

Federal Court



Cour fédérale

Date: 20140327

Docket: IMM-11647-12

Citation: 2014 FC 297

Ottawa, Ontario, March 27, 2014

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

MANIVANNAN YATHAVARAJAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of Sri Lanka of Tamil ethnicity who sought refugee protection upon arriving in Canada on August 13, 2010, along with 492 other passengers and crew on the *MV Sun Sea*.

[2] The Refugee Protection Division of the Immigration and Refugee Board (the “Board”) denied his claim for protection as a Convention refugee and as a person in need of protection

pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] on October 23, 2012.

[3] He now seeks judicial review of that decision pursuant to section 72 of the *Act*.

[4] For the reasons that follow, the application for judicial review is dismissed.

Background

[5] The applicant described the mistreatment he faced during the civil war between the Liberation Tigers of Tamil Eelam [LTTE] and the Government of Sri Lanka as being subjected to routine checkpoints and house checks, harassment, arbitrary arrest, torture, and mortal danger. During the peace talks between 2002 and 2005, the applicant and his family relocated to government-controlled Vavuniya. During this time, the applicant hosted other family members, including his cousin, who allegedly was a high ranking member of the LTTE. After peace talks broke down, the applicant was requested to report to the army for questioning on suspicion of ties to the LTTE. Fearing persecution, he and his family relocated to a more central part of Vavuniya and remained there largely problem-free until the end of the civil war in 2009.

[6] After the civil war, the applicant and his family returned to their hometown. The applicant claims that in 2010 the army came to his house to inquire about his cousin and advised his wife that the applicant was also suspected of ties to the LTTE and that he should report to the army camp upon his return home. Fearing persecution, he fled to Thailand, attempted to register with the United Nations High Commission for Refugees [UNHCR], and then fled to Canada on the *MV Sun Sea*.

[7] Upon arrival in Canada he was detained and interviewed by Canada Border Services Agency [CBSA] officers. He did not disclose to CBSA that the Government of Sri Lanka had linked him to the LTTE through his cousin, but did so later in his Personal Information Form [PIF].

The Decision

[8] The Board determined that the applicant does not have a well-founded fear of persecution on a Convention ground in Sri Lanka and that he would not be personally subject to a risk to his life, a risk of cruel and unusual treatment or punishment, or a danger of torture if he were to return to Sri Lanka.

[9] The Board made several credibility and implausibility findings all stemming from the key incident that led the applicant to flee Sri Lanka:

- The Board remarked that in all of the applicant's interviews with CBSA, he never mentioned that he fled Sri Lanka because the army associated him with the LTTE through his cousin, who was a high ranking member. The Board rejected the explanation that he kept silent because he did not want to be considered a LTTE supporter. The Board noted that it was not logical for him to believe he should withhold this "vital information" and that, if the events had occurred as alleged, he would be eager to disclose the reason for his fear in the country in which he is seeking refugee protection.

- The Board noted the discrepancy between his oral and written testimony about why he did not tell CBSA his reasons for fleeing Sri Lanka; at the hearing, he said he was not asked by CBSA, while in his PIF, he stated that he did not want to be thought of as a LTTE supporter. The Board noted that, contrary to one of the applicant's explanations, he was in fact asked by CBSA whether he had any problems with the government or other groups and specifically whether he had any problems with the army. The applicant never mentioned that the army had associated him with his cousin.
- The Board doubted whether the army had in fact come looking for him in 2010, noting that if the army wanted to apprehend him for suspected ties to the LTTE, they would not have alerted his wife and given him an opportunity to escape.
- The Board found it unlikely that, after six years and the end of the civil war, Sri Lankan authorities would take an interest in the applicant's association with his cousin. The Board noted that the applicant's brother, who still lives in Sri Lanka, has not experienced any problems.
- The Board found it implausible that the applicant was able to obtain a genuine Sri Lankan passport if he was truly wanted by the army. The Board also noted that it was not logical for him to present and identify himself at a government passport office if he was wanted by the army.

[10] The Board concluded that “[t]aken collectively the above inconsistencies and implausibility’s [sic] have led me to the determination that the claimant’s evidence regarding being wanted by the Sri Lankan army is not credible.”

[11] The Board accepted that the applicant was a Tamil Sri Lankan who arrived on the *MV Sun Sea*, and considered whether this would give rise to his refugee claim or whether his presence onboard the ship would result in a *sur place* claim.

[12] The Board considered country condition documents, including a report of Freedom from Torture, which alleged that Tamils with actual or perceived association at any level with the LTTE face risk of torture upon their return. The Board noted, however, that it was not possible to assess the credibility of this information because this NGO had declined to provide any further information about their methodology and contacts when asked by the British Immigration Minister. The Board also considered sources indicating that the situation for young Tamil males has been improving since the end of the war, noting that in 2010, the UNHCR changed its position on the eligibility of Tamil claimants and that the Government of Sri Lanka has since released people with suspected ties to the LTTE and has organized the return of internally displaced persons, demonstrating that emergency and security measures have been relaxed. Based on the lack of objective evidence of human rights abuses towards returnees, coupled with the findings of various monitoring and fact-finding trips by British, Canadian, and Australian officials, the Board concluded that returnees are not being mistreated.

[13] The Board acknowledged that, with strong military and paramilitary presence in the North overseeing the reconstruction process, the situation in Sri Lanka is far from perfect, but found that such measures are reasonable to ensure that the LTTE does not regain a foothold.

[14] The Board concluded that there is insufficient credible evidence to establish that Sri Lankan officials would perceive this applicant as having ties to the LTTE and that he would not be at risk as a returning failed Tamil asylum seeker.

[15] With respect to the *sur place* claim, the Board found that, despite having a high chance of being identified as a passenger onboard the *MV Sun Sea*, and expecting the applicant to be truthful upon return, the applicant would be questioned, but would not be associated with the LTTE. The Board noted that there was no reason for the Sri Lankan authorities to suspect that the applicant was a LTTE supporter when he lived in Sri Lanka. The Board further noted that “[t]here is insufficient credible evidence [...] to suggest that since he fled Sri Lanka, other than his presence on the M.V. Sun Sea, the Sri Lankan Government has any further reason to believe he was associated to the LTTE.”

[16] The Board noted that, after a detailed investigation, the applicant was released by CBSA and was not otherwise the subject of an inadmissibility proceeding, which could corroborate the fact that, for years, the applicant was not a person of interest to Sri Lankan authorities. The Board noted that the result of CBSA’s investigation could place him in a better light in the eyes of Sri Lankan authorities, although they would come to their own conclusions.

Issues

[17] The applicant alleges that the Board erred in its plausibility and credibility findings, including by engaging in speculation, and that the Board erred by ignoring or wrongly rejecting evidence or selectively relying only on evidence which supported its conclusions.

Standard of review

[18] The standard of review for the Board's assessment of credibility and findings of risk and for the *sur place* claim is that of reasonableness.

[19] The role of the Court on judicial review, where the standard of reasonableness applies, is to determine whether the decision of the Board "falls within 'a range of possible, acceptable outcomes which are defensible in respect of the facts and law' (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59).

[20] It is also well-established that boards and tribunals are ideally placed to assess the credibility of refugee claimants (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, [1993] FCJ No 732 at para 4 (FCA) [*Aguebor*]); and that given its role as trier of fact, the Board's credibility findings should be given significant deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82).

Were the Board's Credibility and Plausibility findings reasonable?

[21] The applicant submits that the Board's credibility findings were based on erroneous implausibility analyses and speculation.

[22] The applicant argues that the Board erred in concluding that it is implausible for people without real LTTE links to be at risk. The applicant argues that, simply because the situation in Sri Lanka is no longer so completely dangerous that all Tamils from the North are recognized as refugees as a class, does not lead to the conclusion that none of them are refugees. The applicant argues that his own undisputed experience shows that the perception of links to the LTTE, or allegations of those links, need not be proven or even particularly logical to draw the attention of Sri Lankan officials.

[23] The applicant submits that the Board did not make a specific credibility finding about any of his experiences prior to the incident which led him to flee; therefore, his long history of allegations of LTTE involvement was believed and supports his assertion that he continues to be perceived to be linked to the LTTE.

[24] The applicant also submits that the Board erred in concluding that the discrepancy between his written and oral testimony rendered his story implausible. The applicant submits that the failure to give a complete or correct story on the first telling is not sufficient reason to impugn his credibility and that the Board must consider his personal circumstances and history.

[25] The applicant also submits that his story was not inconsistent, rather it was incomplete, and that he offered a plausible explanation for failing to provide the complete story at his interviews with CBSA.

[26] The applicant submits that the Board erred in focussing on his failure to advise CBSA of his cousin's connection to the LTTE. He argues that an analogous situation arises when an asylum seeker does not disclose his intention to make a claim for refugee status when applying for a visa. In that situation, the applicant notes that the jurisprudence has found that it is not inconsistent with a genuine claim for refugee protection to not be forthcoming with Canadian officials who can obstruct that claim (*Kukhon v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 69 [*Kukhon*]; *Bhatia v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 2010 [*Bhatia*]). The applicant notes similar case law on refugee claimants who are not entirely forthcoming at a port of entry interview (*Okoli v Canada (Minister of Citizenship and Immigration)*, 2009 FC 332 [*Okoli*]).

[27] The applicant also relies on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 6, 208 FTR 267 [*Valtchev*] to highlight that plausibility findings should only be made in the clearest of cases and should not be based on a solely Canadian perspective of what is plausible.

[28] Relying on these principles, the applicant now submits that his experience with law enforcement in Sri Lanka, and his observations of how passengers on the *MV Sun Sea* were treated upon arrival to Canada, formed the basis for his lack of faith in CBSA officers, which influenced his

choice to withhold a part of his testimony. The applicant further submits that he simply did not volunteer the information because he was never asked.

[29] The respondent submits that the applicant has mischaracterized the Board's decision. The Board did not reach a blanket conclusion that those with no real links to the LTTE would not be at risk in Sri Lanka; rather the Board found that key aspects of the applicant's claim were implausible, that the Government of Sri Lanka was not in fact interested in him and, therefore, he would not be at risk.

[30] With respect to the discrepancy between the applicant's oral and written testimony, the respondent notes that the applicant has raised a new explanation that was not presented to the Board. The respondent submits that the Board's credibility and implausibility findings are reasonable based on the evidence and explanations before it.

[31] The respondent also notes that it is undisputed that the applicant provided two different explanations for his failure to mention that his cousin was associated with the LTTE, that he did not explain the inconsistent answers to the Board at all, and that the explanation he now offers on judicial review, which is his fear of the CBSA, was not presented to the Board.

[32] The respondent submits that the present circumstances are unlike those in *Valtchev*. The Board has not "improperly injected its own version of events without evidence to support its conclusions" but has based its findings on common sense and the evidence.

The Board's implausibility and credibility findings were reasonable

[33] It is well established that the Board can determine the plausibility of testimony, and that its findings are entitled to deference. In *Aguebor, supra* at para 4, the Court of Appeal noted:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden. [Emphasis added]

[34] The Board's conclusion was not, as the applicant claims, that it was implausible for those with no real links to the LTTE to be at risk in Sri Lanka, but that the applicant's story was implausible, which undermined his credibility and led to the conclusion that he would not be at risk upon return to Sri Lanka, as he would not be perceived to be connected to the LTTE. This conclusion was clearly articulated by the Board after it considered the applicant's story and made clear credibility and implausibility findings, which, "taken collectively" undermined the credibility of the applicant's claim about being wanted by the Sri Lankan army.

[35] Although the Board must be cautious in not applying North American logic and reasoning to the applicant's behaviour, it was reasonable for the Board to conclude that the applicant's story was implausible.

[36] The discrepancy between the applicant's PIF and his testimony before the Board, as well as the different explanations about why he did not tell CBSA about the events which precipitated his departure from Sri Lanka, reasonably led the Board to make adverse credibility findings. This discrepancy was not related to his interviews and other interactions with CBSA officers, who he now states he could not trust. The explanation that he did not disclose to CBSA because he feared being linked to the LTTE does not address why he provided two other and different explanations for this omission. Moreover, it is reasonable for the Board to conclude that it was not logical for the applicant to withhold the key reason that he feared persecution from those who he seeks to protect him.

[37] As noted, the explanation the applicant now offers for not disclosing his cousin's link to the LTTE was not presented to the Board during the hearing. He also asserts that he was never asked about his fear of the authorities or the army, but we know this to not be the case, as CBSA probed this issue.

[38] The applicant referred to the jurisprudence, including *Kukhon*, *Bhatia*, and *Okoli*, where the Court found that it was unreasonable to undermine the applicants' credibility on the basis of their failure to disclose their intention to seek asylum to visa officers when seeking a visa. I do not find the current case to be analogous to the situation of the asylum seeker who does not disclose his or her intention to claim refugee status when seeking a visa. In those circumstances, a disclosure of an intention to seek asylum would defeat the applicant's visa application. In the present circumstances, the applicant was already in Canada, and disclosing to CBSA about his cousin's link to the LTTE

would not have prevented him from making an asylum claim. Moreover, it was a critical element to his claim.

[39] The applicant stated that he had no subjective fear until the army came to his house in 2010. His earlier incidents, which he seeks to rely on as credible evidence of the risk he faced, are all random events and would not inform any risk he would face now.

[40] This case is also unlike *Valtchev*. Given that the Board's implausibility findings were based on reason and evidence, it cannot be said that the Board "improperly injected its own version of events without evidence to support its conclusions" or engaged in "pure speculation". In *Valtchev*, the Court found many erroneous findings, noting at para 17, with respect to plausibility:

[17] The tribunal did not apply the principle elaborated in *Maldonado, supra*, to this applicant. The tribunal wrongly rejected the applicant's plausible testimony, and improperly injected its own version of events without evidence to support its conclusions. Finally, it was perverse for the tribunal to blame the applicant for complaining to officials about forcibly removing his mother from his apartment, thereby implying that he was responsible for his own predicament. [Emphasis added]

[41] However, more generally, the Court also noted at para 7:

[7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from

within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22].

[42] In the present case, the Board was in the best position to make credibility and implausibility findings based on the evidence before it. The findings are justified, transparent and intelligible and are reasonable.

Did the Board ignore or selectively rely on evidence?

[43] The applicant submits that the Board ignored evidence indicating that he would face a risk of persecution upon his return.

[44] The applicant argues that the Board erred in rejecting the report of Freedom from Torture on the basis that the organisation did not respond to inquiries from the British government. The applicant submits that the NGO described its methodology in a different report which the Board also had and that other credible NGOs, including Amnesty International, corroborate that being a returnee is a risk factor. The applicant submits that the documentary evidence as a whole indicates that both returned asylum seekers and anyone who can be linked in any way to the LTTE is at risk. The applicant argues that the Board uncritically accepted the conclusions of government investigations, but accorded little credence to reports of NGOs.

[45] The applicant further submits that recent case law has highlighted the appropriate analysis of group-based persecution of Tamils in Sri Lanka.

[46] The applicant submits that he is at risk due to being a failed refugee claimant, a Tamil from the North, a passenger on the *MV Sun Sea* and past accusations of being associated with the LTTE. The applicant submits, in particular, that the Board did not consider whether his passage onboard the *MV Sun Sea* would show a link or perceived link to the LTTE.

[47] The applicant also argues that the Board's reference to the fact that Sri Lankan authorities could put some reliance on the fact that he was cleared in Canada of suspicion of LTTE involvement is unreasonable, because the case law has held that the investigative results of Canadian authorities, whether negative or positive, are not conclusive of how Sri Lankan authorities would treat failed asylum seekers upon their return (*Canada (Minister of Citizenship and Immigration) v B272*, 2013 FC 870 at paras 69-70, 19 Imm LR (4th) 93 [B272]).

[48] The respondent submits that the Board assessed all the relevant evidence and did not ignore or reject evidence that contradicted its conclusion. The respondent notes that documentary evidence from Amnesty International merely states that failed asylum seekers would be at risk only if suspected of having ties to the LTTE. The respondent further submits that the Board did not "reject" the report of Freedom from Torture; rather it placed little weight on it given the lack of detail on the alleged victims and the impossibility to assess the credibility of this information.

[49] The respondent reiterates that there is no general duty on the Board to refer to all country documentation which may not support its decision. The Board adequately considered the applicant's past experience and his profile as a Tamil male who travelled on the *MV Sun Sea* and found that he was not, and would not, be perceived to have ties to the LTTE.

[50] The respondent notes that the Board's decision is not unreasonable simply because other Tamil claimants and passengers on the *MV Sun Sea* have been accepted as refugees, as each case must be assessed on its own facts. The Board considered the key issue, being whether this applicant would be perceived to have ties to the LTTE, and reasonably concluded that he would not.

The Board did not ignore evidence

[51] The Board thoroughly considered the documentary evidence concerning the situation for Tamils in Sri Lanka. It acknowledged that the situation for Tamils in Sri Lanka remained challenging, but concluded, based on the individual assessment of the applicant, that the applicant did not have a profile that would not put him at risk if he returned.

[52] The Board is not required to refer to every piece of evidence; however, it is required to consider the evidence that directly contradicts its ultimate findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 at paras 16-17). In the present case, the Board addressed the contrary evidence but gave it less weight, as it was entitled to do, and provided its reasons for so doing.

[53] Even if the Board had given greater weight to the reports of Freedom from Torture and Amnesty International, it would not have affected the Board's ultimate conclusion that the applicant did not have a profile that would put him at risk upon return. These reports indicate that returnees suspected of ties to the LTTE would be at risk. However, the Board considered many factors, including the credibility of the applicant's story, the time elapsed since the end of the war, and the

relatively problem-free reality of his brother in Sri Lanka, before concluding that the applicant was never actively wanted by the army and would not be linked to the LTTE.

[54] The Board clearly considered the applicant's status as a passenger on the *MV Sun Sea* – this could hardly be ignored. The Board found that failed asylum seekers will not be presumed to have LTTE connections upon their return to Sri Lanka on the basis that they were on the *MV Sun Sea* alone. Rather, LTTE connections could be based on being a passenger on the *MV Sun Sea* for those that the government has concluded had previous LTTE connections. As noted, the Board found that the applicant had no such connections.

[55] In *PM v Canada (Minister of Citizenship and Immigration)*, 2013 FC 77, [2013] FCJ No 136 [PM], and *SK v Canada (Minister of Citizenship and Immigration)*, 2013 FC 78, [2013] FCJ No 137, Justice Snider found the Board's determination to be reasonable following its individualized assessment of whether the particular applicant faced a risk due to perceived links to the LTTE. Justice Snider reiterated the long-standing principle that it is the risk to the particular applicant that must be assessed.

[56] In this case, the Board thoroughly considered the particular applicant's risk profile in assessing his *sur place* claim. This included consideration of the risks he faced before he left Sri Lanka and also the risks he would face based on events which occurred after he left, including being a passenger on the *MV Sun Sea*.

[57] Although the applicant has pointed to decisions where the Board found that similar applicants were in need of protection, no two cases are identical and each must be assessed by the Board on their own facts.

[58] The fact that other Tamil claimants and passengers on the *MV Sun Sea* had their claims accepted does not render the contrary finding in this case unreasonable.

[59] Justice Snider in *PM, supra* at para 17, considered a similar argument and noted:

[17] Moreover, and more importantly, the decision is reviewable on a standard of reasonableness. It is possible for different conclusions to be reached on similar facts. I acknowledge that the Applicant put forward a rational line of reasoning for finding that the Applicant was at risk because of his passage on the *M/V Sun Sea*. However, that does not mean that the line of reasoning followed by the Board is unreasonable. The existence of a range of possible outcomes is the hallmark of the reasonableness standard and is the foundation of the deference owed to decision makers. Whether this Applicant would face more than a mere possibility of persecution is a factual question to be determined by the Board. While I or another panel member might have come to a different conclusion, the decision of this Board was reasonably open to it on this particular evidentiary record. The Court should not intervene. (emphasis added)

[60] Similar facts can result in different outcomes which may or may not be found to be reasonable upon judicial review. The issue before the Board in this case was whether *this* applicant would be perceived as having ties to the LTTE and the Board found that he would not. The issue for this Court is whether this is a reasonable finding.

[61] The applicant also took exception to the Board's reference that Sri Lankan authorities would be aware of how he was not found to have LTTE connections by the Canadian authorities. I agree

that this Court has held that the investigative results of Canadian authorities, whether negative or positive, would not be conclusive of how Sri Lankan authorities would treat failed asylum seekers upon their return.

[62] In *B272*, which dealt with the Minister's appeal of a positive refugee finding, the board member rejected the Minister's argument that clearance of suspicion in Canada would hold weight upon return, noting that Sri Lankan authorities would do their own inquiries. The claimant in *B272* possessed other risk factors as well. At para 70, Justice de Montigny remarked:

[70] It goes without saying that the Sri Lankan authorities, concerned as they are with the potential resurgence of the LTTE, will want to reach their own conclusions as to who is and who is not an LTTE member or sympathizer. They would not necessarily rely on a foreign government's determination in that respect, if only because they would be applying different laws as well as different legal standards, rules of procedure and evidentiary norms. Such a conclusion undoubtedly falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.)

[63] However, there is no error on the part of the Board. In fact, the principle in *B272* is exactly what the Board ultimately acknowledged at paragraph 73 of its decision; that Sri Lankan authorities will come to their own conclusions independent of Canadian officials:

Sri Lankan authorities will obviously come to their own conclusions independent of what Canadian officials might have determined, however, that does not preclude them from considering the findings of Canadian officials. Indeed the claimant being on the M.V. Sun Sea and hence subjected to extremely close scrutiny by Canadian officials may very well place him in a better light should he return to Sri Lanka as now Canada has verified the conclusion the Sri Lankans obviously came to prior to him fleeing the country.

Conclusion

[64] The Board did not ignore any evidence; rather, it attached greater weight to some evidence, identified the evidence that it did not rely on and provided reasons for doing so. The Board conducted an individualised assessment of the applicant and concluded that upon return to Sri Lanka, he would be questioned, but that he would not face a risk to his life, or a risk of cruel and unusual punishment or treatment, or a danger of torture, because he would not be suspected or perceived to have ties to the LTTE. The Board's decision is reasonable.

[65] The application for judicial review is dismissed. The applicant had considered proposing a question for certification but did not do so.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question was proposed for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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