

Federal Court



Cour fédérale

Date: 20171116

Docket: IMM-4705-16

Citation: 2017 FC 1044

Ottawa, Ontario, November 16, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SRIDER PALANIVELU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Palanivelu challenges the decision of a Senior Immigration Officer refusing his Pre-Removal Risk Assessment [PRRA] application.

[2] Mr. Palanivelu is a 40 year old Tamil male of Indian ethnicity. He was born and raised in Baddula, in the southern central part of Sri Lanka. He is married and the father of three children. He met his wife in 2009, after the end of the civil war, and they were married in 2010. Mr.

Palanivelu and his family lived in Colombo, which is in the southern central part of the country. Before the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD], he testified that he went to visit his wife's family in the northern part of the country in Massar Palai. The RAD decision notes that Mr. Palanivelu stated that the army questioned him four times about his visits to the north and told him that his wife's former husband was a member of the LTTE.

[3] The RAD decision also recounts that Mr. Palanivelu stated that on September 13, 2013, three strangers entered his home and took him to a building a mile from his home, where he was kept until October 17, 2013. He says that during this time he was interrogated three times and beaten by persons claiming to be from army intelligence who accused him of working for the LTTE. His wife arranged for his release on the payment of a ransom.

[4] Mr. Palanivelu says that he had obtained a work permit for the Marshall Islands and a transit visa for the United States in February 2013. He left Sri Lanka on October 26, 2013, and arrived in the USA the same date. On October 31, 2013, he crossed the Canadian border illegally and claimed refugee protection on the risk he faced as a Tamil male with perceived links to the LTTE.

[5] The [RPD] rejected his claim for protection, finding that he was not credible. Moreover, it found that he did not fit the profile of someone who would be of interest to the Sri Lankan authorities upon his return. The RPD examined the "UNHCR, eligibility guidelines for assessing

the international protection needs of asylum-seekers from Sri Lanka, December 21, 2012” and concluded:

The documentary evidence reports that journalists, political opponents, human rights activists, local activists, members of the LGTB community, unmarried women and people suspected of having ties to the LTTE were more likely to be victims of human rights violations.

...

However, the claimant has not demonstrated that he belongs to one of these categories. The claimant is a Tamil from the plantations in the central part of the country. He does not have any political allegiance, has not been a member of the LTTE, does not allege to have supported them in any way, and he did not finance them from abroad. He has also not established, on a balance of probabilities, that he or his wife had any ties, or were suspected of having any ties, with the LTTE.

[6] The finding made regarding suspected ties to the LTTE was based on the RPD’s finding that Mr. Palanivelu’s testimony was not credible and it was not persuaded that his wife was married to a member of the LTTE who was killed by the Sri Lankan army. It also concluded that if Mr. Palanivelu has been harassed by the army because of his wife’s former husband’s alleged ties to the LTTE, then it was unlikely that she would not also have been subjected to such harassment. The evidence before the panel was that she had no difficulties with the authorities.

[7] Mr. Palanivelu appealed that decision to the RAD. He submitted no new evidence with his appeal. The Respondent notes that he did not appeal the RPD’s credibility findings; rather, he argued that “an individual of the Appellant’s profile is objectively at risk of return to Sri Lanka even if the specific claims of the Appellant, related to an allegation that the police suspect him of association with the LTTE, is dismissed as lacking credibility.” An application for leave to review that decision to this Court was dismissed on December 15, 2014.

[8] Counsel for Mr. Palanivelu in the PRRA application summarizes the history recounted above and his claim for protection on “grounds of identity, race (or ethnicity), imputed or perceived political opinion (as potentially having links and/or support and/or membership in the former Liberation Tigers of Tamil Eelam), and membership in a particular social group.” He added that his client’s claim “is now also to be considered a claim sur place as a potential failed Tamil refugee claimant, and ‘returnee’ having resided in a country with a large concentration of Sri Lankan Tamils.”

[9] Mr. Palanivelu filed letters from his wife in Sri Lanka and from a member of parliament for the Jaffna electoral district. These were accepted as new evidence as they post-dated the earlier decisions.

[10] In this application, it is submitted that the Officer erred “by failing to provide a clear evidentiary basis in support of all critical findings related to current country conditions in Sri Lanka facing the applicant and those similarly-situated” and it is further submitted that because the “Officer raised the issue of the applicant’s overall credibility” the Officer should have convoked an oral hearing. In oral submission, counsel stated that the crux of his submissions was the manner in which the Officer dealt with the two letters and his or her failure to properly consider the current profile of Mr. Palanivelu.

[11] For the reasons that follow, I reject Mr. Palanivelu’s submissions.

[12] I agree with the Respondent that Mr. Palanivelu's alleged risk profile that formed the basis of his PRRA application is that he will be seen by the Sri Lankan authorities to have some connection to the LTTE. In that regard, it is of note that his claim to have been harassed, arrested and detained by authorities because of his alleged ties with the LTTE was found by the RPD not to be credible and that finding was not appealed to the RAD.

[13] The RPD further found that the Applicant had not established on the balance of probabilities that his wife was married to a member of the LTTE who was killed by the Sri Lankan army.

[14] With the PRRA application, Mr. Palanivelu submitted a new letter from his wife and a letter from a Parliamentarian from the Jaffna Electoral District. The Officer gave little weight to either document. His assessment of the weight to be given to the letter from the Parliamentarian was largely based on the fact that the writer does not state that he has personal knowledge of the matters set out in his letter. In fact, he does not state the source of the information he provides. In my view, the information must have been provided to the Parliamentarian from others, but he does not say who gave him the information. Furthermore, as the Officer noted, the Parliamentarian does not give the same dates as Mr. Palanivelu's wife does to some of the relevant events he recites. In my view, the Officer's assessment of this letter and the weight he accorded it was reasonable.

[15] The letter from the Mr. Palanivelu's wife was also given little weight. Although she does mention a few specific dates (these are the dates that do not correspond to those given by the

Parliamentarian), she is otherwise vague as to the dates of the events she recites. As an example, she writes that the security forces visited her an additional “four or five times.” The absence of specific information, when it would otherwise be expected to be available and provided, is sufficient, in my view, to justify the Officer giving the letter little weight.

[16] The Officer also observes that both letters are nearly a year old, and “they both say that the security forces threatened the applicant’s wife with ‘consequences’ if she did not comply with their instructions.” The Officer notes that “several documentary sources suggest that family members of those with real or perceived links to the LTTE face harassment, intimidation, and risk of harm from the authorities.” Given that, the Officer says that he or she would anticipate that Mr. Palanivelu would have recent information from his wife describing any subsequent visits and her fears of personal harm. Again, in my view, the Officer’s expectations are not unrealistic and are germane to the issue of the weight to be given to the letters.

[17] Mr. Palanivelu complains that the Officer relied on the fact that the RPD discounted a “similar letter” from his wife, and suggests that this was an improper consideration when examining the letter. However, I note that this statement is made by the Officer after he or she had ascribed little weight to the letter on the grounds stated above. In short, this was only an observation and formed no part of the reason for the decision made to reject the letter. I see no reviewable error here.

[18] The Officer also notes that the wife has an “obvious interest in the outcome of the application” and indicates that this is another reason why her letter is given it little weight. I

agree with the Respondent that this Court has held that an Officer does not have to uncritically accept evidence of interested parties: See *Ferguson v Canada (Minister of Citizenship & Immigration)*, 2008 FC 1067 at para 27. The Court has also held that dismissing evidence solely because a party may be interested is unprincipled: See *Tabatadze v Canada (Minister of Citizenship and Immigration)*, 2016 FC 24 at paras 4-7 and *Delille v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 508 at para 54. In this instance, the Officer did not assign little weight to the letter solely because of the familial relationship and so committed no reviewable error.

[19] In addition to the Officer's risk analysis considering that Mr. Palanivelu failed to establish that there would be a perception of him having a LTTE connection, the Officer also considered whether there was sufficient evidence to show that Mr. Palanivelu would be at risk as a failed asylum seeker. The Officer concluded that Mr. Palanivelu had not submitted sufficient evidence that he would face a risk simply as a result being a Tamil returnee. In this regard, the Officer's analysis was reasonable and was consistent with the same finding made by the RAD. In the absence of any evidence of changed circumstances, the Officer's decision is reasonable.

[20] Mr. Palanivelu lastly submits that the Officer made a veiled credibility finding and thus was required to convoke a hearing.

[21] Having reviewed the decision at length, I am unable to accept that this Officer made any veiled credibility finding relating to Mr. Palanivelu. The Officer arguably did so with respect to the statements made by the wife and Parliamentarian in their respective letters, although even

that is unclear. However, subsection 167(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 specifies that a hearing may be required where “there is evidence that raises a serious question of the applicant’s credibility [emphasis added].” Accordingly, I find that no hearing was required by the Regulations.

[22] Neither party proposed a question for certification, nor is there one on these facts.

JUDGMENT IN IMM-4705-16

THE COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4705-16

STYLE OF CAUSE: SRIDER PALANIVELU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 3, 2017

JUDGMENT AND REASONS: ZINN J.

DATED: NOVEMBER 16, 2017

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