

Date: 20091016

Docket: IMM-1804-09

Citation: 2009 FC 1055

Toronto, Ontario, October 16, 2009

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

SUGANJA SOTHIRATNAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Suganja Sothiratnam is a 28-year-old citizen of Sri Lanka, whose claim for refugee protection was found to be ineligible for consideration by the Refugee Protection Division on the grounds that she had been recognized as a Convention refugee in the United States.

[2] Ms. Sothiratnam asserts that she was denied procedural fairness in relation to this determination. She alleges that the immigration officer considering the question of her eligibility to

seek refugee protection in Canada refused to accept or consider a letter addressed to Ms. Sothiratnam from the American authorities dealing with her status in that country. She further asserts that in the event that a breach of procedural fairness is found to have occurred, the question of her eligibility to claim refugee protection in Canada is not so free from doubt as to render it futile to remit the matter for re-determination.

[3] For the reasons that follow, I am not persuaded that Ms. Sothiratnam was denied procedural fairness in this matter. As a consequence, the application will be dismissed.

Analysis

[4] Both Ms. Sothiratnam and the immigration officer have provided affidavits describing what transpired in the meetings that led up to the ineligibility finding. Neither side chose to cross-examine the deponent of the opposing affidavit.

[5] Ms. Sothiratnam's brief affidavit refers to a single interview with Canadian immigration officials regarding her eligibility. No date is provided for that interview. The sum total of her evidence on the issue of the letter from the American authorities is her statement that she had the letter in question with her at the interview, and that she "tried to give it to the officer. But the officer did not want to take it".

[6] In contrast, the affidavit of the immigration officer is lengthy and detailed. The officer describes three separate exchanges between Ms. Sothiratnam and Canadian immigration officials.

[7] The first contact occurred on March 11, 2009, when Ms. Sothiratnam presented a number of documents from Sri Lanka at the reception area of the immigration officer's office. These documents were copied and put on her file.

[8] On March 18, 2009, the immigration officer met with Ms. Sothiratnam. A routine check of the FOSS system had disclosed that Ms. Sothiratnam had been issued an American travel document, and that her parents were asylum claimants in the United States. In response to a query from the immigration officer, Ms. Sothiratnam stated that she did not know what her status was in the U.S. She also stated that she had not sought refugee protection in any other country.

[9] The officer states in her affidavit that she was not able to make a decision with respect to Ms. Sothiratnam's eligibility that day, and asked her to return a week later with her travel documents.

[10] The officer goes on to state that information provided by the U.S. authorities confirmed that Ms. Sothiratnam had entered the United States in 1999, and had subsequently been granted asylum in that country.

[11] According to the officer's affidavit, when Ms. Sothiratnam returned on March 25, 2009, she provided the officer with a current United States Refugee Travel Document, which identified her as an "asylee". The officer then advised Ms. Sothiratnam that her claim for refugee protection in

Canada was ineligible for referral to the Refugee Protection Division, as she had been granted asylum in the U.S. and was able to return to that country.

[12] The officer's affidavit states categorically that Ms. Sothiratnam never attempted to give her a copy of the letter in issue at any time.

[13] I have several reasons for preferring the immigration officer's evidence to that of Ms. Sothiratnam.

[14] First, the officer's recollection is clear, specific and detailed, and is supported by contemporaneous notes. In contrast, Ms. Sothiratnam's affidavit is vague and lacks any specifics as to when it was that she allegedly tried to provide the letter in question to the officer.

[15] Second, it is not at all clear why the officer would have refused to consider the letter in issue, had it indeed been proffered by Ms. Sothiratnam. The immigration officer had no personal interest in the outcome of the matter, whereas Ms. Sothiratnam clearly had a strong interest in having her refugee claim go forward.

[16] Third, the record demonstrates at least some confusion on the part of Ms. Sothiratnam in some respects, as well as a lack of candour on her part in her interaction with Canadian immigration authorities. For example, Ms. Sothiratnam told the immigration officer that she did not know what her status was in the United States. Giving her the benefit of the doubt, I will accept that she really

did not know and was not attempting to deceive the officials. However, even if there was no intent to deceive in this regard, it does suggest that she was, at a minimum, confused.

[17] More importantly, however, it is quite clear that, in at least some respects, Ms. Sothiratnam actually tried to mislead the Canadian authorities. For example, she stated in her Claim for Refugee Protection in Canada form that she lived in Sri Lanka until 2006, when she left that country to come to Canada. In actual fact, Ms. Sothiratnam had been residing in the United States since 1999.

[18] Ms. Sothiratnam's Claim for Refugee Protection in Canada form is detailed, providing both dates and places of residence in Sri Lanka in the years before 2006, and is also very specific with respect to her itinerary in coming to Canada, allegedly from Sri Lanka. There is no possibility that she was confused on these points, and her misrepresentation in this regard calls her overall credibility into serious question.

[19] Ms. Sothiratnam bears the burden of establishing that there has been a breach of procedural fairness in this case. In light of the foregoing, she has not persuaded me that she attempted to give the letter in issue to the immigration officer. As a consequence, I am not satisfied that she was treated unfairly in this matter.

[20] In light of my factual finding on this point, it is unnecessary to consider what effect, if any, the letter in question could have had in relation to Ms. Sothiratnam's eligibility to have her refugee claim considered in Canada.

Conclusion

[21] For these reasons, the application for judicial review is dismissed.

Certification

[22] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1804-09

STYLE OF CAUSE: SUGANJA SOTHIRATNAM v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 15, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: October 16, 2009

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