

Federal Court



Cour fédérale

**Date: 20170721**

**Docket: IMM-520-17**

**Citation: 2017 FC 704**

**Ottawa, Ontario, July 21, 2017**

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

**BETWEEN:**

**JEGAN KUNABALASINGAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Jegan Kunabalasingam seeks judicial review of an adverse pre-removal risk assessment [PRRA].

[2] For the reasons that follow, I find that the PRRA Officer correctly applied ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and the analysis supporting

the decision was transparent, justifiable and intelligible. The application for judicial review is therefore dismissed.

## II. Background

[3] Mr. Kunabalasingam is 28 years old and a citizen of Sri Lanka. His parents and three siblings continue to reside in Sri Lanka. Another sibling lives in France.

[4] Mr. Kunabalasingam left Sri Lanka on February 16, 2011 and entered Canada on April 18, 2011, having transited through the United Arab Emirates, Brazil, Panama, Guatemala, Mexico and the United States of America. He claimed refugee status upon his arrival in Canada. His claim was rejected by the Refugee Protection Division [RPD] of the Immigration and Refugee Board on February 14, 2014.

[5] Before the RPD, Mr. Kunabalasingam testified that for several years he and his family suffered under the occupation of the Liberation Tigers of Tamil Eelam [LTTE] and the Sri Lankan Army [SLA]. His father was extorted for money, and he and his siblings were forced to work for the LTTE. Several of their relatives were killed. He and his family were displaced numerous times. While they were in a camp for internally displaced persons, the SLA questioned them about their affiliation with the LTTE. The family was eventually permitted to return to their home in Ramanathapuram. However, in November 2010 and January 2011, Mr. Kunabalasingam was detained by the SLA. He was questioned and physically abused. On both occasions, he was released only after his father paid a bribe.

[6] The determinative issue before the RPD was whether Mr. Kunabalasingam had an objectively well-founded and forward-looking fear of persecution. Based upon his profile, his personal circumstances and the changing political situation in Sri Lanka, the RPD concluded that he did not:

The panel acknowledges that the claimant has been detained by the SLA twice after the family returned to their home in Ramanathapuram in May 2010. The claimant's evidence shows that he was released after questioning both times. The panel is aware that his father had to pay money each time to get him released. The Board documents in evidence show that during the conflict-period and following the end of the war between the Sri Lanka government and the LTTE, SLA and other Sri Lankan authorities had accepted bribes in exchange for release of detainees. The panel finds, however, that the claimant was released each time. The panel is of the view that if the Sri Lanka government had perceived the claimant to have had ties to the LTTE, they would not have released him from custody.

[7] The RPD also noted that Mr. Kunabalasingam was able to leave Sri Lanka using his own, valid passport, further supporting the conclusion that he was not suspected by the authorities of having links to the LTTE.

[8] Mr. Kunabalasingam sought leave to commence an application for judicial review of the RPD's decision in this Court, but leave was refused on June 23, 2014.

[9] Mr. Kunabalasingam was scheduled for removal from Canada. He requested that his removal be deferred pending his eligibility for a PRRA, but this was refused. He sought leave to commence an application for judicial review of the refusal, but this was denied. He also brought a motion to stay his removal from Canada, but this too was denied (*Kunabalasingam v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 31). He then failed to report for removal.

When he eventually reported to the CBSA, enough time had elapsed for him to avail himself of the PRRA process.

### III. Decision under Review

[10] In support of his request for a PRRA, Mr. Kunabalasingam again claimed that he would be at risk in Sri Lanka due to his profile and perceived ties to the LTTE, and also because he was suffering from mental illness. He submitted new evidence, including his own affidavit, supporting letters, additional country condition reports and a psychiatrist's report.

[11] The PRRA Officer noted that a PRRA is not an appeal of a negative refugee determination. The PRRA officer also declined to consider documentary evidence that pre-dated the hearing before the RPD and could reasonably have been presented to the RPD. The PRRA Officer concluded that the affidavit and supporting letters had little probative value.

[12] The PRRA Officer noted that Mr. Kunabalasingam's ethnicity, place of origin, perceived links to the LTTE, age and time spent in Canada had all been addressed by the RPD. The only remaining factor was Mr. Kunabalasingam's Hindu faith, but it was unclear how this might increase his risk of harm or the likelihood that he would be perceived as having links to the LTTE.

[13] The PRRA Officer conducted an extensive review of recent country condition reports before concluding as follows:

Based on the totality of the information presented, I find insufficient evidence to establish that country conditions have

worsened since February 2014 for individuals with Mr. Kunabalasingam's profile. If anything, they have slightly improved. Accordingly, I find that Mr. Kunabalasingam has no more than the mere possibility of persecution. Moreover, I find that there is little evidence before me to conclude that Mr. Kunabalasingam would face, on a balance of probabilities, a risk of torture, a risk to life or a risk of cruel and unusual punishment because of his specific profile.

[14] Mr. Kunabalasingam also alleged that he might be targeted by the SLA because of his perceived wealth. The PRRA Officer found that any attempt to extract wealth from Mr. Kunabalasingam would not be motivated by race, religion, nationality, membership in a particular social group or political opinion, and could not therefore sustain a claim under s 96 of the IRPA. The PRRA Officer then found that systemic and generalized human rights violations were insufficient to sustain a claim under s 97(1)(b) of the IRPA.

[15] Despite identifying several shortcomings in the psychiatric report submitted by Mr. Kunabalasingam, the PRRA Officer accepted that he suffers from mental health problems. However, the PRRA Officer found that Mr. Kunabalasingam was able to obtain treatment for his mental illness in Sri Lanka, and he no longer required medical treatment when he entered Canada in April 2011. The PRRA Officer also found that there was insufficient evidence to demonstrate that Mr. Kunabalasingam might be persecuted on the basis of his mental health, or that his mental illness would increase his risk of harm in Sri Lanka.

#### IV. Issues

[16] Mr. Kunabalasingam challenges the decision of the PRRA Officer on numerous grounds, and the Court must therefore consider the following questions:

- A. Did the PRRA Officer apply the correct legal test under s 96 of the IRPA?
- B. Did the PRRA Officer incorrectly require Mr. Kunabalasingam to demonstrate an individualized risk of harm?
- C. Did the PRRA Officer unreasonably find that Mr. Kunabalasingam's affidavit and supporting letters had little probative value?
- D. Did the PRRA Officer unreasonably conclude that country conditions in Sri Lanka had not deteriorated?
- E. Did the PRRA Officer unreasonably discount the psychiatric report?

V. Analysis

[17] Whether the PRRA Officer applied the correct legal tests in assessing the risks faced by Mr. Kunabalasingam is reviewable by this Court against the standard of correctness (*Kaneza v Canada (Citizenship and Immigration)*, 2015 FC 231 at para 25).

[18] The PRRA Officer's application of the legal tests to the facts is a question of mixed fact and law, and is reviewable against the standard of reasonableness (*Talipoglu v Canada (Citizenship and Immigration)*, 2014 FC 172 at para 22). The PRRA Officer's factual findings are also reviewable against the standard of reasonableness (*New Brunswick v Dunsmuir*, 2008 SCC 9 [*Dunsmuir*]).

A. *Did the Officer apply the correct legal test under s 96 of the IRPA?*

[19] Mr. Kunabalasingam says that the PRRA Officer improperly required him to demonstrate a risk of persecution on a balance of probabilities. He notes that portions of the PRRA Officer's decision appear to address whether a risk was likely, as evidenced by the use of phrases such as "would face", "would be perceived" and "would be persecuted". While an applicant must establish his case on a balance of probabilities, he does not have to prove that persecution would be more likely than not (citing *Adjei v Canada (Employment and Immigration)*, [1989] 2 FC 680 at page 2 (FCA)).

[20] Mr. Kunabalasingam acknowledges that the PRRA Officer cited the correct legal test at the commencement of the analysis, and reiterated the test in final conclusions. I agree with the Respondent that, read as a whole, the PRRA Officer's decision does not support the conclusion that the PRRA Officer applied the wrong test. The PRRA Officer found, on a balance of probabilities, that the evidence was insufficient to establish the facts necessary to sustain a claim under s 96 of the IRPA. The PRRA Officer then concluded that Mr. Kunabalasingam faced "no more than the mere possibility of persecution". This was the correct legal test.

B. *Did the PRRA Officer incorrectly require Mr. Kunabalasingam to demonstrate an individualized risk of harm?*

[21] Mr. Kunabalasingam says that the PRRA Officer incorrectly required him to show an individualized risk of harm, rather than a personalized risk. He argues that this amounted to asking him to prove that there is a "bullet with his name on it" in Sri Lanka.

[22] The PRRA Officer began his analysis by identifying Mr. Kunabalasingam's risk profile:

The applicant fears the Sri Lankan Government because of experiences in Sri Lanka as well as his profile. Specifically, Mr. Kunabalasingam is a young male Tamil Hindu with mental health issues, from northern Sri Lanka who was detained twice (released after bribe payments), and who is being returned from Canada after a failed refugee claim. [Emphasis added.]

[23] The PRRA Officer's analysis encompassed the risks faced by those who might share Mr. Kunabalasingam's profile, and was not limited to his individual circumstances:

Nevertheless, it does not appear to me that the Sri Lankan Government is gratuitously directing violence at the Tamil population as a whole. When human rights abuses are taking place, these abuses appear directed at civil society activists, journalists, and persons viewed as sympathizers of the LTTE or members of the LTTE.

[...]

Based on the totality of the information presented, I find insufficient evidence to establish that country conditions have worsened since February 2014 for individuals with the applicant's profile. If anything, they have slightly improved. [Emphasis added.]

[24] The PRRA Officer found the risk faced by Mr. Kunabalasingam to be insufficiently personal because country conditions had improved slightly, he is not a member of a targeted group such as activists, journalists, and LTTE members or sympathizers, and he could not demonstrate that in the six years following his departure from Sri Lanka, the authorities continued to target or search for him based on his suspected ties to the LTTE. The PRRA Officer considered whether Mr. Kunabalasingam faced either an individualized risk of harm or a personalized risk as a member of a group, and reasonably concluded that he could demonstrate neither.



C. *Did the PRRA Officer unreasonably find that Mr. Kunabalasingam's affidavit and supporting letters had little probative value?*

[25] The PRRA Officer provided detailed reasons for ascribing little probative value to Mr. Kunabalasingam's affidavit and the supporting letters:

- (a) Mr. Kunabalasingam's affidavit contained no new information beyond an assertion that the SLA had intermittently harassed his parents, most recently in April 2016;
- (b) three of the letters were from individuals in Canada who did not indicate that they were witnesses to any of the relevant events;
- (c) the letters from Sri Lanka were unsworn and unaccompanied by any identification, and it was unclear how they had reached Mr. Kunabalasingam;
- (d) Mr. Kunabalasingam obtained letters from neighbours in Sri Lanka, but failed to obtain letters from any direct witnesses to the alleged events, such as his mother;
- (e) two of the letters were vague, general and contained third-hand information; and
- (f) one of the letters described a specific event, but it was unclear how the author could have witnessed the event – furthermore, the letter provided little evidence

regarding the individuals who were allegedly looking for Mr. Kunabalasingam, and no indication of why they were looking for him.

[26] The PRRA Officer's reasons are transparent, justifiable and intelligible, and do not give rise to a reviewable error (*Dunsmuir* at paras 47, 50).

D. *Did the PRRA Officer unreasonably conclude that country conditions in Sri Lanka had not deteriorated?*

[27] Mr. Kunabalasingam does not identify any specific shortcoming in the PRRA Officer's analysis of changing country conditions in Sri Lanka, but says that the PRRA Officer failed to consider some reports that were inconsistent with the conclusions reached. His counsel drew the Court's attention to only one example: a report published by the Organisation suisse d'aide aux réfugiés on June 16, 2015 titled "Sri Lanka: dangers liés au renvoi des personnes d'origine tamoule". Mr. Kunabalasingam relies on an excerpt that describes the ongoing arrest, interrogation and close scrutiny by the Sri Lankan authorities of those who return to that country using emergency travel documents.

[28] I am not persuaded that the Swiss report is sufficiently authoritative or contradictory to undermine the PRRA Officer's conclusions, which were well-supported by reports published by the U.S. Department of State, the United Kingdom Foreign and Commonwealth Office and Home Office, Minority Rights Group International, the United Nations Human Rights Council, the International Crisis Group, Human Rights Watch, Freedom House, and others. The PRRA Officer's analysis of country conditions in Sri Lanka accounted for almost 10 pages of the decision. It was detailed and thorough.

[29] Mr. Kunabalasingam admitted in his affidavit that Sri Lankan authorities had never discovered his family's coerced association with the LTTE. The PRRA Officer reasoned that, if the Sri Lankan authorities knew of this past connection, then it would be "reasonable that some other Sri Lankan-based family member would be confronted as persons with perceived links to the LTTE". There was no evidence that they had been.

[30] The PRRA Officer's conclusion that Mr. Kunabalasingam failed to adduce sufficient evidence to demonstrate that conditions in Sri Lanka had deteriorated since the RPD rejected his refugee claim in February 2014 is, again, transparent, justifiable and intelligible.

E. *Did the PRRA Officer unreasonably discount the psychiatric report?*

[31] The PRRA Officer identified several deficiencies in the psychiatric report submitted on behalf of Mr. Kunabalasingam. The clinician sometimes referred to Mr. Kunabalasingam as "Jegan", and sometimes as "Rahim". There was an unexplained reference to head trauma. Little explanation was offered to support the finding of schizoaffective disorder. The clinician had no knowledge of conditions in Sri Lanka, but expressed an opinion regarding the availability of mental health services in that country.

[32] The PRRA Officer nevertheless accepted that Mr. Kunabalasingam suffers from mental health problems. However, the PRRA Officer found that Mr. Kunabalasingam had adduced insufficient evidence to establish that he would be persecuted on the ground of his mental health. Nor was the PRRA Officer satisfied that Mr. Kunabalasingam would face a forward-looking risk

to his life, a risk of torture or a risk of cruel and unusual treatment or punishment due to his mental illness.

[33] Mr. Kunabalasingam says that the PRRA Officer misconstrued his argument, which was primarily focused on his vulnerability in dealing with authorities or withstanding the stresses of interrogation or possible detention. But the PRRA Officer dealt specifically with this allegation:

Counsel submits that the applicant's mental illness makes him more vulnerable to risk and unable to protect himself from agents of persecution. However, having conducted a detailed analysis in the preceding sections of this PRRA assessment, I found that the applicant has not demonstrated more than the mere possibility of being subjected to persecution at the hands of the government of Sri Lanka or any other agent of persecution. As such, I am unable to conclude that the applicant's mental illness would likely put him at an increased risk of harm.

[34] The PRRA Officer's assessment of the psychiatric report and its bearing on the risks faced by Mr. Kunabalasingam in Sri Lanka is, once again, transparent, justifiable and intelligible.

## VI. Conclusion

[35] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal, and none arises in this case.

[36] In light of the recent appointment of the former Deputy Attorney General of Canada as a judge of this Court, the solicitor of record for the Respondent is changed to the Attorney General of Canada.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified for appeal.
3. The solicitor of record for the Respondent is changed to the Attorney General of Canada.

“Simon Fothergill”

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Judge

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

**DOCKET:** IMM-520-17

**STYLE OF CAUSE:** JEGAN KUNABALASINGAM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 11, 2017

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** JULY 21, 2017

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