

Federal Court



Cour fédérale

Date: 20150318

Docket: IMM-449-14

Citation: 2015 FC 343

Toronto, Ontario, March 18, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

INTHUSAN RASAKUMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of an Officer of Citizenship and Immigration dated January 2, 2014 in which the Applicant's application for an exemption from visa requirements for permanent residence in Canada on humanitarian and compassionate grounds was refused.

[2] The Applicant is an adult Tamil male from Sri Lanka residing in the northern part of that country. He left Sri Lanka, came to the United States where his claim for asylum was granted

preliminary acceptance. Nonetheless, he came to Canada and claimed refugee protection based on a fear of persecution in Sri Lanka. That claim was rejected by a decision of a member of the Refugee Protection Division dated July 20, 2011. An application for leave to apply for judicial review was dismissed by this Court.

[3] The Applicant then applied for an exemption on humanitarian and compassionate grounds. That application was supported by letters from his mother, father, sister and wife, all of who resided in Sri Lanka. I agree with the Officer that the substance of the evidence set out in those letters is not materially different from the evidence considered by the Refugee Protection Division, namely fear of harassment by the Sri Lankan authorities because the Applicant is a young adult Tamil male from the northern part of that country. By the time that the humanitarian and compassionate application was filed, the Applicant had spent about eighteen months in Canada. The evidence as to assimilation was directed to his attendance at a religious temple in Canada, and a brief letter from his sister residing in Canada to the effect that the Applicant spent time with her family.

[4] Applicant's Counsel argues that the Officer's discretion was fettered by reliance upon the decision of the Refugee Protection Division, and that the Officer did not conduct an independent investigation as to hardship were the Applicant to be returned to Sri Lanka.

[5] An application on humanitarian and compassionate grounds is an application for an exemption from the usual visa requirements. As stated by Justice Evans (as he then was) in *Gautam v Canada (Minister of Citizenship and Immigration)* (1999), 167 F.T.R. 124 at

paragraph 9, the applicant bears a heavy burden to satisfy the Court that a rejection of a claim for exemption was unlawful. As stated by Justice L'Heureux-Dubé of the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 62, considerable deference must be afforded to the Officer exercising such powers.

[6] The parties are agreed that the standard of review is reasonableness. In conducting such a review, the words of Justice Stratas of the Federal Court of Appeal in *Kanhasamy v. Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at paragraph 99 must be kept in mind. In conducting a reasonableness review of factual findings, the Court shouldn't re-weigh the evidence; under a reasonableness review, the quest is limited to finding irrationality or arbitrariness of the sort that implicates our rule of law jurisdiction.

[7] In the present case, I find that the Officer's decision was reasonable. The Officer did not fetter his or her discretion by referring to the Refugee Board Decision. The Officer expressly states "I am mindful that I am not bound by the Board's findings....Nevertheless, the findings of the Board are relevant to the assessment of hardship in a humanitarian and compassionate application where the applicant presents materially the same evidence in his application that was presented before the Board".

[8] I find that the Officer was correct in stating that the evidence was materially the same, namely that the state authorities were seeking out the Applicant and might harm him.

[9] The Officer stated that, in addition to the Board's decision, consideration was given to the Applicant's evidence and that the Officer conducted independent research into country conditions. I am satisfied that the Officer's findings were not fettered by any reference made to the Refugee Board's Decision.

[10] The application will be dismissed. No party requested a certified question.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ORDERS AND ADJUDICATES that:

1. The application is dismissed;
2. No question is certified;
3. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-449-14

STYLE OF CAUSE: INTHUSAN RASAKUMAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 17, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: MARCH 18, 2015

APPEARANCES:

Robert I. Blanshay FOR THE APPLICANT

David Cranton FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert I. Blanshay FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario