

Federal Court



Cour fédérale

**Date: 20170104**

**Docket: IMM-581-16**

**Citation: 2017 FC 11**

**Ottawa, Ontario, January 4, 2017**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**KUMAR VARATHARASA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Varatharasa is a Tamil citizen of Sri Lanka who entered Canada in 2009 and claimed refugee protection. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada refused the claim in October 2012. Leave for judicial review of that decision was denied by this Court. Mr. Varatharasa failed to attend a bond reporting in August 2013, a warrant was issued for his arrest. He was arrested in September 2015.

[2] He subsequently requested a Pre-Removal Risk Assessment [PRRA] which was refused in December 2015. Mr. Varatharasa now seeks judicial review of that decision alleging that the PRRA Officer [Officer]: (1) misunderstood his or her role as it related to the RPD decision by making veiled credibility findings and relying on the RPD's factual determinations without assessing more recent documentary evidence; (2) mischaracterized, mistreated and selectively relied on the evidence and, as a result, reached unreasonable findings on several matters; (3) erred in determining that discrimination did not rise to the level of persecution; and (4) failed to consider cumulatively the distinct risks alleged on return. He asks that this Court set aside the decision and return the matter for reconsideration by a different Officer.

[3] I have framed the issues that arise in this application as follows:

- A. Did the Officer commit a reviewable error by relying on the RPD's findings of fact?;
- B. Were the Officer's findings in regard to corroborating documentary evidence unreasonable?;
- C. Did the Officer unreasonably conclude that the evidence of discrimination did not rise to the level of persecution?; and
- D. Did the Officer unreasonably fail to consider the elements of Mr. Varatharasa's profile cumulatively?

[4] For the reasons that follow, I am of the opinion that the Officer reasonably considered the RPD decision and the corroborative new evidence, including the new country condition

evidence. The Officer reasonably addressed the issue of discrimination versus persecution and assessed Mr. Varatharasa's profile. The application is dismissed.

## II. Standard of Review

[5] The decision of a PRRA officer is to be reviewed on a standard of reasonableness. A decision will be reasonable where it: (1) demonstrates justification, transparency and intelligibility in the decision-making process; and (2) the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). A correctness standard of review may apply where fairness or specific questions of law are engaged. However, none of those issues arise here (*Dunsmuir* at paras 50, 51, 55 and 58).

[6] Factual findings of a PRRA Officer are to be given significant deference by a reviewing Court (*Cupid v Canada (Minister of Citizenship and Immigration)*, 2007 FC 176 at para 15); however "... deference is not a blank cheque. There must be reasoned reasons leading to a justifiable finding." (*Njeri v Canada (Minister of Citizenship and Immigration)* 2009 FC 291 at para 12 cited in *Pavlov v Canada (Minister of Citizenship and Immigration)*, 2016 FC 282 at para 14).

III. Analysis

A. *Did the Officer commit a reviewable error by relying on the RPD's findings of fact?*

[7] In rendering a negative PRRA decision, the Officer addressed Mr. Varatharasa's new evidence, the information on file and the objective documentation on the country conditions. In doing so, the Officer concluded that the risk alleged for the purpose of the PRRA application was not significantly different from that which was presented before the RPD and that Mr. Varatharasa had failed to prove that he was at risk with new and significant or significantly different information. The Officer emphasized that a "... PRRA application is not an appeal of a negative refugee claim decision" and found that the new evidence "... does not demonstrate that the Sri Lankan authorities have any interests in the applicant and his family or that the Sri Lankan authorities believe the applicant to have ties to the LTTE."

[8] Mr. Varatharasa argues that in reaching this conclusion, the Officer erred in relying on dated factual determinations of the RPD, findings that were in some areas clearly incorrect. The RPD had determined that he was not suspected of links to the Liberation Tigers of Tamil Eelam [LTTE]. Mr. Varatharasa submits however, that more recent evidence demonstrated that suspected links to the LTTE was not the only factor leading to risk. Rather, the new evidence demonstrated that those who had fled Sri Lanka as asylum seekers and Tamils who had left the country legally would be at risk on return on the basis of those factors alone. I disagree.

[9] It was reasonable for the Officer to rely on the RPD's prior findings. Mr. Varatharasa's counsel advanced the position in oral argument that the RPD decision, as it related to the finding

that he had no suspected links to the LTTE, was inconsistent and perhaps even incoherent in light of the evidence of him having been detained in 1998.

[10] The RPD decision is not the subject of review in this application, nor was it the Officer's role to review the RPD decision. However, it is evident that the RPD considered a wide range of factors in reaching its conclusion that there was no suspected LTTE link in Sri Lanka including the fact that Mr. Varatharasa was: (1) not sent to government camps after the defeat of the LTTE; (2) allowed to continue to go about his business subject to brief questioning when encountering government authorities; (3) issued a genuine Sri Lanka passport in 2004 and 2006; (4) able to depart and return to Sri Lanka in 2007 and again soon after the LTTE defeat in 2009 "... without any interference whatsoever from any arm of the Sri Lanka government".

[11] The RPD decision does not disclose findings that are inconsistent or incoherent. In reaching its finding of no suspected LTTE link, the RPD assessed all of the evidence, including the 1998 detention by the Sri Lanka Army. This finding was neither clearly wrong nor inconsistent with the evidence. It is also not inconsistent with the new evidence advanced in support of the PRRA application. The Officer assessed the 1998 detention evidence in light of all of the circumstances and did not err in relying on the RPD findings.

[12] With respect to the argument that the new documentary evidence discloses that returning Tamils are at risk solely on the basis of having fled Sri Lanka as asylum seekers absent any suspected LTTE link, the Officer specifically noted this alleged risk. The Officer undertook a

detailed assessment of the current country condition evidence: (1) quoting extensively from the 2014 US Department of State Report on Human Rights Practices in Sri Lanka which noted the persistent reports of close ties between the Eelam's People's Democratic Party [EPDP] and government security forces; (2) noting the minimal progress made by the Government of Sri Lanka in addressing wartime abuses and its failure to comply with the March 2013 United Nations Human Rights Council resolution which led to the adoption of a new resolution in 2014 (3) noting the Human Rights Watch reports of failed Tamil asylum seekers being subject to torture on return; (5) quoting the UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka specifying that "there is no systematic monitoring after arrival in Sri Lanka of the treatment of Sri Lankans who were forcibly returned"; but also (6) noting the United Kingdom [UK] Operational Guidance on Sri Lanka to the effect that this risk arises in the context of Tamil activists in the Diaspora working to destabilize Sri Lanka.

[13] The Officer acknowledged and addressed the evidence of human rights groups to the effect that there is a risk of harm to asylum seekers on return, but preferred the UK evidence to the effect that targeting does not occur based solely on ethnicity but rather due to personal political profiles. The Officer noted that Mr. Varatharasa did not allege any involvement in activities aimed at destabilizing the government of Sri Lanka or provide evidence to demonstrate that the government would have reasons to believe that he was involved in any such activities.

[14] The Officer did not act unreasonably in relying on the RPD's factual findings, nor did the Officer fail to consider the new evidence advanced in support of the PRRA in light of those findings.

B. *Were the Officer's findings in regard to corroborating documentary evidence unreasonable?*

[15] Mr. Varatharasa argues that the Officer focused on one imprecise statement in counsel's submissions relating to EPDP recruitment to unreasonably conclude that he had contradicted himself and that the contradiction impacted the Officer's overall assessment. He also submits that the Officer unreasonably concluded that there was insufficient evidence to link the deaths of his father and brother to the EPDP, by imposing a burden on him to explain EPDP actions. He argues that the Officer unreasonably assumed how Sri Lanka medical and police authorities would act in light of the father's and brother's deaths and unreasonably assigned little weight to the letters from family and neighbours despite the matters set out in those letters being addressed in his sworn statement. Finally, Mr. Varatharasa argues that the Officer acted unreasonably in selectively relying on the evidence relating to the persecution and mistreatment of Tamils in Sri Lanka. I am not convinced by Mr. Varatharasa's arguments.

[16] The Officer was entitled to rely on the submissions advanced in support of the PRRA including the allegation that the EPDP had previously attempted to recruit Mr. Varatharasa. This statement was advanced in support of the argument of perceived links to the LTTE and contradicted prior evidence. However, the Officer did not consider this inconsistent fact in isolation. The Officer noted that on this point, Mr. Varatharasa's prior statements were to be

preferred. The Officer then proceeded to consider and address the allegation of harassment by the EPDP of Mr. Varatharasa's family as set out in the various affidavits, letters, government documents and the psychological report advanced in support of the PRRA.

[17] In reviewing the Officer's treatment of the evidence, the Court is required to consider whether the conclusion that the evidence was insufficient to establish the EPDP's current interest in Mr. Varatharasa was reasonably available to the Officer.

[18] I agree with Mr. Varatharasa's submissions that it is not for a claimant to explain the actions of an alleged agent of persecution or the conduct of government officials. However, in this case, the Officer's concerns were not limited to these issues. The Officer undertook a detailed consideration of each piece of documentary evidence. The Officer noted inconsistencies between Mr. Varatharasa's evidence and the evidence set out in other documents relating to an alleged attack on the father, the timing of the brother's death and the absence of any indicia as to how or why family members attributed these incidents to the EPDP.

[19] With regard to the letters of family members and friends, the Officer noted concerns with the absence of any identity documents to corroborate the identity of the writers and the absence of original envelopes. In light of these concerns, and absent any other compelling evidence, it was reasonably open to the Officer to conclude that the evidence was insufficient to establish a current interest by the EPDP. While other conclusions might also have been reasonably available to the Officer, the conclusion reached is well within the range of reasonable outcomes. The reasons advanced in support of the conclusion are justified, transparent and intelligible.



[20] I have previously addressed the Officer's consideration of the new country condition evidence and am similarly not convinced that the Officer selectively relied on some evidence to the exclusion of other evidence. The Officer was under no obligation to refer to all documents submitted and is presumed to have considered all of the evidence. In this case, the Officer noted and considered the extensive documentary evidence, acknowledged contradictory evidence and preferred some documentary evidence over others. It is not the role of this Court to reweigh the documentary evidence (*Pathinathar v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1312 at paras 15 - 17).

C. *Did the Officer unreasonably conclude that the evidence of discrimination did not rise to the level of persecution?*

[21] Mr. Varatharasa argues that in acknowledging that Tamils do suffer discrimination in Sri Lanka but that discrimination does not rise to the level of persecution, the Officer unreasonably failed to engage in an analysis of why the discrimination evidenced in the country condition documentation does not amount to persecution. I disagree.

[22] The Officer engaged in a detailed analysis of the country condition documentation. In doing so, the Officer noted discrimination in the areas of government employment, university education as well as access to justice and observed that past human rights abuses may not have yet been fully addressed by the government. However, the Officer also found that Tamils are not systematically apprehended or assumed to be affiliated with the LTTE nor systematically targeted by paramilitary groups. These factors led the Officer to conclude that the evidence "... did not demonstrate that this discrimination amounts to persecution."

[23] In reviewing the Officer's conclusion on persecution, I would have preferred a more detailed analysis in support of the conclusion reached. However, I am mindful that in conducting a review on a standard of reasonableness, the validity of the reasons or the result is not impugned by the fact that a decision-maker did not address the arguments, jurisprudence or other details the reviewing judge would have preferred (*Newfoundland and Labrador Nurse' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). A review of the documentary evidence reflects that despite the government's failure to have fully addressed past abuses there have been positive developments in the protection of human rights in Sri Lanka and political commitments to action aimed at benefitting the Tamil population. After reviewing the reasons and reviewing the record, I am satisfied that the conclusion reached was reasonably open to the Officer.

D. *Did the Officer unreasonably fail to consider the elements of Mr. Varatharasa's profile cumulatively?*

[24] Mr. Varatharasa argues that the Officer failed to consider his risk arising out of perceived LTTE connections in concert with his psychological health. I disagree. The Officer acknowledged and addressed Mr. Varatharasa's argument that his mental health issues would place him at greater risk from agents of persecution. In considering the issue, the Officer observed that Mr. Varatharasa had failed to demonstrate risk at the hands of any agent of persecution or that he was at risk of persecution or discrimination based on his mental health. It was on this basis that the Officer concluded that his mental health did not place him at an increased risk of harm. This finding was not unreasonable.

IV. Conclusion

[25] The Officer conducted a comprehensive and detailed analysis of Mr. Varatharasa's application. The findings and ultimate conclusions were reasonably open to the Officer and the refusal decision was reasonable. The application is dismissed.

[26] The parties have not identified a question of general importance, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No question is certified.

"Patrick Gleeson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-581-16

**STYLE OF CAUSE:** KUMAR VARATHARASA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 30, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JANUARY 4, 2017

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