

Federal Court



Cour fédérale

Date: 20130208

Docket: IMM-3332-12

Citation: 2013 FC 145

Ottawa, Ontario, February 8, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**GANESAVEL THARMARAJH
(a.k.a. GANESAVEL THARMARAJA)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, a Sri Lankan Tamil, sought protection from the Sri Lankan police and army who consider him to be a member of the Liberation Tigers of Tamil Eelam [LTTE]. The claim for protection was rejected by a member [Member] of the Refugee Protection Division [RPD]. This is the judicial review of that decision.

II. FACTS

[2] The Applicant, a 31 year old Tamil, outlined in his narrative a series of events from 2001 to 2005 in which the Sri Lankan army either questioned, stopped or detained him because of his alleged involvement with the LTTE.

[3] The Applicant went to Singapore and worked there at a Hindu temple until May 2011. At that time, with his work visa expiring, the Applicant returned to Sri Lanka, and travelled from Colombo to his home village in the north. With the help of an agent, he went first to the United States and then to Canada.

[4] The Member rejected the Applicant's claim finding him not to be a credible witness nor had he provided sufficient trustworthy evidence to support his claim. The Member identified a number of significant inconsistencies and omissions between his PIF and his evidence at the hearing.

[5] There were five areas of concern to the Member which the Applicant raised with the Court:

- the Applicant's return to Sri Lanka from Singapore (re-avilment) was not included in his PIF;
- he was arrested twice and there was a major inconsistency in the dates of the arrest;
- he was unable to provide a detailed description of his second arrest;
- there were a number of other omissions and inconsistencies between his PIF and his evidence at the hearing; and
- the use of the term "authorities" in relation to the temple in Singapore.

III. ANALYSIS

[6] It is accepted that the standard of review of credibility findings is reasonableness (*Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929, 2009 CarswellNat 2913).

[7] The Applicant's failure to mention re-avilment is a significant matter. Even if he was travelling with an agent, it was a critical event which should have been mentioned in his PIF. It was not unreasonable for the Member to consider this failure as negatively affecting credibility.

[8] More importantly, re-avilment significantly undermines the Applicant's claim of fear. It negatively affects the subjective and objective components of the risk analysis.

[9] With regard to the discrepancy between the dates of arrests, it was reasonable for the Member to view this negatively. The Applicant first claimed a five-month gap between the first and second arrest and then claimed it to be one week.

[10] The Applicant argues that he should have been confronted with his inconsistency per *Estrada v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 60, 111 ACWS (3d) 985 [*Estada*]. In my view, *Estrada*, above, is distinguishable as the inconsistency or perceived inconsistency was not apparent. In that case, fairness was considered to require that the applicant be confronted with this inconsistency. In the present case, the inconsistency was apparent and significant. The Applicant outlined the events which were inconsistent. It was the Applicant's obligation to explain the inconsistency and he had a full opportunity to do so.

[11] The Applicant complains that the misdescription of the second arrest was due to the phrasing of the Member's question. This is a wholly unsustainable claim. The Applicant was given three opportunities to give a clear account which he failed to do. It was not unreasonable to draw a negative conclusion.

[12] The Applicant suggests that the Member was overly zealous in finding inconsistencies in the evidence. He referred to Justice Barnes' decision in *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101, 154 ACWS (3d) 1183, that PIFs are not an encyclopedia.

[13] This is not a case of microscopic examination. The inconsistencies are numerous and important. In a credibility analysis, the strength of a claim is undermined by repeated omissions and inconsistencies just as any story unravels through compounding omissions and inconsistencies.

[14] Finally, the Applicant testified that he left Singapore because the priest was retiring but his PIF related that he left because he was subject to an interview by immigration authorities. It is apparent that the Member did not believe the Applicant's evidence about the retiring priest. It was reasonable, in the context of this whole case, not to accept that explanation.

IV. CONCLUSION

[15] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3332-12

STYLE OF CAUSE: GANESAVEL THARMARAJH
(a.k.a. GANESAVEL THARMARAJA)

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 20, 2012

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

DATED: February 8, 2013

APPEARANCES:

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