

Federal Court



Cour fédérale

Date: 20160205

Docket: IMM-2434-15

Citation: 2016 FC 142

Toronto, Ontario, February 5, 2016

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

GOWRY SANKER NAGALINGAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant has applied for Judicial Review of a negative decision dated May 8, 2015 made by a member of the Refugee Protection Division of the Immigration and Refugee Board [the Board]. The Board found that the Applicant is neither a convention refugee nor a person in need of protection. This application is made to section 72(1) of the *Immigration Refugee Protection Act*, S.C. 2001, c.27 [the IRPA].

I. Background

[2] The Applicant is a thirty one year old single Tamil male. He is a citizen of Sri Lanka and his claim for protection is based on his political opinion and race. The agents of persecution have been identified as the army and the police.

[3] The Applicant studied graphic design and graduated in 2006. He worked for his father until 2009 when he became employed as a graphic designer for Express Newspapers in Colombo. He worked there until he fled Sri Lanka in July 2014. Express Newspapers publishes Virakesari - a well-known Tamil newspaper.

[4] Virakesari has been accused of promoting anti-government views. Its staff and premises have suffered attacks by government and paramilitary groups. The Applicant states in his Basis of Claim [BOC] form that he had connections to many journalists and knew people who had been attacked. The Applicant also alleges that he attended many pro-media rallies.

[5] In July 2014, the Applicant was waiting for a bus when he was kidnapped by unidentified people. He was detained in a dark room for seven days, during which time he was questioned about his connection to pro LTTE groups. While in captivity, the Applicant was interrogated once a day for approximately one hour. During the interrogations, he was beaten with batons and kicked. He was threatened with death if he went to the police.

[6] The Applicant was released on July 25, 2014. Thereafter, he went home, gathered his education documents and his press credentials, and fled to his aunt's house. The same day, he saw a doctor and received treatment. At that time, the Applicant did not intend to leave Sri Lanka and he testified that he had not previously been out of the country. However, when the Applicant's father joined him at the aunt's house the following day, he advised him to leave Sri Lanka. He arranged a smuggler to take the Applicant to Dubai and on to the USA on an Indian passport. When they arrived in the USA on September 7, 2014, the smuggler took the passport. The Applicant was detained in the USA until October 21, 2014. Upon arrival in Canada on November 18, 2014, he made his claim for protection.

II. The Decision

[7] The Board accepted that the Applicant is Sri Lankan. The Board also accepted the medical evidence which showed that, at some point, the Applicant had been a victim of torture. However, the Board concluded that the Applicant had not attended pro-media rallies, had not been kidnapped and tortured in July of 2014, and had not even been in Sri Lanka at that time. The reasons for these findings were:

- a) The Applicant's inability to explain why his birth certificate was translated into English in February 2010;
- b) The Applicant's failure to produce the pages of his passport which would have shown his travel history and the fact that the failure to produce those pages was not satisfactorily explained;
- c) The Applicant's statements in his BOC that he attended "many pro-press rallies" when, in fact, he attended only three;

- d) The Applicant's statement in his BOC that he "knew people who were attacked" when this was not true. In fact, he gave inconsistent evidence about whether he had even met such people;
- e) The Applicant did not produce any media reports about the rallies, even though he said they had appeared on websites.

[8] These credibility concerns, which have not been challenged on this application, caused the Board to reject the authenticity of two pieces of evidence [the Corroborating Evidence] which, if accepted, would have shown that the Applicant was in Sri Lanka in July of 2014. The Corroborating Evidence was:

- a) A handwritten doctor's note dated July 25, 2014, describing his treatment for burns and injuries caused by an iron rod;
- b) A letter from his employer's branch manager of July 26, 2014 saying that the Applicant was employed in July 2014, and that he had been kidnapped and released that month and that he had participate in pro-press protests. As well, the letter indicated that the newspaper had been contacted about his kidnapping, and was told not to publish any information on the subject.

The Issues

[9] Was the rejection of the Corroborating Evidence unreasonable?

[10] Was the failure to assess whether the Applicant's scars would lead to further persecution unreasonable?

A. *Issue I: The Corroborating Evidence*

[11] The Applicant relied on a decision of Mr. Justice Rennie (as he then was) in *Chen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 311. In that case, an applicant for refugee protection testified that he had been a member of a Catholic house church in Fujian Province in China until it was raided. He fled during the raid and testified that a summons [the Summons] was served on his family, and that other members of the church had been arrested and imprisoned. He produced the Summons and a prisoner visiting card which he said had been issued to the wife of one of the imprisoned worshippers.

[12] The applicant's evidence did not involve any contradictions or inconsistencies, and there was nothing about his manner to suggest a lack of credibility. However, the Board rejected his evidence because it was inconsistent with documentary evidence which showed that Catholic parishioners are rarely persecuted in Fujian. Then, because the applicant's evidence was contrary to the documentary evidence which the Board accepted, the Board concluded that the raid on the church had not occurred.

[13] The Board also concluded that the prison visiting card was not genuine simply because it was inconsistent with its finding that the raid had not occurred. Without additional reasons, it also rejected a certificate of baptism and a letter from a Canadian priest. The Board took this view even though the accused had answered questions about his knowledge of Christianity in a forthright and accurate manner. Justice Rennie concluded that:

A decision to reject certain aspects of the evidence does not constitute, absent a negative credibility finding, *carte blanche* to

reject all of the remaining evidence. Each aspect of the evidence must be assessed on its own merits.

[14] In my view, this decision can be distinguished and does not assist the Applicant because in this case, there were negative credibility findings that have not been challenged. Further, in this case, the Corroborating Evidence was assessed and dismissed because it could have been created by the Applicant. Accordingly, in my view, the Board's treatment of the Corroborating Evidence was reasonable.

B. *Issue II: The Scars*

[15] The Applicant acknowledges that the Board was not asked by counsel for the Applicant to consider whether the scars from past torture would possibly lead to further persecution. In my view, if an Applicant is represented by counsel, the Board is not obliged to consider possible avenues of future persecution beyond those presented by an applicant.

Certification

[16] No question was posed for certification for appeal.

JUDGMENT

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

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2434-15
STYLE OF CAUSE: GOWRY SANKER NAGALINGAM v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING: TORONTO, ONTARIO
DATE OF HEARING: JANUARY 20, 2016
JUDGMENT AND REASONS: SIMPSON J.
DATED: FEBRUARY 5, 2016

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