

Federal Court



Cour fédérale

Date: 20140801

Docket: IMM-7399-13

Citation: 2014 FC 757

Ottawa, Ontario, August 1, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RISHIKESAN MAHENDRALINGAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] Mr Rishikesan Mahendralingam, a citizen of Sri Lanka, sought refugee protection in Canada based on his fear of the Sri Lankan army and paramilitary organizations, namely, the Eelam People's Democratic Party [EPDP] and the Karuna Group. In 2011, he fled to Guatemala, then to the United States, where he was granted asylum, and then to Canada.

[2] Mr Mahendralingam applied for a refugee protection. A panel of the Immigration and Refugee Board found that Mr Mahendralingam would likely experience persecution if he returned to Sri Lanka. However, the Board denied Mr Mahendralingam's application because it found that his evidence was not credible in certain areas.

[3] Mr Mahendralingam argues that the Board treated him unfairly by not giving him a chance to explain an apparent discrepancy between his written narrative and a letter provided by his cousin. In addition, Mr Mahendralingam says that the Board's decision was unreasonable because it failed to take proper account of a supporting letter from Mr Mahendralingam's cousin, and otherwise made unsupported negative credibility findings against him. He asks me to overturn the Board's decision and order a different panel to reconsider his claim.

[4] I agree with Mr Mahendralingam that the Board's decision was unreasonable and must, therefore, allow this application for judicial review. In my view, the Board unreasonably discounted the documentary evidence supporting Mr Mahendralingam's application.

[5] The issues are:

1. Did the Board treat Mr Mahendralingam unfairly?
2. Was the Board's decision unreasonable?

II. The Board's Decision

[6] The Board accepted Mr Mahendralingam's evidence that he had been detained and beaten by the Sri Lankan army in 2008 and 2009. The Board also found that Mr Mahendralingam had been abducted by the EPDP three times in 2009, and by the Karuna Group in 2011. He was released on the payment of bribes by his father and sister.

[7] The Board found that Mr Mahendralingam would likely experience persecution on his return to Sri Lanka and would not receive state protection. However, the Board found that Mr Mahendralingam had not given an adequate explanation for his lack of a passport, had continued to attend college in Sri Lanka even though he risked being abducted again, had failed to mention that his brothers had also been mistreated, had omitted reference to the death threats he said he had received, and had not adequately explained why he had left the United States after acquiring asylum there.

[8] In addition, the Board found that a letter from Mr Mahendralingam's sister explaining the circumstances in which she had paid for his ransom in 2009 was unclear about whom she was actually paying the ransom for – Mr Mahendralingam or their father. Further, the Board concluded that a corroborating letter from Mr Mahendralingam's cousin was not probative because it was sent from an address that differed from the one contained in Mr Mahendralingam's written narrative.

[9] Overall, the Board found that Mr Mahendralingam had not provided credible evidence that he would be subjected to persecution in Sri Lanka.

A. *Issue One - Did the officer treat Mr Mahendralingam unfairly?*

[10] Mr Mahendralingam argues that the Board should have given him a chance to respond to its concern about the cousin's address. The cousin's letter, corroborating Mr Mahendralingam's claim to have been abducted and held for ransom, contained an address different from the one given by Mr Mahendralingam in his narrative.

[11] The address was not at all relevant, but the circumstances surrounding Mr Mahendralingam's abduction were. There was no reasonable basis for discounting the contents of the letter based on the address from which it had been sent.

[12] However, this issue strikes me not as a question of fairness but one related to the overall reasonableness of the decision.

B. *Issue Two - Was the Board's decision unreasonable?*

[13] The Minister argues that the Board reasonably discounted Mr Mahendralingam's evidence for having failed to mention the detention of his brothers, or the death threats that he had received. Further, the Minister submits that that the Board correctly dismissed the corroborating letter from Mr Mahendralingam's sister because she had no firsthand knowledge

of the situation in Sri Lanka and it was unclear from her letter whether she provided ransom money in relation to Mr Mahendralingam's abduction or to their father's.

[14] I disagree.

[15] Mr Mahendralingam's written narrative was aimed primarily at describing the events relating to him, not to his other family members, who were endangered by different agents of persecution. Accordingly, his failure to mention details relating to his brothers' experiences was not a serious omission warranting a negative credibility finding. Further, while it obviously would have been better if Mr Mahendralingam had specifically mentioned the death threats against him, the existence of serious threats could reasonably be inferred from his evidence about abductions and the payment of ransoms. Presumably, there would have been no reason to pay ransoms if Mr Mahendralingam had not been in danger.

[16] Regarding the sister's letter, it would be possible to find an ambiguity in it if one were looking to discount its significance. But reading the letter fairly, as a whole, and considering the purpose for which it was written, it is clear that the writer was talking about ransom payments for Mr Mahendralingam, not for his father. In my view, the Board unreasonably dismissed the letter's evidentiary value.

[17] Finally, I find that the Board's conclusion was out of keeping with the main finding – that Mr Mahendralingam faced a risk of abductions and beatings in Sri Lanka, and could not obtain state protection. That principal finding should have been unaffected by the various minor

problems the Board found in the corroborating evidence. None of them individually, nor all of them together, was so serious as to excoriate Mr Mahendralingam's claim.

III. Conclusion and Disposition

[18] I find that the Board's treatment of the evidence relating to Mr Mahendralingam's PRRA application was unreasonable. I must, therefore, allow this application for judicial review and order another panel of the Board to reconsider his claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed. The matter is referred back to another panel of the Board for reconsideration. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7399-13

STYLE OF CAUSE: RISHIKESAN MAHENDRALINGAM v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 22, 2014

JUDGMENT AND REASONS: O'REILLY J.

DATED: JULY 30, 2014

**AMENDED JUDGMENT
AND REASONS DATED:** *AUGUST 1, 2014*

APPEARANCES:

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