Federal Court  Cour fédérale

Date: 20160218

Docket: IMM-3550-15

Citation: 2016 FC 224

Ottawa, Ontario, February 18, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

DAJEEVAN NADARASA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

UPON an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision dated June 8, 2015, by a Pre-Removal Risk Assessment [PRRA] officer, refusing to grant the Applicant protection;

AND UPON having read the material submitted by the parties and having heard counsel for both parties at a special session of this Court held in Montreal, Quebec on February 3, 2016;

AND UPON considering that the standard of review that applies to a PRRA officer's finding of fact, or mixed fact and law, including assessments of risk and of credibility, is that of reasonableness, whereby the reviewing Court is concerned with the "existence of justification, transparency and intelligibility within the decision-making process", and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Hernandez Malvaez v Canada (Citizenship and Immigration),* 2011 FC 128 at para 22; *Dunsmuir v New Brunswick,* 2008 SCC 9 at para 47, [2008] 1 SCR 190; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339);

AND UPON determining that this application for judicial review should be allowed for the following reasons:

[1] The Applicant is a Tamil male from the Northern Province of Sri Lanka. He entered Canada on October 3, 2011, and claimed refugee status upon his arrival. The Applicant alleged that in November 2009 and January 2010 he was taken from a refugee camp in Sri Lanka by Criminal Investigation Division [CID] agents, who physically abused and interrogated him concerning his membership or support of the Liberation Tigers of Tamil Eelam [LTTE]. The Applicant further alleged that in February 2010, he and his sister were questioned and beaten by CID agents, and in April 2011, he was detained by members of the Eelam People's Democratic Party and was only released upon the payment of 500 000 rupees.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected his application for refugee protection on November 15, 2012. In light of inconsistencies in his oral and written testimony, the RPD found that the events that allegedly took place between

February 2010 and April 2011 were not credible. The RPD also decided that the Applicant possessed none of the additional factors which would increase his risk, given that he left Sri Lanka legally with his own passport, he holds a national identity card and a certificate of birth, he has no criminal record, there is no evidence of him having been connected to the LTTE and there is no evidence of any outstanding arrest warrant. On a balance of probabilities, the RPD decided that it was more likely than not that if the Applicant were to return to Sri Lanka he would not personally be subject to a risk of persecution, or risk to his life, torture, or cruel and unusual punishment. His application for judicial review of the RPD's decision was denied leave to appeal by this Court on June 10, 2013.

[3] On March 3, 2014, the Applicant filed an application for a PRRA, which was rejected on June 8, 2015. The PRRA officer determined that the new documentary evidence submitted by the Applicant, which largely consisted of country condition reports from organizations such as Freedom from Torture [FFT] (*Out of the Silence: New evidence of Ongoing Torture in Sri Lanka 2009-2011*) and Human Rights Watch [HRW] (*UK: Suspend Deportations of Tamils to Sri Lanka: Further Reports of Torture of Returnees Highlight Extend of Problem, May 29, 2012*), failed to establish risk of persecution, or risk to his life, torture, or cruel and unusual punishment. The PRRA officer gave little weight to the new documentary evidence submitted by the Applicant. Instead, he relied on a United Kingdom Border Agency [UKBA] Country Policy Bulletin issued in October 2012 and reissued in March 2013, which had found that the limited and anonymous information provided by the FFT and HRW was unreliable and did not constitute sufficient evidence for the UKBA to change its policy on Sri Lankan returns. The PRRA officer also relied on a December 2012 edition of the UKBA: *Country of Origin Information Service* to reject the proposition that the Applicant was at risk of being detained at the airport upon his

return to Sri Lanka by virtue of either being a Tamil from the North of Sri Lanka, or by being a failed refugee claimant. Furthermore, the PRRA officer also gave little weight to the latest "Responses to Information Requests" [RIR] found in Canada's own National Documentation Package on Sri Lanka, specifically LKA104245.E published on February 12, 2013, as he was of the view that the report was "mostly based on foundations that were proven to be unreliable".

[4] The PRRA officer also found that despite LKA103782.E, LKA103784.E and LKA103816.E RIR, the Applicant had failed to show that he was personally at risk. The PRRA officer accepted that some Tamils are singled out for questioning and detention when suspected of being an LTTE supporter or sympathizer. However, he found that there was insufficient evidence to satisfy him that the Applicant would be targeted by the security forces or that he was a person of interest to the security forces or any other party. In fact, the PRRA officer was of the view that more recent objective documentary evidence indicates that the Sri Lankan government has begun releasing many detained suspected LTTE members, that it has started relaxing its emergency legislation and that it is focused on rebuilding, suggesting "a positive change". To support this conclusion, the PRRA officer cited the United Nations High Commissioner for Refugees [UNHCR] Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka [UNHCR Guidelines], dated July 2010. He also relied on a number of articles and press releases dated early 2012. Overall, despite acknowledging that human rights problems still exist in Sri Lanka, the PRRA officer found that the Applicant had submitted insufficient evidence to persuade him that he would be at risk by virtue of being a Sri Lankan of Tamil descent, or by virtue of being a failed refugee claimant of Canada.

[5] Before the Court, the Applicant's counsel argued that the PRRA officer erred by not assessing the recent documentary evidence, erroneously disregarding reports emanating from reputed international sources and by not assessing the specific circumstances of the Applicant.

[6] The Respondent's counsel on the other hand argued that the PRRA officer's decision is reasonable and is supported by the evidence. According to the Respondent, the PRRA officer reviewed recent documentary evidence on country conditions in Sri Lanka and in particular, failed refugee claimants who return to Sri Lanka. The PRRA officer's decision that the Applicant did not fit the profile of young Tamils who are targeted by authorities upon entry was reasonable. The Respondent reminded the Court that the assessment of weight to be given to a document is a matter within the discretion of the PRRA officer and that he is not required to refer to every piece of evidence in his decision.

[7] It is well-settled that a PRRA officer has the duty to examine the most recent sources of information in conducting a risk assessment and is not limited to the material filed by the Applicant (*Rizk Hassaballa v Canada (Citizenship and Immigration),* 2007 FC 489 at para 33; *Jama v Canada (Citizenship and Immigration),* 2014 FC 668 at paras 17-18). Furthermore, while a decision-maker is not required to refer to every piece of evidence, they must consider evidence that contradicts their conclusion, (*Florea v Canada (MEI),* [1993] FCJ No 598 (QL) at para 1; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* [1998] FCJ No 1425 (FCTD) at para 17);

[8] In the circumstances of the present case, the PRRA officer relied on country condition information that was over two (2) years old. In addition, the PRRA officer also relied on the

2010 UNHCR Guidelines even though they no longer applied (see footnote 8 at page 8 of the decision). The fact that the PRRA officer failed to identify, assess or even mention the most recent country condition information, including the 2012 UNHCR Guidelines or the 2014 UNHCR Country of Origin Information on Sri Lanka, is unreasonable and requires that this decision be set aside. As stated in *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 244 at para 16, "the PRRA Officer is the last line of risk assessment, subject to the removal officer's limited decision. There is no point in having a PRRA if it is to proceed on information known to be incorrect", and I may add, outdated.

[9] In addition to setting aside the decision because of the PRRA officer's failure to consider the most recent country condition evidence, I am also of the view that the decision must be set aside for another reason. In June 2014, Justice Martineau allowed an application for judicial review of a decision dated September 16, 2013, issued by the same PRRA officer (*Thavachchelvam v Canada (Citizenship and Immigration)*, 2014 FC 601). In that case, which is highly similar to the present case, the PRRA officer also relied upon statements from UKBA officials and the December 2012 UKBA Report to discredit and discount the FFT and HRW Reports, and Canada's own RIR, including LKA104245.E. Justice Martineau found that there was a fundamental problem with the outright dismissal of all relevant information provided by HRW, FFT and Canada's own RIR, because their sources were anonymous. Justice Martineau noted that HRW and FFT were very credible and internationally recognized organizations and that the protection of their sources was central to their mandate of exposing human rights violations. He also offered a differing view than the PRRA officer on the importance of "signs that the government of Sri Lanka is focused on rebuilding including the lifting of the state of

emergency". Justice Martineau clarified that torture continues in Sri Lanka and that resettlement under the auspices of the UNHCR does not include failed refugee claimants. Justice Martineau also reiterated that the failure by a tribunal to take into account material evidence amounts to a reviewable error. In the end, he found the decision to be unreasonable as it failed to address contradictory evidence.

[10] For these reasons, the present application is allowed. The impugned decision made on June 8, 2015, is set aside and the matter shall be returned for reassessment and redetermination by a different PRRA officer.

[11] Counsel agreed that there is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. The impugned decision made on June 8, 2015, is set aside and the matter shall be returned for reassessment and redetermination by a different Pre-Removal Risk Assessment officer. No question is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3550-15
STYLE OF CAUSE:	DAJEEVAN NADARASA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	FEBRUARY 3, 2016
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	FEBRUARY 18, 2016

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