

Federal Court



Cour fédérale

Date: 20140714

Docket: IMM-3323-13

Citation: 2014 FC 692

Ottawa, Ontario, July 14, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KEERTHANAN SIVAKUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Leonard Favreau, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that he was not a convention refugee or person in need of protection under sections 96 and 97 of the Act.

I. Issue

[2] The issue in the present application is whether the Board's decision was unreasonable.

II. Background

[3] The Applicant is a Tamil citizen of Sri Lanka. He was born on September 15, 1990, in Velenai, in the Northern province.

[4] According to the Applicant's Personal Information Form [PIF] narrative, he fears the Sri Lankan armed forces, police, and pro-government military groups. He first experienced the problems which led to this fear in October, 1991, when he was dislocated to Jaffna with his family as a result of military activity by the Sri Lankan army. The Applicant's father was a farmer and was forced to pay money and supply farm products to the Liberation Tigers of Tamil Eelam [LTTE].

[5] In 1998, the Applicant and his family fled to India, as the Applicant's father feared that his children would be recruited by the LTTE in Sri Lanka. The Applicant and his family stayed in Chennai, India without any immigration status. The Applicant worked as a computer repair person from 2008 to 2009.

[6] In April, 2009, the Indian police arrested, beat and detained the Applicant at the Thuraipakkam police station in Chennai on suspicion that he was a member of the LTTE. The police accused him of assisting the LTTE with the release of a compact disc containing

information about the killing of Tamils in Northern Sri Lanka in 2008 and 2009. The Applicant believes the police held this belief because he was known locally as a computer repair person. His father bribed the police to secure his release after two days.

[7] After the Applicant was released, the police continued to harass him. They threatened him with deportation if he did not reveal information about the LTTE. The Applicant's father repeatedly paid the police money so that the Applicant was not arrested.

[8] After failed attempts to leave the country, the Applicant applied for an emergency passport and flew to Sri Lanka on June 23, 2010. However, when he landed, the police were suspicious as to why he was returning to Sri Lanka without his family. He was detained for three days until his uncle paid money to secure his release.

[9] The Applicant stayed with his uncle's friend in Vavuniya. In October, 2010, an unidentified group of people came to the Applicant's residence and questioned the Applicant's uncle's friend about whether the Applicant was a member of the LTTE. He denied the Applicant was involved with the LTTE. They returned the next day to arrest the Applicant. He escaped and travelled to Colombo, where he stayed with his uncle until arrangements were made for him to leave the country. He left Colombo on November 1, 2010, and travelled to Canada via Dubai, Brazil, Venezuela, Panama, Guatemala, Mexico and the United States. He made a claim for refugee protection on April 5, 2011.

[10] The determinative issue for the Board was credibility.

[11] In assessing his demeanour, the Board noted that the Applicant has ten years of formal education and has held a job as a computer repair technician, managed to travel through several countries unaccompanied on his way to Canada, and appeared to be sophisticated and calm during his testimony.

[12] The Board drew a negative credibility inference from the fact that the Applicant testified that the Indian police accused him of providing food, medicine and other materials to aid LTTE efforts in Sri Lanka and having connections with the political arm of the LTTE, yet omitted this from his PIF narrative. Given the serious nature of these allegations, they should have been included in his PIF narrative.

[13] The Board found it implausible that none of the other members of the Applicant's family were harassed or threatened by the police, given that the Applicant testified that his entire family was suspected of being affiliated with the LTTE.

[14] The Board also notes that the Applicant amended his PIF narrative shortly before the hearing to reflect the fact that the unidentified group of people who attempted to arrest him in Vavuniya were "armed." However, in his testimony, he states that they were "armed with guns." The Board drew a negative credibility inference from the fact that the Applicant did not note they were "armed with guns" in his PIF narrative, as such a statement would heighten the risk posed by this group. Furthermore, the Applicant testified that he assumed this group wanted to arrest him. However, the Applicant later testified that he knew they wanted to arrest him because his uncle informed him of this.

[15] The Board drew a negative credibility inference from the fact that the Applicant traveled on his own passport. If he was a person of interest to the authorities then he would not have been able to do so. Furthermore, the Board notes country condition information which indicates that the Sri Lanka government requires that Sri Lankan passports be obtained in person.

[16] The Board noted that the Applicant's testimony is uncorroborated, and as a result of this, and the negative credibility inferences described above, the Board did not believe the Applicant's testimony was credible.

[17] Even if the Applicant's stories were true, the Board found that extortion in the context of Sri Lanka is a generalized risk which does not allow the Applicant to claim refugee protection in Canada.

[18] Likewise, the Board found that the Applicant's decision to return to Sri Lanka on his own passport undermines his subjective fear of persecution, as the Applicant would be unlikely to fear persecution from the Sri Lankan authorities if he were willing to return in this manner. The Board held that this further undermined the Applicant's credibility.

[19] The Board reviewed country condition information for Sri Lanka, citing the fact that individuals who do not have links to the LTTE are no longer cited as "at risk" according to the United Nations High Commissioner for Refugees Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka. Accordingly, the Board found that none of the risk profiles applicable to a fear of persecution in Sri Lanka fit the

Applicant's situation, and that he would not be at risk should he return to Sri Lanka on the basis of his profile alone.

III. Standard of Review

[20] The standard of review is reasonableness (*Ren v Canada (Minister of Citizenship and Immigration)*, 2009 FC 973, at paras 12-13).

IV. Analysis

[21] The Applicant argues that the Board: (i) unreasonably failed to consider the Applicant's age in determining that he appeared sophisticated during his testimony; (ii) unreasonably conducted a microscopic examination of the Applicant's evidence; (iii) failed to assess that the Applicant was at a personalized risk of extortion pursuant to 97(1)(a) of the Act (*Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 353), and made his finding on this issue with no basis in the evidence and without a proper consideration of 97(1)(b) of the Act; (iv) failed to consider whether the Applicant merits protection because he was arbitrarily detained or because of his cumulative risk of persecution; (v) drew an unsupported negative credibility inference from the fact that the Applicant was able to leave Sri Lanka without drawing attention from the authorities (*Wei v Canada (Minister of Citizenship and Immigration)*, 2010 FC 694, at paras 6-9, 15-16); and (vi) given the numerous credibility issues, the Board's decision was unreasonable (*Alavi Mofrad v Canada (Minister of Citizenship and Immigration)*, 2012 FC 901, at para 11).

[22] While it may have been unreasonable for the Board to draw a negative credibility inference from the fact that the Applicant did not specify in his PIF narrative the type of weapon the unidentified group who attempted to arrest him in Vavuniya were armed with (*Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249, at paras 16-17), this issue is not central to the Board's overall credibility finding. The Applicant did not challenge the Board's findings that he omitted a central rationale as to why he was suspected of being linked with the LTTE from his PIF narrative, or the contradictory testimony he gave regarding how he knew the unidentified group in Vavuniya came to arrest him. The Board also drew negative credibility inferences from the implausibility that the Applicant's family was never harassed by the Sri Lankan government, despite apparently being similarly suspected of LTTE involvement, and the fact that the Applicant travelled on his own passport. Cumulatively, these omissions, implausibilities and inconsistencies are a reasonable basis for the Board to disbelieve the Applicant's claims. While not determinative, this finding is bolstered by the Board's unchallenged finding that the Applicant failed to corroborate any of his claims.

[23] The Applicant's claims regarding the necessity for the Board to conduct a section 97(1)(a) analysis are without merit. A review of the transcript and the Applicant's PIF narrative do not reveal any substantive submissions regarding the risk of torture. The bulk of this argument appears to originate from the Applicant's original Memorandum of Argument on judicial review. The Applicant incorrectly and improperly attempts to equate extortion with torture.

[24] While it was not obligated to do so, given its credibility findings, the Board also considered the Applicant's risk of extortion pursuant to paragraph 97(1)(b) of the Act. The Board

reasonably concluded that, even if the Applicant's claims were to be believed, this risk was generalized (*Pararasasingam v Canada (Minister of Citizenship and Immigration)*, 2013 FC 805, at para 22), and not sufficient to allow the Applicant's claims.

[25] The Board also considered the Applicant's cumulative risk profile independent of his claims. The Board reasonably cited documentary evidence, including the United Nations High Commissioner for Refugees Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, in determining that the Applicant's cumulative profile would not put him at risk independent of his personalized claims.

[26] The Board reasonably dismissed the Applicant's section 96 claim on the basis of credibility. There was no claim before the Board that the Applicant was at risk of torture under 97(1)(a) and the Board reasonably considered both his cumulative profile and the generalized risk of extortion in dismissing his claim.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3323-13

STYLE OF CAUSE: KEERTHANAN SIVAKUMAR v THE MINISTER OF
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DATE OF HEARING: JULY 10, 2014

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