

Federal Court



Cour fédérale

Date: 20140728

Docket: IMM-3531-13

Citation: 2014 FC 754

Ottawa, Ontario, July 28, 2014

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

A037

Respondent

JUDGMENT AND REASONS

[1] There is no need for lengthy reasons in this matter. The issues here are almost identical to those dealt with in detail by Justice Gleason in *Canada (Citizenship and Immigration) v. A068*, 2013 FC 1119, and summarized and relied upon by Justice Strickland in *Canada (Citizenship and Immigration) v. A069*, 2014 FC 341.

[2] The applicant in this matter seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board which granted refugee status to the respondent. As in *A068* and *A069*, as well as many other applications that have come to this Court recently, the respondent is a Tamil from Sri Lanka who sought asylum in Canada after arriving aboard the *M/V Ocean Lady*. As in *A068* and *A069*, and on the basis of very similar factual conclusions, the RPD ruled in this case that the respondent had:

...a well founded fear of persecution for a Convention refugee ground in Sri Lanka by reason of his nationality and membership in a particular social group of young Tamil males who would be suspected of links to the LTTE¹ because of their travel to Canada on the *Ocean Lady*.

[3] The parties are agreed that the RPD erred in basing its decision on the nexus of “membership in a particular social group”. Nevertheless, I am satisfied, for the same reasons as Justices Gleason and Strickland were satisfied in *A068* and *A069*, respectively, that:

- (i) the RPD clearly delineated that the risk the claimant would face is tied in part to the fact that the Sri Lankan authorities would perceive that he had links to the LTTE; and
- (ii) the RPD should be viewed as having tied its nexus finding to race or nationality and perceived political opinion. (*A068* at para 36, *A069* at para 17)

[4] In *A069*, Justice Strickland demonstrated the similarity of the RPD’s conclusions in that case concerning the refugee claimant’s risk of torture if returned to Sri Lanka with corresponding conclusions in *A068*. She did this by identifying a number of paragraphs in the former which corresponded to paragraphs in the latter (see *A069* at para 16). Precisely the same exercise can be done in the present case. The table below shows the concordance of corresponding paragraphs from each of the RPD decisions in *A068*, *A069* and in this case:

A068	A069	A037
23	16	20
27	21	25
29	23	27
31	25	29
41	36	40
44	38	42

[5] The applicant argues that *A068* and *A069* were wrongly decided and that I should not follow them. The applicant argues that I should follow instead other decisions in which this Court was faced with an RPD decision granting refugee status based on a conclusion that a passenger on the *M/V Ocean Lady* (or another ship carrying Sri Lankan asylum seekers, the *M/V Sun Sea*) was a member of a particular social group, and refused to read in another nexus such as perceived political opinion. I decline to do so. There are many decisions on both sides of this issue, and it is generally recognized that such decisions turn on the evidence that has been placed before the Court and the findings of the RPD in each case. I have read the reasons in *A068* and *A069* and am satisfied that the facts in those cases were substantially the same as here and that the reasoning in those decisions was sound.

JUDGMENT

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

There is no serious question of general importance to certify.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3531-13

STYLE OF CAUSE: MCI v A037

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 23, 2014

JUDGMENT AND REASONS: LOCKE J.

DATED: JULY 28, 2014

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