

Date: 20080130

Docket: IMM-2567-07

Citation: 2008 FC 93

BETWEEN:

**Hettiarachchige TISSERA
Naharanpitage S TISSERA
Hasagani Chathurangi TISSERA
Hiromi Chalanayani TISSERA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), in which it concluded that the applicants were not “Convention refugees” or “persons in need of protection” as defined in sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicants are a husband, wife, and two daughters, who come from Sri Lanka. The applicants' claim is based on Hettiarachchige Tissera's (the "principal applicant") alleged fear of persecution on the basis of his political opinions.

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[3] After summarizing the facts and determining that the identity of the applicants was not in issue, the Board proceeded to analyze the principal applicant's claim. "Although the panel accepts that the main claimant is a well-known personality in Sri Lanka, the claimant having adduced many documents to that effect [. . .], the panel finds that the main claimant's allegations of kidnapping and beating are not credible."

[4] In particular, the Board found inconsistencies between the principal applicant's and his wife's interviews with an Immigration Officer, and between the principal applicant's interview and his narrative on his Personal Information Form. The principal applicant tried to explain these inconsistencies by stating that he had not revealed the details of the incidents he alleged to his wife, and that he had trouble understanding the interpreter when he was interviewed. The Board found these explanations to be unsatisfactory. It found it implausible that the principal applicant would not tell his wife about the danger to prevent her from returning to Sri Lanka when she was in the United States, or to explain why they had to leave Sri Lanka so quickly, or, at the very least, in preparation for their refugee claim in Canada. Additionally, the Board noted that the principal applicant was a well-traveled individual who was able to speak English, and had said that he had been able to understand the interpreter.

[5] Furthermore, the Board noted that the applicants had obtained Canadian visas in March 2005, and that it believed, in light of the principal applicant's explanation that he had wanted to be prepared to flee the country, "that the claimants intended to leave their country well before July 2005, when the incidents the main claimant alleged were the reasons for their departure, occurred."

[6] The Board accepted that the principal applicant did openly criticize the Government's actions, and that the documentary evidence demonstrates that the Government does not tolerate criticism:

. . . it is possible that they would greatly be displeased when a well-known businessman takes it upon himself to criticize their management of goods sent from abroad and realized what it could mean to their reputations in the donor countries. The Government and the organizations he belonged to and spoke for, (his remarks reflecting on them) could have seen him as a liability and made life unpleasant for him.

However, the panel does not believe this equates to persecution as defined by the Convention.

[7] Finally, the Board addressed two medical reports filed by the applicants, but noted that they "cannot be considered *bona fide* psychological evaluations" as they were not prepared by a psychologist, and the family doctor had only referred the principal applicant to a social worker.

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(1) Did the Board err in its credibility finding?

[8] In rejecting the principal applicant's allegations of kidnapping and beating, the applicants submit that the Board failed to recognize that sworn statements are presumed to be true, and unreasonably dismissed his explanations. According to the respondent, however, the Board's determination was perfectly justified.

[9] The Board has complete jurisdiction to make findings on credibility, and the Court is not to intervene in these findings in the absence of an erroneous finding of fact that the Board made in a perverse or capricious manner or without regard to the material before it (see, for example, *R.K.L. v. Minister of Citizenship and Immigration*, 2003 FCT 116, [2003] F.C.J. No. 162 (T.D.) (QL) and *Azad v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 136 (T.D.) (QL)). A sworn statement is presumed to be true, but only in the absence of evidence to the contrary, which can include omissions, inconsistencies, and implausibilities (*Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315; *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (C.A.) (QL); *Kairouz v. Minister of Citizenship and Immigration*, 2004 FC 158, [2004] F.C.J. No. 206 (T.D.) (QL)). While the Board must take account of the applicant's explanations for any such omissions, inconsistencies or implausibilities, it is up to the Board to determine whether these explanations are convincing (*Hosseini v. Minister of Citizenship and Immigration*, 2002 FCT 402, [2002] F.C.J. No. 509 (T.D.) (QL); *Kasdali v. Minister of Citizenship and Immigration*, 2002 FCT 204, [2002] F.C.J. No. 269 (T.D.) (QL); *Muthuthevar v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 207 (T.D.) (QL)). However, in doing so, it must be careful to recognize the fact that claimants come

from diverse cultures (*R.K.L., supra; Valtchev v. Minister of Citizenship and Immigration*, 2001 FCT 776, [2001] F.C.J. No. 1131 (T.D.) (QL)).

[10] In this case, the Board pointed to inconsistencies between the principal applicant's claim and that of his wife, as well as the fact that the applicants had already obtained Canadian visas well before the events which they allege caused them to flee their country. The Board did not accept the applicants' explanations on these issues. The applicants state that the Board must be careful when assessing the plausibility of claims from diverse cultures, but do not point to how the Board has failed to take this into consideration. I do not find that the Board's credibility finding was patently unreasonable. The applicants are essentially seeking to have this Court reweigh the evidence considered by the Board, which is not the role of this Court in an application for judicial review.

[11] The applicants also submit that the Board erred in its treatment of the medical reports submitted by the principal applicant, saying that it is not able to reject a doctor's diagnosis as it is not a medical expert. The respondent submits that the Board's treatment of the medical reports was open to it.

[12] The applicants point to *Zapata et al. v. Minister of Employment and Immigration et al.* (1994), 82 F.T.R. 34, [1994] F.C.J. No. 1303 (T.D.) (QL), where the Board's treatment of a medical report was held to be "cavalier" because it had not recognized that the diagnosis was based not only on the facts related by the claimant, but also on the doctor's psychological observations. In my opinion, this case is distinguishable. Both medical reports, one from a family doctor and one from a social worker, rest essentially on the facts as related by the principal applicant. The Board is entitled

to determine what weight to give to the report, and was not patently unreasonable when it determined that the reports, “although informative cannot be considered *bona fide* psychological evaluations.”

(2) Did the Board err when it determined that the principal applicant did not face persecution?

[13] Despite the Board’s negative credibility finding with respect to the principal applicant’s claim that he was beaten and threatened, the Board did accept that the principal applicant had openly criticized the Sri Lankan Government’s actions on two occasions, and that the Government “does not tolerate criticism.” However, the Board found that this does not equate to persecution.

[14] The applicants submit that this finding is arbitrary and ignores relevant documentary evidence. The respondent submits that the onus is on the applicants to demonstrate a correlation between the documentary evidence and the particular facts of their case, which the applicants in this case have failed to do.

[15] I do not find that there is any reason to intervene in the Board’s decision, although the Board’s reasons are brief. The documentary evidence cited by the applicants, which focuses on the treatment of journalists and the news media by the Sri Lankan Government, does not establish a link between human rights violations and the principal applicant’s situation. The principal applicant was not a journalist, although he has been reported to have been critical of the Sri Lankan Government. I have reviewed the documentary evidence that was before the Board and, while it is clear that there are serious human rights problems in Sri Lanka, I have not found any evidence indicating that the

Janatha Vimukthy Peramuna (a political party in Sri Lanka) or the Sri Lankan Government is targeting civil society activists or critics of the Government to a level which amounts to persecution.

[16] The clearest indication that civil society might be targeted comes in a letter from Human Rights Watch to Pope Benedict XVI (page 270 of the Tribunal Record), in which it states:

The government has dangerously ratcheted up its criticism of civil society, especially in the media. In February 2007 Minister for Environment and Natural Resources Champika Ranawaka of the Jathika Hela Urumaya (JHU), the Buddhist monk party in the government coalition, advocated extrajudicial methods to deal with human rights groups, journalists, and others who criticize the state's militaristic aims. [. . .]

Human Rights Watch is concerned that these verbal attacks will lead to physical assaults. [. . .]

[17] However, more recent documentary evidence indicates that "individuals could criticize the government generally without fear of reprisal" (United States Department of State, "Sri Lanka", *Country Reports on Human Rights Practices for 2006* (March 6, 2007), under the heading "Freedom of Speech and Press"). In my opinion, the applicants have not shown that the Board came to an unreasonable, let alone patently unreasonable, conclusion on the question of persecution.

[18] For all the above reasons, the application for judicial review is dismissed.

"Yvon Pinard"

Judge

Ottawa, Ontario
January 30, 2008

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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