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Arumugam v. Canada (Minister of Employment and Immigration)

Between
Kandasamy Arumugam, Applicant, and
The Minister of Employment and Immigration, Respondent

[1994] F.C.J. No. 122

[1994] A.C.F. no 122

46 A.C.W.S. (3d) 693

Action No. IMM-1406-93

Federal Court of Canada - Trial Division
Toronto, Ontario

Reed J.

Heard: January 20, 1994

Oral judgment: January 20, 1994

(3 pp.)

Aliens -- Immigration -- Refugees -- Judicial review.

Application for judicial review of a decision denying the applicant's claim for refugee status.

HELD: Application was dismissed. The Board's speculative conclusions in parts of its decision did not constitute errors so substantial as to justify setting it aside.

Adam McIver, for the Applicant.

Mark Persaud, for the Respondent.

1 REED J. (Reasons for Order, orally):-- I agree with counsel for the applicant that there are some erroneous findings of fact in the Board's decision, for example, which person or persons had possession of the keys to the applicant's business. There are some ambiguous statements, for example, that asserting that the applicant encountered no problems when he returned to Sri Lanka in 1991. If that statement was intended as a summary of the applicant's evidence, it was incorrect. If it was intended to be a conclusion of the Board based on the fact that it did not believe the applicant, then, it is supportable. In addition, some of the Board's conclusions are arguably somewhat speculative, for example, that to which Mr. McIver referred concerning the likely treatment by the LTTE of those who are a lucrative source of funds.

2 But, reviewing the decision as a whole, I cannot find that the errors therein were substantial enough to justify the setting aside of that decision. As Mr. Persaud argues, even if some errors were made these do not affect the overall validity of the decision. The Board clearly found that the applicant lacked credibility. The Board noted his demeanour when reciting answers concerning facts already set out in his P.I.F. versus his demeanour when giving evidence about matters outside that narrative. The Board clearly did not find some of the crucial aspects of his evidence credible: why he did not register when he went to Colombo; his story about having his identity card stolen; and, most importantly, why he chose to go back to Jaffna from Saudi Arabia at a time when the situation had worsened since he had left in 1989.

3 For the reasons given the application will be dismissed.

4 I have been asked to certify a question:

Whether a claimant must be confronted with an implausibility on the record and given an opportunity to respond, failing which the panel is not be entitled rely upon the alleged implausibility in reaching its decision.

5 I have decided not to certify this question. I think the jurisprudence is clear. Board's cannot simply draw implausibilities "out of a hat". They must be founded in the evidence. If they are clearly highly speculative and a claimant has not been given an opportunity to address them, a reviewing Court will give the conclusion little weight. If they are firmly founded in and supported by the evidence they of course will be given greater weight. For the reason indicated I do not think it appropriate to certify the question which has been put.

REED J.

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