Federal Court  Cour fédérale

**Date: 20110728**

**Docket: IMM-6826-10**

**Citation: 2011 FC 955**

**Ottawa, Ontario, July 28, 2011**

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

**BETWEEN:**

**KOBIKRISHNA KANAGASINGAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR ORDER AND ORDER

[1] Mr. Kanagasingam is a young Tamil male from northern Sri Lanka. He came to Canada in order to claim refugee status, based on race, imputed political opinion and membership in a particular social group. He fears the Sri Lankan Security Forces and all military and paramilitary groups working with and cooperating with them.

[2] The member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB), who heard his claim, dismissed it on four grounds:

a. he has not shown that he has been targeted as an individual of special interest or of any interest to the Sri Lankan military or police;
b. he has not shown a subjective fear of persecution as his lengthy journey to Canada included stopovers in four countries, including the United States;
c. following the defeat of the LTTE (Tamil Tigers), and given the improving security situation in the north of Sri Lanka, he should not be viewed as facing a serious risk of persecution, as might have been in the past; and
d. even if it were inadvisable to return to the north of Sri Lanka, he has an internal flight alternative in Colombo.

This is the judicial review of that decision. It is not necessary to determine if all four grounds are reasonable. Any one will do.

**The Facts**

[3] Mr. Kanagasingam was a teacher of computer technology. He hails from Jaffna in the north. He first came to the attention of the military in February 2007 following a bomb explosion. He was arrested along with several other young Tamil men, but he was released two days later after being interrogated, slapped and pushed.

[4] The second incident in September 2007 consisted of a roundup of young Tamil men. He was questioned and assaulted, but released the next day.

[5] In June 2008, he was arrested at his home and accused of being involved with the Tamil Tigers. He was turned over to the Eelam People's Democratic Party (EPDP) military group who beat him but released him two days later on payment of a bribe. He was also told to leave the area.

[6] Indeed he did. He fled to Colombo. He was arrested by Sri Lankan police in January 2009 and released upon payment of another bribe. Two months later he left Sri Lanka and after a journey of six months arrived in Canada.

[7] It is to be noted that the member found that in general Mr. Kanagasingam was credible, although he was vague on details of some of the events, examples of which were given.

**Standard of Review**

[8] The only issue in this case is whether the member's decision was reasonable (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190). In *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, Mr. Justice Binnie, at paragraph 52, repeated the caution stated in *Dunsmuir* that:

> *Dunsmuir* states that "[c]ourts, while exercising their constitutional functions of judicial review, must be sensitive not only to the need to uphold the rule of law, but also to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures" (para. 27).

[9] He continued at paragraphs 59 and 60:

> [59] Reasonableness is a single standard that takes its colour from the context. One of the objectives of *Dunsmuir* was to

> liberate judicial review courts from what came to be seen as undue complexity and formalism. Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.
>
> [60] In my view, having in mind the considerable deference owed to the IAD and the broad scope of discretion conferred by the *IRPA*, there was no basis for the Federal Court of Appeal to interfere with the IAD decision to refuse special relief in this case.

**Discussion**

[10] Counsel for Mr. Kanagasingam submits that it was not necessary for the applicant to show that he had been targeted as an individual of special interest, or indeed of any interest at all, to the authorities. He relies upon the decision of the Federal Court of Appeal in *Salibian v Canada (Minister of Employment and Immigration*), [1990] 3 FC 250, [1990] FCJ No 454 (QL). That case establishes that a refugee claimant does not have to show that he himself had been persecuted or would be persecuted in the future, as long as reprehensible acts were committed, or were likely to be committed, against members of a group to which he belonged.

[11] Although this statement is undoubtedly true, in this case it was overridden by the member's specific finding that the events which Mr. Kanagasingam experienced in Sri Lanka establish, on the balance of probabilities, that he was not and would not be personally targeted.

[12] The member was of the view that the fact he was able to be bribed out of detention suggests that Mr. Kanagasingam was not of interest to the security forces. It may well be that it is not implausible that corrupt police officers might release someone in exchange for a bribe, despite suspicions about the person, and could subsequently re-arrest (*Eledchumanasamy v Canada (MCI)*, 87 ACWS (3d) 533, [1999] FCJ No 378 (QL)). It is also quite possible that a series of arrests can, in itself, constitute persecution. On the other hand, it is possible that he was not of interest, and the bribes were just bribes.

[13] While it may well have been open for the member to think that Mr. Kanagasingam would be at considerable risk were he to be returned to Sri Lanka, I am in effect being asked to reweigh country conditions. In *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 (QL), Mr. Justice Evans stated at paragraph 14:

> It is well established that section 18.1(4)(d) of the *Federal Court Act* does not authorize the Court to substitute its view of the facts for that of the Board, which has the benefit not only of seeing and hearing the witnesses, but also of the expertise of its members in assessing evidence relating to facts that are within their area of specialized expertise. In addition, and more generally, considerations of the efficient allocation of decision-making resources between administrative agencies and the courts strongly indicate that the role to be played in fact-finding by the Court on an application for judicial review should be merely residual. Thus, in order to attract judicial intervention under section 18.1(4)(d), the applicant must satisfy the Court, not only that the Board made a palpably erroneous finding of material fact, but also that the finding was made "without regard to the evidence": see, for example, *Rajapakse* v. *Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 649 (F.C.T.D.); *Sivasamboo* v. *Canada (Minister of Employment and Immigration)*, [1995] 1 F.C. 741 (F.C.T.D.).

[14] Other words of wisdom are found in the decision of Lord Wright in *Grant v Australian Knitting Mills,Ltd.*, [1935] ALL ER Rep 209 (JCPC), [1935] UKPC 2, at pages 213-214:

> This, however, does not do justice either to the process of reasoning by way of probable inference which has to do so much in human affairs or to the nature of circumstantial evidence in law courts. Mathematical, or strict logical, demonstration is generally impossible: juries are in practice told that they must act on such reasonable balance of probabilities as would suffice to determine a reasonable man to take a decision in the grave affairs of life. Pieces of evidence, each by itself insufficient, may together constitute a significant whole, and justify by their combined effect a conclusion....

**[15]** I must ask myself whether the member's decision falls within the range of reasonable outcomes (*Dunsmuir*, above, paragraph 47). In my opinion, it does.

## ORDER

**THIS COURT ORDERS that** the application for judicial review is dismissed. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6826-10 |
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