

Federal Court



Cour fédérale

Date: 20220210

Docket: IMM-6642-20

Citation: 2022 FC 171

Ottawa, Ontario, February 10, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

NAHINTHAN NADARAJAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a pre-removal risk assessment [PRRA] by a Senior Immigration Officer of Immigration, Refugees, and Citizenship Canada [the “Officer”], dated November 6, 2020 [the “Decision”], pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”].

II. Background

[2] The Applicant, Nahinthan Nadarajah, is a 49-year-old male citizen of Sri Lanka. The Applicant most recently arrived in Canada in September 2006. The Applicant was previously recognized as a Convention refugee from 1991 to 2014. The Applicant was also granted permanent resident status in 1993; however, this status was lost in 2005 as a result of the Applicant returning to Sri Lanka in 1999.

[3] The Applicant applied for a PRRA on April 19, 2017. The PRRA was refused and he sought a judicial review. His application was sent back to redetermination. On redetermination, the PRRA was refused a second time in the Decision. The present Application is for a judicial review of the redetermination Decision of the PRRA.

[4] The Applicant sought protection in Canada based on his fear of being detained, tortured, and subjected to cruel and unusual punishment by the Sri Lankan authorities because they have a record of him being connected to the Liberation Tigers of Tamil Eelam [LTTE] militant separatist group.

[5] The Officer rejected the Applicant's PRRA in the Decision, dated November 6, 2020. The Applicant seeks an Order setting aside the Decision and remitting the matter for reconsideration by a different immigration officer.

III. Decision Under Review

[6] The Officer found that the Applicant had failed to meet the requirements of sections 96 and 97 of the *Act* in that there was insufficient evidence to elaborate or corroborate:

- i. That the Sri Lankan authorities have a record of the Applicant as associated with the LTTE.
- ii. That the Applicant was threatened and pursued by armed men several times and that he was interrogated by the police regarding his affiliation with the LTTE, which led to the filing of a complaint with the Human Rights Commission of Sri Lanka in 2006.
- iii. That the Applicant would face cruel and unusual treatment similar to his friend (with whom he shared property and a business), who was detained for three and a half years and subject to fifteen hearings due to allegations he was associated with the LTTE in 2010.
- iv. That the Applicant fit the profile (*i.e.* young to middle-aged Tamil man from the northern and eastern areas of Sri Lanka, who is returning to Sri Lanka, and may have connections to the LTTE) that would subject him to a risk of persecutory treatment, harassment, and intimidation by the Sri Lankan authorities.

[7] The Officer acknowledged the Applicant's immigration history, including a successful refugee claim in 1991, and threats to his life and interrogation in 2006. However, they did not

find that these historical events indicated a future risk for the Applicant pursuant to sections 96 and 97 of the *Act* if he were to return to Sri Lanka.

[8] In addition, the Officer acknowledged that the situation in Sri Lanka “is not perfect”, however, since they had found the Applicant did not fit the aforementioned risk profile, they were not obligated to refer to documentary evidence that refers to such risks.

[9] Further, having considered all of the documentary evidence, the Officer acknowledged that persons suspected of having ties to the LTTE continue to be at risk of ill treatment by the Sri Lankan authorities. However, they found insufficient evidence to indicate that, on a balance of probabilities, the Applicant was or will be suspected as an LTTE supporter; that the Applicant faces a risk of persecution by reason of his Tamil ethnicity or origins from the northern region of Sri Lanka; or to corroborate his fears of returning to Sri Lanka as evidenced by the past incidents experienced by himself and his friend.

IV. Issues

[10] The issue is whether the Officer’s Decision was reasonable.

V. Standard of Review

[11] The standard of review is that of reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

[12] A PRRA application involves a factual evaluation of submissions and evidence presented to a PRRA officer by an applicant. The onus is on the Applicant, who is seeking protection, to elaborate on the risks advanced or to provide documentary evidence to corroborate their stated fears of returning to their country of origin.

[13] A decision-maker can only require corroborative evidence if: 1) the decision-maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony, or the fact that a large portion of the claim is based on hearsay; and 2) the evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it [*Senadheerage v. Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 36].

[14] The Applicant argues three key issues in challenging the Officer's Decision:

- i. The Officer erred by ignoring and mischaracterizing the evidence before them;
- ii. The Officer erred by making unreasonable, perverse, and arbitrary conclusions;
and
- iii. The Officer erred by conducting a selective assessment of the Applicant's risk profile and the adverse country conditions.

[15] The Respondent's position is that the Decision is reasonable and that the Officer did not err as claimed by the Applicant. I disagree.

[16] Nowhere in the Decision does the Officer provide an independent reason for requiring corroboration for the Applicant's claims. At no time does the Officer question the Applicant's credibility or the plausibility of the testimony.

[17] On the contrary, there are several instances where the Officer accepts the evidence placed before them but then finds there is insufficient documentary evidence to corroborate it. In addition, there are several instances where the Officer appears to selectively analyze the evidence before them. For example:

- i. The Officer accepted the Applicant's account of events that took place in May 2006, including his arrest, detention, and interrogation due to his employees' suspected connections to the LTTE. The Officer found the Applicant's release significant, yet did not note that the police told the Applicant to leave the country or this perceived connection between the Applicant and the LTTE.
- ii. The Officer noted the letter from the Human Rights Commission of Sri Lanka, which corroborates the events of 2006 where the Applicant is threatened and pursued by armed men, yet finds it insufficient since it does not speak to any action taken by the Commission – the Officer appears to reject the letter for what it does not say and ignores what relevant evidence it does include.

- iii. The Officer acknowledges that letters from the Applicant's family confirm the history of incidents faced by the Applicant, yet finds them insufficient in detail of possible future events.
- iv. The Officer accepted the Applicant's evidence of his friend and former business partner's arrest, detention, and torture for suspected links to the LTTE, yet found that there was insufficient evidence to demonstrate a connection between the Applicant and his friend's alleged connection to the LTTE.

[18] It is trite law that broad statements about insufficiency cannot stand and findings of insufficiency must be explained. The Officer's overall assessment of the documentary evidence is, in essence, an assertion that the Applicant had provided insufficient evidence of his perceived association to the LTTE, despite the Officer's acceptance of the Applicant's account of the events and the absence of issues of credibility. The Officer diminishes the evidence of the Applicant's well-founded fear of persecution without a reasonable foundation to do so, based on insufficiency, which the Officer "blurs" with implicit credibility concerns.

[19] In regards to the Officer's assessment of the country conditions evidence and Applicant's risk profile, the Officer again concluded that there was "insufficient evidence to indicate that the applicant fits or could be perceived to fit the profiles of the aforementioned risk profiles."

[20] The Officer does cite several documents in support of his conclusion; however, he appears to ignore the evidence put forward by the Applicant showing the contrary. The Officer does not address the contradictions between the conflicting documents or provide any

explanation if they are putting more weight on one set of evidence. While the Officer is entitled to perform their own research, they are expected to do so fairly and with current evidence. The Officer appeared to selectively rely on certain documents without reference to the more recent evidence of country conditions put forward by the Applicant.

[21] The Officer relies on *Fernando v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1349 [*Fernando*] for the proposition that, if they find the Applicant to not fit the risk profile, then they are not required to analyze the documentary evidence before them on that point. However, the *Fernando* decision held that, if an Applicant is found to lack credibility, then an assessment of the documentary evidence may not be required, depending on the nature of the evidence and its relationship to the claim (at paragraphs 25 to 35). As stated above, the Officer does not raise any issues of credibility in their Decision. On these facts, they should have assessed the documentary evidence before them and failed to do so.

[22] I further note that the risk profile that the Applicant is alleged to not fit or perceive to fit is that of a young to middle-aged male of the northern or eastern regions of Sri Lanka, who is returning to Sri Lanka following a failed refugee claim associated with perceived connections to the LTTE. The Applicant objectively fits every aspect of this profile – a profile that the Officer explicitly accepted as having been subject to persecutory treatment. The finding that there is insufficient evidence to support that the Applicant does fit this profile is unreasonable.

VII. Conclusion

[23] For the reasons above, this Application is allowed.

JUDGMENT in IMM-6642-20

THIS COURT'S JUDGMENT is that

1. The Application is allowed and the matter is remitted to a different officer for redetermination.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6642-20

STYLE OF CAUSE: NAHINTHAN NADARAJAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 8, 2022

JUDGMENT AND REASONS: MANSON J.

DATED: FEBRUARY 10, 2022

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