

Date: 20071217

Docket: IMM-335-07

Citation: 2007 FC 1314

Ottawa, Ontario, December 17, 2007

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MAHINDA KALDERA HELESSAGE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Helessage is a Sri Lankan national and businessman of Singhalese ethnicity. He ran a machinery reconditioning and parts business and employed two people, one Singhalese and one Tamil. He claims a well-founded fear of persecution by the Liberation Tamil Tigers of Eelam (LTTE).

[2] The applicant testified before the Refugee Protection Division Panel Member that his fear of the LTTE stems from two interactions with the police. The first was in 2001, at which time he was

briefly detained by police on suspicion that he had provided restricted items to the LTTE. His business was searched, he was told not to support the LTTE and then he was released. Nothing untoward happened until May 2005 when his Singhalese and Tamil employees were stopped at an army checkpoint and remote electrical circuits, which are illegal, were found in the van. Both employees were arrested, and the Tamil was identified by the police as a member of the LTTE. Mr. Helessage was himself briefly detained for questioning and his business was closed for a police search for one week. He cooperated with the police investigation. The Singhalese employee was released, but the Tamil man was not.

[3] Mr. Helessage was in Canada on a visit when the Singhalese employee involved in the May incident was killed on September 5, 2005 by unknown assailants. Mr. Helessage alleges that after the murder, his wife began to receive threats against him for purportedly identifying his Tamil employee to the police as a member of the LTTE. He also claims that his family had been forced to move due to fears of kidnap.

[4] Mr. Helessage filed his refugee claim in February, 2006. It was denied on December 22, 2006, and the applicant applied for judicial review January 17, 2007.

ISSUE:

[5] The sole issue before this Court is whether the Panel Member erred in her assessment of Mr. Helessage's credibility.

ANALYSIS:

[6] It is settled law that the standard of review when determining credibility issues is patent unreasonableness: *Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 267, [2007] F.C.J. No. 394.

[7] My colleague Justice Luc J. Martineau set out the test to be applied in this situation in *R.K.L. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, [2003] F.C.J. No. 162 at paragraph 8:

[W]ith respect to credibility and assessment of evidence, this Court may not substitute its decision for that of the Board when the applicant has failed to prove that the Board's decision was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it....
(citations removed)

[8] Generally, the Court will defer to the tribunal of first instance for findings of credibility, as they are in a better position for the making of such judgments. I do not find the Panel Member's findings in this case to be perverse or capricious, or without regard to the evidence before her. She reasonably stated her findings of adverse credibility and provided examples to support her decision. Her analysis did not amount to a microscopic examination of the evidence in order to find reasons to doubt Mr. Helessage's credibility.

[9] Accordingly, I find that the decision is not patently unreasonable and the application is dismissed. No serious questions of general importance were proposed and none will be certified.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-335-07

STYLE OF CAUSE: MAHINDA KADERA HELESSAGE

AND

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 11, 2007

REASONS FOR JUDGMENT: MOSLEY J.

DATED: December 17, 2007

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