

Federal Court



Cour fédérale

**Date: 20161115**

**Docket: IMM-1360-16**

**Citation: 2016 FC 1273**

**Ottawa, Ontario, November 15, 2016**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**PATHMANATHAN PATHMARAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a February 17, 2016 decision by an Immigration Officer [the Officer] rejecting the Applicant's Pre-Removal Risk Assessment [PRRA] application.

[2] The Applicant argues that the Officer erred in his assessment of the evidence by failing to consider new, more timely, evidence of risk and by not assessing his claim on a cumulative basis.

[3] A review of the Officer's decision reveals no reviewable error and, as such, the application is dismissed.

#### I. Background

[4] The Applicant is a citizen of Sri Lanka. In 1997, the Applicant and his family fled to India. They returned to Sri Lanka in 2010. The Applicant fled to Canada in 2013 and claimed refugee status which was rejected by the Refugee Protection Division [RPD] on December 17 2013.

[5] The RPD found that the Applicant's testimony was neither credible nor trustworthy. It rejected a number of his claims, including his allegations of being detained, arrested and tortured upon return to Sri Lanka, as not being credible. The Applicant acknowledged that neither he nor anyone in his family ever had trouble with the Sri Lankan Army prior to leaving.

[6] The Applicant alleged being at risk in Sri Lanka "on the cumulative effect of his being a male Tamil from northern Sri Lanka, who has spent significant time in Canada, and would be returning to Sri Lanka as a failed asylum seeker." This profile, it is alleged, will result in him being viewed as a sympathizer/supporter of the Liberation Tamil Tigers of Eelam [LTTE].

## II. The Impugned Decision

[7] The Applicant's PRRA application relied on the same allegations rejected as being not credible and untrustworthy before the RPD. Two additional pieces of evidence were submitted: a letter from a Member of Parliament in Sri Lanka and a letter from the Applicant's uncle, both noting that the Sri Lankan Army intelligence sought the Applicant's whereabouts on two occasions in 2014. The Officer noted that the new evidence fell "under more of a self-serving nature".

[8] The Officer assigned a significant probative value to the RPD's findings relating to the Applicant's credibility as there were unbiased. It was found, based on the totality of the evidence, that these findings outweighed the new evidence that the authorities would be interested in the Applicant. Accordingly, the Officer rejected the Applicant's PRRA application on February 17, 2016.

## III. Issues

[9] This application raises the following issues:

1. Did the Officer err in his assessment of the evidence that was before him?
2. Did the Officer err by ignoring relevant evidence directly contradicting the conclusion reached?
3. Did the Officer err by failing to consider the claim of the Applicant on a cumulative basis?

IV. Standard of Review

[10] The parties agree that the standard of reasonableness applies to the Officer's analysis. The weighing of evidence is a factual inquiry attracting a high degree of deference (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 45, 59). The Court will not intervene unless the Officer's conclusions fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

V. Analysis

[11] The Applicant submits that the Officer erred in giving minimal probative value to the new evidence submitted by the Applicant as it emanated from the Applicant's uncle and was thus found to be "self-serving". As I have explained in *Fadiga v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1157 at paras 14-28, the Officer's statement that affidavits from relatives are of a self-serving nature and of diminished or little weight is not indicative of a reviewable error. While such statements may be necessary to support the Applicant's claim, they nevertheless lack reliability because they are made out of court and emanate from biased witnesses that are not subject to testing, which is the hallmark of exceptions to hearsay evidence. Unless corroborated their weight is significantly reduced: *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 27.

[12] In any event, the Officer concluded that the new evidence did not outweigh "the value I have placed on the RPD's credibility findings". The RPD's adverse credibility findings were

extensively described and demonstrated that the Applicant was not credible, nor his explanations trustworthy. Having concluded that there was no basis to accept the Applicant's narrative based on his own testimony, which was tested, common sense suggests that new evidence that cannot be tested, repeats the same allegations as the Applicant, and comes from a relative who is partial to the Applicant's well-being due to their family relationship, would not outweigh the detailed credibility findings of the RPD.

[13] The evidence of the Member of Parliament was also rejected on the valid ground that the information would have been hearsay based on information obtained from the uncle. I find no reviewable error in the Officer's treatment of the new affidavit evidence.

[14] The Applicant further submits that the Officer ignored extensive evidence of more recent evidence than that relied upon by the Officer demonstrating the risks to persons with the Applicant's profile in Sri Lanka as a returning refugee claimant and directly contradicting the conclusions reached by the Officer. In particular, the Court was directed to one paragraph in a report by Human Rights Watch submitted to the PRRA officer (at page 77 of the Applicant's Record) indicating that people suspected of links to the LTTE, including those returned as failed asylum seekers were regularly subjected to torture.

[15] The Officer stated that he had read and considered all the evidence submitted. The Officer relied upon the evidence demonstrating that the Applicant had none of the attributes that would fit the profile of someone of interest to Sri Lankan authorities, other than being a young Tamil from the North. He left the country when 14 years old and only returned 10 years later. He

had stated in his oral testimony that neither he nor anyone in his family ever had trouble with the Sri Lanka Army prior to leaving.

[16] The Officer cited the recent 2014 UK Home Office Country Information and Guidance on Tamil Separatism in support of its conclusion that the Applicant would not be perceived as a LTTE supporter or sympathizer such that he would be at risk upon return to Sri Lanka. I would not consider this evidence outdated, such that a report from the Human Rights Watch in 2015 should be considered new evidence, particularly as it was a single unsupported statement.

[17] These cases rely upon profiles of persons at risk returning to Sri Lanka, many of which have been developed by different organizations. In addition, the Officer may choose to rely upon country reports as providing more objective conclusions from assembled information, rather than a single uncorroborated statement in a report of an organization with a mandate to report and promote human rights in societies. Given the deference owed to the Officer in respect of the weight attributed to evidence, the Court finds no reviewable error in the Officer's conclusion.

[18] During the hearing, the Applicant made additional submissions with respect to the general conditions of Tamil citizens in northern Sri Lanka based on documentation from the US Department of State, the UK Foreign and Commonwealth Office and Human Rights Watch. The Court notes that the submissions in the memorandum in respect of the Officer's decision was with regards to the profile of the Applicant being a young Tamil male from the North and a failed asylum seeker returning to Sri Lanka, which was the same risk alleged before the RPD. It

was not unreasonable that the Officer did not address this more general argument in its reasons, as it too would not meet the profile of persons being at risk relied upon by the Officer.

[19] The Court also finds no basis to support the Applicant's claim that the Officer did not conduct a prospective analysis, or that the cumulative effect of the evidence was not considered.

VI. Conclusion

[20] The Application is dismissed. No question is certified for appeal.

**JUDGMENT**

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

"Peter Annis"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1360-16

**STYLE OF CAUSE:** PATHMANATHAN PATHMARAJ v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 22, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** NOVEMBER 15, 2016

**APPEARANCES:**

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