Date: 20061220

Docket: IMM-3169-06

Citation: 2006 FC 1516

BETWEEN:

SEILA PRAK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

PINARD J.

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the IRB) dated April 12, 2006, ruling that the applicant is not a "Convention refugee" or a "person in need of protection" within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The IRB rejected the claim for refugee protection, concluding that the applicant's credibility was tainted and that his behaviour was not consistent with that of a person having a subjective fear of persecution.

Amendment of the Personal Information Form

[3] Relying on *Chahal v. Canada (M.C.I.)*, [1999] F.C.J. No. 1482 (T.D.) (QL), the applicant submits that the IRB erred in criticizing him for not having amended his Personal Information Form (PIF) to include events which happened after he had filed it.

[4] I agree with the respondent that *Chalal* does not apply in the case at bar, since in that case the applicant had failed to note in his PIF something which was not directly connected to his claim. The allegation to the effect that the applicant's parents were visited by someone who was looking for him involves evidence which is very important for the applicant's claim, and it was therefore reasonable for the IRB to draw a negative inference from the fact that the applicant did not amend his PIF to add this particular fact.

Problems with the interpreter

[5] The applicant submits that, in reviewing the IRB decision as to his credibility, the Court should take into consideration the fact that at the hearing he testified through an interpreter who had significant difficulties with the English language.

[6] From the minutes of the hearing, it is clear that the interpreter was not entirely comfortable in English and made many minor mistakes in grammar. However, I am not satisfied that the quality of the interpretation was so bad that the applicant was not heard or that the IRB's assessment of the applicant's credibility was affected. In reaching this conclusion, I rely on the fact that when the IRB could not properly understand the English translation, the interpreter repeated it in French.

The United Nations report

[7] The applicant submits that the IRB did not take into consideration the report of the Special Representative of the United Nations for Cambodia. I agree with the applicant that the IRB incorrectly noted that there was no evidence to the effect the United Nations were interested in the problem of land distribution. The document entitled "Advisory Services and Technical Cooperation in the Field of Human Rights: Situation of Human Rights in Cambodia" (UN Doc. E/CN.4/2005/116, December 20, 2004), was before the IRB, and the report mentioned that the Special Representative was concerned about the situation of peasant farmers in Cambodia, considering the cases in which they were victims of violence in conflicts over land.

[8] Although the report mentioned that the Special Representative was concerned about the problem of land distribution, this is not conclusive evidence that state agents were still interested in the applicant.

Credibility

[9] After reviewing the evidence, I am not satisfied that the IRB, a specialized tribunal, could not reasonably reach the conclusions it did (see *Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315, at pages 316 and 317 (F.C.A.)). A tribunal's impression that the claimant is not a credible witness may sometimes effectively amount to a finding that there is no credible evidence to support his or her claim for refugee protection (see *Sheikh v. Canada (M.E.I.)*, [1990] 3 F.C. 238, at page 244 (C.A.)). It is trite law that in matters of credibility and the assessment of facts, it is not up to this Court to substitute its view for that of an administrative tribunal such as the IRB when, as in this case, the

person seeking judicial review fails to establish that the tribunal rendered a decision based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Delay in making the claim for refugee protection

[10] The respondent submits that the applicant does not have a subjective fear of persecution, because he waited more than three months before claiming refugee protection.

[11] To the extent that the claim is based on section 96 of the Act, the applicant concedes that any delay is a factor from which the IRB may draw a negative inference about a claimant's subjective fear of persecution. However, the applicant submits that he had no reason to be afraid until the moment his visa expired, that is, on December 10, 2005.

[12] This argument must fail, as the applicant did not wait until December 10, 2005 to claim refugee protection. He made his claim on September 27, 2005. The applicant explained that he was waiting to see if the situation in Cambodia would improve. However, the respondent notes that the applicant testified that he had decided at the end of June to remain in Canada to make a claim for refugee protection. In the circumstances, I am of the view that it was open to the IRB to determine that the applicant's behaviour was not consistent with that of a person with a subjective fear of persecution.

[13] Finally, with regard to the application of section 97 of the Act, an analysis on the basis of this provision became unnecessary once the IRB concluded that the applicant's credibility was tainted.

In *Kaur v. Minister of Citizenship and Immigration*, 2005 FC 1710, my colleague Mr. Justice de Montigny wrote the following:

> [16] With respect to the lack of a distinct analysis regarding subsection 97(1), the Board was entirely justified not to undertake that exercise from the moment where it determined that the applicant was not credible. If the Board was correct on that point, it is clear that the applicant could not have been considered to be a person in need of protection. Incidentally, that is what this Court has determined on numerous occasions: *Bouaouni v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1540; 2003 FC 1211 (QL)*; Soleimanian v. Canada(Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 2013; 2004 FC 1660 (QL); *Brovina v. Canada(Minister of Citizenship and Immigration*,[2004] F.C.J. No. 771, 2004 FC 635 (QL).

[14] In my opinion, the IRB's findings concerning the credibility of the applicant and his subjective fear of persecution are not patently unreasonable. The application for judicial review is therefore dismissed.

"Yvon Pinard"

Judge

Ottawa, Ontario
December 20, 2006

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3169-06
STYLE OF CAUSE:	SEILA PRAK v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 22, 2006
REASONS FOR ORDER BY:	The Honourable Mr. Justice Pinard
DATED:	December 20, 2006

APPEARANCES:

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Date: 20061220

Docket: IMM-3169-06

Ottawa, Ontario, the 20th day of December 2006

Present: The Honourable Mr. Justice Pinard

BETWEEN:

SEILA PRAK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

The application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board dated April 12, 2006, ruling that the applicant is not a "Convention refugee" or a "person in need of protection" within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

Certified true translation
Michael Palles