

Federal Court



Cour fédérale

Date: 20190621

Docket: IMM-6143-18

Citation: 2019 FC 847

Ottawa, Ontario, June 21, 2019

PRESENT: Mr. Justice Manson

BETWEEN:

ANGAGE LAKNATH UDAYANGA PERERA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board [the RPD] dated October 23, 2018, which denied the Applicant's claim for refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. Background

[2] The Applicant, Angage Laknath Udayanga Perera, is a citizen of Sri Lanka born November 5, 1968. He is of Sinhalese ethnicity.

[3] Between 2000 and 2003, the Applicant worked at the Navaloka Hospital in Sri Lanka. In this period, he received numerous threats from police due to his insistence on hiring people of Tamil ethnicity to drive ambulances.

[4] In 2003, the Applicant moved to Cuba when his first wife was appointed to the Sri Lankan embassy in Cuba.

[5] In 2007, the Applicant's marriage dissolved, and he left Cuba to live in the United States. The Applicant met and married his second wife, who sponsored his residency in the United States.

[6] While living in the United States, the Applicant took part in protests and demonstrations against the Sri Lankan government, which took place in front of the Sri Lankan embassy in Los Angeles. At these protests, he was confronted and photographed by members of the Sri Lankan embassy. The embassy members were angry that he was protesting as a Sinhalese person, called him a traitor, and stated that he would suffer one day.

[7] On August 5, 2011, the Applicant returned to Sri Lanka to visit family. Upon arriving at the airport in Colombo, Sri Lanka, he was questioned by the authorities before being released.

[8] On August 20, 2011, while still in Sri Lanka, the Applicant was detained by the Sri Lankan police, who questioned him about his support of pro-Liberation Tigers of Tamil Eelam [LTTE] organizations in the United States, as well as his past hiring of Tamil ambulance drivers. The police told him that they were aware of his participation in protests against the Sri Lankan government and his support of the United National Party [UNP].

[9] The Applicant was detained for three days, and suffered significant beatings. He was eventually released after paying 50,000 rupees. He was told that he would be arrested again if he remained in Sri Lanka. Upon his release, he was hospitalized for bruises to his chest and internal bleeding.

[10] On August 26, 2011, the Applicant returned to the United States.

[11] The Applicant's second marriage deteriorated and his wife withdrew her sponsorship of his residency in the United States. He was told by United States immigration authorities that he had to leave the country.

[12] As a result, the Applicant came to Canada and made a claim for refugee protection. He fears that he will be detained and questioned if returned to Sri Lanka, because of his profile as a failed asylum seeker in Canada. He also fears, because of his past activities in the United States

and his 2011 arrest, he will be questioned about his activities in Canada and his association with the Tamil diaspora in Canada.

III. Decision Under Review

[13] The RPD accepted the Applicant's identity and credibility.

[14] The RPD emphasized that the Applicant had not been involved in any political activities since his arrival in Canada, and that it had been almost ten years since he had been involved in demonstrations against the Sri Lankan government. The RPD also noted that the UNP, the political party the Applicant was harassed for supporting in 2011, now formed the government in Sri Lanka. The RPD concluded that there was insufficient evidence to conclude that the Sri Lankan authorities would have adverse interest in the Applicant based on his political activities.

[15] The RPD also considered the evidence regarding failed asylum seekers returning from abroad. The RPD reviewed reports that, while the situation has improved since 2011, failed asylum seekers suspected of links to the LTTE face a possibility of arrest and torture upon their return to Sri Lanka. The RPD went on to note that the Applicant has no direct links to the LTTE, has not been politically active while in Canada, and, while initially detained, was ultimately released by the authorities in 2011. The RPD concluded that the Applicant was not a person who would be perceived to be linked to any pro-LTTE factions by the current Sri Lankan government, and as such did not have good grounds to fear persecution as a failed asylum seeker.

[16] In a decision dated October 23, 2018, the RPD determined that the Applicant was neither a Convention refugee nor a person in need of protection within the meaning of section 96 and subsection 97(1) of the IRPA [the Decision].

IV. Issues and Standard of Review

[17] The sole issue before this Court is whether the RPD was unreasonable when considering the evidence of the potential risk to the Applicant upon a return to Sri Lanka. The standard of review is reasonableness.

V. Analysis

[18] The Applicant argues that the RPD erred unreasonably by overlooking objective evidence on the record which supported the Applicant's claim. In particular, the Applicant argues that the RPD ignored evidence that:

- (i) Non-Tamil citizens of Sri Lanka with perceived links to the LTTE continue to face danger in Sri Lanka;
- (ii) Failed asylum seekers, when returned to Sri Lanka, are subject to extensive screening and may be detained or fined;
- (iii) LTTE sympathizers continue to be the target of harassment and attacks in Sri Lanka; and
- (iv) Sinhalese supporters of the LTTE have been detained and tortured.

[19] I find that the RPD reasonably considered the evidence in the record. As stated by the Federal Court of Appeal in *Florea v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 598 at paragraph 1:

The fact that the Division did not mention each and every one of the documents entered in evidence before it does not indicate that it did not take them into account: on the contrary, a tribunal is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown.

[20] The Applicant correctly asserts that an immigration decision maker may not ignore, or cite but fail to meaningfully address, evidence which directly contradicts their conclusions. However, the RPD did not commit this error.

[21] The RPD clearly recognized the risks that continue to exist for perceived LTTE sympathisers, as well as failed asylum seekers, upon return to Sri Lanka. While the RPD may not have cited to each and every piece of evidence contained in the record, the panel was clearly aware of the potential dangers. In particular, paragraphs 14, 15, 16, and 17 of the Decision reference documentary evidence of the potential dangers upon return to Sri Lanka.

[22] The RPD reviewed the potential dangers, but discounted them in the particular circumstances of the Applicant, on the basis that:

- (i) The political landscape had changed since 2011, and the political party (UNP) that the Applicant had been harassed for supporting now formed the government;
- (ii) The Applicant had no political involvement since leaving the United States in 2012, and had not participated in any pro-LTTE activities since that time; and
- (iii) While dangers remain, the evidence suggested that the situation in Sri Lanka was improving for those with perceived links to the LTTE; and
- (iv) While the Applicant may be perceived to have supported the LTTE in the past, he had no direct ties to the LTTE (individuals who may be at greater risk).

[23] Therefore, I find that the RPD did not err by ignoring relevant evidence. Further, it is apparent that what the Applicant effectively seeks is to have the Court reweigh the evidence, which is not the role of this Court on review.

[24] The Applicant also argues that the RPD erred by finding, at paragraph 18 of the Decision, that when released from detention in 2011 the Applicant had been told not to return to Colombo. The Applicant suggests that he testified that he was told not to remain in Sri Lanka. While the RPD may have misquoted the Applicant, this minor error had no import in the RPD's analysis, did not affect the RPD's analysis or conclusions, and does not impact this decision.

VI. Conclusion

[25] This application for judicial review is dismissed.

JUDGMENT in IMM-6143-18

THIS COURT'S JUDGMENT is that

1. This application is dismissed.
2. There is no question for certification.

“Michael D. Manson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6143-18

STYLE OF CAUSE: ANGAGE LAKNATH UDAYANGA PERERA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 20, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANSON J.

DATED: JUNE 21, 2019

APPEARANCES:

IAN R.J.WONG FOR THE APPLICANT

NEETA LOGSETTY FOR THE RESPONDENT

SOLICITORS OF RECORD:

IAN R.J.WONG FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontari

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario