

Date: 20080226

Docket: IMM-1199-06

Citation: 2008 FC 250

Ottawa, Ontario, February 26, 2008

PRESENT: The Honourable Barry Strayer, Deputy Judge

BETWEEN:

SELLACHCHI KATHIRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for a judicial review of a decision of the Immigration Refugee Board of Canada (Refugee Protection Division) (Board) of February 20, 2006, determining that the Applicant is not a Convention refugee and is not a person in need of protection.

Facts

[2] The Applicant is a citizen of Sri Lanka, born there in approximately 1943. She is a Tamil. She alleges that she has suffered persecution from both the Tamil Tigers and the Sri Lankan army in the past. Her Personal Information Form (PIF) says that she first had serious problems in 1999 when she was living in Mallavi, apparently in Tiger territory. The Tigers demanded that she give up one of her pieces of land to them and after some abuse and a week in their detention she did so. She further says that in February 2000 she came to Vavuniya, apparently army controlled territory where she was harassed by the army because they accused her of having supported the Tigers. After the cease fire between the Tigers and the army she “returned” to Manthuvil. It is not clear to me whether that was in Tiger territory or army territory. According to her PIF she was visited in February 2003 by the Tigers who demanded 500,000.00 rupees. She told them that she did not have the money but she had a daughter in Canada and would get money from her. She then left the country and came to Canada. She was able to extend her initial visa for Canada. When her application for a second extension was refused, she claimed refugee status. She says in her PIF and otherwise that after she was in Canada the Tigers visited her home several times and threatened her children who said she had cheated them by not producing the money.

[3] The Board did not believe her story of persecution. Although she presented a letter from her daughter dated August 10, 2004 saying that they were being harassed in Sri Lanka and that if her mother returned she would be in danger, the Board gave this no weight as not being credible.

[4] The Board cited reasons for doubting her credibility. First, it found that her story was inconsistent as to when she had been harassed by the army and she could not explain why, if she were to return, the army would still pursue her, particularly as she had admitted that she had not had any difficulties with the army while living in their area the last year prior to her departure. The Board attached some importance to this.

[5] The Board treated her claim as a *sur place* claim, since she testified that she had originally planned to go back to Sri Lanka. Her evidence on this point was somewhat contradictory. She said that she had been bothered by the Tigers in February, 2003 when they made demands on her for money. She then left Sri Lanka for Canada, but in applying for a visa for Canada she said that she had no problems in Sri Lanka that would prevent her return. She confirmed in her evidence before the Board that she said this so that they would grant her a visa to come to Canada.

[6] Because the Board did not believe her story of persecution they gave no probative value to the documents in the form of country reports on conditions in Sri Lanka. It relied on *Hamid v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 1293 as authority for not giving credibility to the letter when it doubted the credibility of the Applicant who relied on it.

[7] The Board stated its conclusion as follows:

As for Section 96, the tribunal finds that the claimant did not discharge her burden of proof as to being a "Convention refugee". As for Section 97, is it more probable than not that there would be a risk to the claimant's life or cruel and unusual treatment or punishment, or torture by the authorities? The tribunal finds that the claimant did not discharge her burden of proof on that either.

[8] The Applicant attacks this decision on three grounds. First it is said that the Board fettered its discretion by failing to consider whether circumstances warranted permitting counsel for the claimant to question the Applicant first. Second, she says that the Board made patently unreasonable findings of credibility. And third, the Board erred by failing to provide adequate and separate reasons for dismissing the Applicant's claim for protection pursuant to section 97 of the *Immigration and Refugee Protection Act*.

Analysis

[9] On the first point, the Applicant relied on the decision of this Court in *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, [2006] FC 16 for the proposition that Guideline 7 of the Board, which states that the "standard practice" will be for the Refugee Protection Officer (RPO) to start questioning the claimant at the beginning of the hearing, fetters the discretion of the Board. Instead the Applicant argues that the Board should have considered the particular circumstances of this case and allowed counsel for the Applicant to question the Applicant first. I do not accept this argument. In the first place the *Thamotharem* decision has been reversed by the Federal Court of Appeal: see 2007 FCA 198. Secondly, in the present case the Board member at the outset asked the Applicant a number of questions as to whether she felt able to testify and she confirmed that she did. Further, counsel for the Applicant never asked to be able to question the Applicant first and in fact counsel, who was present throughout, never asked her client any questions for purposes of elaboration or clarification of her testimony.

[10] With respect to the Applicant's argument that the Board member made patently unreasonable findings of credibility, I agree that the standard of review on questions of credibility is that of patent unreasonability: see e.g. *Aguebor v. (Canada) Minister of Employment and Immigration* 1994 160 N.R. 315 (F.C.A.); *Sinan v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 188; and *Gill v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 58. I do not find the credibility findings of the Board to be patently unreasonable. First the Applicant's counsel argues that the Board gave too much weight to its conclusion that the Applicant's assertions about harassment by the army were incredible because of inconsistencies. Counsel argues that as the Applicant had based her claim for fear of persecution on her fear of the Tigers, references to her evidence about the army were irrelevant. I do not accept this. In the first place, in her PIF she begins by saying that she had suffered at the hands of the security forces and the Tigers in Sri Lanka over the years. In the seven paragraphs of her PIF narrative she devotes one paragraph to her persecution by the army. When she testified there was the following exchange:

Q. Who do you fear in Sri Lanka today?

A. The Tigers and the Sri Lankan army.

Q. Since when do you fear the army?

A. From February 2000.

Q. Okay. And today, what do you fear they would do to you were you to return to Sri Lanka?

A. They would punish me or sometimes, they would shoot me.

Q. And what would their reason be today for punishing you or shooting you?

A. The reason for the fear to the Tigers was they asked for my land, but I refused to give my land to the Tigers.

- Q. Okay. I'm going to actually stop you there, because I'm talking about your fear of the army.
- A. The allegation made by the army was that I have given my lands to the Tigers and helped them, but I have not helped the Tigers.
- Q. I don't understand. Could you please summarize for me why the army would punish you today?
- A. Yes. The place where I lived is in the control of the army. If I go back, I have to live in the army-controlled area. The army would say that I'm in support of the Tigers and they would punish me or they would kill me, or they would threaten me.

It was therefore not unreasonable for the Board to consider that feared persecution by the army was still an element in her claim. Further, it was open to the Board to conclude that if her evidence about the army lacked credibility this cast doubt on all of her evidence. Similarly, there was enough contradiction in the Applicant's testimony concerning threats from the Tigers that the Board could reasonably have doubts as to her credibility. This doubt could have been enhanced by the fact that she had told quite a different story when first seeking a visa to visit Canada, namely that there would be no problem in her returning. This would not be consistent with her later evidence that she might be harassed by the Tigers and the army because of her past experiences. I am unable to say that there is such weakness in the Board's credibility findings here that I should intervene: see *Aguebor, supra*, at page 316.

[11] The Applicant also complains that the Board did not provide separate reasons for its conclusion that the Applicant is not a person entitled to protection. The finding of the Board here was essentially that the Applicant had relied on no grounds for a need of protection that are not

grounds under the Convention. As the Board has found no adequate proof of reasonable grounds of fear on Convention grounds, it follows that there are none in respect of the claim under section 97. While it might have been helpful to elaborate on this point, it does not amount to an error of law not to have done so.

Disposition

[12] I will therefore dismiss this application for judicial review. Counsel did not request that any question be certified and none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application for judicial review of the decision of the Immigration and Refugee Board (Refugee Protection Division) of February 20, 2006 be dismissed.

"B.L. Strayer"
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1199-06

STYLE OF CAUSE: SELLACHCHI KATHIRAN
and Applicant
THE MINISTER OF CITIZENSHIP AND IMMIGRATION
Respondent

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DATE OF HEARING: 11-FEB-2008

REASONS FOR : STRAYER, D.J.

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