

Date: 20071121

Docket: IMM-6769-06

Citation: 2007 FC 1222

Toronto, Ontario, November 21, 2007

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

KRISHNAMOORTHY KATHIRGAMU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision by a Pre-Removal Risk Assessment Officer (“PRRA Officer” or “Officer”), dated November 27, 2006, whereby the applicant’s application for protection was refused.

Background

[2] The applicant is a Tamil citizen of northern Sri Lanka. He arrived in Canada on October 7, 2000 and made a claim for refugee protection.

[3] On February 12, 2001, his claim was deemed abandoned for failure to file his Personal Information Form within the time provided.

[4] The applicant submitted a Pre-Removal Risk Assessment (PRRA) application on November 16, 2006.

[5] In his PRRA application, the applicant submits that he fears both the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan authorities.

[6] Specifically, he fears that he will be targeted by the LTTE as a suspected member of, or collaborator with the Sri Lankan armed forces because he has been out of the area for a period of time. He also fears that because he left the LTTE controlled areas illegally he will be at an increased risk of persecution, torture, and death.

[7] Additionally, he believes that he will be targeted as a single (upon his return he will be without his wife and children) Tamil male from northern Sri Lanka and will be suspected of being an LTTE member.

[8] Furthermore, as a Tamil, he will be targeted by either government forces or their allies in retribution for LTTE attacks. The applicant states that he was victim of this in 1994 and was subsequently required to report to the police in Colombo. He failed to do so and now fears that he will be targeted by the police upon his return.

[9] The Officer rejected the applicant's PRRA application based on the availability of an Internal Flight Alternative (IFA) in Colombo. The Officer noted that the applicant's evidence was silent about conditions in southern regions and particularly Colombo and preferred independent documentary evidence in this regard. No less than (9) nine recent country condition documents were ultimately considered in the Officer's analysis.

[10] The PRRA Officer emphasized that the United Nations High Commissioner for Refugees (UNHCR) had no knowledge of returning Tamils having been singled out for adverse treatment under Sri Lanka's Immigrants and Emigrants Act. Further, an immigration official at the Canadian High Commission in Colombo has stated that allegations that returnees to Sri Lanka are tortured are a complete fabrication. Returnees who do not have pending arrest warrants or active charges in Sri Lanka are simply released. Both the UNHCR and Canadian High Commission evidence revealed that some returnees may be questioned at the airport and then allowed to leave or otherwise not questioned at all.

[11] The Officer indicated that the applicant's past treatment, on its own, did not warrant granting protection nor was it necessarily indicative of a forward-looking risk in light of documentary evidence regarding country conditions and the applicant's personal circumstances.

[12] Moreover, the officer emphasized that documentary evidence indicates that Tamils fleeing persecution or the war in the northeast can generally find a safe haven in government-controlled areas. Furthermore, while periodic security measures are in place in Colombo and young Tamils

particularly those newly arrived in Colombo from the north may be stopped, checked, arrested or detained for a short period of time, most are released after their identity is checked. These short term detentions for the purpose of preventing disruptions or dealing with terrorism do not constitute persecution.

Analysis

[13] In *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] FC 437, [2005] F.C.J. No. 540 (QL), at paras. 8-22, after conducting a pragmatic and functional analysis, Mosley J. affirmed that “in the judicial review of PRRA decisions the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness.”

[14] When reviewing administrative decisions, the reasons provided are not to be read microscopically (*Boulis v. Canada (Minister of Manpower and Immigration)*, [1974] S.R.R. 875 at 885). The decision must be assessed as a whole and within the context of the evidence (*Miranda v. Canada (Minister of Employment and Immigration)*, [1993] 63 F.T.R. 80, para. 3).

[15] The applicant first submits that the PRRA Officer failed to assess the applicant’s evidence of past incidents of torture in coming to a conclusion that the applicant’s fears of persecution were not objectively well founded.

[16] It is well established that even though the determination of a well-founded fear of persecution is forward-looking, instances of past persecution must be assessed when put forth by the applicant (*Natynczyk v. Canada (Minister of Citizenship and Immigration)*, [2004] FC 914, [2004] F.C.J. No. 1118 (QL), at para 71).

[17] In the present case, the Officer reviewed the country condition documentation and concluded that the applicant would not face persecution. The Officer noted on page 2 of the decision that the applicant had been targeted by government forces in the past. Further on in the reasons she indicated that she did not believe that the applicant's past treatment, in light of the documentary evidence, warranted a granting of protection. Thus, it cannot be said that she failed to assess the applicant's personal circumstances.

[18] The applicant further argues that the PRRA Officer misconstrued his fear by stating that he feared to return to Sri Lanka because of his prolonged absence from that country, when in reality his fear stemmed from the fact that he had been required to report to the Sri Lankan authorities in 1994 but failed to do so. Again, I disagree.

[19] In the present case, the Officer turned her mind to the specific fears put forth by the applicant. She indicated that the applicant feared being targeted as a Tamil by either government forces or their allies in retribution for LTTE attacks against others. Thus, she recognized that the applicant has been a victim in the past. At page 2 of the decision, the Officer explicitly referred to the fear that the applicant asserts was not considered: "In 1994, the applicant submits that he was

required to report to the police in Toronto and failed to do so; he will be targeted by the police for failing to report.”

[20] Again, I am unable to conclude that the PRRA Officer misapprehended the applicant’s fear.

[21] The applicant also submits that the PRRA officer erred in determining that Tamils fleeing persecution can generally find an (IFA) in government controlled areas and in concluding that the target of arrests and detentions in Colombo were ‘young’ Tamils.

[22] It is true that the Officer indicated that Tamils fleeing persecution can generally find an IFA in government controlled areas, and that the target of arrests are young Tamils, most of whom are released after identity checks. However, what is relevant in the present case is that the particular circumstances of the applicant were addressed. The Officer specifically analyzed the applicant’s circumstances and found that while he was likely to be questioned by the authorities with regard to his identity and previous whereabouts, he would be able to prove his identity “being in possession of NIC (National Identity Card) and a birth certificate” and thus would be released.

[23] I find that the conclusion on the availability of an IFA was not patently unreasonable.

[24] For these reasons, the application for judicial review of the PRRA Officer’s decision is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review of the PRRA Officer's decision is dismissed.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

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