

Federal Court



Cour fédérale

Date: 20140109

Docket: IMM-10407-12

Citation: 2014 FC 25

Ottawa, Ontario, January 9, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

A061

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a refugee claim by a passenger on the *MV Ocean Lady*. It is almost identical in all major respects to that in *Canada (Minister of Citizenship and Immigration) v A25*, 2014 FC 4 [A25]. Therefore, the result of this judicial review will be the same and for essentially the same reasons.

[2] The Respondent is a young Sri Lankan Tamil male. His evidence was that while in Sri Lanka he had been detained, beaten and threatened by members of the Sri Lankan army, who

questioned him as to his Liberation Tigers of Tamil Eelam [LTTE] involvement and sympathies. He was released and subsequently left Sri Lanka. Shortly after he left Sri Lanka, his mother reported that the army was still looking for him and that his brothers were being rounded up by the army.

[3] The Respondent was a passenger on the *MV Ocean Lady* which arrived in Canada on October 17, 2009. The refugee claim was made immediately thereafter.

[4] The Member of the Refugee Protection Division [RPD] was the same member who rendered the decision which was reviewed in A25. The Member found the Respondent to be generally credible. Somewhat curiously the Member found that there was no persuasive evidence to suggest that the Respondent was a member of or would have been considered to have any connection to the LTTE prior to his embarkation.

The Member did find that the Respondent's profile changed when he boarded the ship, in part due to the international publicity surrounding the ship and its alleged connection with the LTTE.

[5] The Member concluded that the Respondent would be viewed by the Sri Lankan government as a person with at least possible ties to the LTTE. The Member found that he would likely be detained because of these suspicions and detention would likely involve beatings and torture. In support of these conclusions, the Member relied on:

- evidence from an expert on international terrorism about LTTE ownership and use of the ship;

- an internal Canadian government report that one-third of the passengers were Tamil Tigers;
- statements of the then Minister of Public Safety suggesting belief that the LTTE had organized the *MV Ocean Lady* voyage;
- the fact that the RCMP had been in contact with Sri Lankan authorities regarding the ship; and
- UNHCR report that persons suspected of links with the LTTE needed protection.

[6] In deciding that the likely actions of the Sri Lanka government amounted to persecution, the Member relied on a number of sources ranging from the 2011 US DOS to a CBSA report and information from the Canadian High Commission.

[7] The Member's consideration of the evidence was thorough and balanced.

[8] While the Member's decision that the Respondent was "a member of a particular social group" is legally questionable, there are other grounds under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, that support the legal basis for the Member's decision, as outlined in A25.

[9] Therefore, for the same reasons as A25, this judicial review will be dismissed.

[10] There is no question for certification and there is insufficient cause to order costs against the Applicant Minister.

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-10407-12

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
v A061

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 22, 2013

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

DATED: JANUARY 9, 2014

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