Federal Court  Cour fédérale

Date: 20120710

Docket: IMM-7025-11

Citation: 2012 FC 865

Ottawa, Ontario, July 10, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

GEETHA ANTONETTA RAJARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, a citizen of Sri Lanka, seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division, dated September 13, 2011 which found that she was not a Convention refugee or person in need of protection pursuant to sections 96 and 97 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The applicant had alleged persecution at the hands of the Liberation Tigers of Tamil Eelam ("LTTE"), the Sri Lankan government and the Karuna and Pillaiyan paramilitary groups.

[2] For the reasons that follow, the application is dismissed.

BACKGROUND:

[3] The applicant, born in 1972, is of Tamil ethnicity. Her husband, whom she married in 1995, is Sinhalese.

[4] Following their marriage, the applicant and her husband lived in Trincomalee where they attracted negative attention for their mixed marriage. The applicant had been criticized by the Tamil community for having married a Sinhalese. The husband had been arrested on two occasions due to perceived support or sympathy for the LTTE as a result of his marriage to a Tamil. The applicant alleges that her husband was also targeted for extortion because of his wealth and business interests. In 2007 their home was temporarily occupied by the Karuna Group, a faction that had broken away from the LTTE. In 2008 the house was taken over by the Pillaiyan Group, which had split from Karuna.

[5] In July 2008 the couple moved to Columbo for security reasons. An incident in which the husband was followed was reported to the police on August 8, 2009. On August 15, 2009, while the applicant was at a hospital for treatment of an illness she witnessed her husband and 8-year-old son being abducted by unknown persons. The applicant went into hiding and fled Sri Lanka on April 12, 2010. She came to Canada in August 2010 after travelling through several other countries. During a brief sojourn in the United States she filed a claim for asylum which she abandoned in leaving that country.

[6] The applicant's refugee claim was heard on September 7, 2011. At the outset of the hearing, she amended her Personal Information Form (PIF) to correct certain dates. Her claim was rejected on September 13, 2011.

DECISION UNDER REVIEW:

[7] The Board found that the applicant was not credible and that she had not provided sufficient credible evidence to establish her claim. The Board also found that circumstances in Sri Lanka had changed such that, even if there had been in the past, there was no longer a serious chance of persecution if the applicant returned.

[8] The Board found that the applicant was not credible because significant events (the return of the applicant's son in January 2011 and a ransom demand for her husband in the same month) were omitted from her PIF. The Board also drew a negative inference from her inability to explain this omission, as well as the implausibility of her explanation that she obtained the documents provided to the Board through a friend, who was able to find them in the applicant's rented home more than two years after the applicant had gone into hiding and then fled.

[9] Regarding the omission from the PIF, the Board's decision, at paragraph 36, describes an exchange with counsel for the claimant (not counsel on this application) in which he objected to a question asked by the Panel. When asked to explain the objection:

> Counsel stated that his objection was that the Panel "doesn't know the true meaning of the hearing." Counsel went on to say that he has more experience than the Panel, having acted as a lawyer in the field of refugee law for thirty-five years; he then again twice repeated that the Panel "doesn't know the true meaning of the hearing."

> Counsel then stated that the claimant has the right to give her testimony at the hearing and that she does not need to amend her PIF narrative in these circumstances. Counsel also stated, incorrectly, that the claimant had affirmed only that her PIF was true, correct and complete as of the date that she signed the form in October 2010. However the Panel reminded Counsel, that as noted above, the claimant had affirmed that *following* (sic) her amendments to the PIF at the commencement of the hearing, declaring that her PIF was true, correct and complete.

[10] The Board rejected the applicant's explanation for the omission that she thought she was only affirming that her PIF was true, correct, and complete as of the day it was signed. The Board relied on two decisions of this Court in drawing a negative inference about her credibility from the omission (*Taheri v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 886; and *Basseghi v Canada (Minister of Citizenship and Immigration)*, (1994) 52 ACWS (3d) 165 at para 33). The Board found that the applicant fabricated the ransom demand to bolster her refugee claim and that her son had never been abducted.

[11] The Board also based its credibility finding on the fact that, despite having provided a police report, the applicant repeatedly stated that neither she nor her husband had ever gone to the police. The Board doubted the plausibility of the applicant's story that her husband "unknowingly" ran into the police station when he was being followed on August 8, 2009 and then decided to file a report when he realized where he was. Based on this implausibility and the Board's concern about how the applicant had obtained the police report and her other documents, the Board found that the applicant's husband never sought state protection and that the documents she provided were not reliable.

[12] Turning to the applicant's fear of persecution, the Board described the previous incidents alleged, but noted that the bulk of them seemed to arise from the husband's wealth and that the majority of the incidents alleged happened to her husband and not to her. Although it acknowledged an allegation of sexual interference in March 2007, the Board found that the allegations of persecution against the applicant did not amount to persecution. Instead, the Board found that the applicant was subject to discrimination for marrying a Sinhalese man and criminal activity.

[13] The Board rejected documentary evidence submitted by counsel to show that similarly situated individuals in Sri Lanka are being persecuted because the evidence all came from the online news source TamilNet, which she found to be not a neutral source, and because the information in the Board's National Documentation Package did not describe persecution against Tamil women.

[14] Finally, the Board found that circumstances had changed in Sri Lanka since the applicant fled. The Board noted that there is no evidence that the applicant is considered a LTTE sympathiser, and that the situation of Tamils has improved in Sri Lanka since she left, with the exception of those Tamils suspected of supporting the LTTE. The Board found that there has been a sustainable and durable change of circumstances in Sri Lanka such that there is no serious possibility that the applicant would be persecuted if she returns to Sri Lanka.

ISSUES:

[15] The issues which arise from this application are:

a. Is the Board's credibility determination reasonable?

b. Was it reasonable for the Board to conclude that the applicant had not been persecuted in the past?

c. Is the changed circumstances determination reasonable?

ANALYSIS:

Standard of review:

[16] The standard of review for the issues in this proceeding has been satisfactorily determined in prior jurisprudence. Credibility determinations, the question of whether mistreatment rises to the level of persecution and the changed circumstances finding are all reviewable on the standard of reasonableness: see *Duran Mejia v Canada (Minister of Citizenship & Immigration)*, 2009 FC 354 at para 29; *Gabor v Canada (Minister of Citizenship and Immigration)*, 2010 FC 383 at para 21; and *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2010 FC 908 at para 7.

[17] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR190 at para 47; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59.

Is the credibility determination reasonable?

[18] The applicant omitted significant recent events from her PIF despite amending the PIF at the outset of the hearing. The caselaw is somewhat mixed on whether an applicant is required to amend his or her PIF to add subsequent events: see, for example, *Zhang v Canada (Minister of Citizenship and Immigration)*, 2007 FC 665; *Chahal v Canada (Minister of Citizenship and Immigration)*, (1999) 177 FTR 234; *Lin v Canada (Minister of Citizenship and Immigration)*, 2007 FC 215; *Prak v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1516; and *Delthalawe Gedara v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1188 at paras 14 to 17. In light of this the Court invited the parties to provide post-hearing submissions on the jurisprudence. Both took advantage of that opportunity.

[19] In her post-hearing submissions, the applicant argues that neither the Refugee Protection Division Rules nor the Claimant's Guide cited in *Gedara*, above, impose an obligation on a claimant to update the Board on events occurring subsequent to the date the PIF is signed. She argues that she had nothing to benefit in disclosing the information in question prior to the hearing and that she was not relying on those facts to establish her claim.

[20] The respondent contends that the jurisprudence reinforces the importance of a complete and accurate PIF amended to include significant and important facts relevant to the claim whether they occurred before or after the PIF was signed.

[21] In this case the applicant did amend her PIF at the hearing but only to correct some dates. The distinction she draws between correcting dates and amending the PIF to include more substantive information is not persuasive. Neither is her argument that asking if the PIF, after

amendment, is "now" true, complete, and correct is somehow different from asking her to affirm that "following" the amendments it is true, complete, and correct.

[22] Not all omissions will be sufficient to ground a negative credibility finding. In *Naqui v Canada (Minister of Citizenship and Immigration)*, 2005 FC 282, the Court stated at paragraph 23 that "[t]he nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission."

[23] In this instance, the applicant did not add significant information when she amended her PIF at the outset of the hearing. The abduction of her husband and her son was a central element of her claim, and the fact that her son had been returned and a ransom demand was made for her husband's return was highly relevant. In contrast, the omissions in the cases cited by the applicant are for the most part relatively minor, such as the arrest of a family member (see *Chahal*, above, at para 12) or the harassment of a claimant's children (see *Naqui*, above, at para 22).

[24] The applicant contends that she mentioned the ransom demand and her son being returned only in response to questions from the Board. She suggests that the fact that her son has been returned actually worked against her claim for refugee protection. However, that is not how she presented the information at the hearing. She testified that she believed her son had been released to lure her back to Sri Lanka and into the open. That was directly relevant to her claim for protection.

[25] Counsel's comments at the refugee claim hearing about the relative experience of counsel and the panel were inappropriate and disrespectful to the Panel. From my reading of the transcript,

the Panel did not "react poorly to counsel's position" as was suggested in argument but reasonably asked why it was being raised in response to a question about the PIF amendments. It was entirely proper for the Member to ask why the information about the husband and son had not been included in the amendments.

[26] In any event, the credibility determination was not based solely on the omissions in the applicant's PIF. It was also based on what the Board found to be implausible explanations with respect to her husband's efforts to seek state protection and how the applicant obtained copies of the documents she provided. Examined as a whole, and giving the Board the deference which is its due with respect to assessing credibility, the negative credibility finding is reasonable.

Was the finding that the applicant had not been persecuted in the past reasonable?

[27] As I have found that the changed circumstances determination is reasonable and determinative of this application, as discussed below, it is not strictly necessary for me to answer this question. However, I will briefly set out the applicant's argument and my conclusions on this issue.

[28] The applicant submits that the Board erred by rejecting the evidence she provided of similarly situated individuals who are being persecuted in Sri Lanka. She argues the Board held her to too high a threshold because it required her to show that she herself had been or would be persecuted: *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (FCA).

[29] In assessing the persecution she alleged, the applicant submits that the Board erroneously imported the concept of generalized risk, citing *Dezameau v Canada (Minister of Citizenship and Immigration)*, 2010 FC 559. The applicant states that she provided evidence that Tamil women are at risk in Sri Lanka, and she therefore argues that the Board's decision is unreasonable; she also claims that, as she stated that she feared persecution because she is a Tamil woman, it was unreasonable for the Board to require evidence of persecution of Tamil women who married wealthy Sinhalese men.

[30] In my view, it was reasonable for the Board to conclude that the incidents that happened to the applicant did not rise to the level of persecution. Apart from an incident that happened to the applicant in March 2007, which, based on her testimony, occurred because she had married a Sinhalese man and not because she is a Tamil woman – the majority of the incidents she relates happened to her husband and to her mother-in-law. She also related inquiries to her mother-in-law about her whereabouts. It was reasonable for the Board to conclude that these few events did not rise to the level of persecution.

[31] In *Raza v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1385, I observed that both sections 96 and 97 require a claimant to demonstrate that the risk applies to them specifically. The mere use of the word "personally" or "personalized" does not automatically show that the Board has conflated the section 96 and 97 issues.

[32] It was open to the Board to discount the applicant's documentary evidence of similarly situated individuals in finding that TamilNet is not a neutral source. While other evidence was

available to corroborate the TamilNet information the applicant did not put them before the Board. The evidence before the Board about the experiences of Tamil women was mixed and it was reasonable for the Board to rely on the National Documentation Package rather than the applicant's evidence.

Is the changed circumstances determination reasonable?

[33] The applicant provided evidence that there is ongoing widespread crime in Sri Lanka, but she has not established a risk of persecution to an identifiable group, other than Tamils who are suspected of having ties to the LTTE. There is no suggestion in the record that she falls within this group, and thus the Board's decision is reasonable. Widespread crime in a claimant's country of origin is insufficient in itself to establish persecution: *Soimin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 218 at paras 13 to 17.

[34] The applicant submits that the changed circumstances determination is unreasonable because there is evidence in the Board's Responses to Information Requests in June, July, and August 2011 that call into question whether the changes are in fact significant and durable. That evidence is mixed and primarily relates to Tamil women in detention and displacement camps and women at risk of domestic violence. The applicant did not demonstrate how either category would apply to her. She does not fit the risk profile identified by the reports.

[35] In my view, the determination that circumstances in Sri Lanka have changed in a meaningful and durable way was open to the Board to make on the evidence before it: see, for

example, *Sivalingam v Canada (Minister of Citizenship and Immigration)*, 2012 FC 47 at paras 16 to 26. This determination is sufficient to dispose of the applicant's claim, as she has not alleged compelling reasons why she should nonetheless receive protection.

[36] Finally, the use of the term "not likely" in one paragraph of the reasons (para 86) does not establish that the Board used the wrong test in assessing risk. It is clear from the next paragraph and the decision as a whole that the Board understood and applied the correct test.

[37] No questions were proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed. No question is certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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