Federal Court  Cour fédérale

Date: 20231106

Docket: IMM-11023-22

Citation: 2023 FC 1476

Toronto, Ontario, November 6, 2023

PRESENT: Madam Justice Go

BETWEEN:

GOWRISHANKAR THIYAGESWARAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Gowrishankar Thiyageswaran [Applicant] is a 38 year-old Tamil from eastern Sri Lanka. He entered Canada in November 2014 and made a refugee claim alleging risk of persecution at the hands of Sri Lankan authorities due in part to his perceived association with the Liberation Tigers of Eelam [LTTE].

[2] On April 18, 2016, the Refugee Protection Division [RPD] refused the Applicant's claim on a finding of negative credibility. On July 13, 2016, the Refugee Appeal Division [RAD] agreed with the RPD's findings and dismissed the Applicant's appeal.

[3] The Applicant was invited to submit a Pre-Removal Risk Assessment [PRRA] under subsection 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, which he did in December 2021. The Applicant's PRRA application was first refused on April 7, 2022. Due to an administrative error, the file was reopened and the Applicant provided further submissions in August 2022. On September 27, 2022, a PRRA Officer [Officer] rejected the Applicant's PRRA, finding that the Applicant presents insufficient evidence to support his allegations that he is at risk in returning to Sri Lanka [Decision].

[4] The Applicant seeks judicial review of the Decision. I grant the application based on the reasons set out below.

II. Issues and Standard of Review

[5] The Applicant raises the following issues:

a. The Officer erred in finding that the Applicant restated the same risks assessed at the RPD;

b. The Officer made an incoherent finding with respect to the evidence being accepted into consideration;

c. The Officer erred in the treatment of the Applicant's supporting personal evidence;

d. The Officer ignored relevant evidence regarding the Applicant's departure from Sri Lanka; and

e. The Officer's determination that the country conditions evidence was generalized was unreasonable

[6] The parties agree that the standard of review in this case is reasonableness, as per *Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65* [*Vavilov*].

[7] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov* at para 100.

III. Analysis

[8] I find the Decision unreasonable for three separate, yet related, reasons. First, the Officer erred in finding that the Applicant's PRRA was based on the same risks assessed by the RPD. Second, the Officer's determination that the country conditions evidence was generalized and not personal to the Applicant was unreasonable. Third, the Officer's treatment of the Applicant's supporting personal evidence was unreasonable.

[9] To start, the Applicant submits that the risks assessed by the RPD involved the Applicant's history of personal detention, first during the war and then because he assisted people to complete forms with the United Nations regarding their disappeared family members.

The Applicant argues that the risks he identifies in his PRRA application are unrelated to those that were before the RPD. In the PPRA application, the Applicant submitted that he faces a new risk due to his brother's activities in the Tamil diaspora and a police investigation into his perceived association with those activities. The Applicant only became aware of the police investigation in 2017. As such, the Applicant submits this is a *sur place* risk that arose after the determination of his refugee claim and was not assessed by the RPD or RAD.

[10] Having reviewed the record and the Decision, I agree with the Applicant.

[11] In his PRRA submissions, the Applicant identified his brother's political activism in France and involvement in the Tamil diaspora as a new risk because it resulted in the Applicant's perceived association with his brother's activities and the LTTE. The Applicant submitted that his brother is the head of the political department for the Association Culturelle Franco-Tamouls Des Yvelines, a position he has held since 2015. The Applicant stated that he did not provide this information at his original refugee claim hearing because it was unavailable to him at the time. The Applicant also submitted that his brother had travelled to Canada, as part of his activism, and stayed with the Applicant on three occasions in 2017, 2018, and 2019 respectively.

[12] The Officer determined that the circumstances surrounding the brother's activities did not amount to a new risk that was personal to the Applicant.

[13] In my view, the Officer came to this conclusion based on their failure to engage with the country conditions evidence submitted by the Applicant, and on their unreasonable treatment of the personal evidence submitted by the Applicant.

[14] As the Officer explained:

> While I note that this post-dates the board's decision, the circumstances surrounding his brother's activities in itself, does not demonstrate a risk that is personal to the applicant. The relevance of this information to the applicant's personal circumstances has not been established. I do not find this information to be evidence of a new risk development which is personal to the applicant and which has arisen since the board's decision.

[15] Further, after finding that the information about the brother not to be evidence of a new risk personal to the Applicant, the Officer went on to find:

> Counsel has provided a plethora of submissions in regards to country conditions in Sri Lanka. While I will not name each and every document that has been presented …. I find that this material is generalized and while I have considered it in the context of assessing country conditions, I do not find it to be evidence of any risk developments which are personalized to the applicant and does not address the material elements of the applicant's personal circumstances. This material does not support the applicant's allegation that he is at risk in Sri Lanka. Moreover, the applicant does not provide sufficient objective evidence that he is currently being threatened by anyone.

[16] I note, however, the country conditions evidence submitted by the Applicant's former counsel includes objective evidence of monitoring of the Sri Lankan Diaspora by Sri Lankan authorities. As noted in the Responses to Information Requests – Immigration and Refugee Board of Canada on Sri Lanka: Situation and treatment of returnees, including failed asylum seekers (2020-March 2022) [RIR], under item 3.1 Treatment of the Diaspora:

> Human Rights Watch (HRW) states that in February 2021, the government published a list "proscribing several 'terrorist organizations' and naming "several hundred individuals as "terrorists'," which included diaspora groups advocating at the UN Human Rights Council and Tamil activists in the diaspora (HRW 7 Feb. 2022, 7). In an interview with the Research Directorate, an analyst covering Sri Lanka with International Crisis Group, speaking on their own behalf, stated the government organizations "regularly" denounce Tamil diaspora organizations as fronts for the Liberation Tigers of Tamil Eelam (LTTE) (Analyst 24 Mar. 2022).

[17] The RIR also notes that the Sri Lankan government perceives "political activities" by members of the Tamil diaspora as a "primary threat" to "territorial integrity and national security" and that since 2019 there is a "new trend" of "mapping the extended family network of Tamils" leading to the questioning of family members of ex-LTTE members living abroad, on the same day in different parts of Sri Lanka, about their relationships to them. Finally, the RIR notes a "concerted surveillance effort" within the country and at diaspora events around the world, and an increase in more sophisticated intelligence operations abroad. The Officer did not refer to the above-quoted country conditions evidence in the Decision, let alone considered it as part of their assessment of the Applicant's claim.

[18] The Respondent submits that the case hinges on whether the Officer's assessment of evidence with respect to the Applicant's *sur place* profile was reasonable and the Officer reasonably found insufficient evidence that the Applicant's profile has changed since he left Sri Lanka. I disagree.

[19] The Officer did not engage with the above noted country conditions evidence, nor did they engage with the Applicant's own submission on the relevance of the evidence regarding his

brother to the Applicant's personal circumstances, in that he now faces risks due to his brother's activities and his perceived association with those activities. The Officer's failure to engage with the Applicant's submission and the objective evidence as noted above rendered the Decision unreasonable.

[20] Similarly, the Officer relied on an unreasonable treatment of certain personal evidence to conclude that the Applicant did not submit evidence of a new risk, which is personal to the Applicant.

[21] Among other things, the Applicant submitted letters from his wife and father alleging multiple police visits to the family home, seeking the Applicant for questioning and inquiring about his and his brother's pro-LTTE activities in the diaspora. The Applicant also submitted messages left by the police stating that the Applicant must report for questioning.

[22] In his letter, the Applicant's father recounted visits from the Sri Lankan police and intelligence questioning about his sons' activities in France and Canada. The Applicant's father alleged that the official was accusing the Applicant and his brother in France of "working along with Tamil diasporas to bring back the LTTE organization in Sri Lanka."

[23] In rejecting the personal evidence, the Officer observed that the letters from the family did not reflect new evidence and that the authors of these letters "are not an unbiased source disinterested in the outcome of the present application." The Officer further found that the information was unsubstantiated and not verifiable.

[24] I agree with the Applicant that the Officer's rejection of the family letters on grounds of partiality is a reviewable error.

[25] As noted by Justice Grammond in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*]:

> [44] Immigration decision-makers have on a number of occasions discounted evidence provided by members of the family of an applicant, for the sole reason that these persons, having an interest in the well-being of the applicant, would have a propensity to make false statements. This Court has repeatedly held that this is unreasonable. In doing so, the Court has shown its awareness of the challenges of obtaining evidence of persecution. In the vast majority of cases, the family and friends of the applicant are the main, if not the only first-hand witnesses of past incidents of persecution. If their evidence is presumed to be unreliable from the outset, many real cases of persecution will be hard, if not impossible to prove. Thus, while decision-makers are allowed to take self-interest into account when assessing such statements, this Court has often held that it is a reviewable error to dismiss entirely such evidence for the sole reason that it is self-interested. In *Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 28, Justice Yves de Montigny (now of the Federal Court of Appeal) wrote:
>
> > […] I do not believe it was reasonable for the Officer to award this evidence low probative value simply because it came from the Applicants' family members. Presumably, the Officer would have preferred letters written by individuals who had no ties to the Applicants and who were not invested in the Applicants' well-being. However, it is not reasonable to expect that anyone unconnected to the Applicants would have been able to furnish this kind of evidence regarding what had happened to the Applicants in Mexico. The Applicants' family members were the individuals who observed their alleged persecution, so these family members are the people best-positioned to give evidence relating to those events. In addition, since the family members were themselves targeted after the Applicants' departure, it is appropriate that they offer first-hand descriptions of the events that they experienced. Therefore, it was unreasonable of the Officer to distrust this evidence simply because it came from individuals connected to the Applicants.

[26] I acknowledge, as the Respondent submits, that it was open to the Officer to take into consideration that the unsworn evidence derives from a close family member who may have an interest in the outcome. However, the cases cited by the Respondent involve situations where the statements provided by family members were not supported by any corroborative evidence. In this case, the Applicant's family members tendered corroborative evidence in the form of police messages which could support giving their letters more weight: *Atafo v Canada (Citizenship and Immigration),* 2022 FC 922, at para 19 and *Pathmaraj v Canada (Citizenship and Immigration),* 2016 FC 1273, at para 11.

[27] Instead of assessing weight to ascribe to the letters in light of the corroborative evidence, the Officer assessed the evidence in silo and engaged in circular reasoning by discounting letters from the Applicant's family members, while requiring corroboration of the police messages because the police messages lacked details contained in the discounted letters.

[28] The Officer's error is further compounded by erroneously finding that the police messages did not explain why the Applicant had to report to the police. The missing explanations are found in the letter from the Applicant's wife, which states: "[the police] said that they know that he is in Canada now and working along with Tamil and pro-LTTE Tamil diaspora and that he was against the Sri Lankan government."

[29] Further, as the Applicant submits, there is no evidence before the Officer that police messages in Sri Lank should include details such as the reasons for the visits. By rejecting the evidence for what it did not say, the Officer erred.

[30] The Respondent points to some of the passages in the family letters that contain allegations already rejected by the RPD, and argues that it was up to the Officer to give the letters minimum weight on that basis. I reject this argument as it was not the reason offered by the Officer to discount the personal evidence.

[31] In sum, the Officer erred by rejecting the letters solely because their authors have an interest in the well-being of the applicant without considering the letters in light of the corroborative evidence: *Magonza*, at para 44. As such, the Decision must be set aside.

IV. Conclusion

[32] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[33] There is no question for certification.

JUDGMENT in IMM-11023-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision-maker.
3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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