

Date: 20071029

Docket: IMM-5578-06

Citation: 2007 FC 1101

Toronto, Ontario, October 29, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MOHAMED FARHAM MOHAMED MASHOOD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Mohamed Mashood claimed refugee protection in Canada based on his fear of political persecution in Sri Lanka. A panel of the Immigration and Refugee Board dismissed Mr. Mashood's claim because of a lack of credible evidence. Mr. Mashood argues that the Board did not afford him a fair hearing and erred in its treatment of his testimony. He asks me to order a new hearing before a different panel of the Board.

[2] I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

I. Issue

1. Did the Board treat Mr. Mashood unfairly?
2. Did the Board err in its treatment of the evidence?

II. Analysis

1. *Did the Board treat Mr. Mashood unfairly?*

[3] Mr. Mashood submits that the Board questioned him aggressively, did not give him a chance to explain apparent inconsistencies in his testimony, and adopted a hostile attitude toward him, all of which caused him to become confused and upset.

[4] I have reviewed the transcript of the hearing in its entirety. It appears to me that there were points during the hearing when the presiding member was having difficulty understanding Mr. Mashood's testimony. He clearly became frustrated. While this conduct was less than exemplary, I cannot conclude that Mr. Mashood was denied a fair opportunity to present his evidence. This conclusion is borne out by the Board's reasons which, as discussed below, set out a fair assessment of the evidence.

[5] Mr. Mashood also argues that the Board unfairly questioned him at the end of the hearing when there was no opportunity for him to clarify his testimony through further questions from his

own counsel. Again, having reviewed the transcript, I do not accept this submission. Mr. Mashood's counsel had an opportunity to put further questions to him after the Board had completed its questioning. Any remaining ambiguities in his testimony could have been resolved at that point in the hearing.

[6] Finally, Mr. Mashood suggests that the Board refused to allow his counsel to question him first because it was worried that it would take too much time. At the opening of the hearing, the presiding member mentioned that he had granted a similar request in another case that morning which caused him to be late for Mr. Mashood's hearing. As I view the exchange between the Board and counsel on this point, I am satisfied that the Board felt that it would not be unfair for it to question Mr. Mashood first. The comment about being late was simply an off-hand remark that should not be taken out of context.

2. *Did the Board err in its treatment of the evidence?*

[7] In its reasons, the Board pointed out numerous grounds for doubting Mr. Mashood's account of events. Before me, Mr. Mashood challenged two areas of the Board's decision.

[8] First, the Board noted that Mr. Mashood had trouble remembering the date of the provincial election in which he stood for office. He had given various dates between July and October 2004. At one point during Mr. Mashood's testimony, the Board asked him if he was sure about the date. In essence, he answered "to the best of my recollection". In its reasons, the Board noted that Mr.

Mashood had said he was sure about the date and then contradicted himself. Mr. Mashood points out that he never actually said he was sure. This is a minor quibble. It is clear that Mr. Mashood's testimony on this point was inconsistent. Even though he did not actually say he was sure about the date, it was open to the Board to draw an adverse inference from his inability to identify when the election had taken place.

[9] Second, the Board noted two areas where Mr. Mashood's testimony seemed implausible. Mr. Mashood had stated that his political opponents had not targeted him during election campaigns because they would not have wanted to attack him in public. In addition, Mr. Mashood had said that he was arrested on suspicion of having associated with terrorists but, while in detention, he had not been subjected to physical abuse. The Board found both accounts unlikely. The Board noted that, if political opponents had actually targeted Mr. Mashood, they could easily have found an opportunity to cause him harm during the election campaign. Further, the Board concluded from documentary evidence that, if Mr. Mashood had been suspected of having terrorist connections, it is likely that he would have been subjected to physical abuse while in detention.

[10] I can find no basis for overturning the Board's decision on the basis of these findings. They were open to the Board on the evidence before it.

[11] Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that :

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5578-06

STYLE OF CAUSE: MASHOOD v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: October 16, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'Reilly J.

DATED: October 29, 2007

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