

Federal Court



Cour fédérale

Date: 20141229

Docket: IMM-4953-13

Citation: 2014 FC 1258

Ottawa, Ontario, December 29, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

UMATHARAN CINNATHAMBY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

(Oral Reasons delivered in Toronto on November 19, 2014)

[1] Umatharan Cinnathamby, [the Applicant], applies for judicial review of a negative decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated July 8, 2013 [the Decision]. This application was made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is now a twenty six year old Tamil citizen of Sri Lanka who lived with his family in Jaffna during and immediately after the civil war. He fled Sri Lanka because he fears the Sri Lankan army, the police, the Eelam People's Democratic Party [EPDP] and the Karuna Group.

The Decision

[3] The Board looked at the Applicant's four detentions. It found that the first three occurred during and just after the civil war, and that the fourth one was the result of a general round up in which the Applicant was caught. One detention lasted three days. The others lasted less than one day. The Applicant was beaten twice but was always released at the insistence of his father or his employer. The Applicant testified that he was never detained because of suspected ties to the Liberation Tigers of Tamil Eelam [the LTTE]. The Applicant also testified that he was able to move through checkpoints and that he left Sri Lanka without difficulty using his own passport.

[4] Based on this evidence, the Board concluded that the Applicant was never suspected by either the police or the army of having LTTE ties. The Board noted that under the UNHCR 2013 Guidelines, the Applicant did not fit the profile of a young Tamil male at risk of persecution. The Board also acknowledged that, although the Applicant and his parents faced a risk of extortion by the EPDP and perhaps by the Karuna Group, it was a generalized risk. The Board found that there was no evidence that the Applicant faced a risk of persecution for his perceived political opinion, and the Board concluded that the documentary evidence did not indicate that the Applicant faced a risk of persecution as a failed asylum seeker.

The Issues

[5] The Applicant alleges that there are four errors that make the Decision unreasonable. I will deal with them in turn.

i. Incorrect Tests for Persecution

[6] The Applicant submits that the Decision shows that the Board required the Applicant:

- to demonstrate an enhanced risk of persecution; and
- to show that he was being pursued; and
- to demonstrate that the situation for him in Sri Lanka had not improved.

[7] However, the test for persecution is properly described by the Board in paragraphs 24 and 27 of the Decision and, in my view, a fair reading of the Decision as a whole shows that the Board did not establish incorrect tests.

ii. The Board Ignored Relevant Evidence

[8] The Applicant suggested that evidence was ignored which was compelling and directly contradicted the Board's conclusions. However, I found no such evidence.

iii. The Board Reached a Simplistic Conclusion

[9] The Applicant alleges that the Board reached a simplistic conclusion because it relied on the fact that the Applicant was released after detention and allowed to leave Sri Lanka, as the basis of its finding of "no risk".

[10] However, in my view, this is not a fair portrayal of the Decision. In each case, the reason for the Applicant's release from detention was analysed and in all cases, either the Applicant's father or his employer was involved. The Board also found that the Applicant was free to move about. He was a very young Tamil male at the relevant time. His detentions were brief and few in number and he was never linked to the LTTE. Given the Board's attention to these facts, I am unable to conclude that its Decision was simplistic.

iv. A Failure to Consider the Claims Cumulatively

[11] The Board found no evidence to suggest that the Applicant has actual or perceived ties to the LTTE and the Board concluded that he is not at risk either as a Tamil or as a failed asylum seeker. That being the case, in my view, there was nothing to be gained by considering those claims together.

Certification for Appeal

[12] No question was posed for certification.

ORDER

THIS COURT ORDERS that for the reasons provided, the application is dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4953-13

STYLE OF CAUSE: UMATHARAN CINNATHAMBY v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 19, 2014

ORDER AND REASONS: SIMPSON J.

DATED: DECEMBER 29, 2014

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