

Third Circuit Court

Case: *Senathirajah v. INS*, 157 F.3d 210 (3d Cir. 1998)

Date: Oct. 9, 1998

Panel: Roth, McKee, O'Neill

Opinion: McKee

Tags: Immigration, asylum, adverse credibility determination, airport interviews, Sri Lanka, corroboration

Question(s) Presented: Did IJ & BIA decide correctly regarding the credibility of respondent?

Holdings: Adverse credibility finding is not supported by the evidence. Remanded for further proceedings.

Rationale: Airport interviews are not to be taken with as much weight as asylum applications and testimony.

Facts: Ethnic Tamil from Sri Lanka who claims to have been detained and tortured by Sri Lankan military and police. Arrived in NY in 1995 with a Canadian passport. Airport interview conflicts with later application and testimony.

Procedural History:

- **1995: IJ:** denied application for asylum because of discrepancies about dates on I-589 conflicting with dates of his alleged imprisonment and his claim to know English fluently. Also (“in an explanation that is nothing short of astounding for reasons we detail below”) thought it was okay for Sri Lankan government to investigate him on suspicion of belonging to Tamil Tigers. No detailed account of assaults and tortures while in detention recorded in affidavit. Also used an assumed name.
- **BIA:** Affirmed. Was troubled by his claims that (a) he spoke English fluently and (b) he didn’t understand what he was signing at the airport inspection.

Appeals to Statute & Precedent:

- ***Turcios v. INS*, 821 F.2d 1396, 1398 (9th Cir. 1987):** “Substantial evidence is more than a mere scintilla and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” An IJ who “rejects a witness’s positive testimony because in his or her judgment it lacks credibility should offer a specific, cogent reason for [his or her] disbelief.” (at 1399)
- ***Balasubramaniam v. INS*, 143 F.3d 157 (3d Cir. 1998):** Tamil from Sri Lanka seeking asylum, also interviewed at airport without translator. Court found that airport report may not be reliable because there is no way to know how the interview was conducted or the document prepared; it was not an application for asylum; the respondent may have been reluctant to disclose information to government officials; BIA may not have correctly assessed respondents English ability. Held: “any discrepancy between B’s airport statement and his testimony was insufficient, by itself, to support the BIA’s finding that the petitioner was not credible.” 218

Discussion:Corroboration

- “It is obvious that one who escapes persecution in his or her own land will rarely be in a position to bring documentary evidence *216 or other kinds of corroboration to support a subsequent claim for asylum. It is equally obvious that one who flees torture at home will rarely have the foresight or means to do so in a manner that will enhance the chance of prevailing in a subsequent court battle in a foreign land. Common sense establishes that it is escape and flight, not litigation and corroboration, that is foremost in the mind of an alien who comes to these shores fleeing detention, torture and persecution.” 215-16

Credibility

- “It is clear from the transcript that whatever S thought ‘fluent’ meant, his facility with English is less than one might expect from the use of that term.” 219
- “the IJ and the BIA held S to a level of proficiency in English that is inconsistent with his request for an interpreter, the circumstances under which the affidavit was taken, or with the transcript of the asylum hearing.” 219
- Reasonable explanations for answers given at airport.
 - “At the hearing, neither the government nor the IJ asked S why he did not tell the INS inspector about his detention or torture in Sri Lanka. It is unfair to fault him for not volunteering that information in response to the questions the INS inspector asked.” 220
- “the immigration judge and the BIA ignore the most obvious reason for S’s purported failure to provide greater detail [at his hearing]. He was not asked.” 220