

Federal Court



Cour fédérale

Date: 20220502

Docket: IMM-5891-20

Citation: 2022 FC 631

Ottawa, Ontario, May 2, 2022

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

KEERTHANAN SIVAKUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application is for judicial review of a negative decision dated July 2, 2020 [the Decision] following a pre-removal risk assessment [PRRA].

[2] The Applicant is a Tamil citizen of Sri Lanka. His family suffered in Sri Lanka during the civil war and so they departed Sri Lanka legally and travelled to India in 1997 when the Applicant was 7-years-old. In India, in 2009, at age 19, the Applicant was accused of

collaborating with the Liberation Tigers of Tamil Eelam [LTTE] and was suspected of involvement in the release of a compact disc, which chronicled the genocide of Tamils during the civil war. He was detained by Indian authorities but was released after his father paid a bribe.

[3] In June of 2010, the Applicant returned to Sri Lanka using an emergency passport, which was a temporary travel document issued by Sri Lanka. On arrival, he was detained for 3 days and questioned regarding his time in India. However, he was released when his uncle paid a bribe. He went to live with his uncle's friend, but the next day that friend was questioned by unknown people regarding the Applicant's possible involvement with the LTTE. The Applicant therefore fled to Colombo and with the assistance of his uncle and an agent, he left Sri Lanka.

[4] He eventually reached Canada and made a refugee claim, which was later denied on the basis of negative credibility findings. The Refugee Protection Division of the Immigration and Refugee Board [the RPD] found that he had embellished his claim in his oral testimony by alleging for the first time that he had been a direct supporter of the LTTE. The RPD found that, had he actually been a supporter, or even had he been perceived to have been a supporter, he would not have been released by either the Indian or Sri Lankan authorities.

I. The PRRA Decision

[5] The Officer found that no new risk had arisen since the RPD refused the Applicant's refugee claim.

[6] Dealing with the issues of risk in Sri Lanka for returning failed Tamil refugee claimants, the Officer noted that he had read the country condition documents submitted by the Applicant but that he preferred more recent reports. He then referred to a report by a UK Home Office fact-finding mission to Sri Lanka dated January 20, 2022 [the Home Office Report] and found that the Applicant, as a returnee, would likely not be pursued by Sri Lankan authorities since he did not have any outstanding criminal charges. As well, a country information report prepared by Australia's Department of Foreign Affairs and Trade [DFAT] dated November 2019 [the DFAT Report] stated that failed Tamil refugee claimants who returned to Sri Lanka from abroad had not been harassed or monitored by the Authorities.

II. The Issues

1. Before he made the Decision, was the Officer obliged to inform the Applicant that he was relying on country condition documents that were more current than those which had been submitted by the Applicant?
2. Did the Officer ignore the Applicant's country condition documents?
3. Did the Officer fail to conduct a forward-looking analysis?

III. Discussion

Issue 1: Before he made the Decision, was the Officer obliged to inform the Applicant that he was relying on country condition documents that were more current than those which had been submitted by the Applicant?

[7] The Applicant relied on a document titled Processing Pre-Removal Risk Assessment Application: Procedures and Guidelines applicable to all cases [the Guidelines]. This document reads as follows at the third bullet point, under the heading “Conducting Research”:

- Where a document post-dates the submission of the applicant, or where the date of publication is not clearly indicated, officers will share with the applicant, prior to rendering a decision, any document that shows changes in the country conditions that could affect the decision.

[8] This provision applies because the Applicant’s PRRA submissions were dated March 4, 2019, and as noted above, the UK Home Office Report and DFAT Report [together the Reports] relied on by the Officer were dated in November 2019 and January 2022 and therefore post-dated the PRRA submissions.

[9] In considering the Reports’ findings, it is important to focus on Tamils in the Applicant’s circumstances. They would be returnees who have no actual or perceived ties to the LTTE, who have no criminal record, and who have not travelled in or out of Sri Lanka on fraudulent documents. The Reports indicate that Tamils returning to Sri Lanka who are failed refugee claimants but who have legal travel documents and no outstanding criminal charges face no risk on their return to Sri Lanka.

[10] The question then becomes whether these findings are different from those in the country condition documents supplied by the Applicant [the Applicant’s Country Condition Documents]. Counsel for the Applicant could not point to passages in the Applicant’s Country Condition Documents which indicated that Tamils in the Applicant’s circumstances faced different or greater risks than those described in the Reports.

[11] Since the Reports did not disclose changes in country conditions which could have affected the Decision, the Guidelines do not apply and the Officer was not obliged to disclose his reliance on the Reports.

Issue 2: Did the Officer ignore the Applicant's earlier country condition documents?

[12] The Officer stated "I have read the country conditions documentation provided by the claimant". However, the Officer did not discuss the evidence in those documents because he found that the more current Reports were more "accurate and reliable". In my view, this was a reasonable approach to take to the evidence. There was no point in discussing documents which the Officer felt were no longer current.

Issue 3: Did the Officer fail to conduct a forward-looking analysis?

[13] The Officer was faced with a situation in which there was no evidence that any new risks had arisen since the RPD decision. The Officer commented on the lack of new evidence. This showed that he was aware that a forward-looking risk analysis was required. Indeed, he undertook such an analysis when he considered the Reports. I find that the Officer acted reasonably.

IV. Conclusion

[14] The application for judicial review will be dismissed.

V. Certification of a Question for Appeal

[15] No such question was posed.

JUDGMENT IN IMM-5891-20

THIS COURT'S JUDGMENT is that the application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5891-20

STYLE OF CAUSE: KEERTHANAN SIVAKUMAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

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JUDGMENT AND REASONS: SIMPSON J.

DATED: MAY 2, 2022

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