Federal Court  Cour fédérale

Date: 20131010

Docket: IMM-1613-13

Citation: 2013 FC 1022

Ottawa, Ontario, this 10th day of October 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SEGU NILABDEEN Mohamed Rizlan
MOHAMMED RAFEEK Fathima Fowmida
MOHAMED RIZLAN Fathima Reeha

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] **CONSIDERING** the judicial review application made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act") with respect to a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the "Board");

[2] **CONSIDERING** that the said decision denied the refugee protection claim made by the applicants pursuant to sections 96 and 97 of the Act;

[3] **CONSIDERING** that the applicants raise two distinct issues:

(1) Was the interpretation available at the Board's hearing inadequate such that a denial of a fair hearing occurred?

(2) Did the Board err in finding that the applicants were not credible?

[4] **UPON** hearing the parties and reviewing the record, I have come to the conclusion that this judicial review application has to be dismissed. My reasons for such a determination follow.

[5] The applicants are a family of three that arrived in Canada in May 2011. The principal applicant, Mohamed Rizlan Segu Nilabdeen, the father, testified on his claim that he and his family needed the protection afforded by sections 96 and 97 of the Act. It is not necessary to review the facts other than to say that the principal applicant (the "applicant") claimed that his political activities in Sri Lanka, and in particular his support for the United National Party [UNP], resulted in acts of violence against him in late 2010 and early 2011. Following the second attack, in February 2011, the family flew to Canada, having already a visa application to Canada in process.

[6] The matter proceeded before the Board on the basis of whether or not the applicant was credible. As put in the decision of the Board, there was agreement that the matter would proceed on that basis. One can read at paragraph 14 of the decision:

> Prior to the questioning, the panel and counsel agreed to focus on the issue of credibility because of the many human rights reports in

> the evidence that establish Sri Lanka as a country where politically motivated violence could plausibly occur against an opposition party activist, without an expectation of police protection.

[7] In my view, the credibility findings are significant and are reasonable.

[8] Thus, the applicant seemed to have been confused as to when the two attacks would have taken place. Was it in January or in February 2011? And that confusion takes place with respect to the second of only two attacks, the second one prompting the applicants to flee their country two months later. One would expect a clear recollection of such momentous event.

[9] In order to support his contention that he was politically active, the applicant had made the allegation that he was a public relations officer for the UNP. Without any explanation, he indicated in his application for a Canadian visa that he had never held a position of authority in a political party. Indicating that the omission is because he had forgotten appears rather implausible, especially in view of the fact that the political involvement was central to his claim for refugee status. It would also appear that the applicant left out of his narrative in his Personal Information Form [PIF] what he claimed were very serious statements made by the attackers. Once again, the applicant indicated that he had forgotten. As pointed out by the Board, the PIF was signed some four months after the applicant had arrived in Canada. Much time was taken and it is not unreasonable to expect that such important document will be accurate, especially when the document is not prepared in a hurried fashion.

[10] Furthermore, the applicant offered in support of his contention a political membership card and a testimonial letter. Both were purportedly signed by the same party official. However, when the Board pointed out to the applicant that the signatures on the document were completely different, the applicant was incapable of providing an explanation. The Board also found that the applicant obtained a visa in the United Kingdom in October 2003 under a different name. However, this was not disclosed in spite of the fact that the PIF is clear that such information must be disclosed. The applicant did not dispute that his identity was used to obtain a visa. The only explanation he gave was that he wanted to forget that information. Indeed, he testified that he never actually travelled to the United Kingdom which is odd in view of the fact that the said visa, which was to expire in June of 2009, was extended to April 2014. The evidence before the Board indicates that an extension is granted when demonstration is made to the authorities that the individual has been attending school in the United Kingdom. The applicant did not have an explanation for why the visa in the United Kingdom was extended. The nebulous and unexplained circumstances around a visa obtained from the United Kingdom could certainly be used to examine and assess the credibility of the principal applicant.

[11] My colleague Justice Donald J. Rennie provided a very useful summary of principles governing the assessment of credibility in refugee claims in *Cooper v The Minister of Citizenship and Immigration*, 2012 FC 118, at paragraph 4. Suffice it to say that, in my view, the implausibilities and inconsistencies found in the testimony of the applicant support a negative finding of credibility. The Board did not conduct an examination of the testimony that could be called microscopic leading to conclusions about claims that are irrelevant or peripheral. The inconsistencies and contradictions were not minor or peripheral, and their cumulative effect can, in

my estimation, support an overall finding of lack of credibility. These findings were in my view reasonable under the circumstances.

[12] As for the issue of the quality of the interpretation, the applicants are right that the standard that is applicable in the circumstances is that which is described in *Mohammadian v Canada (Minister of Citizenship and Immigration)*, [2001] 4 FC 85 (FCA). The interpretation provided to applicants must be continuous, precise, competent, impartial and contemporaneous. Furthermore, there is no need to prove an actual prejudice. Conversely, it is also well established that the interpretation does not require perfection. Indeed, the following passages taken from the Court of Appeal's decision in *Mohammadian* are relevant to the determination of the issue that must take place in this case:

> [17] . . . If the appellant's belated complaint about the quality of the interpretation is accepted, the important work of the Refugee Division in hearing and disposing of Convention refugee claims in a timely fashion would become rather more difficult. The Refugee Division is called upon yearly to dispose of an increasing volume of Convention refugee claims, a high percentage of which are of individuals whose native language is neither of Canada's official languages. It must surely be in the interests of the individual and of the public that refugee claims be processed as soon as is practicable. Neither the individual nor the public interest is served when the refugee determination process is unnecessarily delayed, provided acceptable safeguards are adhered to in order to prevent a breach of the section 14 right.

Later, at paragraph 19, the Court concludes:

> . . . When his conduct during the whole of the third sitting and for some time afterward is weighed with his undoubted knowledge of his right, it is difficult to construe that conduct as other than a clear indication that the quality of interpretation was satisfactory to him during the hearing itself. In my view, Pelletier J. did not err in determining that the appellant had waived his right under section 14 of the *Charter* by failing to object to the quality of the interpretation

> at the first opportunity during the hearing into his claim for refugee status.

[13] As I look at the evidence in this case, I am convinced that the same type of circumstances that has happened in the case of *Mohammadian* were present in this case. Indeed, the applicant claimed to have a working knowledge of the English language. The concerns raised about the first interpreter were addressed squarely by the Board and a different interpreter was brought in. The applicant indicated that he understood the new interpreter when asked specifically by the Board. As issues arose during the hearing, they were addressed seemingly to the satisfaction of counsel for the applicants. No one complained at the hearing.

[14] I have myself reviewed the transcript of the hearing and, to the extent possible, I was satisfied that the interpretation was continuous, precise, competent, impartial and contemporaneous, although certainly not perfect. On a number of occasions, the interpreter, who was on a telephone, had to interrupt and ask for sentences to be repeated. That is not surprising. The fact that the interpreter was operating using a telephone was a source of most of the difficulties that were encountered. Another difficulty was that the persons present seemed, at times, to forget that an interpreter had to perform his duty. Fortunately, the interpreter intervened to allow for a proper interpretation. My reading of the transcript confirmed that nothing of importance could have been lost. Furthermore, the applicant did not raise any issue with the interpretation. It is now raised *ex post facto*, that there were interruptions in the interpretation. That does not suffice to conclude that the right to competent interpretation has been infringed.

[15] As a result, the application for judicial review is dismissed. The parties agreed that this is not a matter for certification. I share that view.

ORDER

THIS COURT ORDERS that the application for judicial is dismissed. This is not a matter for certification.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1613-13
STYLE OF CAUSE:	SEGU NILABDEEN Mohamed Rizlan MOHAMMED RAFEEK Fathima Fowmida MOHAMED RIZLAN Fathima Reeha v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Ghulam Murtaza	FOR THE APPLICANTS
Krysta Cochrane	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GMS Law Corporation Vancouver, British Columbia	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT