

Federal Court



Cour fédérale

Date: 20111212

Docket: IMM-3537-11

Citation: 2011 FC 1447

Ottawa, Ontario, December 12, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**SHAIK JALALUDEEN AHAMED
(A.K.A. AHAMED, SHAIK JALALUDE)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] For the reasons that follow, this application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board, determining that the applicant was neither a Convention refugee nor a person in need of protection, is dismissed.

[2] The applicant is a citizen of India who claimed protection due to his fear of two political parties, the Dravide Munette Kalgan (DMK) and the Anna Dravida Munetta Kalgan (ADMK). On May 16, 2009, the day after the results of parliamentary elections in India were released, the applicant was riding his motorcycle from his home to work. In Athirampaddi he passed by two groups of people who were fighting. He attempted to find an alternate route but was pulled off his motorbike and beaten. He awoke in a private hospital and was questioned by the police because a member of the ADMK party had been killed during the fight. The applicant told the police that there had been a fight between two groups of people but that he did not know more because he was unconscious.

[3] A few days later, a member of the DMK party visited the applicant and told him that he would be killed if he mentioned anything to the police. I note that he had nothing to tell them. A few days after that, four members of the ADMK attempted to bribe the applicant to give information regarding the incident. Members of the ADMK also came to his house and threatened his wife and made threats against him.

[4] The applicant felt threatened by both parties and decided to leave Athirampaddi. He went to Kerala on May 2009 and stayed there until October 2009. The applicant hired an agent who took him to several places before he landed in Canada. From the record, it appears that he traveled from India to Singapore, Malaysia, and Madras before returning to India; then again from India to Thailand, Hong Kong and China before returning again to India; leaving India a third time and traveling to Madras, Brazil, and then arriving in Canada on April 3, 2010, after obtaining a work visa. On April 28, 2010, he filed for refugee protection.

[5] The applicant addressed three issues at the hearing. He submitted that the Member erred in failing to do a proper analysis leading to his conclusion that there was no nexus to a Convention ground as set out in s. 96; that he applied the wrong test in stating that the applicant had to establish that he would be personally subjected to persecution in order to establish a claim under ss. 96 or 97; and that he failed in his state protection analysis by holding that the applicant ought to have sought protection from the police in Athirampaddi when they were part of the state and thus part of the agent of persecution.

[6] In spite of applicant counsel's able submission, I am not persuaded that the Member made any of the errors alleged; further, the finding of state protection, in my view, is unassailable and is fatal to this application even if he had succeeded in convincing me of the merits of his other issues.

[7] Admittedly the Member did a cursory analysis of the claim under s. 96; however, the applicant admitted that he had no political affiliation, that he was an innocent bystander harmed during a fight between two rival groups of political supporters, that he saw nothing of the killing the police were investigating and that the alleged agents of persecution were seeking him to testify against the other or to say nothing. He was a victim of crime and a target of bribery and threats that had nothing to do with his political opinion or perceived political opinion. There was only one conclusion the Member could reasonably have reached regarding s. 96, and he reached it – there was no nexus to a Convention ground.

[8] Having found that there was no claim under s. 96, the Member considered the claim under s. 97. While the Member erred in describing the test under s. 96 in paragraph 7 of the decision, that error was not material as the claim was considered only under s. 97 and the statement of the test under that section was accurate, as admitted by the applicant. As the error had no connection to or impact on the final result, it is not a reviewable error.

[9] In any event, this application must fail as the Member, correctly in my view, concluded that there was state protection available for the applicant and an internal flight alternative (IFA).

[10] The applicant stated that he had been approached only once by members of the DMK and twice by members of the ADMK. Asked why he had not sought police protection, he responded that the head of the police was a member of the DMK and would therefore not listen to him.

[11] First, this explanation only addresses why he would not approach the police to complain of members of the DMK. Presumably the chief of police, given his alleged political affiliation, would welcome any report of threats or bribery from members of the ADMK.

[12] Second, as the Member noted, the explanation does not hold water even if the applicant were bringing to the police concerns regarding DMK members. The applicant himself produced a news article that described the clash between the two groups in which the applicant found himself and the police actions following it. It says that the police had charged DMK members and were continuing their investigation. As the Member noted “[t]he claimant’s testimony

regarding the head of the police force and his reticence to act against DMK members because of his political affiliation is not accurate, or credible.” I agree.

[13] The applicant did not directly challenge the IFA finding but argued that it was subsumed in the other alleged errors. If so, and given my finding that there were no reviewable errors, the IFA finding is also unassailable.

[14] In any event, the evidence before the Board revealed that the applicant had remained in India for some time and from time to time after the initial incident, including staying in Delhi, without any contact or threat from either alleged agent of persecution. The Board’s finding that members of neither group were not likely to find him in Delhi, a large city of over 16 million people some 2,000 kilometres from his home town, was reasonable given the record before him.

[15] For these reasons this application is dismissed. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3537-11

STYLE OF CAUSE: SHAIK JALALUDEEN AHAMED v. THE MINISTER
OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 1, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: December 12, 2011

APPEARANCES:

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