

**Date: 20071105**

**Docket: IMM-4093-06**

**Citation: 2007 FC 1148**

**Ottawa, Ontario, November 5, 2007**

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

**BETWEEN:**

**SASITHARAN SUNDARARAJAH**

**Applicant(s)**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent(s)**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Sasitharan Sundararajah is a refugee claimant from Sri Lanka. He brings this application for judicial review from a negative decision of the Immigration and Refugee Board (Board) that was rendered on July 4, 2006.

**Background**

[2] Mr. Sundararajah is an unmarried 39-year-old Tamil. He arrived in Canada on October 16, 2004 and immediately claimed refugee protection. His story of persecution began in 1983 when he was allegedly arrested by the Sri Lankan Army on suspicion that he was a member of the Liberation

Tigers of Tamil Eelam (LTTE). He alleged that he was held without charge for two years in a prison in Colombo and that during that incarceration he was mistreated and tortured.

[3] In 1988, Mr. Sundararajah's brother joined the LTTE. This, he said, led to a heightened level of harassment of the family by government authorities.

[4] In early March 2004, the LTTE split into opposing factions and an internecine conflict arose. Because Mr. Sundararajah's brother was a member of one of the warring factions, Mr. Sundararajah and his sister were targeted by the opposite faction. Mr. Sundararajah claimed that, on July 25, 2004, his sister and his niece were assaulted and a threat to his life was issued if he failed to surrender to the LTTE. Mr. Sundararajah claimed that, after this, he and a friend, Yoga, fled to Yoga's parents' home in Batticaloa. Nevertheless, the LTTE located him and raided the home. Although he and Yoga managed to escape out the back, Yoga's mother was allegedly shot to death. Mr. Sundararajah then traveled to Polonnaruwa and later to Colombo where he stayed out of sight. He asked another friend, Balla, to help him get out of Sri Lanka but within 8 days Balla was also murdered by the LTTE. Mr. Sundararajah stayed in hiding for another 10 days and fled the country on August 28, 2004 with the help of an agent.

### **The Board Decision**

[5] The Board did not believe Mr. Sundararajah and its decision identifies a number of problems with his evidence.

[6] The Board's first concern had to do with Mr. Sundararajah's delay in departing for Colombo once a risk to his life became apparent. Despite the fact that family members of the warring LTTE factions were being killed and Mr. Sundararajah was aware that he was a target, he did not attempt to escape the area until the third occasion that his sister was approached and warned. The Board also expressed concern that he had neglected to mention in his Personal Information Form (PIF) the first two attempts by the LTTE to locate him through his sister - visits which were supposedly sufficiently troubling that he moved out of her home.

[7] A number of discrepancies in the evidence were also cited by the Board. One notable example of this concerned inconsistencies about the point in time that Mr. Sundararajah decided to leave Sri Lanka. The Board also noted his "mixed and vague testimony" about how he learned about the killing of Yoga's mother. His explanation for the inconsistencies between his testimony and a belated newspaper account of that killing were also found to be unlikely.

[8] The Board expressed another credibility concern about Mr. Sundararajah's failure to include in his PIF the fact that the LTTE and the Sri Lankan Army had been aggressively searching for him since his departure from Sri Lanka. Because he admitted being aware of these events before he completed his PIF, the Board found that this omission was particularly significant.

[9] Finally, the Board expressed doubts about Mr. Sundararajah's testimony concerning a letter from the Minister of his church in Sri Lanka which attested only to the quality of his volunteer work. When he was questioned about the absence of any corroborating details in this letter,

Mr. Sundararajah confirmed that the Minister was aware of the problems he had experienced with the LTTE. His explanation for not seeking corroboration from the Minister was that "it's not proper to ask the religious person, and to write about all these things."

[10] In the end, it is quite clear that the Board did not believe Mr. Sundararajah. It described his testimony variously as exaggerated, untrustworthy, unclear, confusing and vague.

### **Issues**

- [11] (a) What is the appropriate standard of review for the issues raised by the Applicant?  
(b) Did the Board err in its analysis of the evidence?

### **Analysis**

[12] All of the issues raised on behalf of Mr. Sundararajah in this application are evidence-based. For the sake of argument, I am prepared to accept that these are all matters for which the intermediate standard of reasonableness simpliciter applies.

[13] Mr. Sundararajah challenges the Board's decision and, in particular, the credibility conclusion on the strength of an argument that the Board misconstrued the evidence and drew speculative inferences. The Memorandum of Fact and Law submitted on behalf of Mr. Sundararajah advances the following points:

- (a) it was not unreasonable that Mr. Sundararajah would have waited until the third visit by the LTTE to decide to leave;

- (b) Mr. Sundararajah offered a reasonable explanation for his failure to mention the two prior LTTE visits in his PIF;
- (c) it was unreasonable to expect Mr. Sundararajah to explain why the newspaper article reporting the death of Yoga's mother was printed several weeks after the event and, in any event, Mr. Sundararajah did offer a reasonable explanation for the delayed report; and
- (d) it was unreasonable for the Board to be concerned with a discrepancy between Yoga's mother's name as reported by Mr. Sundararajah and the name of the murder victim reported in the newspaper.

[14] The above points were urged upon the Court in argument along with the further criticism that the Board took a "building block" approach to credibility by essentially piling one adverse finding upon another.

[15] Finally, Mr. Sundararajah criticized the Board's failure to refer to the evidence of the murder of Balla a few days after Mr. Sundararajah arrived in Colombo.

[16] All of the arguments advanced on behalf of Mr. Sundararajah are unmeritorious.

[17] There is nothing wrong with the Board's overall approach to the assessment of Mr. Sundararajah's credibility. It is rare that a person's credibility will turn on a single point of

evidence. More often, the exercise of judging credibility is based on a cumulative assessment of the evidence and that is precisely what the Board did here.

[18] Mr. Sundararajah characterizes as reasonable his various explanations for the credibility concerns identified by the Board. It is not, however, the task of the Court on judicial review to reweigh the evidence or to substitute its views on the evidence for those of the Board. The Board's concerns about delay and the PIF omissions were reasonably supported by the evidence and cannot be disturbed. It is also of some significance that the Board had several other legitimate concerns with Mr. Sundararajah's testimony that he does not now seek to challenge but that also support the Board's credibility conclusion.

[19] I agree with counsel for Mr. Sundararajah that that part of the decision which deals with the belated newspaper account of Yoga's mother's death is awkwardly written; however, I cannot identify an error in the Board's analysis of this evidence. It appears to me that the Board's primary concern with this newspaper article was that it appeared not to relate to the incident reported by Mr. Sundararajah and thus failed to corroborate his testimony. This was a reasonable inference to draw from the inconsistencies between the newspaper account and Mr. Sundararajah's testimony, including differences in the name of the victim and the time of the event. While the Board's further concern about the reasonableness of Mr. Sundararajah's explanation for the delayed reporting of this event is somewhat tenuous, this was only a secondary basis for the Board's rejection of this evidence and it is not of sufficient import to justify interfering with the overall conclusion.

[20] Finally, the Board cannot be faulted for its failure to acknowledge the evidence of the murder of Balla in Colombo. Mr. Sundararajah did not establish any nexus whatsoever between that event and the risk he allegedly faced. Indeed, his PIF narrative stated very clearly that he was not aware of any connection between his contact with Balla after his arrival in Colombo and Balla's murder there a few days later. It is not an error for the Board to ignore evidence that has no probative value.

[21] In summary, I can find no reviewable error in the Board's decision and this application for judicial review is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT ADJUDGES that** this application for judicial review is dismissed.

“ R. L. Barnes ”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4093-06

**STYLE OF CAUSE:** Sundararajah  
v.  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 4, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** Mr. Justice Barnes

**DATED:** November 5, 2007

**APPEARANCES:**

John O. Grant FOR THE APPLICANT(S)

Maria Borges FOR THE RESPONDENT(S)

**SOLICITORS OF RECORD:**

John O. Grant FOR THE APPLICANT(S)

Barrister and Solicitor  
5627 Turney Drive  
Mississauga, ON L5M 1A1

John H. Sims, Q.C. FOR THE RESPONDENT(S)  
Deputy Attorney General of Canada