

Federal Court



Cour fédérale

Date: 20110110

Docket: IMM-594-10

Citation: 2011 FC 16

Ottawa, Ontario, January 10, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**JOHN DE BRITO S. ANTHONYSAMY,
THAVAMANY MANICKAM, JANE DE BRITO
AND JERARD ANTHONY DE BRITO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2008, Mr. John De Brito Anthonysamy, along with his wife, Thavamany Manickam, and their two children, Jane and Jerard, left Malaysia to seek refugee protection in Canada. Mr. Anthonysamy alleged that he was persecuted because of his membership in the minority Indian

population in Malaysia. In particular, he says he was harassed and threatened by fellow employees at the hotel where he worked as a manager.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Anthonysamy's claim because he did not show that there was a reasonable chance that he would be persecuted or seriously mistreated if he returned to Malaysia. In addition, the Board found that Mr. Anthonysamy had not presented sufficient evidence of a lack of state protection in Malaysia.

[3] Mr. Anthonysamy argues that the Board treated him unfairly and arrived at unreasonable conclusions regarding his claim. He asks me to order a new hearing before a different panel. However, I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

[4] The issues are:

1. Did the Board treat Mr. Anthonysamy unfairly?
2. Were the Board's conclusions unreasonable?

II. Factual Background

[5] Mr. Anthonysamy and Ms. Manickam are both well educated and were both successful executives in Malaysia. Still, Mr. Anthonysamy described circumstances in his employment in which he endured prejudice and discrimination because of his ethnic Indian background. In

addition, he felt that some of his co-workers had spread the rumour that he was involved in, or might even be a leader of, a group called HINDRAF, an organization devoted to advancing the situation of ethnic Indians in Malaysia. Since 2008, HINDRAF has been an illegal organization in Malaysia. Mr. Anthonysamy stated that he only attended one HINDRAF rally mainly out of curiosity, but was not involved in the group. However, he received phone calls at home in which the callers threatened to reveal his putative involvement in HINDRAF. Mr. Anthonysamy worried that he might be arrested and detained on the strength of those allegations without evidence, warrant or charges.

[6] Mr. Anthonysamy found the circumstances in Malaysia intolerable and decided to leave the country. Just before he and his family left Malaysia, he learned that the police were looking for him. While he was not sure why, he suspected it was because of the rumours about his involvement in HINDRAF. Mr. Anthonysamy and the rest of the family had no trouble acquiring passports, and left the country without incident.

III. The Board's Decision

[7] The Board noted that the majority population in Malaysia discriminates against ethnic Indians. However, it went on to find that Mr. Anthonysamy and his wife, notwithstanding the obstacles they faced, had achieved considerable success in their respective careers.

[8] In respect of the threatening phone calls, the Board noted that Mr. Anthonysamy did not know their source, but he suspected his co-workers. In any case, in the Board's opinion, the phone

calls did not, on their own, amount to persecution. Further, Mr. Anthonysamy did not report the threats to the police. In his view, the police would probably not have believed him because of his ethnicity. Still, he had made no attempt to obtain state protection.

[9] The Board also found that the police were not pursuing Mr. Anthonysamy. Mr. Anthonysamy had made no reference to problems with the police in his written narrative. The Board drew an adverse inference from the fact that Mr. Anthonysamy mentioned this allegation for the first time at the hearing. In addition, there was no reason to think that just because the police were looking for him that they intended to arrest him. They had apparently given no reason for wanting to speak to him. They did not visit him at home. The Board doubted the police were pursuing Mr. Anthonysamy merely for having attended a HINDRAF demonstration more than a year earlier at which there were more than 2,000 other participants.

(1) Did the Board Treat Mr. Anthonysamy Unfairly?

[10] Mr. Anthonysamy submits that the Board treated him unfairly by relying on its specialized knowledge, and by erring in its assessment of Mr. Anthonysamy's credibility.

[11] Regarding specialized knowledge, Mr. Anthonysamy notes that the Board concluded that it was unlikely that the police were looking for him given that he was able to obtain a passport and leave the country without difficulty. Since no evidence was before the Board about the practices and procedures in Malaysia for departing persons, Mr. Anthonysamy asserts that the Board must have

been relying on its specialized knowledge. If so, it was required to inform Mr. Anthonysamy and give him a chance to respond (*Refugee Protection Division Rules*, Rule 18).

[12] In my view, the Board was not relying on specialized knowledge when it observed that Mr. Anthonysamy and his family had no difficulty leaving the country even after learning that the police were looking for him. This statement was factually correct, and did not figure largely in the Board's analysis. The Board did not appear to draw any significant inference from it for which specialized knowledge might be required. It was simply one of the numerous facts the Board took into account in arriving at its ultimate conclusion.

[13] In terms of its credibility findings, the Board found that Mr. Anthonysamy's testimony was vague in some areas. It also drew a negative inference from Mr. Anthonysamy's failure to mention in his written narrative that he was wanted by police. The Board characterized Mr. Anthonysamy's testimony as being "vague" in two areas – with respect to his fear of imprisonment by the police, and to his co-worker's knowledge that police were looking for him. Mr. Anthonysamy contends that his evidence was clear, although he necessarily relied on information provided by others, namely, his co-workers at the hotel.

[14] Reading the Board's decision as a whole, I interpret the Board's use of the word "vague" to mean that the alleged source and nature of the persecution Mr. Anthonysamy feared was not well-identified. It may not have wise for the Board to associate the uncertainty of the evidence with a negative credibility finding. In other words, the vagueness of Mr. Anthonysamy's testimony should not have suggested that he was being evasive or mendacious. Rather, the evidence of persecution

was merely weak. It involved hearsay, speculation and inferences on Mr. Anthonysamy's part, not direct evidence. Accordingly, I find that the Board's description of this evidence was apt. However, its assessment of Mr. Anthonysamy's credibility in certain areas might have been more precise.

Weak evidence is not the same as untruthful evidence.

[15] By contrast, regarding the omission from his written narrative of any reference to the police pursuing him, the Board's adverse inference was clearly justified. While Mr. Anthonysamy notes that he was not represented by counsel when he prepared his narrative, the Board's conclusion - that an educated person, even without legal training would have known that it would be important to mention the main reason for fleeing Malaysia in his written application for refugee protection - was not unfair; accordingly, its negative credibility finding was reasonable.

(2) Were the Board's Conclusions Unreasonable?

[16] Mr. Anthonysamy says the Board's conclusions were unreasonable because it failed to cite important documentary evidence corroborating his claim. In addition, he maintains that the Board failed to consider the overall factual context of his application and, in doing so, unreasonably concluded that his fear of persecution was not well-founded in the circumstances.

[17] Mr. Anthonysamy also suggests that the Board made a significant error when it found that he had only received a total of three to five threatening phone calls when his evidence was that he received three to five calls a day.

[18] The documentary evidence to which Mr. Anthonysamy points shows that arbitrary and warrantless arrests are commonplace under the Malaysia *Internal Security Act*, that some persons involved with HINDRAF were arrested under that authority, and that Malaysian police are ineffective and linked to human rights abuses.

[19] In my view, this evidence could have corroborated the main thrust of Mr. Anthonysamy's claim if he had been able to provide reliable evidence that he was, in fact, sought by Malaysian police for his alleged association with HINDRAF. Without that evidence, the documentary evidence did not assist him. Accordingly, the Board's failure to cite it was not unreasonable.

[20] Regarding the number of threatening phone calls, I cannot find a reviewable error on the Board's part. Mr. Anthonysamy's testimony on this point was not clear. It seems he might have received up to three to five calls on some days, but he did not say it was every day.

IV. Conclusion and Disposition

[21] I cannot find any basis for concluding that Mr. Anthonysamy was treated unfairly by the Board or that the Board arrived at unreasonable conclusions in relation to his claim for refugee protection. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none 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-594-10

STYLE OF CAUSE: JOHN DE BRITO S ANTHONYSAMY, ET AL v MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 3, 2010

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

DATED: January 10, 2011

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