Shrestha v. Canada (Minister of Citizenship and Immigration), [2002] F.C.J. No. 1154

Federal Court Judgments

Federal Court of Canada - Trial Division

Montréal, Quebec

Lemieux J.

Heard: March 7, 2002.

Judgment: August 19, 2002.

Court File No. IMM-2626-01

[2002] F.C.J. No. 1154 | *[2002] A.C.F. no 1154* | *2002 FCT 887* | *2002 CFPI 887* | *23 Imm. L.R. (3d) 46* | *116 A.C.W.S. (3d) 246*

Between Surendra Shrestha, applicant, and The Minister of Citizenship and Immigration, respondent

(57 paras.)

Case Summary

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Credible basis for claim — Disqualifications, crimes against humanity.

Application by Shrestha for judicial review of the decision by the Refugee Division that he was a citizen of Nepal. He claimed to have a well-founded fear of persecution on the basis of his political opinion. Shrestha belonged to the United People's Front. He had aligned himself with a violent faction of the Front. The Division found that he was excluded from the definition of a Convention refugee on the basis that he had supported the Front's activities and did not have a credible basis to fear persecution at its hands. Shrestha argued that he had withdrawn from the Front when he learned about its violent activities. His testimony was inconsistent with several documents he presented to the Division.

HELD: Application dismissed.

Shrestha was excluded from membership as a result of his participation in the Front, which was an organization that participated in crimes against humanity. The court was not entitled to interfere with the Division's findings of fact in respect of Shrestha's membership in the Front. The Division found that Shrestha had been actively involved in the Front and was not a mere member. Shrestha's evidence was not credible.

Statutes, Regulations and Rules Cited:

Federal Court Act, s. 18.1(4)(d).

Immigration Act, R.S.C. 1985, c. I-2, ss. 2(1), 19(1)(c.2).

Counsel

William Sloan, for the applicant. François Joyal, for the respondent.

REASONS FOR ORDER

LEMIEUX J.

BACKGROUND

1 The principal questions arising in this judicial review application are whether the Applicant knowingly participated in the activities of an organization which is said to have engaged in crimes against humanity and whether there was a timely withdrawal on his part when he realized what the organization was about. These questions are essentially questions of fact. The focal point of the events which take place in Nepal is the People's War launched in February of 1996 during which many atrocities were committed against the civilian population.

2 The Applicant, Surendra Shrestha is a 35 year old male from Nepal who arrived in Canada in November 1997 and claimed refugee status fearing the Party he had belonged to, the United People's Front (UPF), as well as the agents of the State: the police. On April 25, 2001, the Refugee Division ("tribunal") decided he is not a Convention Refugee for two reasons; first he was excluded under Article 1F(a) and 1F(c) of the Geneva Convention incorporated into Canadian Law in the definition of "Convention Refugee" in the Immigration Act (the "Act"), R.C.S. 1985, c.I-2, and second he failed to convince the tribunal he had a well founded fear of persecution. The Applicant's credibility loomed large in both determinations.

3 It is common ground the Applicant voluntarily joined the UPF on its creation in 1990 in order to participate in the national election. Prior to that he had a lengthy history of political and social activism and was a member of the Nepal Communist Party in 1987. He was actively involved in the development of the Party. In 1993, he became responsible for some of its activities in the Kathmandu district. He left his job as a teacher so as devote himself to this task.

4 Sometime in 1994-1995, the UPF split into two factions: the Baydha faction and the Bhattarai faction. The Baydha faction chose to pursue its activities peacefully and to continue to participate in electoral politics while the Bhattarai group decided to form an alliance with the violent Communist Party of Nepal (CPN/Maoists). This faction became the political arm of the Maoist militants. The Applicant aligned himself with the Bhattarai faction. The documentary evidence and the testimony of the Applicant establish the UPF ceased to participate in electoral politics in 1994.

5 As noted the tribunal found the Applicant was not a refugee because he is excluded from its definition under section F(a) of Article 1 of the United Convention relating to the Status of Refugees ("Convention") because it found he participated and supported the UPF's activities through his personal efforts. It did find he also violated the provisions of Article 1F(c) but really did not explain why. Both parties did not purport to sustain the tribunal's decision on this ground and because of this the tribunal's decision stands or falls on its application of Article 1F(a) of the Geneva Convention.

6 The tribunal came to its conclusion on exclusion for the following reasons: 1) the Applicant had a high ranking role with the UPF; 2) he continued to be involved in the organization despite his knowledge of its violent orientation; 3) he gave money to the Party after the beginning of the People's War; and, 4) he participated at the meetings of the organization.

7 It did not believe his testimony which it characterized as seeking to minimize his role in the Party and accentuate the timing of his withdrawal.

8 As to inclusion the tribunal concluded the Applicant also lacked credibility and did not have a well-founded fear of persecution in Nepal at the hands of the Police or the UPF.

9 The tribunal reached this conclusion finding: 1) the Applicant's testimony was inconsistent and contradictory; 2) the Applicant did not claim refugee status when he went to the United States in June 1996; and 3) during 1997 he travelled abroad to Hungary and Germany and returned to Nepal before fleeing to Canada.

ANALYSIS

Standard of review

10 If the tribunal's decision turns on whether the Applicant knew the nature of the activities of the UPF, his participation in the organization, his leadership role, and his financial contribution to the Party, these are finding of fact. In accordance with paragraph 18.1(4)(d) of the Federal Court Act, the Court will not intervene unless the tribunal based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, and this is equivalent to a patently unreasonable conclusion.

11 In Canadian Union of Public Employees, Local 301 v. Montreal (City), *[1997] 1 S.C.R. 793* at page 844, L'Heureux-Dubé J. for the Supreme Court of Canada wrote at paragraph 85:

> We must remember that the standard of review on the factual findings of an administrative tribunal is an extremely deferent one ... Courts must not revisit the facts or weigh the evidence. Only where the evidence viewed reasonably is incapable of supporting the tribunal's findings will a fact finding be patently unreasonable. An example is the allegation in this case, viz. that there is no evidence at all for a significant element of the tribunal's decision ...

12 I agree with the Applicant's counsel if the tribunal misinterpreted the meaning of the exclusionary clause of Article 1F(a) correctness is the standard and if it misapplied the correct interpretation to the facts of the case the standard of review is reasonableness simpliciter.

Exclusion

13 Subsection 2(1) of the Act, supra, excludes some individuals from the definition of refugee:

> Convention refugee [...]
>
> but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act;
>
> * * *
>
> réfugié au sens de la Convention [...]
>
> Sont exclues de la présente définition les personnes soustraites à l'application de la Convention par les sections E ou F de l'article premier de celle-ci don't le texte est reproduit à l'annexe de la présente loi.

14 The section F of the Article 1 of the Convention states :

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

[Emphasis mine]

* * *

> F. Les dispositions de cette Convention ne seront pas applicables aux personnes don't on aura des raisons sérieuses de penser:
>
> a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
>
> b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
>
> c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

[Je souligne]

15 The tribunal found at page 2 of its decision that "The United People's Front (UPF) is an organization which commits international offences, as those are defined in the Charter of International Military Tribunal in the Geneva Convention."

16 The Charter of International Military Tribunal (Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945) [82 U.N.T.S. 279] characterizes at Article 6 international crimes:

> The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
>
> a) 'Crimes against peace': namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
>
> b) 'War crimes': namely, violations of the laws or customs of war. Such violations shall include, but not be limited to murder, ill-treatment or deportation to slave labour or for any other

purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

c) 'Crimes against humanity': namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan. [Emphasis mine]

17 Section F uses the words "serious reasons for considering" to qualify the burden of proof to be met by the Minister. In Ramirez v. Canada (Minister of Employment and Immigration), *[1992] 2 F.C. 306*, at page 311, MacGuigan J. A. stated "[t]he words "serious reasons for considering" [...] must be taken [...] to establish a lower standard of proof than the balance of probabilities."

18 Recently, in Chiau v. Canada (Minister of Citizenship and Immigration), *[2001] 2 F.C. 297*, a case based on paragraph 19(1)(c.2) of the Act, the Federal Court of Appeal agreed with the Trial Judge's definition of "reasonable grounds to believe" as an evidentiary burden "while falling short of a balance of probabilities, nonetheless connotes a bona fide belief in a serious possibility based on credible evidence". In Ramirez, supra at paragraph 6, Justice MacGuigan stated there is no difference between the words "reasonable grounds to believe" and "serious reason for considering".

The Applicant's participation

19 The Applicant alleges the tribunal did not link him to a specific crime committed relying on Poblete-Cardenas v. Canada (Minister of Employment and Immigration) *(1994), 74 FTR 214*. I do not accept this argument. Here the tribunal concluded, based on documentary evidence, that crimes were not only directed at government officials but were also inflicted on the population at large. The Respondent points out that the Federal Court of Appeal in Sumaida v. Canada (Minister of Citizenship and Immigration), *[2000] 3 C.F. 66* at page 79, explained it is not necessary "that a claimant be linked to specific crimes as the actual perpetrator or that the crimes against humanity committed by an organization be necessarily and directly attributable to specific acts or omissions of a claimant."

20 An important principle concerning exclusion is that mere membership in an organization committing international crimes is not enough. Justice Robertson for the Federal Court of Appeal wrote in Moreno v. Canada (Minister of Employment and Immigration), *[1994] 1 F.C. 298* at page 321:

> It is well settled that mere membership in an organization involved in international offences is not sufficient basis on which to invoke the exclusion clause; see Ramirez, at page 317, and Laipenieks v. I.N.S., 750 F. 2d 1427 (9th Cir. 1985), at page 1431. An exception to this general rule arises where the organization is one whose very existence is premised on achieving political or social ends by any means deemed necessary. Membership in a secret police force may be deemed sufficient grounds for invoking the exclusion clause; see Naredo and Arduengo v. Minister of Employment and Immigration *(1990), 37 F.T.R. 161* (F.C.T.D.), but see Ramirez at pages 318 et seq. Membership in a military organization involved in armed conflict with guerrilla forces comes within the ambit of the general rule and not the exception.

21 The Applicant alleges he was only a mere member of the UPF so he cannot be held responsible for the crimes committed by others. However, the tribunal determined that the Applicant had scaled to an important level of activity and responsibility within the UPF and in particular his responsibilities for the UPF in 1993 in Kathmandu. A review of the transcript shows it was reasonably open to the tribunal to find the Applicant was not a mere member but held a leadership role sufficient to mark him as accomplice in the UPF's shared responsibilities for crimes against civilians.

22 In Ramirez, supra at page 317, the Federal Court of Appeal established that mere membership in an organization involved in crimes against humanity will be enough when the "organization is principally directed to a limited, brutal purpose, such as a secret police activity".

23 But as pointed out by the Respondent, the tribunal did not conclude the UPF is an organization with a "limited, brutal purpose", so it is irrelevant to determine that mere membership of the Applicant in the UPF is sufficient to constitute complicity in this case. The Respondent affirmed, in order for the tribunal to come to the conclusion the Applicant was an accomplice, it needed to examine the nature of the organization, the link of the Applicant to the UPF, his support for the guerrillas, and the level of the Applicant's knowledge and involvement in the organization. I agree with the Respondent's outlook. The key in this case is the Applicant's personal and knowing participation in an organization linked to crimes against humanity.

24 The tribunal recognized the UPF had shared responsibilities since it is linked to the Maoists' military arm and it launched the People's War. The Applicant affirmed there was a difference between the CPN (Maoist) and the UPF. He said the UPF is only the political wing of the CPN (Maoist). However, the documentary evidence established the UPF is linked to crimes against humanity and to the CPN (Maoist), and that the UPF shared the responsibility for crimes committed during the People's War. The tribunal referred to the Nepal Country Reports on Human Rights Practices for 1997, Exhibit A-3, which said the People's War was launched by the leaders of the Maoist United People's Front (UPF) born of the split in the UPF.

25 In Rai v. Canada (Minister of Citizenship and Immigration), *[2001] F.C.J. No 1163*, Justice Nadon, then of the Trial Division, refused to qualify the UPF as an organization with limited and brutal purposes. He said at paragraph 16:

> First of all, let me say that the evidence appears to support the view that the UPF/Maoist faction is an organization whose very existence is now premised on achieving political ends by any means deemed necessary. However, I am not prepared to say, on the same evidence, that the UPF/Maoist faction is an organization principally directed to a limited, brutal purpose. It is significant to note that when the applicant joined the UPF in 1991, the party was a political contender with duly elected representatives. It is only in 1996 that the party, in alliance with the Maoist faction, decided that means other than democratic means were going to be employed to achieve political ends. [Emphasis mine]

26 I have no doubt Justice Nadon made the correct decision on the evidence before him. The evidence before me was different because it reached back to the genesis of the People's War, the decision of the UPF not to further participate in the democratic election in 1994, its split and the Applicant's adherence to its violent branch.

27 Contrary to Rai, in the case at bar, the tribunal had evidence which demonstrated the UPF had changed its orientation before 1996. The Applicant's testimony and the documentary evidence shows that the UPF stopped participating in electoral politics in 1994. The Applicant also admitted he learned that the Party sent people from 1994 to India for guerilla training and from 1995 some members went underground. Moreover, the Applicant chose to pursue his activities in the violent faction of the UPF.

28 The tribunal concluded the People's War had long been planned. It wrote at page 5 of its decision:

> He acknowledged that his party stopped participating in electoral politics in 1994, but he testified that this was a routine decision for political parties in Nepal and had nothing to do with the violent orientation. In the panel's specialised knowledge, the panel understands that a withdrawal from electoral politics was just one more step toward implementing the People's War which had long been planned.

The Applicant's withdrawal

29 Since 1979, the Applicant has engaged in political organization. He joined the UPF in 1990 at its creation. He

worked for the growth of the Party. In 1993, he became responsible for some of the Party's activities in the district of Kathmandu, Nepal's capital.

30 The Applicant claims in his oral testimony that he ceased to work for the UPF in October 1995 when he learned about the violent orientation of the UPF while in his PIF he said he slowly became inactive after the beginning of the People's War. The UPF sent a letter to the Applicant in 1997, exhibit R-12, accusing him of not participating in the Party's meeting since February 1996.

31 In his PIF, the Applicant indicated that he began giving money to the Party in February 1996. However, in his testimony he said he stopped paying the monthly levee in February 1996. The tribunal notes the Applicant did not correct his PIF at the beginning of the hearing, and after having read the PIF, the word "stopped" doesn't make sense.

32 On December 29, 1996, the Applicant made a donation to All National Independent Student Union (revolutionary), an organization moving towards to the Maoist cause. The Applicant testified he could not refuse this donation to his friends.

33 The Applicant said he learned about the violent orientation of the Party in October 1995. But, during that year he had been arrested on two occasions by the police because the UPF brought violence to the country.

34 The tribunal did not believe the Applicant's story particularly in respect of the UPF violent orientation and his withdrawal. The tribunal states at page 4 of its decision:

> The general quality of the claimant's testimony was evasive, inconsistent and contradictory. There were inconsistencies and contradictions within his testimony, between his testimony and this personal documentation, and between his testimony and the country documentation. The claimant was trying to convince the panel that he was unaware of the violent orientation of the UPF and as soon as he found out about that violent orientation, he withdrew his active role in the UPF. Furthermore, he was trying to convince the panel that the police are after him because of his UPF activities and his party is after him because of his withdrawal from his UPF activities. The panel does not believe any of these assertions.
>
> In the context of the documentation and the panel's specialised knowledge, it is not plausible to the panel that the claimant did not know about the violent orientation of his party given his level of activity and responsibility within the party. Furthermore, in his testimony, the claimant consistently downplayed his role in the party and there were contradictions and inconsistencies regarding the timing of his withdrawal from party activity. [Emphasis mine]

35 The tribunal had the impression the Applicant attempted to minimize his role in the UPF. It wrote at page 6 of its decision:

> As part of his general minimising of his party role and backpeddling of his adherence to the party, the claimant testified that he started to explore the negative side of communism in 1990. It was never clear exactly when he stopped believing in the UPF. However, for someone who began to explore the negative side of the movement he was involved with in 1990, it is curious to see that he continued and expanded his activity in the work of the party for several more years.

36 The Applicant said he established the Society of Rural Development on party instructions to avoid being sent underground. He maintains people were sent underground from 1995, and he learned later they went underground for guerilla training purposes.

37 The tribunal notes the Applicant mentioned in his PIF "as decided by the party, I had to involve indirectly in the party politics by the name of Mount Everest Enterprises (MEE) and Society for Rural Development (SRD)". At the

hearing April 17, 2000 the role of the SRD for the UPF was explained (Tribunal Record, at pages 716-717):

> Q. [...] I think Mr. Carl and I are interested in understanding the same thing, when you say that you had to involve indirectly in party politics, exactly what does it mean to be involved indirectly in party politics? What behaviors were you doing? In other words, for example, if you told me you were participating in [an] election campaign, we know you put up posters and you make speeches or you to [sic] help in various ways. That would be direct participation. What is indirect participation in party politics?
>
> R. When the Society of Rural Development was established, where there is [sic] people who support United People's Front party, we have to take [the] project over there so that United People's Front party it's developed in that area. To give something to the people, to get something for the party, it's the indirect way to gain the people.
>
> S. Okay, so for example, these projects that you're talking about to help people in rural areas, this was where they would gain something so that the party would gain something?
>
> T. In Society for Rural Development, most of the people were the members of United People's Front party. If you go in an area where your members are elected, if I have been elected in that area, I have to go there and do something for them.
>
> U. Okay, so in 1993, what [did] you do in relation to party politics? Very specifically?
>
> V. In 1993, I worked in social development and I went into rural area to take some project to them [sic]. I do that for the people and lots of people work with our party so that's a profit for our party. [Emphasis mine]

38 The Applicant remained as Secretary General of the SRD until August 1997.

39 Moreover, the Party had consented to give money to the Applicant so he could start the MEE. The tribunal felt that the Applicant minimized the role of the MEE.

40 In June 1996, the Applicant went to the United States on business. He said he did not claim refugee status because his problems at that time were not important. However, after the People's War started in February 1996, he had already been arrested two times in1995 and in April 1996 the Party started asking him to train for the guerilla movement. The tribunal found his explanation for not claiming refugee status in the United States not credible.

41 The evidence shows the Applicant was actively engaged in the activities of the UPF. He was responsible for some of the Party's activities at Kathmandu; he attended the UPF's meetings at least up to February 1996; and he gave money to the Party and he continued to be involved in the Party despite his knowledge of its violent orientation.

42 The tribunal concluded the Applicant gave money to the Party after February 1996 despite his knowledge of the violent orientation of the Party and the guerilla training.

43 Even if it is not possible to exclude a person by the mere membership in an organization which commits international crimes, exclusion is appropriate if a person is an accomplice. Whether a person is an accomplice is a question of fact. In Sivakumar v. Canada (Minister of Employment and Immigration), *[1994] 1 F.C. 433* (C.A.F.), at pages 439, 440 and 442, Linden J.A. said:

> Another type of complicity, particularly relevant to this case is complicity through association. In other words, individuals may be rendered responsible for the acts of others because of their close association with the principal actors. This is not a case merely of being "known by the company one keeps." Nor is it a case of mere membership in an organization making one responsible for all the international crimes that organization commits (see Ramirez, at page 317). Neither of these by themselves is normally enough,

> unless the particular goal of the organization is the commission of international crimes. It should be noted, however, as MacGuigan J.A. observed: "someone who is an associate of the principal offenders can never, in my view, be said to be a mere on-looker. Members of a participating group may be rightly considered to be personal and knowing participants, depending on the facts" (Ramirez, supra, at page 317).
>
> In my view, the case for an individual's complicity in international crimes committed by his or her organization is stronger if the individual member in question holds a position of importance within the organization. Bearing in mind that each case must be decided on its facts, the closer one is to being a leader rather than an ordinary member, the more likely it is that an inference will be drawn that one knew of the crime and shared the organization's purpose in committing that crime. Thus, remaining in an organization in a leadership position with knowledge that the organization was responsible for crimes against humanity may constitute complicity.
>
> ...
>
> To sum up, association with a person or organization responsible for international crimes may constitute complicity if there is personal and knowing participation or toleration of the crimes. Mere membership in a group responsible for international crimes, unless it is an organization that has a "limited, brutal purpose", is not enough (Ramirez, supra, at page 317). Moreover, the closer one is to a position of leadership or command within an organization, the easier it will be to draw an inference of awareness of the crimes and participation in the plan to commit the crimes. [Emphasis mine]

44 After examining the Ramirez, supra, Moreno, supra and Sivakumar, supra cases, Justice Reed concluded in Penate v. Canada (Minister of Employment and Immigration), *[1994] 2 F.C. 79* at page 84:

> As I understand the jurisprudence, it is that a person who is a member of the persecuting group and who has knowledge that activities are being committed by the group and who neither takes steps to prevent them occurring (if he has the power to do so) nor disengages himself from the group at the earliest opportunity (consistent with safety for himself) but who lends his active support to the group will be considered to be an accomplice. A shared common purpose will be considered to exist. I note that the situation envisaged by this jurisprudence is not one in which isolated incidents of international offences have occurred but where the commission of such offences is a continuous and regular part of the operation. [Emphasis mine]

45 Justice Nadon in Mohammad v. Canada (Minister of Citizenship and Immigration) *(1995), 115 F.T.R. 161* at page 178, summarized what Linden J.A. had to say in Sivakumar, supra:

1. A person who commits a crime must be held responsible therefor.
2. A person may be responsible for a crime he or she did not personally commit, that is, as an accomplice.
3. The starting point for the existence of complicity is "personal and knowing participation" by the person in question.
4. Mere bystanders are not accomplices.
5. A person who aids in or encourages the commission of a crime may be responsible therefor.
6. A superior may be responsible for crimes committed by those under his or her command if the superior knew about them.
7. A person may be held responsible for crimes committed by others because of his or her close association with those who committed them.
8. The more important the position held by a person in an organization that has committed one or more crimes, the more likely his or her complicity.

9. A person who continues to hold a leadership position in such an organization with full knowledge that the organization is responsible for crimes may be considered an accomplice.

10. Evidence that the individual protested against the crime, tried to stop its commission or attempted to withdraw from the organization must be taken into consideration in determining whether he or she is responsible.

46 The evidence shows that the Applicant participated in the activities of the UPF, and he had responsibilities within it. Since 1994 the UPF had a violent orientation, and when the Applicant learned of the Party's violent orientation he did not attempt to withdraw from it. He admitted knowing the atrocities committed by the UPF's military wing shortly after the People's War began.

47 The Respondent argues it was reasonably open to the tribunal to conclude it had serious grounds for considering the Applicant was an accomplice of crimes against humanity. The tribunal based its decision on the nature of the organization, the Applicant's knowledge and implication in the organization. The Applicant intentionally and voluntarily joined and remained a member of the UPF. Because of his level of involvement and responsibility, the Applicant was not credible when he said he was unaware of the violent orientation of the UPF and was not credible as to the timing of his withdrawal. I am in agreement with the Respondent's submission.

48 Examining the evidence as a whole, the Applicant has not convinced me the tribunal in making these findings of fact made patently unreasonable findings.

Inclusion

49 During its evaluation on exclusion, the tribunal noted many contradictions, inconsistences and implausibilities which affected the credibility of the Applicant.

50 In Aguebor v. Canada (Minister of Employment and Immigration) *(1993), 160 N.R. 315*, Décary J.A. for the Federal Court of Appeals states at page 4:

> There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.

51 The Federal Court of Appeal in Mostajelin v. Canada (Minister of Citizenship and Immigration), *[1993] F.C.J. No. 28*, (January 15th, 1993) A-122-90, said:

> The Board's conclusion that the appellant's evidence was not credible or trustworthy is based upon the appellant's demeanour, the conflict between the Personal Information Form and his oral testimony and a series of inconsistencies and implausibilities in his oral testimony. Such credibility findings are beyond the review of this Court.

52 Due to the Applicant's lack of credibility, the tribunal concluded he did not have a well-founded fear of persecution at the hands of the police because there is no independent evidence linking him to the police persecution.

53 The tribunal did not believe that the Applicant could have a well-founded fear of persecution at the hands of the UPF. After he received calls in April 1996 asking him to begin guerilla training, the tribunal concluded it is not plausible that the Applicant could avoid guerilla training from April 1996 to October 1997, at which point he received a threatening letter from the Party.

54 The tribunal stated on several occasions the Applicant lacked credibility. The tribunal gave no probative value to two pieces of evidence because of his lack of credibility. The perception of the tribunal that the Applicant is not credible is equivalent to the conclusion that no credible element exists to justify his refugee status claim; Sheik v. Canada (Minister of Citizenship and Immigration), *[1990] 3 F.C. 238* (C.A.F.).

55 To the tribunal's finding must be added its conclusion the Applicant did not claim refugee status in the United States in June 1996 after having been arrested two times in 1995, after the start of the People's War in February 1996 and the fact that in April 1996 the Party asked him to train for the guerilla movement.

56 The tribunal's determination on inclusion is not unreasonable. Contradictions, inconsistences, and evasive answers affected his credibility. The tribunal finding the Applicant did not have a well-founded fear of persecution cannot be impeached.

57 For all of these reasons this judicial review is dismissed. No question for certification was proposed.

LEMIEUX J.
