

Federal Court



Cour fédérale

Date: 20140428

Docket: IMM-862-13

Citation: 2014 FC 385

Ottawa, Ontario, April 28, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SING CHAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Sing Chao is a citizen of Cambodia and a Buddhist monk. He says that he fears persecution from the Cambodian authorities.

[2] The applicant alleged he was in a leadership position in the Khmer Kampuchea Krom Federation (KKKF), for which he helped organize a protest outside the Vietnamese embassy in Phnom Penh in 2007. Following that event, he claimed that he was harassed by Cambodian

authorities until he came to Canada, and he remained here because he was advised by his abbot that the police were looking for him.

[3] The Board characterized the applicant's claim as a fear of persecution due to his political opinion, but rejected his claim because he was found not credible. The Board gave the following reasons for disbelieving the applicant:

- The applicant declared in his application that his membership in the KKKF ended in 1993, and he did not mention his membership in the KKKF or his leadership role in his Personal Information Form [PIF] narrative. Although he produced a membership card, it was only issued in September, 2011, and it described him as a supporting member, not a leader. There was no other corroborating evidence of his involvement with the KKKF.
- The applicant never mentioned the 2007 protest in his PIF narrative, and he said it happened in March when the documentary evidence showed that it happened in February. Further, the applicant did not mention in his PIF narrative that he was detained and interrogated shortly after the protest. These events were central to his claim and he gave no reasonable explanation for either omission.
- The applicant was in Canada for more than two years without lawful status before seeking protection, which is inconsistent with his alleged fear of returning to Cambodia.

[4] Because the Board did not believe the applicant's evidence, it concluded that he was probably not active with the KKKF and never experienced any persecution from the authorities.

Further, although the applicant's immigration consultant had proposed that religion was another nexus to Convention protection, the applicant himself testified that he did not fear persecution for that reason. Therefore, the Board dismissed the section 96 claim.

[5] Because the applicant was not credible, the Board said there was not enough evidence to show that he faced any danger of torture or any personalized risk. Therefore, it dismissed the subsection 97(1) claim as well.

Issues

[6] Although many issues were raised in the memorandum, at the hearing counsel referenced three issues:

1. Whether the applicant was denied natural justice by the refusal of the Board to allow him to call a witness coupled with the tenure of the hearing which was characterized as the Member being "glib" and "sarcastic;"
2. Whether the Board erred in finding that there was no nexus to a Convention ground, namely religion; and
3. Whether the Board erred in its credibility finding.

[7] I find that there was no denial of natural justice. I have reviewed the transcript and find nothing particularly aggressive about the Board's questions. The applicant points to one statement where the Board member says "... people are human, even Monks are human ..." as

evidence of sarcasm. Stripped of context, such a statement could conceivably be demeaning. However, at that point in the interview, the member had already asked several times whether there were any consequences if a monk stayed out of the Pagoda longer than he was permitted, and the applicant kept responding only that it was not allowed. In making that statement, the Board was simply trying to overcome the apparent misunderstanding by emphasizing that he was concerned about what happened to a monk who disobeyed that rule. It was not sarcastic or insensitive in context. In short, there was nothing in the conduct of the hearing that was unfair to the applicant.

[8] The applicant was represented by counsel before the Board. The fact that the applicant's abbot was outside the hearing room arose indirectly when the applicant was being questioned by the Board. It was never suggested by the applicant or his counsel that he was waiting to testify. It was the Board, not the applicant or his counsel that considered whether the abbot might have relevant evidence to the point then under discussion and concluded he did not. There is no evidence before the Court to suggest that the abbot had anything relevant to offer. Further, neither the applicant nor his counsel ever asked that the abbot testify. In short, there was simply no refusal to permit the applicant to call whatever witnesses he wished.

[9] The applicant submits that it is not 100% clear from the record that there was no persecution on the grounds of religion. I find that the Board's determination that there was no such nexus was reasonable based on the evidence that Buddhism is the national religion in Cambodia and also based on the applicant's own evidence that he did not fear persecution on that

basis. Despite counsel's able submissions, it is evident to me that the applicant's own testimony was to that effect.

[10] Lastly, the Board's findings on credibility are entitled to considerable deference by this Court. The inconsistencies in the applicant's evidence and the delay in claiming protection are a sufficient basis to support a reasonable finding that the applicant was not credible. Accordingly, this application must be dismissed.

[11] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-862-13

STYLE OF CAUSE: SING CHAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 10, 2014

REASONS FOR JUDGMENT AND JUDGMENT: ZINN J.

DATED: APRIL 28, 2014

APPEARANCES:

HOWARD P. EISENBERG FOR THE APPLICANT

NICOLE PADURARU FOR THE RESPONDENT

SOLICITORS OF RECORD:

Eisenberg & Young LLP FOR THE APPLICANT
Barristers and Solicitors
Hamilton, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario