

Federal Court



Cour fédérale

Date: 20230620

Docket: IMM-3194-22

Citation: 2023 FC 869

Ottawa, Ontario, June 20, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**RUWANTHA SHASHI PRABHATH WADU ARACHCHIGE
SADINI UMESHA JAYATHILAKE SRI BRAHMANA ARACHCHI
MUDIYANSELAGE
SITHULI DULITHNA MINULAKI WADU ARACHCHIGE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision dated March 10, 2022 [Decision] in which the Refugee Appeal Division [RAD] confirmed the decision of the Refugee Protection

Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection.

[2] The Applicants allege that they fear persecution from the extremist Buddhist group Bodu Bala Sena [BBS] because of the Principal Applicant's (PA) professional partnership with a Muslim.

[3] For the reasons that follow, this application for judicial review is dismissed.

II. Background

[4] The Applicants are a family of three, consisting of Ruwantha Shashi Prabhath Wadu Arachchige, the Principal Applicant [PA], his spouse Sadini Umesha Jayathilake Sri Brahmana Arachchi Mudiyansele, and their child Sithuli Dulithna Minulaki Wadu Arachchige. They are all citizens of Sri Lanka.

[5] In March 2019, the PA, a Sinhalese Buddhist, established a used car business with his Muslim friend.

[6] In April 2019, there was a terrorist attack in Sri Lanka, known as the "Easter bombings", in which a series of suicide bomb attacks occurred in Colombo, Batticaloa, and Negombo.

[7] The PA claimed that shortly after the attacks, in May 2019, a local Buddhist priest (VH) accosted the PA and demanded that he cease working with his Muslim business partner (MR).

[8] In June 2019, the PA claims that VH came to his home with several other Buddhist monks demanding money for being a “Muslim sympathizer” and for working with a Muslim. One of the monks identified themselves as a member of BBS. The PA was only able to provide a partial amount of the money demanded which led to further threats.

[9] The PA attempted to file a police complaint, but the police refused to accept it because of the BBS’ power and influence.

[10] After continued threats and demands for payment, the Applicants fearing for their safety, went to live with the PA’s cousin in Chilaw for two months before coming to Canada and initiating a claim for refugee protection.

[11] The RPD heard the Applicants’ claim on September 17, 2021 and refused it on October 21, 2021, having found a viable internal flight alternative in Chilaw as the determinative issue.

III. **Decision under Review**

[12] The RAD also identified IFA as the determinative issue.

[13] The RAD rejected two of the eight items tendered by the Applicants as new evidence, finding they were reasonably available at the time of the RPD’s decision and because the Applicants failed to explain why they could not have reasonably been expected to raise them before the RPD prior to the issuance of its decision.

[14] With respect to IFA, the RAD concluded that the Applicants do not face a serious possibility of persecution in Chilaw, because the evidence did not establish that the BBS had the motivation or the means to track the PA and his family.

[15] Finally, the RAD found that the Applicants do not face a serious possibility of persecution in Sri Lanka as failed refugee claimants.

IV. **Issues and Standard of Review**

[16] The Applicants raise two issues: 1) the RAD erred in refusing to admit new evidence, and 2) the RAD erred in its assessment of a viable Internal Flight Alternative [IFA].

[17] The RAD's Decision is reviewable on a reasonableness standard. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15 and 85.

V. **Analysis**

A. *New evidence was reasonably rejected*

[18] In support of his appeal to the RAD, the Applicant tendered the following eight documents as new evidence. Seven of the eight documents were news articles showing that the BBS continues to operate in the country. The eighth document was a letter from the PA's cousin.

[19] The RAD admitted six news articles, finding that they arose after the RPD rendered its decision, were relevant to the fact that the BBS has not disbanded contrary to evidence cited by the RPD, and credible on their face.

[20] The RAD rejected the seventh news article from “SBS News” dated June 3, 2021, titled “DFAT [Department of Foreign Affairs and Trade] urged to retract ‘inaccurate’ report saying Sri Lankans face low torture risk, following U.K. court finding”.

[21] The RAD found that the SBS News article arose prior to the RPD decision and the Applicants failed to explain why they could not have reasonably been expected to advance it sooner.

[22] The RAD also rejected the letter from the PA’s cousin, finding that it did not contain any new evidence. The letter addressed conditions in Chilaw, the proposed IFA. The RAD found that these conditions were not new, noting that the RPD identified the proposed IFA at the start of their hearing. The RAD concluded that the Applicants failed to provide an explanation for why they could not have provided the evidence sooner.

[23] The Applicants submit that “[t]he circumstance sought to be proved by the documentary evidence only arose after the RPD rendered its decision”.

[24] According to the Applicants, the SBS News article was meant to address the RPD’s reliance on “outdated documents” contained in the National Documentation Package [NDP] for

Sri Lanka, which was unforeseeable prior to the RPD's decision, the letter is new evidence that describes the situation in Chilaw as witnessed by the PA's cousin.

[25] The Applicants have failed to persuade me that the RAD's assessment of the new evidence was unreasonable.

[26] The Applicants had access to the NDP for Sri Lanka prior to the RPD's decision. Accordingly, they had the opportunity to review the NDP documentation and to provide alternative evidence if they did not agree with some of those documents. I do not agree with the Applicants that they could not reasonably foresee that the RPD would rely on these particular documents, which were properly before the RPD.

[27] As for the letter written by the PA's cousin, the information it contains was available prior to the RPD's decision. There is no indication that its contents relate to circumstances that only arose after the RPD's decision. Rather, the evidence referred to by the PA's cousin about the presence and activities of the BBS in Chilaw was available before the RPD rendered its decision.

[28] As noted by this Court in *Vijayakumar v Canada (Citizenship and Immigration)*, 2016 FC 1160 at paragraph 15, “[e]vidence that simply corroborates facts or contradicts the RPD's findings does not fall within the meaning of “new evidence” for the purposes of s 110(4) of the IRPA (Singh at paras 35, 50, 51)”.

[29] Further, the Federal Court of Appeal in *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] held that “[t]he role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected”: (*Singh* at para 54).

[30] I agree with the Respondent that in the circumstances, the Applicants in fact tried to “complete a deficient record submitted before the RPD” with items 7 and 8.

[31] The RAD did not commit a reviewable error when it refused to recognize both documents as new evidence in the meaning of subsection 110(4) of the *Immigration and Refugee Protection Act* (SC 2001, c 27).

B. *The RAD’s IFA analysis was reasonable*

[32] I am satisfied that the RAD reasonably considered the evidence and assessed the totality of it, contrary to what the Applicants submit.

[33] Based on the evidence, the RAD found that the local priest only sought the dissolution of the PA’s partnership with his Muslim friend. As a result of the PA’s sale of the shares of his company to his partner, and because the Applicants presented no further evidence that they had issues with the BBS beyond that, the RAD could reasonably conclude that the BBS lacked ongoing motivation to search for the PA. According to the RAD, this finding was reinforced by the fact that there was no evidence of persecution or continued search outside of the Applicants’ hometown after their departure for Chilaw.

[34] With respect to the means of the BBS to locate the Applicants, the RAD acknowledged the documentary evidence establishing that the BBS is an extremist Buddhist group engaging in acts of violence against religious minorities. The RAD also acknowledged that the group benefits from the support of the government. However, the RAD determined that there was no evidence that the BBS had access to state resources that would allow its members to find the Applicants if they were to relocate to Chilaw. The RAD stated that the Applicants' allegations on this point were "simply conjecture" and that they failed to disclose "any evidence that would support this supposition".

[35] On the risk faced upon return to Sri Lanka as failed refugee claimants, the RAD considered the relevant documentary evidence and acknowledged the possibility that the Applicants would face some questioning and harassment at the airport, but concluded that it would not be sufficiently serious to amount to persecution. In arriving at this conclusion the RAD thoroughly explained its reasons, citing the evidence in the Board's National Documentation Package. The Board noted that the Applicants all have valid Sri Lankan Passports and came to Canada with valid visitor visas, one factor relevant to the level of scrutiny they may be subjected to upon return to the country. The RAD also considered the Applicants' profiles and found:

The preponderance of the evidence with respect to failed claimants returning to Sri Lanka indicates that it is those that the Sri Lankan authorities perceive to have links to the LTTE that face higher scrutiny. There is no evidence that the Appellants have any connection to the LTTE that may bring them to the attention of the Sri Lankan authorities.

There is no evidence that the Sri Lanka authorities would be aware that the Appellants made a claim for refugee protection in Canada that was rejected. The Appellants may face some harassment at the airport in Sri Lanka upon their return, but it is not sufficiently

serious to amount to persecution. I find that the Appellants do not face a serious possibility of persecution in Sri Lanka as failed refugee claimants.

[36] It was open to the RAD to consider the Applicants particular profiles in assessing whether they, as failed refugee claimants, would be screened in a way that would amount to persecution: *Jayasinghe Arachchige v Canada (Citizenship and Immigration)*, 2020 FC 509 at para 96.

[37] After considering the record before the Court, as well as the submissions of both parties, I find the reasons provided by the RAD are intelligible, transparent and justified in light of the constraining facts and law.

[38] The Applicants have failed to identify any reviewable errors or exceptional circumstances that would justify interfering with the RAD's factual findings. Their submissions amount to a mere disagreement with the RAD's findings, asking this Court to look at the evidence and weigh it differently. It is trite law that this is not the role of the Court on judicial review: *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55.

VI. **Conclusion**

[39] For the reasons set out above, this application for judicial review is dismissed.

[40] The parties did not submit a question for certification, and I agree that none arises.

JUDGMENT IN IMM-3194-22

THIS COURT'S JUDGMENT is that:

1. This application for leave and judicial review is dismissed.
2. There is no serious question of general importance to certify.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3194-22

STYLE OF CAUSE: RUWANTHA SHASHI PRABHATH WADU
ARACHCHIGE, SADINI UMESHA JAYATHILAKE
SRI BRAHMANA ARACHCHI MUDIYANSELAGE,
SITHULI DULITHNA MINULAKI WADU
ARACHCHIGE v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 23, 2023

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JUNE 20, 2023

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