



File No./Dossier : B0-00997

**TRANSCRIPT OF PROCEEDINGS/PROCÈS-VERBAL
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Between/Entre:

**The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration**

And/Et

s.19(1)

**Date
of Hearing**

JANUARY 20, 2011

**Date de
l'audience**

Place of Hearing

VANCOUVER, BRITISH COLUMBIA/FRCC

Lieu de l'audience

Date of Decision

JANUARY 20, 2011

Date de la Décision

Member

L. KO

Commissaire

For the Person Concerned

L. SMEETS

Pour L'intéressé

Minister's Counsel

A. LALJI

Conseil de L'intimé

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1 that this number doesn't indicate anything special regarding me.

2

3 When the CBSA officers are entered the ship, since I could speak English, I cooperated
4 with them. I helped with them with the small children and children at first. So when they
5 gave the numbers, they gave number five for me.

6

7 So just because in the engine room, my name came first since I was there, it doesn't mean
8 that I was -- that I worked in the engine room.

9

10 I don't want to waste the Court's time here.

11

12 I'm not a flight risk. If anybody thinks deeply, they will understand that my wife and
13 children are in New Zealand, and if I -- my son, my child is six year. The child is suffering
14 from and he has underwent a surgery for a hole in the heart. So I don't want to
15 jeopardize my chance to go back to New Zealand or to get a bad record by not appearing
16 for hearing.

17

18 So I am not a flight risk at any time. I won't be a flight risk at any time.

19

20 And my mother -- sorry, my older brother is going to stand as a bondsperson and he has
21 two children and a family. I will not at any time jeopardize their kids -- kids' certification
22 here by not obeying the rules. So I respect my brother. I don't want to mess up his life.

23

24 So please consider my situation, my ties situation and I humbly ask you to release me.

25

26 Thank you.

27

28 MEMBER KO: Thank you.

29

30 DECISION AND REASONS BY MEMBER KO:

31

32 All right. Mr. () I'm ready to give you my decision and reasons.

33

34 Would you like to have the interpreter interpret?

35

36 PERSON CONCERNED: No. Stand by.

37

38 MEMBER KO: Okay.

39

40 PERSON CONCERNED: Thanks a lot.

41

42 MEMBER KO: I'm going to be ordering your continued detention today. Sorry. I'm

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1 pausing for -- I have to get used to not pausing for the interpreter.
2
3 I'm going to be ordering your continued detention today because I'm satisfied that you
4 would not be likely to appear for your admissibility hearing.
5
6 The Minister has put forth the argument that you would be unlikely to appear for your
7 admissibility hearing, as well as for removal at a future date.
8
9 I'm going to speak today only to the likelihood to appear for the admissibility hearing
10 because that is a process that has now been convened. The Minister's representative states
11 that the Report has been reviewed by a Minister's delegate and has been referred to the
12 Immigration Division of the Immigration and Refugee Board, along with their disclosure
13 material, asking for an admissibility hearing to be convened.
14
15 I don't find it necessary to go on to speak to the likelihood of appearance for removal.
16 Firstly, because the circumstances surrounding any future removal from Canada will really
17 depend on what the outcome of the admissibility hearing is, and secondly, that under s. 58
18 of the *Immigration and Refugee Protection Act*, if I find that grounds for detention exist for
19 one of those reasons, I don't need to go on to consider another.
20
21 So my focus of my remarks will be on the likelihood that you would appear for your
22 admissibility hearing. Or lack of likelihood.
23
24 I have considered, that at your last detention review hearing, my colleague did come to the
25 same conclusion that she found that you would be unlikely to appear for an admissibility
26 hearing.
27
28 If I were to depart from that decision, I would need to provide clear and compelling
29 reasons for doing so, and I do not find that, having heard the information today, such clear
30 and compelling reasons exist to depart from that decision.
31
32 There are a number of factors that I must consider when determining likelihood to appear.
33 Those are found in s. 245 of the *Immigration and Refugee Protection Regulations*.
34
35 There has been no suggestion made by the Minister's representative that you are a fugitive
36 from justice in a foreign jurisdiction, and I don't find that there -- that that factor is relevant
37 to your present circumstances.
38
39 I've considered whether or not there's been any previous voluntary compliance with
40 previous Departure Orders, previous compliance with any required appearances at an
41 Immigration or criminal proceeding, any previous compliance with conditions imposed in
42 respect of entry or relief.

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2 And when I looked at those three factors, I've considered the information about your
3 Immigration history in other countries before coming to Canada. The Minister's
4 representative provided some information today and further details were found in the
5 evidence previously entered by the Minister, most specifically details of an interview that
6 was held with you on the 27th of September, 2010, with the Canada Border Services
7 Agency. And that was found in Exhibit C-4.

8

9 That detailed your history in previous countries, including that you indicated that you were
10 a crew member aboard the *MV Sun Bird* from 1990 to 1996. That in 1996, you
11 disembarked that vessel in Italy and failed to return to the ship at the time that was
12 designated for you to return to join the ship.

13

14 You made your way to Germany, having paid \$1500 to be smuggled into Germany,
15 eluding examination, and upon arriving in Germany you made a refugee claim. In that
16 refugee claim, you said that you came directly from Sri Lanka to Germany, failing to
17 disclose that you had come off of the ship in Italy.

18

19 During the time that you were in Germany, you also made an application for permanent
20 residence in Canada under a group sponsorship led by your brother. And in that
21 application, you failed to declare that you had been a crew member aboard the *MV Sun*
22 *Bird*. The Minister's representative indicated that your claim for refugee protection in
23 Germany was rejected and that your application for permanent residence in Canada was
24 rejected, that you had indicated that you were told to go to the Sri Lankan Consulate in
25 Germany at a specific date and time, to meet with the German authorities in order to get a
26 travel document for you to be removed back to Sri Lanka, and you failed to appear for that
27 meeting.

28

29 He provided information that you, instead, paid \$3,000 to be smuggled into the United
30 Kingdom, eluding examination on entry, and then made a claim for refugee protection in
31 the United Kingdom. In that claim you withheld the information that you had applied for
32 refugee protection in Germany and had been a crew member on the *MV Sun Bird*.

33

34 And that you had said that you wouldn't have been eligible to make a full claim in the
35 United Kingdom if it was made known that you had made a claim in Germany.

36

37 You were unsuccessful in your refugee claim in the United Kingdom and pursued some
38 various avenues in attempts to stay there. But ultimately, were able to get a permit to go to
39 New Zealand, as you had in the meantime become married to a resident of New Zealand.

40

41 You withdrew your claim in the United Kingdom, but rather than return to Sri Lanka, you
42 proceeded forward on your visa to New Zealand.

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1
2 You attempted to extend your stay in New Zealand, but in order to do so, needed to get a
3 Sri Lankan police certificate. You stated to the Canada Border Services Agency that you
4 obtained this police certificate, but the certificate stated that the Sri Lankan authorities
5 knew you had worked aboard the *MV Sun Bird* and that -- so you did not disclose that
6 certificate to the New Zealand authorities. As a result of not submitting the police
7 certificate, you were not granted the work permit extension in New Zealand, were found to
8 be in contravention of Immigration laws there and were arrested and deported to Sri Lanka.
9

10 In the meantime, you made your way to Singapore and Malaysia, back to Singapore, where
11 you were for about three years. But were later asked to leave Sri Lanka again because of --
12 or sorry. You were asked to leave Singapore because you did not declare, on your work
13 permit application there, that you had been deported from New Zealand.
14

15 I read from the interview notes from the interview that took place on the 27th of
16 September, 2010, that you had initially said that you would depart voluntarily from
17 Singapore, but that on the way to the airport, facing deportation or removal to Sri Lanka,
18 you panicked and didn't want to go. But following some discussions with the Intelligence
19 Department in Singapore and they explained the repercussions of being removed under
20 escort versus voluntary removal, you decided to go on your own back to Sri Lanka.
21

22 I do note that you were detained for some months while you were in Sri Lanka and that
23 following that, it is when you made your way to Thailand and then on to the *MV Sun Sea*,
24 forward on your voyage on here to Canada, where you arrived on the 13th of August,
25 2010.
26

27 Now, Counsel on your behalf submits that a number of the instances of misrepresentation
28 and non-compliance with Immigration laws occurred some time ago, starting in the 1990s,
29 and that these occurred in other countries.
30

31 But I do find that these are relevant considerations when trying to assess whether you
32 would be likely to appear for Immigration proceedings here in Canada.
33

34 As I've said, I read the evidence that has been previously submitted and in the interview on
35 the 27th of September, 2010, you provide a lot of detail about your travel to these various
36 countries and the reasons why you took the steps that you did, to try and seek status there
37 and also to avoid your return to Sri Lanka from these countries.
38

39 What I take from this information, in (indiscernible) to the explanation you've given today,
40 is that you appear to take the steps that you feel are necessary in order to avoid your
41 removal to Sri Lanka. And when you see that things may not be going in your favour in
42 those countries, or when you anticipate that things may not go in your favour, as a result of

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1 some of your past actions, you either fail to disclose that information or you leave those
2 countries and move onwards.

3

4 I understand that the reason why you do this is because you don't want to return to Sri
5 Lanka, but these actions don't instil any confidence in me that you would not take similar
6 measures here in Canada, if you were released.

7

8 In terms of your present circumstances, in your Immigration proceedings in Canada, you
9 are facing an admissibility hearing in relation to allegations that you were a crew member
10 both on the *MV Sun Bird* and the *MV Sun Sea*.

11

12 I'm not going to get into a determination of whether you will be found inadmissible to
13 Canada on those grounds. That's for the admissibility hearing. But it has been made
14 known to you, that the possible outcome of such a proceeding is that you could be facing a
15 Deportation Order, which would make you ineligible to pursue your refugee claim in
16 Canada. And although there -- you would be eligible to pursue some other avenues before
17 your removal would take place.

18

19 When I read your responses about your travels in these other countries, you've indicated
20 that you have purposely withheld information about your work aboard the *MV Sun Bird*,
21 because you felt that it could be held negatively against you in your Immigration
22 proceeding, and this is a similar situation to what you're facing here in Canada.

23

24 With respect to your status in New Zealand, you were ordered deported. You've indicated
25 that that Deportation Order was successfully appealed, and that part of the reasons for that
26 decision were that the authorities there looked to the reasons why you took the steps that
27 you did.

28

29 In this proceeding, in determining whether you would be likely to appear for an
30 admissibility hearing, I do consider the reasons why you took the steps that you did, but
31 the reasons that have been given don't alleviate the concerns, for me, that you wouldn't
32 appear.

33

34 The Minister's representative has asked me to take a broad interpretation of the phrase
35 "avoidance of examination", as is outlined as a factor in 245(e).

36

37 I note from the decision of my colleague at the last detention review, that she did consider
38 your previous misrepresentations and withholding of information to constitute avoidance
39 of examination.

40

41 I don't find that the misrepresentation or withholding of information exactly constitutes an
42 avoidance of examination, in the way that the Minister's representative asks me to interpret

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1 that phrase.

2

3 But I do consider it to be a factor that weighs against you, when determining if you would
4 be likely to appear.

5

6 I believe it could be more accurately described as a failure to comply with a condition that
7 you answer truthfully in questions posed to you and that you comply with Immigration
8 laws. And in our Immigration law, there is a specific provision that could make you
9 inadmissible for withholding relevant information.

10

11 So I think it's -- I don't tend to agree that it constitutes an avoidance of examination, but I
12 do consider it to be a factor that weighs against you, in terms of your past history of
13 compliance with Immigration laws, in terms of having withheld information in an
14 interview or an application, or by misrepresenting information in an application or
15 examination.

16

17 Certainly, travel to other countries by covert means without reporting to Immigration
18 officials when you enter those countries, as you did when you entered into Germany and
19 the United Kingdom, I do consider to be avoidance of examination, although I recognize
20 that at some point, you did come forward to the Immigration officials in those countries to
21 declare your intention to make a refugee claim.

22

23 In considering factor 245(f), involvement in a people smuggling operation, that will likely
24 lead a person to not appear for a measure, referred to in paragraph 244(a), I do consider, in
25 your circumstances, as an alleged crew member of the *MV Sun Sea*, that this is a factor that
26 makes you unlikely to appear for your admissibility hearing.

27

28 And the reason why I find that that factor applies in your circumstances and weighs against
29 you, is not because I find that it's been proven that you were a crew member aboard the *MV*
30 *Sun Sea*, but rather that this allegation has been made against you and that you are facing
31 an admissibility hearing on these grounds. And because in the past, you have
32 demonstrated that you have a concern that if the Immigration officials in countries become
33 aware of your status as a crew member on a vessel that is suspected of having connections
34 to the LTTE, or in this case, that it's suspected of being a human smuggling operation, that
35 you are concerned that this is a factor that will be held against you in your processes, that
36 you're not forthcoming with information as a result of that, and that you take steps to not
37 comply with Immigration laws as a result of that.

38

39 And this was similarly demonstrated in your withholding of information about your status
40 as a crew member on the *MV Sun Bird*, recognizing that such an allegation could have an
41 adverse effect on your ability to pursue Immigration processes.

42

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1 In terms of the factor 245(g), the existence of strong ties in Canada, I recognize that you
2 have a brother here in Canada. He is a person who has indicated that he's willing to offer
3 his support, and in addition, is willing to post a bond of up to \$10,000.

4
5 I do consider the Minister's submission that there have been family members who have
6 been present in other countries where you have stayed, and that you have not demonstrated
7 that the existence of these ties in those countries are able to mitigate the risks that you
8 would not comply with Immigration law. I do take that into consideration and find that it
9 somewhat diminishes the strength of that tie in Canada, as a factor that weighs in your
10 favour when determining whether you'd be likely to appear or not.

11
12 And so based on those findings of each of these factors, when I consider the factors
13 collectively, I find that they do weigh against you, as a whole, and find that on a balance of
14 probabilities, as a result of these factors and the circumstances of your case, you would not
15 be likely to appear for an admissibility hearing.

16
17 When I turn my mind to the factors in Regulation 248, the reason for detention I've just
18 spoken about at length, in my finding that you would be unlikely to appear for an
19 admissibility hearing.

20
21 The length of your detention, it has been five months thus far.

22
23 The reason for your detention has been for a number of different reasons, firstly, identity
24 and then a security investigation.

25
26 One Member did find that you would pose a danger to the public, although at your last
27 detention review hearing, the Member found that you would not pose a danger to the
28 public.

29
30 I'm not making a determination on that ground today because I do find that you would be
31 unlikely to appear for your admissibility hearing.

32
33 This is a significant period of time, but I don't find it to be an inordinate length of time,
34 given the circumstances of your arrival as part of such a large group, that has resulted in
35 such investigations taking quite a lengthy period of time.

36
37 The Minister's representative asks me to take the position that you have contributed to the
38 mass arrival and that you intend to profit from it.

39
40 I'm not making any finding on that.

41
42 There is an allegation that you are a crew member, which you dispute.

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1
2 A far as the length of time, moving forward, the admissibility hearing has been requested
3 by the Canada Border Services Agency. It's now a matter of scheduling your admissibility
4 hearing.

5
6 For persons who are in detention, admissibility hearings are scheduled on an expedited
7 basis. I would estimate that within the month you should be receiving some information,
8 whether it be an initial pre-hearing conference, with respect to your admissibility hearing,
9 or an actual date for your admissibility hearing, that further information in that regard will
10 be coming forward within the next month.

11
12 I don't find that there has been any unexplained delay or lack of diligence on the part of the
13 Department.

14
15 It does appear that you have been quite forthcoming with a lot of information in your
16 interviews with the Canada Border Services Agency.

17
18 The Minister's representative today has not raised significant issues in terms of
19 inconsistencies today. It more -- the basis for the decision on my part goes more towards
20 your reliability based on your past history, as opposed to credibility in your statements,
21 although certainly there's some contested positions between yourself and the Minister, as
22 far as some of your past activities and with respect to your activities aboard the *MV Sun*
23 *Sea*. But I don't find those to be determinative factors for the purposes of this hearing
24 today.

25
26 And when I consider the alternative to detention that's been presented, your brother has
27 indicated that he's now prepared to post a bond of \$10,000. That is quite a significant
28 amount, and much more than the amount that he was -- had indicated he was prepared to
29 post at the last hearing.

30
31 When I consider all the factors together, including your past history of non-compliance
32 with Immigration laws in other countries and the process that you are facing at this time,
33 which is your admissibility hearing, which I anticipate will commence within a very short
34 period of time and that you would not be facing a long period of detention, pending the
35 admissibility hearing, I don't find that your relief on this alternative, even with the
36 significant amount of the bond, would be appropriate.

37
38 I'm not making a finding about the suitability of the bondsperson. My decision with
39 respect to this alternative that has been proposed, goes more towards the high risk of flight
40 that I find exists in your case, based on your past behaviour and the immediacy of the
41 process that is pending for you -- which will -- for which the outcome will impact
42 significantly, one way or the another, how your further proceedings for Immigration

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1 matters in Canada will unfold.

2

3 And so this alternative to detention may become more of an appropriate consideration
4 following the admissibility hearing, but not at the present circumstances.

5

6 For all of these reasons, I'm ordering your continued detention.

7

8 You'll have another review of the circumstances of your detention within the next 30 days.

9

10 --- PROCEEDINGS RECESSED

11

12 --- PROCEEDINGS RECONVENED

13

14 MEMBER KO: All right. So your next hearing will be on the 17th of February, 2011, at a
15 time to be determined.

16

17 Thank you all and this hearing is concluded.

18

19

20 --- PROCEEDINGS CONCLUDED (NEXT DETENTION REVIEW SCHEDULED FOR
21 FEBRUARY 18, 2011)

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I, the undersigned, hereby certify that the preceding constitutes a transcript of proceedings, transcribed from taped proceedings, to the best of my skill and ability, of a Detention Review hearing held at Maple Ridge, British Columbia.

Jackie Stroud