

Federal Court



Cour fédérale

Date: 20160711

Docket: IMM-2784-15

Citation: 2016 FC 761

St. John's, Newfoundland and Labrador, July 11, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

THEEPAN KATHIRKAMANATHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

[1] These Reasons are issued pursuant to the Judgment issued on June 10, 2016.

[2] Mr. Theepan Kathirkamanathan (the “Applicant”) seeks judicial review of the decision of a Pre-Removal Risk Assessment Officer (the “Officer”) dismissing his Pre-Removal Risk Assessment (the “PRRA”). The Officer determined that the Applicant was not a Convention Refugee or person in need of protection as defined in section 96 or subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended (the “Act”).

[3] The Applicant is a citizen of Sri Lanka, of Tamil ethnicity. He arrived in Canada on April 14, 2010 and sought refugee protection on May 10, 2010 on all five of the Convention grounds.

[4] His claim for recognition as a Convention refugee was refused by the Immigration and Refugee Board, Refugee Protection Division (the "RPD") on March 17, 2011, on the grounds that he was not credible and did not fit the profile of a person attracting the interest of the authorities.

[5] The Applicant submitted his PRRA application in November 11, 2011 alleging a fear of persecution from the Sri Lankan army as a "young Tamil male" who would be perceived as a member of the Liberation Tigers of Tamil Eelam (the "LTTE"). He also claimed to be at risk because he was a failed refugee claimant. Finally, he alleged a risk of detention and extortion from the authorities at the Colombo airport.

[6] The Applicant's PRRA application has been refused twice. He succeeded upon judicial review of those decisions in cause numbers IMM-2304-12 and IMM-2443-13.

[7] In support of his PRRA application, the Applicant filed new evidence, including a copy of a Detention Attestation dated May 26, 2009 issued by the International Committee of the Red Cross; a letter dated November 28, 2012 from the Applicant's father; 162 news articles; and an affidavit from the Applicant sworn on December 12, 2012.

[8] In her decision denying his PRRA application, the Officer checked the box indicating that the Applicant had not submitted new evidence.

[9] The Officer said that the Detention Attestation was not accepted as new evidence since the document could have been provided to the RPD and the Applicant had not explained why he did not do so.

[10] The Officer found that, while the Applicant's parents may have been visited by army intelligence in 2012, there was no indication that any state authorities were still interested in the Applicant. She found that the Applicant does not face a risk under sections 96 or 97 of the Act.

[11] The Officer reviewed the current country documentation and noted that Sri Lanka experiences a number of human rights issues including extortion, disappearances and killings. She acknowledged that the documentary evidence shows the Sri Lankan authorities continue to search for suspected member of the LTTE. However, the Officer found that extortion is not a risk that falls under section 96 or section 97 of the Act.

[12] The Officer found that there was no evidence to indicate that the Applicant is known to the authorities or that he is suspected of being a LTTE member.

[13] Finally, the Officer concluded that she was not persuaded that the Applicant would face more than a mere possibility of persecution because of his ethnicity, or that he would face a risk to his life or a risk of cruel and usual treatment or punishment if returned to Sri Lanka.

[14] The first issue to be addressed is the standard of review. Since a PRRA application involves questions of mixed fact and law and the weighing of evidence, the applicable standard of review is reasonableness; see the decision in *Raza v. Canada (Minister of Citizenship & Immigration)* (2006), 58 Admin. L.R. (4th) 283 (F.C.) at para. 12, aff'd (2007), 370 N.R. 344 (F.C.A.) at para. 3.

[15] The reasonableness standard requires that the decision be justifiable, transparent, intelligible and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 47.

[16] The Applicant advanced several arguments in this application. However, in my opinion, it is not necessary for me to address all the arguments since I am satisfied that the Officer made a reviewable error. The dispositive issue in this application is the burden of proof applied by the Officer in assessing the risk alleged by the Applicant.

[17] Under section 96 of the Act, the claimant must establish a reasonable chance of persecution, which is less than the balance of probabilities; see the decision in *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680. This burden has been described as more than a mere possibility of persecution; see the decision in *Alam v. Canada (Minister of Citizenship and Immigration)* (2005), 41 Imm. L.R. (3d) 263.

[18] In my opinion, the Officer's decision does not meet the standard of reasonableness referred to above. It is unclear whether the Officer applied the correct burden of proof to assess

the Applicant's risk pursuant to section 96 of the Act. Any doubt in that regard will be resolved in favour of the Applicant.

[19] In the result, this application for judicial review is allowed and the matter is remitted to a different Officer for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2784-15

STYLE OF CAUSE: THEEPAN KATHIRKAMANATHAN V. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 16, 2015

REASONS FOR JUDGMENT: HENEGHAN J.

DATED: JULY 11, 2016

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