

Federal Court



Cour fédérale

**Date: 20121206**

**Docket: IMM-1500-12**

**Citation: 2012 FC 1435**

**Ottawa Ontario, December 6, 2012**

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

**BETWEEN:**

**JANARTHANAN VAITHIYANATHA IYER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision rendered by the Refugee Protection Division of the Immigration and Refugee Board of Canada (Board) on January 10, 2012, in which it found that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

Factual Background

[2] Mr. Janarthanan Vaithyanatha Iyer (the applicant) is a thirty-one (31) year old citizen of Sri Lanka and is of Tamil ethnicity. The applicant is a Hindu priest who finished his studies in 2000. He alleges that he initially worked at the Nagapusani Amman Temple in Vaddukoddai until 2004, after which he began working at the Sari Marugan Temple, Torrington place in Colombo. The applicant worked at that temple until March 2009 when a next door neighbour was allegedly taken in a white van, prompting the applicant to move back to his native place of Vaddukoddai, Jaffna.

[3] The applicant's uncle was allegedly shot on December 11, 2010 by the Criminal Investigation Department (CID) and the Eelam People's Democratic Party (EPDP) on allegations that he was a supporter of the Liberation Tigers of Tamil Eelam (LTTE). The applicant claims to have been very close to his uncle's youngest son and to have visited his uncle at the hospital and helped out with the funeral.

[4] A few days following the applicant's uncle's shooting, three (3) masked men allegedly came to the applicant's house and called his name, accusing the applicant of working for the LTTE and demanding money. The applicant's mother allegedly pleaded the men to leave and told them a portion of the amount of money they demanded could be given the following day. The men agreed and told the applicant to bring the money to a restaurant. The applicant met with the men the following day to give the money. He was allegedly threatened and told that he would be treated as an LTTE supporter and shot if he remained in contact with his late uncle's family. Following the meeting in the restaurant, the applicant allegedly began receiving threatening phone calls.

[5] Fearing for his life, the applicant decided to leave Jaffna and travel to Colombo. The applicant fled Sri Lanka on December 24, 2010. The applicant arrived in Canada on January 11, 2011. Upon his arrival in Canada, the applicant applied for refugee protection.

[6] The applicant claims that after his departure, CID individuals went to his parents' home asking for him. When his parents told them he had gone abroad, they allegedly requested that the applicant report to them upon his return.

#### The Impugned Decision

[7] The applicant's hearing was held on December 21, 2011. A negative decision was rendered by the Board on January 10, 2012 whereby it determined that the applicant did not have a well-founded fear of persecution for a Convention ground in Sri Lanka, nor was he a person in need of protection pursuant to sections 96 and 97 of the Act.

[8] The Board made several adverse findings with regards to the applicant's credibility and concluded that the applicant did not establish that he was wanted in the past or currently by the CID or EPDP as he alleged. The Board noted that the applicant omitted to mention in his personal identification form (PIF), but testified at the hearing, that he was allegedly held at army checkpoints for questioning about Tiger support in 2006, but was always released after a brief period of time (under one and a half hours). The Board determined, and the applicant agreed, that he would not have been released this way if the authorities had not been satisfied that he was not a Tiger supporter.

[9] The Board further noted that the applicant visited Singapore in October 2010, and chose to return to Sri Lanka when his visa no longer authorized him to stay in Singapore instead of going to another country. The Board concluded that the applicant had failed to credibly establish that he was targeted in the past for being a young Tamil male.

[10] The Board also drew a negative inference from the fact that the applicant did not obtain letters to prove he was living in the north of the country in December 2010 when his uncle was shot, and that the applicant's residence is material to the claim. The Board also drew an adverse inference from an omission in the applicant's PIF that his uncle's shooting had been reported in the news, a fact he mentioned in his oral testimony, and the applicant's failure to obtain reports confirming the shooting. The Board also noted that the only indication as to the motive of the uncle's alleged shooting was town "talk". The Board found that, in the absence of any supporting documents, it could not conclude that the applicant's uncle was shot by the CID and EPDP.

[11] Also, the Board did not accept on a balance of probabilities that only the applicant, and no other member of his family, would be targeted by the CID and EPDP for having gone to the hospital and to the funeral. The Board noted in paragraph 13 of its decision that four (4) of the applicant's five (5) siblings are still living in the north of Sri Lanka without problems.

[12] The Board indicated that the applicant was unable to explain why his home was visited by masked men asking for money, yet the same men met him in the restaurant the following day, unmasked, to collect the money. The Board also found that if indeed the applicant was visited by masked men and forced to pay a sum of money, and the applicant obliged, there would not be more

than a mere possibility that he would be approached again upon returning to Sri Lanka. Not believing that the applicant is being pursued by the CID or the EPDP, the Board gave no weight to the applicant's mother's letter which stated that the CID had come looking for him (Tribunal Record, pp 175-76).

[13] The Board found that the information the applicant provided in his PIF was inconsistent with the information provided to Citizenship and Immigration Canada (CIC) upon his arrival (Tribunal Record, p 156) with regards to his reasons for leaving Sri Lanka and drew an adverse inference from these inconsistencies as well. Namely, on the CIC form, he did not indicate that masked men demanded money from him, he did not indicate that his uncle was shot for alleged support to the LTTE, nor that he received threatening phone calls. The Board found the omission of the demand and payment of the sum of money was material, and found it may have been added later to bolster his claim.

[14] The Board took note of an inconsistency with the applicant's claim of the CID's interest in him: in his narrative, dated January 24, 2011, he stated that his parents "recently" called him and told him the CID was looking for him (Tribunal Record, p 28, lines 50-52), whereas his mother's letter dated October 25, 2011, claims that the CID was there looking for him around October 19, 2011 (Tribunal Record, p 175). Upon questioning, the applicant said the PIF information was incorrect. An adverse inference was drawn from this as a visit from the CID was seen as an important event that would be properly recalled.

[15] The Board also noted that the applicant was not forthright with the events surrounding his arrival at the airport, initially saying he had been arrested and his passport taken, only to finally confirm that he had given his passport when asked and that he was not arrested, but asked questions by an Immigration officer.

[16] The Board considered objective evidence of country conditions. It noted that Sri Lanka continues to experience problems despite the May 2009 defeat of the Tamil Tigers. The Board stated the test was forward-looking, and that there were no reports on remaining groups of the LTTE in the north after the war. The Board noted from a July 2010 UNHCR report that there is no longer a presumption of eligibility for Tamils from the north; that restrictions on movements of displaced persons were lifted, although military and police checkpoints are still present; the country had largely peaceful elections; and there was a reduction in Sri Lankans seeking international protection. It concluded that in the applicant's circumstances, his fear of persecution was not well-founded because his profile does not put him at risk.

[17] The Board also assessed the risk to the applicant pursuant to section 97 of the Act, recalling that section 97 requires a personalized risk. The Board held that the risk faced by the applicant, if any, was a risk of general violence and criminality.

#### Issues

[18] The applicant raises the following issues before this Court:

- a. Was there a breach of procedural fairness?
- b. Did the Board err in making improper credibility findings?

- c. Did the Board err in failing to consider all of the relevant case-specific documentary evidence?

### Standard of Review

[19] Issues of procedural fairness are reviewable on the standard of correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]). On the other hand, issues pertaining to the Board's assessment of credibility and evidence are reviewable on a standard of reasonableness since they are within his expertise (*Aguebor v Canada (Minister of Employment and Immigration)* (FCA), (1993), 160 NR 315, 42 ACWS (3d) 886; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 58, [2009] 1 SCR 339; *Dunsmuir*, above).

### Analysis

[20] On the first issue, the applicant alleges a breach in procedural fairness because the Board did not allow him to address the doubts he had pertaining to his credibility by bringing all inconsistencies to his attention for comment.

[21] The Court finds that there was no breach of procedural fairness. In the present case, the Board indicated from the beginning that credibility would be at issue (Tribunal Record, p 185). Furthermore, the applicant was directly questioned on many of the adverse credibility findings, for instance: the events at the airport (Tribunal Record, p 186-87), his lack of effort for obtaining a report of his uncle's shooting or news reports pertaining to that incident (Tribunal Record, p 197), the men coming to his home masked and meeting him unmasked the following day (Tribunal

Record, p 207). Although some of the inconsistencies may not have been put to the applicant, it does not amount, in these circumstances, to a material and significant issue.

[22] The applicant also argues that the credibility findings were unreasonable and warrant this Court's intervention. Namely, he argues that the Board engaged in baseless inferences and findings of implausibility, as well as a microscopic review of the evidence.

[23] The Court notes that in *Samseen v Canada (Minister of Citizenship and Immigration)*, 2006 FC 542, [2006] FCJ No 727 (QL), Justice Pinard observed at para 10 that "[...] it is reasonable for the Board to doubt the truthfulness of an account when an applicant fails to mention important facts in his PIF but subsequently adds them in his oral testimony [...]". While inconsistencies between the port of entry notes and the PIF are to be taken cautiously because of the manner in which port of entry notes are taken, the PIF is filled out later when the applicant can take the time to relate all relevant facts pertaining to his claim. In the present case, the applicant omitted to include in his PIF that he was allegedly detained at army checkpoints in 2006. There is also an important inconsistency between the PIF and the applicant's mother's letter presented at the hearing with regards to the date at which the CID allegedly went looking for the applicant at his home. These are important facts in the applicant's claim, and it was open to the Board to doubt the veracity of the CID's interest in the applicant due to this inconsistency.

[24] It was also reasonable for the Board to draw a negative inference from the fact that the applicant provided no documentary evidence whatsoever of his uncle's alleged shooting and motives behind the said shooting. The Court recalls that, pursuant to Rule 7 of the *Refugee*



*Protection Division Rules*, SOR/2002-228, it is incumbent on the applicant to provide documents to establish his claim. In the present case, there is absolutely no documentary evidence to corroborate the applicant's uncle's death, which is a very important event in the applicant's refugee claim. There is also no evidence of the applicant's employment as a priest. Lack of effort in obtaining such important documents can reasonably result in a negative finding of credibility (*Samseen*, above, at para 30).

[25] Furthermore, the Court finds that the inference as to implausibility that masked men would threaten the applicant only to reveal their identities the following day is logical, reasonable and adequately based on the applicant's testimonial evidence. Given the deference due to the Board in terms of credibility findings, and the Board's reasons outlining several important issues with credibility, the Court is not to intervene and finds the Board's assessment of credibility reasonable in the circumstances.

[26] On the third and final issue, the applicant argues that even if he is found not to be credible, he could still be found to be a refugee (*Attakora v Canada (Minister of Employment and Immigration)* (FCA), (1989), 99 NR 168, [1989] FCJ No 444 (QL)). While it is true that a non-credible witness could still be found to be a refugee if other elements of the claim permit it, it is not so in this case. A finding of lack of credibility on several material facts of the applicant's case (namely, that the CID and EPSP are behind his uncle's alleged shooting, that the CID is looking for him, and that he resided in the north) make it difficult to conclude that he is a refugee or a person in need of protection. It remains the applicant's responsibility to demonstrate how risks identified in general country conditions documents relate to him personally (*Selvalingam v Canada (Minister of*

*Citizenship and Immigration*), 2012 FC 251, [2012] FCJ No 274 (QL); *Ventura v Canada (Minister of Citizenship and Immigration)*, 2010 FC 871 at para 25, [2010] FCJ No 1079 (QL)). In the case at bar, following the adverse credibility findings, what remained was the fact that the applicant is a thirty-one (31) year old Tamil male.

[27] The applicant submits that the Board was selective in his reliance on the documentary evidence by ignoring relevant information. The Court cannot agree. The Board consulted a recent document from the UNHCR to examine the risks associated with such a profile. The Board did note that the situation in Sri Lanka is still evolving, but outlined several findings indicating a marked improvement since the defeat of the Tamil Tigers. The applicant points to selected excerpts purported to support his argument that the Board engaged in a selective review of the documentary evidence. However, the excerpts the applicant points to are of little relevance to his particular situation: one concerns the Tamils from Vanni - whereby the applicant relocated in Jaffna (Tribunal Record, p 26) - and the relocation in the city of Colombo (Danish Report, Tribunal Record, pp 101-02). Two (2) other specifically concern individuals suspected of having links to the LTTE, which has not been established in the applicant's case (UNHCR Report, Tribunal Record, pp 61-63; Applicant's Application Record, p 189-190).

[28] Madam Justice Bédard reiterated in *Selvalingam*, above, that the mere fact of being a young Tamil male from the North is insufficient to be considered a person in need of protection or a Convention refugee. The Court is satisfied that the Board has not ignored evidence that goes directly against its finding (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*

(1998), 157 FTR 35, [1998] FCJ No 1425 (QL)). Absent such an omission, the Board is not required to refer to every piece of evidence presented before him.

[29] The Court is satisfied that the Board's decision is justified and falls within one of the acceptable outcomes defensible in light of the facts of this case and the law (*Dunsmuir*, above, at para 47). The Court's intervention is not warranted.

**JUDGMENT**

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

“Richard Boivin”

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Judge

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

**DOCKET:** IMM-1500-12

**STYLE OF CAUSE:** Janarthanan Vaithiyana Iyer v MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 9, 2012

**REASONS FOR JUDGMENT:** BOIVIN J.

**DATED:** December 6, 2012

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