



RPD File No. / N° de dossier de la SPR : TB8-10233

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	November 19, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	December 20, 2018	Date de la décision et des motifs
Panel	Tyler Nicholson	Tribunal
Counsel for the Claimant(s)	John Guoba	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2018 CanLII 151587 (CA IRB)

REASONS FOR DECISION

[1] The claimant, XXXX XXXX, claims to be a citizen of Sri Lanka and is claiming refugee protection pursuant to sections 96 and 97(1) of the *Immigration Refugee Protection Act* (IRPA).¹

ALLEGATIONS

[2] The claimant's allegations are fully set out in his Basis of Claim form.² To summarize, the claimant alleges that he is at risk of persecution in Sri Lanka for his ethnicity (being Tamil), an imputed political membership in the Liberation Tigers of Tamil Eelam, and due to his imputed membership of a social group (being a gay male) in Sri Lanka.

[3] He claims a well-founded fear of persecution from a series of incidents that took place regarding authorities, including arbitrary imprisonment, up to 2012. He alleges that he was later sexually abused by a member of the Sri Lankan police, and subsequently suffered social isolation due to assumptions of his sexuality in the community.

DETERMINATION

[4] Having considered the totality of the evidence, the panel finds that the claimant is not a Convention refugee. Further, the panel finds that the claimant is not a person in need of protection as he would not be subjected personally to a risk to his life or a risk of cruel and unusual treatment or punishment or to a danger of torture should he return to Sri Lanka.

ANALYSIS

[5] The determinative issues in this claim are credibility and the objective basis of the claim.

[6] During the hearing and in considering the facts of this claim, the panel has taken into consideration Chairperson's Guideline 9 regarding Sexual Orientation and Gender Identity. In doing so, all relevant factors, such as the social and cultural context within this claim have been considered in light of this guideline. Given the sensitive nature of the allegations, the panel is aware of the difficulties faced by the claimant in establishing his claim. These difficulties include

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended.

² Exhibit 2.

cultural factors, the milieu of the hearing room and the stress of responding to oral questions regarding sensitive issues. As such, during the hearing, the panel addressed the claimant with a heightened sensitivity and avoided unnecessary detail in questions. Furthermore, in making findings, including negative credibility findings, the panel has taken these considerations into account.

[7] Furthermore, the panel has received a psychological report, after the hearing, dated XXXX XXXX, 2018, from Dr. XXXX XXXX XXXX XXXX, that diagnoses the claimant with a “XXXX XXXX XXXX XXXX XXXX XXXX XXXX.” Dr. XXXX notes that the claimant’s “cognitive impairment would also be a deterrent in his performance at any hearing.” It is noted that the claimant had short term memory issues and was unable to recall significant events. The panel takes this report into consideration in making its decision, but also notes that some aspects of the report are based on the claimant’s testimony that the panel subsequently ruled did not occur.

Identity

[8] The claimant did not provide a valid passport, as he testified that the one he used was thrown away by the agent whose services he used to travel to Canada. The panel was able to review certified copies of a national identity card dated in 2018, as well as certified copies of his birth certificate and those of his parents, as well as documents and photographs from his refugee claim in India.

[9] The panel finds that through these documents and his testimony, the claimant has established his identity on a balance of probabilities.

Credibility

[10] While the panel is aware that a claimant is generally presumed to be truthful when testifying under oath, and took into account the related guidelines and psychological report brought after the hearing, the panel had serious issues with regard to the credibility of the claimant. His testimony was vague, meandering, and consisted of major inconsistencies with his Basis of Claim and interview with American authorities that went beyond the issues described by the report.

[11] The claimant testified to an incident that occurred in what he described as “2012”, where he was imprisoned for a week after harassment from Sri Lankan soldiers, and was beaten and his forearm broken. When asked what the cause of this was, the claimant simply stated that he was contacted in the fields and harassed for being Tamil.

[12] The panel asked twice more if there were any proximate causes for the incident, and the claimant did not offer one.

[13] It was then indicated to the claimant that in his Basis of Claim form, he had indicated that he was imprisoned because he had “refused (politely) to provide refreshments for Sri Lankan soldiers.”

[14] In response, the claimant simply indicated that he was confused and did not remember what happened. Despite a follow up question, he offered no additional explanation as to why that explanation had been included in the Basis of Claim or any confirmation as to whether the event described in the Basis of Claim form happened.

[15] The panel finds it unlikely that the claimant could forget such a distinctive account of an originating incident that gave him a week’s imprisonment, torture, and a broken arm, which he had also apparently remembered when authoring the Basis of Claim. The psychological report notes that the claimant would have difficulty recalling specific dates, however, it does not state that he had forgotten the originating incidents of the harm he suffered or would create new explanations.

[16] The panel was provided with a letter from the claimant’s sister, K. B.³ However, the letter only referred to an “incident that happened seven or eight years ago” (which would put the incident in 2010 or 11) in which the claimant was arrested. The letter simply states that he was arrested, he suffered a broken arm, and the writer had to feed him, and no other details to corroborate the incident. Given the lack of details and the inconsistent dating provided in the letter, the panel gives it little weight in its determination of the incident.

³ Exhibit 7.

[17] Given the discrepancy created by the claimant's testimony and his Basis of Claim form, and his lack of explanation for them, the panel draws a negative inference to his credibility and finds that the events described as occurring in 2012 did not occur.

Alleged Torture

[18] When asked about the final incident, the claimant testified that in 2016 he was told that he would have to sell drugs by a paramilitary group, which he clarified as marijuana. He stated that he refused, so was brought into a police station, beaten, and then forced to perform oral sex on a male police chief. He was then brought back once every few weeks for a year and a half for continued sessions.

[19] This was an apparent contradiction to both the claimant's Basis of Claim and his interview with American authorities.

[20] In his Basis of Claim, he indicated that he scolded a drug dealer, later saw that same drug dealer with paramilitary supporters, and then was arrested at what he believed to be the instigation of the paramilitary group by the police.

[21] In his interview with American authorities, he mentions no incidents regarding drugs at all as the precursor incident, and states that he was chosen because "maybe because compared to other Sri Lankans I may be handsome."

[22] When the discrepancy with his Basis of Claim was brought to the claimant's attention, the claimant stated that the story as outlined in the Basis of Claim happened as well. He offered no explanation to the panel for why he excluded the paramilitary group's purported demand to sell drugs from the Basis of Claim or from American authorities, or as to why he omitted the story regarding the drug dealer from his initial testimony.

[23] The panel finds it unlikely that the claimant would immediately testify that the main causative issue of his torture was refusing to sell drugs and yet not include the fact that he was told to sell drugs in his Basis of Claim form, which he confirmed at the hearing he had signed as complete, or his interview with US authorities. Furthermore, the panel reiterates that the psychological report provided does not provide any justification for the claimant to provide a completely different explanation for events.

[24] The panel finds, on a balance of probabilities, that both the story that he was told to sell drugs and the story regarding the claimant scolding a drug dealer did not occur. The panel finds this discrepancy damaging to the credibility of the claimant, and finds a negative inference as to his credibility.

[25] Moreover, when he was originally describing what year the events had occurred, the claimant testified that they had occurred in 2016.

[26] It was also brought to the claimant's attention that he had, in his US interview and in his Basis of Claim, indicated that the events had occurred in 2015.

[27] In response to this, the claimant indicated that they did occur in 2015.

[28] The panel finds that this discrepancy is highly unlikely when regarding events that had led to his repeated abuse for more than a year, and while it considers that the claimant may have difficulty with remembering dates of incidents, naming the wrong year for an incident as traumatizing as the one alleged is unlikely. The panel finds a negative inference as to the credibility of the claimant.

[29] Pursuant to the guidelines as mentioned above, the panel notes that it did not ask for specific details regarding the sexual acts alleged.

[30] However, the claimant was asked about a discrepancy regarding the order the events took place in, as he testified he was propositioned for sexual acts, beaten when he refused, and then forced to perform oral sex. In his Basis of Claim form he noted being beaten and threatened to be sent to a camp, and then being propositioned and forced to perform oral sex by a drunk police chief.

[31] When presented with this discrepancy, the claimant visibly shrugged and stated he simply did not remember what had happened when the attacks took place

[32] In the letter provided from the claimant's sister, K. B.⁴ she did not provide any details in the letter at all regarding the incidents described by the claimant only mentioning that "there were

⁴ Exhibit 7.

a few other incidents in which my innocent brother was arrested.". While the panel is aware, pursuant to Guideline 9 that the claimant may not want to tell a family member details of the sexual abuse he suffered, the lack of any mention of the length of time the abuse took place, as well as the sister's presence in Canada during the events mentioned in the letter means it has very little weight as evidence.

[33] Given the discrepancies in the claimant's descriptions and in both the description of what had occurred, its beginnings, and even what year the events occurred, the panel finds that the incidents regarding the police chief as described by the claimant did not take place.

[34] The claimant then described a suicide attempt, which the claimant testified took place in XXXX of 2016. It was then brought to the claimant's attention that in his Basis of Claim form and his interview with American authorities had indicated the attempt took place in XXXX of 2016.

[35] In response, the claimant claimed that his response was translated incorrectly, and that he had meant XXXX. The interpreter replied that he had made clear which month he was referring to, and had even asked him for confirmation as to what month would be used.

[36] While again, the psychological report has detailed issues with the claimant's remembering dates, misremembering the month of his suicide attempt would be unlikely, on a balance of probabilities.

[37] Furthermore, the claimant testified that he had attempted suicide with liquid insecticide. In his interview with the United States, he indicated that he tried to use tablets. The claimant explained that this may have been an interpretation issue by the American process. However, the panel thinks it would seem unlikely that a translation error would result in a different description of the exact substance used regarding a suicide attempt.

[38] Due to discrepancies regarding the timing and method, the panel finds, on a balance of probabilities, that the suicide attempt did not occur, and finds a negative inference against the claimant in this regard.

Determination

[39] As stated, the panel has found, due to credibility issues in the claimant's testimony, that the allegations put forward in the claim did not occur.

[40] As the panel has found that the incident that would result in an imputed sexual orientation as a gay male did not occur, the panel finds that the claimant does not have a well-founded fear of persecution with regard to an imputed sexual orientation.

[41] Also, as the panel has found that the incidents regarding an imputed political membership of the Liberation Tigers of Tamil Eelam did not occur, and the claimant has testified not to having any ties to the organization, the claimant cannot be found to be a member of the organization.

[42] Further, the panel notes that a Tamil minority's position has improved considerably since the end of the civil war, and that the claimant does not generally meet the current risk profile for a Tamil male. The panel finds that there is not a serious possibility of persecution of the claimant due to his status as a male Tamil in Sri Lanka.⁵

[43] The letter from the claimant's sister, K. B.⁶ details a general concern for the claimant, but only specifically states that her uncle and father have faced some extortion demands from Sri Lankan police that are not connected specifically to the claimant (even mentioning her father is fairly affluent and has lots of family members abroad). As none of these issues were mentioned in the claimant's Basis of Claim or testimony, the panel gives the letter little weight in its determination as to the possibility of the claimant facing persecution in Sri Lanka.

[44] For these reasons, it is the panel's determination that the claimant has not satisfied the burden that he faces a well-founded fear of persecution or, on a balance of probabilities, a risk to life or of cruel and unusual treatment or punishment, or a danger of torture, if he were to return to Sri Lanka.

CONCLUSION

[45] The panel therefore concludes that the claimant, XXXX XXXX, is not a Convention refugee or a person in need of protection. This claim is therefore rejected.

⁵ Exhibit 3, NDP for Sri Lanka (April 30, 2018), item 1.13, DFAT Country Information Report: Sri Lanka, at pp 1-39.

⁶ Exhibit 7.

(signed)

“T. Nicholson”

T. Nicholson

December 20, 2018

Date