

Date: 20071024

Docket: IMM-5899-06

Citation: 2007 FC 1102

Toronto, Ontario, October 24, 2007

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

VASANTHAKUMAR MAHALINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a young Tamil male citizen of Sri Lanka. He claimed Convention Refugee status in Canada. By a written decision dated October 4, 2006, a Member of the Immigration and Refugee Board determined that the Applicant was not a Convention Refugee and not a person in need of protection, thus the Applicant's claim was rejected. The Applicant seeks judicial review of that decision.

[2] For the reasons that follow, I find that the application is dismissed. There is no question for certification. There is no order as to costs.

[3] Applicant's Counsel raises only one issue which is stated at paragraph 2 of his Memorandum as follows:

2. It is respectfully submitted that there is one issue in this application, the particulars of which are as follows:

a. the Board accepts evidence regarding the applicant's identity, profile and ethnicity as credible. It rejects the refugee claim purely on "credibility" issues and the fact that "not all young Tamil males from Sri Lanka" are persecuted. The Board fails, however, to conduct a separate objective risk analysis of the claim pursuant to section 97(1)(a) and (b) of the Immigration and Refugee Protection Act, (IRPA), based on the applicant's remaining credible evidence, which is precisely what he based his refugee upon.

[4] More concisely, the issue can be stated:

"Did the Board fail to conduct a proper separate objective risk analysis of the Applicant's claim pursuant to sections 97(1)(a) and (b) of the IRPA"

[5] As to the Applicant's (claimant's) identity, the Board did not make a definitive finding. At page 1 of the Reasons, the Board says that the Applicant "purports to be a national of Sri Lanka" and claims refugee protection based on race and "imputed political opinion" and that he "claims a fear" of the Tamil Tigers and government authorities of Sri Lanka. As to identity, it appears that the Minister does not make an issue, on this application, that the Applicant is a young Tamil male citizen of Sri Lanka.

[6] The Reasons of the Board began the analysis portion with the statement at page 3 that:

“The claimant’s evidence lacked believability in several areas. This along with inconsistencies led to the undermining of his credibility.”

[7] The Board proceeded with almost six pages of analysis with several examples to support its findings of lack of credibility. At pages 9 and 10 of the Reasons, the Board concluded:

In assessing the evidence the panel finds that the series of inconsistencies have conspired to lead to the conclusion that the claimant is not credible and that the inconsistencies have arisen because his story over and over again to the same degree of accuracy as would have been the case if it had really been his true experience. The claimant’s lack of credibility also points to a lack of subjective fear which is a prerequisite of all refugee claims.

Given this lack of subjective fear therefore, and especially in light of the fact that there is no documentary evidence before me which would suggest that all young Tamil males are persecuted in Sri Lanka, I find that there is less than a mere possibility that the claimant would be persecuted for a Convention ground should he return to Sri Lanka today.

[8] In particular, as to sections 97(1)(a) and (b) of IRPA, the Board concluded at page 10 of its Reasons:

In assessing whether the claimant would face cruel and unusual treatment or punishment or a danger of torture, I have taken into account counsel’s submissions as well as the evidence regarding the fighting that has erupted once again in Sri Lanka. Apart from the fact that I find the claimant not to be credible with regard to his allegations, I find that the danger he would face because of the conflict that has once again broken out, is no more than that of the general population and therefore find on a balance of probabilities that there is no a reasonable change or

a serious possibility that the claimant would personally suffer harm within the meaning of Subsection 97(1)(a) or (b) of the Immigration and Refugee Protection Act.

[9] Applicant's counsel argues that the Board failed to make a clear finding as to the Applicant's identity. Counsel concedes that there was a negative finding as to the Applicant's credibility but argues that not all of the Applicant's evidence was found to lack credibility and that there was sufficient evidence left such that the Board was required to engage in a separate and objective assessment as to risk under section 97(1) on the basis of personalized risk to the Applicant.

[10] This type of argument has recently been considered by Justice de Montigny of this Court in *Ayaichia v. Canada (MCI)*, 2007 FC 239 where he summarized at paragraph 19:

19 This case has been repeatedly followed by other members of this Court. While it is always better to analyze both sections 96 and 97 where an applicant has invoked the two grounds in support of his or her claim, failing to do so will not always be fatal to an otherwise sound decision. If the evidentiary basis for both claims is the same and the applicant's story is not believed, there will be no need to proceed to a separate 97 analysis, as there will be no evidence to ground the applicant's claim that he or she is in need of protection: see, for example...

[11] In the present case, there was a general finding that the Applicant lacked credibility. The Board, at page 10 of its Reasons gave specific and separate consideration to sections 97(1)(a) and (b) of IRPA. While the reasoning is not as detailed as the reasoning in the proceeding pages it is

clear that the Board gave separate consideration to personal risk. The Applicant has not shown, on a standard of simple reasonableness, that the decision was wrongly made or failed to consider material evidence that would have favoured the Applicant.

JUDGMENT

For the Reasons provided;

THIS COURT ADJUDGES that:

1. The application is dismissed;
2. There is no question for certification;
3. There is no order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5899-06

STYLE OF CAUSE: VASANTHAKUMAR MAHALINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
Respondent

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 24, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: October 24, 2007

APPEARANCES:

Robert Blanchay

FOR THE APPLICANT

Lorne McClenaghan

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert Blanshay
Barrister & Solicitor
Toronto, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT