

Federal Court



Cour fédérale

Date: 20110121

Docket: IMM-3857-10

Citation: 2011 FC 66

Ottawa, Ontario, January 21, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**MICHAEL REGINOLD ANTHONIPILLAI
(A.K.A. REGINOLD MICHAEL
ANTHONIPILLAI)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] “And Truth has her throne on the shadowy back of doubt” (Sri Aurobindo from Savitri, Book 1, Canto 1, page 5, verse 4).

II. Introduction

[2] This is an application pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), for judicial review under the *Federal Courts Act*, RSC 1985, c F-7, to review and set aside a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, wherein the RPD determined that the Applicant was not a Convention refugee or person in need of protection.

III. Background

[3] The RPD determined that the Applicant's account was not credible.

IV. Issue

[4] Did the RPD err in its credibility assessment?

V. Analysis

[5] To satisfy the deferential standard of review, the Applicant would have had to, and did demonstrate that (a) it is tainted by an immediately apparent defect that demands intervention, (b) is unreasonable on its face, and (c) unsupported by evidence, or vitiated by failure to consider the proper factors.

[6] The Applicant did meet this test as demonstrated in the Applicant's pleadings which had born out his position.

[7] The Applicant has countered every single finding the RPD made in its brief reasons on the Applicant's credibility in a manner that casts serious doubt on the essence and substantiation of the findings. In addition, the Court recognizes that in the past the Applicant had been held and tortured by Sri Lankan government forces for almost two years which, in and of itself, could have created a pervasive fear of authorities in his country, that would have impacted on his fear of authorities in Canada and, thus, on his responses. The fact that the Applicant had been compensated and given his salary for that period of his detention and torture demonstrates the extent of the Applicant's abuse and torture for the timeframe in question.

VII. Conclusion

[8] It is trite law, on an application for judicial review, that this Court is not to substitute its decision for that of the Refugee Division. In any judicial review of the factual determinations of a lower tribunal such as the RPD, the primary question to be asked is whether the finding was one that could reasonably have been made on the evidence before the RPD. If the finding is reasonable, it must stand, and review must only take place where the findings of fact may be construed as perverse, capricious or made without regard to the material before it (*Federal Courts Act*, at para 18.1(4)(d)). In this case, the material as analyzed in the RPD decision, subsequent to this Court applying the *Dunsmuir v New-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 decision criteria in regard to the test for reasonableness, does not meet the reasonableness standard.

[9] In this matter, the RPD did make core findings that were unsubstantiated by the evidence before it (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA)).

[10] For all of the above reasons, the Applicant's application for judicial review is allowed and the matter is remitted for redetermination by a differently constituted panel.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review be allowed and the matter be remitted for redetermination by a differently constituted panel. No question for certification.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3857-10

STYLE OF CAUSE: MICHAEL REGINOLD ANTHONIPILLAI
(A.K.A. REGINOLD MICHAEL ANTHONIPILLAI)
v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 18, 2011

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

DATED: January 21, 2011

APPEARANCES:

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Mr. Lorne McClenaghan FOR THE RESPONDENT

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