Date: 20070427

Docket: IMM-5689-06

Citation: 2007 FC 450

Montréal, Quebec, April 27, 2007

Present: The Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

ABDUL RAHIM IBUNU MAJEED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated September 27, 2006, refusing the applicant Abdul Rahim Ibunu Majeed status as a refugee and a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

[2] The applicant asks this Court to set aside the Board's decision and return the matter to the Refugee Protection Division for rehearing and redetermination before a differently constituted panel.

FACTS

[3] The applicant, a 36-year-old Indian citizen of India of Tamil descent and Muslim faith.

[4] Since 1997, he has operated a shop selling electronic goods imported from Malaysia, Singapore, and Hong Kong.

[5] One of his clients, a man named Govindan, has connections with a member of Parliament named Harun. When the client refused to pay for goods purchased from the applicant in 1999, the applicant ceased supplying him.

[6] In fall 1999, while returning from a trip to Singapore, the applicant was arrested by airport security and accused of having supported Muslim terrorists in India and a terrorist group in Sri Lanka known as the "Liberation Tigers". He was allegedly detained until the end of December 2000 because of the Harun's influence.

[7] In February 2003, the client in question was killed, and his supporters blamed the applicant for his death.

[8] The applicant was arrested at the beginning of June 2005 and detained by the police in connection with the death of the client, Govindan. Before being released a few days later, the applicant was interrogated and beaten by the police. The applicant blames his detention on Harun.

[9] Subsequently, members of the Harun gang threatened the applicant and insisted that he close down his shop, which he refused to do.

[10] At the end of January 2005, the applicant was arrested, detained and beaten by the police. They allegedly repeated that he would have to close down his shop. The applicant once again refused.

[11] Following his release, his lawyer advised him that members of the Harun gang were looking for him and that if he did not close down his shop, they would kill him and build a false case against him showing that he finances terrorists.

[12] In mid-February 2005, the applicant tried to leave India to fulfil certain commitments he made to clients, but the police arrested him at that time and detained him for five days.

[13] The applicant was released thanks to the intervention of his lawyer. He left India for Canada on March 1, 2005, and in August 2005, he applied for status as a refugee and person in need of protection.

IMPUGNED DECISION

[14] On September 27, 2006, the Board determined that the applicant was not a refugee within the meaning of section 96 of the IRPA or a person in need of protection within the meaning of section 97 of the IRPA. This decision was essentially based on the existence of an internal flight alternative.

[15] In this decision, it was also determined that the applicant did not establish that he had been persecuted by reason of one of the grounds specified in section 96 of the Act, namely his race, religion, nationality, membership in a particular social group or political opinion. The decision concluded with a determination that events giving rise to the applicant's fears were due to business competition with Harun. In that context, the Board noted that the complaint made against the applicant, far from being based on a charge of assisting terrorist groups, actually concerned the smuggling of gold ingots.

[16] In its decision, the Board found the applicant's narrative to be credible with respect to his business rivalry with the Harum gang, subject to a few contradictions which it found to be implausible. Accordingly, the Board determined that the applicant had not established that his arrest in November 1999 was the result of a frame-up by Harun. In addition, it noted that this conflict was local in nature, taking care to point out that the applicant was able to make several trips to the Far East during this conflict and that for the moment he was not wanted by the authorities in his country.

[17] In concluding that there was an internal flight alternative, the Board determined that the applicant did not satisfy it that the business conflict with Harun would continue if he were to move to another region in India, be it Mumbai, Calcutta, or any other place in this large country sufficiently far from Chennai, where the applicant had operated his shop up to now. In addition, the Board was of the opinion that an internal relocation of the applicant within his country would not cause him any unusual, undeserved or disproportionate hardship within the meaning of the decisions in *Thirunavukkarasu* v. *M.C.I.*, [1994] 1 F.C. 589 (C.A.) and *Rasaratnam* v. *Canada*, [1992] 1 F.C. 706 (C.A.).

ISSUES

[18] The Court must decide whether the Board committed a reviewable error when it concluded that there was an internal flight alternative and therefore refused to recognize the applicant as a Convention refugee.

STANDARD OF REVIEW

[19] Where the Court is called on to review a decision of the Board concerning an internal flight alternative, the applicable standard of review is patent unreasonableness when, as in this case, it is a question of applying settled law to all of the evidence filed (*Gilgorrii v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 559).

[20] However, where this Court's review of a decision of the Board concerns the question of whether there is nexus between the alleged persecution and one of the five grounds in the definition of "Convention refugee" in section 96 of the IRPA, the applicable standard is reasonableness

simpliciter, as stated in *La Hoz v. Canada (Minister of Citizenship and Immigration),* [2005] F.C.J. No. 940 (QL).

ANALYSIS

Did the Board commit a reviewable error in concluding that there was an internal flight alternative (IFA)?

[21] The applicant submits that in reaching this conclusion the Board failed to take into consideration the applicant's special situation and that this is a reviewable error. More specifically, he stresses the lack of a business network outside of Chennai, a language barrier, and problems related to religion. He adds that even if he moved elsewhere in India, he would still face business competition from Harun, whom he considers to be a danger to him.

[22] Meanwhile, the respondent submits that the applicant did not discharge his burden of showing there was no IFA.

[23] The applicant had to show that the Board committed a patently unreasonable error in concluding on a balance of probabilities that he was not in serious danger of being persecuted in the place suggested as an IFA and in ruling on the basis of all the circumstances in the applicant's case that the situation in the suggested place was such that it was not unreasonable for him to seek refuge there (*Thirunavukkarasu* v. *Canada (Minister of Employment and Immigration),* [1994] 1 F.C. 589 (C.A.)).

[24] The applicant has the burden of showing that a decision should be subject to judicial review.

[25] The applicant did not show how the conclusion reached by the Board to the effect that there was an internal flight alternative was patently unreasonable. He simply alleged that he would always be threatened by Harun even if he moved, and that he would continue to fear the police.

[26] The Board's conclusion about the existence of an internal flight alternative was based on its analysis of the facts, which led it to characterize the business conflict between Harun and the applicant as being strictly local in scope and, moreover, to determine that the applicant was not wanted by the police.

[27] A study of the file shows that the Board's reasons for concluding as it did in its decision are supported by the evidence. It was its duty to assess the weight and credibility to be attached to each element of that evidence.

[28] The Court notes that nothing in the applicant's Personal Information Form (PIF) or in his testimony clearly shows that the business competition at the root of his problems in India was national in scope, as opposed to being strictly local. The Court also notes that in his testimony the applicant admitted that no warrant for his arrest had been issued against him in India.

[29] As regards the unreasonableness of the internal flight alternative, the applicant only invoked the lack of domestic business connections elsewhere than in Chennai, a language barrier, and problems related to ethnicity. However, it is acknowledged that it is not unreasonable to identify an

internal flight alternative where an applicant could not find suitable employment (*Thirunavukkarasu* v. *Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.)).

[30] Furthermore, the applicant did not establish either before this Court or before the Board how his ethnic origin and his language were unreasonable obstacles to his moving to an internal flight alternative, especially considering that he had the onus of showing the lack of an IFA (*Rasaratnam* v. *Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.)).

[31] All things considered, the Court is of the opinion that the applicant did not discharge the burden of establishing that the Board committed a patently unreasonable error warranting the intervention of this Court in concluding that there was an IFA.

Did the Board commit a reviewable error in excluding the applicant from the definition of Convention refugee?

[32] The applicant submits that the Board erred in determining that his claim for refugee protection had no nexus with the five grounds of persecution specified in the Convention and accordingly that he was excluded from the definition of Convention refugee.

[33] The lack of an IFA in the country of origin of a claimant for refugee protection or a person in need of protection is part of the definition of these concepts, as appears from sections 96 and 97 of the IRPA. Accordingly, the existence of an IFA is fatal to any claim for refugee protection.

[34] Given the Court's conclusion on the first issue, and even if the Board had erred in answering this question, it is not necessary in this case to rule on the merits of the criticism of the Board on this point.

[35] The parties were invited to submit a question for certification but did not submit any.

[36] For all these reasons, the Court concludes that there is nothing warranting review.

ORDER

THE COURT ORDERS that:

The application for judicial review be dismissed. No question is certified.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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