

Federal Court



Cour fédérale

Date: 20190423

Docket: IMM-4590-18

Citation: 2019 FC 501

Ottawa, Ontario, April 23, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

NEDUNCHELIYAN KOPALAPILLAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Neduncheliyan Kopalapillai seeks judicial review of a Pre-Removal Risk Assessment [PRRA] by a Senior Immigration Officer [Officer] with Citizenship and Immigration Canada. The Officer found there had been no material change in circumstances since the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected Mr. Kopalapillai's

claim to be a Convention refugee or person in need of protection under ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Officer therefore concluded that Mr. Kopalapillai could be safely returned to Sri Lanka.

[2] For the reasons that follow, the Officer's decision was procedurally fair and reasonable. The application for judicial review is dismissed.

II. Background

[3] Mr. Kopalapillai is a citizen of Sri Lanka and an ethnic Tamil. He arrived in Canada aboard the *MV Sun Sea* on August 13, 2010 and made a refugee claim. The RPD heard Mr. Kopalapillai's claim on July 4, 2012, and rejected it on September 27, 2012. He applied for leave and judicial review of the decision, but leave was denied on March 19, 2013.

[4] According to Mr. Kopalapillai, on June 6, 2016, his mother was confronted at her home by four armed men. The men asked about Mr. Kopalapillai's whereabouts and uttered threats. His mother submitted a written complaint to the police on June 7, 2016.

[5] Mr. Kopalapillai requested a PRRA. On July 5, 2017, he made written submissions and provided new evidence that post-dated the RPD's decision. This included his mother's letter of complaint to the police, a letter from her doctor, and a letter from a Sri Lankan Justice of the Peace [JP], as well as country condition reports. The Officer rendered an adverse decision on June 8, 2018.

III. Decision under Review

[6] The Officer summarized the narrative that Mr. Kopalapillai had presented to the RPD. She noted that the determinative issue before the RPD was credibility, and excerpted the RPD's assessment that Mr. Kopalapillai was not credible. The Officer held that the findings of the RPD are considered final for the purposes of a PRRA. She therefore disregarded Mr. Kopalapillai's submissions insofar as they addressed matters before the RPD, and focused on the new evidence.

[7] All the new evidence concerned the harassment of Mr. Kopalapillai's mother by the four armed men on June 6, 2016. In the mother's written complaint, she said the men were not in uniform and she could not identify them. She nevertheless maintained that these same men had threatened her several times over the past few years, and their visits had caused her stress. This led to health problems that required medical treatment. The Officer gave the letter low probative value. The mother did not explain why she had not complained about the incidents previously, the letter was vague and did not explain the perpetrators' motivations or affiliations, there was no apparent connection between the men and Mr. Kopalapillai's past in Sri Lanka, and there was no evidence to corroborate the letter's contents.

[8] The letter from Mr. Kopalapillai's mother's doctor stated that she had been experiencing mental health issues related to her "stressful family condition" since 2014. The doctor noted that the mother suffers from hypertension and hypercholesterolemia. The Officer again gave little probative value to the letter, because it was vague and there was no apparent connection between the mother's health and Mr. Kopalapillai's alleged persecution.

[9] The letter from the JP stated that Mr. Kopalapillai's mother had told him about the incident that occurred on June 6, 2016 and a subsequent incident involving the same four men. The JP said he had known Mr. Kopalapillai's family "for a considerable period" and was familiar with the circumstances surrounding Mr. Kopalapillai's departure from Sri Lanka. The Officer was skeptical. She noted that the JP did not claim to have first-hand knowledge of the incidents. Nor did he mention the previous incidents the mother had described in her letter to the police, although he claimed to have been a close acquaintance of the family for a long time.

[10] The Officer found that the country condition reports provided by Mr. Kopalapillai addressed the risks faced by the population in general, and his profile was not similar to those who are currently at risk in Sri Lanka. The Officer considered jurisprudence of this Court submitted by Mr. Kopalapillai, and concluded that the decisions turned on the quantity and quality of the evidence. She gave the jurisprudence no weight.

[11] Finally, the Officer considered reports of country conditions subsequent to the RPD's decision. She found that, despite persistent post-war issues, the overall situation in Sri Lanka had improved to the point that Mr. Kopalapillai would not face an unacceptable risk if he returned to that country.

IV. Issues

[12] This application for judicial review raises the following issues:

A. Was the Officer's decision procedurally fair?

B. Was the Officer's decision reasonable?

V. Analysis

A. *Was the Officer's decision procedurally fair?*

[13] Procedural fairness is a matter for the Court to determine. The standard for determining whether the decision-maker complied with the duty of procedural fairness is correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v. Khela*, 2014 SCC 24 at para 79). The ultimate question is whether the Applicant knew the case to meet, and had a full and fair chance to respond.

[14] Mr. Kopalapillai says the Minister failed to disclose information concerning two passengers on the *MV Sun Sea*, referred to as B005 and B016, who returned to Sri Lanka in 2012. In *B135 v Canada (Citizenship and Immigration)*, 2013 FC 871 [*B135*], the applicants advanced *sur place* claims alleging that they would be perceived by the Sri Lankan government as affiliated with the Liberation Tigers of Tamil Eelam [LTTE] because they had come to Canada aboard the *MV Sun Sea*. The Minister argued that the applicants' circumstances were not the same as B005 and B016, and they would not be mistreated if they returned to Sri Lanka. However, the Minister withheld some information about B005 and B016 that contradicted its

assertions. Justice Sean Harrington held that this was a denial of natural justice (*B135* at para 30).

[15] Here, the Minister did not disclose the information concerning B005 and B016 when he intervened in Mr. Kopalapillia's refugee claim before the RPD, because the information was not yet available. The RPD's decision is not the subject of this application for judicial review. However, Mr. Kopalapillai argues that the Minister, having intervened in the proceeding before the RPD, had an ongoing obligation to disclose this information to the Officer who conducted the PRRA.

[16] Mr. Kopalapillai points to a PRRA conducted by the same Officer in relation to another Sri Lankan citizen and ethnic Tamil who travelled to Canada aboard the *MV Sun Sea*. In that case, the Minister disclosed the information concerning B005 and B016 "out of an abundance of caution", and it was duly considered by the Officer (who nevertheless rendered a decision that was adverse to the applicant).

[17] Mr. Kopalapillai relies on *NR v Canada (Citizenship and Immigration)*, 2015 FC 425, in which Justice Anne Mactavish held it was unreasonable for the RPD to ignore information about B005 and B016 that was submitted by the applicant following the hearing (at para 24). In *CD v Canada (Citizenship and Immigration)*, 2015 FC 1022, Justice Richard Southcott held that evidence of the detention of B005, even though the Sri Lankan courts had cleared him of all allegations of LTTE-related criminality, could be probative of the risk faced by the applicant in that case (at para 45).

[18] Mr. Kopalapillai says the Officer was obliged to consider evidence of country conditions, even if it was not specifically provided by Mr. Kopalapillai (citing *Jessamy v Canada (Minister of Citizenship and Immigration)*, 2009 FC 20 at paras 80-82, 86-87). There is no question that the Officer was aware of the evidence concerning B005 and B016.

[19] The Minister says that *B135* stands for the proposition that, if the Minister provides disclosure in a proceeding, then the disclosure must be complete. In this case, the Minister did not make any disclosure in the PRRA, and he was therefore under no obligation to disclose information pertaining to B005 and B016. Mr. Kopalapillai had no legitimate expectation that the Minister would intervene and disclose information relating to his PRRA (citing *Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 68). Mr. Kopalapillai was represented by counsel, and was required to put his “best foot forward” in support of his request (citing *Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 at paras 6-9). His counsel was presumably aware of information pertaining to B005 and B016, but chose not to present it.

[20] I am not persuaded that Mr. Kopalapillai was denied procedural fairness. He does not assert that the Minister is always obliged to disclose information in response to PRRA requests. Here, the Minister elected not to participate in the PRRA. There was no legitimate expectation that the Minister would provide additional disclosure in this case only because he had intervened in the hearing before the RPD. Counsel for Mr. Kopalapillai acknowledges that the information concerning B005 and B016 was not available at that time.

[21] Whether it was reasonable for the Officer not to mention or discuss B005 and B016 in the PRRA is a separate question, and this is addressed below.

B. *Was the Officer's decision unreasonable?*

[22] A PRRA Officer's assessment of questions of fact or mixed fact and law are subject to review by this Court against the standard of reasonableness. Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a 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).

[23] Mr. Kopalapillai argues that the Officer unreasonably ignored evidence about the risks he would face as a failed refugee claimant returning to Sri Lanka, including the information about what happened to B005 and B016.

[24] The Minister responds that the Officer based her decision on recent country condition reports and was reasonable. The Officer is presumed to have considered all of the evidence that was before her (citing *Saint Hilaire v Canada (Citizenship and Immigration)*, 2010 FC 178 at para 19). It is not the role of this Court on judicial review to reweigh the evidence and substitute its view for that of the decision-maker (citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61 and *Nadarasa v Canada (Citizenship and Immigration)*, 2018 FC 95 at para 20).

[25] I agree with Mr. Kopalapillai that the Officer could not confine herself to the evidence he submitted in support of his PRRA request, but was required to conduct her own research (*Ampong v Canada (Citizenship and Immigration)*, 2010 FC 35 at para 40). Information pertaining to B005 and B016 potentially fell within this category, and there is no dispute that the Officer was aware of the circumstances surrounding their return to Sri Lanka. Moreover, the information was clearly described in the jurisprudence cited in Mr. Kopalapillai's written submissions to the Officer, although no arguments were made concerning the information's significance.

[26] I am nevertheless satisfied that the Officer's decision was reasonable. B005 and B016 returned to Sri Lanka in 2012. The Officer relied primarily on a report of the United Kingdom Home Office dated June 2017. While this report contained some contradictory information, the Officer substantially reiterated its conclusions regarding the risks faced in Sri Lanka by returning refugee claimants. The Officer concluded there was nothing in Mr. Kopalapillai's profile that had not been previously assessed by the RPD or that would now expose him to an unacceptable risk of mistreatment.

[27] The Officer's reasons for rejecting the new evidence offered by Mr. Kopalapillai were transparent and intelligible. An immigration officer conducting a PRRA may give little or no weight to evidence that addresses risks previously assessed by the RPD; whose source is not impartial; or that is vague, inconsistent or lacks corroboration (*Liyanage v Canada (Citizenship and Immigration)*, 2019 FC 194 at paras 17-21, 30-31).

VI. Conclusion

[28] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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