

Federal Court



Cour fédérale

Date: 20160119

Docket: IMM-520-15

Citation: 2016 FC 50

Ottawa, Ontario, January 19, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

THEVANANTHINI SELVARATNAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] challenging the Refugee Protection Division's [the RPD, the Board, Panel member, or Member] decision finding the Applicant, Thevananthini Selvaratnam, to be neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act. The Applicant is seeking to have the

decision set aside and referred back to a different board. For the reasons that follow, the application is allowed.

[2] The Applicant is a single Tamil female citizen of northern Sri Lanka without male protection. She entered Canada in August 2010, aboard the MV Sun Sea and subsequently made a refugee protection claim.

[3] Before the Court, the Applicant's counsel indicated that he wished to limit his client's argument to the sole issue that the Board failed to address the specific risks for young single Tamil women in the North of Sri Lanka. The Applicant's counsel indicated that this issue had not been raised in the memorandum and although he represented the client before the Board, the memorandum was drafted by another lawyer, as he was required to work on a number of matters due to the absence of a key senior lawyer. He was unable to turn his mind to this case until shortly before this Court hearing.

[4] While the Court was of the view that an earlier indication ought to have been provided as opposed to raising the matter at the hearing proper, in the interest of justice, it nevertheless provided the parties with an opportunity to file additional written submissions on the determinative issue. It did so only after hearing the Applicant's brief remarks, which raised a reasonable possibility that the RPD's decision might be set aside.

[5] Having reviewed the parties' submissions and the materials in the Certified Tribunal Record referred to by them, I am satisfied that the Member failed to adhere to the *Chairperson*

Guidelines: Women Refugee Claimants Fearing Gender-Related Persecution [Gender Guidelines] and for that reason the decision must be set aside.

[6] The Applicant specifically directed the Board's attention to the recent decision of Member Bruin in RPD file number VB1-00133. This decision comprehensively reviewed the evidence relating to the social, cultural, religious and economic context in which Tamil women in northern Sri Lanka found themselves in 2013.

[7] In this matter, the Member provided fulsome reasons responding to several issues argued by the Applicant. These related to the Applicant's lack of credibility, and her arguments that she was at risk of being seen as a Liberation Tigers of Tamil Eelam [LTTE] adherent or supporter, a returning refugee claimant from the MV Sun Sea, or someone having a *sur place* claim from events in Canada. The Board rejected these arguments, which rulings have not been challenged.

[8] However, it nevertheless remains that the Applicant addressed the general situation of single women in northern Sri Lanka without male protection. The Board was required to address the issue, particularly as it was specifically directed to the recent decision of Member Bruin, who conducted an exhaustive review of this issue and concluded in relatively similar circumstances that it would be unreasonable to require a young single Tamil woman who was returning from abroad to relocate within Sri Lanka. Instead of dealing with this issue, the Board limited its review to an analysis of a failed LTTE supporter profile, a failed asylum-seeker profile and the Applicant's *sur place* claim.

[9] I find that the Member failed to address the Applicant's general situation as a single Tamil woman from the North without male protection returning to Sri Lanka in accordance with the Gender Guidelines. By the omission of failing to address a determinative issue raised by the party at the hearing and in her subsequent written submissions, the decision fails to meet the transparency requirement of reasonableness described in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 48, thereby constituting a reviewable error.

[10] Accordingly, the application is allowed. The Board's decision is set aside and the matter is referred back to a differently constituted panel for a redetermination. No questions are certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The decision is set aside and returned for redetermination by another Panel member; and
3. No question is certified for appeal.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-520-15

STYLE OF CAUSE: THEVANANTHINI SELVARATNAM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 26, 2015

JUDGMENT AND REASONS: ANNIS J.

DATED: JANUARY 19, 2016

APPEARANCES:

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