Federal Court  Cour fédérale

Date: 20111206

Docket: IMM-3155-11

Citation: 2011 FC 1422

Ottawa, Ontario, December 6, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

SUBHAS MAILVAKANAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Subhas Mailvakanam (the applicant), pursuant to section 72(1) of the *Immigration and refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision of the Immigration and Refugee Board (the Board) rendered on March 23, 2011, where the Board concluded that the applicant does not have a well founded fear of persecution and is not a person in need of protection as contemplated by sections 96 and 97 of the *IRPA*.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The applicant is a 44 year old Tamil farmer from northern Sri Lanka. He lived in the village of Mullaitivu in Vanni. Money was extorted from his family by the Liberation Tigers of Tamil Eelam [LTTE] to support their war against the Sri Lankan authorities.

[4] The applicant and his family were also forced to provide labour for the LTTE. The LTTE would also take advantage of the farm's equipment and produce.

[5] Several attacks between the LTTE and the Sri Lankan army occurred in the vicinity of applicant's family farm. In 1998, the applicant and his brother were injured after their house was bombed.

[6] In April 2001, the applicant travelled to Vavuniya. His brother needed surgery further to injuries suffered resulting from an attack on their village. The applicant also intended to purchase parts for his farm tractor. On their way to Vavuniya, the applicant and his brother encountered the army and the People's Liberation Organisation of Tamil Eelam [PLOTE] at the Pulliyankulam army camp. Upon inspection of their identity documents, the army arrested the two men and transferred them to the JOSF army camp because they resided in Mullaitivu. They were accused of being LTTE militants, were detained separately and tortured over a period of two months.

[7] The applicant and his brother were released after their father paid one lakh rupees. They were immediately admitted at the Vavuniya hospital. After their treatments, they were asked to return to their home village by a PLOTE member.

[8] In February 2002, the Sri Lankan government and the LTTE signed a ceasefire. However, by late 2006, the LTTE started once again to pressure the applicant to join its ranks. He was able to avoid recruitment by showing his injuries and limited mobility.

[9] In March 2007, the Applicant travelled to Colombo for surgery on his leg. In Colombo, the Applicant was arrested by the police since they believed he was affiliated with the Tigers. They detained him at the police station for 3 days where he was harmed physically. He was released on bail further to the payment of 25,000.00 rupees. After his release, he returned immediately to Mullaitivu.

[10] On March 5, 2009, the applicant and his family left their home because of the bombing. At that time, the applicant's brother was separated from the rest of his family. They later found out that the brother was killed by the bombing.

[11] After the applicant and his family fled their home, they went to Vavuniya where they were directed to the Arunachelyam Welfare Center. In the Center, the Applicant was intercepted by the army. As soon as they saw the applicant's scars on his body, they suspected him of being a Tiger

and he was arrested immediately. The army detained the applicant for 10 days during which he was beaten severely. A bribe was paid by his father to obtain his release.

[12] The Applicant then went to Colombo where he made arrangements with an agent to leave Sri Lanka. His father was able to raise 48 lakhs rupees by selling some land and his wife's jewellery to pay the agent.

III. Legislation

[13] Sections 96 and 97(1) of the *IRPA* provide as follows:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du

fear, unwilling to return to that country.

fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless

(iii) la menace ou le risque ne résulte pas de sanctions légitimes —

imposed in disregard of accepted international standards, and	sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

IV. Issues and standard of review

A. Issues

1. Did the Board err in concluding that the applicant does not have a subjective fear of persecution?

2. Did the Board err in its finding of general lack of credibility on the part of the applicant?

B. Standard of review

[14] The standard of reasonableness is the appropriate standard of review when a reviewing court must determine whether the Board erred in assessing an applicant's subjective fear (see *Cornejo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 261, [2010] FCJ No 295 at para 17).

[15] A credibility finding is a question of fact that is also reviewable on a standard of reasonableness (see *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, [2010] FCJ No 673 at para 11).

[16] When reviewing a decision on a standard of reasonableness, the Court must determine "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

V. Parties' submissions

A. Applicant's submissions

[17] The applicant submits that the Board erred and misapprehended the evidence he adduced in relation to his hospitalization after his detention in 2001. The applicant alleges that he tried to obtain a medical certificate from the hospital in Mullaitivu, but claims it was completely destroyed in 2009 since it was located in a war zone. According to the applicant, the Board thought that the hospital in question was located in Vavuniya. The applicant claims not to have been treated for severe injuries at the Vavuniya hospital.

[18] The applicant alleges that the Board also erred in finding that there was no mention in the post-hearing documents of the applicant having been detained in 2009. The applicant refers to his father's statement (filed after the hearing) which indicated that the applicant was detained at the Arunachalam camp, beaten and then released.

[19] The Board found the applicant waited too long to leave Sri Lanka. The applicant submits that the Board erred in concluding that he should have left in 2001, 2006 or 2007. In *Gabeyehu v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1493 [*Gabeyehu*], the Court noted, at paragraph 7, that "delay in making a claim can only be relevant from the date as of which an applicant begins to fear persecution".

[20] Moreover, the applicant claims that the Board erred in making a finding based on what it would have done in the applicant's situation. In *Bains v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 497, Justice Cullen stated "I cannot really comment on the "demeanour" of the applicant before the tribunal except to say if they applied Canadian paradigms in their reasons, his demeanour may very well have been affected negatively". The Board rejected the applicant's claim on the basis of his demeanour. The Board did not consider the fact that, in 2009, it would have taken a few months for the applicant's father to sell his assets and pay for his son's trip.

B. Respondent's submissions

[21] The respondent reminds the Court that the Board's credibility findings and its assessment of evidence and subjective fear are within its specific expertise, and therefore attract a highly deferential standard of review. And, as long as the process and outcome fit within the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own preferable outcome; nor should the reviewing court reweigh the evidence (see *Dunsmuir* above at

paras 47, 48 and 51; see also *Canada (Minister of Citizenship and Immigration) v Khosa*, [2009] SCJ No 12 at paras 58, 59, 61 and 63).

[22] The respondent alleges that the Federal Court of Appeal has held that a delay in claiming refugee status "is an important factor which the Board is entitled to consider in weighing a claim for a refugee status" (see *Heer v Canada (Minister of Employment and Immigration)*, [1988] FCJ No 330). The respondent submits that the circumstances of this case are such that the delay assumes a decisive role in the Board's decision. The applicant was unable to provide a satisfactory explanation for the delay incurred before departing. As such, it was reasonable for the Board to dismiss the applicant's claim because he lacked subjective fear.

[23] The applicant stated that he feared the army, the LTTE and the security forces based on his previous detentions and experiences which began as early as 2001. However, he remained in Sri Lanka because his father did not have sufficient money to pay for his departure. Yet, the applicant was unable to provide a plausible explanation as to why his father could not have paid for his departure earlier when he paid for the applicant's alleged release from detention. Additionally, no explanation was provided by the applicant to explain why funds could not be found for him to leave Sri Lanka when money was spent to buy farm equipment and travel to Colombo.

[24] According to the respondent, the Board clearly considered the applicant's explanation for the delay incurred before leaving, found it insufficient and explained the reasons for arriving at such a conclusion. It was reasonable for the Board to determine that the Applicant's behaviour was indicative of a lack of subjective fear. This Court has found that without some intervening factor, it

is unsustainable to suggest that a subjective fear did not develop until years after the events that triggered the underlying fear (see *Espinosa v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324, [2003] FCJ No 1680 at paras 16-18; *Aragon v Canada (Minister of Citizenship and Immigration)*, 2008 FC 144, [2008] FCJ No 173; *Mahmutyazicioglu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 668, [2008] FCJ No 840).

[25] The respondent alleges that the facts in this application are distinguishable from the case of *Gabeyehu* as cited by the applicant. In *Gabeyehu*, the Court concluded that the "delay in making a claim can only be relevant from the date as of which an applicant begins to fear persecution" (*Gabeyehu* at para 7). However, in the case at hand, the applicant himself testified that the experiences he endured were directly related to his fear of the army, the LTTE and the security forces. Yet he remained in Sri Lanka for several years after each incident. To remain in a country where an applicant has been the victim of numerous attacks over multiple years is a conduct inconsistent with a subjective fear of persecution. Therefore, it was reasonable for the Board to determine that the applicant lacked a subjective fear of persecution (see *Canada (Minister of Citizenship and Immigration) v Huntley*, 2010 FC 1175, [2010] FCJ No 1453).

[26] The Respondent submits that the applicant was found not to be a credible witness. Based on the fact that the applicant's evidence was not credible or trustworthy in matters central and material to the claim, the Board reasonably determined that there is no serious possibility that the applicant would be persecuted should he return to Sri Lanka.

[27] The respondent acknowledges that one must assume that the applicant's allegations are well founded, but this presumption is refuted when there are valid reasons to doubt their truthfulness. In this case, according to respondent, the Board did not base its negative credibility finding on a single inconsistency in the applicant's testimony. Rather, its findings represent numerous inconsistencies and omissions in the applicant's testimony, for which he was unable to provide sufficient explanations or failed to respond at all (see *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302; *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238).

[28] The Board drew a negative inference of the applicant's fear of the LTTE since they were defeated by the army and are now defunct. When asked to explain why he feared the LTTE, the applicant stated that although the LTTE had been defunct, they may regroup to harm him. The Board reasonably rejected this explanation as it was found to be purely speculative. respondent claims the Board reasonably concluded that, based on the documentary evidence, there was no active factions of the LTTE or no evidence suggesting that the LTTE were targeting the Tamils that refused to join their group before the end of the war in May 2009. The respondent finds it interesting that the applicant himself conceded that the LTTE has been defeated.

[29] It is submitted by the respondent that the Board reasonably found a negative inference from a significant omission from both the applicant's port of entry documents [POE] and Personal Information form [PIF]. During his testimony, the applicant claimed that both he and his brother were treated by military personnel while being under military custody for two months and upon their release, received further medical attention. The applicant however failed to mention that he had

received medical attention in either his PIF or POE notes. The respondent argues that this does not constitute a minor omission and that it is well settled that differences between the applicant's statement at the port of entry and his testimony are enough to justify a negative credibility finding when these contradictions bear on elements that are central to the claim (see *Bin v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1246, 213 FTR 47 [*Bin*]; *Matsko v Canada (Minister of Citizenship and Immigration)*, 2008 FC 691 at para 14 [*Matsko*]; *Chen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 767 at para 23; *Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262 at paras 1, 20-21).

[30] This omission is important since it is directly related to the applicant's allegation that he sustained injuries while being detained by the army. The fact the applicant received medical treatment by the army would corroborate his claim. It was reasonable for the Board to question the applicant on why he failed to include this information in his PIF or at the POE. The respondent submits that the Federal Court has held that the Board is entitled to require evidence to corroborate a claim where an applicant has alleged that he suffered torture during detention and received medical care. Failing to provide medical certificates or failing to state that treatments have been received will diminish the applicant's credibility (see *Singh v Canada (Minister of Citizenship and Immigration)*, [2007] FCJ No 97).

[31] Contrary to what the applicant is pleading, respondent claims that the Board did not state that the applicant had no evidence to corroborate his detention in 2009. The Board noted that there were inconsistencies and contradictions in the applicant's statements regarding his release after the

detention. In his PIF, he claimed that money was paid for his release, but at the hearing, he stated that no money was paid.

[32] Having found that the applicant lacked credibility, the Board reasonably turned its mind to the documentary evidence in order to further assess the applicant's credibility.

[33] Contrary to what is argued by the applicant, the Respondent submits that the Board did not err by misunderstanding the applicant's reference regarding his stay at the Mullaitivu Hospital. The Respondent submits that the Board did not err in any fashion as the applicant testified he was in Vavuniya Hospital for several days, received treatment for injuries he sustained while being detained by the army. He also testified that the Vavuniya Hospital provided him with medical reports, which he took with him to his home. He also testified that he was unable to obtain any treatment in Mullaitivu. No corroborating evidence of this treatment in Vavuniya Hospital was provided by the applicant. Respondent claims that the confusion with respect to the Vavuniya hospital does not come from the Board but rather from the applicant who claims that the Mullaitivu hospital was destroyed when the Board was asking for documents related to the Vavuniya hospital and not the Mullaitivu hospital.

[34] Also, the Board noted in its decision that the post hearing documents did not include any medical reports from the Vavuniya Hospital. It also noted the applicant's explanation that this report was impossible to obtain since the Vavuniya Hospital had been destroyed. According to the Respondent, this explanation is insufficient. During testimony, the applicant stated that the medical records were at his home in Sri Lanka and if he would be given time, he would be able to provide

them to the Board. The respondent underlines that no evidence was provided to substantiate the allegation that either hospital had been destroyed.

[35] The respondent concedes that the brother's death has been mentioned in the affidavit of the applicant's father and included in the post-hearing documents. Except for the father's affidavit, no substantial evidence was produced to demonstrate that the brother had died as a result of being detained by the army, the security forces or the LTTE. The Respondent also notes several deficiencies in the father's affidavit. The affidavit was self-serving, submitted after the hearing and could not be corroborated by an objective party. Furthermore, the affidavit did not provide any information regarding the date of the brother's death. More importantly, the affidavit was written in English. No evidence was adduced to establish that the father understands or writes English.

[36] Given the multiple and significant credibility findings above, as well as the thorough assessment of the evidence by the Board, respondent submits that the Board's conclusion that the applicant's claim was not credible and lacked a subjective fear of persecution as his fear as no objective basis, was reasonable and fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir* at para 47).

VI. Analysis

1. Did the Board err in concluding that the applicant does not have a subjective fear of persecution?

[37] The Board did not err in concluding that the applicant does not have a subjective fear of persecution.

[38] The Board found that, since the applicant failed to leave the country when his fear of persecution started, he lacked subjective fear. The Applicant relies on the *Gabeyehu* decision where the Court noted, at paragraph 7, that "the delay in making a claim can only be relevant from the date as of which an applicant begins to fear persecution". Based on the facts and evidence adduced before the Board, the applicant started to be the subject of persecution in 2001. However, he did not leave the country before 2009. It was reasonable and open for the Board to conclude that, since the Applicant had not fled Sri Lanka despite several events of persecution, he did not have a subjective fear of persecution.

[39] In his submissions, the applicant claimed that the Board failed to consider the time it would take the father to sell some land in order to pay for his son's trip to Canada. However, the Board considered and reasonably assessed the applicant's explanation why he did not flee the country immediately. It was reasonable for the Board to conclude that "in 2001, [the applicant's] father had a farm that he was operating, had finances to buy spares for the farm tractor, had finances to have his sons travel to Vavuniya for surgery and had finances to pay for his son's treatments in the hospitals after the alleged April 2001 incident" (see the Board's decision at para 13). It also noted that the father paid for his sons' release after their detention in 2001 and the applicant's bail after his arrest in Colombo in 2007.

[40] The applicant returned to his home village of Mullaitivu after his beating in 2001. It is also noted by the Board that after he was allegedly beaten by the police in Colombo in 2007, he did not attempt to leave Sri Lanka. Instead he decided to return to Mullaitivu. His alleged fear of persecution started in 2001 but yet the applicant only fled the country in August, 2009.

[41] As for the objective fear, the Board writes, at paragraph 37 of its decision that "Since the claimant is not a credible witness and lacks a subjective fear of persecution, and since his fear has no objective basis, the panel finds that he does not face a risk to his life or to being subjected to cruel and unusual treatment or punishment or to a danger of being tortured, should he return to Sri Lanka". In *Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 503 [*Flores*], Justice Mainville stated, at paragraph 31:

> … the analysis of the availability of state protection should not be carried out without first establishing the existence of a subjective fear of persecution. The panel responsible for questions of fact should therefore analyze the issue of the subjective fear of persecution, or, in other words, should make a finding as to the refugee claimant's credibility and the plausibility of his or her account, before addressing the objective fear component which includes an analysis of the availability of state protection.

[42] As per *Flores*, the Board made clear findings on credibility and established that the Applicant did not have a subjective fear. It has no obligation to conduct an assessment on the objective fear after arriving at such conclusion but can simply mention, as it did in this instance, that the applicant does not have an objective basis for his fear of persecution.

2. Did the Board err in its finding of general lack of credibility on the part of the applicant?

[43] The Court finds that the Board did not err in its finding of general lack of credibility for the following reasons.

[44] Determining the credibility of an applicant is factual in nature. “The jurisprudence is clear in stating that the Board's credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference” (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13).

[45] It is submitted by the applicant that the Board erred in misunderstanding the evidence presented with respect to his hospitalization after his detention in 2001. The Board believed, based on his PIF, that the hospital in question was located in Vavuniya. According to the applicant, the Board made a significant error because the applicant claims not to have received substantial medical treatment in Vavuniya.

[46] On this issue, the respondent submits that the applicant testified at the hearing that he was in Vavuniya for several days, and received treatment for injuries he sustained while being detained. The applicant also testified that he did not receive any treatment in Mullaitivu.

> …
>
> Counsel for Claimant: A rickshaw to Vavuniya. You were in the hospital there for how long; three days you said?
> Claimant: I was there for three days
> Counsel for Claimant: what treatment did they give you?

> Claimant: They had sutures on the injury above my eye. On my right… left hand on my wrist they had some sutures and some dressing for the wound in the neck behind and on the… on the waist behind…
> …
> Counsel for Claimant: And your foot, what did they do to your foot?
> Claimant: They gave me… bandaged it with putting some planks on either side.
> Counsel for the Claimant: It was already bandaged so what did they do?
> Claimant: At Vavuniya hospital they took off what the military doctor in the army camp and they put new ones.
> Counsel for the Claimant: So then you said you went to Mullaitivu with your hospital record and they could not deal with it. Why could Mullaitivu hospital deal with your problem?
> Claimant: They said that they do not have facilities for dealing with that sort of wound. They wanted me to go …to (inaudible) hospital. (see transcript, page 27, lines 8 to 44)

[47] The respondent relies on the applicant's testimony to argue that he was unable to receive treatment in Mullaitivu. It is clear to this Court that the Board did not err in assessing the evidence adduced and reasonably concluded that there were discrepancies between the applicant's evidence and his testimony.

[48] Moreover, the confusion stems from the applicant. Clearly the Board was seeking documentary evidence related to the treatment received in the Vavuniya hospital, which the applicant failed to provide to the Board. Such evidence could have corroborated the applicant's contention that he was beaten by the army. The applicant claims that the Board's request was related to the Mullaitivu hospital. The Court does not accept this explanation because the applicant knew that the hospital in Mullaitivu had not treated him (see transcript, page 27, lines 35 to 45). This alleged misunderstanding lead the Board to conclude that "his failure to provide hospital reports from the Vavuniya hospital and his failure to provide reasonable explanation for not doing so raises

a serious disbelief in the mind of the panel whether the claimant and his brother were ever admitted to the Vavuniya hospital in and around June 2001." The Court cannot accept the applicant's allegation that the Board erred since it is apparent, from a close reading of the transcript, that the Board was seeking documentary evidence corroborating the applicant's version of events that he was beaten, and treated by the military before being seen at the Vavuniya hospital. It is also clear from the transcript that applicant claimed he could provide such documentary evidence (see transcript, page 12). The onus is on the applicant to adduce all the evidence possible to substantiate his claim; section 7 of the *Refugee Protection Division Rules*, SOR/2002-228, specifies that the applicant … "must provide." In this instance the applicant failed to provide the necessary documentation. The Board's only error with respect to this issue can be found in paragraph 23 when it states that counsel's submissions indicated that his father was unable to obtain the medical reports because the Vavuniya hospital was burnt down when in fact it was the Mullaitivu hospital. It cannot be faulted and there is no error in its reasoning. The conclusion reached was reasonable under the circumstances.

[49] The Court acknowledges that the Board erred, in paragraph 27 of its decision, when assessing the evidence related to the applicant's brother's death. This error does not invalidate the Board's decision since it is not related to the basic tenet of applicant's claim.

[50] The applicant also contends that the Board erred in concluding that he was detained in 2009. According to the respondent, the applicant failed to provide the Board with adequate and reliable evidence to substantiate his claim that both his father and his friend helped secure his release from detention. The letter received from his father dated January 27, 2011, and the letter from the

Grammasevaka indicated that his family was displaced to a camp in Vavuniya, without the mention of his son's detention. Furthermore, the letter did not indicate what role his father's friend played in the release of the applicant, and how much was paid for his release. In the applicant's PIF, it was noted that his father had not paid for his release.

[51] Based on the evidence, the Board was not persuaded that the applicant was held in detention for 10 days. The Court finds the Board's conclusion reasonable. A lack of relevant documents may lead the Board to find that the applicant lacks in credibility. "The jurisprudence holds that where a claimant's story is found to be flawed because of credibility findings, the lack of corroboration is a valid consideration for the purposes of further assessing credibility" (see *Matsko* and *Bin* cited above). In the case at hand, the Board made several credibility findings and found several discrepancies in the applicant's evidence and testimony. It was open to the Board to analyse the documentary evidence in order to further assess the applicant's credibility and come to the conclusion that the applicant lacked credibility.

VII. Conclusion

[52] For the reasons above, this application for judicial review is dismissed. The Board reasonably concluded that the applicant lacked credibility and had no subjective fear to support his claim as contemplated under sections 96 and 97(1)*(a)* and *(b)* of the *IRPA*.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. this application for judicial review is dismissed; and

2. there is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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