

Federal Court



Cour fédérale

Date: 20140221

Docket: IMM-13227-12

Citation: 2014 FC 170

Ottawa, Ontario, February 21, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

B261

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This application for judicial review concerns a 30 year old single Tamil male from Sri Lanka (the Applicant). He arrived in Canada on the MV Sun Sea on August 13, 2010. His claims for refugee status and protection and his *sur place* claim were dismissed by the Immigration and Refugee Board (the Board) in a decision dated November 7, 2012 (the Decision). The Board concluded that because he was suspected of LTTE activity in Sri Lanka in 2009 and thereafter detained and released, and because he was later issued a passport and allowed to leave Sri Lanka, he

has no links either real or perceived to the Liberation Tigers of Tamil Eelam (the LTTE). The Board therefore found that there was no objective basis for his fear of persecution.

[2] The Applicant raises five issues. I will deal with them in turn.

Issue #1

[3] Is the Decision unreasonable because the Board failed to address the written submissions from Applicant's counsel dated July 30, 2012 (the Submissions) to the effect that the Applicant fears discrimination on his return to Sri Lanka which will cumulatively amount to persecution?

[4] The Applicant says that the Board was required to address this fear even though it was not raised in the Applicant's Personal Information form or in his oral testimony at the hearing before the Board. His evidence was that he experienced no discrimination which could be said to amount to persecution when he travelled through checkpoints between Jaffna and Colombo. As well, he had no significant difficulty with the requirement that he register in Colombo.

[5] The Submissions were based on a report by the US Department of State. It deals with the situation in 2009 which was the year the LTTE was defeated by the Sri Lankan army. At that time Tamils were closely monitored.

[6] However, the Board considered more recent evidence which shows that the Applicant might be subjected to special monitoring but found that it would not amount to persecution. As well, the Board recognised that the Sri Lankan population – especially Tamils – would face “some

restrictions” as the government continued to search for supporters or members of the LTTE. But, since the Applicant had no such profile, the Board concluded as follows at para 63 of the Decision:

[63] The panel finds the potential restrictions that this claimant may face, as a failed Tamil refugee claimant, is not unreasonable and there is less than a reasonable chance he would face persecution.

[7] In my view, this finding dealt with the issue of whether cumulative discrimination would amount to persecution.

Issue #2

[8] Was it reasonable for the Board to conclude that “The panel has not been provided with evidence that the claimant has “obvious” scarring?”

[9] The Applicant testified at the hearing before the Board that “any scarring he may have is small and caused by playing soccer on the stones”. The Applicant made similar statements at his interview with CBSA officers on September 12, 2010. He also told counsel for the Minister at the hearing that he did not initially tell the CBSA officers about the scars because they were “pretty small”. However, the CBSA examining officer described the scars on the Applicant’s back as “slash marks” that appeared to indicate that he had suffered deep gouges or fighting wounds. As well, she noted circular marks on one of his legs which she said: “almost look like bullet wounds to me or shrapnel wounds” (collectively the CBSA Comments).

[10] The Applicant’s counsel says that, given the CBSA Comments, the Board was obliged to disbelieve the Applicant when he minimized his scars and conclude instead that he in fact bears

serious scars. The Board was also obliged to consider whether such scars put the Applicant at risk because they might create a perception of LTTE involvement.

[11] In my view, the Board's conclusion is reasonable. The Applicant is not entitled to rely on the CBSA Comments given his evidence at the hearing that the scars were "small". If he had wanted the Board to consider that he had serious scars then he was required to adduce first hand evidence. He could have shown the Board photographs of the scars or he could have uncovered them at the hearing.

Issue #3

[12] Is the Decision unreasonable because the Board failed to consider evidence which contradicted its conclusions?

[13] The document the Board did not mention is an Amnesty International Report of June 12, 2012 (the AI Report) which spoke of passengers on the MV Sun Sea and Ocean Lady and said in part: "Amnesty International believes that they would be exposed to a serious risk of detention, torture and mistreatment on return should the Sri Lankan authorities suspect they had been on board those vessels"... "Amnesty International is concerned that MV Sun Sea and Ocean Lady passengers are perceived to be LTTE supporters or members and as such face well founded fear of persecution, including unlawful detention, torture, and mistreatment should the Sri Lankan authorities suspect they were passengers on the ships and they are forcibly returned to Sri Lanka [my emphasis]."

[14] On this issue the Board concluded as follows:

[71] After giving consideration to all the oral and documentary evidence and submissions regarding the claimant's profile and potential treatment by the Sri Lanka authorities for being a passenger on the Sun Sea and claiming asylum, the panel finds, on a balance of probabilities, that the claimant would not be perceived to be a member or supporter of the LTTE or face persecution as a result. The panel's reasons include the following:

After being allegedly arrested because his bike turned up near a bomb blast he was released by the army and never rearrested on suspicion of having ties to LTTE.

After his release from detention in February 2009 he was issued a passport and allowed to leave the country in 2010.

There is no persuasive evidence to suggest the claimant was suspected of having ties to LTTE when he left Sri Lanka on his own passport.

The claimant has not been named in any of the disclosed media reports about the Sun Sea and there is insufficient credible evidence that the identities of the Sun Sea passengers have been shared with the Sri Lankan authorities.

There is no evidence to suggest the Sri Lanka government suspects individuals of having ties to the LTTE simply because they were smuggled aboard a ship owned and operated by LTTE.

None of the documents suggest all the passengers on the Sun Sea were members or suspected to have ties to the LTTE.

[my emphasis]

[15] The Applicant submits that the last two statements (the Statements) are contradicted by the expressions of belief and concern in the AI Report.

[16] However, in my view, when read in context, the Statements are not contradicted by the AI Report because it only describes a risk for passengers who were suspected by Sri Lankan authorities of being aboard the MV Sun Sea. Since the Board concluded that the Applicant did not fall into this category, the Board's failure to refer to the AI Report was not unreasonable.

Issue #4

[17] Is the Decision unreasonable because the Board failed to consider whether the Applicant is at risk because Canadian authorities were suspicious that the Applicant is a member of the LTTE?

[18] In my view the Board did consider whether Sri Lankan authorities, like their Canadian counterparts, might suspect the Applicant of ties to the LTTE because he arrived on the MV Sun Sea. As described above, the Board found that there was no evidence to show that Sri Lankan authorities are aware that the Applicant was on the ship. However, even if his arrival by ship was known, the Board concluded that he would not be at risk because he had already been investigated and was not suspected of having LTTE ties when he left Sri Lanka.

Issue #5

[19] Is the Decision unreasonable because the Board failed to consider whether as a member of a social group described as "Sri Lankans returning from abroad", the Applicant faced persecution under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA) by reason of the threat of extortion at the hands of the army and paramilitary groups?

[20] At paragraphs 39 and 40 of the Decision the Board dealt with the evidence related to the extortion the Applicant experienced before he left Sri Lanka. The Board said:

[39]...He alleged being extorted by the army and paramilitary one year after he was released from detention. He did not know why the army specifically warned he would be rearrested if money was not paid. He did not know whether those demanding money from his family in January 2010 were any of the officers that detained him in 2009. No money was paid by his family in January 2010 however he claims his family gave some money in May 2010 out of fear. The claimant was asked to explain why the PIF states money was given in the hopes he would not be arrested again if he was not there when the army came. His response was that the money was not paid only to avoid him being arrested but to avoid any of his family members being arrested. This is not however what is stated in the PIF and the claimant could not provide a further explanation for this.

[40] The claimant was asked about the extortion by paramilitary groups. In the original narrative it states the bribe paid by his father was made to the police with the assistance of an EPDP member for his release from detention. This is the only time a specific paramilitary group is named in the written evidence. At the hearing he was asked to clarify whether the bribe through EPDP was paid to the army or police and he said it was paid to the army and the police were not involved. He was unable to explain the PIF statement that the bribe was paid to the police. He told Minister's Counsel that he did not know what paramilitary group the extortionists belonged to. When he was asked how he knew they were Para militants he said they were masked and wearing black clothing. He said their faces were covered by clothes. He did not pay them any money on the only occasion they came before he left Sri Lanka. He as asked whether they ever tipped off the authorities that he was LTTE and he said they did not. He did not know when the Par militants came again but he said they came once more after he left and his family paid them an unknown sum of money. ...

[21] The Board concluded that the threat of false accusation or arrest was the extortionist's means to an end and noted that the Applicant testified that "everyone" was targeted. His evidence on this issue was corroborated by documentary evidence which showed that the Eelam People's Democratic Party (the EPDP) targets anyone with money regardless of ethnicity.

[22] The Board therefore concluded that the risk was generalized and, regarding section 96 of the IRPA, it concluded that the evidence showed that victims of extortion were victims of crime and that there was no link to Convention grounds.

[23] In my view, given the evidence that everyone was targeted, the Board was not required to consider whether Sri Lankans returning from abroad were a social group for the purposes of section 96 of the IRPA. Those who return from abroad may be at heightened risk of extortion because they are perceived to have money but this does not distinguish them from other potential victims of crime such as wealthy business people or land owners. They are all potential extortion victims not members of a social group.

Certification

[24] No question was posed for certification.

ORDER

THIS COURT ORDERS that:

This application for judicial review is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13227-12

STYLE OF CAUSE: B261 V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 6, 2013

**REASONS FOR ORDER
AND ORDER:** SIMPSON J.

DATED: FEBRUARY 21, 2014

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