

Federal Court



Cour fédérale

Date: 20200326

Docket: IMM-6321-18

Citation: 2020 FC 440

Ottawa, Ontario, March 26, 2020

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

CARMEN MILDRED JANSZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision made on November 7, 2018 by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] in which it found that the Applicant, Carmen Mildred Jansz, a citizen of Sri Lanka, was not a Convention refugee nor a person in need of protection [Decision].

[2] The Applicant is a member of the Burgher ethnic minority. She sought refugee protection on the basis that she faced persecution as a Christian, Burgher woman living in a majority Muslim and Singhalese neighbourhood.

[3] For the reasons that follow, this application is dismissed.

II. **Background facts**

[4] In November 2013, the Applicant's neighbour, Mrs. Swarah, began shaming the Applicant's family and threatening the Applicant. The Applicant filed a police report, and the police came to the neighbourhood, issued a warning to Mrs. Swarah, and asked Mrs. Swarah to attend the police station. Despite the warning, Mrs. Swarah spread rumours about the Applicant and had loud conversations about the Applicant, calling her a "bad person." In 2014, the Applicant began hearing her name mentioned on local radio, and people in the neighbourhood began recognizing the Applicant. The Applicant believed Mrs. Swarah was responsible.

[5] In 2015, the Applicant moved to a new house to avoid attention. The Applicant did not hear from Mrs. Swarah or her family again after moving.

[6] In 2016, people in the Applicant's new neighbourhood began staring at her. The Applicant moved from place to place, staying with friends, because she believed it was too dangerous to stay in her own home.

[7] On January 16, 2017, the Applicant entered Canada on a Temporary Resident Visa. She made a refugee claim on July 20, 2017. The Applicant stated that she delayed in making a

refugee claim because she was recovering from the stress of what happened to her, and because the first lawyer she met with told her that she could not make a refugee claim.

A. *Refugee Protection Division [RPD] Decision*

[8] The RPD found that the Applicant was not a Convention refugee nor was she a protected person. The harm she faced, such as being stared at, did not rise to the level of persecution. The RPD also found that the Applicant's documentation, which included a police report and letters of support from the Applicant's family and friends, provided "no evidence of significance in regard to the level of harm faced by the [Applicant]".

[9] The RPD found that the evidence did not establish that the Applicant was at risk of future harm.

B. *Decision under review – the RAD*

[10] The RAD found that the determinative issue was whether the Applicant faced more than a mere chance of persecution upon her return to Sri Lanka.

[11] The RAD held that the acts of discrimination alleged by the Applicant did not rise to the level of persecution because the acts did not deprive the Applicant of a basic human right, and because the acts were not perpetrated repeatedly and persistently. Mrs. Swarah's behaviour was rude, and Mrs. Swarah may have committed a minor criminal act when she uttered threats, but this threat was handled effectively by the police. When the Applicant moved to a different neighbourhood, she testified that she never heard from Mrs. Swarah or her family again. While people in the Applicant's new neighbourhood stared at her, being stared at does not lead to

deprivation of a basic human right. The RAD concluded that the Applicant did not experience persecution.

[12] The RAD considered the Applicant's residual profile as a Burgher, Christian woman. The RAD reviewed country documents provided by counsel which showed that Christians face some discrimination in Sri Lanka. However, the RAD found that the number of incidents was low – 47 reports of discrimination between 2015 and 2016 in a population of over one and half million Christians, and 87 attacks on churches, pastors and congregations in a population of 1,655,000. The RAD found that there was no more than a mere chance that the Applicant would face a risk upon her return to Sri Lanka.

[13] The RAD considered Chairperson's Guideline 4, which sets out considerations for women refugee claimants who fear gender-related persecution by reason of one or any number of enumerated grounds.

[14] The RAD stated that the Applicant claimed she would be targeted because she is a "single female Tamil," despite identifying the Applicant as an ethnic Burgher earlier in the decision. The RAD then distinguished the Applicant's circumstances and risk from returning Tamil women who are suspected of having ties to the Liberation Tigers of Tamil Eelam (LTTE).

[15] The RAD found that the Applicant's profile was distinct because she had no suspicions attached to her, and could live anywhere she wished in Sri Lanka without attracting police attention.

[16] The RAD concluded that the Applicant would face no more than a mere chance of a risk of persecution.

III. Issue and Standard of Review

[17] The Applicant raises a single issue: was the RAD's finding that she failed to establish a well-founded fear of persecution based on her residual profile as a Catholic female Burgher unreasonable?

[18] The Federal Court of Appeal has established that reasonableness is the standard of review to be applied by this Court to a decision of the RAD: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30, 35 [*Huruglica*].

[19] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[20] Recently, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions which do not apply on these facts: *Vavilov* at para 23.

[21] Citing *Dunsmuir*, it was also confirmed in *Vavilov* that a reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15.

IV. Analysis

[22] The RAD acknowledged that the standard of review it was to apply to the RPD decision was set out in *Huruglica* as being correctness.

[23] The core of the Applicant's argument that her residual profile as a Christian female Burgher was not properly considered arises from the reference made by the RAD that she claimed "she will be targeted because she is a single female Tamil."

[24] The Respondent characterized that reference as merely "a typo".

A. *The RAD properly considered the Applicant's residual profile*

[25] It is clear from reading the decision as a whole that the RAD understood the Applicant was a Burgher, not a Tamil. At paragraph two of the decision the RAD states that the Applicant "alleges that she is targeted due to her ethnicity as an ethnic Burgher, a very small minority in Sri Lanka".

[26] Later in the Decision the RAD expressly discusses the full residual profile of the Applicant in the section entitled "Residual Profile". Over eight paragraphs the RAD considered whether there was evidence that the Applicant would be persecuted as "a Burgher, Christian female".

[27] As previously stated, when considering that residual profile, the RAD took into account that Chairperson's Guideline 4 dealt with gender in relation to refugee claims. The RAD noted that in addition to the particular social group identified by the Applicant there was a second dimension, which was race. It was at this point that the RAD erroneously stated that the Applicant claimed she would be targeted "because she is a single female Tamil".

[28] The error was corrected two paragraphs later when the RAD discussed the Applicant's argument that a confluence of four factors — gender, ethnicity, religion and return from abroad — put her at serious risk.

[29] The RAD distinguished the risk arising from the profile of the Applicant by contrasting it to a Tamil woman suspected of having ties to the LTTE who is sneaking back into Sri Lanka after attempting to hide from justice.

[30] The RAD found that the Applicant has none of those traits, which it refers to as "suspicions", and she does not have the profile to attract the attention of police or anyone else.

[31] I find that the RAD reasonably reviewed the arguments made by the Applicant about her profile. It fully considered them in light of all the evidence before it. The conclusion that her residual profile would not put her at risk is supported in the underlying record.

[32] For these reasons this aspect of the Decision is reasonable.

B. *The RAD did not minimize the evidence*

[33] The Applicant also argues that the RAD did not take into account her combined identity as a Catholic and a Burgher and it unduly minimized the documentary evidence. She says the evidence shows significant persecution against Christians.

[34] The RAD considered the documentary evidence submitted by the Applicant from the 2015 US Department of State International Religious Freedom Report for Sri Lanka [US DOS Report]. It included statistical evidence of the number of incidents of religious discrimination against people and against churches. Given the numbers, which it described as an “infinitesimally small percentage”, the RAD reasonably concluded that while Christians faced some discrimination there was no more than a mere chance that the Applicant would face such a risk in Sri Lanka.

[35] Although the Applicant disagrees with that conclusion by the RAD, the only way it can be set aside is for the Court to reweigh the evidence.

[36] That is not something that I am permitted to do. Nor, on these facts, am I inclined to.

[37] The US DOS Report notes that since a change in government there was a decrease in organized violence against minority communities but other forms of rights violations persisted such as discriminatory practices and harassment.

[38] The documentary evidence submitted by the Applicant included a two-page article by the New York Times, dated December 27, 1988 called “Colombo Journal; A Proud People, Scattered and Forgotten by Time”. The article discussed the fact that Burghers are Christians

descended from Eurasians, Europeans and high-born Sinhalese who, at that time in Sri Lanka, numbered no more than 30,000. The Burghers became well-educated and active in the professions. They became patrons of the arts. When the Sinhalese came to power more than 60,000 Sri Lankans, most of them Burghers, moved to Australia where more Burghers now live than in Sri Lanka.

[39] The Applicant pointed to a paragraph in the article in which it was stated that Burgher families left to avoid growing violence and the breakdown in services in a country that once led South Asia in almost every field of development. The article concluded with the statement that “we Burghers are a middle-class community, a law-abiding people . . . We hate disruption, and we are out of sympathy with socialism and revolution.”

[40] The RAD noted that there was nothing in the New York Times article to support a current or forward-looking level of persecution of Burghers or Christians in Sri Lanka. That is a reasonable conclusion on the evidence. The article, written over 30 years ago is significantly dated. It mentions “intolerance” of religious minorities, not threats or persecution. The violence referred to in the article, when read in context, refers to the Tamil-Sinhalese fighting that brought Colombo to a standstill.

V. **Conclusion**

[41] On the basis of the reasons provided, the outcome and the evidence in the record, I find that the Decision is reasonable.

[42] The finding of the RAD that the Applicant did not face more than a mere chance of persecution was reasonable on the facts and law, both of which the RAD reviewed.

[43] The RAD reasonably considered the alleged acts of discrimination and the country condition documents that the Applicant said showed both significant persecution and violence against Christians and Burghers in Sri Lanka. Quite simply, the evidence did not support that position.

[44] The decision-making process of the RAD meets the requirement of being justified, transparent and intelligible. The outcome falls within the range of possible, acceptable outcomes defensible on the facts and law: *Dunsmuir* at paras 47-49; *Vavilov* at paras 15 and 86.

[45] For all the foregoing reasons, I find that the Decision is reasonable.

[46] The application is dismissed, without costs.

[47] There is no serious question of general importance for certification on these facts.

JUDGMENT in IMM-6321-18

THIS COURT'S JUDGMENT is that the application is dismissed, without costs. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: CARMEN MILDRED JANSZ v THE MINISTER OF
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