Federal Court  Cour fédérale

**Date: 20140626**

**Docket: IMM-5274-13**

**Citation: 2014 FC 618**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, June 26, 2014**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**PRASATH NAGENDRARASA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board dated June 10, 2013.

[2] The RPD rejected the claim pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act).

[3] This is an application for judicial review pursuant to section 72 of the Act.

[4] After having considered the arguments of the parties and having examined the record, the Court found that the application for judicial review must be dismissed for the following reasons.

[5] The applicant claims that he fears persecution in Sri Lanka. He is a man of Tamil ethnicity from the northeastern part of the country. He was 24 years old at the hearing. He and his family worked as fishers. His father was apparently victimized by members of the Liberation Tigers of Tamil Eelam (LTTE), who purportedly requisitioned one of the family's two boats in 2001, and then the other in 2006. The applicant was allegedly arrested by the Sri Lankan authorities in 2006, beaten and questioned about possible links to the LTTE. In 2009, a group calling itself the "Karuna group" apparently tried to extort money from the applicant's father and purportedly confined the applicant for one week to force his father to pay an alleged ransom. A member of the Karuna group then allegedly reported the applicant to the army as an accomplice to the LTTE, stating that he was lending his boats to the guerrillas. He was then apparently imprisoned from May 2010 to August 20, 2010. He escaped or was released in August 2010.

[6] Ultimately, it appears from the applicant's account that it is not clear whether he fears persecution from the LTTE, the Karuna group, the government authorities, or all of those parties.

[7] His journey to Canada took some time. The applicant testified that he left Sri Lanka on September 1, 2010, and, after a long journey, arrived at the Canadian border in Lacolle, Quebec, on May 2, 2012.

[8] He apparently travelled from Sri Lanka to South Africa and to Kenya in September 2010. He then returned to South Africa in February 2011 and flew to Brazil, either in February or in May 2011, and arrived in Sao Paulo. Between May 11 and June 11, 2011, he drove a car, or was driven in a car, to the northern border of Brazil and through Colombia, Panama, Nicaragua and Honduras, to finally arrive in El Salvador. From there, he left for Mexico by car in September 2011.

[9] He was arrested on December 25, 2011, while trying to cross the border between Mexico and Texas. Around March 28, 2012, the American authorities released him on $3,000 bail, which was paid by an uncle in New York. He went to stay with that uncle for a few weeks and claimed asylum in the United States. However, he did not wait for his hearing in the United States and explained that his uncle could no longer help him and that he preferred to seek protection in Canada. As previously noted, he arrived in Canada on May 2, 2012.

[10] The RPD found that the applicant's account was implausible, which obviously undermines his entire credibility. For example, the whole story about the family's fishing boats was inconsistent. He initially stated that "[n]othing happened with boats" between 2001 and 2006, and then stated that, between 2002 and 2006, "the LTTE took away our boat more frequently". When asked about this at the hearing, he explained that he had not understood the question in the Personal Information Form. Given the significance of the allegation of collaboration with the LTTE to his refugee protection claim, the RPD did not accept that he could not clearly testify on that point, which was central to his refugee protection claim.

[11] He could not provide details about his supposed escape from prison in August 2010 and had instead testified before the American authorities that the army had released him and told him to leave the country or be arrested again. He explained that contradiction by stating that he had been questioned via videoconference by the American authorities and had not really understood.

[12] On many occasions, the applicant changed his account concerning his journey from Sri Lanka to Canada. The RPD tried to determine whether he stated that he had crossed through Venezuela on his way from Brazil to Colombia, and whether he stated that he took a boat to get from Colombia to Panama. The panel noted that there is no highway between Brazil and Colombia, that the applicant stated that he crossed those two large countries in seven or eight days during the rainy season, and that apparently he did not see anything en route, including the fact that Colombia is in an armed conflict with the FARC. The panel found that that was not credible. The RPD was therefore unable to determine when he left Sri Lanka or where he stayed before his arrest in Texas. One would have thought that such a remarkable journey would have left a stronger impression.

[13] The RPD was no more satisfied with the explanations as to why he did not stay in New York while waiting for the outcome of his asylum claim in the United States. The applicant did not demonstrate that his uncle could not help him and he had family there, contrary to his situation in Canada. Moreover, the asylum claim had already been filed and was waiting to be processed.

[14] Thus, not surprisingly, the RPD found that the applicant was not credible and that his account was implausible; thus, he did not provide sufficient evidence to demonstrate that he was a refugee or a person in need of protection.

[15] The two issues are whether the RPD's finding was reasonable and, if necessary, whether the applicant's profile is enough in itself to demonstrate that he is sufficiently at risk if he were returned to Sri Lanka to be able to benefit from section 97 of the Act even if his personal history of persecution is not credible. The applicant claims that the RPD disregarded the extensive documentary evidence that supports the argument that his profile makes him a target.

[16] I am of the opinion that the RPD's credibility findings were completely reasonable. The contradictions and implausibilities undermined the testimony and the applicant, who has the burden of proof, had no acceptable explanation. The role of the reviewing judge is not to reassess the facts, but to ensure that the decision rendered was reasonable in light of the record. Thus, the decision must have the distinction of being within the realm of reasonableness pursuant to *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190:

> [47] . . . reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[17] In this case, the panel's reasoning was justified, transparent, and intelligible.

[18] Regarding the applicant's argument that the objective evidence on the conditions in Sri Lanka could, in itself, form the basis for his refugee protection claim, even if his personal

history did not sufficiently demonstrate past persecution or future risk, the applicant is confronted with the RPD's finding that he cannot be believed.

[19] The panel was not faced with a case of weak credibility where there could be, despite everything, support in the documentary evidence that could fill certain gaps. It did not believe the applicant's entire account. The allegations of torment in Sri Lanka, the escape, the journey in Africa, from east to west in South America, then north through Central America, Mexico, to Texas, none of that was accepted by the RPD. As previously stated, the RPD's decision is reasonable.

[20] It follows that the applicant wanted to benefit from sections 96 and 97 of the Act based solely on the documentary evidence suggesting that youths like him are more at risk. In fact, this would mean that the profile suffices, without there being anything more precise on the individual's particular circumstances. Thus, a risk that is at best generalized would guarantee the claim's success.

[21] Because the documentary evidence cannot be considered corroborative in this case, it can merely support a finding that the risk is only generalized. In my view, there should have been a minimum amount of evidence of a personalized risk. The documentary evidence is only general.

[22] A decision by Justice Boivin, then of this Court, is to the same effect. In particular, paragraph 22 of *Ayikeze v Canada (Citizenship and Immigration),* 2012 FC 1395 reads as follows:

> [22] The case law of this Court is clear that the burden is on the applicant to make the link between the objective evidence and her personal situation and, in this case, the applicant did not show that she was threatened or that she would be if she were to return to Burundi. The documentary evidence on record, in itself, cannot supplement the lack of evidence related to the applicant's particular case (citing *Dreta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1239, 142 ACWS (3d) 493, and *Nazaire v Canada (Minister of Citizenship and Immigration)*, 2006 FC 416, 150 ACWS (3d) 902).

[23] The applicant relied on *Kulasekaram v Canada (Citizenship and Immigration)*, 2013 FC 388, and *Ponniah v Canada (Citizenship and Immigration)*, 2014 FC 190. It is sufficient to find that the facts in those decisions are very different from the case at bar, where nothing remains of applicant's account. Regardless, the Federal Court of Appeal's decision in *Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 seems to me to dispose of the issue. Paragraphs 3 and 10 serve as an illustration:

> [3] To be a person in need of protection, the appellant had to show the Board, on a balance of probabilities, that his removal to Haiti would subject him *personally*, in every part of that country, to a risk to his life or to a risk of cruel and unusual treatment that is *not faced generally* by other individuals in or from Haiti (emphasis added) (the relevant legislation is annexed to these reasons).
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> . . .
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> [10] In the case at bar (*Prophete v. Canada (Citizenship and Immigration)*, 2008 FC 331), there was evidence on record allowing the Applications Judge to conclude:
>
> > [23] . . . that the applicant does not face a personalized risk that is not faced generally by other individuals in or from Haiti. The risk of all forms of criminality is general and felt by all Haitians. While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

[24] Consequently, the application for judicial review is dismissed. The parties did not submit a serious question of general importance and no question for certification arises.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. There is no question for certification.

"Yvan Roy"
Judge

Certified true translation
Janine Anderson, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5274-13 |
| **STYLE OF CAUSE:** | PRASATH NAGENDRARASA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | MAY 7, 2014 |
| **JUDGMENT AND REASONS:** | ROY J. |
| **DATED:** | JUNE 26, 2014 |

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