Date: 20070730

Docket: IMM-3592-06

Citation: 2007 FC 802

Ottawa, Ontario, July 30, 2007

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

ANTHONY BAHEERATHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant is a citizen of Sri Lanka who bases his claim for protection on an alleged fear of persecution by reason of race by the Liberation Tigers of Tamil Eelam (LTTE or Tigers), the Sri Lankan Army and the Eelam People's Democratic Party (EPDP). He is a young, Tamil male who claims to have lived most of his life, including the period from 1996 to 2004, in Jaffna, in northern Sri Lanka. He left Sri Lanka in 2004 for France, where his claim for refugee protection was denied. Rather than return to Sri Lanka, he then came to Canada where he claimed protection.

[2] In a decision dated June 15, 2006, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) determined that the Applicant was not a Convention refugee and not a person in need of protection. The Applicant seeks judicial review of that decision.

[3] In broad terms, the Board's decision was based on two conclusions:

1. The Board was not persuaded that the Applicant had lived in Jaffna during the period of time (1996 to 2004) when he was allegedly persecuted; and

2. The Applicant would not face more than a mere possibility of persecution or be subjected to a risk to his life if he returned to Sri Lanka and lived in the government controlled areas.

[4] The Applicant asserts that the Board erred in respect of each of these conclusions.

[5] The Board's conclusions are findings of fact that are directly within the competence and expertise of the Board. As such, the standard of review for such determinations is patent unreasonableness. That is, the decision will only be overturned where the findings are made perversely and capriciously or without regard to the evidence (*De (Da) Li Chen v. Canada (Minister of Citizenship and Immigration)* (1999), 49 Imm. L.R. (2d) 161 at para. 5 (F.C.A.); *Brar v. Canada (Minister of Employment and Immigration)*, [1986] F.C.J. No. 346 (F.C.A.); *Tekin v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357 at para. 10).

[6] The burden is on the Applicant to satisfy the Board of the credibility of his story. In meeting this burden, it was incumbent on the Applicant to persuade the Board that he was in the area where he allegedly was persecuted. The Board raised a number of problems with his testimony in this regard which threw doubt on his whereabouts during the material time of 1996 to 2004.

[7] In reading this decision it is important to read the decision in its entirety and to consider the reasonableness of the overall finding that the Applicant had not demonstrated that he was in Jaffna for the period when he alleges to have been persecuted. All of the individual issues addressed by the Board should be read in that light. Two examples are as follows:

- The Board did not conclude that every citizen of Jaffna carried an army identity card. Rather, the Board noted that the Applicant did not have a card that he was required by law to carry and that he did not appear to know about the requirement. It was not unreasonable for the Board to rely on these facts to support its conclusion that the Applicant was not in Jaffna.

- In questioning why the Applicant would only know the manager of the store where he allegedly worked by only one name, the Board was not ignoring the fact that persons in Sri Lanka are most usually known by one name only. Instead, the Board was reasonably stating that, where someone was your manager for 10 years, it is reasonable to expect that you would be able to identify the manager by more than one name. Once again, this, coupled with evasive and hesitating answers in oral testimony on his employment, casts some doubt on whether the Applicant was being truthful about his employment.

[8] Other alleged errors can be similarly situated within the decision as a whole. Despite the efforts of the Applicant to show errors in the individual areas addressed by the Board, I am satisfied that the overall conclusion was open to the Board on the evidence before it. The combination of contradictions, inconsistencies, evasive or non-responsive answers and lack of specific details on the situation in Jaffna at the relevant time is supportive of the Board's conclusion that he was not in Jaffna during the material time. Put simply, due to the cumulative impact of the numerous problems with his testimony and evidence, the Applicant was unable to weave together a story that met the test for claiming protection. While parts of the decision dealing with particular aspects of the testimony and evidence may not be written as carefully as they should be, the Court's intervention is not warranted.

[9] Even though the Board found the Applicant's story to lack credibility, the Board considered whether the Applicant would, objectively, be at risk. The Board's analysis in this consideration is very brief and concludes by saying, in effect, that the Applicant would be able to live relatively safely if he were to live "in the government controlled area". The Applicant asserts that the Board failed to have regard to the evidence that shows that Tamils are at risk in government-controlled areas.

[10] It is well established that the tribunal is not bound to refer in its reasons to each piece of evidence that it considered (*Hassan v. Canada (Minister of Employment and Immigration)* (1993), 147 N.R. 317 (F.C.A.); *Zhou v. Minister of Employment and Immigration*, [1994] F.C.J. No. 1087 (F.C.A.) (QL); *Martinez v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No.

1615 (F.C.) (QL)). There is a presumption that the tribunal considered all of the evidence before making a decision (*Woolaston v. Minister of Manpower and Immigration*, [1973] S.C.R. 102; *Hassan*, above).

[11] In my view, the Board considered the context and totality of the evidence regarding the Applicant's fear. The Board acknowledged that, since the ceasefire agreement in February 2002, problems have surfaced. The Board pointed out that there are still isolated incidents, even though the ceasefire has been effect, but found that there was not more than a mere possibility the Applicant would face harm in a government controlled area of Sri Lanka. Having reviewed the evidence, I am satisfied that the Board's conclusion was open to it. Although the Applicant can highlight certain evidence from the evidence that shows that Tamils continue to be subjected to risks, even in government-controlled areas, there is no indication that this evidence was ignored. I do not find a reviewable error.

[12] Neither party proposed a question for certification. I agree that the issues in this case do not raise a question of general importance and will not certify a question.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"

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Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3592-06
STYLE OF CAUSE:	ANTHONY BAHEERATHAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 24, 2007
REASONS FOR ORDER AND ORDER:	Snider J.
DATED:	July 30, 2007

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