

Federal Court



Cour fédérale

Date: 20140625

Docket: IMM-1273-13

Citation: 2014 FC 611

Ottawa, Ontario, June 25, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ANTON JEKATHAS ANTHONIPILLAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, who is a Tamil from Northern Sri Lanka [the Applicant], has applied for judicial review of a decision of the Immigration and Refugee Board [the Board] dated December 12, 2012 refusing his claim for refugee protection on the basis that he is neither a convention refugee nor a person in need of protection. The application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act],

I. **Background**

[2] The Applicant was born in September 1990. He grew up in Vanni in northern Sri Lanka during the Liberation Tigers of Tamil Eelam's [LTTE] insurgency. LTTE took him into overnight custody twice in 2006 and required him to perform manual labour such as digging bunkers and chopping wood. On both occasions he was released the following day.

[3] Two years later he was arrested by the LTTE and tied to a tree and beaten. He was released when a bribe was paid. Thereafter the Applicant hid for six months. He never joined and never supported the LTTE.

[4] In April 2009 the Applicant, with his family, surrendered to the Sri Lankan Army and entered a relief camp. The Applicant was tortured by the Army. His fingers were crushed with boots during questioning and he was beaten and hung upside down and made to inhale gasoline fumes. In September of 2009 the Applicant was released from the camp.

[5] Between his release and 2011, the Eelam People's Democratic Party [the EPDP] tried to recruit him as an informer to provide the identities of former LTTE personnel. After he refused, he was stopped and beaten with a cement-filled pipe and threatened with death if he continued to object to becoming an informer. This beating caused him to flee Sri Lanka.

[6] The Applicant said that he fears forced recruitment as an informer by the EPDP should he be returned to Sri Lanka and also said that he is at risk because he is perceived to have ties to the LTTE.

II. The Decision

[7] The Board concluded that the Applicant was entirely without credibility and denied the claim. It also decided, in the alternative, that changed country conditions meant that he was neither a convention refugee nor at risk.

III. The Issues

[8] The Applicant takes issue with both the credibility findings and the Board's conclusion about country conditions.

A. *Issue 1 - Credibility*

[9] In my view, there were two credibility findings that remained relevant when country conditions were assessed. The first was the finding in paragraph 27 of the Decision that the Applicant was not suspected of LTTE ties and the second was the conclusion that the EPDP did not try to forcibly recruit the Applicant as an informer. The Applicant says that both conclusions are unreasonable. I will deal with them in turn.

- (1) Perception of ties to the LTTE

[10] The Applicant testified that he had no actual ties to the LTTE and a review of the transcript (Certified Tribunal Record pages 373-376) shows that he did not testify that anyone suspected or perceived that he had such ties. Rather, he testified that the EPDP suspected that, because he had grown up in an area controlled by the LTTE, he would be able to help them identify LTTE members.

[11] In view of this testimony the Board's conclusion that the Applicant was not suspected of ties to the LTTE was reasonable. This meant that, according to the UNHCR Guidelines for assessing the international protection needs of asylum seekers from Sri Lanka dated July 5, 2010 [the UN Guidelines], the Applicant was not at risk.

(2) Forcible Recruitment by the EPDP

[12] The Board did not believe that the Applicant was beaten or threatened with death for refusing to become an EPDP informant and concluded that the EPDP was not looking for him. At paragraph 10 of the Decision the Board indicated that it reached this conclusion because there was no documentary evidence showing that the EPDP engaged in forcible recruitment. The Board noted that this was in marked contrast to the wealth of evidence showing that the LTTE did recruit in that manner.

[13] The Applicant says that this was in error because a document in Citizenship and Immigration's country file showed that a group called "Karuna" recruited child soldiers. However, it is clear that this reference did not apply to the EPDP. Accordingly, the Board's negative credibility finding on this issue was also reasonable. This meant that the Applicant was

not at risk because none of the documents dealing with country conditions described the EPDP as a risk for Tamils with the Applicant's profile.

[14] In my view, even if all the Applicant's other evidence had been accepted as credible, his claim would have been denied based on changed country conditions.

B. *Issue 2 - Changed Country Conditions*

[15] The Board relied on the UN Guidelines to conclude that the Applicant did not fit the profile of a person at risk because he was not a person suspected of having links to the LTTE.

[16] The Board noted that the fact that the Guidelines had been updated as of July 5, 2010 meant that the UNHCR had then decided that substantial and durable changes had occurred. The Board therefore concluded that a young man from Northern Sri Lanka could return without facing persecution or the harm described in s. 97 of the Act.

[17] The Applicant says that the Board ignored a report by the Danish Immigration Service dated October 2010. However, given the presumption that the Board considered all the evidence and the Board's thorough review of the material, together with its acknowledgment that there was inconsistent information and that the situation in Sri Lanka was not perfect, I cannot conclude that the report was ignored. Rather, it appears that the Board preferred the UN Guidelines and the more recent and exhaustive U.K. Border Agency Report of November 11, 2011. In my view, this treatment of the evidence was reasonable.

[18] The Applicant notes as well, that the Board did not mention the U.S. Department of State Report of May 24, 2012. It describes an increase in paramilitary groups/criminal gangs in the North and says that abductions for ransom and torture and killings of former LTTE personnel and sympathizers occurred. As well, human rights abuses, discrimination and harassment by security forces in paramilitary groups affected Tamils. However, the Board noted that the discrimination did not reach the level of persecution and there was no suggestion in the report that the human rights abuses or harassment were at a persecutory level. The abductions were described as criminal or anti-LTTE and neither are material to the Applicant's claim. Accordingly, I cannot fault the Board for not referring to this report.

[19] The Applicant also says that the Board erred in that it did not apply a three-pronged test (substantial, effective and durable change) when it assessed country conditions. However the law is now clear that there is no such test, see *Yousef v Canada (Minister of Employment and Immigration)*, [1995] FCJ No. 35 and *Fernandopoulle v Canada (Minister of Citizenship and Immigration)* 2005 FCA 91.

IV. **Conclusion**

[20] For all these reasons the application will be dismissed.

V. **Certified Question**

[21] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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