

Federal Court



Cour fédérale

Date: 20231129

Docket: IMM-10140-22

Citation: 2023 FC 1593

Ottawa, Ontario, November 29, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SASITHARAN THARMARATNAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Sasitharan Tharmaratnam (the “Applicant”) seeks judicial review of the decision of an officer (the “Officer”), refusing his Pre-Removal Risk Assessment (“PRRA”) application, made pursuant to subsection 112(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a national of Sri Lanka. For various reasons, he was ineligible to submit a claim for refugee protection but was given the opportunity to make a PRRA application. He based that application upon his fear of persecution by the Sri Lankan authorities relating to his activities in an Internally Displaced Persons (“IDP”) camp, Tamil ethnicity, perceived connection with the Liberation Tigers of Tamil Eelam (the “LTTE”), and his status as a returning refugee claimant.

[3] An officer refused his first application by a decision dated October 28, 2020. Upon an application for leave and judicial review, the Minister of Citizenship and Immigration (the “Respondent”) agreed to set aside that decision and return the matter for redetermination.

[4] The Applicant now argues that the Officer made veiled credibility findings without holding an oral hearing, thereby breaching his right to procedural fairness. This argument relates to the manner in which the Officer treated letters and affidavits prepared by the Applicant’s sister and brothers.

[5] The Applicant also submits that the finding that his evidence about his activities in the IDP camp, in documenting war crimes at the camp, was insufficient to establish personal risk to him means that the Officer did not believe his evidence. He characterizes this as a credibility finding.

[6] As well, the Applicant argues that the decision is unreasonable since the Officer applied the wrong burden of proof by requiring him to prove future risk on the balance of probabilities

standard. He relies upon the decision in *Sivagnanasundarampillai v. Canada (Citizenship and Immigration)*, 2018 FC 1109, where Justice Diner allowed an application for judicial review where the decision-maker had misstated the test in some places, while correctly setting it out in other places.

[7] The Applicant challenges the Officer's assessment of the evidence, citing for example the treatment of the letters and affidavits and the apparent requirement for corroboration of the contents of that evidence. He also claims that the Officer failed to consider the risk he would face as a returning refugee claimant.

[8] Finally, the Applicant submits that the Officer should have considered the "compelling reasons" exception set out in paragraph 108(1)(b) of the Act.

[9] The Respondent argues that there was no breach of procedural fairness and that the Officer reasonably considered the evidence and arguments submitted by the Applicant, reaching a reasonable conclusion in denying the Applicant's application.

[10] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

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

[12] 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.

[13] It is not necessary for me to address all the arguments advanced by the parties since I am satisfied that the Officer did not apply the correct test consistently in his decision.

[14] I refer to the following extract from the Officer’s decision:

Accordingly, I find that the submitted evidence does not demonstrate that on a balance of probabilities that the applicant is currently under suspicion of ties to the LTTE by Sri Lankan authorities, nor that the applicant’s former employment, interment at Kopay or Tamil identity would result in a forward looking personalized risk to him upon a return to the country. [...]

[15] In the result, the application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to a different officer for redetermination. There is no question for certification.

JUDGMENT IN IMM-10140-22

THIS COURT'S JUDGMENT is that 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. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10140-22

STYLE OF CAUSE: SASITHARAN THARMARATNAM v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 11, 2023

REASONS AND JUDGMENT HENEGHAN J.

DATED: NOVEMBER 29, 2023

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