

Federal Court



Cour fédérale

Date: 20180308

Docket: IMM-2475-17

Citation: 2018 FC 274

Ottawa, Ontario, March 8, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RAJA SINNARAJA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Raja Sinnaraja claimed refugee protection in Canada based on his fear of the People's Liberation Organization of Tamil Eelam (PLOTE) in Sri Lanka. PLOTE is a group that opposes the Liberation Tigers of Tamil Eelam (LTTE), of which Mr Sinnaraja's deceased brother was a member.

[2] A panel of the Refugee Protection Division (RPD) dismissed Mr Sinnaraja's claim, primarily on the basis that it did not believe that Mr Sinnaraja's account of his alleged persecution and flight from Sri Lanka was credible. The RPD also found that Mr Sinnaraja did not fit the profile of those who experience persecution in Sri Lanka.

[3] Mr Sinnaraja appealed the RPD's decision to the Refugee Appeal Division (RAD). The RAD dismissed his appeal, finding that the RPD's concerns about his personal credibility and the reliability of his documents had not been allayed.

[4] Mr Sinnaraja submits that the RAD failed to discharge its duty to conduct an independent analysis of the evidence; rather, the RAD simply deferred to the RPD's findings. In addition, Mr Sinnaraja contends that the RAD's treatment of the evidence relating both to his past persecution and the risk of future mistreatment was unreasonable. He asks me to quash the RAD's decision and order another panel to reconsider his refugee claim.

[5] I can find no basis for overturning the RAD's decision. I find that the RAD conducted a sufficiently independent analysis of the evidence and reasonably weighed the evidence supporting Mr Sinnaraja's claim. I must therefore dismiss this application for judicial review.

[6] There are two issues:

1. Did the RAD conduct an independent assessment of the evidence?
2. Were the RAD's factual findings unreasonable?

II. Issue One – Did the RAD conduct an independent assessment of the evidence?

[7] Mr Sinnaraja argues that the RAD's role is to carry out a full, fact-based review or to conduct a hybrid appeal as described in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103. Instead, the RAD deferred to the findings of the RPD without explaining why that deference was merited. For example, the RAD found that it was appropriate for the RPD to scrutinize carefully the evidence about Mr Sinnaraja's departure from Sri Lanka even though that issue was unrelated to the future risk that he will face on his return. The RAD appeared to apply an unduly deferential standard of review, according to Mr Sinnaraja.

[8] I disagree.

[9] While the RAD provided a lengthy summary of the RPD's findings (25 paragraphs), that is not enough on its own to suggest that it was unduly deferential to the RPD. The RAD also outlined the proper principles from *Huruglica*, above, summarized Mr Sinnaraja's grounds for disputing the RPD's conclusions, and laid out fresh findings of fact over the course of 31 paragraphs. Simply because it ultimately agreed in large part with the RPD's findings does not suggest that the RAD applied the wrong standard of review.

III. Issue Two – Were the RAD's factual findings unreasonable?

[10] Mr Sinnaraja points to the RAD's findings in two areas and argues that its conclusions were unreasonable. First, he suggests that the RAD unreasonably discounted the probative value of documentary evidence supporting his claim. Second, he submits that the RAD failed to

recognize the significance of the evidence supporting his claim to be at risk if he returned to Sri Lanka.

[11] I disagree. The RAD provided reasonable and independent explanations for its findings that the documents Mr Sinnaraja provided were unpersuasive, and for its conclusion that there was no more than a mere possibility that Mr Sinnaraja would be at risk on his return to Sri Lanka.

[12] The RAD reviewed three documents Mr Sinnaraja had provided. The first was a death certificate for Mr Sinnaraja's brother who, according to Mr Sinnaraja, died in 1995. However, the certificate was not issued until 2015. Mr Sinnaraja stated that the date on the certificate represents the timing of his request for a copy, not the date of the death. However, the certificate clearly states that February 3, 2015 was the date the death was registered. This confusion was a sufficient basis for the RAD to doubt the authenticity of the death certificate.

[13] Mr Sinnaraja also provided a letter from his mother. The letter provides little information about any persecution Mr Sinnaraja previously endured or what might happen if he returned home. The letter simply states that if Mr Sinnaraja had remained in Sri Lanka, he might have been targeted by PLOTE or the military. However, the letter also says that, although the family worried it would be targeted, nothing happened. In addition, the letter contains an error about the year Mr Sinnaraja's brother died. Similarly, with respect to a letter from Mr Sinnaraja's uncle, the RAD noted that it contained information that contradicted other evidence before it, including

Mr Sinnaraja's own testimony. Again, the RAD's finding that these letters had little probative value was not unreasonable.

[14] Mr Sinnaraja maintains that, as a young Tamil male and a failed asylum seeker from northern Sri Lanka with family ties to the LTTE, he will be detained, questioned, and possibly tortured on his return to Sri Lanka. The RAD's conclusion to the contrary, he suggests, was unreasonable.

[15] The RAD found it unlikely that Mr Sinnaraja's personal circumstances would result in his being targeted on his return to Sri Lanka since he did not have personal ties to the LTTE, and authorities had already allowed him to travel throughout the country and leave Sri Lanka on his own passport. The RAD reviewed the evidence relating to Mr Sinnaraja's profile and the risks facing returnees to Sri Lanka. It found little evidence that Mr Sinnaraja would be singled out, given that neither he nor his other family members had been targeted by PLOTE as a result of a perceived connection, through Mr Sinnaraja's brother, to the LTTE.

[16] The RAD concluded that Mr Sinnaraja might be detained on his return but that this risk did not amount to persecution.

[17] The RAD's conclusion, on a balance of probabilities, that there was no more than a mere possibility that Mr Sinnaraja faced a risk of persecution on his return to Sri Lanka represented a reasonable finding applying the correct test (*Alam v Canada (Minister of Citizenship and Immigration)* 2005 FC 4 at para 8).

IV. Conclusion and Disposition

[18] The RAD arrived at a reasonable conclusion on the evidence before it. In doing so, it did not show excessive deference to the previous findings of the RPD to similar effect. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-2475-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
and no question of general importance is certified.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2475-17

STYLE OF CAUSE: RAJA SINNARAJA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 30, 2017

JUDGMENT AND REASONS: O'REILLY J.

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