

Federal Court



Cour fédérale

Date: 20120118

Docket: IMM-2826-11

Citation: 2012 FC 66

Ottawa, Ontario, January 18, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

SATIT NINTAWAT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Satit Nintawat (the Applicant), pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 [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 is neither a Convention refugee nor 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 allowed.

II. Facts

A. Contextual background

[3] The Applicant is a citizen of Thailand who borrowed money from his neighbour to come to Canada in order to find work and provide a better source of income for his family.

[4] On his arrival in Canada, he started working for National Bait in Toronto. He picked worms and was paid by the pail. He was barely making enough money to eat and was not able to reimburse the loan contracted from his neighbour.

[5] He then worked for a greenhouse in Leamington, Ontario, where he was making enough money to repay his loan and provide for his wife and daughter back in Thailand.

[6] The applicant claimed refugee protection because he alleged owing money to a loan shark in Thailand.

[7] However, in his amended Personal Information Form [PIF] narrative, he writes that he would like to stay in Canada to be able to give his family a better life. He also indicates that he is

afraid of the political instability in Thailand, and consequently, of the impact it would have on him, while seeking a job.

B. Impugned decision

[8] The Board's decision is contained in the following paragraphs:

IDENTITY

... I am satisfied that the claimant is a citizen of Thailand and as to his personal identity based on certified copy of his passport.

ALLEGATIONS

The details of the claimant's allegations appear in the narrative to his Personal Information Form (PIF). In short, the claimant fears returning to Thailand for economic reasons. The claimant admitted that his fears were "purely economic" in response to questioning by his counsel during the hearing.

DETERMINATION

For the following reasons, I find that the claimant is not a Convention refugee and not a person in need of protection.

ANALYSIS

The claimant's economic fears have no nexus to Convention refugee reasons or grounds. Furthermore, they also clearly do not trigger a risk to life or of cruel or unusual treatment or punishment, or a danger of torture within the meaning of subsection 97(1) of the IRPA. For these reasons, I find that the harm feared is not related to a Convention ground and that any risk to him in Thailand is an economic risk that is not protected by subsection 97(1) of the IRPA.

CONCLUSION

I therefore conclude that Satit Nintawat is not a Convention refugee under section 96 of the IRPA and not a person in need of protection under subsection 97(1) of the IRPA. Furthermore, having considered the facts, the country evidence and the law in a manner consistent with the context and mission of the Refugee protection Division, I find that these conclusions fall within the range of reasonable outcomes.

III. Legislation

[9] Sections 96 and 97 of the *IRPA* provide as follows:

Convention refugee	Définition de « réfugié »
<p>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,</p> <p style="padding-left: 40px;"><i>(a)</i> is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p style="padding-left: 40px;"><i>(b)</i> not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>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 :</p> <p style="padding-left: 40px;"><i>a)</i> 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;</p> <p style="padding-left: 40px;"><i>b)</i> 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 fait de cette crainte, ne veut y retourner.</p>
Person in need of protection	Personne à protéger
<p>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</p> <p style="padding-left: 40px;"><i>(a)</i> to a danger, believed on substantial grounds to exist,</p>	<p>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 :</p> <p style="padding-left: 40px;"><i>a)</i> soit au risque, s’il y a des motifs sérieux de le</p>

of torture within the meaning of Article 1 of the Convention Against Torture; or

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 themselves 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 imposed in disregard of accepted international standards, and

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

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de

is also a person in need of protection.

personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Issues and standard of review

A. Issues

- *Did the Board err by failing to provide adequate reasons in support of its decision?*

B. Standard of review

[10] The question of the adequacy of reasons is a matter of procedural fairness and the appropriate standard of review is correctness (see *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SRC 982, [1998] SCJ No 46).

V. Parties' submissions

A. Applicant's submissions

[11] In his submissions, the Applicant argues that the reasons given by the Board are not adequate as they fail to address the issue of the money lender. He also submits that the Board failed to consider all of the evidence adduced.

[12] The applicant also cites *Syed v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1331 at para 8, for the proposition that “The function of written reasons is to allow an individual adversely affected by an administrative tribunal’s decision to know the underlying rationale for the decision.”

[13] In addition, the Applicant submits that the Board erred in the interpretation of sections 96 and 97 of the *IRPA*.

B. Respondent’s submissions

[14] The Respondent alleges that the Applicant’s fears are purely economic. Consequently, there is no nexus to a Convention ground under section 96 of the *IRPA* and the economic risk he fears does not trigger the application of section 97 of the *IRPA*.

[15] The Respondent submits that, in reading the Applicant’s PIF narrative and affidavit, it is clear that the Applicant borrowed money from his neighbour and that he did not raise a risk of persecution by a loan shark. Consequently, the Board did not ignore any evidence in its assessment of the file.

[16] The Respondent also argues that the Board provided sufficient and adequate reasons to support its conclusion. Moreover, in cases where the claim is clearly invalid, even minimal reasons are adequate if they inform the individual of the basis of the Board’s decision.

[17] According to the Respondent, the inadequacy of reasons does not automatically establish grounds for judicial review. The Applicant must show the deficiency in the reasons and that he is prejudiced by this inadequacy in the exercise of his legal right to seek leave and judicial review of the decision (see *R v Sheppard*, [2002] 1 SCR 869 at paras 33, 46 and 53). The Applicant was informed of the reasons for the Board's decision and there is no prejudice to the Applicant's right to seek leave and judicial review.

[18] The Respondent argues that a reading of the transcript of the hearing clearly indicates that the reasons, as written, were sufficient in this instance.

VI. Analysis

- ***Did the Board err by failing to provide adequate reasons in support of its decision?***

[19] The Court finds that the Board failed to provide adequate reasons in support of its decision.

[20] In its decision, the Board concluded that the Applicant feared returning to Thailand solely for economic reasons. In reading the transcript of the hearing, it appears that the Applicant completely reimbursed his loan, with interest, and that his prime reason to stay in Canada was economic.

Counsel: Okay when you are first making your claim, you indicated that you feared for the money lender. Is that correct?

Claimant: That is correct.

Counsel: Okay and who is this lender?

Claimant: Neighbour.

Counsel: It is a neighbour?

Claimant: It is money lender in the same village.

...

Counsel: Is this a relative of yours?

Claimant: No, no relation, just live in the same village.

Counsel: Okay and how much money did you borrow from Lian?

Claimant: 200,000 [bhats]

...

Counsel: And how much is that in Canadian currency?

Claimant: Around 8,000.

...

Counsel: what was the interest rate?

Claimant: I borrowed 200,000 so I return 50,000 [bhats].

...

Counsel: Okay, so how much have you paid so far?

Claimant: I pay it off already.

Counsel: You paid all the 200,000 together with the 50,000 [bhats]?

Claimant: yes.

Counsel: so you do not owe any money now to Lian?

Claimant: That is correct.

...

Counsel: So your fear to go back to Thailand is that you may not be able to get a job?

Claimant: That is correct.

Counsel: And there is no other reason? There is no other reason?

Claimant: There is some.

...

Claimant: So because now my children just want to continue to get a degree so I am afraid that if I do not have money, so I cannot support them.

Counsel: So your reason for wanting to stay in Canada is mostly economic reason, is that correct?

Claimant: That is correct.

Counsel: Just last question.

Member: Sure.

Counsel: Do you have anybody in Thailand who you fear if you were to go back?

Claimant: No. (see the Tribunal Record at pages 100 to103)

[21] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SRC 817, the Supreme Court of Canada held, in paragraph 43, that a decision-maker, in a refugee claim, owes the claimant procedural fairness which entails the obligation to provide adequate reasons for a decision.

[22] In *Lake v Canada (Minister of Justice)*, 2008 SCC 23, [2008] 1 SCR 761, the Supreme Court underlines the importance of the duty to provide reasons for a decision maker when it writes, in paragraph 46: “The purpose of providing reasons is twofold: to allow the individual to understand why the decision was made; and to allow the reviewing court to assess the validity of the decision. The Minister's reasons must make it clear that he considered the individual's submissions against extradition and must provide some basis for understanding why those submissions were rejected”.

[23] The Board’s decision is quite brief. It addressed the issue of the money lender since this particular question became moot on the basis of the Applicant’s answers during the hearing. There was no need to comment further on this issue. But the Board failed to provide any explanation as to why the Applicant’s economic fears have no connection to sections 96 and 97 of the *IRPA*. It writes: “I find that the harm feared is not related to a Convention ground and that any risk to him in Thailand is an economic risk that is not protected by subsection 97(1) of the *IRPA*” (see the Board’s decision at para 5). For a Board member this was obviously most apparent but for the lay person in this instance, a thai who is a mechanic by training, the subtleties of sections 96 and 97 warranted a minimum of explanation.

[24] The Board failed to provide sufficient reasons that would allow the Applicant to understand the basis of the decision.

[25] Reasons also “provide a basis for an assessment of possible grounds for appeal or review. They allow the appellate or reviewing body to determine whether the decision-maker erred and thereby render him or her accountable to that body” (see *Via rail Canada Inc v Lemonde*, [2000] FCJ No 1685, [2001] 2 FC 25 at para 19).

[26] The Supreme Court recently specified that a “[...] breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there are reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis (see *Nurses’ Union v Newfoundland and Labrador*, 2011 SCC 62 at para 22). In the present case, it is impossible for the Court to review the decision without referring to the transcript of the hearing, since the wording the Board’s decision is incomplete.

[27] It could well be argued that allowing this application will most probably lead to a similar end result. Notwithstanding our concern for judicial efficiency, it is our belief that the judicial system will be better served if the Board ensures that its decision are “justified, transparent, intelligible” (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VII. Conclusion

[28] The Board failed to provide adequate reasons for its decision. As a result, this application for judicial review is allowed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. the application for judicial review is allowed; and
2. there is no question of general interest to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2826-11

STYLE OF CAUSE: SATIT NINTAWAT
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 23, 2011

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

DATED: January 18, 2012

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