

Federal Court



Cour fédérale

Date: 20220404

Docket: IMM-55-21

Citation: 2022 FC 467

Ottawa, Ontario, April 4, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

THANARUPAN SHANMUGAM

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a 36-year-old Tamil and citizen of Sri Lanka who reports he faces persecution in that country, as he is perceived by members of Sri Lankan security forces as being a supporter of the Liberation Tigers of Tamil Elam [LTTE].

[2] The Applicant applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the November 19, 2020 decision of the Refugee Appeal Division [RAD] upholding a decision by the Refugee Protection Division [RPD]. The RPD found he had a viable Internal Flight Alternative [IFA] in Sri Lanka and is not a Convention refugee or a person in need of protection. He submits the RAD unreasonably assessed the evidence and his circumstances. The Respondent submits the RAD's treatment of the evidence was reasonable and the IFA finding is determinative.

[3] Having considered the parties' submissions, I am persuaded the Application should be granted for the reasons that follow.

II. Background

[4] The Applicant reports he was the captain of a soccer team that played against teams made up of members of the Sri Lankan police, air force and army. He states he often coached his team to lose, but on October 29, 2016, his team won a game against a team that included army members. A fight broke out and the Applicant pushed a player on the other team. The police intervened and asked all players to leave. The Applicant reports the army showed up at his house later that day and inquired as to his whereabouts. He had not returned home and his brother warned him to stay away. The Applicant claims the army also visited his teammates' homes.

[5] The next day, the Applicant states, the Sri Lankan army's Criminal Investigation Department [Army CID] visited his house. His mother informed the Army CID that he was not at home. She was told the Applicant must report to an army camp. The Applicant reports the

Army CID made a similar visit to his teammate's house, where his teammate was accused of being an LTTE supporter and arrested. The Applicant's mother subsequently travelled to the army camp to determine why the Applicant was required to report. She was not given a clear answer but was informed the Applicant would be arrested if he did not report.

[6] The Applicant remained in hiding and left Sri Lanka on November 21, 2016. He spent some time in a third country where he reports his passport was lost. The Applicant then entered Canada from the United States in February 2017 and initiated a refugee claim on March 7, 2017.

III. Decision under Review

[7] In finding the Applicant had an IFA, the RAD first noted the Applicant had often been vague in answering questions and in explaining his basis of claim. However, the RAD concluded the Applicant had been truthful and stated the presumption of truthfulness had not been rebutted.

[8] The RAD then addressed the two-pronged IFA test as set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706. In addressing the first prong, the RAD found that the Sri Lankan army and Army CID's interest in the Applicant was driven by a personal vendetta and that the interest was localized. As such, the reported agents of persecution would not be motivated to pursue the Applicant within the proposed IFAs. In addressing the second prong of the IFA test, the RAD concluded there were no factors that would render the IFA unreasonably or unduly harsh. The RAD further concluded that although the Applicant may face a higher degree of screening upon return to Sri Lanka, this did not amount to persecution.

IV. Issues and Standard of Review

[9] The sole issue that arises is whether the RAD's decision is reasonable. A reasonable decision is one that is transparent, justified and intelligible (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15).

V. Analysis

[10] The Applicant submits in finding that his risk arose from a personal vendetta, the risk was localized and he had a viable IFA, that the RAD failed to adequately consider the circumstances, including:

- A. That the negative response by the army team members to the soccer game loss was not simply because the army team lost – it was because the army team lost to a team composed of Tamil players;
- B. That the Applicant's position of leadership is a factor that explains why he was targeted;
- C. That despite the RAD's view that an arrest may have been effected at the time of the game had there been a genuine belief that the Applicant was an LTTE supporter, this possibility does not negate the fact that a teammate was arrested the following day and that the Applicant was sought out at his home;
- D. That whether the agents of persecution genuinely believed the Applicant was an LTTE supporter is not determinative because the use of this as a pretext to pursue

the Applicant was sufficient to create a perception that the Applicant was an LTTE supporter, thereby placing him at risk throughout the country; and

- E. That the arrest of his teammate demonstrates more than a mere risk of persecution.

[11] The Respondent submits the RAD adequately weighed the evidence and considered the implications of the Applicant's Tamil identity.

[12] I am not persuaded by the Respondent's submissions.

[13] In considering whether the Sri Lankan army or the Army CID was motivated to pursue the Applicant within the IFA, the RAD finds the evidence falls short of establishing the Applicant was genuinely suspected of being an LTTE supporter. The RAD then finds "the evidence suggest[s] that the CID are using [suspected LTTE membership] as an excuse to pursue their personal vendettas" and that the Applicant has failed to put forward any evidence to establish those CID members had taken steps that "would effectively 'mark' him to outside persons as a suspected member of the LTTE." The RAD then concludes the Applicant's fear that he is perceived to be an LTTE supporter is speculative.

[14] I am satisfied that it was reasonable for the RAD to conclude the evidence fell short of establishing the army members pursuing the Applicant had a genuine belief that he was an LTTE supporter. However, I am not convinced the genuineness of the belief is of relevance in assessing

the Applicant's risk or whether there was a motivation to pursue him in other parts of the country in this particular instance.

[15] The genuineness of the belief of the reported agents of persecution does not diminish the Applicant's risk if that belief had been communicated to others within the security services who are unaware of the underlying motivation. The RAD does not ignore this circumstance but finds the Applicant failed to provide evidence that he had been otherwise marked as a suspected LTTE member. In my view, this finding renders the IFA analysis unreasonable.

[16] The Applicant cannot reasonably be expected to know what internal action the reported agents of persecution may have taken to pursue or justify their personal vendetta or whether those efforts included "marking" the Applicant. The Applicant's burden was not to establish he would be subject to persecution but rather to demonstrate a well-founded fear of persecution.

[17] The RAD was required to assess the Applicant's narrative in light of the evidence produced. This evidence included the visits to the Applicant's home, the arrest of a team member and the information provided by the Applicant's mother.

[18] The RAD's focus on the genuineness of the agents of persecution genuine belief as opposed to the perception that would result from their purported motives for seeking out the applicant unduly influenced the RAD's assessment of the Applicant's evidence, undermining the reasonableness of the decision.

VI. Conclusion

[19] The Application is granted. The parties have not identified a question for certification and none arises.

JUDGMENT IN IMM-55-21

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-55-21

STYLE OF CAUSE: THANARUPAN SHANMUGAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 28, 2022

JUDGMENT AND REASONS: GLEESON J.

DATED: APRIL 4, 2022

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