

BETWEEN:

TUAN NIZAM OSSEN

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent.

REASONS FOR ORDER

WETSTON J.:

The applicant, a 36 year old citizen of Sri Lanka, is a Muslim Moor -- one of the three main ethnic groups of which the Sri Lankan population is composed. The applicant is from a village in the Kurunegala District of central Sri Lanka (approximately 93 kms from Colombo). He and his family have lived in Colombo and surrounding areas, as well as Vavuniya. The applicant was serving as a crew member on board a cargo ship when he jumped ship and applied for refugee status at the Port of Québec.

The Board determined that the applicant had not been subjected to past persecution in Sri Lanka, based on documentary evidence, the testimony of a witness (Hemantha Jayanetti, who had employed him to work on the cargo ship), a private investigator's report commissioned by the witness, the fact that he was not Tamil, as he had claimed, and its evaluation of the applicant's testimony. The Board concluded that the applicant's testimony was not credible, and that he did not have a well-founded fear of persecution in Sri Lanka.

The Board also determined that certain portions (if not all) of the applicant's personal information form (PIF) had apparently been disclosed to the private investigators hired by his former employer, Jayanetti, without his consent. However, the Board nonetheless concluded that the applicant was not a refugee "*sur place*" as a result of the disclosure. The Board found that, because the applicant's claim was false, he would be under no greater risk of persecution at the hands of Sri Lankan authorities even if the details of his PIF were disclosed to them.

There are three issues in this application for judicial review:

1. whether disclosure of some, or all, of the information contained in the applicant's PIF should lead to the granting of an extra-ordinary remedy;
2. whether such disclosure renders the applicant a refugee *sur place*; and
3. whether the Board erred in failing to make a reasonable assessment of all the evidence before it.

Effect of the Disclosure of PIF Information

The applicant alleges that an official in the Citizenship and Immigration Department was responsible for disclosing certain information in the PIF to Mr. Jayanetti, who provided this information to the private investigators he hired in Sri Lanka.

It is clear that some or all of the PIF was released to the private investigators. The Board made no finding as to how or by whom the PIF was released. It is likely that Mr. Jayanetti contacted the Minister's officials and it was released by them to him. However, there is no evidence that the information contained in the PIF was released to Sri Lankan police authorities.

In my opinion, this is not a case for the application of a *Charter* remedy. It has not been established that disclosure of contents of the applicant's PIF materially affected the applicant's right to fundamental justice under s. 7 of the *Charter*.

I have considered the applicant's argument for application of section 7 of the *Charter*. While there may be cases in which the life, liberty and security of a person may be affected by an inappropriate and untimely disclosure of information, this is not one of them. Applicant's counsel argues that it is likely that Sri Lankan authorities were contacted and informed of the information contained within the applicant's PIF. However, there is no evidence to substantiate this submission.

Moreover, the provisions relied upon by the applicant do not provide an unqualified right to confidentiality. Rather, section 69 of the *Immigration Act* establishes a procedure for Board hearings to be held in camera "wherever practicable."

Even if disclosure of the applicant's PIF did constitute a breach of s. 69 of the Act, it does not necessarily follow that the applicant is entitled to a remedy, *per se*, for this breach. The *Immigration Act* does not provide any specific remedies as a consequence of such a breach.

Obviously, there may be a risk in releasing information contained in a PIF. It may be inappropriate for the Minister to do so. However, I do not find, in this case,

that the release has resulted in a violation of the *Charter*, nor that its release resulted in an unfair hearing into the applicant's refugee claim.

Whether Disclosure Renders the Applicant a Refugee *sur place*

The Board's finding that the applicant was not a refugee, *sur place*, as a consequence of the disclosure of information contained within his PIF was a conclusion open for it to make. There was ample evidence before the Board to support this finding.

The applicant submits that the Court's decision in *G.F.Q. (Re)*, [1996] CRDD No. 18 (Q.L.), is analogous to the case at bar, and should therefore be applied. I do not agree. The case of *G.F.Q. (Re)* is clearly distinguishable from this case. In that case, a Canadian Consular Officer contacted the Nigerian police about the claimant and disclosed that he had made a refugee claim. There was also evidence that, as a result of this breach of confidentiality, the Nigerian authorities were harassing the applicant's family and extorting money from them.

The Board did not err in concluding that the disclosure of some or all of the contents of the applicant's PIF did not materially affect its finding that he did not have a well-founded fear of persecution, if returned to Sri Lanka. Even if an employee of the Minister did disclose information to Mr. Jayanetti, who in turn disclosed it to his private investigators, such disclosure would still be insufficient to render the applicant a refugee *sur place*. I am not satisfied that the evidence provided establishes that, in the event that the applicant's PIF information has fallen into the hands of the Sri Lankan authorities, there is a serious chance of persecution.

Whether the Board Failed to Make a Reasonable Assessment of the Evidence Before It

The applicant submits that the Board ignored documentary evidence concerning the relationship between the Muslim Moor and Tamil communities. It is clear from its reasons for decision that the Board did consider the relationship between the Tamil and Muslim Moor communities in Sri Lanka.

The remainder of the applicant's argument can be summarized as follows; that the Board improperly weighed the testimony of the applicant against the remainder of the evidence. In particular, the applicant argues that the Board should have assigned much less weight (if any) to the evidence provided by Mr. Jayanetti.

The applicant argues that the Board erred in failing to consider that Jayanetti's evidence was clearly motivated by self-interest. Jayanetti's firm is subject to an assessment of administrative penalties when its employees jump ship. Mr. Jayanetti's actions, it is argued, are directed to preserving his company's reputation and deterrence of ship jumping. Similarly it is submitted that there is no credible basis for the Board to

have accepted the truth of the investigator's report, provided at the request of Mr. Jayanetti.

Mr. Jayanetti may have had these reasons for retaining private investigators in Sri Lanka, but none of the reasons suggested by the applicant are sufficient for this Court to set aside the Board's decision. As the Court of Appeal stated in *Brar v. M.E.I.* (A-987-84, 29 May 1986, F.C.A.), questions of credibility and weight afford no legal basis upon which this Court could properly interfere with the Board's decision. It is not the role of this Court, upon review, to second-guess the factual findings of the Board.

Similarly, it is submitted that the apparent contradictions in Jayanetti's evidence, such as whether the results of criminal record and "good character" checks for prospective employees are provided to his firm orally, or on written certificates, are sufficient for the Court to interfere with the Board's decision. In this regard, I do not agree that they are sufficient. Further, where the applicant's evidence contradicted that of Mr. Jayanetti, it was for the Board to determine which it preferred. The presumption that an applicant's sworn testimony is true is rebuttable: *Adu v. M.E.I.* (A-194-92, 24 January 1995, F.C.A.).

It is also argued that the Board erred in relying on Jayanetti's offer to deposit a sum of money with the Canadian High Commission in Sri Lanka, on behalf of the applicant (should he encounter problems with the authorities), because the Board had indicated, during the hearing, that it would assign little or no weight to the offer. However, it is clear that, while the Board did note Jayanetti's offer in its reasons, it did not rely on it to conclude that the applicant did not have a well-founded fear of persecution, should he be returned to Sri Lanka. The Board had sufficient evidence before it without reliance on Jayanetti's offer.

The applicant also argues that the Board erred in preferring findings in the investigator's report to the documentary evidence of the applicant. It is clear, however, that the Board properly evaluated and weighed the totality of the evidence before it, assigning weight as it saw fit: *Hassan v. M.E.I.* (1992), 147 N.R. 317 (F.C.A.). For example, the Board relied, in part, upon the death certificate supplied by the applicant to find that the applicant was attempting to mislead the panel by claiming to be a Tamil Muslim, when he was, in fact, a Ceylon Moor (or Muslim). As such, the Board drew an adverse inference concerning the applicant's credibility, as it was entitled to do: *Aguebor v. M.E.I.* (1993) 160 N.R. 315 (F.C.A.).

Accordingly, the application for judicial review shall be dismissed.

No question for certification was proposed.

Howard I. Wetston

Judge

Ottawa, Ontario
October 21, 1997