

Federal Court



Cour fédérale

Date: 20120525

Docket: IMM-8462-11

Citation: 2012 FC 636

Ottawa, Ontario, May 25, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**WILFRED JULIAN CHRISTOPHER
FRANCIS (A.K.A. WILFRED JULIAN
CRISTOPHER FRANCIS)**

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant is a Christian Tamil and citizen of Sri Lanka. In February 2010 he arrived in Canada, making a claim for refugee protection on January 11, 2011. He claims to risk persecution at the hands of the Sri Lankan government and its agents because of his escape from a camp where he was detained following the end of the war in 2009. In a decision dated

October 25, 2011, a panel of the Immigration and Refugee Board, Refugee Protection Division (Board) determined that he was not a Convention refugee pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] or a person in need of protection pursuant to s. 97 of IRPA. The Board rejected his claim on the basis of “a lack of credible and trustworthy evidence on which to find that the [Applicant] ha[d] a well-founded fear of persecution or that he would be subject personally to a risk to his life or a risk of cruel and unusual treatment or punishment or a risk of torture if returned to Sri Lanka.” The Applicant seeks to overturn this decision.

II. Issues

[2] The key issue raised by the Applicant relates to the quality of interpretation. The Applicant, who speaks Tamil, was provided with an interpreter at the hearing. The Applicant submits that, because of the poor quality of the interpretation, he did not receive a fair hearing. This is a question of procedural fairness to which a standard of review of correctness will be applied (see, for example, *Sherpa v Canada (Minister of Citizenship and Immigration)*, 2009 FC 267 at para 21, 344 FTR 30).

III. Affidavit

[3] In support of his application, the Applicant provided the affidavit of Mr. Kandiah Navaratnam, an independent translator/interpreter. Mr. Navaratnam was hired by the Applicant's

counsel to transcribe the audio recording of the hearing and audit it for accuracy of interpretation. Mr. Navaratnam found numerous problems with the translation. He stated that:

The audit revealed that the errors made in interpreting included:

- a) Use of wrong terminology;
- b) Omissions;
- c) Embellishments and additions;
- d) Inclusion of interpreters commentary; and
- e) Interpreter's directions to the claimant.

IV. Analysis

[4] The Applicant argues that, given the poor quality of the translation, his “story” was not understood by the Board. Thus, he asserts, his right to a fair proceeding was breached and the matter should be returned for re-hearing.

[5] It is well established that a claimant for refugee protection in Canada has the right to “continuous, precise, competent, impartial and contemporaneous” interpretation during the course of the refugee hearing before the Board (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 FC 85). This is a right that arises pursuant to s. 14 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*.

[6] Translation cannot be expected to be perfect. Simply asserting that the translation was inadequate may not be sufficient grounds on which to overturn a decision. An applicant must raise the issue at the earliest opportunity or risk a conclusion that the right to procedural fairness was not breached. Moreover, it is not enough to show that there were errors: there will always be

errors. A translation mistake will translate into a procedural fairness error where an incorrect translation results in a decision or determinative finding that might have been different had the words been correctly translated. In *Khatun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 159 at para 51, [2012] FCJ No 169, a case where the Court concluded that the applicant's right to a fair hearing had been breached by the poor quality of translation, Justice Russell described the situation as follows:

The errors in interpretation went to the very essence of the RPD's rejection of the Applicant's claim. The RPD relied, at least in part, on the translation errors to support its conclusion that she was not credible. As the main reason the RPD rejected her claim was its finding that she was not credible, her right to procedural fairness was breached, so the Decision must be reconsidered.

[7] I am satisfied that, on the facts of this case, the Applicant did raise the issue as soon as possible. However, the question of whether the poor translation resulted in material errors is more problematic for the Applicant. Do the errors observed by Mr. Navaratnam, go to the very essence of the rejection? Stated differently, could the decision have been different if the translation had been correct?

[8] One potential interpretation difficulty arises from the Board's understanding of the word "ongoing". The Board asked the Applicant why he continued to remain in Sri Lanka in spite of problems. The Applicant did not, as stated by the Board, reply that he remained in the face of "ongoing problems". Rather, the Applicant used the Tamil word meaning "alternative". The problem with this submission is that it appears, from reading the balance of the transcript referenced and the Board's reasons, that the Member fully appreciated that the situation in Sri Lanka was one where there were periods of war and periods of peace. Thus, I am satisfied that

the Board understood this portion of the “story” in spite of a misinterpretation of the word “alternative”.

[9] Another area of concern to the Applicant relates to some of the questioning on the Applicant’s alleged detentions by the Liberation Tigers of Tamil Eelam (LTTE). In its decision, the Board raises the implausibility of the Applicant’s claims about his detentions by the LTTE. In particular, while the Applicant alleges that he was forcibly taken by the LTTE on three occasions, he always managed to escape the next day. The Applicant points to a number of interpretation errors in the Board’s questioning of how he escaped. All of the errors arise with respect to the details surrounding the Applicant’s escapes from detention. I acknowledge that certain words were interpreted incorrectly. However, the point remains that the Applicant was able to escape from the LTTE three times. In both the official version reflected in the transcript of the hearing and the version produced by Mr. Navaratnam, the Applicant acknowledges key elements of his escapes; specifically, the Applicant testified that no one blocked his escape and that no one accompanied him to the bathroom. The interpretation errors do not change those key facts or detract from the important finding of the Board that the Applicant had been able to easily escape from LTTE detention on three occasions, something that seems quite implausible.

[10] I have reviewed all of the other interpretation problems raised by the Applicant and find that none of them raise issues that are central to the Board’s decision.

[11] In addition to a lack of credibility with respect to the subjective fear of the Applicant, the Board also examined whether there was other credible evidence that might have provided an

objective basis for the Applicant's claim. Based on a review of the available objective documentary evidence, the Board concluded that his claim was not well-founded. This aspect of the Board's decision was not based on interpretation of the Applicant's story.

[12] In sum, the interpretation was flawed. However, the errors of interpretation were either minor or unrelated to the Board's key findings. The errors did not result in a breach of the Applicant's rights under s. 14 of the *Charter*. The application for judicial review will be dismissed.

[13] Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and
2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8462-11

STYLE OF CAUSE: WILFRED JULIAN CHRISTOPHER FRANCIS v
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 14, 2012

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

DATED: MAY 25, 2012

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