Federal Court  Cour fédérale

Date: 20210702

Docket: IMM-6389-19

Citation: 2021 FC 699

St. John's, Newfoundland and Labrador, July 2, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

KENGESWARAN THANAPALASINGAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Kengeswaran Thanapalasingam (the "Applicant") seeks judicial review of the decision made by an Officer upon his application for a Pre-Removal Risk Assessment ("PRRA"), pursuant to section 112 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The Officer dismissed the application.

[2] The Applicant is a citizen of Sri Lanka. He arrived in Canada on board the MV "Sea Sun" in August 2010. He sought Convention refugee protection in Canada, under the Act, on the basis that as a young Tamil male he was at risk from the army, police, Liberation Tigers of Tamil Eelam ("LTTE"), and pro-government militants if returned to Sri Lanka.

[3] The Immigration and Refugee Board, Refugee Protection Division (the "RPD") dismissed the Applicant's application for protection. An application for judicial review of that decision was dismissed by this Court.

[4] In the decision here in issue, the Officer quoted extensively from the decision of the RPD. The Officer concluded that the Applicant had not identified any new risks arising since the decision of the RPD, did not present evidence to counteract the findings of the RPD, and presented the same risk that was raised before the RPD.

[5] The Applicant was represented by Counsel when he submitted his PRRA application. Counsel submitted a recent decision of this Court concerning a person in similarly situated circumstances as the Applicant. The Officer found the decision not to be relevant since it could not prove or disprove a fact related to the Applicant's application.

[6] Counsel for the Applicant alleged that publicly available information about the Applicant, that is by means of the publication on CanLII of the Federal Court's decision dismissing his application for judicial review of the RPD's decision.

[7] The Applicant challenges the decision on the grounds that it is unreasonable and was made in breach of procedural fairness.

[8] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision of the Officer was reasonably made, without any breach of procedural fairness.

[9] The merits of the decision are reviewable on the standard of reasonableness, further to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.). Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa* (2009), 304 D.L.R. (4th) 1 (S.C.C.).

[10] Although the Applicant advances several issues in his Memorandum of Fact and Law, it is not necessary for me to address them all. The main, and dispositive, argument is that the decision is unreasonable because the Officer apparently adopted the reasons of the RPD without engaging in an independent assessment of the evidence and submissions made in connection with the PRRA application.

[11] The jurisprudence is clear that an applicant cannot use the PRRA process as a means to rehabilitate a negative RPD decision. In *Figuardo v. Canada (Solicitor General)*, [2005] 4 F.C.R. 387 (F.C.), the Court made the following observation at paragraph 52:

> It is important to underline the fact that the PRRA process is not an appeal of the Board's decision, but rather is intended to be an assessment based on new facts or evidence which demonstrates that the person at issue is now at risk of persecution, risk of torture,

> risk to life, or risk of cruel and unusual treatment or punishment. In short, the purpose of the PRRA application is not to reargue the facts which were originally before the Board or to do indirectly what cannot be done directly – i.e., contest the findings of the Board. …

[12] It follows, in my opinion, that the Respondent, through his agents and employees, cannot dismiss a PRRA application by apparently endorsing an RPD decision and ignoring the materials submitted upon a PRRA application.

[13] The decision of the Officer appears to reflect such an approach, as illustrated by the following extract from the decision:

> I have read the submissions and I find the applicant has not identified a new risk development that has arisen since the RPD decision, he has not presented evidence to rebut the numerous finding (sic) made by the RPD, and has restated the same risk that was presented to the RPD for their consideration.

[14] These statements do not show that the Officer independently engaged with the evidence before him.

[15] This failure does not meet the standard of reasonableness described in *Vavilov*, *supra*, at paragraph 126, as follows:

> That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. …

[16] There are other problems with the decision but it is not necessary for me to address them.

[17] In the result, this application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another Officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-6389-19

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another Officer for redetermination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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