Federal Court Cour fédérale

Date: 20171116

Docket: IMM-4706-16

Citation: 2017 FC 1045

Ottawa, Ontario, November 16, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SRIDER PALANIVELU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Palanivelu is a national of Sri Lanka. His claim for refugee protection was dismissed by the Refugee Protection Division [RPD] and his appeal to the Refugee Appeal Division [RAD] was also denied. An application for leave to review that decision was dismissed by this Court. Mr. Palanivelu made an application for a Pre-Removal Risk Assessment [PRRA] which was denied. His application for judicial review of that decision was heard together with this application, and a decision will issue denying that review: See 2017 FC 1044.

[2] This application for judicial review relates to the application of Mr. Palanivelu for a visa exemption permitting him to file an application for permanent resident status from within Canada, on humanitarian and compassionate grounds [the H&C Application]. In the H&C Application Mr. Palanivelu says that he is seeking the exemption “as return to Sri Lanka would expose him to severe hardship, discrimination, harassment and an overall environment which is violent and volatile for him, and for persons similarly-situated to him.”

[3] Mr. Palanivelu, before the RPD, RAD and in his PRRA application alleged that he would be at risk in Sri Lanka from its security forces because he had been previously detained because of suspected links to the Liberation Tigers of Tamil Eelam [LTTE]. He further testified that his wife had previously been married to a man in the LTTE, who was killed in the conflict by the army.

[4] The RPD found that Mr. Palanivelu was not credible. It was not satisfied that he had been detained, that his wife was a widow of an LTTE member, nor that he would be, or had been, targeted by security forces because of his wife’s deceased spouse. He did not challenge the credibility finding relating to his evidence to the RAD, and presented no new evidence.

[5] In the PRRA application and in the H&C Application, he presented two letters as new evidence: a letter from his wife in Sri Lanka and a letter from a member of parliament for the Jaffna electoral district. The Officer who assessed the PRRA application also assessed the H&C Application. In each decision, the Officer assigned little weight to these letters. In my review of the PRRA decision, I held that the Officer’s assessment was reasonable, and I repeat that ruling

in this application. That analysis addresses one of the grounds raised in this application; namely that the Officer "erred by rejecting 2 credible letters, each with significant probative value." Other grounds of review are raised.

[6] Mr. Palanivelu submits that the Officer erred "by requiring the applicant to demonstrate 'significant financial establishment' in Canada." This submission is based on the following passages from the decision:

> The applicant first entered Canada on October 31, 2013. His application shows that he started working in November 2015 for ACE Bakery, and he submits a March 16, 2016 letter from his employer confirming his start date and ongoing employment. He also submits pay stubs covering the period from November 29, 2015 to April 30, 2016 showing that he works about 40 hours a week and nets between $450 and $550 per week. The applicant also submits his 2015 income tax assessment, showing 2015 earning of $11,566. The applicant does not say where he worked prior to ACE Bakery, but his earnings for 2015 suggest that he had another employer.
>
> …
>
> The applicant does not describe his work history or source of financial support prior to November 2015. He does not submit evidence of savings, renting a home, remitting money to family in Sri Lanka, ownership of a car or other assets, or other evidence of financial establishment. While I grant weight to the applicant's employment history, I am not satisfied that he has submitted evidence of <u>significant financial establishment.</u> [emphasis added]

[7] I do not accept that the Officer required that Mr. Palanivelu have "significant financial establishment." As the Respondent notes, in his H&C Application, Mr. Palanivelu himself describes his establishment as significant:

> My client remains gainfully employed in Canada, on a full-time basis. He is financially self-sufficient and he has done a stellar job, in the midst of a refugee claim determination process, of improving his English proficiency, securing employment, and

> contributing to the Canadian labour market and economy. <u>This establishment is significant</u> and ought not be interrupted or relinquished by virtue of potential removal to Sri Lanka. [emphasis added]

[8] I agree with the Respondent that an Officer can hardly be faulted for using the applicant's own terminology when stating that he does not agree with his submission. In any event, the evidence of financial establishment provided by Mr. Palanivelu, in my view, cannot be said to be anything more than minimal, and most certainly not worthy of much weight.

[9] Mr. Palanivelu also submits that the Officer erred by "finding, within a Visa exemption request, that the <u>solution</u> for the applicant is to return to Sri Lanka to be reunited with his family and children [emphasis added]." He also submits that the Officer's consideration of the children's best interests was unreasonable and not in keeping with guidance from the Supreme Court of Canada.

[10] The Officer's statement here complained of was made in the section of his analysis dealing with the best interests of the children. The Officer's analysis is as follows:

> The applicant says that he has three children in Sri Lanka, aged 5, 4, and 2. The applicant submits little additional information about his children and how they would be affected by the outcome of this application.
>
> The applicant does not say that he remits money to Sri Lanka to support his children and does not submit copies of remittance receipts. He does not say that he hopes to bring his children to Canada if this application were approved.
>
> With such limited information about the best interests of the applicant's children, I cannot grant much weight to this factor in this application. I note that a return to Sri Lanka would reunite the

> applicant with his children, and it seems likely that the children would benefit from a reunification.

[11] The submission of Mr. Palanivelu is that "[w]hile a return to Sri Lanka may reunite the applicant with his wife and children, this was quite irrelevant as the crux of his H&C was his fear of discrimination, harassment and harsh consequence [emphasis in original]."

[12] In my view, Mr. Palanivelu's complaint overlooks that an Officer in an H&C Application is required to consider the best interests of the children involved: See *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61, at para 39. This remains the case even where, as here, an applicant provides scant information regarding his children and their respective situations abroad or in Canada. Had the Officer not done this analysis, it may have been a reviewable error. Moreover, given the extremely brief narrative this applicant provided – that he has three children in Sri Lanka and their ages – he cannot now complain that the Officer's analysis was brief. As the Federal Court of Appeal observed in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, at para 8:

> H&C applicants have no right or legitimate expectation that they will be interviewed. And, since applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril.

[13] I see no error here of the sort alleged. Given the dearth of information about his children, nothing much could be said about their best interests. Given that family reunification is usually better for the children, it was not objectionable for this officer when considering their interests to note that they would likely be reunified with their father in Sri Lanka.

[14] Lastly, Mr. Palanivelu submits that the Officer's "analysis of country conditions in Sri Lanka, including [his or her] finding of a viable internal flight alternative in Colombo or Uva Province, is unreasonable."

[15] I concur with the Respondent's submissions that the Officer reasonably and adequately reviewed the country condition documents and did so based on this applicant's identity – keeping in mind the numerous findings that he would not be perceived to be someone with LTTE connections. I further agree with the submission that:

> [T]he H&C Officer's discussion regarding Colombo and Uva province does not constitute an IFA finding as this finding is understood in a risk assessment. This statement was made in context of assessing the Applicant's hardship – the H&C Officer noted that the Applicant had significant ties to Colombo and Uva province where he could relocate to avoid any unwanted government monitoring. It is open to the H&C Officer to consider different regions of a country in assessing hardship.

[16] In my view, the Officer's analysis was well reasoned, transparent and consistent with the evidence placed before him or her. No reviewable error is found.

[17] Neither party proposed a question for certification, nor is there one on these facts.

JUDGMENT IN IMM-4706-16

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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