

Federal Court



Cour fédérale

Date: 20130516

Docket: IMM-10030-12

Citation: 2013 FC 485

BETWEEN:

**B027
B028
B029
B030**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

PUBLIC REASONS FOR ORDER
(Confidential Reasons for Order issued May 8, 2013)

[1] A family of four ethnic Tamils from northern Sri Lanka: husband, wife, and two children, identified in these proceedings as B027, B028, B029 and B030, were among the passengers on board the MV Sun Sea. This is the judicial review of a decision rejecting their claim for refugee status.

[2] I find that the decision is unreasonable and so shall be granting judicial review and sending the matter back to another member of the Refugee Protection Division (RPD), of the Immigration and Refugee Board of Canada, for redetermination in light of these reasons. I do so, however, on

very narrow grounds, on circumstances peculiar to B027 and B028. I agree with the member who decided the case that they are not refugees sur place. There is no serious question of general importance to certify.

[3] B027 was injured in 2001, he says by flying shrapnel. This has affected his mobility. He worked at [Redacted] in the north. As the civil war was coming to an end, his wife was injured [Redacted]. There is some confusion as to whether she was originally treated by a rebel medical unit. In any event, she later received more intensive medical treatment at government facilities.

[4] Like many civilians in the north, they had to flee from hostilities time and time again and ended up in camps. They were both interrogated by the Criminal Investigation Department of the Sri Lankan government on suspicion of being members of, supporters of, or sympathetic to, the Liberation Tigers of Tamil Eelam (LTTE).

[5] They were eventually given identity cards and allowed to leave their last camp. They finally made their way on board the Sun Sea and then to Canada.

[6] Both husband and wife were intensely interrogated in Canada. The husband was held in detention far longer than the time it took to establish his identity. His interrogators claimed they had medical evidence that he had not suffered a shrapnel injury, but rather had a bullet wound. Of course, there was no obligation on the interrogators to speak the truth. Rather, the issue is if there was suspicion on the part of the Canadian authorities that he was affiliated with the LTTE, would

there also be suspicion on the part of Sri Lankan authorities? A bullet wound might well suggest more than collateral damage, but rather that B027 was an active participant in hostilities.

[7] In the end, B027 was released by the Canadian authorities, who have not written him up for inadmissibility.

[8] The deciding member rationalised that since the family members were given identity cards and were released from the camp, it follows that the authorities were satisfied they had no LTTE affiliations. As noted by Mr. Justice Barnes in *Rayappu v The Minister of Citizenship and Immigration*, IMM-8712-11, a conclusion that a release signifies that a person is not of interest to the Sri Lankan authorities is over-simplistic.

[9] By parity of reasoning, the member also concluded that since the Canadian authorities eventually released B027, they too are satisfied he is not an LTTE supporter. That too is over-simplistic. They may well have had suspicions, but are unable to prove them under our system of law. Sri Lankan authorities would not be so bound.

[10] B027 was constantly accused of lying when he denied that he had LTTE affiliations. For instance, "...you are looking me in the eyes and lying through your teeth. Tell me, why should Canada help you?... You are being like a child. Children keep lying even when everyone knows they are lying. Adults tell the truth once they know there is no reason to lie to anyone. Why don't you be a man about this and stop being a child?"

[11] The member recognized that those suspected of being LTTE members or those suspected of having links to the LTTE face a serious possibility of persecution. However, by treating Sri Lanka and Canada as separate silos, the member failed to appreciate the risk the family faces. To that extent, the decision was unreasonable. The member did not analyse the circumstances cumulatively. It may well be that given B027's ethnicity, the nature of his injury, the fact that he worked **[Redacted]** in the northern controlled part of Sri Lanka, that his wife was **[Redacted]**, and that they were passengers on the Sun Sea, they would face a serious risk of persecution if returned to Sri Lanka.

[12] I agree with the member that the claimants are not refugees sur place. Decisions of the RPD that Tamil passengers on board the Sun Sea were a particular social group under section 96 of the *Immigration and Refugee Protection Act* have been found either to be incorrect (*Minister of Citizenship and Immigration v B472*, 2013 FC 151, [2013] FCJ No 192 (QL) and *Minister of Citizenship and Immigration v B323*, 2013 FC 190, [2013] FCJ No 193 (QL)) or unreasonable (*Minister of Citizenship and Immigration v B380*, 2012 FC 1334, [2012] FCJ No 1657 (QL)). There are other cases in which refugee findings have been upheld on the grounds of mixed motives, *i.e.* motives relating to other Convention grounds.

“Sean Harrington”

Judge

Ottawa, Ontario
May 16, 2013

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10030-12

STYLE OF CAUSE: B027 ET AL v MCI

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 1, 2013

REASONS FOR ORDER: HARRINGTON J.

**CONFIDENTIAL REASONS
FOR ORDER DATED:** MAY 8, 2013

**PUBLIC REASONS FOR
ORDER DATED:** MAY 16, 2013

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