

Date: 20060418

Docket: IMM-4756-05

Citation: 2006 FC 493

Ottawa, Ontario, April 18, 2006

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**KANTHASAMY SELLIAH and
MALLIKADEVI KANTHASAMY**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Selliah's and his wife's, Ms. Kanthasamy, story that they reasonably feared persecution in Sri Lanka at the hand of the LTTE, and others, was not believed by the Refugee Protection Division of the Immigration and Refugee Board. It found that although they were Tamils from Sri Lanka, their story was not credible and that they had no well-reasoned fear of persecution should they be returned to their homeland. This is a judicial review of that decision.

[2] Counsel for the applicants raised a number of issues, but the matter boils down to the circumstances relating to their alleged kidnapping by the LTTE in July 2004.

[3] Although the applicants had stated that they had had prior troubles with the LTTE, they had been left alone from December 2001 until July 2004. They were then kidnapped and held for a ransom of 50,000 rupees. The applicants thought the LTTE's renewed interest probably arose from the fact that they would have known that their son had moved to Canada and might be able to send them money for support.

[4] The Board asked the applicants how the LTTE would have known that their son was in Canada or that he had any money. They speculated that perhaps a neighbour had mentioned the fact.

[5] The Board did not find it credible that the LTTE would have waited only three months before engaging in their extortion activities. Surely they would have waited for a while longer so that the son could have saved up some money.

[6] With respect, this is pure speculation. Why should the applicants know what lay in the minds of the LTTE? To paraphrase Mr. Justice O'Reilly, "In my view, the Board fell into error when it seemed to require [Mr. Selliah and Ms. Kanthasamy] to prove that the actions of the LTTE ... were rational and justifiable." (*Yoosuff v. Canada (MCI)* 2005 FC 1116 at paragraph 8). He relied, as do I, on the fact that terrorist groups often act irrationally. There appears to have been some considerable misunderstanding about how the 50,000 rupee ransom was raised. The Board was of the view that Ms. Kanthasamy, who had allegedly paid bribes in the past, had 40,000 rupees

on her person. The Board did not find it credible that she would have had such a large amount on her person, and secondly if she did, why she would have bluffed her way through a three-day detention (six days for her husband) before paying the money.

[7] Consider the following portion of the transcript of Ms. Kanthasamy's interview in English translation:

RPO: How long did they keep you?

CLAIMANT #2: I was detained for three days; he was detained for six days.

RPO: Why were you only detained for three days?

CLAIMANT #2: They released me asking me to go and bring the money to have him released.

RPO: So, how much money were they asking you for?

CLAIMANT #2: 50,000 rupees

RPO: Were you able to arrange for this money?

CLAIMANT #2: I do farming, so I had some money with me.

RPO: How much money did you have?

CLAIMANT #2: I had 40,000 with me, and I had to borrow some money.

RPO: Who did you borrow money from?

CLAIMANT #2: There was four (inaudible), one of my neighbours who had borrowed money.

RPO: So, you asked for the money back?

CLAIMANT #2: Yes, they returned the money and then on the sixth day I went, gave the money and I had him released.

[8] The RPO (Refugee Protection Officer) in later summing up the case was of the view that Ms. Kanthasamy was saying she had 40,000 rupees available, not that she had it on her person. This is what she says in her affidavit supporting the application. Would not the LTTE have known if she had cash in hand?

[9] The finding of fact by the Board that Ms. Kanthasamy had 40,000 rupees on her person was a major factor in finding that the applicants were not credible. However, that is not what she said.

[10] Although findings of fact, including findings of credibility, should not be disturbed unless patently unreasonable, the case law is such that one must begin with the rebuttable presumption that the applicant is telling the truth. There is no evidentiary basis to disturb that presumption. Indeed, the finding cannot stand up to the slightest analysis.

[11] Consequently, I shall allow the application. There is no general question of general importance to certify.

ORDER

THIS COURT ORDERS that the application for judicial review is allowed and the matter is referred back to the Refugee Protection Division of the Immigration and Refugee Board for a redetermination by a differently constituted panel.

“Sean Harrington”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4756-05

STYLE OF CAUSE: KANTHASAMY SELLIAH and MALLIKADEVI
KANTHASAMY v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 11, 2006

REASONS FOR ORDER: HARRINGTON J.

DATED: April 18, 2006

APPEARANCES:

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