

Date: 20061013

Docket: IMM-7487-05

Citation: 2006 FC 1217

OTTAWA, Ontario, October 13, 2006

PRESENT: The Honourable Paul U.C. Rouleau

BETWEEN:

DAMIANUS SJAFEI THAMRIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Refugee Division).

[2] The applicant, Damianus Sjafei Thamrin, is a citizen of Indonesia. He is a Christian and of Chinese ethnicity. He claims that he has a fear of persecution from Muslims who target him because of his religion and ethnic background.

[3] In its decision dated December 1, 2005, the Refugee Division rejected the applicant's Convention refugee claim on the basis that he did not establish by clear and convincing proof that state protection was not available in Indonesia; further they found that there was an internal flight alternative.

[4] The Refugee Division found that the applicant did not establish by clear and convincing proof that there was no state protection available to the claimant. It based this finding on two factors; the first factor being that the applicant did not attempt to seek the help of the police. The Refugee Division rejected the applicant's allegation that he did not seek help of police because it was useless and it was necessary to bribe them.

[5] The Refugee Division cited a 2003 United States Department of State Report that indicates that the Indonesian police do make arrests of Muslims and attempt to protect its citizens. The applicant claims that the Refugee Division cited one of the Report's findings, but ignored other applicable findings of corruption and inefficiency in the Indonesian police force.

[6] In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74, the Supreme Court of Canada addresses circumstances where a refugee claimant did not seek out state protection. At paragraphs 48 and 49, Justice LaForest states:

Most states would be willing to attempt to protect when an objective assessment established that they are not able to do this effectively. Moreover, it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness.

Like Hathaway, I prefer to formulate this aspect of the test for fear of persecution as follows: only in situation in which state protection “might reasonably have been forthcoming”, will the claimant’s failure to approach the state for protection defeat his claim. Put another way, the claimant will not meet the definition of “Convention refugee” where it is objectively unreasonable for the claimant not to have sought the protection of his home authorities; otherwise, the claimant need not literally approach the state.

[7] The applicant alleges that he suffered discrimination because of his religious and ethnic background. During the course of the hearing before the Refugee Division, he speaks of one incident which would have occurred in 1985 and to a further incident when he would have been accosted by Muslims on a bus in January 1990. Then he refers to large scale riots against the ethnic Chinese in May 1998.

[8] The applicant left Indonesia in May 2001 and resided in the United States of America where he did not make a claim for refugee protection hoping there would be a general amnesty. Following the tragic events of September 2001, he registered with the American authorities and then filed a refugee claim. This he eventually withdrew because he knew that no one in his position would have been granted refugee status. He then received notice from the US authorities that he must leave by November 2004. He left and arrived in Canada October 24, 2004 and filed a refugee claim immediately.

[9] Concerning the incidents of 1985 and 1990, the applicant failed to report the incidents with the police because he felt he had to bribe officers before they would initiate any proceeding that would be of assistance. His explanation was rejected since he failed to even attempt to seek

assistance. The Refugee Division then indicated that the burden was on the applicant to establish by clear and convincing proof the absence of state protection.

[10] The Refugee Division went on to determine that even though he may have had some reticence about returning to his initial place of residence there was an internal flight alternative for this applicant in Bali.

[11] As both the Refugee Division and counsel for the respondent indicated in the documentary evidence, the Indonesian police do arrest Muslims when warranted and do attempt to protect its citizens.

[12] In assessing whether there is adequate state protection, the onus is on the applicant to show that his government has been unable to provide effective protection in particular circumstances.

[13] The applicant's position amounts to nothing more than a disagreement with the Refugee Division's weighing of the evidence and I am satisfied that its conclusion was clearly open to it based on the evidence.

[14] I am of the view that the applicant has not met the onus of satisfying the Refugee Division that he was in fact a person in need of protection.

[15] I see no obligation to comment on the internal flight alternative determination. The applicant has failed to meet the test; this application must therefore be dismissed.

JUDGMENT

The application for judicial review is dismissed.

"Paul U.C. Rouleau"

Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-7487-05

STYLE OF CAUSE: DAMIANUS SJAFEI THAMRIN v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 4, 2006

REASONS FOR JUDGMENT BY: Rouleau D.J.

DATED: October 13, 2006

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