

Federal Court



Cour fédérale

Date: 20190809

Docket: IMM-5112-18

Citation: 2019 FC 1050

Ottawa, Ontario, August 9, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

JAMES ROCHE ALOYSIOUS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] James Roche Aloysious [Mr. Aloysious] entered Canada in October 2010. He claims he departed his native Sri Lanka in December 2007. His approximate three-year (3) journey to Canada took him from Sri Lanka to Singapore, Malaysia, back to Sri Lanka, Dubai, Brazil, Venezuela, Dominican Republic, Turks and Caicos, Bahamas, and the United States of America. There is no record of him ever having claimed asylum in any of those countries. During his

travels, Mr. Aloysious spent nearly a year in immigration detention in the Turks and Caicos and several months of detention in the United States of America.

[2] Mr. Aloysious' claim for refugee status in Canada was dismissed by the Refugee Protection Division [RPD] on November 10, 2011. On March 8, 2012, this Court dismissed his application for leave to seek judicial review of the RPD decision. A warrant for Mr. Aloysious' arrest was issued on October 22, 2012 as a result of his failing to keep the Canadian immigration authorities informed of his address. On August 24, 2015, nearly three (3) years after issuance of the warrant, Mr. Aloysious surrendered himself to Canadian authorities. He was eventually released upon payment of two (2) performance bonds and two (2) cash bonds with terms and conditions. He filed a Pre-Removal Risk Assessment (PRRA) application on November 16, 2015, which was rejected on June 8, 2018.

[3] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [Act], of the June 8, 2018 decision of the Senior Immigration Officer [Officer] rejecting the PRRA.

II. Decision Under Review

[4] The Officer found that Mr. Aloysious would not face more than a mere possibility of risk under any of the Convention grounds as set out in section 96 of the Act. The officer also concluded that Mr. Aloysious would not, on balance of probabilities, face a risk of torture, a risk to life, or a risk of cruel and unusual punishment pursuant to paragraph 97(1)(a) or (b) of the Act. In reaching his decision, the Officer examined all materials before him, including evidence

provided by Mr. Aloysious, as well as recent publicly available documents regarding current country conditions in Sri Lanka.

[5] First, I would note that the Officer considered the complete profile of Mr. Aloysious in assessing risk. That profile included that fact he is a returning single male, failed asylum seeker, from northern Sri Lanka and of the Christian faith. The Officer also considered that Mr. Aloysious is from a village which, during the civil war, was controlled by the government forces but was near hostilities. The Officer also accepted Mr. Aloysious' contention that efforts had been made to recruit him to the side of rebel forces, he had been arrested by security forces while awaiting his father to return from fishing and that security forces enquired of his parents about his whereabouts in September 2012. With respect to the visit by security forces in 2012 the Officer opined:

I note that it is now June of 2018 and over 5.5 years has passed since the applicant's PRRA documents indicate that the Sri Lankan authorities expressed any interest in the applicant. Accordingly, I do not find that the new evidence in the applicant's PRRA materials demonstrates that the applicant would face a personalized, forward-looking risk of harm from the authorities in Sri Lanka.

[6] The Officer also considered Mr. Aloysious' claims that he would be targeted by Sri Lankan authorities by reason of his perceived links to the Liberation Tigers of Tamil Eelam [LTTE]. He had claimed this was one of his reasons for leaving Sri Lanka. The RPD concluded that Mr. Aloysious did not leave Sri Lanka "for the reasons provided". The RPD referred to contradictions between the immigration notes, personal information form, and oral and written evidence as well as "material omissions". On this issue of credibility the Officer deferred to the

RPD in noting that it had heard Mr. Aloysious' testimony and had questioned him "in-depth concerning his claims of risk".

[7] In considering the risk faced by Mr. Aloysious as a returning Tamil from Northern Sri Lanka the Officer acknowledged country condition documents which indicate that individuals of Tamil ethnicity "face pervasive and systemic discrimination in all areas of life in Sri Lanka". He also referred to more recent reports such as the *2017 United Kingdom: Home Office's Country Policy and Information Note – Sri Lanka* which spoke about the new government of President Sirisena which came to office in January 2015. That report referred to "positive developments including: curtailing of executive power, the reestablishment of independent commissions (and in particular the restoration of the legitimacy and independence of Sri Lanka's Human rights Commission) [...]." The Officer also referred to a report from *Freedom in the World 2018 – Sri Lanka* which spoke negatively about the systematic discrimination of Tamils in areas of government employment, university education and access to justice. However, that same report referred to improvements in political rights and civil liberties since the 2015 election of President Sirisena, including the reversal of a number of repressive policies and efforts to repair relations with the ethnic Tamil minority. Other reports considered included the *United States Department of State, 2016 Country Reports on Human rights Practices – Sri Lanka* and the *2017 Compilation on Sri Lanka – Report of the Office of the United Nations High Commissioner for Human Rights*. The latter report spoke about the arbitrary detention and ill-treatment of Tamils who, according to the Officer, were "suspected of having some sort of ties to the LTTE". The Officer, however, accepted the RPD's observation that Mr. Aloysious was not credible in respect of his claim of perceived links to the LTTE.

[8] On numerous occasions in crafting his decision the Officer employed the conditional “would”. For example, he concluded that Mr. Aloysious “would” not face a personalized risk, he “would” not face a forward-looking risk of harm and he “would” not be under suspicion of having ties to the LTTE. I could go on. Suffice it to say that the conditional “would” is found throughout the decision. That said, with respect to the section 96 analysis, the Officer concluded Mr. Aloysious would not face “more than a mere possibility of risk under any of the Convention grounds”. With respect to his conclusion under paragraphs 97(1)(a) and (b), the Officer concluded that Mr. Aloysious would not face “on a balance of probabilities, a risk of torture, a risk to life, or a risk of cruel and unusual punishment [...] were he to return to Sri Lanka”.

III. Relevant Provision

[9] Section 96 and paragraphs 97(1)(a) and (b) of the *Act* are set out in the attached Schedule.

IV. Issues Raised by Mr. Aloysious

[10] Mr. Aloysious contends the Officer erred in two respects. First, he “erred in law through applying a higher standard and considering personalized risk in the test for assessing risk”. Second, he “erred through selectively reviewing country condition evidence”.

V. Analysis

A. *Standard of Review*

[11] Questions of mixed fact and law attract deference (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 51, 53, 164) [*Dunsmuir*]. While the first question posed by Mr. Aloysious purports to raise a unique question of law, I disagree. Placed in the context of a PRRA officer's role and within the context of the facts considered by the Officer in the circumstances, I am satisfied both questions attract a reasonableness standard of review. See, *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 au para 13-14. 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 with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

B. *Alleged error in law through applying a higher standard and considering personalized risk in the test for assessing risk?*

[12] Mr. Aloysious raises several issues under this allegation of error. He effectively contends three reviewable errors arise: a. the Officer applied a standard of proof on a balance of probabilities to both his s. 96 and s. 97 analysis; b. the Officer conflated his s. 96 analysis with his s. 97 analysis; and c. the s. 97 analysis demonstrates an inadequacy of reasons.

[13] First, with respect to the contention that the Officer applied a balance of probabilities test to his s. 96 analysis, I would note that his role is to determine whether an Applicant faces more than a mere possibility of persecution on a Convention ground (*Kunabalasingam v Canada (Citizenship and Immigration)*, 2017 FC 704 at para 20). Mr. Aloysious contends that by concluding he *would* not be at risk upon return to Sri Lanka, the Officer required proof on a

balance of probabilities. I disagree with this assertion. The Officer's decision must be read as a whole. The mere mentioning of terms such as "would face" or "would be perceived" is not an error (*Kunabalasingam* at para 20). The Court should not be focused on details that are designed to encourage court intervention where it is unnecessary. A judicial review is not a "line-by-line treasure hunt for error". A reviewing court must approach the reasons and outcome of a tribunal's decision as an "organic whole" (*Kanhasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909, 2015 SCC 61, at para 138 [Kanhasamy]; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54) when determining whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law as set out in *Dunsmuir*. The concluding paragraph of the reasons, as noted in paragraph 4 above, demonstrates that the Officer was aware of, and applied the correct legal test, as it relates to s. 96 – namely, whether there is more than a mere possibility of persecution on a Convention ground. I would dismiss this ground of review.

[14] Second, Mr. Aloysious contends the use of the words "personalized forward-looking risk" by the Officer demonstrates a conflation of the legal tests under s. 96 and s. 97. There is no doubt that under s. 97 an applicant is required to demonstrate a personalized risk. That risk extends beyond a mere possibility and must be proven on a balance of probabilities. The use of the terms "personally" or "personalized" are not automatically an indication of conflation (*Debnath v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 at para 32; *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419 at para 33; *Mavhiko v. Canada (Citizenship and Immigration)*, 2018 FC 1066 at para 26). I am not satisfied upon reading the reasons in context that the Officer conflated the two (2) tests. His conclusory observation wherein he

properly frames the two tests, demonstrates he was very much aware of the test to be met in each case.

[15] Third, Mr. Aloysious contends that his s. 97 claim should have been assessed separately from the one advanced under s. 96. According to Mr. Aloysious, this error results in reasons which are inadequate and, hence, reviewable. Regrettably for Mr. Aloysious, I again disagree. There is no legal requirement that the s. 96 and s. 97 claims be assessed separately. This is particularly evident where an officer concludes that an applicant's return to his country would not be of interest to the authorities of that country (*Esmailzadeh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1207 at para 23). That is precisely the conclusion reached by the Officer in this case. Furthermore, this court has found that negative credibility findings are sufficient to foreclose a separate analysis under s. 97 (*Canada (Minister of Citizenship and Immigration) v Nwobi*, 2014 FC 520 at para 14; *Cortes v Canada (Citizenship and Immigration)*, 2016 FC 684 at para 30). Recall that in this case credibility was very much an issue.

C. *Alleged error through selective review of country condition evidence*

[16] In making his argument that the Officer was selective in his review of country condition evidence, Mr. Aloysious says the Officer focused on highly optimistic reports and discounted the negative reports. Mr. Aloysious further contends the Officer disregarded his submissions and ignored the Sri Lankan government's reprehensible actions. Once again, I take a different view. As briefly noted in my summary of the Officer's decision, I find the Officer meticulously considered factors weighing in favour of Mr. Aloysious' claim and factors which weighed

against him. The Officer was very frank about the misdeeds of the Sri Lankan government toward people of Tamil ethnicity. The most egregious actions of the Sri Lankan government, according to the Officer, were reserved for those with ties to the LTTE and those who left the country unlawfully. The Officer concluded that Mr. Aloysious failed to establish either applied to him. In fact, he was specifically disbelieved with respect to his allegation of ties to the LTTE. He did not attempt to advance the position that he left the country unlawfully. It is apparent to me that the Officer examined all the evidence before him, including the somewhat dated research reports submitted by Mr. Aloysious. The officer relied upon more recent reports which was open to him (*Pathinathar v Canada (Citizenship and Immigration)*, 2015 FC 1312 at paras 15-17; *Varatharasa v Canada (Citizenship and Immigration)*, 2017 FC 11 at para 20). There is, in my view, no hint of unreasonableness in the approach taken by the Officer toward the country condition evidence.

VI. Conclusion

[17] For these reasons, I dismiss the application for judicial review. The officer's decision falls well within the parameters of reasonableness as set out in *Dunsmuir*. Neither party proposed a question for consideration by the Federal Court of Appeal.

JUDGMENT in IMM-5112-18

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

"B. Richard Bell"

Judge

SCHEDULE

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Convention Refugee

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,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(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

Person in need of protection

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

(a) to a danger, believed on

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

Définition de réfugié

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) 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) 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

Personne à protéger

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) soit au risque, s'il y a

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

des 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 themselves 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

Personne à protéger

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

(2) A également qualité de personne à protéger la

persons 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.

FEDERAL COURT
SOLICITORS OF RECORD

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