Federal Court  Cour fédérale

Date: 20120612

Docket: IMM-6563-11

Citation: 2012 FC 706

Ottawa, Ontario, this 12th day of June 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

Suresh Chandrabose FERNANDO

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by the Minister of Citizenship and Immigration (the "applicant") of the decision of Negar Azmudeh, 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 Board held that Suresh Chandrabose Fernando (the "respondent"), a Tamil citizen of Sri Lanka, was a Convention refugee and a person in need of protection pursuant to sections 96 and 97 of the Act.

[2] The Board accepted the respondent's identity, and also found him to be a credible witness. The Board found that there were no material inconsistencies or contradictions in the evidence that were not reasonably explained, and therefore the Board believed what was alleged in support of his claim.

[3] Having accepted his credibility, the Board found that the respondent had been arrested in Colombo, and was only released because of a bribe. The Board did not accept the applicant's submission that the authorities did not consider the respondent an activist with Tamil Tigers ("LTTE") links. The Board found it more likely than not that, as a Tamil returnee with an arrest record and perceived LTTE links, the respondent would be detained upon his return to Sri Lanka, where he would face a reasonable possibility of persecution and of cruel and unusual treatment or punishment.

[4] The Board rejected the evidence presented by the applicant that the Sri Lankan army has guaranteed the security of a referred combatant. In light of the serious human rights violations perpetrated by the Sri Lankan authorities, the Board did not find such a guarantee credible. The Board found that state protection is not available to the respondent, as the state is the agent of persecution.

[5] The Board further found that, since the Sri Lankan authorities are in effective control of the territory, the respondent cannot reasonably avoid them should he return. The Board found he would likely be arrested on arrival and persecuted, and therefore he could not enter the country without detection and live anywhere in Sri Lanka without a reasonable fear of persecution, thus eliminating

the possibility of any viable Internal Flight Alternative ("IFA"). The respondent's claim for refugee protection was therefore granted.

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[6] The only issue raised by the applicant in this application is whether the Board erred in its analysis of whether there was a viable IFA for the respondent in Sri Lanka.

[7] The Board's determination of whether a claimant has a viable IFA is a question of mixed fact and law, and therefore is to be reviewed on a standard of reasonableness (*Agudelo v. Minister of Citizenship and Immigration*, 2009 FC 465 at para 17). This determination is to be given significant deference and must only be disturbed if the Board's reasoning was flawed and the resulting decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47 [*Dunsmuir*]). Although there may be more than one possible outcome, as long as the Board's decision making process was justified, transparent and intelligible, a reviewing court cannot substitute its own view of a preferable outcome (*Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para 59).

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[8] The applicant argues that the Board failed to conduct a proper IFA test, instead simply concluding that the Sri Lankan authorities would arrest the respondent on arrival and subject him to

persecution and cruel and unusual treatment or punishment. The applicant submits that this conclusion overlooks the numerous pieces of evidence confirming that the respondent left Sri Lanka using his own passport. The respondent also traveled within Sri Lanka to Colombo with his father.

[9] The respondent argues that an IFA did not arise on the facts of this case, because the Board found that the respondent would be arrested immediately upon his arrival in Sri Lanka, and therefore he could not flee to another part of the country. The respondent notes that an IFA is not viable if it is not accessible to the claimant (*Rabbani v. Canada (Minister of Citizenship and Immigration)* (1997), 125 F.T.R. 141 at paras 16-17). The respondent also notes that an IFA is inapplicable when the state itself is the agent of persecution (*Khan v. Canada (Minister of Citizenship and Immigration)* (2000), 6 Imm. L.R. (3d) 119 (F.C.T.D.); *Canada (Minister of Employment and Immigration) v. Sharbdeen* (1994), 23 Imm. L.R. (2d) 300 (F.C.A.)).

[10] I agree with the respondent that the Board did not fail to conduct a proper IFA analysis: the first prong of that test is whether there is a serious possibility that the claimant will face persecution in the proposed IFA location (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.)). The Board found that, since the Sri Lankan authorities are in control of the whole territory, and would detain and persecute the respondent upon his arrival in Sri Lanka, the respondent could not return and live anywhere in Sri Lanka without fear of persecution. Since the possibility of an IFA failed on the first prong of the test, there was no need for the Board to go on to the second prong and determine whether it was reasonable to ask the respondent to relocate to a proposed IFA location.

[11] The real error alleged by the applicant in the decision is not the application of the IFA test, but the finding that the respondent would face persecution upon arrival in Sri Lanka. The applicant contends that this finding overlooks the documentary evidence that the Sri Lankan authorities control entry and exit of the country — since the authorities let the respondent leave using his own passport, the applicant contends they must not be interested in him.

[12] As the respondent submits, the Board need not specifically mention every piece of evidence. As my colleague Justice Donald J. Rennie stated in *Mejia v. Minister of Citizenship and Immigration*, 2011 FC 1265:

> [12] There is no requirement for the Board to refer to every piece of documentary evidence or every passage from sources relied on by the claimant which contradict the information relied on by the Board. The constraint is whether, in examining the record as a whole, including the contradictory evidence, the decision is reasonable: *Raclewiski v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 244; *Valez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 923.

[13] When the record in this case is examined in its totality, the Board's conclusion was reasonable. The mere fact that the respondent left Sri Lanka using his own passport was not determinative of whether he faces a risk of persecution upon return to Sri Lanka. The Board accepted the respondent's evidence that he was assisted in fleeing the country by an agent, and that he used a false piece of corroborating identification. In light of these facts, it was reasonably open to the Board to find the respondent would be at risk upon return, even though he managed to exit Sri Lanka without being detained.

[14] The Board also found that the respondent was still of interest to authorities, since his parents have been recently questioned about his whereabouts, and that Tamils returning to Sri Lanka (particularly those with an arrest record) are at risk. These findings were reasonably open to the Board on the record, and thus the Board's conclusion falls within the range of acceptable outcomes defensible in light of the facts and the law (*Dunsmuir*, above, at para 47).

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[15] For the above-mentioned reasons, the application for judicial review is dismissed. 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 of Canada dated September 6, 2011 is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. Suresh Chandrabose FERNANDO
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