

Federal Court



Cour fédérale

**Date: 20110516**

**Docket: IMM-5389-10**

**Citation: 2011 FC 548**

**Ottawa, Ontario, May 16, 2011**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**RASAMALAR JOSEPH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] In 2009, Ms. Rasamalar Joseph claimed refugee protection in Canada based on her alleged fear of persecution as a Tamil woman from northern Sri Lanka. A panel of the Immigration and Refugee Board dismissed her claim after finding an absence of credible evidence supporting it.

[2] Ms. Joseph maintains that the Board carried out a microscopic analysis of the evidence she presented. This caused it, she says, to dismiss and overlook evidence that reinforced her claim, and to arrive at an unreasonable conclusion. She asks me to overturn the Board's decision and order a new hearing before a different panel.

[3] I cannot find, however, a basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review. In my view, the Board's conclusion that Ms. Joseph's claim was unsupported by reliable evidence was reasonable.

[4] The issue is whether the Board's treatment of the evidence was reasonable.

## II. The Board's Decision

[5] The Board found there was little evidence supporting Ms. Joseph's account of events.

[6] The Board was concerned about gaps in Ms. Joseph's recollection of her voyage from Sri Lanka to Canada. She could not remember what airline took her from Sri Lanka to Singapore, or from Singapore to Japan, or from Japan to Canada. An agent provided her a new passport in Singapore but she could not remember what country had issued it, or whose name appeared on it.

[7] The Board also noted that Ms. Joseph had provided little documentation to show that she had lived in Sri Lanka until 1999 as she had testified. She had no bank records, no ownership records for her house or business, and no driver's licence. She provided a birth certificate (issued in

2004 with no photo) and a letter from a lawyer who had done legal work for her parents. The latter was clearly a form letter – mostly boilerplate information, with only a few personal details. Ms. Joseph also provided an affidavit from a friend in Toronto stating that Ms. Joseph had been living in Sri Lanka, but the deponent had not seen her since 1992.

[8] The Board also found some parts of Ms. Joseph's narrative implausible. She stated that she had given her original passport and National Identity Card to the agent to mail to her. The Board wondered why she could not have mailed it herself, and why the agent would take the risk of being found with two different travel documents.

### III. Was the Board's Treatment of the Evidence Reasonable?

[9] The task of evaluating and weighing the evidence falls to the Board. It is not my role to second-guess the Board's fact-finding unless its analysis was unreasonable.

[10] Here, the Board's concerns about the evidence before it caused it to find that there was no basis on which to conclude that Ms. Joseph's alleged fear of persecution in Sri Lanka was well-founded. Ms. Joseph argues that the Board's concerns related solely to issues at the periphery of her refugee claim. Even if the Board did not believe her story about how she got to Canada or what happened to her identity documents, the fact remained that she was a Tamil woman from the north of Sri Lanka and the documentary evidence supported her claim to be at risk of persecution if she returned there. Her birth certificate proved her identity and ethnicity and that alone, she says, should have been enough to sustain her claim for refugee protection.

[11] The Board must be careful not to dismiss a refugee claim on the basis that it disbelieves parts of the claimant's testimony, or evidence that does not go to the core of the claim. Sometimes claimants embellish their stories, or they forget minor details. It is unreasonable for the Board to dismiss claims simply because they find evidence at the fringes not to be reliable or trustworthy. Even if the Board finds some evidence not to be credible, it must go on to consider whether there remains a residuum of reliable evidence to support a well-founded fear of persecution. (See, e.g. *Seevaratnam v Canada (Minister of Citizenship and Immigration)* (1999), 167 FTR 130, 88 ACW (3d) 650 (TD); *Mylvaganam v Canada (Minister of Citizenship and Immigration)* (2000), 98 ACWS (3d) 1089, [2000] FCJ No 1195 (FCTD) (QL); *Kanesaratnasingham v Canada (Minister of Citizenship and Immigration)*, 2008 FC 48).

[12] On the other hand, sometimes the Board's concerns about the credibility or trustworthiness of the claimant's evidence causes it to doubt the very essence of the claim. In those circumstances, the Board need not look to general country condition evidence to determine whether the claim was well-founded: *Mathews v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387 at para 7-8. That was the case here. The question, then, is whether the Board had a reasonable basis for its concerns about the evidence presented by Ms. Joseph.

[13] In my view, the Board's conclusion was reasonable in light of the evidence before it. Ms. Joseph's account of her travel to Canada was, at best, incomplete. It cast doubt on her testimony relating to other aspects of her claim. She lacked documentary evidence that would have corroborated her claim to have lived and worked in northern Sri Lanka for many years. The letter

from her parents' lawyer and the affidavit from her friend were weak evidence of her life in Sri Lanka. And her 2004 birth certificate could have been acquired outside Sri Lanka. There remained, of course, her oral testimony but, in key areas where one would have expected corroborative documentary evidence, (e.g., relating to her residence and business) none was offered. The Board is entitled to make an adverse credibility finding in those circumstances: *Adu v Canada (Minister of Employment and Immigration)* (1995), 53 ACWS (3d) 158, [1995] FCJ No 1114 (FCA) (QL), at para 1.

[14] In my view, the Board's treatment of this evidence and its conclusion were reasonable. Taking account of its doubts about Ms. Joseph's narrative of events and the paucity of evidence confirming that she had actually been resident in northern Sri Lanka during the relevant time period, the Board's conclusion that her claim was not supported with reliable and trustworthy evidence was clearly open to it.

#### IV. Conclusion and Disposition

[15] Having found that the Board's conclusion was reasonable on the evidence, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

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

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-5389-10

**STYLE OF CAUSE:** JOSEPH  
v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** April 19, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** May 16, 2011

**APPEARANCES:**

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