

Federal Court



Cour fédérale

Date: 20150825

Docket: IMM-8327-14

Citation: 2015 FC 1005

Ottawa, Ontario, August 25, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

SASIKUMAR SANDIRASEKARAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Sasikumar Sandirasekaram is a young Tamil male from northern Sri Lanka who traveled to Canada on board the *MV Sun Sea*. The Refugee Protection Division of the Immigration and Refugee Board rejected his refugee claim, finding that his evidence of past persecution based upon his perceived connection to the Liberation Tigers of Tamil Eelam (LTTE) was not credible. The Board was also not persuaded that he would now be at risk of persecution in Sri Lanka as a result of his travel to Canada on the *MV Sun Sea*. This Court denied Mr. Sandirasekaram leave to judicially review the Board's decision.

[2] A Pre-removal Risk Assessment Officer subsequently found that Mr. Sandirasekaram had not established that he would be at risk if he were returned to Sri Lanka. For the reasons that follow, I have concluded that the Officer properly understood her jurisdiction, and that the decision was one that was reasonable for the Officer to make on the record before her. As a result Mr. Sandirasekaram's application for judicial review will be dismissed.

I. Did the PRRA Officer Misunderstand her Jurisdiction?

[3] Mr. Sandirasekaram submits that the PRRA officer erred by finding that the Refugee Protection Division's decision is final, subject only to it being established that he faced a "new, different or additional risk". According to Mr. Sandirasekaram, this statement demonstrates that the officer did not understand that the risk asserted in a PRRA could be the same risk as had been considered by the Board, if the applicant is able to adduce new evidence showing a worsening of country conditions since the date of the Board's decision. An applicant could also adduce new evidence to rehabilitate evidence that the Board had found not to be credible.

[4] I do not agree that the Board erred as alleged by Mr. Sandirasekaram. The phrase "new, different or additional risk" that was used by the PRRA Officer was taken from this Court's decision in *Perez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1379, 59 Imm. L.R. (3d) 156. There, Justice Snider noted that a PRRA is not an appeal of a Board decision, and is not an opportunity to re-argue the facts that were considered by the Board. She went on, however, to cite the example of a worsening of country conditions as being precisely the sort of thing that could be considered by a PRRA officer based upon new evidence: *Perez*, para. 5.

[5] That is, while a "new" or "different" risk would be one that had not previously been considered by the Refugee Protection Division, when read in context, an "additional risk" clearly

refers to additional risk developments in relation to a previously-asserted risk. As a consequence, I am satisfied that the PRRA Officer correctly understood her jurisdiction and did not err in this regard.

II. Did the PRRA Officer Err in her Treatment of the New Evidence?

[6] Mr. Sandirasekaram submits that the PRRA officer also erred in her treatment of the new evidence that he had adduced in support of his PRRA application. This consisted of an affidavit from Mr. Sandirasekaram's father, who is still in Sri Lanka.

[7] Much of the father's affidavit provided background information regarding the conflict in Sri Lanka, along with a description of Mr. Sandirasekaram's experiences while he was still in that country. The PRRA Officer found that this was not new evidence. This is a reasonable finding as these events pre-dated the Board's decision, and no explanation was provided as to why Mr. Sandirasekaram could not have obtained an affidavit from his father in support of his claim for refugee protection.

[8] The PRRA Officer did note that there were differences between Mr. Sandirasekaram's version of the events leading up to his departure from Sri Lanka and that provided by his father, specifically in relation to the nature of Mr. Sandirasekaram's contact with Sri Lankan authorities in 2008. Mr. Sandirasekaram argues that the PRRA Officer erred by fixating on microscopic inconsistencies in the evidence. I do not agree that the Officer erred as alleged.

[9] The Officer did not find that there were actual inconsistencies in the evidence of the two men, nor did she draw any conclusions in this regard. Rather, she simply observed that their versions of the events in issue were somewhat different. Mr. Sandirasekaram provided a more

detailed description of these events than did his father. The PRRA Officer focussed on Mr. Sandirasekaram's version, and quite reasonably questioned why he had not raised incidents mentioned by his father at his refugee hearing.

[10] The PRRA Officer also questioned why Sri Lankan authorities would have released Mr. Sandirasekaram after questioning him in 2008 and 2009 if they truly suspected him of having LTTE connections. Mr. Sandirasekaram submits that the PRRA Officer was speculating about the motives of the Sri Lankan authorities, and that there was no evidence in the record to support this finding. However, Mr. Sandirasekaram himself asserted that the Sri Lankan authorities were arresting Tamils during this period because of concerns that the LTTE would carry out suicide attacks.

[11] It was, in my view, a reasonable, common-sense inference on the part of the PRRA Officer that the fact that Mr. Sandirasekaram was questioned and released during this period indicates that the Sri Lankan authorities did not believe that he was involved with the LTTE in planning such attacks.

[12] The father's affidavit also stated that the Sri Lankan authorities came to his home looking for Mr. Sandirasekaram on three occasions in early 2012, and that the father had told Mr. Sandirasekaram about each visit. These visits pre-dated Mr. Sandirasekaram's refugee hearing, and the Officer was quite reasonably troubled by the fact that Mr. Sandirasekaram had not mentioned any of them at his hearing.

[13] The father's affidavit did contain new evidence regarding three other occasions in December of 2012, and April and May of 2013 (after Mr. Sandirasekaram's refugee hearing)

when Sri Lankan authorities allegedly came to the father's home looking for Mr. Sandirasekaram in order to question him regarding an LTTE plot involving Jaffna University students.

Mr. Sandirasekaram's father says that he was beaten on two of these occasions, and he provided a doctor's letter attesting to the fact that he had sought treatment for contusions and other injuries resulting from blunt force trauma.

[14] The PRRA officer considered the new evidence provided by Mr. Sandirasekaram's father regarding the events that post-dated the Board's decision. In concluding that the evidence was not sufficient to establish a forward-looking risk for Mr. Sandirasekaram, the Officer noted that the father's evidence was "vague and lacking in details". Moreover, no evidence had been provided by Mr. Sandirasekaram's mother and sister, who were allegedly present during the visits to the family home by the Sri Lankan authorities. The PRRA Officer also noted that there was no indication in the doctor's letter that the father had explained how he had sustained his injuries or that they were consistent with a beating. While the Officer accepted that Mr. Sandirasekaram's father had sustained injuries, the Officer found that the cause of the injuries had not been satisfactorily established.

[15] I agree with Mr. Sandirasekaram that it would be not be reasonable for the PRRA Officer to fault Mr. Sandirasekaram or his father for being unable to explain what was in the mind of the Sri Lankan authorities, and why they only came looking for Mr. Sandirasekaram some two years after he left Sri Lanka if they were seriously concerned about his involvement with the LTTE.

[16] However, when the Officer's reasons are read as a whole, it appears that the Officer was questioning whether Mr. Sandirasekaram's father had been given any explanation as to why the

authorities were suddenly interested in Mr. Sandirasekaram's whereabouts and his possible connection to the LTTE.

[17] I further agree with the respondent that even if this aspect of the Officer's decision was unreasonable, it does not affect the Officer's overall assessment of the case, and does not provide a basis for this Court's intervention.

[18] The Officer also noted the fact that there was no suggestion that the Sri Lankan authorities had shown any interest in Mr. Sandirasekaram in the 18 months between their last alleged visit in 2013 and the date of the PRRA decision. This reasonably led the Officer to conclude that the Sri Lankan authorities were not currently interested in Mr. Sandirasekaram.

[19] Mr. Sandirasekaram further submits that the PRRA officer erred by only considering the risk that he would face at the airport in Colombo, and failing to consider the risk to which he would be exposed elsewhere in Sri Lanka. This argument is not borne out by a review of the Officer's analysis. While considerable attention was paid by the Officer to the treatment that Mr. Sandirasekaram might encounter at the Colombo airport, the Officer also examined the risk faced by Mr. Sandirasekaram once he left the airport: see, in particular, pages 25 and 26 of the Officer's reasons.

[20] It is, moreover, apparent that the Officer did not just consider country condition information that pre-dated Mr. Sandirasekaram's refugee hearing, as Mr. Sandirasekaram contends. The list of sources consulted at the end of the PRRA decision lists a number of reports from 2013 and 2014, and specific reference is made to a 2014 United Kingdom Home Office report in the body of the Officer's analysis.

III. Conclusion

[21] It is the PRRA Officer's responsibility to evaluate the probative value of evidence provided in support of a PRRA application. The officer did so here, and determined that little weight should be ascribed to the affidavit of Mr. Sandirasekaram's father. I have not been persuaded that this determination was unreasonable. Consequently, the application for judicial review is dismissed.

[22] I agree with the parties that the case is fact-specific, and does not raise a question for certification.

JUDGMENT

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

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8372-14

STYLE OF CAUSE: SASIKUMAR SANDIRASEKARAM v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 19, 2015

JUDGMENT AND REASONS: MACTAVISH J.

DATED: AUGUST 25, 2015

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