

Federal Court



Cour fédérale

**Date: 20121113**

**Docket: IMM-8504-11**

**Citation: 2012 FC 1317**

**Ottawa, Ontario, November 13, 2012**

**PRESENT: The Honourable Mr. Justice Rennie**

**BETWEEN:**

**MYO KHINE NAY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated October 27, 2011, which found that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. For the reasons that follow the application is granted.

***Facts***

[2] The applicant is a citizen of Burma (Myanmar). He lived in Taiwan from 2000 to 2008, studying pharmacy and working. While there, he donated money to monks who provided humanitarian relief in Burma.

[3] The applicant entered Canada as a student on April 9, 2009. In October of 2009, he claims to have learned that the Burmese military arrested a monk, Uananda, while raiding a monastery and that the military found a list of donors during the raid. The applicant alleges that his friend, Khin Zaw Hlat, was arrested because his name was on the list and that the authorities found the names of donors at his home as well. He says that his name would also be on these lists. The applicant alleges that his sister called him from Burma to say that the authorities went to their home and demanded their father call him back to the country because of his fundraising activities in Taiwan.

[4] The applicant claimed refugee protection on October 14, 2009.

[5] Since arriving in Canada the applicant has been involved with a Burmese Buddhist temple. He says that the authorities still harass his parents about when he will return and that his father was detained by the police. He believes that the Burmese authorities may know where he is because there are photos of him with Canadian monks.

***Decision Under Review***

[6] The Board decided that the applicant did not provide sufficient credible evidence to establish that there is serious possibility he is at risk.

[7] The Board considered the applicant's evidence to be contradictory on an essential element of his claim. The applicant was asked why the monk would keep a list of donors. The applicant said that in accordance with Buddhist practice only the monastery keeps a list. The Board then asked why his friend was also found with a list. The applicant said that donors communicate through email and so those involved in fundraising have a list.

[8] The Board also decided that the applicant's testimony lacked corroboration:

- There was no documentation to show that a monk returning from Taiwan had been arrested in 2009.
- The applicant could not produce his own email correspondence about the donations. He said that his records were destroyed by a computer virus.
- The applicant claimed he is a member of the All Burma Monks Alliance. However, the supporting letter he provided named two different associations: International Burmese Monks Organization and Burma Buddhist Association of Ontario.

[9] The Board determined that the applicant had been involved in humanitarian efforts, but was not a major donor with a prominent profile.

[10] The Board also found that there was no evidence that the applicant's activities in Canada had been transmitted back to Burma. The applicant did not provide any evidence that similarly situated individuals had been persecuted after returning to Burma from Canada.

*Issue*

[11] The issue for this judicial review is whether the Board reasonably decided that the applicant is not a Convention refugee nor a person in need of protection: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

*Analysis*

[12] The decision must be set aside.

[13] The applicant argues that the Board placed too high a burden on him. Specifically, the applicant claims that the Board should not have expected him to have been able to provide documentation such as a media report about a specific monk's arrest. He notes that in Burma the press is not free and the regime monitors the internet, mail and phones. I agree with this submission.

[14] The respondent relies on *Bin v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1246 for the principle that the Board can take into account a lack of corroborating evidence. In that case, Justice Pelletier explained "... where a claimant's story has been found to be implausible, a lack of documentary corroboration can be a valid consideration for purposes of assessing credibility." In *Bin*, the applicant's story included "a number of internal contradictions and inconsistencies." Additionally, the documents sought as corroborating evidence would have been reasonably available.

[15] The Court has cautioned against reliance on the absence of media reports of an event as a failure to produce corroborating evidence. In the absence of evidence or a reasonable basis to believe that an event would be normally reported in the media, the absence of a media report is proof of nothing and a negative credibility inference is, in this context, based on pure speculation: *Xu et al v Minister of Citizenship and Immigration*, March 4, 2011, IMM-4394-10; *Argueta v Canada (Citizenship and Immigration)*, 2011 FC 1146; and *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705.

[16] Similarly, the Board noted that the applicant did not provide evidence to corroborate his testimony that he is a member of All Burma Monks Alliance. The letter he provided referred to the International Burmese Monks Organization and the Burma Buddhist Association of Ontario.

[17] I cannot see the significance of this discrepancy. There is ample evidence that the applicant is a member of national and international umbrella Buddhist organizations in Canada. He provided donation receipts and letters from the Burma Buddhist Association of Ontario and photos of himself with monks. The significance of the difference, if any, between All Burma Monks Alliance and the International Burmese Monks Organization is not material to the issues before the Board.

[18] Additionally, the applicant submits that the Board ignored two relevant pieces of evidence: documentary evidence relating to his fundraising in Taiwan and evidence that his father was arrested.

[19] The Board accepted that the applicant participated in fundraising. Therefore, the Board is not required to detail the evidence on this point.

[20] In my view, the second omission is significant. As noted, the Board did not find that the applicant lacked credibility generally. The Board believed certain elements of his claim. Therefore, the Board was required to consider the applicant's allegations that Burmese authorities visited his home on February 2, 2011, April 11, 2011, May 25, 2011 and September 5, 2011. He claims that his father had to go with the police officers some days, and was detained several times, most recently from July 18, 2011 to July 20, 2011.

[21] The respondent correctly notes that the Board referred to this claim when reciting the applicant's allegation. However, it is not referred to at any point in the Board's analysis. If believed, the allegation could demonstrate that the applicant is wanted by Burmese authorities. As such, it is unreasonable for the Board to neglect to consider it.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. There is no question for certification.

"Donald J. Rennie"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-8504-11

**STYLE OF CAUSE:** MYO KHINE NAY v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** September 25, 2012

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

**DATED:** November 13, 2012

**APPEARANCES:**

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