Federal Court Cour fédérale

Date: 20110712

Docket: IMM-6744-10

Citation: 2011 FC 856

Ottawa, Ontario, July 12, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GUNARATNAM NAVARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] An applicant who trifles with the truth in legal proceedings cannot expect to be successful; thus, a Court may discredit even true statements, not knowing where the truth begins and ends, and a climate of uncertainty then prevails.

II. Judicial Procedure

[2] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), rendered on October 20, 2010, wherein, the Applicant was found to be neither a "Convention refugee" nor "a person in need of protection" pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because **he was not credible**.

[3] In sum, the Board found that the Applicant's evidence was racked with discrepancies and omissions and that he "cannot be trusted".

[4] In the Board's words: "the evidence in the testimony, Port of Entry (POE) documentation and PIF narrative cannot be trusted to be the truth, let alone the whole truth" (at para 9). A position wherein an applicant is declared to lack credibility.

III. Background

[5] The Applicant, Mr. Gunaratnam Navaratnam, is a citizen of Sri Lanka. He alleges that he is a person in need of protection and that he has a well-founded fear of persecution at the hands of both the government security forces and the Liberation Tigers of Tamil Ealam [LTTE].

[6] The allegations specify that his problems began more than two decades ago. The events which traumatized the Applicant and caused him to flee his country had occurred in April and June 2008, after which he went into hiding and left Sri Lanka for France in July 2008 where he remained

approximately three months before transportation could be arranged for him to come to Canada in October 2008.

[7] The Applicant is afraid of the Eelam People's Democratic Party [EPDP] due to his imputed political opinion, as he would be considered a LTTE supporter. The Applicant also alleges the he is at risk from the Tamil LTTE.

[8] The Board's negative decision rests on an array of pertinent points touching the heart of the Applicant's claim and which undermined his credibility irreparably; he "was often vague in responding to questions and had gaps in his knowledge, which the panel believes is simply the claimant refusing to answer questions" (at para 9).

IV. Issue

[9] Did the Board err in law or is its decision unreasonable as to the facts?

V. Analysis

[10] The issue here is one of facts and no evidence has been adduced to demonstrate that the Board's decision is unreasonable or arbitrary.

[11] The Board's findings point out major omissions and discrepancies between the Applicant's statements and the declarations at the POE and those in his written and oral testimony before the Board, such as those regarding his ownership of a trucking company and his itinerary when travelling to Canada.

[12] It is well established by the jurisprudence that declarations to immigration authorities at the POE may be considered by the Board in order to evaluate a claimant's credibility.

[13] If the Applicant had wanted to challenge the accuracy of the POE documents, he could have subpoenaed the Immigration Officer to testify at the hearing. On the contrary, there's no evidence that any objection to the admission of the POE materials was ever formulated (*Yontem v Canada (Minister of Citizenship and Immigration)*, 2005 FC 41, 136 ACWS (3d) 891; *Lin v Canada (Minister of Citizenship and Immigration)* (1995), 101 FTR 192, 58 ACWS (3d) 288; *Abdoli v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 382 (QL/Lexis), 54 ACWS (3d) 350).

[14] Justice Michael Kelen, in *Rrukaj v Canada (Minister of Citizenship and Immigration)*, 2004 FC 605, 130 ACWS (3d) 1012, stated:

> [10] The Board's function includes assessing credibility, and one of the common tools for testing credibility is comparing the applicant's evidence at three different times during the refugee claim process:
>
> (1) the POE notes;
>
> (2) the PIF statement; and,
>
> (3) the oral evidence at the hearing.
>
> If the POE notes contain errors, the applicant has adequate time before the hearing to marshal evidence for the purpose of explaining and correcting the errors. The applicant cannot ignore alleged mistakes in the POE notes, and then when confronted with them at the hearing, expect the Board to adjourn the hearing so that the applicant can obtain allegedly missing but available evidence. The Board hears approximately 25,000 cases a year, and has a tremendous backlog. The applicant must be ready with his evidence on the day scheduled for the hearing.

[15] It is trite law that statements to immigration authorities at the POE may be considered by the Board in order to evaluate a claimant's credibility and that a person's first story is usually the most genuine, and therefore the one to be believed (*Mongu v Canada (Minister of Citizenship and Immigration)* (1994), 86 FTR 59, 52 ACWS (3d) 391 (TD)).

[16] As well, contradictions between the Applicant's oral and written statements justify a negative finding of credibility (*Yu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 720, 124 ACWS (3d) 161; *Muanza v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1121, 117 ACWS (3d) 956).

[17] Moreover, it was entirely open to the Board to conclude that the Applicant's failure to mention important facts in his Personal Information Form [PIF] was the basis for a negative conclusion as to the Applicant's credibility, most especially after he had the opportunity to amend his PIF at the hearing and declared it to be complete and accurate (*Chavez v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 738, 118 ACWS (3d) 877; *Kabengele v Canada (Minister of Citizenship and Immigration)*, 197 FTR 73, 104 ACWS (3d) 166; *Sanchez v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 536 (QL/Lexis), 98 ACWS (3d) 1265 (TD)).

[18] A hearing is an opportunity for an applicant to complete his evidence and not to introduce new and important facts to his story (*Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No. 1867 (QL/Lexis), 52 ACWS (3d) 165 (TD); *Hammoud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 251 (QL/Lexis) (TD); *Grinevich v Canada (Minister*

of Citizenship and Immigration), [1997] FCJ No 444 (QL/Lexis), 70 ACWS (3d) 1059 (TD); *Sanchez*, above).

[19] In the circumstances of the present case, the Board clearly did not commit any error in drawing a negative inference from the Applicant's astounding lack of knowledge regarding his itinerary in travelling to Canada, most especially when considering the fact that he worked in the transportation business.

[20] In *Akhtar v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1319, Justice Yvon Pinard concluded that acting on the instructions of an agent is not a valid excuse:

> [5] The Board also considered in its evaluation of the applicant's credibility the fact that he had failed to provide any evidence, such as plane tickets or a passport. The Board found that the applicant had made no effort to obtain such documents. Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, sets out that "the claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them". In this case, the Board considered the applicant's explanation that smuggling agents typically request that travel documents be returned to them upon arrival to the destination. In light of the Board's finding that many aspects of the applicant's claim were not credible, it is entirely reasonable for the Board to attach great importance to documentation which would have supported his allegations and to draw an adverse inference from the fact that the applicant failed to submit such documentation (see *Elazi v. Canada (M.C.I.)*, [2000] F.C.J. No. 212 (F.C.T.D.) (QL) …). [Emphasis added].

(Reference is also made to *Li v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1030 at para 8).

[21] The Board's plausibility findings were reasonably open to it because the reasons that are stated are clearly supported by the evidence before the panel (*Yada v Canada (Minister of Citizenship and Immigration)* (1998), 140 FTR 264, 76 ACWS (3d) 1169 (TD)).

[22] It is well-established in law that the Board is in a better position to appreciate the credibility of the Applicant since it has the benefit of seeing the Applicant, his mannerisms and hearing his testimony.

[23] The panel's assessment appears clearly dependant, at least in part, upon seeing and hearing the witness; and given the Board's opportunity and ability to assess the witness in respect of demeanour, frankness, readiness to answer, coherence and consistency of oral testimony before it, findings with regard to the quality of a testimony must therefore be subject to a significant judicial reserve (*Ithibu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 288, 202 FTR 233 (TD); *Grinevich*, above; *Boye v Canada (Minister of Employment and Immigration)*, 1994) 83 FTR 1, 150 ACWS (3d) 643 (TD)).

[24] Contrary to the Applicant's arguments, it was entirely reasonable for the Board to take into consideration that the documentary evidence did not support the Applicant's allegations in respect of the prevailing situation in Sri Lanka. It was also open to a specialized Board to rely on the evidence that it considered most consistent with reality, and to prefer the documentary evidence from various objective sources to the testimony of the Applicant (*Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (QL/Lexis), 53 ACWS (3d) 158 (CA); *Oppong v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1187 (QL/Lexis), 57 ACWS

(3d) 821 (TD); *Zhou v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1087 (QL/Lexis), 49 ACWS (3d) 558 (CA)).

[25] The jurisprudence of this Court clearly holds that sections 96 and 97 of the *IRPA* require the risk to be personalized in that they require the risk to apply to the specific person making the claim (*Sathivadivel v Canada (Minister of Citizenship and Immigration)*, 2010 FC 863, [2010] FCJ No 1070 at para 28). As such, the Board found that the Applicant's specific profile and circumstances did not place him at risk.

[26] Since the Applicant failed to show that he has the profile of the persons described in the documentary evidence, it was not unreasonable for the Board to conclude as it did and hence an applicant does not have the profile of a person at risk, the Court will not intervene (*Appu v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 780, [2010] FCJ No 992 at paras 48 and 68).

VI. Conclusion

[27] For all of the foregoing reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review is dismissed.

No question for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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