Federal Court  Cour fédérale

Date: 20190612

Docket: IMM-4088-18

Citation: 2019 FC 802

Ottawa, Ontario, June 12, 2019

PRESENT: Mr. Justice Bell

BETWEEN:

MELBOURNE EMMANUEL INBAROOBAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application under subsection 72 (1) of the *Immigration and Refugee Protection Act, SC 2001, c. 27* [the *IRPA*] for judicial review of a decision [the Decision] by a Senior Immigration Officer [the Officer] dated June 11, 2018, in which the Officer dismissed the

Applicant's Pre-Removal Risk Assessment [PRRA] application. For the reasons set out below, I dismiss the application for judicial review.

II. Background

[2] The Applicant [Mr. Inbarooban] is a 38-year-old Tamil from Mannar, in Northern Sri Lanka. He is a marine engineer by profession. In and around April 2013, he traveled to Yemen for work purposes. He was to be in Sri Lanka for a two-year work term. In April, 2014 he returned to Sri Lanka for what he describes in his affidavit as a "brief visit to see my wife and family". He never returned to Yemen to complete his contract. Regardless, upon his return to Sri Lanka in April, 2014, the authorities observed the Yemeni stamp on his passport. The authorities then took Mr. Inbarooban in for further questioning. While conducting a search of Mr. Inbarooban's mobile phone and laptop, the authorities discovered some photos of him posing with security guards at the cement factory where he had worked in Yemen. The guards were holding Kalashnikov assault rifles. As a result of the photos, the authorities asserted Mr. Inbarooban had traveled to Yemen to receive terrorist training. Following questioning, Mr. Inbarooban was released.

[3] Mr. Inbarooban contends that in late 2014, on three (3) separate occasions, army intelligence officers visited him at his home. On the first two (2) occasions, he claims to have been interrogated at his home. On the third visit, which occurred in December, 2014, Mr. Inbarooban says the intelligence officers took him to their office in Mannar for interrogation. His computer and mobile telephone were seized. Mr. Inbarooban asserts that on each occasion

the officers questioned him regarding his travel outside of Sri Lanka and stated that he was being investigated for alleged links with the pro-Liberation Tigers of Tamil Eelam [LTTE] diaspora.

[4] At the close of the December 2014 meeting, the intelligence officers informed Mr. Inbarooban they would be monitoring him closely. He was released, unharmed. Following this intervention, Mr. Inbarooban claims he was followed, harassed and threatened. In January, 2015 he fled Sri Lanka with the assistance of a smuggler. He arrived in Canada on February 8, 2015 and immediately claimed refugee protection.

[5] On April 9, 2015, Mr. Inbarooban appeared before the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]. On September 10, 2015, his claim was rejected. The IRB identified major omissions and contradictions between his testimony and the documentary evidence before it. The RPD opined that there was no reasonable explanation for the discrepancies. The RPD did not believe Mr. Inbarooban's claim that he was arrested, interrogated and threatened upon his return to Sri Lanka from Yemen. The RPD concluded there was no evidence which established a link to the LTTE or that the Sri Lankan authorities perceived there to be such a link. In the course of rendering its decision, the RPD also questioned Mr. Inbarooban's assertion that someone had stolen his Sri Lankan passport while in the United States. It doubted this claim given Mr. Inbarooban's extensive travels, the care he had taken to secure his passport in the past and his failure to report the alleged theft or loss to the police.

[6] Mr. Inbarooban's application for leave for judicial review of the RPD Decision was dismissed. He then applied for permanent resident status in Canada on humanitarian and

compassionate grounds. That application and a request for a Visa exemption were also dismissed. Mr. Inbarooban's PRRA application was dismissed on June 11, 2018. A stay of his removal to Sri Lanka was granted on November 14, 2018, pending the hearing of this application for judicial review.

III. The PRRA Decision

[7] The Officer concluded that Mr. Inbarooban had provided insufficient objective evidence which post-dates the decision of the RPD to substantiate the alleged risks. The Officer found he had failed to provide objective evidence to substantiate his assertion that he would be of interest to the Sri Lankan authorities or that he would be subject to lengthy detention upon his return to Sri Lanka. The Officer never expressed any doubt about his potential detention for some questioning upon his eventual return.

[8] The Officer gave no weight to a letter received from Mr. Inbarooban's sister, dated April 6, 2018. The Officer noted that the letter did not contain any evidence to corroborate her statements about alleged mistreatment of returning failed asylum seekers. The Officer also concluded the letter was largely a repetition of that which Mr. Inbarooban had recounted to the RPD. The Officer was concerned about the lack of any information about how the letter was obtained and the fact that it originated from an interested party.

[9] In the course of rendering his decision, the Officer referred to the following characteristics of Mr. Inbarooban's profile:

a. A returning male;

b. Tamil ethnicity;

c. Previously lived in an area of Sri Lanka where the LTTE was active;

d. Is a sole returnee, that is, he is not accompanied;

e. Returning from Canada, a country with a large concentration of Sri Lankan Tamils, as a failed asylum seeker; and

f. Had spent time in Yemen.

[10] The only characteristic of Mr. Inbarooban's profile not mentioned specifically by the Officer is the fact that Mr. Inbarooban claimed his Sri Lankan issued passport had been stolen and will require an externally obtained passport or other identity document in order to re-enter the country. There was some evidence before the Officer that failure to return with an internally issued passport or travel document increases one's risk upon return.

[11] The Officer concluded that the risk faced by Mr. Inbarooban pursuant to either s. 96 or 97 of *IRPA*, reach only that of a mere possibility and that those risks are not personalized to him.

IV. Relevant Provisions

[12] The relevant provisions of the *IRPA* are set out in the Schedule attached to this decision.

V. Issues

[13] While several issues have been raised by Mr. Inbarooban, including that the Officer undertook selective use of country condition evidence and that he accorded no weight to the letter from Mr. Inbarooban's sister, I consider the following issue the most compelling:

> Is the decision unreasonable on the basis the Officer failed to specifically include, as part of Mr. Inbarooban's profile, the assertion that he would be returning to Sri Lanka without an internally issued passport?

VI. Analysis

A. *Standard of Review*

[14] It is well-settled that the standard of reasonableness applies to a PRRA officer's findings of fact, determinations based on mixed fact and law, and consideration of the evidence (*Selduz v. Canada (Citizenship and Immigration)*, 2009 FC 361 at paras. 9-10). Deference is owed to the factual determinations and risk assessments made by a PRRA officer, including the officer's assessment of the weight to be accorded to new evidence adduced in support of a PRRA application (*Aladenika v. Canada (Citizenship and Immigration)*, 2018 FC 528 at para. 11).

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para. 47; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59).

B. *Was the PRRA Decision reasonable?*

[16] At the outset, it is essential to make a few observations about the PRRA process. The PRRA is intended to address the current country conditions of the country to which an applicant will be returned and whether the applicant would face a personalized risk of persecution upon his return. As Justice Mosley so ably stated in *Raza v. Canada (Citizenship and Immigration)*, 2006 FC 1385 (appeal dismissed, *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385):

> [29] The assessment of new risk developments by a PRRA officer requires consideration of sections 96-98 of IRPA. **Sections 96 and 97 require the risk to be personalized in that they require the risk to apply to the specific person making the claim. This is particularly apparent in the context of section 97 which utilizes the word "personally". In the context of section 96, evidence of similarly situated individuals can contribute to a finding that a claimant's fear of persecution is "well-founded".** That being said, the assessment of the risk is only made in the case of a PRAA application on the basis of "new evidence" as described above, where a negative refugee determination has already been made.
>
> [Emphasis added.]

[17] Simply put, "the purpose of the PRRA is to prevent a foreign national whose refugee claim has already been rejected from being required to return to his country of residence or citizenship when the situation has changed in that country and he would be exposed to a risk of persecution" (*Revich v. Canada (Citizenship and Immigration)*, 2005 FC 852 at para. 15). The PRRA must not become a second refugee hearing, nor can it be considered an appeal or reconsideration of the decision of the RPD (*Ponniah v. Canada (Citizenship and Immigration)*, 2013 FC 386 [*Ponniah*] at para. 27; *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] at para. 12. It is meant "to assess new risk developments between the hearing and the removal date" (*Kaybaki v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 32 [*Kaybaki*] at para. 11).

[18] 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).

[19] Mr. Inbarooban contends the Officer ignored counsel's written submissions and the country condition evidence post-dating the RPD decision. I disagree. The Officer stated that the articles post-dating the RPD decision could not be considered new evidence since Mr. Inbarooban failed to explain how they were relevant to his personal circumstances or how they rebut many of the findings made by the RPD. It is well established that one needs more than mere country condition evidence to establish a personalized risk (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para. 29). As noted below in paragraph 23 of my decision, the Officer clearly indicated he read all of the evidence, reviewed country condition documents and took "full consideration [of] the personal circumstances of the applicant".

[20] With respect to the letter from his sister [the Letter], Mr. Inbarooban contends that by affording it no weight, the Officer made a veiled credibility finding which should have triggered on oral hearing pursuant to section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. I disagree. While this Court has held on numerous occasions that evidence should not be rejected merely because it is not at arm's length (*Tabatadze v. Canada (Citizenship and Immigration)*, 2016 FC 24 at paras. 4-6; *Cruz Ugalde v. Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at para. 38), such evidence may be examined for weight before considering its credibility (*Ferguson v. Canada (Citizenship and Immigration)*, 2008 FC

1067 [*Ferguson*] at para. 27; *A.B. v. Canada (Citizenship and Immigration)*, 2018 FC 953 [*A.B.*] at para. 21).

[21] The letter from Mr. Inbarooban's sister is merely a repetition of some of the evidence before the RPD from a person with an interest in the outcome. The decision about the weight, if any, to afford the letter was the Officer's and the Officer's alone. It is not the role of this Court on judicial review to re-evaluate that determination (*A.B.*, at para. 21; *Ferguson*, at para. 33).

[22] I now turn to the issue which I find more challenging on this judicial review application; that is, whether the Officer failed to consider the cumulative profile of Mr. Inbarooban, and, in the event he did not, whether that failure results in an unreasonable decision. The Officer does not mention that Mr. Inbarooban would be returning to Sri Lanka on an externally obtained travel document. This failure has the potential to render the decision unreasonable. However, for the following reasons, in exercising deference to the Officer, I find the decision meets the test of reasonableness.

[23] First, Mr. Inbarooban points to no evidence that would personalize the risk, even if it exists. He says he was interrogated several times in 2014; however, he provides no reports of torture or other conduct by the officials that would amount to persecution. Second, the Officer clearly indicates he read all of the evidence, reviewed country condition documents and has taken "full consideration [of] the personal circumstances of the applicant" before concluding that he does not meet the definition of a Convention Refugee or a person in need of protection. The Officer was alert to the fact that he must consider objective country condition documents and

must not rely exclusively upon negative credibility findings made by the RPD. Third, and quite frankly, most importantly, while the Officer could not rely exclusively on credibility findings by the RPD, it was appropriate for him to consider those credibility findings in his overall assessment of the risk factors (*Dinartes v. Canada (Citizenship and Immigration)*, 2018 FC 986 at para. 17; *Perampalam v. Canada (Citizenship and Immigration)*, 2018 FC 909 at para. 20; *Sani v. Canada (Citizenship and Immigration)*, 2008 FC 913 at para. 23) On this point, it is clear that the RPD did not believe Mr. Inbarooban's testimony regarding the missing passport. In reaching that conclusion, it relied upon Mr. Inbarooban's lengthy history of travel, including his work as a marine engineer, the fact he did not report his passport missing and the ambiguity in his testimony regarding the passport. Mr. Inbarooban offered no new evidence before the Officer on that issue. Importantly, on this issue of the supposedly lost or stolen passport, one reads as follows from Mr. Inbarooban's own declaration:

> I used my own passport up to USA. After that I crossed into Canada without any document. My passport is currently in possession of Canada immigration.
>
> (p. 124, Certified Tribunal Record)
>
> [Emphasis is mine.]

[24] That declaration from Mr. Inbarooban corroborates the concerns of the RPD regarding the location of his passport. I ask rhetorically, "How could it have been lost or stolen if Mr. Inbarooban reports that it is in the hands of Canada Immigration?" Given the observations of the RPD regarding the allegedly missing passport and Mr. Inbarooban's own declaration that the passport existed and was in the hands of Canadian officials, the Officer's failure to specifically mention the supposedly "lost" or "stolen" passport has no impact upon the reasonableness of the decision. Although courts should not substitute their own reasons, they may "look to the record

for the purpose of assessing the reasonableness of the outcome" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para. 15).

[25] I would not disturb the findings of the Officer. In my view, they are reasonable as they fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law". I also find them to be transparent, justified and intelligible. (*Dunsmuir*, at para. 47)

VII. Conclusion

[26] For the foregoing reasons, the within application for judicial review is dismissed without costs. The parties proposed no question of general importance for certification and none arises from the facts of this case. As a result, no question is certified for consideration by the Federal Court of Appeal.

JUDGMENT in IMM-4088-18

THIS COURT'S JUDGMENT is that the within application for judicial review is dismissed without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

ANNEX

Immigration and Refugee Protection Act, S.C. 2001, c. 27	***Loi sur l'immigration et la protection des réfugiés***, L.C. 2001, ch. 27
Convention Refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner
Person in need of protection	**Personne à protéger**
97(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97(1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on	**a)** soit au risque, s'il y a des

substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats

Person in need of protection

(2) A person in Canada who is a member of a class of persons

Personne à protéger

(2) A également qualité de personne à protéger la

prescribed by the regulations as being in need of protection is also a person in need of protection.

personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Consideration of Application

113 Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

Examen de la demande

113 Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

***Immigration and Refugee Protection Regulations*, SOR/2002-227**

Hearing — prescribed factors

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

Règlement sur l'immigration et la protection des réfugiés DORS/2002-227

Facteurs pour la tenue d'une audience

167 Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du

	demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

FEDERAL COURT

SOLICITORS OF RECORD

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