

Federal Court



Cour fédérale

Date: 20200525

Docket: IMM-5972-18

Citation: 2020 FC 639

Ottawa, Ontario, May 25, 2020

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

UDAYA NISHAN ARUNA KUMURA
WATTORUTHANTHRIGE FERNANDO
SULAKSHANA LAKSHANI JAYARATHNA
HEWAGE
MANETH LOSATH FERNANDO
WATTORUTHANTHRIGE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

AMENDED ORDER TO
JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews a decision [Decision] of the Refugee Appeal Division [RAD] confirming the Refugee Protection Division's [RPD] decision which found that the Applicants are neither Convention refugees nor persons in need of protection. For the reasons that follow, this application for judicial review is dismissed.

II. Background

[2] The Applicants, all citizens of Sri Lanka, consist of the Principal Applicant, his wife and their son. They fear a risk to their lives based on the Principal Applicant's perceived affiliation with his late uncle, a well-known criminal figure in Sri Lanka. I will summarize the highlights of their narrative which consists of elements largely accepted by both the RPD and RAD.

[3] As a young child, the Principal Applicant moved in with his uncle due to problems he experienced with his step-father. The uncle was a "political fixer", "contract killer" and a "loan shark" with ties to influential politicians. As the Principal Applicant grew older, he began taking care of the uncle's financial accounts and paperwork because he was illiterate. In June 2006, the Principal Applicant was attacked by individuals in a black van. The attackers told him to stay away from the uncle's business or be killed [2006 incident]

[4] After the attack, the uncle found the Principal Applicant a job as a welder in Dubai and insisted that the Principal Applicant and his wife leave Sri Lanka for Dubai. The Principal Applicant then returned to Sri Lanka in October 2012. On the last day of his visit, he saw a black

van outside of the friend's house where he was staying. The van began to move towards him and the he ran away, hearing gunshots behind him and leaving straight for the airport [2012 incident]. The uncle himself was murdered three months later.

[5] The Principal Applicant applied for and received a work permit and came to Canada in March 2013. His wife and son arrived in December 2014. The Applicants filed a refugee claim after receiving negative decisions on their work permit application, their permanent residence application under the provincial nominee program, their application for permanent residence on humanitarian and compassionate [H&C] grounds, and when leave was dismissed for an application for leave and judicial review of the negative H&C decision.

III. Decision and Standard of Review

[6] The RAD agreed with the RPD's analysis, reasoning and conclusion that the Applicants have a viable Internal Flight Alternative [IFA] in Kandy, Sri Lanka. Neither panel accepted the Principal Applicant's arguments that he would be persecuted or further pursued in that location. The sole issue raised in this judicial review is whether the RAD's IFA analysis was reasonable. A standard of reasonableness is applicable to the RAD's determinations on questions of mixed fact and law such as the presence of a viable IFA (*Onyeme v Canada (Citizenship and Immigration)*, 2018 FC 1243 at para 15).

IV. Parties' Positions

[7] The Applicants' arguments boil down to their contention that the RAD made three fatal errors in its Decision: first, contrary its findings, the Principal Applicant neither speculated nor provided vague answers regarding his attackers. Second, the RAD ignored evidence including regarding similarly situated individuals, from the Principal Applicant's former neighbour, and regarding the wife's life in hiding. Third, with respect to the IFA, the RAD failed to consider the ability of the late uncle's enemies to find the family given the proximity of the IFA, as well as the difficulty in finding employment there.

[8] The Respondent counters that the RAD's assessment was reasonable – the Applicants are asking the Court to reweigh the evidence. It countered each point by showing that the Board was entirely reasonable.

V. Analysis

[9] I will address why the Respondent's arguments are persuasive, but will first briefly touch on the RAD's correct identification of the IFA test. To find an IFA, the RAD must be satisfied, on a balance of probabilities, that (i) there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists; and (ii) conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all circumstances, including those particular to the claimant, for them to seek refuge there (*Kapuuo v Canada (Citizenship and Immigration)*, 2018 FC 1107 at para 18). It is the Applicants who

bear the burden of proving that they would face persecution in the proposed IFA (*Yang v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 138 at para 26).

[10] In my view, given the evidence on the record and the applicable standard of review, the RAD went on to reasonably apply the test in confirming an IFA in Kandy, and did not err with its observations in any of the three contested areas, as applied to the viability of Kandy as a safe haven within Sri Lanka.

Lack of sufficient evidence and specificity

[11] First, after reading the transcript, the RAD reasonably characterized the Applicants' responses to questions, as – if not 'fairly vague', then certainly, lacking in specificity. Similarly, the supporting evidence lacked sufficiency linking the Applicants to future risk. Simply being able to identify attackers as using a 'black van' in two attacks six years apart, with no supporting objective evidence to support the Principal Applicant's narrative of the linkages to the late uncle, tend to support the findings of both panels.

Ignoring evidence

[12] While the Board need not address all evidence, it must be alive to contradictory evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 15–17). Silence on evidence pointing to the opposite conclusion supports an inference that such evidence was overlooked (*Varatharajah v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 149 at para 25).

[13] Here, based on a reading of both prior decisions, I neither agree that the RAD ignored articles showing that similarly situated individuals were targeted for death, nor the wife's situation 'in hiding' given her testimony, nor the other evidence tendered (including the neighbour's letter). For instance, the wife did not state that she lived in a state of perpetual hiding (e.g. – "I did not go out much"), and certainly, that was not the evidence of the Applicants including various return trips to Sri Lanka from Dubai during the years in question. Ultimately, the RAD simply gave little weight to the evidence due to inherent weaknesses, again relating to the lack of detail and specificity.

[14] Finally, when asked what evidence might have been missed about similarly situated (i.e. related) individuals being harmed by gang members, counsel confirmed that she could not point to anything in the record. The same applied to any objective evidence linking the 2016 murder of the uncle's associate to either the late uncle, or the Principal Applicant. Indeed, that article was, in part, intended to underline the unfeasibility of Kandy as an appropriate IFA – which segues into the last issue raised by the Applicants.

Viability of the IFA

[15] The evidentiary weaknesses set out above failed to allow the RAD to find anything problematic with the viability of the IFA under either prong of the test, namely the risks of getting there, and/or the viability of settling there.

[16] On the first prong of the test, namely in assessing whether there is a serious possibility of persecution or risk to life, the RAD reasonably determined that there is insufficient evidence to

establish that any remaining opponents of the Principal Applicant's late uncle would have the means or intention to locate the Applicants if they were to return to Sri Lanka and relocate to an area, some distance away from the limited area where his uncle once operated.

[17] On the second prong of the test, the RAD reasonably determined that the Applicants had the wherewithal to relocate. They did not face any ethnic or religious barriers, or any other threat of harm or persecution in Kandy. Furthermore, they had adaptable skills based on their language, education, and work backgrounds. Finally, when asked about the Applicants' assertion that almost all jobs in Sri Lanka are in Colombo, counsel was not able to point to the source of this assertion in the evidence.

VI. Conclusion

[18] The RAD's Decision was reasonable and entirely defensible based on the reasons given and the evidence in the record. This application for judicial review is accordingly dismissed. No questions were raised for certification. Despite this negative outcome, I acknowledge counsel's efforts to put her client's best position forward in the circumstances.

JUDGMENT in IMM-5972-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, ad I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5972-18

STYLE OF CAUSE: UDAYA NISHAN ARUNA KUMURA
WATTORUTHANTHRIGE FERNANDO,
SULAKSHANA LAKSHANI JAYARATHNA
HEWAGE, MANETH LOSATH FERNANDO
WATTORUTHANTHRIGE v THE MINISTER OF
CITIZENSHIP, AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 16, 2019

JUDGMENT AND REASONS: DINER J.

DATED: JULY 19, 2019

AMENDED MAY 25, 2020

APPEARANCES:

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