

Date: 20080206

Docket: IMM-1165-07

Citation: 2008 FC 155

Ottawa, Ontario, February 06, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

THURAI NARANY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Pre-Removal Risk Assessment (PRRA) Officer, dated January 17, 2007, wherein the Officer found that the applicant is not at risk of torture, death or cruel and unusual punishment if he were returned to Sri Lanka.

[2] Mr. Narany is a 75-year old citizen of Sri Lanka and an ethnic Tamil. His three children have all left Sri Lanka, with two living in Canada. His wife remains in Sri Lanka, but because of the

war, he does not know where she is. He alleged that he was forced by the Liberation Tamil Tigers of Eelam (LTTE) to work for them in the early 1990s, when his city, Jaffna, was under their control.

[3] He arrived in Canada on a visitor's visa in December 2002, and applied for refugee status three months later. After two days of hearings before the Refugee Protection Division (RPD), the decision of May 17, 2005, he was found not to be a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA. The RPD found him not to be credible, and further found that if he were eligible for protection under sections 96 or 97 of the IRPA, he would be excluded under Article 1F of the *Refugee Convention*, as listed in the Schedule to IRPA, for participation in war crimes or crimes against humanity for his assistance to the LTTE. Leave for judicial review of that decision was refused.

[4] Mr. Narany first applied for a PRRA in January 2006, which was rejected in July of that same year. An application for leave and judicial review of the first PRRA was filed but not pursued, as he had filed submissions for a second PRRA. He claimed, at both the RPD hearing and his first PRRA, risk from the LTTE and other Tamil groups for having fled, risk of conscription despite his age, and risk of abduction or extortion as the parent of children living outside Sri Lanka. He filed a new PRRA application, resulting in a negative decision dated January 17, 2007.

I. Decision

[5] The PRRA Officer considered only new evidence which had not been before the RPD or the officer who determined Mr. Narany's first PRRA. The Officer then assessed his risk for each of the claimed grounds, and dismissed them. In doing so, the Officer found that the applicant had not provided evidence which countered the finding of the first PRRA officer that he did not have a profile which made him particularly subject to risk at the hands of the LTTE.

II. Issues

- A. Did the PRRA Officer err in not considering all of the evidence including that which was presented at the first PRRA hearing?
- B. Did the PRRA Officer ignore the evidence or make a perverse and capricious decision?

III. Standard of review

[6] In *Figurado v. Canada (Solicitor General)*, 2005 FC 347, Justice Luc J. Martineau noted that the standard of review of a PRRA Officer's decision, considered as a whole, is reasonableness, while particular factual findings should stand unless they are patently unreasonable.

IV. Analysis

A. *Did the PRRA Officer err in not considering all of the evidence including the one presented at the first PRRA hearing?*

[7] It is well-established that the PRRA is not an appeal or a reconsideration of the RPD's decision. Section 113(a) of the IRPA provides that the decision with respect to the findings on sections 96 and 97 is final, except where evidence of new, different or additional risks is established which could not have been foreseen by the applicant at the time of the RPD hearing: *Perez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1379. Likewise, a second PRRA is not a review of the first, and the second PRRA Officer need not revisit evidence which was before the first except if there is an allegation of new risks. Therefore, the applicant's submission that it should be done here, cannot be entertained because of the clear intent of section 113(a) of the IRPA.

B. *Did the PRRA Officer ignore the evidence or make a perverse and capricious decision?*

[8] The finding of the first PRRA Officer was that there was insufficient evidence before her to support the applicant's contention that he was personally at risk of torture, conscription or extortion, or was a member of a group with higher risk of such persecution. The decision under review in the instant case makes reference several times to the 'profile' of someone at risk of persecution by the LTTE and finds that the applicant does not match that profile. These statements show that the PRRA Officer was alive to the fact that membership of a group vulnerable to persecution is considered equivalent to being personally at risk.

[9] The profiles of those at risk from the LTTE are young Tamil professionals, Tamil businessmen, Tamil political figures and activists demonstrating an anti-Tamil stance.

[10] There is also another aspect to those profiles, in that the applicant submits that persons who lived or reside abroad, in returning to Sri Lanka are often considered “wealthy” and are subject to kidnappings to be held for ransom or obliged to contribute financially or subject to giving bribes to the police as a form of extortion: see *Kularatnam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1122 at paras. 10-13; *Sinnasamy v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 67 at paras. 25 and 27. An omission to consider this possibility constitutes a reviewable error.

(1) The travel warning

[11] The applicant further asserts that the PRRA Officer refused to consider relevant evidence, i.e. the travel warning issued by the Canadian Federal Department of Foreign Affairs (DFAIT) which advised that non-essential travel to Sri Lanka should be limited.

[12] The applicant argues that the PRRA Officer did not consider the seriousness of this warning and noted that the warning was aimed mainly at Canadian citizens and permanent residents.

[13] The respondent replies that the PRRA Officer did consider this warning noting it was that mainly for Canadian citizens and did no more than show the general situation in Sri Lanka.

[14] There is no doubt that this document was mainly addressed to Canadian citizens and permanent residents, but there is no valid reason why it should not be considered when dealing with other nationals. Justice Yves de Montigny wrote the following on the subject in *Sinnasamy*, above, at para 35:

Finally, the applicant submits that the PRRA officer misinterpreted a DFAIT report which advises Canadian against all non-essential travel. While I find it disingenuous to argue that it is only meant to advise Canadians and does not apply to citizens of Sri Lanka, as if the country were not as dangerous for them as it is for Canadians and permanent residents of Canada, I agree with the respondent that this advisory could be interpreted as discouraging travel to the north and east only.

[15] However, I believe the consequences of this warning were sufficiently examined by the PRRA Officer in this case.

(2) The RPD Decision

[16] The PRRA Officer could correctly use the RPD decision as a starting point for his analysis but he had to pursue his own one to find that the applicant was not at a particular risk for extortion.

V. Conclusion

[17] The reviewable errors made by the PRRA Officer in the assessment of the applicant's case merit a new assessment and justify this application for judicial review.

[18] No question of general importance was raised.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be granted. The decision of the PRRA Officer is set aside and the matter is referred back for redetermination by a different PRRA Officer. No questions are certified.

"Orville Frenette"
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1165-07

STYLE OF CAUSE: Thurai Narany
v.
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 17, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Deputy Judge Frenette

DATED: February 6, 2008

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