Federal Court  Cour fédérale

Date: 20150421

Docket: IMM-228-14

Citation: 2015 FC 506

Ottawa, Ontario, April 21, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

PALARAJH NANTHAPALAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review concerns a decision of an Immigration Officer [Officer] at the Canadian High Commission in Sri Lanka rejecting the Applicant's permanent residence application.

II. Background

[2] The Applicant is a Tamil citizen of Sri Lanka who claimed his government suspected him of being a member of LTTE at the same time that the LTTE was targeting him for not joining them. He cited instances of abuse while in detention and in other situations.

[3] The Officer concluded that on balance, the Applicant had not established a well-founded fear of persecution or that he had been seriously and personally affected by civil war, armed conflict or a massive violation of human rights. Therefore, the Officer was not satisfied that there was a reasonable chance or grounds that the Applicant was a member of the prescribed class consistent with s 147*(a)* and *(b)* of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	**147.** Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their countries of nationality and habitual residence; and	*a)* il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	*b)* une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[4] Turning to the Applicant's present circumstances, the Officer found that in light of the Officer's knowledge of current country conditions in Sri Lanka, he was not satisfied that the Applicant was or continued to be seriously and personally affected as a result of the civil war in Sri Lanka. The Officer made reference to two documents: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers From Sri Lanka, 21 December 2012 [UNHCR Report] and UK Border Agency Seekers From Sri Lanka OGN v14, July 2013 [UK Report].

[5] In this judicial review, the Applicant has raised that there was a breach of natural justice because the two documents were not disclosed to him. The Applicant has challenged the reasonableness of the decision because the Officer did not deal with the Applicant's fear of extortion.

III. Analysis

[6] The applicable standards of review are well settled. With respect to procedural fairness, the standard is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339) and with respect to the merits of the decision, the standard is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[7] In considering this matter as a whole, it is important to bear in mind that the Applicant filed his application in 2009. It is his obligation to keep it current and to have it reflect any changes in country conditions which may be relevant (see *Besadh v Canada (Citizenship and*

Immigration), 2009 FC 680; *Pizarro Gutierrez v Canada (Citizenship and Immigration)*, 2013 FC 623, 434 FTR 69).

[8] The Applicant's procedural fairness issue centres on the fact that neither the UNHCR Report nor the UK Report were disclosed to him. The UK Report was issued a month after the Applicant's interview whereas the UNHCR Report was issued before the interview.

[9] The relevant legal authority is *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 565, [1998] 3 FC 461, where this Court held that it is only when an officer relies on a significant post submission document evidencing changes in general country conditions that such document must be disclosed to an applicant.

> 22 These decisions are based, it seems to me, on the two following propositions. First, an applicant is deemed to know from his past experience with the refugee process what type of evidence of general country conditions the immigration officer will be relying on and where to find that evidence; consequently, fairness does not dictate that he be informed of what is available to him in documentation centres. Secondly, where the immigration officer intends to rely on evidence which is not normally found, or was not available at the time the applicant filed his submissions, in documentation centres, fairness dictates that the applicant be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case.
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> …
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> 26 The documents are in the public domain. They are general by their very nature and are neutral in the sense that they do not refer expressly to an applicant and that they are not prepared or sought by the Department for the purposes of the proceeding at issue. They are not part of a "case" against an applicant. They are available and accessible, absent evidence to the contrary, through the files, indexes and records found in Documentation Centres. They are generally prepared by reliable sources. They can be repetitive, in the sense that they will often merely repeat or confirm

> or express in different words general country conditions evidenced in previously available documents. The fact that a document becomes available after the filing of an applicant's submissions by no means signifies that it contains new information nor that such information is relevant information that will affect the decision. It is only, in my view, where an immigration officer relies on a significant post-submission document which evidences changes in the general country conditions that may affect the decision, that the document must be communicated to that applicant.

[10] While the Respondent relied on such cases as *Stephenson v Canada (Citizenship and Immigration)*, 2011 FC 932, and *Shokohi v Canada (Citizenship and Immigration)*, 2010 FC 443, 367 FTR 161, those are cases where the documents at issue were publicly available for the applicant's hearing. They are distinguishable from this case in respect of the UK Report.

[11] However, I do note that even though the documents were not disclosed to the Applicant, he had the right to bring the UNHCR Report to the attention of the Officer as late as the interview stage and in respect of the UK Report issued one month after the interview, he could have made post-interview submissions.

[12] There is nothing to suggest that either document contained novel and significant information which showed a change in country conditions. As such, there was no obligation on the Officer to disclose. As the Officer states, he made his determination of country conditions not just on those documents but also on his knowledge gained from being in the country.

[13] It is of concern to the Court that neither document was contained in the Certified Tribunal Record. They should have been and their absence could have, in a different case, led to a quashing of the decision.

However, the ultimate burden rests with the Applicant. If those documents, which are available, had evidence contrary to the Officer's conclusion on general country conditions, the Applicant was in a position to demonstrate that fact.

[14] Therefore, on these facts, I cannot find a breach of procedural fairness.

[15] The second point raised by the Applicant is the failure of the Officer to consider the Applicant's fear of extortion should he remain in the country. There is one small reference contained in his narrative as to extortion. It was raised in the context of his fear of the army and police (which was part of his fear of the LTTE and at the same time fear of the Sri Lankan authorities).

[16] The issue of extortion was not raised in the more current interview and the narrative was a document which the Applicant admitted contained inaccuracies.

[17] The matter of extortion was not advanced by the Applicant and the Officer cannot be criticized for not addressing an at best tangential issue (*Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, [2001] 2 FC 164).

[18] Lastly, I cannot accept the Applicant's oral submission that the Officer (and this Court) should take into account that this was the first immigration proceeding the Applicant had experienced and as such, his failure to advance a ground should be excused. No such principle is applicable here. Applicants are responsible for the conduct of their case.

IV. Conclusion

[19] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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