

Date: 20071128

Docket: IMM-5057-06

Citation: 2007 FC 1256

Vancouver, British Columbia, November 28, 2007

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DHILAKAVATHY CHATHASIVAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Dhilakavathy Chathasivam (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”). In its decision, dated June 12, 2006, the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”), respectively.

[2] The Applicant is a 30-year old woman from Sri Lanka of Tamil ethnicity. She sought refugee status in Canada on the basis of her fear of the Sri Lankan Army Forces and forced recruitment by the Liberation Tigers of Tamil Eelam (“LTTE”).

[3] The Board rejected her claim on the basis of a negative assessment of the Applicant’s credibility. It did not believe her evidence relative to the activities of the LTTE in the Jaffna area in April 2000 when the LTTE launched its largest offensive before the imposition of the ceasefire in 2001.

[4] The Board did not believe the Applicant’s claim that she had been used as a human shield by the army. The Board did not believe that the Applicant was at risk from the Sri Lankan Army Forces.

[5] The first matter to be addressed is the applicable standard of review, having regard to a pragmatic and functional analysis. The Act contains no privative clause and this factor tends in favour of deference to the decision-maker. The Board is a specialized tribunal and this factor also favours deference. The purpose of the Act is to regulate the admission of persons into Canada. This is a broad purpose which favours deference. Finally, the nature of the question here is a factual one: does the Applicant satisfy the requirements of section 96 or subsection 97(1) of the Act? Factual findings are generally assessed on the standard of patent unreasonableness, having regard to paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[6] The evidence in the Tribunal Record supports the findings of the Board. In addition to weighing the evidence, the Board was in the position of being able to assess the demeanour of the Applicant and the manner in which she testified. The Board commented upon these factors, referring for example to her hesitation in describing certain events.

[7] I cannot say that the Board's conclusions were patently unreasonable. I am not persuaded that the Board erred either in its application of any legal test or by breaching the rules of procedural fairness.

[8] In the result, the application for judicial review is dismissed. There is no question for certification arising.

ORDER

The application for judicial review is dismissed. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5057-06

STYLE OF CAUSE: Dhilakavathy Chathasivam v. The Minister of
Citizenship and Immigration

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 16, 2007

**REASONS FOR ORDER
AND ORDER:** HENEGHAN J.

DATED: November 28, 2007

APPEARANCES:

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Ms. Kristina Dragaitis FOR THE RESPONDENT

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