

Federal Court



Cour fédérale

Date: 20191115

Docket: IMM-562-19

Citation: 2019 FC 1427

Ottawa, Ontario, November 15, 2019

PRESENT: Madam Justice Simpson

BETWEEN:

ARIKARAN SENTHIVEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on October 29, 2019)

I. Proceeding

[1] This application is for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated December 20, 2018, in which due to negative findings about the Applicant's credibility, the Panel denied the Applicant's claim for refugee protection [the Decision]. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 40-year-old ethnic Tamil male and citizen of Sri Lanka. He was one of 10 children born into a farming family in a Tamil area of the country.

[3] During the civil war his father took the family to India for safety and the Applicant lived there in a refugee camp from 1997 until 2003, when a ceasefire was declared in Sri Lanka.

Thereafter he returned to Sri Lanka and remained there working on the family farm through the end of the ceasefire in 2006 and through the Tamil defeat in 2009. He left for the United States in 2018 and made an asylum claim. He was detained and interviewed [the US Interview]. On his release from detention in the US, he came to Canada and made a refugee claim.

II. The Issues

1. *Whether the three negative credibility findings which support the Panel's decision were reasonable*

[4] The first issue is whether the three negative credibility findings which support the Panel's decision were reasonable. The findings are based on inconsistencies between the Applicant's testimony before the RPD, statements in his Basis of Claim form [BOC] and in some cases, statements he made in the US Interview. I will deal with each credibility finding in turn.

(1) The 2012 (Tree) Incident

[5] The Applicant testified that in 2012 he was harassed by Sri Lankan soldiers and tortured by being hit and kicked while tied to a coconut tree. In his testimony before the RPD he was asked what caused the incident and in particular if the army had asked anything of him. He could not recall. Yet in his BOC he said that soldiers asked him to purchase refreshments for them at his expense and that he politely refused. His refusal of their request sparked the incident.

[6] The Panel did not accept that, if made, such a request would be forgotten, and concluded that the “Tree” incident did not occur. In this regard, the record shows that although the psychiatrist’s report [the Report] indicated that in his session with the doctor, the Applicant was unable to recall the dates of significant events, there is no suggestion in the Report that the events themselves could not be recalled.

(2) A Year of Sexual Assault by the Police Chief

[7] The arrest dates given by the Applicant were inconsistent. In the US Interview he stated that the arrest which led to a year of sexual assaults occurred in 2015, but in his RPD testimony, he initially said it happened in 2016. However, when he was advised that he had given 2015 as the date in the US Interview, he changed his evidence and said that the arrest which led to the assaults was in 2015. This caused the Panel to make an adverse credibility finding.

[8] In view of the Report, which stated that the Applicant had trouble with dates, it is my view that basing a negative credibility finding on inconsistent evidence about dates was unreasonable. Nevertheless, there were other inconsistencies relating to this event.

[9] Before the RPD, the Applicant testified that he was brought to the police station because he refused to sell drugs on behalf of the police. However, in his BOC, he said that he was arrested at the instigation of a drug dealer whom he had scolded for selling drugs. Further, in the US Interview, he stated that he was arrested because he was a handsome man compared to other Sri Lankans. In my view, this inconsistent evidence reasonably led to a negative finding about the Applicant’s credibility and justified a conclusion that the sexual assaults which followed the arrest did not occur.

(3) Suicide

[10] The Applicant testified that he attempted suicide in August of 2016, whereas in his BOC he said that his suicide attempt occurred in December of 2016. Again, based on the Report, I have concluded that a negative credibility finding on this basis was unreasonable.

[11] However, again, there was a serious inconsistency. He testified that he used a liquid insecticide and in his BOC stated that he consumed it. However, in the US Interview he said that he had taken tablets. In my view, a negative credibility finding based on this evidence was reasonable.

2. *Residual Profile*

[12] The second issue is whether the Panel considered the Applicant's residual profile as a returning middle-aged Tamil male with no former ties to the LTTE. In my view, the Panel's reference to a recent Report by the Australian Department of Foreign Affairs and Trade which dealt with the position of returning Tamils, supported the Panel's conclusion that the Applicant did not meet the current risk profile. Accordingly, this finding was reasonable.

III. Conclusion

[13] Given that the Applicant could not provide consistent testimony about fundamental matters such as: the event that led to torture while he was tied to a tree, the cause of his arrest which led to a year of sexual abuse by the Police Chief and the method he used to attempt suicide, I have concluded that it was reasonable of the Panel to find that these events did not occur and that the balance of the allegations made in the claim also did not occur.

IV. Certification

[14] No question was posed for certification for appeal.

JUDGMENT IN IMM-562-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and the style of cause is to be amended to correct the Applicant's surname so that it ends with the letters EL instead of AL.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-562-19

STYLE OF CAUSE: ARIKARAN SENTHIVEL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 29, 2019

JUDGMENT AND REASONS: SIMPSON J.

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