Federal Court  Cour fédérale

Date: 20240527

Docket: IMM-1913-23

Citation: 2024 FC 799

Toronto, Ontario, May 27, 2024

PRESENT: Madam Justice Go

BETWEEN:

Johnson Fernando JOSHEPH

Applicant

and

Minister of Citizenship and Immigration Canada

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Johnson Fernando Josheph [Applicant] is a Tamil businessman from Sri Lanka. The Applicant entered Canada on July 14, 2017 and made a claim for refugee protection, alleging that the Sri Lankan authorities were in search of him because they suspected the Applicant was linked to the Liberation Tamil Tigers of Eelam [LTTE].

[2] The Refugee Protection Division [RPD] rejected the Applicant's refugee claim on credibility grounds in 2018. The Refugee Appeal Division [RAD] agreed with the RPD and dismissed the Applicant's appeal in 2019. The Applicant was invited to submit a Pre-Removal Risk Assessment [PRRA] application, which he did on September 26, 2022.

[3] In his PRRA application, the Applicant raised a new risk related to his son's own anti-government activities in Sri Lanka. The Applicant's son affirmed that he was targeted and detained twice - in 2019 and 2022 - for participating in anti-government protests. The Applicant's family also reported that Sri Lankan authorities continue to harass them and ask about the Applicant's whereabouts and his activities with the Tamil diaspora.

[4] On January 6, 2023, a Senior Immigration Officer [Officer] rejected the PRRA application, finding that the Applicant's PRRA application set out the same risk alleged in his refugee protection claim and that the Applicant did not provide sufficient evidence, including evidence that would overcome the RPD's credibility concerns [Decision].

[5] The Applicant seeks judicial review of the Decision. I grant the application based on the reasons set out below.

II. Analysis

[6] The Applicant raises several issues to challenge the Decision. The parties agree that the presumptive standard of review is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] The determinative issue in this case, in my view, is the Officer's assessment of the new evidence concerning the new risk. Specifically, in finding that the new evidence proffered by the Applicant's son to be insufficient in the absence of corroborating evidence, the Officer erred.

[8] As part of his PRRA submissions, the Applicant provided an affidavit from his son. Notably, the Applicant's son attested to being arrested and detained by Sri Lankan army twice, in 2019 and 2022, due to his participation in anti-government protests. The Applicant's son also affirmed that the army asked about where he received money to organize the protest. The son further alleged that during his detention, the army accused him and the Applicant as acting against the Sri Lankan government and that the Applicant is linked to the LTTE.

[9] The Officer noted that the Applicant provided new evidence but found that the Applicant's new evidence was insufficient. With respect to the evidence submitted by the Applicant's son and family, the Officer found there was "very little other independent, objective documentary support for the allegations made by the Applicant's relatives and neighbour." Specifically, the Officer noted with regard to the Applicant's son stating he was arrested on two occasions, but did not provide a police record or police document in submission indicating his arrest by the police for his involvement in the protests or for questioning. The Officer also observed there was no document issued by the police to the Applicant's son indicating that he must report to them.

[10] The Officer went on to note:

> Furthermore, the Applicant does not address the RPD's credibility findings. The RPD found that the Applicant fabricated his

> allegations of being wanted by the authorities on suspicion for being linked to the LTTE.

[11] As a starting point, I note that the Applicant's son did not allege that he was arrested by the police. Rather, the son claimed he was arrested by the army. The Officer's comments about a lack of police report for the arrest or a document requiring the son to report to the police were incongruous.

[12] More importantly, the Officer did not explain why they found the son's affidavit to be insufficient, other than noting the lack of objective evidence. At best, the Officer was engaged in circular reasoning by citing the lack of objective evidence as the basis for finding the affidavit insufficient.

[13] Further, as Justice Grammond explained in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 24:

> [24] Not all elements of a claim for asylum are susceptible of corroboration. As acts of persecution are typically illegal or immoral, one cannot expect agents of persecution to provide written evidence of their deeds. They may actively try to suppress or withhold such evidence: *Ndjavera v. Canada (Citizenship and Immigration)*, 2013 FC 452 (*Ndjavera*), at paragraph 7. Third parties who witnessed acts of persecution may put themselves at risk if they provide written statements. When asylum claimants allege that the police failed to protect them, it is pointless to require a police report certifying this: *Fontenelle v. Canada (Citizenship and Immigration)*, 2011 FC 1155, 5 Imm. L.R. (4th) 14, at paragraphs 46-47. Moreover, asylum seekers may not be able to carry documentary evidence with them when they go through "refugee camps, situations in war-torn countries, cases of discrimination and situations in which refugee claimants have only a very short time to escape their persecutors:" *Fatoye v. Canada (Citizenship and Immigration)*, 2020 FC 456 (*Fatoye*), at paragraph 36.

[14] After summarizing the case law on this point, Justice Grammond concluded at para 36 that a decision maker can only require corroborative evidence if:

> 1. The decision maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony or the fact that a large portion of the claim is based on hearsay;
>
> 2. The evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it.

[15] In this case, the Officer did not provide an independent reason for requiring corroborative evidence from the Applicant's son about his arrest by the army. The Officer made no finding, one way or another, whether he accepted the son's affidavit.

[16] The Respondent submits the Officer's reasons clearly lay out that the Applicant's new evidence did not counter the RPD's credibility findings or support his allegation of his perceived LTTE link. Contrary to the Applicant's arguments, the Respondent submits that the Officer's reasons on sufficiency were clear and transparent and the Officer specified the type of evidence that would have been considered.

[17] Despite counsel's able submission, I reject the Respondent's arguments for two reasons.

[18] First, the son's affidavit suggests that the army was questioning him about his and the Applicant's activities against the Sri Lankan government, which went beyond the Applicant's alleged link to the LTTE. In contrast, the RPD and RAD's credibility findings were, as the

Officer noted, tied to the Applicant's allegations being wanted by the authorities on suspicion for being linked to the LTTE.

[19] Second, PRRA officers cannot simply disbelieve every piece of evidence brought by an applicant for the sole reason that previous decision-makers found them to be not credible. As Justice Fothergill noted in *Kuba v Canada (Citizenship and Immigration)*, 2019 FC 1298 [*Kuba*]:

> [23] When importing credibility findings from prior proceedings, PRRA officers must explain how those findings affect the evidence before them. In principle, the evidence presented to the PRRA officer must be different from that before the RPD and RAD [*Magonza* at para 67].

[20] Here, the Officer did not explain how the prior RPD and RAD credibility findings affected their assessment of such new evidence like the son's affidavit. If the Officer was merely importing the previous credibility findings into the new evidence without any further analysis or explanation, *Kuba* confirmed they could not do so.

[21] The Respondent submits that it would have been reasonable to expect evidence of the son's arrest and that the Officer is understood to have the expertise when it comes to assessing country conditions, citing *Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 [*Yansane*] at para 22, where the Federal Court of Appeal noted PRRA officers' expertise. With respect, *Yansane* is distinguishable on both the facts and the legal issues involved.

[22] At the hearing, the Respondent added that the Officer did consider the son's affidavit; it was up to the Officer to weigh the evidence and not for the Court to reweigh it. I reject this

submission. Other than stating the evidence was insufficient, the Officer did not indicate what weight, if any, they assigned to the affidavit.

[23] PRRA officers' reasons must reflect the stakes, especially where the impact of a decision on an individual's rights and interests are severe: *Sharif v Canada (Attorney General)*, 2018 FCA 205 at paras 9-12 and *Vavilov* at para 133. The reasons in this case failed to meet the requisite requirement of justification, intelligibility and transparency and as such, the Decision must be set aside.

III. Conclusion

[24] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[25] There is no question for certification.

JUDGMENT in IMM-1913-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The matter is referred back for redetermination by a different decision-maker.

3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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