

Federal Court



Cour fédérale

Date: 20150428

Docket: IMM-7708-13

Citation: 2015 FC 552

Ottawa, Ontario, April 28, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ANUNAN BALAKRISHNAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Defendant

JUDGMENT AND REASONS

[1] **UPON** the Applicant's application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the RAD] dated November 6, 2013;

[2] **AND UPON** reading the material filed and hearing the submissions of counsel for both parties in court in Toronto on March 26, 2015;

[3] **AND UPON** noting that in my decisions in *Bahta v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 1245, and *Hossain v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 312, I concluded that although the RAD indicated that it was using reasonableness as the standard of review, it actually conducted the required independent assessment;

[4] **AND UPON** concluding that, in this case, the RAD did not in fact independently assess the Applicant's credibility, as required, but simply considered whether the conclusions reached by the Refugee Protection Division were reasonable;

[5] **AND UPON** concluding as well that the RAD was precluded from performing the required independent assessment of the *sur place* claim because that claim required a consideration of the Applicant's profile and it, in turn, depended on the credibility findings that the RAD had not independently assessed;

[6] **AND UPON** concluding that the RAD's decision was reasonable when it concluded that an article dated September 2, 2013 from the Swiss Broadcasting Service titled "Repatriation Suspended to Sri Lanka" [the New Evidence] was not material and would not be admitted as new evidence;

[7] **AND UPON** noting that no question was posed for certification for appeal;

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application is allowed in part – the Applicant's refugee and *sur place* claims are to be reconsidered by a different panel of the RAD in accordance with these Reasons;
2. The application is dismissed as it relates to the RAD's decision about the New Evidence.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7708-13

STYLE OF CAUSE: ANUNAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 26, 2015

JUDGMENT AND REASONS: SIMPSON J.

DATED: APRIL 28, 2015

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