

Date: 20080711

Docket: IMM-1326-07

Citation: 2008 FC 863

Ottawa, Ontario, July 11, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

VIGNESRAJAH NADARAJAH

Applicant

- and -

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Vignesrajah Nadarajah is a 27 year old Tamil male from northern Sri Lanka. He claims he was persecuted and detained by three different groups: first the Sri Lankan Army (the “SLA”) which imprisoned him for two years from 1996-1998; second, the People’s Liberation Organization of Tamil Eelam which held him for six weeks in 1999 and third, the Liberation Tigers of Tamil Eelam (the “LTTE”) who detained him for 16 months. He says he later left his home region of Mannar and hid in Colombo before fleeing Sri Lanka in 2004. He eventually came to Canada after

being held in the United States for being illegally in that country. He applied for refugee status upon entry into Canada.

[2] The Board accepted Mr. Nadarajah's identity and Sri Lankan citizenship but decided he was not a credible witness. The Board also decided, Mr. Nadarajah as a young Tamil male, had an internal flight alternative in Colombo. In result, the Board found Mr. Nadarajah was neither a Convention refugee nor a person in need of protection and rejected his claim.

[3] The issues in this judicial review are:

1. Did the Board err in assessing credibility?
2. Did the Board err in concluding that Colombo was a viable internal flight alternative?

[4] I conclude that this application for judicial review should be dismissed. My reasons follow.

Did the Board err in assessing credibility?

[5] A preliminary issue arises because Mr. Nadarajah has submitted by affidavit a new document, a 2003 Sri Lankan driver's licence, to counter the Board's finding that it had no credible evidence that Mr. Nadarajah was in Sri Lanka during the period 2001-2003. The 2003 driver's licence was not before the Board.

[6] The short answer to this preliminary issue is that this evidence was not before the decision-maker. I will disregard this evidence as I must, as well as other new evidence that arises in Mr.

Nadarajah's affidavit (*Lemiecha (Litigation guardian of) v. Canada (Minister of Employment and Immigration)*), [1993] F.C.J. No. 1333 at para. 4). The evidence that is relevant is the evidence that was before the Board at the time of the hearing.

[7] Mr. Nadarajah contends that the Board made three errors in its credibility findings. He argues that the Board erred in that it:

- considered it significant that he failed to mention his detention by the SLA to a question in his Personal Information Form but ignored the fact that he had reported his detention by the LTTE elsewhere in the same form;
- made note of his failure to produce documents to corroborate his detention by the SLA despite the fact that his mother had petitioned the International Red Cross and the National Human Rights Commission to secure his release but did not give him an opportunity to explain the absence of documents;
- questioned his credibility about being subjected to police checks because he had no difficulty obtaining a Sri Lankan passport without having evidence linking the process of obtaining a passport with police surveillance.

[8] Mr. Nadarajah submits the Board's credibility assessment is flawed because of these errors.

[9] This application was heard but not decided before the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. The decision in *Dunsmuir* has established that there are now only two standards of review: correctness and reasonableness (*Dunsmuir* at para. 34).

Where questions of fact and credibility are reviewed, the standard of review is reasonableness (*Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427 at para. 15).

[10] A claimant's testimony is presumed to be true (*Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para. 6). The presumption may be refuted by the presence of inconsistencies and contradictions in testimony, implausibility and where facts are presented are not what could reasonably be expected (*Jiang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 775 at para. 15). Lastly, the Board is entitled to deference in regard to its credibility determinations (*Lubana v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para. 7).

[11] Mr. Nadarajah's objections are without merit. The Board was examined inconsistencies and contradictions in Mr. Nadarajah's evidence and assessed facts presented which it did not find could reasonably be expected. As the Board's reasons are supported by the evidentiary record, it is entitled to deference in its findings.

[12] I find that the Board's assessment of Mr. Nadarajah's credibility was neither perverse or capricious, nor unreasonable.

Did the Board err in concluding that Colombo was a viable Internal Flight Alternative?

[13] Mr. Nadarajah argues that, as a young Tamil male from northern Sri Lanka, he is at greater risk than the generalized population in the country. He submits that the Board ignored the persecution he suffered at the hands of the SLA and the LTTE. He argues the Board failed to

consider evidence of human rights abuses in Sri Lanka and the evidence of a security crackdown in Colombo.

[14] The approach to be taken when evaluating an internal flight alternative was summarized by Justice Snider in *Rincon v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 407. She stated:

When the possibility of an IFA is raised, the onus lies on the claimant to demonstrate that there is a serious possibility of persecution in the designated IFA area(s) (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.) at para. 9; *Ochoa v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1957, 2005 FC 1577 at para. 12).

An IFA finding requires a two-part test. To find that an IFA exists, the Board must be satisfied that: (i) there is no serious possibility of persecution in the IFA region; and (ii) it would not be unreasonable to expect the claimant to seek refuge in the IFA area (or put another way, it would not be unduly harsh to relocate to the IFA area) (*Thirunavukkarasu*, above at para. 12).

[15] The Board concluded that Mr. Nadarajah had not established he was a prisoner of the SLA or the LTTE and went on to consider his risk, as a young Tamil male, from persecution by the authorities or LTTE anywhere in the country. It acknowledged the instability in the north and northeast of Sri Lanka, the breakdown of the ceasefire agreement and examined the risk to Mr. Nadarajah elsewhere, notably Mannar and Colombo.

[16] The Board canvassed the documentary evidence. It concluded that Mr. Nadarajah may be subject to some discrimination and some scrutiny by the authorities but, considering the level of integration of Tamils into Sri Lankan society, he would not be persecuted by the Sri Lankan authorities merely because he was a young Tamil male in Colombo or even in Mannar.

[17] The Board also considered whether Mr. Nadarajah would be targeted by LTTE. It decided that the LTTE probably has infiltrated Mannar and may engage in extortion or forced recruitment of young men under 18 and the killing of political opponents. The Board decided that if the situation in Mannar was too tense, Mr. Nadarajah would have an internal flight alternative in Colombo. The Board noted that the LTTE targets political opponents or critics, but found Mr. Nadarajah was not involved in activities that would give him a profile that would cause him to be targeted by LTTE in Colombo.

[18] Finally, the Board decided, given that Mr. Nadarajah is young and mobile, that it was not unreasonable to expect he could settle in Colombo.

[19] The Board has clearly satisfied the test for determination of a viable internal flight alternative. The onus rests on Mr. Nadarajah to show why it would be unreasonable to expect him to seek refuge in Colombo. Mr. Nadarajah does not demonstrate that he faces a serious possibility of persecution in Colombo since he merely repeats his claim to have been detained by the SLA and cites human rights abuses which the Board properly considered in its analysis.

[20] I find the Board did not err in concluding that Colombo was a viable internal flight alternative for Mr. Nadarajah.

[21] The application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1326-07

STYLE OF CAUSE: VIGNESRAJAH NADARAJAH
v. MCI

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN, J.

DATED: July 11, 2008

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