

**Date: 20061221**

**Docket: IMM-1339-06**

**Citation: 2006 FC 1543**

**Ottawa, Ontario, December 21, 2006**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**THANUKKODY PUVANESWARAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Puvaneswaran brings this application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) that dismissed his claim for refugee protection. The determinative issue was the Board's finding that Mr. Puvaneswaran's evidence was not credible. This application is dismissed because I find no reviewable error in the Board's decision.

[2] In his amended, further memorandum of argument the following five issues were raised by Mr. Puvaneswaran:

1. Did the panel err in law by failing to consider and apply the objective evidence as to the Applicant's central theme of his claim – LTTE extortion & fear [of] being killed by the LTTE as he was suspected to be a spy of the army?
2. Did the panel err in law in failing to consider the past persecution of the Applicant?
3. Did the Board err in law in considering the POE [port of entry] notes that were obtained in violation of the Operation Manual?
4. Whether the RPD member misconstrued the evidence before it and made findings of fact related to credibility that were so patently unreasonable and perverse as to constitute a reviewable error?
5. Was the Applicant denied procedural fairness and the due process of law as to whether there was a fair hearing before the RPD by directing the RPO first to conduct the cross-examination of the Applicant before the Applicant presented his case to the panel, especially when the Applicant was a victim of violence?

[3] During oral argument, counsel for Mr. Puvaneswaran advised that he was not pursuing the fifth issue, relating to Guideline 7. At the conclusion of that oral argument, the Court advised that the application for judicial review would be dismissed. These are the reasons for that decision.

[4] As noted above, the determinative issue before the Board was credibility. The Board took issue with the fact that Mr. Puvaneswaran, upon making his claim, said in both the Background Information questionnaire and in his interview with an immigration officer that he had never been arrested. However, at the Refugee hearing Mr. Puvaneswaran testified to being arrested six times. When asked about this discrepancy, Mr. Puvaneswaran said when he arrived in Canada he was tired, nervous and afraid of being deported. The Board did not accept this explanation, finding it to

be a major contradiction going to the core of the claim, as it was the alleged arrest by the army in March 2005 that triggered Mr. Puvaneswaran's decision to flee to Canada in May 2005.

[5] In oral testimony, Mr. Puvaneswaran testified to being afraid of the Liberation Tigers of Tamil Eelam (LTTE), the People's Liberation Organization of Tamil Eelam (PLOTE), the police, the army and the Eelam People's Democratic Party. However, in his immigration documents Mr. Puvaneswaran only indicated that he was fearful of the LTTE. When asked to explain this omission, Mr. Puvaneswaran, again, claimed that he was tired and nervous when he filled out his immigration papers. The Board did not find this explanation sufficient because the fear from the army and PLOTE went to the root of the claim.

[6] The Board also found a contradiction to exist as to the whereabouts of Mr. Puvaneswaran's wife and children. In his Personal Information Form (PIF), it was indicated that his wife and children were in Vavunya, but in the Background Information form, he had written that his wife's "present address" was in Jaffna. During the oral hearing, Mr. Puvaneswaran testified that his family lived with a friend in Vavunya for about two weeks and then returned to their home.

[7] Mr. Puvaneswaran also alleged that he was told in mid-June 2005 that the LTTE had come to collect the 500,000 rupees it had demanded as a result of its allegation that Mr. Puvaneswaran provided information about the LTTE to the army. However, his PIF (signed June 24, 2005) made no mention of this event. Mr. Puvaneswaran explained that his wife told the LTTE that he had fled the country and that afterwards the LTTE did not bother his wife anymore. Given the way the LTTE operates, and having regard to the fact that the two stores Mr. Puvaneswaran owned in Sri

Lanka remained open, the Board found it implausible that the extortion attempts from the LTTE would stop simply because Mr. Puvaneswaran had fled.

[8] The Board also took issue with the “confused and contradictory” testimony as to how and when Mr. Puvaneswaran travelled to Canada. Mr. Puvaneswaran testified that he left Sri Lanka with a Canadian passport and went to an unknown country in Europe via Malaysia or Thailand, whereupon he waited for four days with an agent. He then took the train to Geneva, whereupon he met another agent and received a different Canadian passport in exchange for the one he had already used. Mr. Puvaneswaran then flew to Canada on May 28, 2005.

[9] The Board found that Mr. Puvaneswaran’s testimony was inconsistent as to what date he switched passports with the agent. First, he testified that it was when he arrived in the unknown country and subsequently he testified that this event occurred in Geneva.

[10] The Board also was concerned over the “strange coincidence” that the last name on the second passport was the same as Mr. Puvaneswaran’s last name and was also identical to the name of a man granted Canadian citizenship in 1999. However, according to Mr. Puvaneswaran the Canadian citizen was an unrelated person.

[11] The Board was concerned that Mr. Puvaneswaran did not completely destroy the second Canadian passport. Rather, only a few non-sequential pages were torn out. Mr. Puvaneswaran testified that he was nervous and did not have sufficient time to destroy the passport. The Board rejected this explanation as it also appeared that the biometric page was missing and that while

Mr. Puvaneswaran testified that he “tore out one page after another”, this did not explain why certain intervening pages remained. The Board believed that Mr. Puvaneswaran chose to destroy some pages because they contained information he wished to hide from immigration officials.

[12] Also, in his PIF and immigration documents, Mr. Puvaneswaran omitted to refer to any stop over from his flight to Canada from Geneva, and had listed the date of departure as May 27, 2005. However, he later testified there was a stop over.

[13] When asked about an internal flight alternative Mr. Puvaneswaran said he did not have the correct travel documentation and could not move to Colombo. The Board did not accept this explanation because there has been no need for army travel passes since the 2002 ceasefire. The Board was of the opinion that a businessman who was allegedly living in Sri Lanka in 2005 should be aware of this fact.

[14] Consequently, the Board determined Mr. Puvaneswaran’s story had been “invented.”

[15] Those findings are reviewable on the standard of patent unreasonableness. See: *Mugesera v. Canada, (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100 at paragraph 38.

[16] In my view, the Board's credibility findings were based upon the evidence before it and they cannot be characterized as being patently unreasonable. There is, therefore, no basis for intervention by the Court. This is determinative of the fourth issue raised by Mr. Puvaneswaran.

[17] Turning to the other issues, as noted above, the Board found Mr. Puvaneswaran's failure to mention in his PIF the June 2005 extortion attempt by the LTTE to be a material omission. It also found his testimony to be implausible that the extortion attempts by the LTTE (that flowed from the accusation of spying) ceased after he left Sri Lanka, notwithstanding that his wife remained and his businesses continued to operate. In view of those findings, it cannot be said, as Mr. Puvaneswaran asserts, that the Board failed to consider Mr. Puvaneswaran's fear of the LTTE due to the accusation of spying.

[18] Similarly, in view of the credibility findings of the Board with respect to Mr. Puvaneswaran's failure to mention his six prior arrests, his failure to mention any agent of persecution other than the LTTE, and the Board's conclusion that his story was invented, it cannot be said that the Board failed to consider Mr. Puvaneswaran's allegations of prior persecution.

[19] Finally, Mr. Puvaneswaran complains that the Board erred by relying upon omissions in the port of entry notes. He relies upon the prior decision of this Court in *Sawyer v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 935 to argue that "notes taken at the border in violation of the Operations Manual could not be admitted in a subsequent refugee hearing".

[20] With respect, *Sawyer* is not authority for this proposition, and to suggest that it is, grossly distorts the Court's reasoning in *Sawyer*.

[21] In *Sawyer*, the Board had drawn a negative inference from the fact that the officer's notes prepared when Mr. Sawyer made an inland refugee claim failed to record certain information. The following portions of the reasons in *Sawyer* are relevant:

[5] As to any omissions in the notes taken by the immigration officer when Mr. Sawyer claimed refugee status, Mr. Sawyer testified that he told the immigration officer that he was identified by rebels on the basis of a photograph and he testified that he believed that he told the officer that he had been beaten but that the immigration officer told him "you don't have to tell me everything" and that he had to put things in his PIF. The panel rejected this testimony because it did not accept that an immigration official would not record Mr. Sawyer's evidence.

[6] However, the Minister's operations manual dealing with "Processing Claims for Protection in Canada" contains the following instructions to officers to whom a claim for refugee status is made:

**Appropriate questions**

The officer should ask the claimant the standard questions on the refugee claim and the answers must be recorded. However, the officer should not ask the claimant to elaborate on the basis of the claim unless the information relates to admissibility and eligibility. It is not the officer's responsibility to determine the credibility of the claim for refugee protection.

- Officers are encouraged to use the interview template created by NHQ (see Appendix A below)

- Claimants must explain how they entered Canada.  
[underlining added, Appendix omitted]

[7] In the face of this instruction it was in my respectful view, at least with respect to the evidence about mention of the photograph, patently unreasonable for the panel to reject summarily in the manner it did Mr. Sawyer's evidence that the officer told him that it was not necessary for him to give her his full story and this was why she did not record everything that he told her.

[22] Further, in Mr. Puvaneswaran's case the omissions relied upon by the Board were omissions with respect to standard questions on the refugee claim form. The notes taken were, therefore, consistent with the instructions given to officers in the Inland Processing Manual.

[23] For these reasons, the application for judicial review is dismissed.

[24] Counsel posed no question for certification, and I agree that no question arises on this record.

### **JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

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Judge



**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-1339-06

**STYLE OF CAUSE:** THANUKKODY PUVANESWARAN  
Applicant

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION  
Respondent

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 14, 2006

**REASONS FOR JUDGMENT  
AND JUDGMENT:** DAWSON, J.

**DATED:** DECEMBER 21, 2006

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