Federal Court  Cour fédérale

Date: 20130722

Docket: IMM-6959-12

Citation: 2013 FC 805

Ottawa, Ontario, July 22, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

MAUTHARAN PARARASASINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant, a citizen of Sri Lanka, of Tamil ethnicity, was the owner of a small business on a small island in the north of Sri Lanka. He arrived in Canada, travelling through the United States, in 2010. He claimed refugee protection in Canada on the grounds that he would be subject to persecution at the hands of a paramilitary group, the Eelam People's Democratic Party (EPDP), which group had allegedly subjected him extortion and threats.

[2] In a decision dated June 6, 2012, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) dismissed the Applicant's claim for protection under ss. 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The Board did not believe that the Applicant had been extorted by the EPDP or that he was suspected of being a supporter of the Liberation Tigers of Tamil Eelam (LTTE). In any event, the Board concluded that any risk faced by the Applicant had no nexus to a Convention ground and was a generalized risk.

[3] The Applicant seeks to overturn this decision.

II. Issues

[4] This judicial review turns on two issues:

1. Is the Board's credibility finding reasonable?

2. Is the Board's evaluation of nexus and generalized risk reasonable?

III. Standard of Review

[5] The Board's decision – both as to the issue of credibility and of nexus and generalized risk – is reviewable on a standard of reasonableness. When reviewing a decision on a reasonableness standard, the Court must determine "whether the decision falls within a range of

possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). Reasonableness is also concerned with whether the decision displays "justification, transparency and intelligibility" (*Dunsmuir*, above at para 47).

IV. Credibility Finding

[6] The Board expressed four reasons for concluding that the Applicant's story of extortion was not credible:

1. The EPDP's visits, as described by the Applicant, were inconsistent with documentary evidence the Applicant presented. If the EPDP wanted the Applicant to pay them, they would have succeeded or, if the did not, they would have made threats and then made an example of the Applicant. They would not have visited so many times without exacting more serious consequences. In other words, the actions of the EPDP were not "typical".

2. The Board was not convinced that the extortion was government-sanctioned simply because one sailor accompanied the EPDP. Further, if the extortion was government-sanctioned then it was implausible that the government would not have succeeded in extorting the Applicant.

3. The Applicant did not mention extortion in his application for asylum.

4. The letter from the Applicant's father, given under oath, also did not make reference to extortion.

[7] The Applicant disputes each of the four findings.

[8] In my view, the Board expressed its credibility findings clearly and they are reasonably grounded in the evidence before it.

[9] First, the Board's finding that the Applicant's story was not plausible was open to it. It is reasonable for the Board to draw inferences with respect to the plausibility of a claimant's story as long as the inferences are reasonable and clearly described (*Moualek v Canada (Minister of Citizenship and Immigration)*, 2009 FC 539 at para 1, [2009] FCJ No 631; *Aguebor v Canada (Minister of Citizenship and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 (FCA)). These findings may be based on common sense and rationality in view of the Applicant's case as a whole.

[10] In this particular case, the Board evaluated the Applicant's account of persecution by the EPDP, finding that it was not plausible. The Board concluded that it was unlikely that the EPDP would not have successfully extorted the Applicant or otherwise harmed him given the number of times they visited him. The Board relied on an IRB document submitted by the Applicant himself, which I excerpt briefly here (CTR at 557):

> … the EPDP extorts money from business owners in particular, as well as from truckers and fishermen. This money is akin to "protection money"…Extortion starts in a polite way, with the extorter stating that the money is needed for charitable purposes or

> as a "contribution to the party" even though it is well known by all involved in the transaction that this is not the case. Typically, no one shows up with a gun and threatens an individual. If, however, the person is adamant about no paying, then they will receive another visit. This visit would contain veiled threats (e.g. mentioning where the children go to school…). If an individual still refuses, the individual will have to be willing to suffer the consequences. The individual who refuses to pay will be beaten up or killed. The EPDP will make an example of someone who does not pay.
>
> [References omitted.]

[11] In my opinion, the Board reasonably relied on and directly quoted this document to demonstrate that the Applicant's account did not accord with the usual practices of the EPDP. Although I agree that the Board misstated the documentary evidence when it quoted this passage as saying that "typically one shows up with a gun", this inadvertent error is not material to the Board's reasoning. The Board relied on this particular document to demonstrate that the Applicant's account that he did not pay the EPDP and suffered no harm, aside from losing some of his store goods, after up to eight visits from the EPDP, was inconsistent with the documentary evidence.

[12] Moreover, the Board did not unreasonably assume that the EPDP has a particular *modus operandi*. The Board relied on documentary evidence for the very general point that it was not plausible that the Applicant had not suffered harm in any way after receiving so many visits from the EPDP and not paying them. The Board did not attribute any particular method to the EPDP or assume that the EPDP always acts in exactly the same way.

[13] Second, it was open to the Board to find that in the Applicant's particular case, it was not plausible that the EPDP were acting with state actors. Given the Board's existing concerns regarding the Applicant's account, it was open to the Board not to be convinced by the Applicant's description of one sailor. Even if certain documents presented by the Applicant state that the EPDP may sometimes act with state individuals or operate with impunity, it was open to the Board to conclude that the Applicant himself did not discharge his burden to demonstrate state complicity in this case.

[14] Third, it was open to the Board to take into account the Applicant's omission of the incident of extortion in his application form and at the point of entry. The Applicant stated at the point of entry that the army and navy took his vegetables and he was beaten for selling EPDP newspapers. There was no mention of extortion demands. There is a large difference between taking a few vegetables and demanding money from a business operator.

[15] The Board is entitled to draw a negative inference from differences between the Applicant's statements at the point of entry and his PIF narrative or subsequent testimony (*Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at paras 30-32, [2011] FCJ No 644). In this particular case, the Applicant omitted the critical incident to his claim, which led him to flee the country. It was open to the Board to reject the Applicant's explanation that he was trying to brief as unreasonable, in view of the centrality of this evidence to his claim.

[16] Fourth, the Board's analysis of the letter of the Applicant's father was reasonable. The Applicant's father's letter, given under oath, only mentions general dangers articulated in very vague terms. The Applicant argues that the Board erred by relying on what the document did not say (*Bagri v Canada (Minister of Citizenship and Immigration)* (1999), 168 FTR 283 at para 11, [1999] FCJ No 784). In these particular circumstances, where extortion is the specific risk, one would expect that the father would refer to that risk. The letter, however, does not mention extortion, which, as noted above, was crucial to the Applicant's claim for protection. In the context of other problems with the Applicant's testimony, it was open to the Board to draw a negative inference from this omission. Contrary to the submissions of the Applicant, there are, in my view, situations where a decision maker can rely on what a document does not say; this is one of those situations.

[17] In sum, each of the Board's findings can be supported by the evidence, even if another Board member or this Court might have viewed the evidence differently.

[18] I conclude on the credibility issue by commenting that the Board's decision must be reviewed as a whole. In this case, the Board identified four problems with the testimony which, when taken together, led the Board to conclude that it did not believe his story of extortion at the hands of the EPDP. It is not sufficient for the Applicant to identify weaknesses or alternative conclusions to be drawn from the evidence for each of the individual findings; rather the reviewing court must look at the decision as a whole. While any one of the four findings, on its own, might have been an insufficient basis for an overall finding of lack of credibility, taken

together, the Board was entirely within reason to conclude that the Applicant's story was not credible.

V. Nexus and Generalized Risk

[19] The Applicant asserts that the Board erred in finding that the Applicant does not have a nexus to a Convention Ground and that he faces only a generalized risk. The Applicant relies on the Board's acceptance that the Applicant is a Tamil and the documentary evidence describing persecution of those of Tamil ethnicity. On this issue, the Applicant's argument is interwoven with the Board's credibility findings. The Applicant accepts that, if the Court upholds the Board's credibility finding, his arguments with respect to nexus and generalized risk are weakened.

[20] Taking into account the Applicant's evidence and documentary evidence, the Board reasonably analyzed nexus. The Applicant himself testified that he was targeted because he had money, and other people who fished or farmed on a large scale were also targeted for extortion. The Board reasonably rejected the Applicant's documentary evidence since it related to a group that was not the EPDP. Lastly, the Board relied on its own documentary evidence that corroborates the Applicant's statements that the EPDP target individuals for money. The Board quoted documentary evidence stating that "the target for these groups [of the EPDP involved in extortion] could be anybody who has got money".

[21] I acknowledge that some documentary evidence suggests that the EPDP may extort Tamils. However, in the Applicant's particular case, he did not discharge his burden to show that the extortion he experienced was attributable to his Tamil ethnicity. Given the Applicant's own testimony that he was targeted for his money, it was open to the Board to conclude that no nexus exists in this case.

[22] I am also satisfied that the Board reasonably concluded that the risk of extortion described by the Applicant is a generalized one – and not one aimed at the Applicant, in particular. The Applicant testified that he was targeted for money, as are other people who farm and fish. Documentary evidence cited by the Board and relied on by the Applicant himself states that the EPDP extorts from business owners generally, as well as truckers and fishers. From the Applicant's testimony, it was within a range of possible, acceptable outcomes for the Board to conclude that this risk of crime is prevalent and is therefore a generalized risk, even if the Applicant himself was personally targeted (see, for example, *Paz Guiffaro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 182, at para 32, [2011] FCJ No 222).

VI. Conclusion

[23] In my view, the Board reasonably concluded that the Applicant is not at risk under either s. 96 or s. 97 of *IRPA*. In sum, the Board's decision was reasonable and will not be overturned. Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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