

Federal Court



Cour fédérale

Date: 20150724

Docket: IMM-7538-14

Citation: 2015 FC 913

Ottawa, Ontario, July 24, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

MATHIRAJ THIRUCHELVAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Mr. Thiruchelvam [the Applicant], a citizen of Sri Lanka, seeks judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision by an immigration officer [the Officer] denying his Pre-Removal Risk Assessment [PRRA].

[2] The central issue of concern is whether the Officer made a determinative adverse credibility finding against the Applicant without convoking a hearing as required pursuant to subsection 113(b) of the IRPA.

[3] While there has been some debate in the court with respect to the standard of review regarding the decision of a PRRA officer to conduct an oral hearing, I find that the recent jurisprudence has held that the deferential standard of reasonableness applies (*Kulanayagam v Canada (Citizenship and Immigration)*, 2015 FC 101 at para 20, *Ibrahim v Canada (Citizenship and Immigration)*, 2014 FC 837 at para 6; *Bicuku v Canada (Citizenship and Immigration)*, 2014 FC 339 at paras 16-20; *Ponniah v Canada (Citizenship and Immigration)*, 2013 FC 386 at para 24; *Mosavat v Canada (Citizenship and Immigration)*, 2011 FC 647 at para 9).

[4] For the reasons that follow, the application is dismissed. I find that a hearing would have served no purpose based on the Officer's line of reasoning for rejecting the Applicant's evidence that he was arrested, detained and tortured three times between November 2012 and March 2013 prior to fleeing on March 19, 2013 after experiencing problems with reporting to the authorities.

[5] The Applicant offered direct personal evidence claiming that he had been arrested and tortured by state authorities on three occasions. This evidence was corroborated by letters from a Sri Lankan doctor and from a Canadian doctor that the scarring apparent on the Applicant's body was consistent with his evidence of being tortured.

[6] In addition, the Applicant offered evidence primarily from his father or gathered from others by his father intended to corroborate the Applicant's arrest and the case against him being maintained by state authorities. This evidence was rejected as having little probative value. Its rejection is the second basis of the Applicant's application. However, I am satisfied with the Officer's analysis in this regard and only the need for a hearing raises a serious issue of concern for the Court.

[7] The Officer states that, based on all of the evidence presented, the Applicant did not discharge his burden of proving that he was reasonably likely to have been scarred by torturers against his will in Sri Lanka, or that he was a person of interest to the authorities.

[8] I find that the determinative issue in this case is whether a hearing would have changed the result. This is a highly contextual decision, which in the present matter is assisted by the exhaustive and detailed reasons that accompany the decision. I conclude that the Officer's reasoning was that a hearing would serve no purpose given the probative evidence of inconsistencies from the Applicant, his profile and his treatment by state authorities which led the Officer to conclude that he was not a person of interest.

[9] Based on the objective country condition evidence, the Officer found that the scarring is not, in and of itself, considered a risk unless a person is likely to be detained and stripped during interrogation for other reasons. The Officer concluded that the evidence presented by the Applicant does not support a finding that he will be detained and stripped during interrogation for other reasons upon his return to Sri Lanka, which would lead to his scars being revealed.

[10] The Officer also found that the Applicant's evidence does not support a conclusion that the Sri Lankan authorities suspected or accused the Applicant of being a failed suicide bomber or a fighter for the LTTE. The Officer found that those suspected of LTTE links are at a particular risk, that they are held for long terms and those who are released undergo rehabilitation. In that respect, the Applicant was not held for a long period of time nor did he undergo rehabilitation, which supports the conclusion that he would not be viewed by the authorities as a supporter or member of the LTTE.

[11] He was also released with minimal reporting conditions and after a short period of time, he was no longer required to report to the army camps. His national identity card was returned to him following his detentions. He was allowed to leave Sri Lanka with his own passport without problems from the authorities. He was not interrogated, detained or stripped by the authorities prior to his departure.

[12] The Officer found that the Applicant was cleared of any suspicion of being a LTTE member or supporter and therefore, he was not a wanted person or on the government's security alert list. As a result, the Officer concluded that the Applicant was not of interest to the authorities as a result of any real or perceived LTTE affiliation and therefore, he was not at risk upon his return to Sri Lanka.

[13] The Officer's final conclusion is that the Applicant does not have the profile of someone who will be seen as a threat or of adverse interest upon his return and that he does not have a personalized risk of persecution or harm in Sri Lanka based on his ethnicity.

[14] It is the accumulation of this evidence which led the Officer to conclude that the Applicant did not discharge his burden of proof that he was tortured. The Officer found it to be inconsistent with the more probative evidence of his actual treatment by the authorities and his profile as someone of no interest to the authorities.

[15] Ultimately, the decision whether to require a hearing is one to be made by the Officer and this decision is entitled to deference from the Court. I conclude that the Officer's decision not to hold a hearing is reasonable, as it would serve no purpose given the contradictory objective evidence that the Officer found to be of more probative value than the Applicant's personal narrative.

[16] The Officer's decision therefore falls within the range of reasonably acceptable outcomes based on the facts and the law and is justified by intelligible and transparent reasons.

[17] In the circumstances, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7538-14

STYLE OF CAUSE: MATHIRAJ THIRUCHELVAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 13, 2015

**REASONS FOR JUDGMENT
AND JUDGMENT:** ANNIS J.

DATED: JULY 24, 2015

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