

Federal Court



Cour fédérale

**Date: 20190222**

**Docket: IMM-3661-18**

**Citation: 2019 FC 217**

**Toronto, Ontario, February 22, 2019**

**PRESENT: Mr. Justice Grammond**

**BETWEEN:**

**MOHAMED BAKEER MOHAMED ISHAK  
SITHY HAMEETHA ABDUL MAJEED  
NADA MOHAMED BAKEER  
ZEINA MOHAMED BAKEER**

**Applicants**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench at Toronto, Ontario on February 21, 2019)**

[1] Mr. Ishak and his family are seeking judicial review of a decision of the Refugee Appeal Division to the effect that they are not Convention refugees. The RAD found that Mr. Ishak was not a credible witness and that he had not proved that he was detained by Sri Lankan police in

2012 and 2016. Moreover, the RAD found a lack of subjective fear, given Mr. Ishak's frequent trips to Sri Lanka, and also found that he had an internal flight alternative.

[2] Before me, the main issue is whether the RAD erred in referring to an outdated version of the national documentation package [NDP] regarding Sri Lanka.

[3] This Court has held, in particular in *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1359, that it is a breach of procedural fairness to refer to a document that has been removed from the NDP.

[4] However, in this case, when Mr. Ishak filed his argument with the RAD, the impugned documents were still in the NDP and Mr. Ishak had notice of them and was in a position to make submissions with respect to them.

[5] The concern, as I understand it, is that the removal of the documents from the NDP is a signal that the IRB's research division no longer considers these documents to be an accurate portrait of the situation in Sri Lanka.

[6] However, these documents established a number of "profiles" of persons who may be at risk of persecution. The RAD found that Mr. Ishak did not fit any of these profiles.

[7] The fact that the documents establishing the profiles were removed does not assist Mr. Ishak. It was not suggested that documents recently added to the NDP would create new profiles that fit Mr. Ishak's situation.

[8] Mr Ishak also notes that a number of documents were added to the NDP and argues that these documents establish a risk that should be considered under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[9] Those documents pertain to the treatment of the Muslim community, in particular Muslim women; Mr. Ishak did not raise this issue before the RAD and in *Murugesu v Canada (Citizenship and Immigration)*, 2016 FC 819 at paras 25-27, the Court noted that it is the onus of the appellant to raise a particular issue before the RAD. Here, Mr. Ishak did not bring evidence that the conditions described in those documents would affect him or his family personally and it is unclear that they would amount to persecution or to a risk contemplated in section 97. As a result, I find the changes in the NDP did not affect the logic of the RAD's decision.

[10] Mr. Ishak's second argument is that his credibility assessment by the RAD was unreasonable. He points to the fact that the RAD took into account what are called Port of Entry Notes (POE Notes) and that this Court has repeatedly cautioned about the reliability of such notes given the conditions in which they are taken. However, the RAD relied on many other issues in its assessment of credibility and I am unable to conclude that this was unreasonable.

[11] Accordingly, the application for judicial review is dismissed. No questions certified.

**JUDGMENT in IMM-3661-18**

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

No questions are certified.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3661-18

**STYLE OF CAUSE:** MOHAMED BAKEER MOHAMED ISHAK, SITHY HAMEETHA ABDUL MAJEED, NADA MOHAMED BAKEER, ZEINA MOHAMED BAKEER V THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 21, 2019

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** FEBRUARY 22, 2019

**APPEARANCES:**

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