

Federal Court



Cour fédérale

**Date: 20110712**

**Docket: IMM-6895-10**

**Citation: 2011 FC 857**

**Ottawa, Ontario, July 12, 2011**

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

**BETWEEN:**

**ISURU PRASANNA  
NANAYAKKARA-AGARAGE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Board is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the evidence when examined as a whole (*Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 11 (QL/Lexis) (FCA); *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL/Lexis) (FCA); *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 415 (FCA)).

## II. Introduction

[2] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), rendered on October 29, 2010, wherein, the Applicant was found to be neither a “Convention refugee” nor “a person in need of protection” pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## III. Facts

[3] The Applicant, Mr. Isuru Prasanna Nanayakkara-Agarage, a citizen of Sri Lanka alleged his problem began when he lent his cell phone, which was run on pre-paid cards, to a young Tamil who was a driver/cook for a company he was working for, in Monaragala, Uva Province. The Tamil’s name was Shankar and they spent approximately six weeks working together.

[4] In mid-October 2008, Shankar disappeared. On May 2, 2009, the Sri Lankan military killed four Liberation Tigers of Tamil Eelam [LTTE] fighters in the Yala Sanctuary, in the Hambantota District of the Southern Province, in proximity to where the Applicant was working for the summer. The Applicant alleged that his phone number was found in the possession of these “assassins”; and, on May 6, 2009, he was arrested by Sri Lanka’s Terrorist Investigation Department [TID] and questioned on his relationship with Shankar. The Applicant alleged he was also tortured. To the Applicant’s knowledge, Shankar was in touch with people in “Ampara” (Eastern Province). The Applicant stated that the police had mentioned to him that, in fact, Shankar was communicating with LTTE “assassins”.

[5] The Applicant also alleged he was confronted with further accusations and, under torture, was forced to sign a document.

[6] The Applicant claimed he was released the next day on payment of a large bribe. The Applicant's father then organized the Applicant's flight from Sri Lanka and since that time, the father has himself been visited by the police.

### III. Issue

[7] Is the Board's decision reasonable?

### IV. Standard of Review

[8] Questions of facts or of mixed law and facts are reviewed under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

### V. Analysis

[9] The Federal Court will not substitute its discretion for that of the Board if it was open to the Board to find as they did, even if the Court might have drawn different inferences or found the evidence to be plausible. The Court clarified the case law on this point in *Aguebor*, above:

[3] It is correct, as the Court said in *Giron*, that it may be easier to have a finding of implausibility reviewed where it results from inferences than to have a finding of non-credibility reviewed where it results from the conduct of the witness and from inconsistencies in the testimony. The Court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is "plausibility" or "credibility".

[4] There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of

testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review...

[10] If the story is true, then why would an individual who was contacting LTTE assassins or persons associated with the “enemy” in the midst of a civil war use someone else’s cell phone? In response, the Applicant stated that it was a question of cost. Shankar could not afford to buy the phone but could afford to pay for the minutes. The Board found this explanation to be inadequate. If Shankar was communicating with the LTTE, which means he was at risk of being uncovered, he would not likely use a phone number that could be traced back to him, which would be the case with a borrowed phone from the son of his employer’s friend.

[11] The fact that the Applicant was released from detention indicates that the authorities did not seriously consider that he was an LTTE member nor that he had any association with them.

[12] The Applicant alleged that the police and the TID were actively seeking him. At the same time, the Applicant was able to secure a valid Canadian visitors permit and a valid Sri Lankan passport and leave the country with a group of students, one of whom was from his college, to attend a conference in Canada.

[13] In order to board the plane, the Applicant went through security which involved a review of his identity documentation. The Board found it was impossible for the Applicant to clear the airport while being sought by the TID.

[14] According to a UK Home office report:

... All passengers must complete a departure card and then queue at an immigration officer's desk. Passengers must present their passport, departure card and boarding pass to the immigration officer. The immigration officer will swipe the passport onto the IED [Department of Immigration & Emigration] Border Control System database... Having passed through the immigration control, passengers proceed to the main departure lounge. There are further security checks conducted when passengers arrive at the boarding gate... There is then a further boarding card check conducted by airline staff prior to entering the holding lounge.

(Exhibit A-3: National Documentation Package on Sri Lanka, 13 August 2010, tab 2.7, United Kingdom (UK). 18 February 2010. Home Office. Country of Origin Information Report: Sri Lanka at para 33.03).

[15] The Board held that the plausibility of the Applicant's story of his arrival in Canada is also open to question. According to the Applicant, his participation in the JAX Youth Leader's Exchange Program in Hamilton, Ontario (August 2-14) was simply a means of leaving Sri Lanka. The Board had grave concerns about the Applicant's description of his participation in this event and the assistance by which his integration into the event was facilitated (at para 21). (The question is open whether, in fact, any organization would want to jeopardize its entity by including a non-participant in a program that could put into peril the very organization's existence, itself, both as a collective entity and, furthermore, jeopardize each individual, him or herself, who as a member of the entity could then be under scrutiny.)

## VI. Conclusion

[16] For all of the above-reasons, the Applicant's application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed.

No question for certification.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-6895-10

**STYLE OF CAUSE:** ISURU PRASANNA NANAYAKKARA-AGARAGE  
v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** July 6, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** July 12, 2011

**APPEARANCES:**

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