

Federal Court



Cour fédérale

Date: 20100409

Docket: IMM-2858-09

Citation: 2010 FC 371

Ottawa, Ontario, April 9, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JOHN XAVIER NAZERETH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. John Xavier Nazereth arrived in Canada in 2006. He maintains that he fled his country of origin, India, because he was persecuted by Hindu extremists who objected to his religious activities as a practising Catholic.

[2] A panel of the Immigration and Refugee Board heard Mr. Nazereth's claim for refugee protection in Canada and rejected it. The Board accepted certain parts of Mr. Nazereth's account of events, but believed that others were exaggerated. It also concluded that Mr. Nazareth could live

safely in India, particularly in Tamil Nadu, where he had lived for several months before travelling to Canada.

[3] Mr. Nazereth argues that the Board treated him unfairly and unreasonably concluded that he could live safely in Tamil Nadu. He asks me to order a new hearing before a different panel of the Board.

[4] I can find no grounds for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

II. Issues

[5] There are two issues:

- (1) Did the Board treat Mr. Nazereth unfairly by failing to notify him that it was considering whether he could live safely in Tamil Nadu?
- (2) Was the Board's conclusion that Mr. Nazereth could live safely in Tamil Nadu unreasonable?

III. Analysis

- (a) Factual Background

[6] Mr. Nazereth was a practising Catholic and involved in missionary work in his hometown of Trivandrum, Kerala, India. He was involved in the conversion of at least one Hindu, which is how he came to the attention of Hindu extremists. In 2005, during a procession celebrating the anniversary of his church, extremists threw bombs and assaulted a number of participants. After the attack, his family was threatened and harassed. He decided to leave his hometown.

[7] Mr. Nazereth moved to Puthu Kadai, a village in the state of Tamil Nadu. He claims that he attempted to open a bank account there, but this alerted the police to his presence. In 2006, after the police came to his house in Puthu Kadai, he decided to come to Canada.

(b) The Board's Decision

[8] The Board found a number of discrepancies in Mr. Nazereth's account of events but, nevertheless, concluded that he was genuinely involved with Christian religious activities and had participated in the conversion of a Hindu person to Catholicism. The Board acknowledged that, in some parts of India, Christians are mistreated by Hindu extremists.

[9] However, the Board found that Mr. Nazereth could live safely in Tamil Nadu; *i.e.*, that he had an "internal flight alternative" (IFA). It concluded that there was no serious possibility of persecution, and that it was not unreasonable for Mr. Nazereth to seek refuge there. The Board noted that Mr. Nazereth did not experience any persecution in Tamil Nadu; in fact, no one had been looking for him for over three years. Many Christians live in Tamil Nadu and practise their faith

openly. Mr. Nazereth had lived there safely and has family nearby. The Board did not believe Mr. Nazereth's claim to have been sought by police in Tamil Nadu.

1. *Did the Board treat Mr. Nazereth unfairly by failing to notify him that it was considering whether he could live safely in Tamil Nadu?*

[10] At his hearing, the Board raised the issue whether Mr. Nazereth had an IFA in India. It specifically named two potential safe havens – New Delhi, and Mumbai. To be fair to a claimant, the Board must give him or her notice that a particular IFA is being considered so the person can address the point in testimony or documentary evidence: *Arunasalam v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 885.

[11] Mr. Nazareth argues that because the Board referred specifically to New Delhi and Mumbai he had no notice that the Board was considering Tamil Nadu as a potential IFA. In my view, Mr. Nazereth's submission is unduly formalistic.

[12] A refugee claimant has the burden of showing a well-founded fear of persecution in his or her country of origin. In Mr. Nazereth's case, he had to show that he was persecuted in his home town of Trivandrum, Kerala and in Puthu Kadi, Tamil Nadu. In respect of Puthu Kadi, he had to justify why he felt he was not safe there and had to seek refuge in Canada. According to his own version of events, he fled to Tamil Nadu because he felt it would be a suitable and safe location in which to live. I cannot see how he can claim to have been prejudiced by the Board's consideration of a proposition he put forward himself. He could not have been taken by surprise. He presented

evidence about the circumstances he encountered in Tamil Nadu and was questioned about his experiences there. Accordingly, I can see no unfairness in the Board's consideration of an IFA in Tamil Nadu.

2. *Was the Board's conclusion that Mr. Nazereth could live safely in Tamil Nadu unreasonable?*

[13] Mr. Nazereth submits that the Board erred in three aspects of its IFA finding. First, he argues that the Board did not identify the IFA with sufficient precision. Tamil Nadu is a huge state, with a population of 62 million. Second, he suggests that the Board erred in its finding that he did not have a well-founded fear of persecution in Tamil Nadu. Finally, he maintains that the Board did not analyze adequately the reasonableness of the IFA in Mr. Nazereth's particular circumstances.

[14] In my view, the Board's conclusion that Mr. Nazereth had an IFA in Tamil Nadu was reasonable.

[15] First, the Board's identification of a putative IFA in Tamil Nadu was sufficiently precise. It is insufficient for the Board merely to make vague suggestions, such as, that a claimant live "elsewhere in Pakistan" (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 237) or "elsewhere in Mexico" (*Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 387). Here, though, the Board identified a particular, and well-defined geopolitical area.

[16] Second, the Board concluded that Mr. Nazereth was unlikely to experience persecution in Tamil Nadu because it disbelieved his evidence on the point. The Board noted discrepancies between his written narrative and his oral testimony. In the former, he said that the police came looking for him after he attempted to open a bank account. In the latter, he said he did not present his identity card to the bank because he did not want to be traced. In addition, there was no evidence that Mr. Nazereth was targeted by Hindu extremists in Tamil Nadu, even though he continued to attend church. I cannot see anything unreasonable about the Board's conclusion.

[17] Third, regarding the reasonableness of Tamil Nadu as an IFA, the Board noted that Mr. Nazereth had lived there without incident for several months. The Board considered the sizable Christian minority and the relative absence of Hindu extremists. He had family nearby. Again, I can find nothing unreasonable in the Board's analysis.

IV. Conclusion and Disposition

[18] Mr. Nazereth was not treated unfairly by the Board's consideration of a potential IFA in Tamil Nadu. Mr. Nazereth had, in any case, the burden of showing he had a well-founded fear of persecution there and was justified in seeking refugee protection in Canada. He was not prejudiced by the Board's treatment of the issue. Further, the Board's conclusion that Tamil Nadu was a viable IFA was not unreasonable in light of the evidence before it. Accordingly, I must dismiss this application for judicial review. No question of general importance is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2858-09

STYLE OF CAUSE: NAZERETH v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: January 13, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 9, 2010

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