Federal Court  Cour fédérale

Date: 20150421

Docket: IMM-7228-14

Citation: 2015 FC 514

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 21, 2015

PRESENT: The Honourable Mr. Justice Noël

BETWEEN:

TISHANAN NAGENDRAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review by Tishanan Nagendram [the applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated June 13, 2014, by a Citizenship and Immigration Canada officer [PRRA officer] rejecting his Pre-Removal Risk Assessment [PRRA] application.

II. Alleged facts

[1] The applicant is a Tamil from Sri Lanka, originally from Jaffna. He indicates that he left Sri Lanka because he was at risk of persecution by Sri Lankan military and paramilitary groups, and because he is a young Tamil man from northern Sri Lanka with ties to the Liberation Tigers of Tamil Eelam [LTTE].

[2] He arrived in Canada on October 6, 2010, and claimed refugee status. The Refugee Protection Division [RPD] rejected his claim for refugee status on November 23, 2012. The application for judicial review of the RPD's decision was in turn rejected on November 14, 2013.

[3] The applicant applied for a PRRA on December 19, 2013. This application was rejected on June 13, 2014. This is the decision that is being contested.

III. Impugned decision

[4] The PRRA officer initially analyzed the new evidence submitted under subsection 113(2) of the IRPA. The PRRA officer began by rejecting the letter from the applicant's employer dated December 18, 2013, deeming it irrelevant to the PRRA application.

[5] The PRRA officer then assessed the documents pertaining to the applicant's mental health. In regard to the letter from psychologist Sylvie Laurion, dated January 2, 2014, the PRRA officer specified that Dr. Laurion had administered several tests and done three interviews with the applicant since the first report was issued on September 25, 2012. Dr. Laurion concluded that

the applicant's mental health had deteriorated because he was facing possible deportation. The PRRA officer also took into consideration a letter from the applicant's family dated December 19, 2013, explaining that his mother's death and the events that had happened to him had so distressed him that loud noises distressed him. The PRRA officer concluded that the applicant had not demonstrated that the information about his mental health amounted to risks described in sections 96 and 97 of the IRPA.

[6] In regard to the documentary evidence presented pertaining to conditions in Sri Lanka, the PRRA officer determined that the risks that the applicant said he would face if he returned to Sri Lanka, which were that young Tamil men still face certain dangers in that country, and that he would be arrested if he had to return to his country because he had already been arrested and targeted by authorities in Sri Lanka, are not significantly different from the risks presented in his refugee protection claim before the RPD.

[7] Nonetheless, the PRRA officer assessed the documentary evidence submitted in support of the applicant's allegations. In regard to the articles about people whose human rights were violated in Sri Lanka, the PRRA officer determined that the applicant had not demonstrated how his profile placed him in a situation similar to those described in the articles, and that he would not be subjected to the same treatment as those people because he is a Tamil. In regard to the documents addressing the situation in Sri Lanka after the civil war, the PRRA officer concluded that Tamils may face discrimination because of their ethnic origins. However, the applicant failed to demonstrate that this discrimination amounted to persecution. Consequently, the PRRA officer concluded that the applicant would not be at risk in Sri Lanka because he is Tamil. The

PRRA officer added that the applicant had not presented sufficient evidence in support of his argument that he would be arrested upon his return to Sri Lanka.

[8] For these reasons, the PRRA officer rejected the applicant's application.

IV. Parties' submissions

[9] The applicant alleges that the PRRA officer failed to consider the applicant's situation at the time of his PRRA application. The applicant also argues that the PRRA officer failed to take into consideration the documentary evidence on the situation of young Tamils in Sri Lanka that was added to the file after the RPD decision of November 2012. The respondent replies that the applicant's PRRA application was based on the same facts as the refugee protection claim submitted to the RPD. The respondent adds that the PRRA officer had also analyzed and cited recent documentary evidence on young Tamils in Sri Lanka and reasonably concluded that the applicant did not have the profile of a person at risk in Sri Lanka.

[10] In terms of the applicant's psychological state, the applicant claims that the PRRA officer failed to consider the evidence in this regard. The respondent's position is that the psychological profile that was presented changes nothing with regard to his risk profile should he return to Sri Lanka.

V. Issue

[11] After reviewing the parties' arguments and their respective files, I find that the issue in dispute is as follows:

1. Is the PRRA officer`s decision reasonable?

VI. Standard of review

[12] The question of whether the decision by the PRRA officer is reasonable is related to findings of fact and will therefore be reviewed on the standard of reasonableness (*Pareja v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1333 at para 12; *Kandel v Canada (Minister of Citizenship and Immigration)*, 2014 FC 659 at para 17). This Court will intervene only if the decision is unreasonable in that it does not fall "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).

VII. Analysis

[13] A PRRA application is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection (*Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at para 12 [*Raza*]). However, a PRRA application may call for review of some or all of the same questions of fact or of law as a refugee protection claim. Paragraph 113*(a)* of the IRPA serves to mitigate the risk of multiple proceedings under this process by limiting the evidence that

can be presented to a PRRA officer. Paragraph 113*(a)* of the IRPA "is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD" (*Raza* at para 13). Finally, a "PRRA officer may properly reject such evidence if it cannot prove that the relevant facts as of the date of the PRRA application are materially different from the facts as found by the RPD" (*Raza* at para 17). In this case, the PRRA application by the applicant is essentially based on the same facts that were alleged before the RPD, and there is no need for this Court to intervene.

[14] The applicant alleges that he is at risk as a refugee returning to his country. He also claims that the PRRA officer refused to take into consideration the documentary evidence indicating that the applicant had a profile that placed him at high risk of being arrested and interrogated as an LTTE sympathizer. He also argues that the PRRA officer erred in determining that the situation had not changed since the RPD decision. These arguments are incorrect. The PRRA officer's decision clearly demonstrates that the documentary evidence that came after the RPD decision was taken into consideration (Applicant's Record, pages 14 to 16). More specifically, the PRRA officer took into consideration several documents from 2013, all of which therefore came after the RPD decision was signed on November 12, 2012. These arguments by the applicant were also analyzed by the RPD (Applicant's Record [AR], page 30, at paras 20 to 23) and underwent judicial review by this Court (AR, page 40, at para 14). The PRRA officer reassessed the applicant's arguments on the basis of the evidence he submitted and found that he was not at risk and had to return to Sri Lanka. The PRRA officer correctly wrote that the risks

presented by the applicant were not significantly different from those presented to the RPD (AR, page 13).

[15] The applicant also argues that the PRRA officer refused to admit the facts recognized by the RPD about his having been arrested several times and questioned about his mother's murder and his leaving Jaffna, and that young Tamils suspected of having ties to the LTTE are at risk in Sri Lanka. This argument does not hold sway. The PRRA officer did write the following in regard to the applicant's arrests and the murder of his mother:

> The IRB found that there was nothing to indicate that the police or military had substantial interest in the claimant, particularly due to the fact that the applicant was released twice after being detained during wartime conditions. It found that the applicant did not demonstrate that he had the profile of an individual that would be apprehended upon his return. Furthermore, the IRB found that there was nothing to indicate that the murder of the applicant's mother was related to the LTTE or that the interest of the police in the case might indicate that it involved the LTTE. It found that the applicant did not demonstrate a real or perceived personal risk with the LTTE (AR, page 13).

Further, after taking into consideration the documentary and other evidence filed by the applicant, the PRRA officer determined as follows:

> Moreover, the applicant has not submitted sufficient evidence to demonstrate that he will be arrested upon his return to Sri Lanka due to the fact that he had already been targeted and arrested by the authorities in the past. As mentioned previously, it is not the role of the PRRA officer to revisit the IRB's findings. The IRB had already deliberated this allegation and found that there was nothing to indicate that the police or military had any interest in the claimant, having previously detained and subsequently released him (AR, pages 14 and 15).

The PRRA officer then continued his assessment of the conditions in Sri Lanka and determined that they had remained relatively unchanged since the RPD decision (AR, page 13). The officer finally concluded that the applicant had failed to demonstrate that his profile put him at risk if he returned to Sri Lanka (AR, page 13). Thus, the PRRA officer did not refuse to admit the facts recognized by the RPD as the applicant claimed, nor did he refuse to assess the situation of young Tamils suspected of having ties to the LTTE. The PRRA officer assessed all of the evidence in the file, the alleged facts and the RPD analysis before rejecting the PRRA application.

[16] The second argument presented by the applicant concerns his psychological state, and the fact that the PRRA officer failed to discuss this evidence in his decision. This argument is incorrect. The PRRA officer did indeed take into consideration the assessment by Dr. Laurion that was filed by the applicant, which was done after the RPD decision (AR, page 2). On this point, the PRRA officer indicated that he was sensitive to the applicant's previous experiences in Sri Lanka and the possible effect that these events may have had on him. After reviewing the letter from his family in Canada and the assessment by Dr. Laurion, the PRRA officer concluded that the allegations about his possibly vulnerable mental state if he returned to Sri Lanka did not raise the risks mentioned in sections 96 and 97 of the IRPA, and were not pertinent to his PRRA application. This finding is reasonable.

VIII. Conclusion

[17] The decision by the PRRA officer is complete and contains a good analysis of the file in support of the applicant's PRRA application. The PRRA officer properly assessed the new

evidence presented by the applicant, as well as all the documents in the file. No error was made by the officer. Thus, there is no need for this Court to intervene.

[18] The parties were invited to submit a question for certification, but none was submitted.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Simon Noël"

Judge

Certified true translation
Michael Palles

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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