

Federal Court



Cour fédérale

Date: 20150415

Docket: IMM-7908-13

Citation: 2015 FC 470

Montréal, Quebec, April 15, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

RAJMOHAN MAHALINGAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) of the November 27, 2013 decision (the decision) of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, wherein the RPD determined that the applicant is not a convention refugee and is not a person in need of protection pursuant to section 96 and paragraphs 97(1)(a) and (b) of the *IRPA*.

II. Facts

[2] The applicant is a Tamil from the north of Sri Lanka. He came to Canada on June 30, 2010.

[3] The applicant alleges that as a young Tamil he was often detained and harassed by the army, as he is from the town of Uduppiddy. This area was under surveillance due to its proximity to where the leader of the Liberation Tigers of Tamil Eelam (LTTE) was from.

[4] In 2009, the army discovered weapons buried in the house next to the applicant's place of residence. As a result, the applicant was arrested along with other young male Tamils. During his detention, the applicant was beaten with guns and interrogated about his alleged support for the LTTE. He was released five days later after his father paid a bribe.

[5] In January 2010, the applicant was arrested at an army checkpoint as he was suspected of being an LTTE supporter. He was beaten and asked to identify LTTE members and supporters shown in photographs. He answered that he did not recognize them. He was then put in front of a masked man who was instructed to nod if he recognized anyone associated with the LTTE. The masked man did not recognize him. The applicant alleges that, upon his release the following day, the army warned him that should he be arrested again he would be killed.

[6] It was at this point that the applicant decided to leave Sri Lanka. In February 2010, the applicant hid in a lodge in the city of Colombo. During his second day in Colombo, he was

warned by a group of people in a white van that he must leave Colombo or he would be sent to a detention camp.

[7] The applicant left Sri Lanka on March 4, 2010, and came to Canada on June 30, 2010, using a genuine passport obtained in Colombo. The applicant alleges that an agent helped him obtain a passport and told him which counter to go to at the airport to be able to leave Sri Lanka.

III. Decision

[8] The RPD considered that the applicant did not have a well-founded fear of persecution if he were to return to Sri Lanka for the following reasons:

1. The country documentation reveals that the situation is improving for Tamils in Sri Lanka who are not suspected of having links with the LTTE.
2. Though the country documentation paints a confusing picture as to who is at risk and why, the documents supplied by the United Nations High Commissioner for Refugees (UNHCR) are preferable.
3. One UNHRC document indicates that individuals with certain profiles are still at risk, but the applicant fits none of these profiles.
4. The applicant did not provide any persuasive evidence that he would be perceived to be a supporter of the LTTE. Though the applicant was detained twice, he was released the first time after five days upon the payment of a bribe, and the second time after one day after a state informant failed to identify him as an LTTE supporter. If the applicant had been perceived as an LTTE supporter, he would not have been released. Moreover, the applicant was also allowed to pass through checkpoints on his way to Colombo.

5. The fact that the applicant's brother was a successful refugee claimant in Canada would not be a factor in the Sri Lankan authorities forming the belief that the applicant is an LTTE in the absence of any evidence that his brother was himself associated with the LTTE.
6. If the applicant had been wanted by the Sri Lankan authorities, he would not have been able to obtain an authentic passport and leave Sri Lanka, even with the help of an agent/smuggler.
7. The people in a white van who allegedly warned the applicant to leave Sri Lanka when he was in Colombo are unknown and their intentions were unclear.
8. It is implausible that the army would have looked for the applicant five times, as he alleges. They know that he had left the country since he used his own genuine passport. Moreover, there is no indication that the army has threatened or harmed the applicant's family since he left the country.
9. The UNHCR does not consider a failed asylum claimant returning from abroad to be at particular risk.
10. Documentation by the United Kingdom Border Agency indicates that more sophisticated record keeping in Sri Lanka substantially reduces the risk that a person of no real interest for the authorities will be arrested or detained.
11. The documentation indicates that, though the applicant will be subject to controls by the authorities upon his return to Sri Lanka, they are mainly seeking information about human trafficking and smuggling. Returnees are interviewed at the airport, and criminal background checks are done, but there is insufficient evidence that the applicant would be subjected to mistreatments due to his particular profile.

IV. Issue

[9] This matter raises the following issue:

1. Did the RPD err in concluding that the applicant does not have a well-founded fear of persecution?

V. Analysis

A. *Standard of review*

[10] The present case turns on the appreciation of the evidence which is reviewable on the standard of reasonableness (*Balasubramaniam v Canada (Citizenship and Immigration)*, 2013 FC 698 at para 24 (*Balasubramaniam*)).

B. *The well-founded fear of persecution*

[11] The applicant argues that the RPD “erred in law in its conclusion that the [a]pplicant’s release from detention showed that the authorities did not suspect him to be associated with the LTTE.” The applicant argues that this conclusion ignores the documentary evidence. Though there is documentation indicating that bribery is a typical manner of escaping detention in Sri Lanka, I note that there is no indication that the applicant’s second release from detention was the result of a bribe. I am not prepared to conclude that the RPD failed to appreciate the evidence on this issue, as argued by the applicant.

[12] The applicant argues that it was unreasonable for the RPD to draw an inference from the fact that the applicant could leave his country using his own passport with the help of an agent. In my view, such an inference was reasonable and open to the RPD (*Zeng v Canada (Citizenship and Immigration)*, 2014 FC 1060 at para 11).

[13] The applicant argues that the RPD erred in law in concluding that the authorities did not target him since he was released from detention twice and was subsequently allowed to go through checkpoints. To support his argument, the applicant refers to Justice Barnes' decision in *Rayappu v Canada (Citizenship and Immigration)*, October 24, 2012, Docket: IMM-8712-11 (unreported) (*Rayappu*), which concluded that such an assessment of the evidence was overly simplistic. The respondent argues that *Rayappu* is distinguishable on the facts. I agree with the respondent. Mr. Rayappu's second detention "culminated in the theft of a considerable sum of money (ostensibly being carried by Mr. Rayappu on behalf of the [LTTE])." Because of this association with the LTTE, Mr. Rayappu was likely to face persecution upon his return to Sri Lanka even if he was not on the official wanted list of LTTE suspects or sympathizers. In the present case, there is no evidence that the Sri Lanka authorities still consider the applicant to be an LTTE supporter. While it is true that the authorities in Sri Lanka detained the applicant in January 2010, the state informant did not identify him as an LTTE supporter, and he was released after only one day of detention, apparently without the payment of bribe.

[14] The RPD did consider the applicant's specific situation as a young male Tamil, but it concluded that he would not be at risk of persecution if he returns to Sri Lanka. After reviewing

the documentary evidence, the RPD concluded that Sri Lanka is evolving. I am satisfied that the RPD's conclusion in this regard was reasonable.

[15] The applicant argues that the RPD “erred in law [and unduly fettered its discretion] by relying exclusively on the five specific categories of asylum seekers from Sri Lanka identified in the UNHCR Guidelines to support its finding that the [a]pplicant did not have a well-founded fear of persecution.” As alluded to above, the RPD stated that “different documents paint a confusing picture as to who is at risk and why”, and decided to rely on the documentation supplied by the UNHCR. The RPD referred specifically to the following passage of the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka (UNHCR Guidelines)* dated July 5, 2010:

Given the cessation of hostilities, Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of risk of indiscriminate harm. In light of the improved human rights and security situation in Sri Lanka, there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country.

[Emphasis added.]

[16] The RPD also considered that, while “risk profiles” according to the UNHCR documentation include suspected supporters of the LTTE, the applicant provided no persuasive evidence that he would be perceived to be a supporter of the LTTE if he returns to Sri Lanka. In my opinion, it was reasonable for the RPD to select the documentation supplied by the UNHCR over other documentation contained in the National Documentation Packages even when such other documentation contains contradictory information. First, it is trite law that the RPD is not

obliged to comment on every piece of evidence adduced by a refugee claimant when it deals with contradictory evidence as long as it properly deals with the evidence (*Balasubramaniam* at para 57). Second, the RPD provided a clear and reasonable explanation for preferring the UNCHR documentation (*Makhtar v Canada (Citizenship & Immigration)*, 2004 FC 16 at para 11).

[17] The applicant criticizes the finding at paragraph 30 of the decision that the applicant:

was detained as part of an overall policy by authorities that, at the time of his arrests, were especially concerned with having to face “a second front” in Colombo from Tamils who might have supported and assisted the LTTE.

[18] The applicant argues that there is no evidence of any concern about “a second front”. The applicant also noted that the arrests in issue did not even occur in Colombo. The applicant urges me to conclude that the RPD must have used specialized knowledge to make this finding and that the failure to put this specialized knowledge to the applicant for comment constituted a breach of the duty of procedural fairness. In my view, the circumstances surrounding the applicant’s arrests do suggest a general concern about a possible resurgence of the LTTE. Noting that the RPD’s choice of words was informal and imprecise, and noting that Colombo is the capital of Sri Lanka’s government, I understand the RPD’s reference to a second front in Colombo to be an allusion to such a possible resurgence. Accordingly, I do not believe that the RPD applied specialized knowledge of which the applicant was not aware.

[19] With respect to the risk that the applicant might face as a failed asylum seeker, the applicant argues that the RPD made an incomplete assessment of the evidence by failing to consider more recent evidence before it. He refers to recent reports of detention, ill-treatment,

and torture of failed asylum seekers, as mentioned in the *UNHCR Guidelines*. However, these reports do not supersede the UNHCR's overall conclusion that those without suspected links to the LTTE (or other risk profiles) are unlikely to be targeted.

[20] The applicant also argues that the RPD should have considered the UK Border Agency Operational Guidance Note on Sri Lanka dated April 2012, which refers to detention and torture of non-asylum seekers who returned voluntarily to Sri Lanka from abroad. Though this document is concerning and confirms that the documentary evidence contains some contradictions, I remain of the view that it was open to the RPD to prefer certain documents over others. I am not satisfied that the RPD failed to consider such documents.

VI. Conclusion

[21] The present application should be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7908-13

STYLE OF CAUSE: RAJMOHAN MAHALINGAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 24, 2015

JUDGMENT AND REASONS: LOCKE J.

DATED: APRIL 15, 2015

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