Federal Court  Cour fédérale

Date: 20111027

Docket: IMM-6291-10

Citation: 2011 FC 1188

Ottawa, Ontario, this 27th day of October 2011

Before: **The Honourable Mr. Justice Pinard**

BETWEEN:

Naleen Dileep K. DELTHALAWE GEDARA
and
Anura Priyantha KUDADEWAGE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Tracey Ann Martineau, a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, (the "Act"). The applicants are Naleen Dileep K. Delthalawe Gedara ("Naleen") and Anura Priyantha

Kudadewage (“Anura”). The Board held that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

[2] The applicants are from Sri Lanka, being Sinhalese men, the majority ethnic group. The applicants worked together at a shoe company: Naleen was the assistant manager of imports and Anura was a wharf clerk. In November 2007, the applicants allege they were approached by Mr. Lal to clear a shipment of footwear which included camouflage boots. The applicants informed Mr. Lal that they needed the authorization of the Defense Ministry to clear the shipment. The applicants later received a random phone call from a journalist, inquiring about the shipment of camouflage boots and alleging that such a shipment was ordered by Minister Mervyn Silva and was destined for the Liberation Tigers of Tamil Eelam.

[3] Mr. Lal did not obtain the necessary authorization, so the applicants refused to clear the shipment. After having refused to proceed with the shipment, the applicants claim to have been bribed by Mr. Lal, who asked that they do not document that the shipment contained camouflage boots. Having once again refused, the applicants claim to have been threatened and beat up by Mr. Lal and his goons.

[4] The applicants then went into hiding and attempted to flee, requesting Canadian visas in January 2008. Their first application was denied. However, with the help of Subash Enterprises, they were granted Canadian visas, arriving in Montreal on March 17, 2008. On April 2, 2008, the applicants filed their claims for refugee protection for fear of persecution based on political opinion

on the basis of this one incident. On May 20, 2008, they signed joint Personal Information Forms ("PIFs").

[5] On September 16, 2010, their claims for refugee protection under sections 96 and 97 of the Act were heard by the Board.

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[6] Having made various findings in regards to the applicants' credibility, the Board found that the applicants were not Convention refugees or persons in need of protection. Because of the lack of detail in their testimonies, a failure to amend their PIFs to include threats received by their families after they had left Sri Lanka, and a lack of evidence connecting Minister Silva to the shipment, the Board was not convinced that Minister Silva was involved, or that anyone was still looking for the applicants.

[7] Moreover, the Board concluded that the applicants had not rebutted the presumption that the state of Sri Lanka is capable of protection, having failed to provide clear and convincing evidence of the state's inability to protect.

[8] Consequently, the Board dismissed the applicants' application under section 96 of the Act: the applicants' fear was based on one incident and did not fit within the grounds specified in the *United Nations Convention Relating to the Status of Refugees*. The Board also dismissed the applicants' application under paragraph 97(1)(*a*) of the Act because there was no evidence that,

based on substantial grounds, they would face any danger of torture. Finally, based on the evidence, it considered the applicants would be able to obtain state protection under paragraph 97(1)(*b*) of the Act.

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[9] The main issues raised by this application are as follows:

I. Did the Board err in not providing reasons in rejecting elements of evidence and in its findings of credibility?
II. Did the Board err in its finding that state protection was available to the applicants?
III. Did the Board err in considering that the applicants illegally obtained their Canadian visas?
IV. Did the Board err in law in imposing a statutory obligation on the applicants to update their PIFs?

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I. Did the Board err in not providing reasons in rejecting elements of evidence and in its findings of credibility?

[10] The applicants claim that the Board failed to render a decision on their subjective fear because it did not provide reasons for rejecting elements of evidence. This failure is, in the applicants' opinion, an error in law warranting judicial review. However, the respondent is correct in its view that the Board's findings of fact and credibility are to be given great deference and are not to be lightly interfered with (*Weerasinghe v. Minister of Citizenship and Immigration*, 2008 FC 927 at para 17).

[11] The Board's findings of fact and credibility are reasonable, falling within the possible range of outcomes. The Board was under no obligation to mention every piece of evidence in its decision (*Byaje v. Minister of Citizenship and Immigration*, 2010 FC 90 at para 19). Its conclusions on the applicants' credibility were supported by various portions of its decision where it identifies which statements of the applicants' testimony it accorded less weight to, where details were lacking and where there were contradictions. A reviewing court need not go over each of the reasons given by the Board which led to its conclusions on credibility: "it is entirely reasonable for the Board to decide adversely with respect to the applicant's credibility on the basis of contradictions and inconsistencies in his story or on the basis that it is simply implausible" (*Weerasinghe*, above, at para 18). Therefore, sufficient reasons were given and the applicants have not established that the Board's findings of credibility were unreasonable.

II. Did the Board err in its finding that state protection was available to the applicants?

[12] The applicants also allege that the Board erred when it found that state protection was available to them in Sri Lanka. They consider the Board to have ignored objective evidence. However, they do not criticize the Board's application of the presumption of state protection set out in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689. Rather, they take issue with the Board's findings of fact as to the state of Sri Lanka. The applicable standard of review to these findings is reasonableness (*Byaje*, above, at para 16). The applicants have failed to establish how these findings were unreasonable: the Board considered the documentary evidence and its conclusions were within the range of acceptable outcomes. As highlighted by the respondent, a single visit to the police station does not prove the applicants did everything required to seek out state protection and does not rebut the presumption of state protection (*Flores Carrillo v. Canada*

(Minister of Citizenship and Immigration), [2008] 4 F.C.R. 636 (F.C.A.)). Accordingly, it was not unreasonable for the Board to conclude that the applicants had failed to provide convincing evidence of their state's inability to protect them.

III. Did the Board err in considering that the applicants illegally obtained their Canadian visas?

[13] The Board's statement that the applicants' visas were illegally obtained is a finding of fact to which deference is owed and should only be disturbed if unreasonable (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190). Based on the way the applicants went about obtaining their visas, it was not unreasonable for the Board to use the term "illegally". Regardless, this finding had no impact on the Board's decision. Therefore, the Board did not err in mentioning that the applicants illegally obtained their visas. Even if it did, such an error would not warrant allowing the present application for judicial review.

IV. Did the Board err in law in imposing a statutory obligation on the applicants to update their PIFs?

[14] Lastly, the applicants take issue with the Board's supposed creation of an obligation to amend their PIFs to include information and events that occurred after the applicants' initial declaration in 2008. The applicants claim that no such statutory obligation exists. Therefore, they believe the Board erred in its imposition of this obligation, and in drawing negative inferences as to their credibility for failing to conform to this obligation. Inversely, the respondent identifies subsection 6(4) of the *Refugee Protection Division Rules*, SOR/2002-228, as generating this obligation. The respondent also identifies various documents, specifically instructions on completing PIF forms and the "Claimant's Guide" where it is stated that if important information

was not included in the PIF, the Immigration Refugee Board must be notified. Having considered the sources identified by the respondent, the applicants are incorrect in asserting that the Board simply created this obligation of amendment.

[15] While the applicants cite *Erdos v. Minister of Citizenship and Immigration*, 2003 FC 955, on the basis that a PIF is not meant to document the applicants' entire case, the Court went on to add at paragraph 24 that "[i]t is trite law that omissions of a significant or important fact from a claimant's PIF can be the basis for an adverse credibility finding".

[16] Similarly, while the applicants rely on *Lahocsinsky v. Minister of Citizenship and Immigration*, 2004 FC 275, for the position that applicants are at fault in providing amendments too close to the hearing and such amendments can lead to adverse findings of credibility, it fails to mention that the Board in *Lahocsinsky* did not believe the information contained in the amended PIF, and the PIF was amended one day before trial without a valid reason. Inversely, as the respondent indicates, in the case at bar, the applicants had two years from the filing of the original PIF and their hearing date to make amendments. If their families were threatened, such important events should have been included, as stated in subsection 6(4) of the *Refugee Protection Division Rules*, the information documents given to claimants and the Federal Court's decision in *Prak v. Minister of Citizenship and Immigration*, 2006 FC 1516.

[17] Therefore, the Board was not incorrect, in the circumstances, to draw negative inferences from the applicants' failure to include such information, especially after they affirmed at the beginning of the hearing that the PIFs were complete and true.

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

[19] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board, determining that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-6291-10
STYLE OF CAUSE:	Naleen Dileep K. DALTHALAWE GEDARA and Anura Priyantha KUDADEWAGE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
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