Federal Court  Cour fédérale

Date: 20110628

Docket: IMM-6211-10

Citation: 2011 FC 788

Ottawa, Ontario, June 28, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

S. K.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") of the decision made on October 4, 2010, by a Pre-Removal Risk Assessment ("PRRA") officer, refusing the applicant's PRRA application.

BACKGROUND

[2] The applicant is a 41-year-old male, Sri Lankan citizen of Tamil ethnicity. He arrived in Canada on July 8, 2007 and made a claim for refugee protection shortly after his arrival. He was subsequently referred to the Immigration Division for an admissibility review which was heard on December 9, 2009 and February, 11, 2010.

[3] On April 16, 2010, the applicant was found to be inadmissible under paragraph 34(1)(f) of the IRPA for membership in a terrorist organization. This finding was based on the applicant's wife's story, accepted by the Immigration and Refugee Board, that her husband was a full-time member of the LTTE from 1988 until at least 2004 and went by a code name. She said he transported both people and weapons, especially at Thundy camp, and fought on the front lines before 1996. She said he was approved to act as a spy, was injured in the chest by shrapnel and was paid by the LTTE. The applicant denies those allegations.

[4] An application for leave for judicial review of this decision was denied by the Federal Court on September 8, 2010. The applicant's PRRA application was refused on October 4, 2010. On March 15, 2011, this Court stayed the applicant's removal to Colombo, Sri Lanka, scheduled to take place on March 22, 2011 pending the determination of this application for leave and for judicial review.

DECISION UNDER REVIEW

[5] The PRRA officer found that as part of his documentary evidence, the applicant did not submit reports more recent than those from 2010. The officer concluded that the evidence the applicant did submit referred to wartime conditions in Sri Lanka rather than the more recent and well-documented post-war environment. The officer also noted that the applicant did not provide a personal statement of his experiences or risk in Sri Lanka, nor did he say he was convicted or charged of crimes or wanted by the police or military in any country.

[6] The officer did not accept that the applicant was detained for years by authorities prior to coming to Canada and found the applicant failed to indicate how Canada's identifying him as a former member or supporter of the LTTE could be relayed to the Sri Lankan authorities. There was no evidence from Interpol, CSIS or the Sri Lankan government to suggest that the applicant's name or identity were linked to the LTTE. Finally, the officer found there was little to suggest that the applicant has a profile that would be of interest to the authorities on return to Sri Lanka.

ISSUES

[7] The issues raised in this application are as follows:

1. Did the PRRA officer err in considering the applicant's risk profile?
2. Did the PRRA officer err in concluding that the applicant would not be suspected in Sri Lanka of being an LTTE supporter?

3. Did the PRRA officer err in relying on *Sittampalam*?

ANALYSIS

Standard of Review

[8] PRRA officer's decisions are to be reviewed on a standard of reasonableness: *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, 30 Admin. L.R. (4th) 131; *Perea v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1173 at paras. 22-24.

Did the PRRA officer err in considering the applicant's risk profile?

[9] The applicant submits that in examining the UNHCR's updated *Eligibility Guidelines for Assessing International Protection Needs of Asylum-Seekers from Sri Lanka (2010)*, dated July 2010, the officer erred in overlooking that he has a profile identified as being at risk. While the evidence indicates that the numbers detained in Sri Lanka by the authorities are diminishing, there continues to be large numbers held, many of whom are not high profile suspects.

[10] The officer did not ignore the risk of the applicant's potential mistreatment as a suspected LTTE supporter. The officer appreciated that Tamils who are suspected supporters of the LTTE may face mistreatment if detained by the Sri Lankan authorities and that returning failed refugee claimants are given greater scrutiny by the criminal investigation branch. However, the officer

determined that there was no evidence suggesting that the authorities would perceive the applicant to be an LTTE supporter, or a supporter suspected of committing serious crimes who would be at risk of detention.

[11] The officer based this opinion partially on the fact that the applicant did not provide a personal statement of his experiences or risk in Sri Lanka, indicated that he has not ever been convicted or charged of any crimes in any country and that he had never been wanted by police or military or any other authorities in any country. The officer also relied on the ameliorated environment in post-war Sri Lanka, as outlined in the UNHCR's guidelines, as well as the *UK Home Office Operational Guideline Note* from August 2009. These were reasonable findings based on the facts and evidence before the officer.

[12] The applicant further claims that the officer erred in basing the risk assessment on the assumption that applicant could successfully lie if questioned. To this end, the applicant advances the case of *Donboli v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 883, 30 Imm. L.R. (3d) 49 for the proposition that it is not appropriate to base a risk assessment on the assumption that the person concerned will lie successfully or be able to lie upon being questioned. It seems clear that if the applicant discloses the reason for the failure of his refugee claim, he will face greater scrutiny and likely detention in Sri Lanka.

[13] *Donboli* involved a citizen of Iran who contended he was on a list of persons to be destroyed. He left the country illegally and claimed refugee status based on his political opinion. The Court held that the Board erred in law in failing to consider whether Mr. Donboli would risk

severe or extra-judicial treatment at the hands of a repressive regime as a result of his illegal exit from the country and a failed refugee claim.

[14] *Donboli* is not directly applicable to the instant case, firstly because here, the applicant did not leave the country illegally and did not submit evidence that he was wanted by the authorities. Secondly, the Board's error in *Donboli* was only underscored by its finding that Mr. Donboli had a "good cover story", it was not a central error in itself. See: *Rafipoor v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 615 at para. 19.

[15] In this matter, the only evidence before the Immigration Division respecting the applicant's alleged activities were the statements by the wife. There is no indication that the Sri Lankan authorities would be aware of those statements as the proceedings were confidential. The officer was clearly mindful of the fact that the applicant would be examined upon return. It was not necessary for the officer to speculate about what information would be gleaned from that interview or what the applicant would choose to say.

Did the PRRA officer err in concluding that the applicant would not be suspected in Sri Lanka of being an LTTE supporter?

[16] The applicant claims the officer erred in confining this portion of the analysis to that information which the Canadian government will disclose to Sri Lankan authorities. Upon his return, the authorities will question him as to the activities in which he was engaged in Sri Lanka as well as in Canada.

[17] Although it is reasonable to assume that the Sri Lankan authorities will question the applicant upon re-entry, his claim that he will be seen as an LTTE supporter and would have to lie to the border officials regarding the purpose of his return is mere speculation. The applicant submitted no evidence to support his assertion that he would have to discuss the particulars of his failed refugee claim in Canada. Further, and as noted by the officer, "[W]hile they [the Sri Lankan authorities] may presumably be aware that the applicant filed a refugee claim, as many Tamils and non-Tamils who spent years abroad have, there is little to indicate that this in itself presents returnees with a risk of return". This was a logical conclusion.

[18] Moreover, the officer rightly noted that the Immigration Division hearings were private proceedings and the decision which found the applicant to be inadmissible was not publicly available. Nor was there any evidence from Interpol, CSIS or the Sri Lankan government suggesting that the applicant's name and identity are linked to the LTTE. It was thus open to the officer to conclude that there was little to suggest that the applicant would have a profile of interest to the authorities on return to Sri Lanka.

Did the PRRA officer err in relying on Sittampalam?

[19] The applicant argues that the officer erred in relying on *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 562, 89 Imm. L.R. (3d) 280 as evidence of country conditions. The applicant points to *Pathmanathan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 885, [2010] 3 F.C.R. 395 for the proposition that jurisprudence should not be used as evidence of country conditions.

[20] To say the officer was *relying* on *Sittampalam* would be a mischaracterization of the officer's findings. Early in the decision the officer provided some initial analysis on the risk to the applicant's profile group, those suspected of LTTE links, and then went on later to make reference to *Sittampalam*. This was only to reinforce that changes in conditions related to this group had been recognized in other recent cases. The officer was not relying on the decision for evidence of country conditions.

[21] The application for judicial review will be dismissed. No questions for certification were proposed. The applicant requested that this judgment and reasons for judgment be anonymized by the substitution of initials for his name in the style of cause. The respondent took no position on that request. While the open court principle normally requires that the names of the parties be set out in the style of cause, the courts have recognized exceptions to that principle such as where the decision contains highly personal information or would put a party at risk. In light of the nature of the evidence referred to above and the conclusion reached I will agree to the applicant's request in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is dismissed;
2. initials shall be substituted for the applicant's name in the style of cause of these Reasons for Judgment and Judgment;
3. no questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6211-10
STYLE OF CAUSE:	S.K. and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
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REASONS FOR JUDGMENT AND JUDGMENT:	MOSLEY J.
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