Date: 20071023

Docket: IMM-3270-06

Citation: 2007 FC 2003

Toronto, Ontario, October 23, 2007

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

SINNARASA SINNATHURAI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant (claimant) is an elderly adult male Tamil citizen of Sri Lanka who is seeking refugee protection in Canada pursuant to section 96 and 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended (IRPA). The Applicant's wife and six children have been accepted into Canada as Convention refugees. A Hearing was held by the Immigration and Refugee Board as to the Applicant's claim and on April 20, 2006 a Member of the Board gave a written decision in which it was determined that the Applicant was not a Convention refugee or

person in need of protection, thereby denying the Applicant's claim. Judicial review is now sought by the Applicant in respect of that claim.

[2] The Applicant has raised the following issues:

1. Were the findings of the Board patently unreasonable in determining that the lack of documentary evidence to corroborate the Applicant's assertions as to beatings and requirements to report lead to a conclusion of lack of credibility? (Patent Unreasonableness)

2. Was there a breach of a duty of fairness in finding that there was no corroboration of the Applicant's assertions as to a requirement to report weekly to the army without calling upon Applicant's wife for corroboration? (Duty of Fairness)

3. Did the Board err in not considering the Applicant's subjective fear of living in Columbo as a reasonable Internal Flight Alternative? (IFA)

1) <u>Patent Unreasonableness</u>

[3] The first issue is whether the findings of the Board patently unreasonable in determining that the lack of documentary evidence to corroborate the Applicant's assertions as to beatings and requirements to report lead to a conclusion of lack of credibility?

[4] The findings of the Board Member in this respect are set out at paragraph 2 of his Analysis:

> *2. The claimant alleges that the army accused him of giving his house to the LTTE. They detained him at Nelliady army camp, beat him on his back with batons, and ordered him to sign every week in camp. When he was asked if he suffered injuries from those beatings, he replied negatively. He said "Why should I want to tell a lie?" At the time of the alleged incident, the claimant was 67 years-old. The tribunal let it be known that it was unaware of documentary evidence corroborating that the army beat senior citizens, more particularly someone of the claimant's age. The tribunal is also not aware of documentary evidence that would corroborate that the army would ask someone of the claimant's age to come and sign every week. The army is known to have been weary of young Tamils (Exhibit A-1, 2.6 at 2.3). After considering the entire evidence, the tribunal does not believe, on a balance of probabilities, that the army detained the claimant, beat him or made him sign on a weekly basis. This is an embellishment to a weak claim.*

[5] The Board stated that it had considered the entire evidence noting in particular the lack of documentary evidence that would corroborate the Applicant's assertion that a person of 67 years of age would be beaten by the army. Counsel have reviewed the most pertinent documentary evidence with the Court and while there is documentary evidence to indicate that young male Tamils and those of some political profile may be sought out for abuse, nothing supports an assertion with respect to an elderly Tamil person. The Board is entitled to look for corroboration where a claimant's evidence is in question and otherwise unsupported. Justice Blanchard of this Court in *Khan v. Canada (MCI)*, 2002 FC 400 at paragraph 17 and 18 reviewed and summarized the pertinent jurisprudence:

> ***17*** *While there is no legal requirement to produce corroborative evidence, it was not unreasonable in the particular circumstances of this case for the CRDD to consider, as one of the several factors in assessing the well-foundedness of the applicant's fear, the complete absence of any evidence suggesting that the Taliban were targeting members of the Gadoon tribe. I believe the statement of Mr. Justice Hugessen in Adu v. Canada (M.E.I.), [1995] F.C.J. No. 114 (C.A.), online: QL (FCJ) is applicable to the circumstances of this case:*
>
> > *The "presumption" that an Applicant's sworn testimony is true is always rebuttable, and in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention. (Emphasis added).*
>
> ***18*** *The jurisprudence of this Court has clearly established that it is within the specialized jurisdiction of the CRDD to decide how much weight to assign to the evidence. It is also well established that the CRDD is entitled to rely on documentary evidence in preference to the testimony provided by a claimant. Furthermore, the tribunal is also entitled to give more weight to the documentary evidence, even if it finds the applicant to be trustworthy and credible. [Zhou v. Canada (M.E.I.), [1994] F.C.J. No. 1087 (F.C.A.) online: QL].*

[6] It was reasonably open to the Board to weigh the Applicant's evidence as against the documents pertinent to the case and make its assessment of the evidence as a whole. The decision of the Board is not patently unreasonable and will not be set aside on this basis.

2) Duty of Fairness

[7] The second issues is whether there a breach of a duty of fairness in finding that there was no corroboration of the Applicant's assertions as to a requirement to report weekly to the army without calling upon Applicant's wife for corroboration?

[8] The Applicant was represented by Counsel at the hearing. The Applicant was free to present such evidence as he chose and to lead the evidence of such witnesses as he chose. His Counsel was free to examine and cross-examine. The Applicant bears the burden to make out his case; he cannot assume or require the Board to present his case for him. This point was made by the Federal Court of Appeal in *Ranganathan v. Canada (MCI)*, [2000] 2 FC 164 per Letourneau JA. for the Court at paragraph 10:

> ***10*** *I am of the view that the Board cannot be faulted for not having addressed in its reasons the fact that Tamils are not allowed to reside in Colombo for more than three days. It appears from a version of the transcript of the hearing before the Board that the respondent was represented by counsel at the hearing and never raised that issue with the Board. The burden was on the respondent to establish that living in Colombo was not an internal flight alternative because of the alleged three-day policy. One would have expected her to raise that issue if it was really a serious concern to her. But she did not and the Board was entitled to assume that this was a non-issue especially as she had lived there for four years before departing for Canada in 1997.*

[9] A review of the Tribunal Record, and in particular the transcript of the hearing demonstrates that there was no failure of any duty of fairness to the Applicant.

3) IFA

[10] The third issue was Did the Board in not considering the Applicant's subjective fear of living in Columbo as a reasonable Internal Flight Alternative?

[11] Counsel for the parties were agreed at the hearing that while the Board has a duty to raise the issue as to whether there exists in the Applicant's country a suitable Internal Flight Alternative (IFA), once that issue is raised, the Applicant has the burden of demonstrating that the IFA is not reasonable.

[12] Applicant's Counsel argues that Columbo is not a reasonable place of refuge within Sri Lanka given that the Applicant is elderly, a Tamil and without any family there to support him. While there is sympathy for the Applicant's situation, a situation which should be given serious consideration should the Applicant make a claim under humanitarian and compassionate (H&C) grounds; such a situation does not make Columbo an unreasonable flight alternative. As Letourneau JA. said at paragraph 15 of *Ranganathan* supra:

> ***15*** *We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be*

> *jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.*

Conclusion

[13] Accordingly, the application will be dismissed. No counsel requested certification and none will be given. There is no special reason to award costs.

JUDGMENT

For the Reasons given;

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

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