distinguished from the decision in *Yaliniz v Canada (Minister of Employment & Immigration)*, [1988] FCJ No 248, 7 Imm LR (2d) 163, cited by the Applicant, because here the Board found that the Applicant had fabricated the major portion of his claim (see Board's Reasons, para 30).

[55] The Board, however, was still required to consider the objective evidence for its section 97 analysis. As Justice Phelan wrote in *Balakumar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 20 at para 13:

"It is not necessary that there be a rigid bright line between the s. 96 and s. 97 considerations. A finding that the objective element of s. 96 had not been met could, depending on the circumstances, dispose of the s. 97 issue as well. However, the rejection of the subjective element of s. 96 does not entitle the Board to ignore the objective element of fear particularly in respect of s. 97. The form in which that consideration occurs is not one which the Court should direct – what is important is that it be done and appear to be done."

[56] The Court is of the opinion that the Board adequately assessed the objective evidence for the purpose of its section 97 analysis. The Board acknowledged that abductions for the purpose of extortion are a problem in the north and east of Sri Lanka and noted that the targets of such attacks were those perceived as wealthy. The Board accepted that the Applicant had been a victim of abduction and extortion in 2008, and might very well again be in the future, but found that this risk was a generalized one and therefore did not meet one of the conditions found in subparagraph 97(1)(b)(ii) of the *IRPA*. The evidence was appropriately addressed.

[57] The Applicant, relying on the principle set out in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35, also claimed that the Board committed a reviewable error when it failed to explain why it preferred two reports from 2010, one from the UNHCR and another from the Danish Immigration Services rather than documentation he submitted which dates from 2011 and establishes that Tamils returning to Sri Lanka are more greatly exposed to a risk of torture and extortion. It is trite law that the Board is not obligated to comment on every single piece of evidence adduced by a refugee claimant as long as it properly

Page: 24

dealt with the evidence (see *Florea v Canada (Minister of Employment and Immigration)*, (FCA), [1993] FCJ No 598 (available on QL)). In the present case, the Court is satisfied that the Board firstly acknowledged there were still problems in Sri Lanka based on conflicting reports but more importantly concluded as it did in view of the lack of claimant specific evidence to find that the Applicant had a well-founded fear of persecution.

4. Did the Board err in its understanding of generalized risk?

[58] The Board did not err in its understanding of generalized risk. It cited evidence that extortion has been on the rise in the north and east of Sri Lanka and that the targets are usually people perceived as wealthy. The Board invoked the reasons in *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, to assert that a risk is generalized when a large *segment* of the population, and not necessarily the entire population, is confronted with it. In this case, the large segment included all those perceived as wealthy who reside in the north and east. The Board thus held that to the extent that the Applicant belonged to this targeted group, he did not face a personalized risk that is not faced generally by other individuals in the north and east of Sri Lanka (see *Carias v Canada (Minister of Citizenship and Immigration)*, 2007 FC 602 at para 25). There was no error as this conclusion was supported by part of the documentary evidence in the record and was consequently an "acceptable [outcome] which [is] defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[59] The Court consequently finds that the application is dismissed as the Board's decision is reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed and

that there is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4243-12
STYLE OF CAUSE:	PARTHIPAN BALASUBRAMANIAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 13, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	SCOTT J.
DATED:	June 21, 2013

APPEARANCES:

Barbara Jackman Meghan Wilson

Monmi Goswami

SOLICITORS OF RECORD:

Jackman, Nazami & Associates Toronto, Ontario

William F. Pentney Deputy Attorney General of Canada Toronto, Ontario FOR THE APPLICANT

FOR THE APPLICANT

FOR THE RESPONDENT

FOR THE RESPONDENT