

Federal Court



Cour fédérale

Date: 20210723

Docket: IMM-4460-20

Citation: 2021 FC 784

Ottawa, Ontario, July 23, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**DON OSANDA BUDDHIKA
HIRIMUTHUGODA**

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Don Osanda Buddhika Hirimuthugoda, is a Sri Lankan citizen. He reports fearing persecution in Sri Lanka at the hands of the Sri Lankan Terrorism Investigation Division, the military, the police, and Buddhist extremists. He alleges that, because of his friendship with

two individuals who are perceived Liberation Tigers of Tamil Eelam [LTTE] supporters, these groups believe he supports the LTTE.

[2] Finding significant omissions and inconsistencies in the Applicant's narrative, the Refugee Protection Division [RPD] found the Applicant generally lacking in credibility and denied the claim. Finding the determinative issue to be credibility, the Refugee Appeal Division [RAD] dismissed the Applicant's appeal finding the claim of persecution in Sri Lanka was not credible.

[3] The Applicant now applies pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of the RAD decision. Two issues arise on the Application:

- A. Did the RAD err in assessing the Applicant's credibility, including his subjective fear, by engaging in a microscopic and selective examination of the evidence?
- B. Did the RAD err by failing to recognize the Applicant's *sur place* claim and the risk faced as a returnee to Sri Lanka due to his past perceived association with the LTTE?

[4] Having carefully considered the written and oral submissions of the parties, I am unable to conclude that the Court's intervention is warranted. For the reasons that follow, I am of the opinion that the RAD's credibility findings are reasonable and determinative. I am also of the view that the RAD did not err in relying on its credibility finding when considering the *sur place* claim and that the RAD's consideration and assessment of the *sur place* claim was reasonable.

II. Standard of Review

[5] The reviewing Court presumptively applies the reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). In this case none of the reasons identified in *Vavilov* that might warrant a departure from the presumptive standard are present (paras 33, 53). The RAD's evaluations of credibility and the *sur place* claim are issues that I will review on the reasonableness standard (*Mohamed v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1145 at paras 6-7; *Chen v Canada (Minister of Citizenship and Immigration)*, 2020 FC 907 at para 4).

[6] A party challenging a decision subject to the reasonableness standard has the burden of showing the decision is unreasonable. To discharge that burden it must be demonstrated that the shortcomings are more than superficial or peripheral to the merits of the decision. The shortcomings must be such that they undermine the required degree of justification, intelligibility, and transparency in relation to both the decision-maker's reasoning and the ultimate outcome, having regard to the facts and the applicable law (*Vavilov* at paras 100, 102, 105).

III. Analysis

A. *The RAD did not engage in a microscopic and selective examination of the evidence*

[7] The Applicant takes issue with a series of the RAD's negative credibility findings as they relate to key incidents detailed in the Applicant's narrative in support of his claim. He submits

the RAD's negative credibility findings are the result of a microscopic and unreasonable focus on the details of the narrative. He further submits the RAD unreasonably required he provide corroborative documentary evidence in the form of a police report, and unreasonably discounted the documentary evidence submitted. Finally, he argues the RAD's re-availment findings are unreasonable.

[8] Contrary to the submissions of the Applicant, many of the omissions and inconsistencies identified by the RAD are neither minor nor microscopic. They related to the very incidents the Applicant relied upon in advancing his claim. They involved significant details including the nature of the injuries received from a number of beatings the Applicant reportedly suffered at the hands of different agents of persecution. Among the inconsistencies identified and addressed by the RAD was the evidence in relation to the nature of the injuries received, the medical treatment if any the Applicant subsequently sought, and who provided that medical care.

[9] The RAD also considered the Applicant's frequent returns to Sri-Lanka and the length of those visits finding them to be indicative of a lack of subjective fear, a factor that the RAD found undermined the Applicant's credibility. The RAD addressed each period of re-availment and detailed its concerns in each instance. The RAD addressed the argument that frequent re-availments occurred because the Applicant's fear only arose after his final return in 2017, noting the argument was inconsistent with the evidence given before the RPD - the Applicant had testified he feared returning to Sri-Lanka during a previous period of re-availment in 2016.

[10] The RAD's underlying analysis and the conclusion in respect of the issue of re-availment are justified, transparent, and intelligible.

[11] I accept the Applicant's argument that a number of the inconsistencies highlighted by the RAD are minor and do not, on their own, justify a negative credibility finding. However, this is of little assistance to the Applicant. The RAD was under no obligation to consider the many inconsistencies and omissions in isolation. The RAD was entitled to consider and rely on the accumulation of inconsistencies, contradictions, and omissions in making its credibility finding (*Lawani v Canada (Minister of Citizenship and Immigration)*, 2018 FC 924 at para 22 [*Lawani*]). In addition, the RAD was able to consider the Applicant's frequent returns to Sri-Lanka and his evolving explanation for not claiming protection in the United States. The RAD's reasons comprehensively address each of the inconsistencies of concern, detail the reasons for the concern, and speak to the Applicant's explanation for the inconsistency, if any. The RAD's credibility findings are reasonable.

[12] Having reasonably concluded the Applicant was not credible, it was open to the RAD to require corroborative documentary evidence and to discount the weight to be given to the documentary evidence presented. This Court has previously clarified that "a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim...and be generalized to all of the documentary evidence presented to corroborate a version of the facts" (*Lawani* at para 24).

B. *The RAD did not err in assessing the Applicant's sur place claim*

[13] In assessing, the *sur place* claim the RAD reviewed the documentary evidence and detailed the profile of those who may be at risk. The RAD noted that the Applicant was not a Tamil, was never a member of the LTTE, had not participated in protests or activities related to the LTTE, and was not credibly involved or associated with anyone in the Tamil diaspora. The RAD also noted the Applicant's history of frequent travel in and out of Sri Lanka without difficulty as indicating that he was not on a stop or watch list.

[14] The RAD concluded that not all failed refugee returnees are targeted by Sri Lankan authorities. Instead, the targeting of returnees was dependent upon their profile and whether an individual's past or present activities would be perceived as threatening to the State. The RAD found the Applicant did not meet this profile.

[15] The RAD's negative credibility findings were available to it in considering the *sur place* aspect of the claim including the assessment of the Applicant's profile (*Zheng v Canada (Minister of Citizenship and Immigration)*, 2019 FC 904 at para 25; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2016 FC 765 at para 36; *Sanaei v Canada (Minister of Citizenship and Immigration)*, 2014 FC 402 at para 55; *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at para 27) .

[16] Having reasonably found the Applicant not to be credible, it was also reasonably open to the RAD to conclude the Applicant did not face a serious possibility of detention or other abuses

that documentary evidence indicates some returnees and failed refugee claimants face in Sri Lanka.

IV. Conclusion

[17] The RAD's decision is reasonable. The Application is dismissed.

[18] The parties have not identified a question of general importance for consideration, and none arises.

JUDGMENT IN IMM-4460-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4460-20

STYLE OF CAUSE: DON OSANDA BUDDHIKA HIRIMUTHUGODA v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: GLEESON J.

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