

Between:

ANUSHA NITHIYANATHAN,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS

(delivered orally from the bench on July 30, 1997)

Muldoon J.

The Court, with respect to the applicant and with respect to the persuasive voice of her counsel, finds little difficulty in disposing of this application. The application certainly has very few unique characteristics. One thinks of, first of all, Mr. Justice Décarie's passage in Aguebor v. Minister of Employment and Immigration (1993) 160 N.R. 313, where he set out the standard of review for findings of credibility and implausibility. He said:

There is no longer any doubt that the Refugee Division... [the Convention Refugee Determination Division or CRDD he meant] ...any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony. Who is in the better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.

Now, what that means is that even if the Court were adjudicating the case at first instance and would have come to a different conclusion, one must nevertheless find that the findings of the tribunal under review, in this case the CRDD, are so unreasonable that they cannot stand, in order to quash them. And the Court applies that to the notion that the board looked at the personal information form, listened to the testimony and concluded that while the applicant is generally a credible person, she embellished. The story, in effect, as so often happens in the course of human history, got "better" from her point of view. It actually got worse, but from her point of view as a refugee claimant it got "better" each time she told it.

The CRDD did state, however, that even if Ms. Nithiyanathan had been mistreated by police - and they said that the documentary evidence states that the risk of physical and mental abuse is very low during short term detentions - the relatively few incidents which have occurred are isolated and not systemic.

Now, Sri Lanka is a country riven by vicious, murderous, civil war. The government of Sri Lanka is attempting to put down a rebellion of the most vicious and mindless kind. The rebels are given to suicide attacks and especially the murder of Rajiv Gandhi, the Prime Minister of India, a short while ago and the murder of a candidate for the Presidency of Sri Lanka, both by women suicide bombers. That means that precautions have to be taken, and so, they have put in place security measures. Security measures and the manner in which they are carried out, certainly the manner in which they are carried out, would never be acceptable in Canada, a peaceful country in which there is no civil war now, and some would say, more than enough individual and personal rights and freedoms: but it is false logic to apply Canadian standards to Sri Lanka. There the state has to be very careful.

Not every member of the security forces is a doctor of philosophy and a kindly-disposed person. One might say that of Canadians, too, when one considers the misbehaviour of the Airborne Regiment in Somalia. Give a person of little education and poor upbringing too much power: the power of the firearm, the power of the law, and one finds that some are thugs, yes, Canadian thugs, but at least the law in Canada will not tolerate that while civil peace reigns.

So Ms. **Nithiyanathan**, when she proceeded from the north to Colombo, was arrested or detained by the police for a rather longer time than most are so that they could, no doubt, investigate her background. Their technique is, if the Court may say, brutal, simplistic and stupid. They think that a Sri Lankan, Tamil Tiger suicide bomber would break down and confess if they threaten, if they bluster, if they slap. Of course, it is only the innocent who will be distressed by this and may think they are being persecuted, it wouldn't be the suicide bomber. But that is how they approach the people whom they have to investigate, into whose background they have to perform certain researches. This is all in the evidence and the documentation. They are a country riven by civil war; they have security measures; and their security forces are not all well educated, gentle folk.

In the Court's opinion, the CRDD made a correct assessment of the situation and did not go off the rails. In the Court's opinion, the CRDD correctly found that there was no persecution and no serious risk of persecution. A detention, even of four days, a slap and threats and no doubt yelling at the applicant, do not a refugee make. That they were correct in finding that the applicant had an internal flight alternative in Colombo, a city with a Tamil population of more than a quarter of a million, perhaps half a million now, where there is a Tamil women's network, where there are supports for a person, even with no work experience, is not to be doubted.

If one understood, or understands, the CRDD correctly, it was not unreasonable for the applicant to try and indeed to find an IFA in Colombo and they discussed her prospects of employment. They said that she had a grade 12 education, far ahead of many others (who do not have such an education) in her prospects for employment, despite the fact that she had no work experience.

The document they quoted is not necessarily adopted verbatim. It is referred to and the CRDD, it must be noted, made an illogical conclusion or they expressed their conclusion in an illogical form when they reviewed the document which said it is necessary for a woman to have either work experience and a good education in order to find employment. And the CRDD said well, she has a good education, therefore she has prospects for employment. It is an illogical form of expression: perhaps it shows an illogical thinking process on that very basis, but it also points out that she's better off than many in her prospects for a job.

Now, it is undoubtedly legally irrelevant to think that if she is going to go on welfare because she cannot find a job, there is no reason why it should not be in her own country rather than in Canada. It seems that her job prospects would be no better in Canada than they would be in Sri Lanka; and indeed in Canada, because of the technological development of the society, she would have poorer job prospects undoubtedly than in Sri Lanka where she was educated. So, whereas it may be legally irrelevant, it cries out in common sense and it is not unthinkable to think that thought. If she is going to be thrown on welfare she might as well be thrown on welfare in her own country rather than in this country. Why does Canada need to take in people who are going to be a burden on the taxpayers when they can find safety in some part of their own country? That is, an internal flight alternative.

All in all, this Court cannot find any serious error in the CRDD's decision such as would induce the Court to quash that decision. So, with no joy, whatever, the Court dismisses the application and confirms the CRDD's decision.

The Court considers there is no serious question of general importance to certify and both counsel confirm that finding.

FEDERAL COURT OF CANADA TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

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