Federal Court  Cour fédérale

Date: 20180302

Docket: IMM-1869-17

Citation: 2018 FC 235

Ottawa, Ontario, March 2, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

KAJENTHERAN KOPPALAPILLAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Kajentheran Koppalapillai, is a 32-year-old citizen of Sri Lanka. He left Sri Lanka in July 2010 and arrived in Canada in January 2011, at which time he sought refugee protection. The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected his claim for Canada's protection in a decision dated February 3, 2012, finding that he faced a generalized risk and could relocate to a viable internal flight alternative [IFA] in

Colombo. The Applicant applied for leave and for judicial review of the negative RPD decision, but this Court denied leave on June 18, 2012.

[2] In 2014, the Applicant applied for a pre-removal risk assessment [PRRA] on the basis that his family had recently been visited and harassed by a group of soldiers and members of the Karuna Group inquiring about his whereabouts. An immigration officer rejected the Applicant's PRRA application in a decision dated July 28, 2014. This decision was quashed though on judicial review and the matter was sent back for redetermination since the officer had improperly relied on an assessment of country conditions evidence by the Court of Appeal for the United Kingdom and the underlying decision from the Upper Tribunal of the Immigration and Asylum Chamber. Upon redetermination, a Senior Immigration Officer rejected the Applicant's PRRA application for a second time in a decision dated March 3, 2017. The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's decision.

I. Background

[3] The Applicant is of Tamil ethnicity. His family is involved in goldsmithing and farming in Munaitvu, a community in the Eastern Province of Sri Lanka some 30 kilometres from Batticaloa. During the Sri Lankan civil war, the region was under the control of the Liberation Tigers of Tamil Eelam [LTTE]; since the war's end, a number of military and paramilitary groups have been active in the region, including the Sri Lankan Army [SLA] and the Tamil Makkal Viduthalai Pulikal, also known as the Karuna Group, which the Applicant describes as a paramilitary organization. In May 2007, the Applicant started working in Kattankudi, a city

south of Batticaloa. In November 2007, on a visit home to Munaitvu, he was detained, beaten, and interrogated by the SLA who released him only after his family agreed to pay a large sum of money.

[4] In December 2009, following the end of the civil war, the Applicant attempted to return home for his grandmother's funeral but he was abducted by members of the Karuna Group who interrogated him about LTTE connections and his family's goldsmithing business. His abductors phoned the Applicant's father while they were beating him and demanded a large extortion payment. Five days later, a sum of money was paid and the Applicant was released. The Applicant's abductors demanded that he continue to report to them on a regular basis, and he claims that the Karuna Group has continued to harass his family about his whereabouts as recently as February 2014. The Applicant departed Sri Lanka in July 2010 and, after several months of travelling, arrived in Canada from the United States and made a claim for refugee protection on January 9, 2011.

II. The PRRA Officer's Decision

[5] In rejecting the Applicant's PRRA application, the Officer considered two affidavits sworn by the Applicant on March 6, 2014, and November 16, 2015, as well as several thousand pages of country conditions evidence submitted by the Applicant. The Officer did not consider those documents which pre-dated the RPD's decision; nor did the Officer consider evidence as to humanitarian and compassionate considerations which the Applicant had not linked to his personal, forward-looking risk in Sri Lanka. The Officer stated that "all other written evidence submitted has been considered in this PRRA."

[6] After summarizing and quoting from the RPD's decision, the Officer then proceeded to assess the risks faced by the Applicant because of his profile as a young Tamil male from the East, his race, his perceived political opinion, and as a failed asylum seeker. In assessing these risks, the Officer considered three translated letters provided by the Applicant: one from his parents dated September 15, 2015; an undated letter from his sister in Sri Lanka; and one from a neighbour of his parents in Sri Lanka dated November 16, 2015. The Officer afforded the letter from the Applicant's parents low probative value because it did not show that the Karuna Group has influence where the Applicant had lived or that they have an interest in pursuing the Applicant to Colombo. The Officer discounted the letter from the Applicant's sister on the basis that, not only did it not state that the Applicant faced risk upon his return to Sri Lanka due to his race, political opinion, being a Tamil male from the East or as a failed asylum seeker, but also because the Applicant had not provided identifying information such as a national identity card, photo identification, or other personal information to support her identity as the Applicant's sister. This letter did not, in the Officer's view, "add to the information concerning personal risk for the applicant or enlighten as to new risks for him in Sri Lanka." As for the neighbour's letter, the Officer noted that it did not indicate what threats the Applicant would face, by whom, or for what reasons, and that it was not accompanied by any documentation to confirm the neighbour's identity. The Officer found this letter to be "vague, lacking in details and not supported by corroborating evidence."

[7] After assessing these letters, the Officer then considered the Applicant's profile as a failed refugee claimant. The Officer reviewed documentary evidence which indicated that individuals returning to Sri Lanka after failed refugee claims were likely to be detained until

their identity could be corroborated by a family member. The Officer considered evidence from the Canadian High Commission indicating that it was aware of only four cases of persons having been detained on return to Sri Lanka, and that these cases involved outstanding criminal charges and were not related to their overseas asylum claims or their ethnicity. The Officer noted that the Applicant had been able to leave Sri Lanka on his own passport, indicating that he was not of interest to Sri Lankan authorities, and found that it was reasonable to expect he would not be subject to extended detention due to his lack of ties with the LTTE and the presence of his family in Sri Lanka to verify his identity should he be required to do so.

[8] The Officer next addressed the Applicant's "voluminous" submissions of country conditions evidence, noting that each piece of evidence would not be weighed individually and that, in view of *Ozdemir v Canada (Citizenship and Immigration)*, 2001 FCA 331 at para 9, 110 ACWS (3d) 152: "Decision-makers are not bound to explain why they did not accept every item of evidence before them. Much depends on the significance of that evidence when it is considered in light of the other material on which the decision was based." Nevertheless, the Officer stated, "all evidence that meets the requirements of the relevant IRPA sections has been considered in this PRRA."

[9] The Officer then cited subsection 161(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which requires that: "A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) and indicate how that evidence relates to them." The Officer reviewed the country conditions documentation and found that the Applicant had not linked this evidence to his personalized,

forward-looking risk in Sri Lanka, and it did not support the Applicant's contention that his profile is similar to those who are currently at risk in Sri Lanka. The Officer concluded that the country conditions evidence showed risks faced by the general population or described conditions faced by individuals whose profile did not match that of the Applicant.

[10] With respect to the Federal Court decisions the Applicant had submitted concerning passengers of the MV Sun Sea, the Officer found that since he had not been a passenger on the MV Sun Sea, he would not face a risk in Sri Lanka based on his mode of travel to Canada. The Officer noted that determinations arising from similar cases or outcomes of refugee determinations are to be given no weight, since they are dependent on the evidentiary record before the decision-maker. The Officer therefore assigned no weight to the Federal Court decisions submitted by the Applicant in support of his cited risk in Sri Lanka.

[11] The Officer found that the Applicant had not provided objective evidence to rebut the RPD's finding that he had an IFA in Colombo, and that his submissions that he would be targeted by the Eelam People's Democratic Party or security forces in Colombo were speculative. The Officer stated that the Applicant's PRRA application had been assessed independently of the RPD's findings, and found that the evidence the Applicant had submitted did not lead to a different conclusion than that of the RPD. The Officer concluded by noting that, while the country conditions evidence was inconsistent as to Sri Lanka's progress following the defeat of the LTTE, the majority of the evidence led to a conclusion that there had not been a material change in country conditions which would bring the Applicant within the definition of a Convention refugee or a person in need of protection.

III. Analysis

[12] Although the Applicant raises several discrete issues, it is unnecessary to deal with these separately because the overarching issue, in my view, is whether the PRRA Officer's decision was reasonable.

A. *Standard of Review*

[13] It is well established that, absent any question of procedural fairness, the standard of review by which to assess a PRRA officer's decision is that of reasonableness (see, e.g.: *Paul v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 687 at para 12, 282 ACWS (3d) 146; *Khatibi v Canada (Citizenship and Immigration)*, 2016 FC 1147 at para 11, 273 ACWS (3d) 156; *Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 8, 272 ACWS (3d) 822; *Chen v Canada (Citizenship and Immigration)*, 2015 FC 565 at para 11, 254 ACWS (3d) 901; *Shilongo v Canada (Citizenship and Immigration)*, 2015 FC 86 at para 21, 474 FTR 121; *Shaikh v Canada (Citizenship and Immigration)*, 2012 FC 1318 at para 16, 223 ACWS (3d) 1020).

[14] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine

whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708 [*Newfoundland Nurses*].

[15] Additionally, provided "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; nor is it "the function of the reviewing court to reweigh the evidence": *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339. The decision under review must be considered as "an organic whole" and the Court should not embark upon "a line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at para 54, [2013] 2 SCR 458).

B. *Was the PRRA Officer's decision reasonable?*

[16] The Applicant takes issue with the fact that the Officer considered "dated" evidence from 2011 and 2013, and then referred to more recent country conditions evidence independently researched by the Officer, before concluding that there had been no material change in circumstances. In the Applicant's view, the Officer ignored the bulk of the evidence he had submitted, despite the fact that his counsel had used extensive footnotes to identify the documentary evidence corroborating his submissions. The Applicant contends that if the Officer did not ignore the documentary evidence, the only alternative conclusion is that the Officer based the decision on the Applicant failing to show that he would personally be targeted. According to the Applicant, the Officer made findings which show a failure to review the evidence, including

evidence showing risks faced by young male Tamils returning from the West and who had experienced problems in the past. The Applicant maintains that the evidence submitted by him shows that leaving Sri Lanka without difficulty is not a predictor of safety upon return, and that Tamils who have family to pay bribes face heightened risk.

[17] The Applicant says the Officer did not consider the evidence as to the SLA and Karuna Group being linked, and this makes the proposed IFA in Colombo not viable since the agent of persecution is associated with the state. The Applicant maintains that the Officer erred in law by rejecting the three letters without rejecting the credibility of the authors or the Applicant, contrary to the Officer's obligation to consider the evidence in its totality and for what it does say, particularly since it corresponds to the Applicant's documentary evidence. In the Applicant's view, the Officer unreasonably ignored the bulk of his submissions and supporting documentation and required him to show personalized risk. The Applicant notes that, though he has suffered persecution in the past, that is not a prerequisite for finding that a person has a well-founded fear of persecution.

[18] The Respondent maintains that the Officer's decision was reasonable. According to the Respondent, the Officer properly considered the country conditions evidence to determine whether new risks had arisen between the date of the RPD decision and the PRRA decision. The Respondent says the Officer was clear that all documents which met the relevant provisions of the *IRPA* were considered, and failure to specifically refer to each piece of evidence does not mean that evidence was ignored or that the decision was unreasonable. The Respondent argues it is not an error for a PRRA officer to fail to refer to country conditions evidence that contradicts

the officer's findings, and in this case the Applicant has not pointed to any evidence which squarely contradicts the Officer's decision and which was ignored by the Officer.

[19] The Respondent contests the Applicant's argument that the Officer did not properly consider risks faced by young Tamil men returning from the West, noting that this point was clearly considered by the Officer. According to the Respondent, it is not the Court's role to re-weigh the evidence, and the Applicant must make a connection between general country conditions evidence and his personal circumstances. The Respondent says the Officer did not find the Applicant was not at risk because he had left Sri Lanka on his own passport but, rather, cited this as an example of his lack of LTTE ties which would put him at risk upon return. The Respondent maintains that the three letters were properly considered and that the Officer did not question the credibility of the authors, but reasonably found them to be of low probative value since they did not provide any concrete evidence as to the risk the Applicant would face upon return. As to the Applicant's argument that the Officer required him to show personalized risk, the Respondent says this argument is without merit because he failed to show that his situation or personalized circumstances were materially different from what was considered by the RPD.

[20] It is true that the Officer did not specifically refer to each piece of evidence. This, however, does not mean that the Officer ignored evidence, nor does it render the decision unreasonable. There is a presumption that a decision-maker such as the Officer "weighed and considered all the evidence presented…unless the contrary is shown" (*Boulos v Public Service Alliance of Canada*, 2012 FCA 193 at para 11, [2012] FCJ No 832, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1). A failure to refer to

some relevant evidence will not typically justify a finding that the decision was made without regard to the evidence, prompting the Court to grant relief as contemplated by paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7. This is not always the case though, since "…the more important the evidence that is not mentioned specifically and analyzed in the…reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact 'without regard to the evidence'" (*Hinzman v Canada (Citizenship and Immigration)*, 2010 FCA 177 at para 38, [2012] 1 FCR 257 [*Hinzman*], citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17, 157 FTR 35 (TD) [*Cepeda-Gutierrez*]).

[21] The case law in this Court is somewhat divided as to whether a *Cepeda-Gutierrez* inference can be drawn when the evidence purportedly overlooked is country condition documentation. Such evidence is usually extensive and can be (as in this case) voluminous, including not just the material submitted or specifically referred to by applicants but also everything in the national documentation package for the countries of reference (*Avila Rodriguez v Canada (Citizenship and Immigration)*, 2012 FC 1291 at paras 42, 44, [2014] 2 FCR 254).

[22] In *Canada (Citizenship and Immigration) v Balogh*, 2014 FC 932 at para 25, 245 ACWS (3d) 915, the Court observed that the RPD's "duty to expressly refer to evidence that contradicts its key findings does not apply where the contrary evidence in question is only general country documentary evidence". This proposition finds support in several decisions (see: e.g., *Shen v Canada (Citizenship and Immigration)*, 2007 FC 1001 at para 6, 160 ACWS (3d) 1048; *Zupko v Canada (Citizenship and Immigration)*, 2010 FC 1319 at para 38, 196 ACWS (3d) 817;

Camacho Pena v Canada (Citizenship and Immigration), 2011 FC 746 at para 34, 204 ACWS (3d) 370; *Salazar v Canada (Citizenship and Immigration)*, 2013 FC 466 at paras 59-60, [2013] FCJ No 527). It has also been rejected though. For example, in *Ponniah v Canada (Citizenship and Immigration)*, 2014 FC 190 at para 16, 238 ACWS (3d) 436, the Court rejected an argument that *Cepeda-Gutierrez* should be read narrowly so that it does not apply where the documents in question are general country documents and are not specific to an applicant, and stated that "nothing in *Cepeda-Gutierrez* supports such a narrow reading so as to constrain its precedent to evidence regarding the Applicant's personal situation" (see also: *Gonzalez v Canada (Citizenship and Immigration)*, 2014 FC 750 at para 56, 460 FTR 221; *Pinto Ponce v Canada (Citizenship and Immigration)*, 2012 FC 181 at para 66, [2012] FCJ No 189; *Gonzalo Vallenilla v Canada (Citizenship and Immigration)*, 2010 FC 433 at paras 13-15, [2010] FCJ No 507).

[23] A pragmatic approach to this issue is the one adopted by Mr. Justice O'Keefe in *Vargas Bustos v Canada (Citizenship and Immigration)*, 2014 FC 114 at paras 35-39, 237 ACWS (3d) 189 [*Vargas Bustos*]. Justice O'Keefe did not subscribe to the notion that unmentioned country documentation can never support an inference that it was overlooked, but he acknowledged that it would often be administratively impractical for the RPD to specifically discuss every conflicting source of information. Consequently, "if the board explains what documentary evidence it relies on and that evidence is reliable and reasonably supports its conclusions, then finding a few contrary quotations that it did not specifically explain away will not make the decision unreasonable" (*Vargas Bustos* at para 39; see also *Hernandez Montoya v Canada (Citizenship and Immigration)*, 2014 FC 808 at paras 35-36, 50-51, 462 FTR 73). To similar effect, the Court in *Kakurova v Canada (Citizenship and Immigration)*, 2013 FC 929 at para 18,

[2013] FCJ No 1026, stated that: “It would be overwhelmingly burdensome for the Board to specifically cite every point in the evidence that runs contrary to its determinations. All it was required to do was to review the evidence and reasonably ground its findings in the materials before it…”

[24] It should be remembered that the principle emanating from *Hinzman* and *Cepeda-Gutierrez* is not mandatory. It is only where the unmentioned evidence is “critical and contradicts the tribunal’s conclusion that the reviewing court *may* decide that its omission means that the tribunal did not have regard to the material before it” (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 39, 213 ACWS (3d) 1003 (emphasis in original)). Also, this principle does not supplant the ordinary reasonableness standard of review, pursuant to which courts must “be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful” (*Newfoundland Nurses* at para 17). So long as the reasons “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland Nurses* at para 16), there is no cause to infer that contrary evidence was overlooked (*Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at paras 11-13, [2012] FCJ No 1594).

[25] In this case, the reasons enable the Court to understand why the Officer made the decision he or she did, and permit it to determine that the conclusion is within the range of acceptable outcomes. The Officer clearly stated that, aside from those documents which pre-dated the RPD’s decision and those which the Applicant had not linked to his personal, forward-

looking risk in Sri Lanka, all documents which met the relevant provisions of the *IRPA* were considered. The Officer explicitly stated what evidence had been relied upon, and in my view that evidence was reliable and supported the Officer's conclusions. The Officer conducted an independent assessment of country conditions evidence of risks faced by returning young Tamil males, based upon not only the evidence submitted by the Applicant but also upon the evidence independently researched and referenced by the Officer in the decision. The Officer cannot be faulted, as the Applicant argued at the hearing of this matter, for not relying upon or referencing more recent country conditions evidence which the Applicant included as part of his application record but which was not submitted to or before the Officer in rendering the PRRA decision.

IV. Conclusion

[26] The Officer's reasons for refusing the Applicant's PRRA application are intelligible, transparent, and justifiable, and the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review is therefore dismissed.

[27] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-1869-17

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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