Date: 20071009

Docket: IMM-4148-06

Citation: 2007 FC 1040

Ottawa, Ontario, October 09, 2007

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VAITHY PHILIP SOOSAIPILLAI
MARGARET SOOSAIPILLAI,

Applicants

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 (the “IRB” or the "Board") dated July 5, 2006, wherein the Board determined that the applicants were not Convention refugees according to Section 96 of the Act, nor "persons in need of protection" according to Section 97 of the Act.

[2] The applicants, aged 74 and 70 respectively, are husband and wife, Tamil citizens of Sri Lanka, with an alleged fear of extortion at the hands of the Liberation Tigers of Tamil Eelam

(LTTE) by reason of their belonging to a particular social group: Tamils with relatives living abroad.

[3] The applicants allege that after the LTTE took control of Jaffna in 1990 they became the victims of extortion.

[4] In October 1995, the applicants allege they were displaced to Kilinochchi and their eldest daughter left for Canada. Subsequently they fled to Mankulam where the LTTE continued to extort money and forced them to work. The applicants fled to Mallavi and then Vavuniya, all the while being questioned and harassed by the police. They reached Colombo and another daughter left to live in Canada.

[5] A ceasefire agreement was then brokered between the government and the LTTE after which the LTTE openly extorted money from individuals including the applicants, abducted people, and killed political opponents.

[6] On November 9, 2004, the applicants arrived in Canada with visitors' visas.

[7] On February 4, 2005, they made a claim for protection in Canada.

[8] In a decision dated July 5, 2006, the IRB concluded that the claimants were not Convention refugees nor "nor persons in need of protection" as they were not credible nor did they rebut the presumption of state protection.

[9] Credibility and implausibility findings are questions of fact and are therefore reviewable on a standard of patent unreasonableness, *Aguebor v. Canada (Minister of Employment and Immigration)*, (1993) 160 N.R. 315 (QL**),** (*Xu v. Canada (Minister of Citizenship and Immigration)*, [2005] FC 1701, [2005] F.C.J. No. 2127 (QL), at para. 5; *Asashi v. Canada (Minister of Citizenship and Immigration)*, [2005] FC 102, [2005] F.C.J. No. 129 (QL), at para. 6; *Canada (Minister of Citizenship and Immigration) v. Elbarnes*, [2005] FC 70, [2005] F.C.J. No. 98 (QL), at para. 19; Findings reviewable on this standard will remain undisturbed unless they are "clearly irrational" or "evidently not in accordance with reason", *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941, at pp. 963-64).

[10] The Board's reasons are not to be read microscopically, *Boulis v. Canada (Minister of Manpower and Immigration)*, [1974] S.C.R. 875 at page 885. The decision must be assessed as a whole and within the context of the evidence and in context. As stated by the Supreme Court of Canada in *R. v. Gagnon*, 2006 SCC 17:

> "… appellate review does not call for a word-by-word analysis; rather, it calls for an examination to determine whether the reasons, taken as a whole, reflect reversible error."

[11] The Board found the applicants incredible on various grounds. It indicated that the female applicant's testimony was hesitant and improvised when asked about the LTTE's reaction to her and her husband's departure from Sri Lanka. The Board also highlighted the female applicant's conflicting testimony with respect to the date of the last LTTE extortion. The contention that the applicants would be abducted from Colombo to Vanni for failure to pay the LTTE was considered to be implausible given the long distance and multiple checkpoints between the two areas. Moreover, the Board questioned how the LTTE could know where the applicants resided and that they had children living abroad given the large number of Tamils living in Colombo.

[12] I am satisfied that overall, taken as a whole, these findings are supported by the record and cannot be said to be "clearly irrational".

[13] The applicant further submits that the Board erred in failing to consider the risk of future persecution given that the Board accepted their identities and family status. In *Seevaratnam v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 694 at para.11, I held that the Board had erred when it denied the applicant's claim without assessing remaining credible evidence emanating from sources other than the applicant's testimony. However, where an applicant's testimony is the only evidence linking the applicant to its claim, finding that the applicant lacks credibility will indicate that no credible evidence exists *Sheik v. Canada (Minister of Employment and Immigration) (F.C.A.),* [1990] 3 F.C. 238.

[14] The applicants finally submit that the Board erred in failing to carry out a separate s.97 analysis. It is well established that the requirement to carry out a separate s.97 analysis is to be

assessed on a case by case basis and in consideration of a country's human rights record; however, the assessment must be individualized (*Bouaouni v. Canada (Minister of Citizenship and Immigration)*, [2003] FC 1211, [2003] F.C.J. No. 1540 (QL), at para 41).

[15] Moreover, in *Bouaouni*, *supra*, Blanchard J. clarified the relationship between credibility findings and the requirement of an independent s.97 analysis at paras. 41 and 42:

> […] It follows that a negative credibility determination, which may be determinative of a refugee claim under s. 96 of the Act, is not necessarily determinative of a claim under subsection 97(1) of the Act. […] Apart from the evidence that the Board found to be not credible, there was no other evidence before the board in the country documentation, or elsewhere, that could have led the Board to conclude that the applicant was a person in need of protection.

[16] In the present case, there was no independent evidence meriting an independent s.97 analysis. The evidence tendered before the Board raised no issues outside of the applicants' refugee claim. As there was no independent evidence, there was no need for the Board to conduct a separate s.97 analysis.

JUDGMENT

[17] **THIS COURT ORDERS that** the application for judicial review of the Immigration and Refugee Board decision is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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