

Federal Court



Cour fédérale

Date: 20140625

Docket: IMM-5937-13

Citation: 2014 FC 614

Ottawa, Ontario, June 25, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SENTHAN SRIRATHAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] **UPON** an application for judicial review, made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, against a decision of the Refugee Protection Division [RPD];

[2] **AND UPON** considering carefully the application record presented on behalf of the applicant as well as the response submitted by the respondent;

[3] **AND UPON** hearing the parties through their counsel, for the reasons that follow, the application for judicial review is dismissed.

[4] The applicant is a citizen of Sri Lanka who travelled to Canada onboard the MV Sun Sea. He claims that he was helped out of Sri Lanka by an agent, which allowed him to reach Thailand on February 6, 2010. He then boarded the Sun Sea vessel on June 16, 2010, and eventually arrived in Victoria, British Columbia, on August 13, 2010. He claimed refugee protection the same day.

[5] Being a young Tamil male from northern Sri Lanka, he claimed a well-founded fear of persecution if he were to be returned to Sri Lanka. Indeed, being a failed refugee claimant adds to that well-founded fear.

[6] The applicant makes two arguments before this Court. First, he claims that he was not afforded the assistance of counsel when he made a number of statements during an interview held on September 12, 2010. These statements were held against him in that they were used to establish a number of contradictions and implausibilities, such that the applicant's version of events was unreliable as lacking credibility. The applicant would want for the version given on September 12 to be excluded from the record.

[7] Second, the applicant claims that the RPD failed to examine his claims cumulatively.

[8] As for the first argument, the circumstances surrounding the interview of September 12 are very much unclear. What is clear is that the applicant had been informed promptly of the reasons for his detention which had started a month earlier, and that, indeed, he had retained counsel without delay. It would appear that the applicant contends that there exists an obligation to refrain from questioning a person detained when that person has already retained the services of counsel. Here, the interview took place one month after the initial detention and without counsel being present.

[9] In support of the argument, the applicant submits the decision of *Chevez v Canada (Minister of Citizenship and Immigration)*, 2007 FC 709, a decision of Justice Tremblay-Lamer of this Court. As I read that decision, it merely establishes that where, in immigration matters, a person's liberty is significantly constrained, that person has a right to retain and instruct counsel without delay. The decision goes on to find that a reasonable opportunity to obtain counsel must be afforded.

[10] With respect, the case does not support the applicant's argument. In the case at hand, the right to counsel had been afforded fully to the applicant. The case does not stand for the proposition that the immigration authorities are required to refrain from interviewing the applicant in the absence of counsel. Indeed, it would appear that such a right does not even exist in the area of criminal law (see *R v Logan* (1988), 46 CCC (3d) 354 (ON CA); *R v Sinclair*, 2010 SCC 35, [2010] 2 SCR 310).

[11] The RPD was alert to the issue of the interview of September 12 having taken place without counsel being present. However, on this record, the best that can be said is that the applicant expressed some form of disappointment in counsel not having come to the interview (CTR pages 494-495). His counsel before the RPD probably put the proposition at its highest when he suggested that the interview notes “should be taken with a certain amount of – what’s the word – a certain amount of caution...” (CTR page 511). Thus, this argument fails.

[12] The other argument put forward in this judicial review application is a suggestion that the RPD did not consider cumulatively the fact that the applicant is of Tamil ethnicity, that he comes from the northern part of the country, that he travelled on the MV Sun Sea, and that he failed on his refugee claim. Such an argument is reviewable on the standard of reasonableness and, in my estimation, the matter was fully addressed by the RPD in its decision.

[13] The decision of Justice Snider in *Ganeshan v Canada (Citizenship and Immigration)*, 2013 FC 841, appears to me to capture the issues fully and appropriately. I would apply this reasoning to the case at bar. One can read:

[33] As far as I can discern, the Applicant is arguing that he is subject to persecution because of both his Tamil ethnicity and because of his perceived political opinion as a passenger on the M/V Ocean Lady. His submission appears to be that, as a Tamil having been a passenger on the M/V Ocean Lady, that he would be perceived as a person with links to the LTTE making him part of a “particular social group” and, alternatively, a person with a “political opinion” for purposes of the Convention.

[34] In the Applicant’s opinion, the high level of media scrutiny of M/V Ocean Lady and M/V Sun Sea has increased the chances that he will be persecuted upon his return. The Board dealt with that argument and found, on a balance of probabilities that, in spite of the media interest, the identity of this particular claimant would not have come to the attention of Sri Lankan authorities. In coming

to this conclusion, the Board carefully considered and weighed all of the evidence before it. In spite of this conclusion, the Board went on to consider what might happen to the Applicant if he were identified as a passenger on the M/V Ocean Lady. On this question, the Board found that, as someone not perceived to have ties to the LTTE, the Applicant would not face a serious possibility of persecution.

[35] A further problem with the Applicant's argument is that the alleged risk from "mixed motives" is speculative. The Board had no evidence before it of any instance where a failed Tamil refugee claimant, who arrived at another country by ship, was persecuted upon his return to Sri Lanka. On the other hand, the Board did have evidence of returning Tamils – albeit not from the M/V Ocean Lady – who were questioned but not detained. The situation is different, as acknowledged by the Board for persons who are or are perceived to be LTTE or LTTE supporters. The Board dealt with that aspect of the Applicant's claim. Once it was found – reasonably, in my view – that the Applicant was not a member of the LTTE or a supporter of the LTTE, the Board turned to the possibility that, just because of his passage on the M/V Ocean Lady, the Applicant would be perceived as LTTE. The final question is whether the evidence shows, on a balance of probabilities, that a Tamil on the M/V Ocean Lady, would be subjected to persecution because he might have information on the LTTE members who were, without question, organizers of the passage of the M/V Ocean Lady. I can see nothing in the evidence presented to the Board that supports a position that questioning of a Tamil upon return to Sri Lanka rises to the level of persecution.

[14] In my view, on this record, the RPD's decision "falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[15] As a result, the second argument fails as well. It follows that the application for judicial review must be dismissed. The parties did not offer a question of general importance that would warrant certification. I share their view.

ORDER

THIS COURT ORDERS that application for judicial review must be dismissed. There is no question for certification.

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5937-13

STYLE OF CAUSE: SENTHAN SRIRATHAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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