

Federal Court



Cour fédérale

Date: 20130912

Docket: IMM-10162-12

Citation: 2013 FC 944

Ottawa, Ontario, September 12, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BASKARAN BALAKRISHNAN

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review subsequent to an August 30, 2012 decision from the Immigration and Refugee Board [IRB], Refugee Protection Division [RPD], which concluded that the Applicant is not a Convention refugee or a person in need of protection.

[2] The Applicant, a thirty year old Tamil, from Sri Lanka, arrived in Canada aboard the MV Sun Sea and claimed refugee status on the basis of two incidents, at two separate times, separated by a two year span, one in 2005 and the other in 2007.

[3] Due to country conditions in Sri Lanka in 2009, the Applicant was granted United Nations High Commission for Refugees [UNHCR] refugee status which had expired a year later. No “sur place” claim was considered valid as the evidence did not point in such direction.

[4] Neither his alleged fear of the Sri Lankan army, nor that of any other enforcement entity, whether it be, police, paramilitary in nature or that of the Karuna and Eelam People’s Democratic Party [EPDP] were considered to be targeting the Applicant.

[5] The two incidents from which the Applicant allegedly extricated himself were not considered credible; and, his alleged subjective fear, when analyzed in view of the objective surrounding circumstances, was concluded as invalid as borne out by the objective evidence and lack of personal corroboration on the Applicant’s part.

[6] As per its specialized knowledge, the IRB considered that, since 2010, the UNHCR, itself, does not consider young Tamils from northern Sri Lanka eligible for refugee status unless their particular, respective, situations warrant such findings.

[7] The Applicant, not viewed by the IRB as personally targeted, was refused by the IRB due to inherent contradictions between his oral testimony and his written narrative, especially in respect of who, it is that he, in fact, fears and why (Reference is made to *R v RDS*, [1997] 3 SCR 484 at para 29).

[8] The finding of the IRB from documentation, culled from the Australian Department of Immigration and Citizenship, the United Kingdom, British Immigration Agency and, in addition, to the UNHCR, concluded the region to have undergone positive improvements. Refugees and returnees were considered to be able to work; thus, to interact, with local police forces in an atmosphere that pointed to marked improvements to living conditions of the local population (Exhibit M-4, item 18, “Area Trip Report (Trincomalee and Batticaloa), High Commission of Canada, Colombo, 28 - 31 March 2011”), this, due to the state of emergency having been lifted by the Sri Lankan government in the same year. Even Amnesty International has on record that, as of October 2011, “[p]eople alleged to be involved with the [Liberation Tigers of Tamil Eelam] LTTE are rarely brought to trial. Most of these detainees are eventually released for lack of evidence”. For those who are targeted as LTTE members, a concern does remain, in that they are kept in “prolonged administrative detention to circumvent ordinary procedures” (Exhibit M-4, item 45, Amnesty International – Sri Lanka: Briefing Committee Against Torture, October 2011); however, that is not considered the case of the Applicant in view of his specific evidence.

[9] The IRB also recognized that reports do signal that Sri Lanka is still reluctant to acknowledge serious human rights violations that it did incur in the final phase of the war to those directly targeted; nevertheless, the objective evidence points to the Lessons Learnt and Reconciliation Committee [LLRC] which has accepted the implication of the Security Forces for “resulting death and casualties to civilians”. That recognition is of late a tacit acknowledgement of the perpetration of “human rights violations by state forces” (Exhibit R/A-3, item 2.6, International Crisis Group, December 22, 2011, “Statement on the Report of Sri Lanka’s Lessons Learnt and Reconciliation Commission”).

[10] It was also noted that in 2011, the UNHCR, itself, has assisted Sri Lankans to voluntarily return from India, Malaysia, Georgia and St. Lucia. Integration is an ongoing process which bears significant difficulties for those who were former LTTE operators which, per the evidence, is not the case of the Applicant.

[11] Canadian officials have also reported that Sri Lankan returnees, although interviewed upon arrival at the airport, were released (Exhibit M-4 – Vol 3, item 3 Colombo MIU – Monitoring of Sri Lankan National Irregular Migrants returned to Sri Lanka under the Canada/International Organization for Migration, February 18, 2012).

[12] As the IRB did not conclude the Applicant to be a LTTE member, nor even a supporter, his return, per its decision, was not viewed as problematic in the Applicant's particular case.

[13] The IRB reviewed the objective evidence, as per its decision, carefully; a very balanced reading of the objective evidence is witnessed by this Court; and, the IRB has done the same in regard to the personal evidence submitted by the Applicant.

[14] The findings of the IRB are clear, in addition to being reasonable, and are based on the inherent evidence on the record before this Court.

[15] For all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10162-12

STYLE OF CAUSE: BASKARAN BALAKRISHNAN v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 10, 2013

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

DATED: SEPTEMBER 12, 2013

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