

Federal Court



Cour fédérale

Date: 20151125

Docket: IMM-2183-15

Citation: 2015 FC 1312

Montréal, Quebec, November 25, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RICHARD LUCIAN PATHINATHAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] It is very difficult, if not impossible, to determine whether an applicant would be at risk in Sri Lanka, if the Court does not know, if the applicant was in Sri Lanka when the alleged events happened.

II. Introduction

[2] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a senior immigration officer [Officer] decision, dated August 29, 2014 (and its addendum, dated March 3, 2015) rejecting the Applicant's pre-removal risk assessment [PRRA] application.

III. Background

[3] The Applicant, Richard Lucian Pathinathar (age 30), is a Tamil of Catholic faith and he is a citizen of Sri Lanka.

[4] The Applicant alleges that he faced persecution in Sri Lanka because of his Tamil ethnicity by the Sri Lanka army (SLA) and the Liberation Tigers of Tamil Eelam (LTTE). Namely, the Applicant alleges that in 2006 his brother was abducted by a Tamil militant group. In August 2006, the Applicant was arrested and assaulted by the SLA and accused of being a LTTE supporter. Between 2007 and 2009, he was stopped and assaulted numerous times by the SLA. Finally, in August 2010, a Tamil militant group abducted him. The Applicant was only released after he had partially paid a ransom; and, promised that he would pay the remainder of the ransom two months later.

[5] Not able to pay the remainder of the ransom, the Applicant fled Sri Lanka on October 30, 2010. He travelled through many countries. In November 2010, the Applicant was intercepted

and detained in the United States after he illegally tried to cross the American border. On December 31, 2010, the Applicant, released on bail, sought asylum in Canada at the Saint-Bernard-de-Lacolle border crossing. On February 21, 2013, the RPD refused the Applicant's refugee claim finding that, on the balance of the probabilities, the Applicant's narrative was not credible; that the Applicant had not been living in Sri Lanka after 2006; that even if the Applicant had, in fact, been credible, the Applicant did not demonstrate a nexus between his alleged fear and a Convention ground; and, that the documentary evidence, in and of itself, without a credible claim, demonstrates that the Applicant is not at risk as a Tamil from the north of Sri Lanka or as a failed refugee claimant.

IV. Decision under Review

[6] On February 14, 2014, the Applicant was offered a PRRA. On August 29, 2014, the Applicant's PRRA application was rejected. In an addendum, dated March 3, 2015, the Officer confirmed his August 29, 2014 decision after having reopened the Applicant's file to assess the additional documents.

[7] In support of his PRRA application, the Applicant submitted four letters from acquaintances in Sri Lanka, three articles dated November 2010 in respect to his illegal entry and detention in the United States; and, country reports and news articles regarding the treatment of Tamils in Sri Lanka.

[8] In his PRRA decision, the Officer found that the Applicant did not demonstrate that the alleged risks which he may face, upon return to Sri Lanka, are significantly different from those

presented before the RPD. Furthermore, the Officer rejected letters from acquaintances in Sri Lanka as he found that the signatories of the letters did not mention that they were first-hand witnesses to the events, or if they were basing their statements on hearsay. Additionally, the Officer gave little weight to the letters as there were no explanations as to why the originals were not submitted; and, there was no proof that the letters were, in fact, sent from Sri Lanka. As a result, the Officer found that the letters were not sufficient to refute the RPD's credibility findings. The Officer also gave little probative value to the letter from Reverend Thomas Savundaranayagam, as the letter does not mention any risk that the Applicant may encounter should he return to Sri Lanka.

[9] The Officer gave little probative value to the news articles in respect of the Applicant's illegal entry to the United States, as they did not provide sufficient details to support the Applicant's allegations of risk in Sri Lanka.

[10] Finally, the Officer reviewed the country reports and news articles submitted by the Applicant, as well as other objective documentary evidence, in respect of the situation of Tamils in Sri Lanka. The Officer found that Tamils may continue to face discrimination due to their ethnicity in Sri Lanka; but, the Applicant did not demonstrate that the discrimination, in his case, would amount to persecution. Moreover, the Officer did not find that the objective documentary evidence demonstrates that the Applicant, himself, would be at risk as a failed refugee. As a result, the Officer rejected the Applicant's PRRA application.

V. Parties positions

[11] The Applicant's main argument, before this Court, is that the officer erred in his assessment of the documentary evidence. Namely, the Officer did not explain why he decided to choose certain parts of the objective documentary evidence over other parts of that evidence; he ignored, and failed to mention, objective documentary evidence that is in contradiction with his conclusions; and, he relied on objective documentary evidence that pre-dates the evidence submitted by the Applicant.

[12] Conversely, the Respondent submits that the Officer's decision is reasonable as the Officer conducted a reasonable balancing of the evidence; and, chose to rely on recent, credible and frequently used objective documentary evidence to find that although the situation of Tamils in Sri Lanka is far from perfect, it is improving. The Respondent also submits that there is a presumption that the Officer considered all of the evidence; and, the officer is not required to refer to every document presented (*Ramanathan v Canada (Citizenship and Immigration)*, 2015 FC 319 at para 23); and, this Court has already found, in other decisions, that the documentary evidence regarding risks faced by Tamils in Sri Lanka is contradictory (*Thavapalan v Canada (Citizenship and Immigration)*, 2015 FC 485 at para 9). Moreover, an Officer does not have a duty to explain why he preferred a specific document over another (*Navaneethan v Canada (Citizenship and Immigration)*, 2015 FC 664 at para 58 [*Navaneethan*]; *J.M. v Canada (Citizenship and Immigration)*, 2015 FC 598 at para 65 [*J.M.*]). Finally, it is not the role of this Court to reweigh the evidence before the Officer (*Nebie v Canada (Citizenship and Immigration)*, 2015 FC 701 at para 40; *J.M.*, above, at para 67).

VI. Standard of Review

[13] The standard of review of reasonableness is applicable wherein fact and law determinations as well as fact determinations are reached by PRRA Officers (*Navaneethan*; above, at para 7; *Nebie*, above).

VII. Analysis

[14] The Court is in a situation where it does not know the fulsome narrative of the Applicant, as there are clear credibility issues, as pointed out by the PRRA Officer and the RPD. The RPD stated in its decision that, on the balance of the probabilities, it did not believe that the Applicant was in Sri Lanka after 2006. It is very difficult, if not impossible, to determine whether an Applicant would be at risk to return to Sri Lanka, if the Court does not know if the Applicant was in Sri Lanka when the alleged events happened.

[15] A voluminous, often irrelevant, documentation has been submitted to the Court. Some of it is in respect of the risk faced by Tamils in Sri Lanka but not all of it. Country conditions in other countries have been included in a very voluminous package of documents, some of which evidence has nothing to do with the case (for example, country conditions in Honduras and several other countries of no relevance to the case). The Applicant's main argument is that the Officer failed to consider certain parts of the voluminous documentary evidence submitted. While it is true that a decision-maker has the duty of examining the evidence submitted by the parties before him (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL); 157 FTR 35; 83 ACWS (3d) 264), it does not mean that a decision-

maker has to refer to all the documents submitted (*Ramanathan v Canada (Citizenship and Immigration)*, 2015 FC 319, at para 23). It is trite law that Officers are presumed to have considered all the evidence before them (*Nguyen v Canada (Citizenship and Immigration)*, 2015 FC 59, at para 5; *Marin v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1683, at para 10); and, that an Officer does not have to explain why he preferred some documents over others (*Navaneethan v Canada (Citizenship and Immigration)*, 2015 FC 664, at para 58; *J.M. v Canada (Citizenship and Immigration)*, 2015 FC 598, at 65).

[16] Turning to this case, the Officer assessed the objective documentary evidence and found that there were contradictions regarding the risk that Tamils may face in Sri Lanka. As submitted by the Respondent, this Court has found in other cases that there is contradictory documentary evidence with regard to the situation of Tamils in Sri Lanka (*Anderson v Canada (Citizenship and Immigration)*, 2015 FC 495, at para 9).

[17] The Court, when it comes to the assessment of contradictory evidence by a decision-maker, has a very limited role – it is not the role of this Court to reweigh the documentary evidence before a decision-maker (*Negm v Canada (Citizenship and Immigration)*, 2015 FC 272, at para 34; *Rauda Paniagua v Canada (Citizenship and Immigration)*, 2008 FC 1085, at para 8; *Orellana Ortega v Canada (Citizenship and Immigration)*, 2012 FC 611, at para 14). Given the presumption that an Officer has reviewed the entirety of the documentary evidence submitted; and, that an Officer may prefer certain documentary evidence over others, the Court finds that the Officer's decision was reasonable as it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[18] Consequently, the Application is denied.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review be denied.
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2183-15

STYLE OF CAUSE: RICHARD LUCIAN PATHINATHAR v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 24, 2015

JUDGMENT AND REASONS: SHORE J.

DATED: NOVEMBER 25, 2015

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