

Federal Court



Cour fédérale

Date: 20191009

Docket: IMM-3766-18

Citation: 2019 FC 1274

St. John's, Newfoundland and Labrador, October 9, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

CHARLES AROKKIYANATHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and THE MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

[1] Mr. Charles Arokkiyanathan (the “Applicant”) seeks judicial review of the decision, dated January 26, 2018, made by a Pre-Removal Risk Assessment Officer (the “Officer”) dismissing his Pre-Removal Risk Assessment (the “PRRA”) application. The Officer determined that the Applicant was not a person in need of protection as defined in subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a male Tamil citizen of Sri Lanka. He arrived in Canada on October 27, 2009 on board the M.V. “Ocean Lady,” where he was a crew member.

[3] The Immigration and Refugee Board, Immigration Division (the “Immigration Division”) found that the Applicant was inadmissible to Canada pursuant to paragraph 37(1)(b) of the Act and issued a deportation order against him.

[4] The Applicant applied for a PRRA and filed several submissions, with a focus on his *sur place* status in Canada as a “people smuggler.”

[5] The Officer denied the PRRA application on the basis that he was not satisfied the Applicant had shown he would be at risk in Sri Lanka on the basis of being perceived as a supporter of the Liberation Tigers of Tamil Eelam (“LTTE”).

[6] The Officer also rejected a claim of risk based upon a *sur place* claim as a former migrant on board the M.V. “Ocean Lady.”

[7] The Applicant argues that the decision is unreasonable and advances several arguments, including the submission that the Officer erred in the treatment of his risk profile and failed to take into account all the relevant circumstances specific to that profile, including the identification of the Applicant as being a human smuggler on board the M.V. “Ocean Lady.”

[8] The Minister of Citizenship and Immigration and the Minister of Safety and Emergency Preparedness (the “Respondents”) submit that the decision is reasonable and judicial intervention is unwarranted.

[9] A PRRA decision, involving issues of mixed fact and law, is reviewable on the standard of reasonableness; see the decision in *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at paragraph 3.

[10] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and facts.

[11] The Officer made the following statement in the negative PRRA decision:

While I acknowledge that the Canadian government has indicated that they have found the applicant to be an LTTE supporter/member, evidence has not been provided to support how much weight the Sri Lankan authorities may attribute to this finding. The applicant was not charged nor convicted of being a member of the LTTE by the Canadian authorities; rather he was identified by CBSA as such.

Having considered the applicant’s travel on the Ocean Lady and whether this information was provided to the Sri Lankan authorities, I find that the Sri Lankan authorities would not perceive the applicant to be a supporter or member of the LTTE as a result of his travel on the Ocean Lady. Given that the evidence does not support that the applicant was previously perceived by the Sri Lankan government to have ties to the LTTE, it is determined that he has not established a *sur place* refugee claim.

[12] When considering a *sur place* claim, a decision maker is to adopt the perspective of the state against which a person claims risk; see the decision in *Girmaeyesus v. Canada (Minister of Citizenship & Immigration)*, 2010 FC 53 at paragraphs 28 and 29.

[13] A determination by the Canadian government and by a Canadian government agency may well attract negative attention from the Sri Lankan authorities if the Applicant were to be returned to Sri Lanka.

[14] In my opinion, the Officer's conclusions are not reasonable having regard to the evidence before him. It is not necessary for me to address the other arguments raised.

[15] The application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to a different officer for redetermination.

[16] There is no question for certification arising.

JUDGMENT in IMM-3766-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for re-determination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3766-18

STYLE OF CAUSE: CHARLES AROKKIYANATHAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION and THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 11, 2019

JUDGMENT AND REASONS: HENEGHAN J.

DATED: OCTOBER 9, 2019

APPEARANCES:

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Mr. Charles Steven

FOR THE APPLICANT

Ms. Hillary Adams

FOR THE RESPONDENTS

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