

Federal Court



Cour fédérale

Date: 20170209

Docket: IMM-2048-16

Citation: 2017 FC 164

Toronto, Ontario, February 9, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ANAA SITHAMPARANATHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD] dated April 11, 2016 [the Decision]. The RPD refused the Applicant's refugee claim, finding the Applicant is not a Convention refugee and is not a person in need of protection.

I. Background

[2] The Applicant was born on September 9, 1986 in Jaffna, Sri Lanka. She is a Tamil citizen and fears persecution by agents of the Sri Lankan state, including the military and police. The Applicant says that she and her family have been targeted by state officials because they are perceived to be associated with the Liberation Tigers of Tamil Eelam (LTTE).

[3] The Applicant says her husband was taken by authorities on February 12, 2009 [the Disappearance]. This happened two days after the Applicant, her husband and their families were relocated to a camp for displaced persons. After the Disappearance, the Applicant went to the nearby army camp to enquire about her husband, but officials refused to give her any information.

[4] In 2010, the Applicant and her family resettled in the Vanni area. The Applicant and her father went to the Kilinochchi police station in October 2010 to enquire about her husband, but did not receive assistance and were instead detained. The police accused the Applicant's husband of having connections to the LTTE, questioned the Applicant about her involvement with the LTTE, and physically abused the Applicant. The Applicant and her father were released after four hours.

[5] When they arrived home, the Applicant's father received a call telling him to pay 250,000 Rupees for the release of the Applicant's husband. The money was paid, but the husband was not released and has not been seen since he was taken away.

[6] In January, 2015 the newly elected government announced its intention to release detainees. The Applicant returned to the Kilinochchi police station where she again inquired about her husband. However, she was humiliated and threatened by the police officer she spoke with and her request was torn up and thrown out.

[7] The Applicant also says she was targeted by military men who were housed in a camp opposite her home. She said they would come into her house and “give [her] troubles”. On May 12, 2015, the Applicant says three men from the camp entered and searched her house and accused her husband of being associated with the LTTE. Two of the men locked her family members inside another room, and the Applicant ran outside screaming for help. The men left when neighbours put their lights on, and one of the men warned her he would be back to teach a “good lesson for opposing them.”

[8] The Applicant fled Sri Lanka on May 25, 2015. She was detained in the US, in Texas, on June 8, 2015 and was interviewed at a border patrol station on June 10th. She was later transferred to detention in Newark, New Jersey and a credible fear interview was held on June 29, 2015 with her counsel present. Her sister and brother-in-law are in Canada and they paid for her release on bond. She presented herself to the port of entry at Fort Erie (the POE) on August 27, 2015 where she was interviewed by Canadian authorities and where she made her refugee protection claim. The Applicant’s claim was rejected on April 22, 2016 and because she was admitted to Canada pursuant to the Safe Third Country Agreement, she is not eligible to appeal to the Refugee Appeal Division.

[9] The RPD concluded that the Applicant was not credible based on the following inconsistencies:

- A. Birth Registration - Although the Applicant testified in the hearing and in her BOC form that her husband was taken and disappeared on February 12, 2009, his name appears as the informant on her daughter's birth registration dated June 8, 2009. When asked about this inconsistency, the Applicant said that she did not know why that information was on the document. At the RPD's second sitting, the Applicant provided an affidavit from her father. He said that he provided the information to register the birth, and told the registration official that he was there on behalf of his son-in-law so the official included the latter's name on the registration as the informant. The RPD did not believe this account, because there was nothing to rebut the presumption of bureaucratic regularity or to suggest an official would misrepresent the name of the informant.

- B. Grama Letter - The Grama letter included information provided by the Applicant's father. He stated that the Applicant and her family "had lived in this village from the year of 1995 till 2015.05.25." This suggested that the Applicant's husband had not disappeared and that he lived in the village until the date the Applicant left Sri Lanka. The Applicant explained that her father wrote this in order to confirm that her husband is the father of her daughter. The RPD did not find this explanation credible because earlier in the letter her father had already stated that the Applicant and her husband had a child named Enmathy.

- C. Credible Fear Interview - In the account of the Credible Fear interview in Newark, the Applicant stated that her husband was taken on April 12, 2009, not February 12, 2009. The Applicant explained that she was handcuffed and tense during the interview. The RPD did not accept this explanation, because the Applicant was able to tell the interviewer that she and her husband had been taken into the camp on February 10, 2009.
- D. Searches for her Husband - In her BOC form, the Applicant stated she went in search of her husband on three occasions: in 2009 just after he was taken, once in 2010, and once in 2015. According to the record of the Credible Fear interview, the Applicant indicated that she searched for her husband four times per year. She explained that the BOC was correct (which reports a total of 3 searches) and that she actually told the officials that she went four times in total (not per year) because she was handcuffed and nervous. However, this was still inconsistent with the BOC. The Applicant also told the Canadian officer at the POE that she searched for her husband twice in 2010. However, in her BOC form, the Applicant says she only went to search for her husband once in 2010.
- E. Detention of her Father - The Applicant was asked whether her father was ever detained, put into custody, or questioned after 2010. She testified that, after her arrival in Canada, he was questioned about her whereabouts by the army at their home but was never detained. However, the record of the Credible Fear Interview indicates that she said that around January 2015, persons in civilian clothes detained her father for a day and released him after payment of money. The

Applicant testified that she had no recollection of saying this. The RPD did not accept her explanation.

- F. Border Interview - In her interview at the Border Patrol Station in Texas, the Applicant stated that she came to the USA to live and work in New York City. She made no mention of being a refugee. The RPD found this undermined her account that she left Sri Lanka due to a fear of persecution and was headed to Canada to seek protection. The Applicant says that the story about New York was suggested to her by the interviewer, and that she did not sign the interview notes because the account was not correct. Although the notes show that the Applicant did refuse to sign, the RPD did not accept that an official would, in essence, commit a fraud by making a false record of the interview.

- G. Sister at Family Home - The Applicant testified that her sister did not attend the RPD's second sitting because she was in Sri Lanka with her husband visiting her ailing father and staying for two months at her family home. The RPD found that their return to Sri Lanka and to the family home – allegedly situated across from the army camp - undermined the Applicant's credibility.

Items E, F & G above are not challenged on this application for judicial review.

[10] Having found the Applicant not credible, the RPD turned to her residual profile and found that the risk profiles that had potential application to her were “Persons Suspected of Certain Links with the [LTTE]” and “Women in certain circumstances.”

[11] The RPD member noted that the UNHCR Eligibility Guidelines require previous (real or perceived) links to the LTTE that go beyond prior residency within an area controlled by the LTTE, and which continue to expose individuals to treatment which may give rise to a need for refugee protection. The RPD found that due to the credibility concerns, the Applicant's profile was limited to prior residency in an area controlled by the LTTE.

[12] With regard to the residual profile of "women in certain circumstances", the RPD found that the Applicant did not meet any of the listed descriptions of particularly vulnerable women.

II. Issues

[13] The issues are:

- A. Whether the RPD made unreasonable credibility findings.
- B. Whether the RPD erred in failing to consider all grounds of the Applicant's claim.
- C. Whether the RPD erred in failing to consider the *Gender Guidelines*.
- D. Whether the RPD erred in dismissing the Applicant's medical evidence.
- E. Whether the RPD breached principles of fairness and natural justice in failing to consider the Applicant's counsel's submissions at the hearing.

III. Standard of Review

[14] Decisions of the RPD involving questions of credibility are to be reviewed on a standard of reasonableness and its conclusions are entitled to considerable deference (*Diaz v Canada (Citizenship and Immigration)*, 2016 FC 1343 at para 10). The Court will only interfere with an RPD decision if it lacks justification, transparency and intelligibility and if it falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, para 47). Issues of procedural fairness attract review on the correctness standard.

IV. Issue A

[15] In my view it was unreasonable of the RPD to create a “presumption of bureaucratic regularity.” The father’s affidavit says that the husband was accepted as the informant on the basis of his National Identity Card and the father’s assurance that he was still alive. The RPD assumed that the informant had to be present and actually providing the information but there was no evidence that this was required. Accordingly, the RPD was not entitled to rely on the birth registration to show that the husband had not disappeared and was present to register the birth. The RPD also found it incredible that the Applicant was unaware that her father had registered the birth. Again however, there was no evidence to show that she was interested in the registration. The only issue of concern to her was naming her daughter.

[16] For these reasons the Birth Registration document does not provide a reasonable basis for questioning the Applicant's credibility.

[17] At first blush the Grama Letter does provide a basis to question the husband's Disappearance. The father does indicate that the "family", which would include the husband, still lived in the village after the Disappearance. However, the father's statement is offset by the Grama's note on the letter which simply confirms that the Applicant and her daughter were in residence. In these circumstances I consider it unreasonable of the RPD to have relied on the father's statement to mean that the husband was in the home after the Disappearance.

[18] The Applicant says that, after her abuse at the hands of officials in Sri Lanka, it was unreasonable to expect that she would be able to respond accurately to questions while sitting in handcuffs in front of male officials in the US.

[19] However I am not persuaded by this submission as it relates to the Credible Fear Interview. She was not alone with the officials. Her attorney was present and he was a Tamil who had spoken with her sister in Canada. As the RPD noted, she gave the correct date for their move to the displaced persons camp but then could not give an accurate date for her husband's disappearance. This went to the core of her refugee claim. It was the day that gave rise to her troubles and eventually her flight and it was reasonable of the RPD to expect her to state it correctly.

[20] I also find that the RPD reasonably concluded that her inconsistent evidence about her inquiries about her husband diminished her credibility. Her BOC was clear – 3 inquiries in total yet she told US officials there were 4 and told a Canadian official there were 2. Given that she testified that she was assaulted and threatened during two of the three inquiries it was reasonable to expect her to remember them.

[21] Lastly, she told US border officers that she was going to New York. No amount of stress explains this statement and there is no reason to suppose that the border officer invented the story. Accordingly, the RPD reasonably relied on it to impugn her credibility.

[22] These findings leave the RPD's Decision to stand on the following:

- She misstated the date of the Disappearance – a core date.
- She was wildly inconsistent about her searches for her husband
- She said that her father had been detained and later denied the statement.
- She gave an inconsistent reason for arriving in the US – To work in New York.
- She testified that her brother in law who was accepted as a refugee here had returned to her family home opposite an army camp in Sri Lanka.

[23] In my view these facts are sufficient to allow me to conclude that the RPD's credibility finding was reasonable and that it was not necessary for the RPD to consider her corroborative documents as they would be unreliable.

V. Issues C and E

[24] The Decision makes it clear that the Gender Guidelines and the Submissions of Applicant's counsel were considered. There is no reason to conclude that the RPD referred to the Guidelines for appearances sake and did not apply them in substance. Further, counsel's submissions, are referred to in paras. 15, 48 and 50 of the Decision. They were clearly considered.

VI. Issue B

[25] The Applicant says that the RPD failed to consider her claim that she was suspected of ties to the LTTE. In my view this is not the claim stated in her BOC or in testimony before the RPD. Accordingly, and there was no reason for the RPD to give it consideration. It is clear that her difficulties arose from her husband's perceived lies to the LTTE and her efforts to locate him. This is confirmed in her counsel's submissions before the RPD when he said:

But this is, I think, a central characterization of the Claimant in terms of why she is being targeted or would be targeted in Sri Lanka, the fact that her husband is someone perceived to be LTTE, the fact that she has made numerous – well, not numerous, but she's made specific efforts to determine where he is...So I think she has a very specific profile that causes her a risk, not shared by the general public.

VII. Issue D

[26] The RPD considered the psychologist's report and found that the facts described were consistent with the claimant's BOC form and personal narrative which he had reviewed.

However, the psychologist did not review the record of the POE interview or the interviews conducted by US officials, and was therefore not aware of the material inconsistencies revealed by those records.

[27] The psychologist said:

In the event that subsequent evidence suggests that information provided is incomplete or inaccurate, then my diagnosis, comments, recommendations and opinions expressed in the report may change.

[28] In my view it was reasonable of the RPD to give the report little weight given the fact that it concluded that the Applicant's version of events was not credible.

VIII. CONCLUSION

[29] This application will be dismissed.

IX. CERTIFICATION

[30] No questions were posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2048-16

STYLE OF CAUSE: ANAA SITHAMPARANATHAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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