

Federal Court



Cour fédérale

**Date: 20130709**

**Docket: IMM-9198-12**

**Citation: 2013 FC 763**

**Ottawa, Ontario, July 9, 2013**

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

**BETWEEN:**

**BIRUINTHAPAN PATHMANAPAN  
(a.k.a. Pathmanapan BIRUINTHAPAN)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This judicial review concerns a decision by a member of the Immigration and Refugee Board [Member] rejecting the Applicant's claim to be a refugee and a person in need of protection.

**II. BACKGROUND**

[2] The Applicant is a Tamil from northern Sri Lanka. His family fled to Colombo in 1995. In December 2008 the Applicant's parents were arrested but released after a neighbour paid a bribe. In

January 2009 the Applicant's parents were arrested again, interrogated and assaulted. The Applicant was likewise interrogated and assaulted but he was released. He had to report to the police weekly.

[3] After that incident, the Applicant's parents went to the US on visitor visas. The Applicant, however, went to Singapore until December 2009.

[4] As the Libertarian Tigers of Tamil Eelam [LTTE] were defeated in May 2009, the Applicant believed that it was safe to return to Colombo. He claims he continued to be harassed based, as in the past, on some alleged connection with the LTTE.

[5] The Applicant left Sri Lanka in June 2011 and arrived in the US. He was arrested there and began his asylum process. He abandoned the US process and came to Canada where he claimed refugee protection.

[6] The Member found that the determinative issue was credibility. The Member held that the Applicant had not established the well-foundedness of his fear of persecution because he was always released from arrest and was able to travel even outside the country. The Member concluded that this treatment was inconsistent with any suggestion that he was seen as a LTTE supporter.

[7] The Member considered the Applicant's abandonment of his US asylum claim as counter indicative of a genuine fear. It significantly undermined his credibility.

[8] The Member then turned to the alternative issue of changed circumstances in Sri Lanka and whether those changes supported the allegation of well-founded fear of persecution.

[9] In the Member's analysis, the Member referred to the 2010 United Nations High Commissioner for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* (July 5, 2010) [UNHCR Report] and other documents which showed that while information was often contradictory, Tamils *per se* were not threatened with persecution. The Member did conclude that those persons who were in the LTTE or who were linked to the LTTE could be in danger. The Applicant was held not to be suspected of being linked to the LTTE.

[10] Aside from the UNHCR Report and the United States, Department of State, *Sri Lanka: Country Reports on Human Rights Practices for 2011* (May 24, 2012), the Member considered the United Kingdom, Border Agency *Operational Guidance Note – Sri Lanka* (December 2011) and the report of Denmark, Immigration Service, *Human Rights and Security Issues Concerning Tamils in Sri Lanka: Report from Danish Immigration Service's Fact Finding Mission to Colombo Sri Lanka, 19 June to 3 July 2010* (October 2010). Overall, the Member found the documents pointed to improved conditions in Sri Lanka for Tamils and that the Applicant would not be at risk.

[11] As a further alternative issue, the Member considered "generalized risk" and found that as a wealthy or perceived to be wealthy person, he was in a sub-group but only faced a generalized risk.

### III. ANALYSIS

[12] The standard of review was generally accepted as “reasonableness”. The Applicant points out that where the finding at issue is a plausibility finding, the Court owes little deference to the decision maker. In my view, that is an overbroad statement. The deference given to a plausibility finding depends on the nature of the finding and any expertise inherent in the conclusion (*Leung v Canada (Minister of Employment and Immigration)*, 81 FTR 303, 1994 CarswellNat 673 (FCTD)).

[13] Many of the Member’s plausibility findings related to experience from immigration matters. More importantly, the findings are supported by reasons and are themselves reasonable.

[14] There was nothing unreasonable about the Member questioning the Applicant’s abandonment of his US asylum application. In addition to the principle that a claimant should claim at the first point where it is safe to do so, there was evidence that his claim in the US might be favourably received. The abandonment and resultant delay was a factor, but not the determining factor in the credibility finding. As such, it was reasonable.

[15] The Applicant has criticized the Member’s method of dealing with conflicting evidence about changed circumstances. The Applicant suggests that it erred in law but its selective focus on documentary evidence was unreasonable in the conclusions the Member reached.

[16] There was no such selective focus or imbalance and no failure to consider relevant matters. The Member used several sources of information and reached a conclusion on that basis.

[17] To the extent that it was an error to not use the most current UNHCR Report, the whole of the finding concerning change in circumstances is an alternative determination. Since the principal finding on credibility was reasonable, the alternative findings are irrelevant even if in error.

[18] Again, the issue of “generalized risk” was an alternative issue to the principal issue of credibility. As the Member’s conclusion on credibility is reasonable, any difficulties in the “generalized risk” analysis fall away.

[19] The Applicant argued that he had provided the Court with a menu of options to quash the decision. However, this is not ordering in a restaurant and the choices are not ones of personal preference. The Supreme Court of Canada teaches that courts should not seek to quash decisions if the records can be said to be a basis for maintaining the decision (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

#### IV. CONCLUSION

[20] Therefore, the judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-9198-12

**STYLE OF CAUSE:** BIRUINTHAPAN PATHMANAPAN  
(a.k.a. Pathmanapan BIRUINTHAPAN)

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 24, 2013

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

**DATED:** July 9, 2013

**APPEARANCES:**

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Julie Waldman FOR THE RESPONDENT

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