Federal Court  Cour fédérale

Date: 20140220

Docket: IMM-13174-12

Citation: 2014 FC 162

Ottawa, Ontario, February 20, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

MAYOORAN SIVARATHTHINAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7, for judicial review of the decision of a Member (the "Member") of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dated December 11, 2012, wherein the applicant was determined not to be a Convention refugee or a person in need of protection. The

applicant asks that the decision be set aside and referred back to be reconsidered by a differently constituted panel of the RPD.

[2] For the following reasons, the application is dismissed.

BACKGROUND

[3] The applicant, Mayooran Sivaraththinam, is a Sri Lankan of Tamil ethnicity who arrived on one of the two ships, the *M/V Sun Sea* (the "Sun Sea"), bearing Tamil asylum-seekers which landed in Canada in late 2009 and mid-2010.

[4] He was born in Atchevely, a northern province of Sri Lanka which fell under the control of the Sri Lankan Army in 1995 when the applicant was about seven years of age.

[5] In 2007, on two or three occasions, the applicant was stopped by the Army on his way to school along with other students. He was let go after some questioning. The longest period of time he was stopped for was two hours. He was stopped by the police because, according to the applicant, young students were being targeted for recruitment by the Liberation Tigers of Tamil Eelam [LTTE].

[6] The applicant testified that neither he nor his family had any problems with the LTTE or any other group. He has never been accused of involvement with the LTTE by any governmental or nongovernmental groups. He was never arrested, or charged for any criminal infraction. His life was unmarred by any major incident with the authorities.

[7] He subsequently began working as a security guard at a bank that was situated between an army camp and a Tamil militant camp. The RPD concluded that he would not normally be allowed to be a security guard at a bank if he were a suspected criminal or LTTE member. The applicant claims that he was scared to work at the bank as there had previously been theft of the bank at gunpoint.

[8] Fearing for his safety, the applicant left the North and went to Colombo, where he procured a passport and a tourist visa to Thailand. He left Colombo on April 24, 2010, and went to Thailand, where he boarded the Sun Sea on May 16, 2010, arriving in Canada on August 13, 2010, where he claimed refugee protection.

[9] He claimed protection on three Convention grounds: race, political opinion and membership in a particular social group.

DECISION UNDER REVIEW

[10] In his decision, the Member determined that the applicant was neither a Convention refugee nor a person in need of protection, and that there was not a serious possibility that removal to Sri Lanka would subject him personally to persecution, or that he would be subjected personally to a risk to his life, or a risk of cruel and unusual treatment or punishment, or to a danger of torture by any authority in Sri Lanka.

[11] Firstly, the Member determined that the applicant was not credible. This assessment was based primarily on a series of inconsistencies between the applicant's account of his story in his Claim for Refugee Protection, his Personal Information Form [PIF], and in his testimony.

[12] The Member also determined that even if he were to find the applicant credible, his alleged subjective fear was not supported by objective evidence, and therefore he had not established a well-founded fear of persecution. In arriving at this conclusion, the Member examined the applicant's personal profile, and the current country conditions in Sri Lanka.

[13] In terms of his personal profile, the Member noted that the applicant did not have any particular problems with the LTTE, nor was there any indication that he was ever accused of being involved with the LTTE.

[14] The Member noted that UNHCR's 2010 revised *Eligibility Guidelines for Assessing the International Protection Needs of Asylum- Seekers from Sri Lanka* state that young Sri Lankan males from the North are no longer in need of automatic eligibility for refugee protection, and that asylum claims should be considered on their individual merits.

[15] Further, the Member noted that the applicant did not fit into any of the categories of persons for which UNHCR's guidelines recommend ongoing protection. The only category the applicant could arguably fit in is persons suspected of having links with the LTTE, and the Member determined that on a balance of probabilities the government authorities did not suspect the claimant of LTTE involvement.

[16] In terms of country conditions, the Member noted that there continue to be problems in Sri Lanka, but that the situation affects all Sri Lankans, not just Tamils. Furthermore, despite ongoing problems for Tamils, the Member determined that there have been durable and meaningful changes in the country conditions affecting Tamils, basing this determination on the UNHCR guidelines. The Member mentioned, for example, that even LTTE members are beginning to be released from detainment, which suggests that someone like the claimant who, at most, would be suspected of mere links to the LTTE, would probably not face problems if returned to Sri Lanka.

[17] The Member examined other reports submitted by the applicant, but ultimately preferred the documents and guidelines prepared by the UNHCR over the other documentation available. He described the UNHCR as the premier organization to protect human rights of people all over the world.

[18] The Member went on to state that he was not bound by his colleague's decision that an asylum seeker who had arrived on the second ship, the *M/V Ocean Lady* (the "Ocean Lady") be granted refugee status based on his membership in a particular social group as a Tamil male who arrived as a passenger of the Ocean Lady.

[19] The Member also found that despite Sri Lanka's strict entry and exit controls, there is no evidence that the applicant will face much more than questioning by officials upon return. Based on the UNHCR's practice of helping Tamils returning to Sri Lanka, the Member concluded that Tamils do not face a serious chance of persecution upon return.

[20] Ultimately, the Member concluded that the applicant would not, on a balance of probabilities, be perceived to be linked to the LTTE by the Sri Lankan government and therefore would not be targeted by the government. He also found that there was no serious possibility that the applicant would be persecuted upon return, and that therefore his fear was not well-founded.

[21] The Member then proceeded to an analysis of whether the applicant is a refugee *sur place*, concluding ultimately that he was not. After examining the documentary evidence submitted by the applicant demonstrating the media coverage of the Ocean Lady and the Sun Sea, the Member concluded that the applicant was not personally identified anywhere as a passenger.

[22] Furthermore, the Member concluded that there was no evidence that the passengers aboard the two ships in question were identified to the Sri Lankan government, and that on a balance of probabilities, the Sri Lankan government would not perceive the applicant to be a member or supporter of the LTTE on the basis of his travel on the Sun Sea. The Member emphasized that the jurisprudence is clear that the country of origin has to be aware that the applicant was aboard the ship in order for him to be considered a *sur place* refugee; in this case, the Member found that there was insufficient evidence that the Sri Lankan authorities are aware that the applicant was aboard the Sun Sea.

[23] Ultimately, the Member found that regardless of whether the Sri Lankan government becomes aware of the applicant's travel aboard the Sun Sea, he will not face any heightened risk as a result.

[24] The Member then analyzed the potential risk faced by the applicant under section 97 of the *Immigration and Refugee Protection Act* [*IRPA*] in the form of extortion, and concluded that he would face personalized risk from perceived wealth, but that because this risk is faced by Sri Lankans in general, it is excluded pursuant to section 97(1)(b)(ii) of *IRPA* as the risk is "faced generally by other individuals in or from that country." The risk of extortion is faced by any Sri Lankan with a capacity to pay, including Tamils, Muslims, LGBT people, merchants, etc. Ultimately, the Member concluded that that the risk would remain a generalized risk.

APPLICANT'S SUBMISSIONS

[25] The applicant claims that the Member erred in his application of the test under s 96 of *IRPA* in stating that the test was whether the applicant's profile as a male Tamil puts him at personal heightened risk in Sri Lanka today. According to the applicant, the proper test is whether or not there is a reasonable chance or a serious possibility that the applicant would be persecuted should he be returned to Sri Lanka (*Chan v Canada (Minister of Employment and Immigration)*, [1995] SCJ No 78, [1995] 3 SCR 593 [*Chan*] at para 120). He claims that the Member also erred in the application of the *Chan* test by articulating a necessity that the applicant be wanted by the Sri Lankan authorities.

[26] The applicant further contends that the Member erred in his assessment of the applicant's credibility and in his reliance upon speculation.

[27] The applicant alleges that the Member's focus on a minor contradiction in the applicant's evidence (his statement as to how many months he spent working at the bank) was misplaced in that it was an immaterial concern.

[28] The applicant also claims that the Member erred in his reliance on some passages of UNHCR's guidelines, while ignoring other passages which indicate that male Tamils from northern Sri Lanka do indeed still face a serious possibility of persecution upon return (and which were drawn to his attention by applicant's legal counsel) (*Toth v Canada (Minister of Citizenship and Immigration)*, 2002 FC 1133 at para 26).

[29] The applicant alleges that the Member ignored relevant documentary evidence indicating that Tamils from northern Sri Lanka do face a serious possibility of persecution upon return (*Orgona v Canada (Minister of Citizenship and Immigration)*, [2001] FCT 346 at para 31; *Goman v Canada (Minister of Citizenship and Immigration)*, 2012 FC 643 at para 13).

[30] The applicant also alleges that the Member erred in his *sur place* finding by indicating that it is necessary for all the passengers on the Sun Sea to have been found to have LTTE connections. According to the applicant, it need only be established that there is more than a minimal possibility that he would be persecuted upon return to Sri Lanka. The applicant also points out that the Member, on a few different occasions, made an evaluation of the *sur place* claim on a balance of probabilities, as opposed to "more than a minimal possibility."

[31] The applicant then contends that the Member erred in his determination that the applicant's fears represent a generalized risk and not persecution for any Convention reason. The applicant was victimized by a group with a political agenda, the Eelam People's Democratic Party [EPDP], and because the EPDP is a group that funds its political activities through extortion, any refusal or reluctance to submit to extortion demands would be considered to be indicative of opposition to that political agenda. The Member failed to consider this aspect of the claim on the basis of perceived political opinion, and considered it only under section 97, as opposed to section 96.

STANDARD OF REVIEW

[32] In her recent decision in *Canada (Minister of Citizenship and Immigration) v A068*, 2013 FC 1119 [*A068*] at paragraph 28, Justice Gleason stated the following:

> [28] In focusing on whether the Board erred in premising its decision on the risk the claimant would face due to his background and the belief of the Sri Lankan authorities that he might be an LTTE supporter (as opposed to consideration of what the "particular social group" ground encompasses as a matter of law), the standard of review to be applied is reasonableness as the issue is one of mixed fact and law as opposed to a pure legal issue (see e.g. *Dunsmuir v New Brunswick*, 2008 SCC 9 (CanLII), 2008 SCC 9 at para 53, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, B420 at para 13; *A032* at para 14; *B377* at para 8). In other words, what is at issue is not what the grounds of "nationality", "race" or "political opinion" may mean under the *Refugee Convention*, but, rather, whether the Board's explicit or implicit finding of a nexus to these grounds on the facts of this case should be disturbed. This question requires application of the deferential reasonableness standard of review.

[33] In the case at hand, the Member was making an assessment as to what risk the applicant would face due to his background and the belief of the Sri Lankan authorities that he might be an LTTE supporter. The standard of review is therefore reasonableness (see also *B231 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1218, [*B231*] at para 28).

ISSUE

Was the Member's assessment of the applicant's potential risk upon return reasonable?

ANALYSIS

Foundational Facts and Reasonable Outcome

[34] In my view, the proper approach for a decision of this nature, where the Member has carried out an exhaustive review of all aspects of the case, should begin with a general analysis of the reasonableness of the decision based on what I would describe as the foundational, by which I mean undisputed or conclusive, facts.

[35] By enunciating a test based on a range of reasonable acceptable outcomes, I understand the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], to be directing reviewing courts to stand back and take a broad view of the reasonableness of the decision based on all of the evidence. If that perspective generally supports the conclusion that the decision is reasonable, it will be challenging for the applicant to demonstrate that the decision falls outside the range of reasonable acceptable outcomes unless a major flaw exists in the reasoning that undermines the legitimacy of the decision.

[36] In the matter at hand, which involves the risk of persecution to the applicant and/or his need of protected person status, the foundational and undisputed facts are supportive of a conclusion that the board's decision was more than reasonable.

[37] The applicant acknowledges that neither he nor his family had any problems with the LTTE or any other group. He has never been accused of involvement with the LTTE by any governmental or nongovernmental groups. He was never arrested, or charged for any criminal infraction. His life was without any major incident with the authorities.

[38] He departed legally from Sri Lanka without difficulty. He fits none of the profiles of persons identified by the UNHCR as being at risk upon return to Sri Lanka.

[39] He has done nothing in Canada in terms of involving himself in any political action group that would draw the attention of Sri Lankan authorities. There is no evidence that he has been identified as a passenger on the Sun Sea. There is no evidence that he has ever been the target for extortion.

[40] Accordingly, on the generally uncontested foundational facts described above, the Member's decision that the applicant has not established a reasonable chance of having a well-founded fear of persecution, or that he is a person in need of protection, falls well within the range of reasonable acceptable outcomes.

Incorrect Test

[41] The applicant submits that the Member articulated an incorrect test by stating that "the claimant would not face a heightened risk upon return to Sri Lanka". He argues that the standard is lower than a balance of probabilities, but higher than a mere possibility.

[42] In my view, this distinction would not make any difference to the outcome given the persuasive value of the foundational facts, but nevertheless, I am not of the opinion that there is such a clear distinction to be drawn in the expression of the standards.

[43] The Oxford Dictionary defines risk, when used in its singular form, as referring to possibilities, which is the understanding that I believe is attached to the term in common parlance:

> 1. a situation involving exposure to danger: …
> [mass noun]: 'all outdoor activities carry an element of risk'
>
> 1.1 [in singular] the possibility that something unpleasant or unwelcome will happen: …
>
> [My emphasis]

[44] A risk is a possibility that something unpleasant will happen, which I take to mean the same thing as a possibility or a chance when referring to fear of unwelcome persecution of a person. The applicant argues that because the word "risk" is used in section 97 of *IRPA*, for which the burden of proof is the balance of probabilities, its use by the Member means that he is applying the wrong burden of proof to section 96 of *IRPA*. I do not accept this submission because it is clear that the Member is carrying out his analysis under section 96 and refers to the appropriate burden elsewhere in the decision.

[45] The applicant's submission is also inconsistent with his argument that "heightened risk" is something less than a balance of probabilities, but greater than more than a mere possibility. This argument is indicative of the fact that his real critique relates to the term "heightened" rather than the term "risk". I will deal with the issue of different qualifiers of possibility, risk, etc, below. However, I wish first to set out the reasons for my view that the test of "more than a mere

possibility" misstates the test as originally formulated in *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680, [1989] FCJ No 67 [*Adjei*].

[46] The Federal Court of Appeal in *Adjei* examined the meaning of "well-founded fear", concluding that the appropriate standard is a reasonable chance, which lies somewhere between more than a minimal possibility and a probability:

> It was common ground that the objective test is not so stringent as to require a probability of persecution. In other words, although an applicant has to establish his case on a balance of probabilities, he does not nevertheless have to prove that persecution would be more likely than not. Indeed, in Arduengo v. Minister of Employment and Immigration (1981), 40 N.R. 436 (F.C.A.), at page 437, Heald J.A. said:
>
> > Accordingly, it is my opinion that the board erred in imposing on this applicant and his wife the requirement that they would be subject to persecution since the statutory definition supra required only that they establish "a well-founded fear of persecution". The test imposed by the board is a higher and more stringent test than that imposed by the statute.
>
> The parties were agreed that one accurate way of describing the requisite test is in terms of "reasonable chance": is there a reasonable chance that persecution would take place were the applicant returned to his country of origin?
>
> We would adopt that phrasing, which appears to us to be equivalent to that employed by Pratte J.A. in *Seifu v. Immigration Appeal Board* (A-277-82, dated January 12, 1983):
>
> > [I]n order to support a finding that an applicant is a Convention refugee, the evidence must not necessarily show that he "has suffered or would suffer persecution"; what the evidence must show is that the applicant has good grounds for fearing persecution for one of the reasons specified in the Act. [Emphasis added].
>
> What is evidently indicated by phrases such as "good grounds" or "reasonable chance" is, on the one hand, [1] that there need not be

> more than a 50% chance (i.e., a probability), and [2] on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a "reasonable" or even a "serious possibility", as opposed to a mere possibility.
> [Emphasis and bracketed numbers added]

[47] As I interpret *Adjei*, the Court of Appeal was not suggesting that either "not more than a 50 percent chance" or "more than a minimal possibility" should be accepted as the test for determining a well-founded fear under section 96 of the *IRPA*. The immigration bar obviously prefers the standard of "more than a mere possibility" because nearly anything is possible and "more than a mere possibility" sounds like a threshold that is close to a possibility.

[48] This was not, however, what the Court of Appeal was proposing in *Adjei*. It was undertaking a process of deduction to determine a compromise standard between the two extremities, neither of which was being suggested should apply. In my view, therefore, the test of "more than a mere possibility" to determine a well-founded fear misstates the test handed down by the Court of Appeal in *Adjei*. The proper expression of the standard to determine a well-founded fear is a "reasonable chance", "reasonable possibility, "serious possibility", or "good grounds".

[49] Returning to the issue of appropriate qualifiers of possibilities, chances, etc, I am of the view that any test not containing the term "reasonable" as a limitation should be shunned. This would leave the appropriate standard to be either a "reasonable chance" or a "reasonable possibility", as there is no distinction between a chance or a possibility.

[50] All three prognostic descriptors of fear, i.e. possibility, chance, or risk need to be circumscribed in their scope. This is because the vast range of circumstances they encompass does not make them useful as a standard employed to impose remedies in a legal system that has always discouraged floodgate consequences. Unfortunately, the need to impose limitations has given rise to a number of different restraining qualifiers, i.e. a "reasonable" chance, "more than a mere" possibility, a "serious" possibility, and now a "heightened" risk.

[51] Subject to my comments above on the test of "more than a mere possibility," I do not think that when used in the context of section 96, there is any meaningful distinction between these various descriptors as they have been developed in the jurisprudence. They are all imprecise measures based on opinions of circumstances that are intended to be a median between something less than a balance of probabilities and more than a mere possibility.

[52] That being said, I am of the view that the most appropriate qualifier to a range of possibilities is that of "reasonable". Reasonableness is a ubiquitous measure or standard used throughout our legal system, be it with respect to facts or law. It is a standard that combines human experience with rational logic. It is implemented through the pragmatic fiction of the reasonable person to provide an objective measure of decision-making in a world of unlimited circumstances. What is more, it connotes reasonableness, a notion which a fair legal system must be based upon.

[53] A test such as "more than a mere" has no common boundary of limitation any more than does "serious" or "heightened" when applied to a possibility, risk or chance relating to fear. To be useful they all have to come back to a sense of what a reasonable limitation is in the circumstances,

even though that may remain unsaid. That is because reasonableness imports human experience and logic as an aid to define the applicable boundary of possibilities, chances or risks that should give rise to a well-founded subjective fear.

[54] In reference to my preference for the term reasonable, I note that the Supreme Court appears to be employing the term "rational", which it considers to have the same meaning as "reasonable," as the preferred expression in place of the term "possible" when describing acceptable outcomes in the application of the *Dunsmuir* test. See, for example, Justice Cromwell's description of the test in *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission),* 2012 SCC 10, [2012] 1 SCR 364, at paras 44, 46 and 47:

> [44] Reasonableness as a standard of review reflects the appropriate deference to the administrative decision maker. It recognizes that certain questions that come before administrative tribunals do not lend themselves to a single result; administrative decision makers have "a margin of appreciation within the range of acceptable and rational solutions": *Dunsmuir*, at para. 47 (emphasis added). Reasonableness is a concept that must be applied in the particular context under review. The range of acceptable and rational solutions depends on the context of the particular type of decision making involved and all relevant factors: […] [My emphasis]
>
> […]
>
> [46] […] Evans J. held that he should only intervene to prohibit continuation of the inquiry if satisfied that "there [was] no rational basis in law or on the evidence to support the Commission's decision that an inquiry by a Tribunal is warranted in all the circumstances of the complaints" (para. 49).
>
> [47] While I would use the word "reasonable" rather than "rational", I do not think there is any difference in substance between the two formulations. As the Court said in *Dunsmuir*, a result reached by an administrative tribunal is reasonable where it can be "rationally supported" (para. 41).

[55] In my view, a possible acceptable outcome is different from a rational acceptable outcome. The fact that the Supreme Court, which carefully measures its words, appears to have replaced the language of possibilities with the more commonly understood standard of reasonableness should be taken as a strong indication of the Court's intent. In effect, the Court appears to be saying that possible acceptable outcomes must be reasonable, making reasonability the real standard. For the same reason, it would be preferable to limit the description of the standard under section 96 to that of a reasonable possibility or chance, avoiding the language of risk because of the confusion that it can give rise to in reference to section 97. Establishing a single consistent standard would have the advantage of preventing any further new synonyms being offered to describe degrees of fear of persecution, while shifting the language in this field back to that normally employed in the legal world.

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[56] Apart from his submissions on a test of "heightened risk", the applicant also claims that other incorrect tests were employed by the Member. These included statements such as: "… life for the remaining Tamil population has improved"; and "… the country is perceived internationally to have become safer since the end of war." I agree with the respondent that these are not tests but merely findings of fact which are determined upon a balance of probabilities.

Credibility Findings

[57] The applicant challenged some of the Member's credibility findings, but spent little time in argument expanding on these. In my view credibility was not a determinative issue inasmuch as the evidence that was relied upon came from the applicant.

Challenge to UNHCR Guidelines as the Principle Document to Determine Country Conditions

[58] The applicant was critical of the Member for failing to refer to certain passages in the UNCHR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, which indicated that male Tamils from the North face a serious possibility of persecution if returned to Sri Lanka on that basis alone. In that regard, he highlighted references in the report to other reports which stated that "young Tamil men, particularly those originating from the north and east of the country, may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE."

[59] That particular passage does not state that young males face a serious possibility of persecution if returned to Sri Lanka on that basis alone, nor does it or other references and reports mentioned by the applicant undermine the reliability of the UNHCR guidelines, which are relied upon regularly, and which the panel member relied upon as part of his reasoning to conclude that the applicant would not face a serious possibility of persecution as a young male from the north of Sri Lanka on that basis alone.

[60] The applicant was also critical of the alleged failure to refer to much of the documentary evidence, which he argued directly contradicted the member's conclusion. In fact, I find that the panel member considered reports, such as those from Amnesty International, along with other reports, which contradicted the conclusion that the situation was generally improving. The panel member indicated that he preferred the documents and guidelines prepared by the UNHCR. This was certainly within his discretionary powers, and in any event appears to be the preferred documentation in determining risk for returning refugees.

[61] A similar argument was put forth in *B231*, above, in which Justice Kane upheld the use of the UNHCR guidelines at paragraphs 43-47:

> [43] […] The Board thoroughly considered the documentary evidence concerning the situation for Tamils in Sri Lanka and acknowledged the ongoing concerns, particularly for Tamils who fit a certain profile. The Board, however, reasonably concluded that the applicant's particular profile would not put him at risk if he were to return to Sri Lanka.
>
> [44] The Board addressed the contrary evidence but found, for several reasons, that it was not persuasive and chose to "prefer the documents and guidelines prepared by the UNHCR".
>
> [45] The applicant strongly argued that the Board erred in failing to heed the advice of the UNHCR that the more recent country condition evidence should be considered.
>
> [46] I agree with the applicant that the UNHCR is the foremost authority on the risks faced in the country of origin.
>
> [47] Therefore, the Board was justified in relying on the 2010 UNHCR Guidelines which remained unchanged at the date of the hearing and decision. The Board noted that the previous version of the UNHCR Guidelines in 2009 called for protection for young male Tamils more generally but had been superseded by the 2010 UNHCR Guidelines, which note risks to particular people or categories of people and call for an individualised assessment.
>
> […]
>
> [50] Although the applicant disagrees with the way the Board has treated the contrary evidence, the Board's analysis of that evidence was thorough, balanced and unimpeachable under a reasonableness standard of review.
>
> [51] The Board did exactly what the UNHCR advised – an individual assessment based on the documentary evidence while acknowledging the mixed evidence and identifying that it preferred to rely on the UNHCR Guidelines. The Board found that the applicant would not be at risk.

[62] In a similar vein, I conclude that the Member's treatment of the documentary evidence on country conditions was thorough, and certainly holds up in the face of a reasonableness review. Furthermore, as in *B231*, the Member carried out exactly what the UNHCR Guidelines recommend: an individual assessment based on the applicant's profile. It is not the task of this Court to disturb that assessment.

Sur Place Claim as Passenger on the Sun Sea

[63] In *A068*, Justice Gleason conducted a thorough review of the case law pertaining to the various refugee claims made by passengers who arrived in Canada on the Ocean Lady and the Sun Sea.

[64] The question that has been raised in this series of decisions is whether the mere fact of having been aboard the Ocean Lady or the Sun Sea is enough to make passengers members of a "particular social group" within the meaning of section 96 of *IRPA* (*A068* at para 18). In *Canada (Citizenship and Immigration) v B380*, 2012 FC 1334 at paras 23-27, Chief Justice Crampton held that the RPD had erred by determining that passengers of the Sun Sea constituted a particular social group for purposes of application of section 96. In *A068* at paragraph 18, Justice Gleason points out that Justices O'Reilly, Blanchard, Noel, Mosley and de Montigny have made similar findings to the Chief Justice in *Canada (Minister of Citizenship and Immigration) v B399*, 2013 FC 260 at paras 16-18; *Canada (Minister of Citizenship and Immigration) v B420*, 2013 FC 321 at para 17; *Canada (Minister of Citizenship and Immigration) v B451*, 2013 FC 441 at para 27; *Canada (Minister of Citizenship and Immigration) v B171*, 2013 FC 741 at paras 11-13; and *Canada (Minister of Citizenship and Immigration) v B272*, 2013 FC 870 at para 75.

[65] However, Justice Gleason goes on to point out at paragraph 22 that:

> […] several cases have upheld RPD findings in situations like the present case where the RPD premised its decision in large part on the claimants being members of a "particular social group" comprised of Tamils who were at risk as a result of their presence on one of the vessels but also commented at one place or another in the decision that the risk in question was tied to the claimants' ethnicity and the possibility that they might be viewed as supporters of the LTTE. In *B399*, *B420*, *B377*, *B344* and *B272*, Justices O'Reilly, Blanchard, Noël and de Montigny upheld the decisions reached by the RPD on the basis of there being a confluence of grounds related to race and perceived political opinion, which they found to be sufficient to establish a nexus to one of the grounds in the *Refugee Convention*. To a greater or lesser extent, in each of these decisions, my colleagues have read into the Board's reasons to reach their conclusions. For example, Justice O'Reilly noted at para 19 of *B399*:
>
> > Unfortunately, the Board's findings are not as clear as they could have been; yet, the following passage in its reasons supports B399's contention that the Board did not rest its conclusion solely on membership in a particular social group as a passenger on the MV Sun Sea:
> >
> > > […] the claimant will most likely be detained and questioned … upon his return to Sri Lanka…The panel finds that the authorities will suspect the claimant has links to the LTTE. The country documents establish that Tamils suspected of having links to the LTTE continue to be subject to serious abuses, including torture, by the authorities in Sri Lanka.
>
> [23] In *B399*, *B420*, *A032*, *B377*, *B344* and *B272*, Justices O'Reilly, Blanchard, Noël and de Montigny determined that decisions much like the one in this case were reasonable as there was evidence to support the conclusion that the claimants might be at risk of torture if returned to Sri Lanka and that such torture was based on the confluence of their ethnicity, suspected complicity with the LTTE and possession of knowledge about the LTTE, the first two of

> which would invoke the grounds of race and perceived political opinion.
>
> [24] Conversely, in *B472* at para 28, *B323*, *A011* at paras 40-42, *B459* at para 7, and *B171* at para 10, Justices Harrington and Mosley refused to engage in a similar reading-in exercise and decided the cases based solely on the reasonableness or correctness of the Board's analysis of the "particular social group" ground for refugee protection. In *B472* and *A011*, Justice Harrington set aside RPD decisions as incorrect where the Board found the claimants to be members of a "particular social group" comprised of passengers at risk due to their presence on one of the vessels, and in *B459* and *B171*, Justice Mosley set a similar finding aside as unreasonable. In all four cases, they certified a question regarding the appropriate standard of review and held that it was inappropriate to consider whether the RPD's decision could be upheld under the grounds of race or perceived political opinion as neither of these grounds was specifically addressed by the RPD as a reason for granting refugee status.

[66] The Member in the case at hand concluded that there was insufficient evidence to show that the Sri Lankan authorities will have knowledge that the claimant was a passenger on the Sun Sea. He also concluded that there was insufficient evidence that the applicant would be treated any differently than any other returnee to the country given his complete lack of past association with the LTTE.

[67] While the member did not explicitly address the question of membership in a particular social group, he discussed the situation in Sri Lanka for young Tamil men, and the potential risks the applicant would face upon return as a result. His findings were based on a comprehensive survey of the documentary evidence in regards to country conditions in Sri Lanka, as well as on the applicant's own testimony to the Board. His conclusion that, on a balance of probabilities, there was not a serious possibility that the applicant would face persecution upon return is both reasonable and an application of the correct test as laid out in *Adjei*; *Németh v Canada (Justice)*, 2010 SCC 56 at

para 98, [2010] 3 SCR 281; *Mugadza v Canada (Minister of Citizenship and Immigration)*, 2008 FC 122 at para 20, 164 ACWS (3d) 841; and *Canada (Citizenship and Immigration) v A068*, 2013 FC 1119 at para 8.

The applicant's extortion claims

[68] In respect of the applicant's contention that he is subject to a risk of extortion by the EPDP, I recently discussed the nature of extortion for purposes of a personalized versus generalized risk assessment under section 97 of *IRPA* in *Wan c Canada (Citoyenneté et Immigration)*, 2014 CF 124. Extortion is by nature a personalized crime, a fact which gives rise to some confusion in the ensuing risk analysis. When faced with a claim of fear based on extortion, the Board must determine whether the claimant has provided sufficient evidence to meet his onus that the general crime of extortion in his particular circumstances presents a sufficient risk to his life or a risk of cruel and unusual treatment to take it outside of the risk faced by other similarly situated individuals in the country in question, in this case, Sri Lankans who are perceived as wealthy. This was the analysis carried out by the Member, who pointed out that the allegations of risk raised by the applicant did not differentiate his situation from that of any other Sri Lankan perceived as wealthy.

[69] In sum, the Member's decision was a reasonable one in light of the facts and the law.

CONCLUSION

[70] This application for judicial review is dismissed.

JUDGMENT

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

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13174-12
STYLE OF CAUSE:	MAYOORAN SIVARATHTHINAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 28, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	ANNIS J.
DATED:	FEBRUARY 20, 2014

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