

Federal Court



Cour fédérale

Date: 20230125

Docket: IMM-5203-21

Citation: 2023 FC 108

St. John's, Newfoundland and Labrador, January 25, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

KOGULARAJESH KULASEGARAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Kogularajesh Kulasegaram (the “Applicant”) seeks judicial review of the decision of a Senior Immigration Officer (the “Officer”), dismissing his Pre-Removal Risk Assessment (“PRRA”) application, made pursuant to section 112 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The Officer dismissed the application on the grounds that the Applicant did not present enough evidence to show that he is a Convention refugee or person in need of protection, within the scope of section 96 and subsection 97(1), respectively, of the Act.

[2] The Applicant is a citizen of Sri Lanka. He arrived in Canada on October 31, 2011, and sought Convention refugee protection on the basis of a fear of persecution from the Sri Lankan authorities due to his perceived political support for the Liberation Tigers of Tamil Eelam (the “LTTE”) and his Tamil ethnicity.

[3] The Immigration and Refugee Board, Refugee Protection Division (the “RPD”) dismissed his claim on May 25, 2012, on the basis of negative credibility findings. An application for leave and judicial review was dismissed on December 13, 2012.

[4] The Applicant submitted his PRRA application on November 12, 2019. He filed his initial submissions on November 27, 2019, and filed further submissions on December 12, 2019.

[5] The Applicant now argues that the Officer breached his rights to procedural fairness by failing to afford him an oral hearing. He argues that by requiring corroborating evidence of his claim for protection, the Officer made a negative credibility finding and should have provided an oral hearing, in order to test his credibility.

[6] Further, the Applicant submits that the decision is unreasonable on the grounds that the Officer erred in assessing his *sur place* claim, the evidence of personal risk and his risk profile.

[7] The Minister of Citizenship and Immigration (the “Respondent”) argues that there was no breach of procedural fairness arising from the lack of an oral hearing. Otherwise, he submits that evidence presented in support of the PRRA application does not address the deficiencies

identified by the RPD in its decision, in particular the negative credibility findings, and that the decision is reasonable.

[8] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[9] The merits of the decision are reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[10] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra* at paragraph 99.

[11] I see no merit in the Applicant's arguments about a breach of procedural fairness. He seems to rely on the finding about the lack of corroborating evidence relative to allegations about the arrest of his father in 2013 to mean that the Officer did not believe him. He builds upon this perception to argue that his credibility was in issue and consequently, the Officer should have decided if an oral hearing was required.

[12] The Officer specifically noted that the Applicant had requested an oral hearing “if needed”. The Officer decided that no hearing was required, pursuant to the factors set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, since credibility was not an issue in the PRRA application.

[13] I see no breach of procedural fairness arising from the lack of an oral hearing.

[14] As for the Applicant’s submissions about the overall reasonableness of the decision, these seem to be an attack upon the weight given by the Officer to the new evidence submitted by the Applicant.

[15] For example, the Applicant argues that the Officer misunderstood the evidence about the risk profile in Sri Lanka of a person who unsuccessfully sought Convention refugee status and the possibility that such failure can lead to an imputed link with the LTTE upon return to Sri Lanka.

[16] I agree with the arguments of the Respondent on this point.

[17] In his PRRA submissions, the Applicant provided several decisions of the RPD and of other officers where those decision makers found that there was a risk to failed asylum seekers upon their return to Sri Lanka. I see no error on the part of the Officer in declining to follow those decisions. These decisions reflect an assessment of the evidence in those cases.

[18] The Officer set out the findings in clear terms. Each case is to be assessed upon the evidence and arguments raised, relative to the individual claimant.

[19] I am not persuaded that the Applicant has shown any error that requires judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-5203-21

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

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5203-21

STYLE OF CAUSE: KOGULARAJESH KULASEGARAM v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 2, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JANUARY 25, 2023

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