Federal Court  Cour fédérale

Date: 20150422

Docket: IMM-2686-14

Citation: 2015 FC 518

Toronto, Ontario, April 22, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

KIRISANTHAN SELVACHANTHIRAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a Member of the Refugee Protection Division dated March 19, 2014 in which the Applicant's claim for refugee protection was rejected.

[2] The Applicant is an adult Tamil male from the north part of Sri Lanka. He is a citizen of that country. He was caught up with the civil war there. His brother was killed during the conflict. The Applicant left Sri Lanka on March 22, 2010 and travelled through several countries

entering the United States on May 10, 2010. He did not claim asylum there although he was detained by the United States authorities. The Applicant travelled to the United States/Canada border on August 7, 2010 and claimed refugee protection upon entry into Canada at that time.

[3] The issue for determination centers upon the inconsistency between what the Applicant said on his original Personal Information Form ("PIF"), which was prepared with the assistance of Counsel and received September 1, 2010, and his subsequent amended PIF received mid-2013. That and other factors led the Member to conclude that there was not a serious possibility that the Applicant would not be persecuted upon return to Sri Lanka today.

[4] In the Applicant's original PIF narrative, the Applicant said that his brother was killed on January 16, 2009 during a shell attack on a bunker in which his family was sheltering. He said that his brother's body was removed a day later. He said that in March 2009, the Applicant and relatives were fleeing through the jungle where a cousin and some other relatives were killed.

[5] In his 2013 amended PIF narrative, the Applicant stated that the LTTE had demanded that his family provide them with a person and, as a result, that his brother was taken by them. He said that the LTTE said that his brother died in battle and his body was not recovered. His brother's death certificate was dated March 15, 2009, the day the LTTE told his family that his brother was dead. The family assumed that he died in a battle that took place January 16, 2009.

[6] When asked why he did not mention that his brother was conscripted by the LTTE and died in battle in his original PIF, the Applicant admitted that he had lied. He said that he feared

that his claim would be refused, and that he would be deported had he disclosed his brother's ties to the LTTE at the time.

[7] The Member found, given the discrepancies in the PIF's, that the Applicant was not credible. I find this determination to be reasonable.

[8] The Member proceeded with a consideration as to whether the Applicant would be persecuted by the authorities in Sri Lanka were he to be returned today. The Member noted that the Applicant had been detained by the authorities for several days in September 2010 at which time he was beaten and questioned as to his affiliation with the LTTE. The Member noted that the Applicant had been released upon the payment of a bribe by the Applicant's father. The Applicant then proceeded to leave Sri Lanka via the airport using his own passport without apparent difficulty.

[9] The Member weighed the evidence as to possible persecution were the Applicant, as a young Tamil male possibly with LTTE connections, to be returned to Sri Lanka, and came to the conclusion that there was no serious possibility of persecution.

[10] Applicant's Counsel, with considerable skill, went through the Member's reasons pointing out where the Member failed to mention other evidence or portions of the evidence cited by the Member which would have favoured the Applicant. Counsel referred to several authorities in which the Court was critical of reasons that did not cite all the evidence.

[11] Respondent's Counsel, also skillfully, noted that there was considerable evidence to support the Member's determinations and authorities pointing out that the reasons do not need to be microscopically examined or refer to every piece of evidence.

[12] A consistent theme in the jurisprudence respecting matters such as this is that each case is fact specific and must be determined on its own merits (e.g. *Sivalingam v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1046 at paragraph 38).

[13] I am left with some doubt in this case as to the determination by the Member; however, I am mindful of my role in a judicial review; it is not to make the determinations that I would have made; rather, it is to determine whether the determinations of the tribunal were reasonable. In this regard, it is worth repeating paragraphs 46 and 47 of the Supreme Court of Canada decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190:

> *46 What does this revised reasonableness standard mean? Reasonableness is one of the most widely used and yet most complex legal concepts. In any area of the law we turn our attention to, we find ourselves dealing with the reasonable, reasonableness or rationality. But what is a reasonable decision? How are reviewing courts to identify an unreasonable decision in the context of administrative law and, especially, of judicial review?*
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> *47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of [page221] justification, transparency and intelligibility within the*

> *decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.*

[14] To this, I add the remarks of Justice Gascon for the majority of the Supreme Court of Canada in the recent decision of *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 where he wrote at paragraph 46:

> *46 Deference is in order where the Tribunal acts within its specialized area of expertise …*

[15] Guided by these principles, I find that the decision under review was reasonable and will not be set aside.

[16] No party requested that a question be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2686-14
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