

Federal Court



Cour fédérale

Date: 20180129

Docket: IMM-3278-17

Citation: 2018 FC 95

Montréal, Quebec, January 29, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

DAJEEVAN NADARASA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Dajeevan Nadarasa, is a Tamil male from the Northern Province of Sri Lanka. After fleeing his country via the United States, he arrived in Canada on October 3, 2011 and sought refugee status. The Applicant claimed that he was interrogated and physically abused by Criminal Investigation Division [CID] agents in November 2009 and January 2010 because of his perceived membership or support of the Liberation Tigers of Tamil Eelam [LTTE]. He

further claimed that in February 2010, he and his younger sister were questioned and beaten by CID agents, and that in April 2011, he was detained by members of the Eelam People's Democratic Party military group.

[2] The Applicant's refugee claim was rejected by the Refugee Protection Division [RPD] in November 2012. The RPD found the Applicant's testimony about the events that occurred between February 2010 and April 2011 not to be credible. It also found that the Applicant would unlikely be subject to a risk of persecution upon his return to Sri Lanka. Leave for judicial review of the RPD's decision was denied by the Federal Court on June 10, 2013.

[3] In March 2014, the Applicant filed an application for a Pre-Removal Risk Assessment [PRRA] which was refused on June 8, 2015. On February 18, 2016, I set aside the PRRA Officer's decision on the basis that he had failed to rely on the most recent country condition information and because he had dismissed relevant information provided by credible and internationally recognized organizations (*Nadarasa v Canada (Citizenship and Immigration)*, 2016 FC 224).

[4] On March 29, 2016, the Applicant updated his PRRA submissions.

[5] In a decision dated May 31, 2017, the second PRRA Officer [Officer] rejected the Applicant's application. The Officer found that the Applicant was materially restating the same facts that were presented at the RPD hearing and had failed to provide sufficient evidence to demonstrate a significant change in his personal circumstances. Turning to the risk that the

Applicant would experience upon his return to Sri Lanka, the Officer assessed the documentary evidence and found that the Applicant had not provided sufficient evidence to demonstrate that the Sri Lankan authorities would have any significant interest in targeting him.

[6] The Applicant seeks judicial review of the Officer's decision on the basis that the Officer failed to assess his specific personal circumstances and profile in light of the most recent country conditions evidence.

[7] For the reasons below, I find that this Court's intervention is not warranted.

II. Analysis

[8] A PRRA officer's decision, including his assessment of the evidence, involves questions of mixed fact and law and as such, is reviewable on a reasonableness standard (*Mbaraga v Canada (Citizenship and Immigration)*, 2015 FC 580 at para 22; *Kulanayagam v Canada (Citizenship and Immigration)*, 2015 FC 101 at para 21; *Hernandez Malvaez v Canada (Citizenship and Immigration)*, 2011 FC 128 at para 22). In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[9] The Applicant submits that in assessing the most recent evidence of country conditions in Sri Lanka, the Officer failed to consider his profile as a young Tamil returning to Sri Lanka who has been interrogated and beaten by the CID in the past, who bears torture scars and whose family has been persecuted by the security forces for suspicion of LTTE links.

[10] The Applicant argues that his profile as someone who was interrogated and beaten by the security forces in Sri Lanka is undisputed since the RPD did not make an explicit credibility finding on the Applicant's allegation that he was detained and mistreated in November 2009 and January 2010. According to the Applicant, it is obvious from the decision that the Officer did not consider this particular part of his profile given that the documentary evidence upon which the Officer relied clearly corroborated the persecution of such individuals upon their return to Sri Lanka. In particular, he relies upon a portion of the Officer's decision that examines the June 2017 United Kingdom Home Office [UK Home Office] report which references a decision of the United Kingdom Upper Tribunal issued in 2013. It found, among other things, that if a person is detained by the Sri Lankan security services, there remains a real risk of ill treatment or harm requiring international protection.

[11] I am not persuaded by the Applicant's submissions.

[12] I agree that the RPD did not make a credibility finding with respect to the Applicant's allegation that he was questioned and physically abused by the CID in November 2009 and January 2010. However, I disagree with the Applicant's assertion that it was not considered by

the Officer. The Officer clearly refers to the Applicant's allegation in the first part of his risk assessment.

[13] Moreover, the excerpt upon which the Applicant relies to support his argument that he has the profile of someone at risk upon return to Sri Lanka must be interpreted in its proper context. The UK Home Office report also states that since the Upper Tribunal decision was issued in 2013, a new government came into office in January 2015 and there have been positive developments in the country. Unlike in the past, returnees who have a previous connection with the LTTE are able to return to their communities without suffering ill-treatment. Police interest, if any, is not in any previous involvement with the LTTE but on whether the person has committed any criminal act. The report also indicates that those who are most at risk are the persons who are, or are perceived to be, a threat because they have, or are perceived to have, a significant role in relation to post-conflict separatism. A "significant role", according to the report, means those in the LTTE's former leadership and/or former members who were suspected of having committed terrorist or serious criminal acts during the conflict.

[14] In his decision, the Officer examined both the documentary evidence presented by the Applicant as well as the evidence from his own independent review of country conditions in Sri Lanka. After referring to some of the most recent documentary evidence, the Officer noted that the profiles most at risk are those with a real or perceived connection to the LTTE, those who have been or continue to be active in promoting Tamil separation, those who have been critical of the Sri Lankan government such as journalists and human rights defenders, and those wanted for having committed a crime in Sri Lanka before departing including those having left illegally.

The Officer then noted that the Applicant had not put forward any evidence to demonstrate that he fell within these risk factors or that the Sri Lankan authorities would have any significant interest in targeting the Applicant. He thus found that the current country conditions did not reflect new risk developments for the Applicant. Having reviewed the record and the Officer's decision, I am satisfied that the Officer's conclusion is reasonable.

[15] The Applicant also argues that the Officer erred in rejecting the two (2) photographs of the scars on his body that he presented as new evidence before the Officer. This, according to the Applicant, is another factor which puts him at risk upon his return to Sri Lanka. The Officer found that this evidence was not new as the injuries existed at the time of the RPD hearing. The Officer also found that the photos were unclear and did not demonstrate what the marks were or that the injuries were consistent with torture. The Applicant has not persuaded me that the Officer's finding is unreasonable.

[16] Finally, the Applicant argues that the Officer erred in failing to recognize that he was also at risk because members of his immediate family, two (2) brothers and one (1) sister, were accepted as refugees for being persecuted by security forces on suspicions of links with the LTTE. He further argues that the Officer erred in finding that the excerpts from his older sister's personal information form and convention refugee decision did not constitute new evidence on the basis that it predated the RPD hearing and no reason was provided to explain why the evidence was not reasonably available or why the Applicant could not have been reasonably expected to present this evidence before the RPD.

[17] I agree that the Applicant provided a reason for not producing his older sister's documents at the RPD hearing. The Applicant indicated that his sister was unable to find her documents. Whether or not this reason constitutes a reasonable explanation and is sufficient to characterize the documentation as new evidence, I find that the Officer's treatment of the Applicant's new documents was not determinative. The Officer noted that even if he accepted the Applicant's documents, the Applicant's sister had left Sri Lanka in 2002. The documents did not speak to the family's experiences after that time and did not corroborate the Applicant's statements that he continued to experience harassment at the hands of the Sri Lankan authorities in 2009 and 2010.

[18] As for the Applicant's brothers, the Officer noted that the Applicant's two (2) brothers had escaped Sri Lanka due to the persecution of the LTTE and that they were accepted as Convention Refugees. While he gave the letter signed by the brothers little weight on the basis that the letter lacked detail and did not corroborate the Applicant's experiences, this is not to say that he did not consider their status as refugee claimants.

[19] Given the profiles identified by the Officer of those individuals most at risk in his assessment of the most recent country conditions, it was reasonably open to the Officer to consider that the refugee status of the Applicant's family members was not a risk factor to the Applicant.

[20] In summary, the Applicant has not demonstrated that the Officer's assessment of the Applicant's personal circumstances and country condition evidence was unreasonable.

Moreover, upon review of the Applicant's submissions, I find that he is essentially asking this Court to reweigh the evidence before the PRRA Officer and to come to a different conclusion. That is not the role of the Court on judicial review (*Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 15; *Khosa* at para 61).

[21] For all of the above reasons, I find that the PRRA Officer's decision is reasonable as it falls within a range of possible, acceptable outcomes, which are defensible in light of the facts and law (*Dunsmuir* at para 47). As a result, the application for judicial review is dismissed.

[22] No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-3278-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3278-17

STYLE OF CAUSE: DAJEEVAN NADARASA v THE MINISTER OF
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APPEARANCES:

Viken Artinian

FOR THE APPLICANT

Andréane Joannette-Laflamme

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT