

Federal Court



Cour fédérale

Date: 20150624

Docket: IMM-6132-14

Citation: 2015 FC 781

Ottawa, Ontario, June 24, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

RANGATHURAI KRISHNAPILLAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Appeal Division [RAD] denying an appeal of a negative determination made by the Refugee Protection Division [RPD]. For the reasons that follow, this application will be dismissed.

[2] The applicant, Rangathurai Krishnapillai, is a citizen of Sri Lanka. He is a young Tamil male from the northern part of the country. The RPD made its decision based on its finding that

the applicant was not credible. It held that his evidence was “confusing and inconsistent” and that he “exaggerated certain portions of his evidence.” Among other things, he testified that the government was intent on annihilating the Tamil race and to that end was chemically castrating young Tamil males and raping young Tamil females.

[3] The applicant appealed to the RAD alleging that the RPD erred in its assessment of his credibility and in not examining his claim on the basis of credible evidence. In addition to these issues, the RAD addressed the issue of the standard it was to apply on appeal from a decision of the RPD. It held that it was to review the decision on the basis of reasonableness and not correctness as was urged by the applicant.

[4] The RAD found that the credibility analysis of the RPD was reasonable, but that it had “failed to deal with the issue at the heart of this claim, whether the [applicant’s] identity as a young male Tamil is a reasonable basis for his subjective fear of persecution.” Accordingly, the RAD did its own analysis of the risk profile for young male Tamils returning to Sri Lanka and concluded there was only a mere possibility the applicant would face persecution.

[5] I reject the submission of the applicant that the decision must be set aside for failing to apply the correctness standard on appeal. I adopt the view expressed by Justice Noël in *Yin v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1209 paras 35-39, that it is appropriate for the RAD to employ a reasonableness analysis to credibility findings made by the RPD. Therefore, the RAD did not err in applying a reasonableness standard to the credibility

findings. Further, it acted within its jurisdiction as an appellate tribunal in conducting an independent risk profile analysis.

[6] I turn now to the remaining issue – was the risk assessment of the RAD reasonable?

[7] The applicant submits that it was not reasonable because: (i) the RAD erred in imposing a requirement that the applicant have a personalized risk as opposed to a generalized one; (ii) the RAD erred in not finding that young Tamil males from northern Sri Lanka are perceived to be LTTE supporters, which is a characteristic of this applicant in addition to being a failed asylum claimant; (iii) the RAD erred in not examining the two bases of the claim (young male Tamil from the north and a failed refugee claimant) on a cumulative basis; and (iv) the RAD erred in basing part of its determination on the applicant's use of his own passport to leave Sri Lanka.

[8] I am not persuaded that any of these alleged errors occurred or were dispositive of the appeal.

[9] In the present case the RAD did not eliminate the possibility of a persecution finding based on generalized risk; rather in doing its Convention refugee or person in need of protection analysis, it only reasonably asserted that there needed to be a minimum amount of evidence of personalized risk because the general risk was only a mere possibility. The RAD cites *Nagendrarasa v Canada (Minister of Citizenship and Immigration)*, 2014 FC 618, which is similar to the present case regarding the need for some evidence of personalized risk. Justice Roy held that the person in need of protection analysis was reasonable.

[10] The RAD examined the country conditions documents and preferred and adopted the UNHCR 2010 and 2012 Guidelines which provide that one must assess each asylum case on its own merits as there is no longer a presumption that young Tamil males from the north are presumed to automatically require refugee protection.

[11] The RAD considered whether the applicant was at risk under each of his profiles – young Tamil male from the north and returning failed refugee claimant – and found he was not at risk under either analysis. There is nothing in the record to suggest that if they had been looked at in a cumulative manner it would have led to a different result.

[12] I agree with the respondent that “it was open to the RAD – especially in light of the Applicant’s evidence which did not disclose anything that would show that the Applicant was connected to the LTTE or that he would be perceived to have any association with the LTTE – to consider the fact that he was able to leave the Sri Lanka legally using his own passport.” While not in itself determinative, it was in the parcel of evidence considered when examining whether he was at risk as a young Tamil male from the north.

[13] In summary, the decision as a whole is reasonable. The RAD reasonably found that the applicant was not perceived to be a member or supporter of LTTE. Furthermore, the finding that being a young Tamil male from the north of Sri Lanka is not sufficient for refugee protection was reasonable. The RAD reasonably relied on UNHCR Guidelines and acknowledged evidence contrary to its conclusion.

[14] Neither party proposed a question for certification, nor is there one on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6132-14

STYLE OF CAUSE: RANGATHURAI KRISHNAPILLAI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 9, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: JUNE 24, 2015

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