

Federal Court



Cour fédérale

Date: 20140523

Docket: IMM-5175-13

Citation: 2014 FC 495

Ottawa, Ontario, May 23, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ANTON JOHENDRAN IRUTHAYAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The decision in issue is that of a Visa Officer who determined that the Applicant did not meet the requirements for a permanent resident visa as a member of the Convention refugee abroad class or as a member of the humanitarian-protected persons abroad designated class.

II. Background

[2] The Applicant, a Tamil business man, feared extortion from Tamil Makkal Viduthalai Pulikal [TMVP] were he to return to Sri Lanka. He had left Sri Lanka in 2009 because he was asked to pay ransom money. There was evidence that the Applicant had, in 2001-2002, been taken by the LTTE and only released upon payment of a ransom.

[3] The Applicant admitted that he did not have problems with the Sri Lankan authorities nor was he suspected of being LTTE. His parent and siblings continued to live in Sri Lanka and encountered no problems with the government either.

[4] The Visa Officer, after referring to UNHCR and UK Border Agency documents, concluded that the Applicant did not have a well-founded fear of persecution. The Visa Officer ended his conclusion:

I have considered the provision of A108(4) but have not found sufficient compelling reasons to prevent his return. Application refused.

The reference to s 108(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] is a major issue in this judicial review.

[5] The Applicant argues that the decision is unreasonable because the Visa Officer did not make a finding of previous persecution and yet relied on subsection 108(4) of the Act which only applies where such a finding is made.

[6] Section 108(4) reads:

108. (4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

108. (4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

III. Analysis

[7] The central point in the s 108(4) issue is whether the finding is inconsistent with earlier findings or is a reference to an alternative finding.

[8] The Supreme Court of Canada has, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, expressed the view that courts should not look for ways to undermine a decision, that courts should look at the reasons as a whole to find support for the decision – fairly put, courts are to read decisions “generously but not blindly”.

[9] In the present case, the Visa Officer had, in several places, referenced the absence of a well-founded fear. It would be inconsistent with those references to conclude that the reference to s 108(4) was connected to the clear finding of absence of well-founded fear of persecution.

[10] A fairer and more reasonable interpretation is that the s 108(4) reference was an alternative finding. It may have been preferable to begin the finding with reference to an alternative conclusion. However, the absence of such language is not fatal.

[11] The Applicant is, in essence, asking the Court to reweigh the evidence but he cannot point to evidence that was overlooked. There were indications that business men were targeted for money but this was not in the context of Convention grounds.

[12] The Applicant feared the TMVP, not the government. He asks this Court to conclude that the TMVP is an arm of the government and hence the Applicant has fear of persecution on political grounds. However, that finding would be contrary to the Applicant's PIF, his interview and his affidavit evidence.

[13] Any argument suggesting fear of being identified with the LTTE because of past ransom payments is too speculative to be sustained.

IV. Conclusion

[14] For these reasons, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5175-13

STYLE OF CAUSE: ANTON JOHENDRAN IRUTHAYAM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 12, 2014

JUDGMENT AND REASONS: PHELAN J.

DATED: MAY 23, 2014

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