

Federal Court



Cour fédérale

Date: 20160128

Docket: IMM-2350-15

Citation: 2016 FC 100

Ottawa, Ontario, January 28, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SULFICAR ALI LIYAKAT ALI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a Refugee Protection Division [RPD] decision rejecting a refugee protection application on the grounds of credibility. Only in the rarest of cases should a court overturn such a finding – this is one of those cases because the Court is uncertain that, had the RPD not been confused about a material incident, the RPD would have made the same credibility finding.

II. Facts

[2] The Applicant is a Tamil speaking Muslim from Sri Lanka. He attended the Main Street Mosque in Colombo – known as the Al Jamaiul Alfar Masjid Mosque. He served on the board of that mosque and helped by cleaning and performing other odd jobs.

[3] Central to this case is the alleged attacks on two different mosques. The Applicant claimed that in August 2013, the Sinhalese group Bodu Bala Sena [BBS] attacked the Grandpass Mosque – also known as the Deen Ul Islam Mosque - when the Applicant was present.

[4] In July 2014, the BBS attacked the Main Street Mosque, also while the Applicant was present. The Applicant says that he used a loudspeaker during the attack to call on community members to protect the mosque. As a consequence, community members fought off the BBS.

[5] A central finding by the RPD was that the Applicant was not present at either attack.

[6] The Applicant claimed that he was threatened by the BBS on 7-8 occasions, abducted by them, held and beaten. He further contended that the police did not respond to his several complaints.

[7] The RPD did not accept that the Applicant had been targeted by the BBS after the Main Street Mosque attack.

[8] While there were other instances of credibility concerns, the Applicant's involvement in these attacks on the two mosques was the pivotal matter in his claim.

[9] The RPD did not accept the Applicant's narrative because of what it found to be inconsistencies in his description of his location at the time of the attacks. For example, the Applicant's testimony was inconsistent relating to whether he was on the second floor or outside the mosque at the time of the attack.

[10] This judicial review turns on the credibility determination. As such, it is subject to the reasonableness standard of review (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (Fed CA), 42 ACWS (3d) 886) with considerable deference owed to the trier of fact who observed the witness and who had expertise in the subject matter.

III. Analysis

[11] The Court is mindful of the deference owed to the RPD but in this case, the Board's conclusion cannot be supported.

[12] A review of the reasons and the transcript confirms that the RPD was confused by the Applicant's narrative. It confused circumstances of the Main Street Mosque with those of the Grandpass Mosque.

Whether this confusion arose from the Applicant's words, the translation or the member's comprehension or combinations thereof is not clear.

[13] The Respondent admitted in oral argument that the RPD was confused about the Applicant's location during the relevant events. It is clear that the RPD mixed up critical events.

[14] Therefore, this decision cannot stand. Its foundation is too uncertain.

IV. Conclusion

[15] The judicial review will be granted, the decision quashed and the matter remitted back to be determined by a different member of the RPD.

[16] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision of the Refugee Protection Division is quashed and the matter is remitted back to be determined by a different member of the Refugee Protection Division.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2350-15

STYLE OF CAUSE: SULFICAR ALI LIYAKAT ALI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 14, 2015

JUDGMENT AND REASONS: PHELAN J.

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APPEARANCES:

Jacqueline Swaisland

FOR THE APPLICANT

Laura Christodoulides

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT