Federal Court  Cour fédérale

Date: 20180305

Docket: IMM-3384-17

Citation: 2018 FC 247

Ottawa, Ontario, March 5, 2017

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

KAJENTHIRAKUMAR NAVARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision by a Senior Immigration Officer [the Officer] dated June 20, 2017, which dismissed the Applicant's Pre-Removal Risk Assessment [PRRA] application [the PRRA Decision].

II. Facts

[2] The Applicant is a 38-year-old Tamil from northern Sri Lanka.

[3] The Applicant was born in the village, Annaicoddai, near the city of Jaffna in the north of Sri Lanka. The Applicant alleges he was subject to ongoing harassment from the Sri Lankan Army [the SLA] because they suspected him of involvement with the Liberation Tigers of Tamil Eelam [the LTTE]. According to the Applicant, there were a number of instances dating back to 1999 where he was detained, mistreated, beaten and abused by the SLA.

[4] According to the Applicant, in March 2010 he was kidnapped on the street and taken, blindfolded to an unknown location by men speaking Tamil and Sinhalese. The Applicant is alleged to have been detained for four days, and was only released after his father paid part of a ransom demanded by the men who captured him. His father promised to pay the balance of the ransom within a month. Instead of paying the remainder of the ransom, the Applicant fled Sri Lanka in March 2010.

[5] The Applicant arrived in Canada in June 2010 and immediately claimed refugee protection.

[6] The Applicant has a scar on his stomach from a surgery he underwent as a child. The Applicant submits that this scar gives rise to suspicion because the SLA believes it is a sign that he was in the LTTE and was injured while fighting. The Applicant indicates that while captured, he was asked about his scar.

[7] Since leaving Sri Lanka, the Applicant submits that his family has been approached and interrogated by the SLA, paramilitaries, the Criminal Investigation Department [CID], and the police regarding his whereabouts. According to the Applicant, a neighbour in Sri Lanka revealed, to these authorities, that the Applicant's refugee claim in Canada has been refused. Further, the Applicant claims his sister was interrogated about his whereabouts while she visited Sri Lanka. The Applicant also submits that his two brothers experienced similar issues in Sri Lanka and fled to France in 2007 and 2008.

[8] In May 2012, the Refugee Protection Division [RPD] found that if the Applicant returned to Sri Lanka, there was not a serious possibility that he would face persecution and rejected the Applicant's refugee claim [the RPD Decision].

[9] The Applicant filed an application for leave for judicial review of the RPD Decision and leave was denied in October 2012.

[10] A stay of the Applicant's removal to Sri Lanka was granted in August 2017, pending the hearing of this application for judicial review of the PRRA Decision.

[11] Despite the RPD Decision, the Applicant did not return to Sri Lanka as scheduled.

III. The RPD Decision

[12] The RPD did not find the Applicant credible when describing his alleged problems and experiences and concluded that he failed to discharge his onus to provide sufficient credible evidence to establish a well-founded fear of persecution. The RPD also noted that the Applicant failed to explain why he had delayed his departure from Sri Lanka to 2010, given that he

allegedly experienced persecution in 2008, at which time his brothers fled. The RPD also relied on documentary sources from the United Nations High Commissioner for Refugees which spoke to improved post-war country conditions, successful facilitation of programs that return Sri Lankans home to Sri Lanka, and an advisory that Tamils from the north are no longer presumptively eligible for refugee protection.

[13] The RPD concluded that the Applicant is not a Convention refugee and that he is not a person in need of protection in that his removal to Sri Lanka would not subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment, and that there is are no substantial grounds to believe that his removal would subject him personally to danger or torture.

IV. The PRRA Decision

[14] The Officer considered the Applicant's new evidence which included letters from his neighbours in Sri Lanka describing vehicles without plates driving by and parking outside of the family's home, officials interrogating neighbours, and armed men entering the Applicant's family's home and interrogating them about the Applicant's whereabouts and date of return. The Officer did not find that the letters constitute new evidence as the information contained within was reasonably available and could have been reasonably presented to the RPD for consideration, nor was it significantly different from what was previously provided to the RPD for consideration. Even if accepted, the Officer noted that the evidence is general, vague and limited.

[15] The Officer accepted but gave little weight to unsworn letters from the Applicant's sister and brother-in-law, which indicated that they were confronted by unknown, armed persons on

their recent trip to Sri Lanka and asked about the Applicant. The Officer noted that the letters did not come from unbiased sources nor did they establish that the unknown persons were members of the SLA, a paramilitary group or local police. The Officer concluded they were insufficient to rebut the RPD's findings.

[16] With respect to the country condition information that was submitted by the Applicant, the Officer concluded that the content did not address material aspects of the Applicant's PRRA application and did not overcome the RPD's findings. Instead, the Officer referred to country documentation which indicated improvement in the overall human rights situation in Sri Lanka, but also noted that some concerns remain.

[17] Although the Applicant alleged becoming depressed and anxious by the prospect of returning to Sri Lanka, the Officer noted that the Applicant provided insufficient objective evidence that he suffers from any mental condition or that he would be unable to access treatment in Sri Lanka.

[18] The Officer concluded that the Applicant, through counsel, restated materially the same information in his PRRA application as that presented before the RPD. As such, the Officer found insufficient evidence before him to arrive at a different conclusion than that of the RPD.

V. Issues

[19] In my view, there are two issues for determination:

A. *Was the Officer's assessment of the new evidence reasonable?*

B. *Was the PRRA Decision reasonable?*

VI. Standard of Review

[20] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57 and 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." This Court has established that a PRRA Officer's assessment of claims under sections 96 and 97 of the *IRPA* are questions of mixed fact and law and attract the reasonableness standard of review *(Kailajanathan v Canada (Minister of Citizenship and Immigration)*, 2017 FC 970 per McDonald J at para 10). Therefore, reasonableness is the standard of review.

[21] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[22] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34). Further, a reviewing court must determine whether the decision, viewed as a

whole in the context of the record, is reasonable (*Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62).

VII. Analysis

A. *Was the Officer's assessment of the new evidence reasonable?*

[23] In my view, the decision of the Officer in assessing the new evidence, as a whole, was not reasonable.

[24] The Applicant submitted letters from his sister and brother-in-law but the Officer afforded them limited weight because the letters were unsworn, the letters were from the Applicant's family and the information concerning the men attending his family's residence did not clearly identify the men.

[25] The Officer accepted but afforded little weight to the sister and brother-in-law's letter because they were self-serving. In *Obeng v Canada (Minister of Citizenship and Immigration)*, 2009 FC 61 at para 31, the Federal Court determined that an officer may award limited weight to letters written by interested parties. The Federal Court has also found that an officer cannot reject evidence because the evidence is from someone with a familial relationship to the Applicant (*Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 28). There are valid policy reasons for accepting evidence from friends and family members, especially where the evidence is corroborated by other sources, as it was in this case.

[26] The Officer rejected the letter from the neighbour and the Justice of the Peace because he found they could have been presented to the RPD at the time of the hearing. It was within the Officer's purview to make this finding.

[27] The Applicant's argument that the Officer made an unreasonable conclusion regarding country conditions is persuasive. Each case needs to be decided on its own facts. This Court has held that Sri Lanka is a country where the conditions are continuously changing (*Navaratnam v Canada (Minister of Citizenship and Immigration)*, 2015 FC 244 per Brown J at para 13).

[28] Where a decision maker fails to consider recent country condition evidence and bases a risk conclusion on outdated country conditions, such decision is unreasonable (*Rasalingam v Canada (Minister of Citizenship and Immigration)*, 2017 FC 718 per Diner J at paras 19-20). While not every aspect of the evidence of country condition evidence needs to be explained, it should be considered fully.

[29] On the face of it, the Officer deferred to the RPD's conclusion that country conditions were improving instead of considering the "significant package of documentary material which consisted of internet and news articles as well as publications which discuss various topics such as torture, rape, disappearance, human rights abuses, impurity, detention, returnees, country condition etc." In short, there was more recent evidence before the Officer to illustrate that conditions were not improving. In my view, this is one of the reasons the PPRA Decision is unreasonable.

[30] The Officer seems to have misunderstood the reasons the Applicant submitted a photograph of his scar. The photograph of the Applicant's scar was submitted along with an article regarding Tamils with scars on their bodies which post-dated the RPD decision. The purpose was to outline that young Tamils with scars are considered, in some cases, to be involved with the LTTE. I agree with the Applicant that this was an error on the part of the Officer.

[31] The application for judicial review is allowed. No question of general importance was proposed and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the PRRA Decision is quashed and the matter is remitted back to a differently constituted panel to be reconsidered. No question of general importance is certified.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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