Federal Court  Cour fédérale

Date: 20150507

Docket: IMM-4706-13

Citation: 2015 FC 598

Ottawa, Ontario, May 7, 2015

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

J.M.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

PUBLIC REASONS FOR JUDGMENT AND JUDGMENT
(Confidential Reasons for Judgment and Judgment issued April 21, 2015)

[1] The applicant's claim for refugee protection was denied by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board). He now applies for judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The applicant seeks an order setting aside the negative decision and returning the matter to a different member of the Board for redetermination.

I. Background

[3] The applicant is a citizen of Sri Lanka, of Tamil ethnicity. He grew up in [redacted], Jaffna in the Northern Province.

[4] In the 1990s, the applicant and his family experienced problems after the Liberation Tamil Tigers of Eelam [LTTE] took control over Jaffna. There was pressure on the applicant's older brother to join the LTTE and when the applicant's family was displaced to [redacted] in 1995, his brother disappeared and was never seen again.

[5] In 1996, the applicant and his family returned to [redacted]. Between 1997 and 1999, the applicant's parents were questioned about his brother's disappearance. In 2001, the applicant left high school and then worked on his family farm until July 2012.

[6] On [redacted] 3, 2009, six people who appeared to be paramilitaries came to the applicant's home and after their demand for money was unsuccessful, they beat the applicant's father. On [redacted] 4, 2009, the applicant's father reported the incident to the police. On [redacted] 5, 2009, the applicant's father's body was found [redacted]. A post-mortem on the applicant's father showed signs of beating. The applicant believes these men were from the Eelam People's Democratic Party [EPDP]. Later, a case was filed at the Magistrate's Court in [redacted].

[7] The case dragged on without any apparent police action after the identification parade. The applicant was harassed by EPDP supporters about dropping his father's case. At one point, false charges were brought against him but were later dismissed when he established an alibi.

[8] In order to move forward with the case, the applicant's family retained a lawyer named [redacted]. In early 2012, the case was transferred to the Supreme Court which put the police under more pressure to produce people for identification.

[9] [redacted] In July [redacted], 2012, four people came to the applicant's home and took money and jewellery. Within an hour, the army came and questioned the applicant regarding who these people were and if the applicant had given money to them. The army then detained the applicant for eight days. During this time, the applicant was beaten and was advised that he would be released if he dropped his father's case. On the eighth day of his detention, the applicant's mother came and told him to drop the charges. The applicant agreed and was released but had to return each day to the army camp to sign in. This went on for about 20 days.

[10] [redacted] In August [redacted], 2012, the applicant went to Colombo and made arrangements to leave Sri Lanka. On August [redacted], 2012, he fled the country and travelled through Singapore, Japan and Mexico before entering the United States of America (the U.S.), filing no refugee claims in any of these countries. He was caught being in the U.S. illegally and was detained from October [redacted], 2012 until January [redacted], 2013.

[11] On January [redacted], 2013, the applicant came across the border as an exception to the Safe Third Country Agreement because of his sister, who is a permanent resident of Canada, and filed a claim at the port of entry on arrival in Canada.

II. Decision Under Review

[12] The Board hearing took place in Toronto, Ontario on March [redacted] and March [redacted], 2013. The Board issued its written decision on June [redacted], 2013, ruling that the applicant is not a Convention refugee because he does not have a well-founded fear of persecution for a Convention ground in Sri Lanka and that the applicant is not a person in need of protection. Accepting the applicant's identity and acknowledging his mental health condition, the Board analyzed the applicant's credibility and his residual profile as a young male Tamil from the North.

[13] Pertaining to the negative credibility findings, the Board made observations in the following areas: i) the applicant's risk in Sri Lanka; ii) the case regarding the applicant's father's death; and iii) the applicant's lack of knowledge for his involvement in the case.

III. Credibility Findings

[14] First, the Board found the applicant's allegations of risk in Sri Lanka due to his involvement in the active court case of his father's murder lacks credibility. It noted at the port of entry, the applicant made reference to his father's death, but he did not mention the court case

which caused his personal troubles in Sri Lanka. Instead, he linked his problems to money demands.

[15] Also, the applicant did not mention that he agreed to withdraw as a witness from the court case of his father's death to gain release as he did during the hearing and in his basis of claim (BOC). He did not provide details in one of the immigration forms at the port of entry for reasons of his 2012 detention by the Sri Lankan army.

[16] The Board found it unreasonable that these details were omitted at the port of entry because they were the very crux of the applicant's claim and were not minor. Noting the Federal Court's cautions with respect to relying on port of entry omissions, it drew a negative inference as to the applicant's credibility.

[17] Second, the Board stated although the evidence provided by the applicant establishes the applicant's father's death, it did not corroborate his alleged risk related to the case. It noted the post-mortem report stated the cause of death was drowning in the water. When asked why the report had no mention of the beating, the applicant answered because his father suffered internal injuries. The Board noted this detail would reasonably be expected in the more than ten pages of post-mortem report.

[18] Then it noted that the letter from the Gramma Officer and the two letters from the applicant's family's lawyer indicate the case was referred to the high court. The Board observed this contradicts the applicant's claim that the case is being stalled by the police.

[19] Next, the Board noted that although the applicant provided documents from the initial investigation into his father's death in 2009, he did not provide more recent court documents to suggest the case was still active and ongoing. It found, if the applicant's mother was able to obtain the 2009 documents in early 2013, the court would also have provided more recent documents. Therefore, the Board found this lack of corroborating evidence diminished the applicant's credibility.

[20] Third, the Board found the applicant was not able to provide details in his answers to the questions about the processing of the case and his lack of knowledge regarding the case is unreasonable. During the hearing, the applicant stated the ongoing case was a murder case and it was the EPDP members who were on trial for the case; however, he did not know who they were specifically. The Board found this inconsistent and stated "either the case is stalled and can't move forward as the suspects aren't being identified or the suspects have been identified and the case is continuing in the courts." Also, the Board noted the applicant's other evidence also were lacking in details for the case. Therefore, the Board ruled negatively for the applicant's credibility.

IV. Residual Profile

[21] The Board then analyzed the applicant's residual profile as a young male Tamil from the North. It cited the *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* from the United Nations High Commissioner for Refugees [UNHCR Guidelines] and determined that although everyone living in areas under LTTE control necessarily had contact with the LTTE and its civilian administration. Originating from an area

that was previously controlled by the LTTE, does not in itself result in a need for international refugee protection. It noted that the applicant did not allege and establish the special links to LTTE under the UNHCR Guidelines that might expose him to the higher risk on a balance of probabilities.

[22] Therefore, the Board determined that the applicant has not established, on a balance of probabilities, that he is of such a profile as to face a personal risk due to the conditions as described in either section 96 or subsection 97(1) of the Act.

V. Issues

[23] The applicant raises four issues:

1. What is the standard of review?
2. Did the Board err in fact and law in its assessment of the applicant's credibility?
3. Did the Board err in law in making veiled credibility findings against the applicant's lawyer in Sri Lanka and the Gramma Officer who wrote a letter in support of the applicant's case?
4. Did the Board err in its assessment of the evidence before it and err in its application of sections 96 and 97 to the applicant's claim?

[24] The respondent submits that the applicant has failed to demonstrate that there is an arguable issue of law upon which the proposed application for judicial review might succeed.

[25] In my view, the issues are:

A What is the standard of review?

B Was the Board decision reasonable?

C Did the Board breach procedural fairness?

VI. Applicant's Written Submissions

[26] The applicant submits the standard of review is reasonableness on questions of fact or mixed fact and law and correctness on questions of law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs 50 and 51, [2008] 1 SCR 190 [*Dunsmuir*]). The applicant further reviewed *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*], *Canada (Attorney General) v Kane*, 2012 SCC 64, [2012] 3 SCR 398, and *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 353, [2013] FCJ No 370 in support of his position.

[27] The applicant structures his submissions in two main categories: 1) credibility findings; and 2) the assessment of his residual profile as a young Tamil from the North.

[28] He submits the Board erred in assessing his credibility. First, he argues the discrepancies relied on by the Board must be real (*Rajaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1271, 135 NR 300 [*Rajaratnam*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444, 99 NR 168 [*Attakora*]; and *Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442, 98 NR 312 [*Owusu-Ansah*]) and the Board should not conduct a microscopic examination of the evidence (*Attakora*).

He argues in this case, the Board relied on minor discrepancies that were not material to the applicant's credibility. He takes issue with the Board's reliance on the port of entry notes, arguing that he did mention the court case at the port of entry but the interviewing officer said he or she had enough information for now. The applicant argues that the Board needs to accept reasonable explanations for omissions at the port of entry and this Court has warned against using port of entry notes as a reason for finding a lack of credibility (*Cetinkaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 8 at paragraph 51, [2012] FCJ No 13 [*Cetinkaya*]; *Sawyer v Canada (Minister of Citizenship and Immigration)*, 2004 FC 935 at paragraphs 6 and 7, [2004] FCJ No 1140 [*Sawyer*]; *Samarakkodige v Canada (Minister of Citizenship and Immigration)*, 2005 FC 301 at paragraph 50, [2005] FCJ No 371 [*Samarakkodige*]; *Ali v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1035 at paragraph 8, 98 ACWS (3d) 648 [*Ali*]; *Kanapathipillai v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1110 at paragraph 8, 81 ACWS (3d) 859 [*Kanapathipillai*]; *Thambirasa v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 205 at paragraph 3 [*Thambirasa*]).

[29] Second, the applicant submits the Board erred in its treatment of the post-mortem report, arguing it was unreasonable to expect the applicant to explain the results of the report and it should have considered the post-mortem report for what it did provide in corroborating the applicant's father's death.

[30] Third, the applicant argues the Board was overzealous in finding instances of contradiction (*Attakora*) and these contradictions are not real. The Board's finding of

inconsistency about the court case was unreasonable because it failed to consider the explanation that the case had been stalled but was now moving forward. He cites Mr. Justice Max Teitelbaum's direction respecting corroboration in *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705 at paragraph 45, 65 FTR 137, that the failure to offer documentation cannot be related to the applicant's credibility in the absence of evidence to contradict the allegations. Here, the applicant did offer corroborating evidence and in the absence of contrary evidence, the Board's negative credibility finding is therefore unreasonable.

[31] Fourth, the applicant submits the Board erred in making veiled credibility findings. He states the letters from his family's lawyer explain the background of the case and the current case status. He argues the Board's finding that the letters did not provide sufficient detail was unreasonable and this was an indication that the Board did not believe there was an ongoing court case and by giving the letters little weight, the Board did not believe the lawyer. Also, the applicant submits the letter from the Gramma Officer was requested by the applicant's mother as a confirmation of events and this is why the officer did not go into great detail because he was not asked to. The Board's assignment of little weight to this evidence is therefore also an indication of its veiled credibility findings.

[32] Then, the applicant submits the Board erred in assessing the evidence before it and erred in its application of fact to the section 96 and section 97 analysis of his residual profile. He points out multiple areas of ignored evidence.

[33] First, the applicant argues the Board failed to consider whether the harassment, detention, and torture amounted cumulatively to persecution (*Alfred v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 463, 76 FTR 231 and *Rahman v Canada (Minister of Citizenship and Immigration)*, 2009 FCJ 945 at paragraph 67, [2009] FCJ No 945). He also argues the Board failed to engage in an analysis of whether his profile placed him at risk upon return. In specifics, the applicant argues the Board did not properly consider and apply the UNHCR Guidelines because it ignored the evidence that showed the applicant as a potentially perceived LTTE supporter, such as the evidence of his brother's disappearance and evidence of accusations of the applicant giving money to the LTTE during his detention at the army camp.

[34] Second, the applicant submits there was evidence on the record that returnees from Western countries may be perceived as LTTE supporters whether or not they have actual links to the organization (National Document Package, Item 9.5, Freedom from Torture, Out of Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011) (NDP).

[35] Third, the applicant points out the Board ignored the evidence that he fits the profile of witnesses to human rights violations - a category of person whom the UNHCR believes is "likely to be in need of international refugee protection on account of their (perceived) political opinion" (applicant's record at page 297). He argues the Board did not consider the applicant's risks of torture, extrajudicial killings, arbitrary arrest, detention and especially the risks he faces at the hands of the paramilitary group EPDP which is documented by the NDP.

[36] Lastly, the applicant argues the Board did not address whether he would be at risk as a returning failed asylum seeker which, according to an Australian non-governmental organization, people who are returned are questioned and may be detained for up to months.

VII. Respondent's Written Submissions

[37] The respondent submits the standard of review should be reasonableness and this Court should not intervene in this decision because the Board's decision falls within the range of possible acceptable outcomes which are defensible in respect of the facts and law (*Newfoundland Nurses* at paragraph 15; *Dunsmuir* at paragraphs 47, 53, 55 and 62; *Khosa* at paragraph 59; *Mwaura v Canada (Minister of Citizenship and Immigration)*, 2008 FC 748 at paragraphs 10 and 11, [2008] FCJ No 951; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354 at paragraphs 25 to 29 [2009] FCJ No 438 [*Mejia*]). It argues that the Refugee Division Board is a specialized tribunal and the Board is entitled to determine the weight to be assigned to each piece of evidence (*Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at paragraphs 15 and 16, [2002] FCJ No 64; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 809 at paragraph 30, [2012] FCJ No 820; and *Mejia*).

[38] First, the respondent argues the applicant failed to meet his onus to establish a claim. Here, the applicant's evidence lacked credibility due to the inconsistencies between his BOC and the port of entry notes and between his statements and the documentary evidence. It urges this Court that the Board's reasons should be read as a whole (*Newfoundland Nurses*, at paragraphs 15 and 18).

[39] Second, the respondent argues that the Board's credibility findings are not unreasonable. It states that this Court should not interfere with the Board's assessment of credibility because the Board has had first hand experience seeing and hearing the witness during an oral hearing. Also, as long as the Board's inferences and conclusions are reasonably open on the record, this Court should not interfere (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732, 160 NR 315 [*Aguebor*]; *Chen v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 551 at paragraph 7, 49 Imm LR (2d) 161 (FCA) [*Chen*]; *Ambros v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 299 at paragraphs 1 and 2, 78 ACWS (3d) 778 [*Ambros*]; *Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at paragraph 8, [2006] FCJ No 717 [*Karanja*]; *Krishnapillai v Canada (Minister of Citizenship and Immigration)*, 2007 FC 563, [2007] FCJ No 760 [*Krishnapillai*]; *Li v Canada (Minister of Citizenship and Immigration)*, 2008 FC 751 at paragraph 21, [2008] FCJ No 954 [*Li*]; and *Ramirez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 335 [*Ramirez*]). It further argues that the Board can make reasonable findings based on common sense and rationality.

[40] Third, the respondent submits the applicant's evidence was inadequate and inconsistent as to cast doubt on his testimony and this resulted in the general negative credibility finding (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 at paragraph 8, [1990] FCJ No 604). It argues a failure to provide documents that could be obtained to support an otherwise doubtful claim can impact negatively on credibility (*Reyna Flores v Canada (Citizenship and Immigration)*, 2010 FC 874 at paragraph 9, [2010] FCJ No 1081 [*Reyna*

Flores]). It argues in this case, the applicant's inability to explain his lack of up to date information on the court case impacted negatively on his claim.

[41] Further, the respondent states it was open for the Board to consider inconsistencies between the port of entry notes and the BOC, and the Board in doing so did acknowledge the caution with which omissions from the port of entry notes were to be treated. It points out since the post-mortem report did not mention the applicant's father was beaten to death, it is therefore somewhat inconsistent with the applicant's version of the cause of death. Lastly, it argues assigning little weight to the lawyer's letters and the Gramma Officer's letter was not unreasonable because these letters lacked specificity in order to provide corroboration to the applicant's testimony.

[42] Fourth, the respondent submits the applicant failed to establish his fear of EPDP and the Sri Lankan Army was well founded or forward looking. Also, the Board was entitled to prefer the documentary evidence indicating that the applicant, solely by virtue of being a young Tamil from the North, had not established a well-founded fear of harm going forward (*Doka v Canada (Minister of Citizenship and Immigration)*, 2004 FC 449 at paragraphs 37 and 38, [2004] FCJ No 554 [*Doka*]; and *Szucs v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1614 at paragraph 11, 100 ACWS (3d) 650 [*Szucs*]).

VIII. Applicant's Further Submissions

[43] The applicant continues to rely on his submissions from the original memorandum and submits in his reply that the Board's decision does not fall within a range of possible and acceptable outcomes.

[44] As for the issue of credibility, the applicant argues the Board is not owed a high degree of deference in this case because it erred in basing its credibility findings on irrelevant considerations and ignored corroborating evidence. He quotes *Burgos v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1537 at paragraph 23, [2006] FCJ No 1924 [*Burgos*] that "triers of fact are not in a better position to assess credibility on the basis of criteria that are extrinsic to testimony."

[45] Regarding the applicant's port of entry omissions, the applicant argues that just because the Board acknowledged that the caution from this Court does not mean that it actually heeded it. Also, the port of entry interview should not be expected to contain all the details of the claim. As for the documentary evidence, the applicant argues that the evidence was not inconsistent with his claim and that he did provide a significant amount of corroborating evidence.

IX. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[46] The applicant raises two broad issues in the present case: 1) the reasonability of the decision; and 2) procedural fairness in the area of veiled credibility findings.

[47] First, for the reasonability of the Board's decision which involves questions of fact or mixed fact and law, it should be reviewed on the standard of reasonableness. The standard of reasonableness means that I should not intervene if the Board's decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (*Dunsmuir* at paragraph 47).

[48] Here, I will set aside the Board's decision only if I cannot understand why it reached its conclusions or how the facts and applicable law support the outcome (*Newfoundland Nurses* at paragraph 16). As the Supreme Court held in *Khosa* at paragraphs 59 and 61, a court reviewing for reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

[49] Second, for the issue of veiled credibility findings, this concerns procedural fairness. It is a question of law and pursuant to *Khosa* at paragraph 43, it is reviewed on a standard of correctness.

B. *Issue 2 - Was the Board decision reasonable?*

[50] The applicant submits the Board's decision is unreasonable in two areas: 1) the Board's credibility findings and 2) the Board's assessment of the applicant as a young Tamil from the North for the purposes of section 96 and subsection 97(1) of the Act. My analysis will be focused on these two areas.

[51] Insofar as the credibility findings are concerned, I agree with the respondent that these findings are reasonable.

[52] Here, the Board made a negative determination on the applicant's credibility based on the following evidence: port of entry notes, post-mortem report, letters from the Gramma Officer, letters from the applicant's family's lawyer and the court documents about the applicant's father's case. On one hand, the applicant submits that the inconsistencies among these documents and his claim are microscopic and regarding the port of entry notes, the Board should not even have used the notes for determining its credibility findings. On the other hand, the respondent is of the view that I should not interfere with these findings because the Board has had first hand experience seeing and hearing the witness during an oral hearing and as long as the Board's inferences and conclusions are reasonably open on the record, I should not interfere.

[53] When examining the evidence, the Board should not conduct it microscopically (*Attakora*) and the discrepancies relied on must be real (*Rajaratnam*; *Attakora*; and *Owusu-Ansah*). Chief Justice Edmond Blanchard stated in *Burgos* at paragraph 23, that this Court does

not owe a high level of deference to the Board's credibility finding when it is based on criteria that are extrinsic to the testimony:

> However, the Federal Court of Appeal determined there was a difference in the way conclusions on the issue of credibility must be considered, depending on whether they are based on contradictions in the evidence or on implausibilities. Although the Board may conclude that a story is implausible, its conclusion must "be based on the totality of the evidence and must be clearly supported in the Board's reasons." Moreover, upon judicial review, the Court is not required to show as much deference, because triers of fact are not in a better position to assess credibility on the basis of criteria that are extrinsic to testimony (*Leung v. Canada (Minister of Employment and Immigration)*, [1994] FCJ No 774 (FCA) (QL); *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 (FCA) (QL)).
>
> [Emphasis added]

[54] First, an examination of the port of entry notes reveals that although the applicant did not mention about his father's case when he was first asked why he was afraid of returning, he did subsequently mention his father's death in the following related questions. The Board should exercise caution when using the port of entry notes for assessing credibility (*Cetinkaya*; *Samarakkodige*; *Ali*; *Kananpathipillai* and *Thambirasa*). Here, I do not find it reasonable that the Board would consider this as a form of crucial omission, especially when the applicant did mention his father's death in his answers to the subsequent questions during the port of entry interview. This alone would not make the entire decision unreasonable.

[55] Second, about the post-mortem report, the Board noted the details of the beating are absent in the report and this detail would reasonably be expected. The Board found the applicant's explanation unsatisfactory. It was in its right to question the content of the evidence

and since it had first hand experience listening to the applicant's explanation, I am not going to second guess its determination.

[56] Third, about the Gramma Officer's letter and the lawyer's letters, I will first examine the applicant's argument on veiled credibility. The Board found these letters lack details about the applicant's father's case. The applicant argues the letter from the Gramma Officer was requested to confirm the ongoing court case and that the applicant had to flee the country. By not accepting it, the Board in essence, did not find the letter credible. I disagree. Here, the Board gave it little weight because it was unsatisfied with this piece of evidence in corroborating the applicant's claim. This does not necessarily mean the Board found the letter not credible. The same thing can be said about the letters from the applicant's family's lawyer.

[57] However, the Board's rationale in assigning these letters little weight is troubling. The Board found them not sufficiently corroborating because of the inconsistencies that the details in the letters contradicted the applicant's claim that the police stalled the case. The applicant correctly argues that the Board's finding of inconsistencies about the court case was unreasonable because it failed to consider the explanation that the case had been stalled but was now moving forward. Therefore, the rationale of the Board's finding of inconsistencies is unreasonable. In light of the Board's cumulative credibility findings though, this mistake alone would not make the entire decision unreasonable.

[58] Fourth, about the Court documents concerning the applicant's father's case, I agree with the respondent that the onus is on the applicant to produce sufficient evidence. On one hand, the

applicant argues the failure to offer documentation cannot be related to the applicant's credibility in the absence of evidence to contradict the allegations (*Ahortor* at paragraph 45). On the other hand, the respondent is of the view that a failure to provide documents that could be obtained to support an otherwise doubtful claim can impact negatively on credibility (*Reyna Flores* at paragraph 9).

[59] Here, a review of the transcript reveals that the applicant was given an opportunity to explain but did not provide satisfactory rationales as to why the documents were not provided. The applicant only stated that when his mother requested the court files, these were all that were received. I do not see this as a matter of whether or not there was evidence to contradict the applicant's testimony; rather, it is whether or not the Board had sufficient evidence to believe the applicant.

[60] Mr. Justice Roger Hughes explained the role of corroborating evidence in *Reyna Flores* at paragraph 9:

> As to corroboration, it is argued that, particularly since the new Act in 2001, corroboration may not be essential however where there is doubt as to the evidence given it is not improper for the Board to ask for corroboration or to take lack of corroboration into account where assessing credibility.

[61] It seems to me that in the present case, the Board had doubt about the applicant's father's case. Therefore, I find it was not unreasonable for the Board to demand more recent court documents to prove the applicant's father's case was still active and ongoing.

[62] The Board's reasons need to be read as a whole (*Newfoundland Nurses* at paragraphs 15 and 18). Here, in reaching its negative credibility findings, the Board based them on the following: the applicant's allegations of risk in Sri Lanka due to his father's murder lacked credibility; although the evidence provided by the applicant established the applicant's father's death, it did not corroborate his alleged risk related to the case; and the applicant was not able to provide details about the processing of the case and his lack of knowledge regarding the case is unreasonable. Even in light of the errors the Board made, I do not find them being significant enough to render its decision on the applicant's credibility cumulatively unreasonable.

[63] Insofar as the Board's assessment of the applicant's residual profile is concerned, I agree with the respondent that the Board's determination is reasonable.

[64] The applicant submits that in making this determination, the Board ignored evidence of harassment, detention, torture and cumulative persecution. On the other hand, the respondent is of the view that the Board is entitled to prefer documentary evidence in its analysis. In my view, the applicant is at issue with why the Board relied upon the documentary evidence but not the other evidence of the applicant.

[65] It is well established that an officer is not required to mention every piece of evidence in the analysis (*Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629, [2004] FCJ No 758). Here, the Board determined that according to objective documentary evidence such as the UNHCR Guidelines, the applicant did not allege and establish the special links to LTTE that might expose him to the higher risk on a balance of probabilities. In doing so, it did

not mention all the evidence submitted by the applicant and it did not explain why it preferred documentary evidence over the applicant's evidence. However, I am of the view that the Board is not required to mention or give all evidence equal weight.

[66] In *Doka* at paragraphs 37 and 38, Mr. Justice James Russell examined the use of documentary evidence over subjective evidence provided by an applicant:

> 37 In my opinion, the Applicant is raising similar objections on this issue to those that were raised in *Pehtereva v. Minister of Citizenship and Immigration*, [1995] F.C.J. No. 1491 (T.D.) and that were dealt with by MacKay J. in the following manner:
>
> > 13. Finally, the tribunal's decision does not set out in precise terms why it preferred certain documentary evidence and not other evidence, but that does not constitute error. Here, the applicant's concern is primarily that the documentary and other evidence offered by the RHO was relied upon without specifying why evidence of the applicant was not. But that preference of the tribunal, related to evidence of the general circumstances within Estonia, of which the applicant's experience was but an example. The general circumstances based on documentary evidence from recognized sources provided the basis for objectively assessing the applicant's expressed fear. In my opinion, the tribunal did not err by ignoring evidence offered by the applicant, or by failing to specify reasons for preferring other sources of evidence, particularly in seeking an objective overview of circumstances within Estonia. Nor am I persuaded that the tribunal misunderstood or misstated the evidence of the applicant in any way significant for its ultimate finding that the applicant is not a Convention refugee, because it found no serious possibility or reasonable chance she would be persecuted for any reason set out in the definition of Convention refugee should she return to Estonia.
>
> 38 In essence, the Applicant is asking the Court to reweigh the evidence before the Board and reach a different conclusion. However, the following words of Blanchard J. in *Khan v. Canada*

> *(Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 520 (T.D.) provide concise and elegant reasons why this Court should decline to engage in such an exercise:
>
> > 18. The jurisprudence of this Court has clearly established that it is within the specialized jurisdiction of the CRDD to decide how much weight to assign to the evidence. It is also well established that the CRDD is entitled to rely on documentary evidence in preference to the testimony provided by a claimant. Furthermore, the tribunal is also entitled to give more weight to the documentary evidence, even if it finds the applicant to be trustworthy and credible. [*Zhou v. Canada (M.E.I.)*, [1994] F.C.J. No. 1087 (F.C.A.) Online: QL].
>
> [Emphasis added]

[67] Similarly here, the applicant is asking me to reweigh the evidence in order to reach a different conclusion. It is not my role to reweigh the evidence. It is well established in the jurisprudence that the Board is entitled to give more weight to the documentary evidence. Therefore, I am satisfied that the Board's determination on the applicant's residual profile is reasonable.

C. *Issue 3 - Did the Board breach procedural fairness?*

[68] As analyzed above, the Board did not make any veiled credibility findings pertaining to the Gramma Officer's letter and the letters from the applicant's family's lawyer. Therefore, it is not necessary for me to look into whether procedural fairness was breached.

[69] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

[70] The application for judicial review is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
…	…
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97. (1) A person in need of protection is a person in Canada whose removal to their	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT

SOLICITORS OF RECORD

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