Federal Court  Cour fédérale

Date: 20220531

Docket: IMM-6744-20

Citation: 2022 FC 788

Toronto, Ontario, May 31, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

KETHESWARAN THEVARASA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a Sri Lankan national who arrived in Canada on August 13, 2010, aboard the MV *Sun Sea*. In August 2011, the Refugee Protection Division (the "RPD") denied his application for protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*). After a deportation order against the applicant became active on November 13, 2019, he applied for a pre-removal risk assessment ("PRRA") under section 112 of the *IRPA*.

[2] By decision dated August 5, 2020, a senior immigration officer denied his PRRA application. The officer concluded that the applicant would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if he returned to Sri Lanka.

[3] The applicant applied for judicial review of that decision. The applicant asked the Court to set aside the decision as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[4] For the reasons below, the application will be dismissed.

I. **The PRRA Process**

[5] A PRRA is a formal risk assessment provided to qualifying individuals before they are removed from Canada. The PRRA process seeks to ensure that those individuals are not sent to a country where their lives would be in danger or where they would be at risk of persecution, torture, or other cruel and unusual treatment or punishment, consistent with Canada's obligations under international law: see *Valencia Martinez v Canada (Citizenship and Immigration)*, 2019 FC 1, at para 1; *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262, [2020] 2 FCR 355, at para 11.

[6] A PRRA determines whether, based on a change in country conditions or new evidence that has emerged since the RPD decision, there has been a change in the nature or degree of risk faced by the applicant if he or she is returned to his/her home country. The PRRA recognizes that the international law principle of *non-refoulement* (which prohibits the removal of refugees to a

territory where they are at risk of human rights violations) is prospective, and that, in some cases, a second look at country conditions may be required to determine whether the circumstances have changed or new risks have arisen between adjudication of the refugee claim and the individual's removal: *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 FCR 299, at paras 4, 116; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, at para 10; *Alexander v Canada (Citizenship and Immigration)*, 2021 FC 762, at para 48.

[7] The applicant bears the burden to show that the PRRA application should be granted: *GU v Canada (Citizenship and Immigration)*, 2021 FC 1055, at para 14; *Qosaj v Canada (Citizenship and Immigration)*, 2021 FC 565, at para 30; *Daniel v Canada (Citizenship and Immigration)*, 2011 FC 797, at para 14.

[8] In this matter, the record before the officer included the applicant's application forms for the PRRA; the applicant's 2010 Personal Information Form and narrative claiming *IRPA* protection; the RPD's decision dated October 2, 2012; and two emails from his legal counsel containing submissions on the PRRA application with links to country condition documents.

[9] In the first PRRA email dated March 5, 2020, the applicant's counsel submitted that Sri Lanka had experienced "major changes in its country conditions in the last few months" due to an election in November 2019 and the country's withdrawal from the United Nations Human Rights Committee resolution in the week before the email. As a result, the applicant took the position that the major country condition documents on which counsel and officers rely required "major revision". In addition, certain country reports prepared annually were not yet available for 2020. As a result, the applicant submitted that none of the evidence usually relied upon (for

example, evidence listed in the most recent National Documentation Package) should be relied upon without notice to the applicant and an opportunity to respond because "they will largely have been overtaken by events". In addition, the applicant requested additional time to incorporate recent events into updated submissions and major reports as they were available.

[10] Following delays related to the pandemic, the applicant made additional submissions by email dated June 8, 2020, supported by a number of articles and provided links to them. The applicant submitted that the government of Sri Lanka had "just taken a move so extraordinary" that it had to be brought to the officer's attention. The applicant explained that on June 2, 2020, the President of Sri Lanka has established a Presidential Task Force whose objectives and powers were broad and vague. Many of the individuals appointed to the Presidential Task Force had military and other backgrounds in the Sri Lankan civil war that caused great concern to the applicant, as did the absence of legislative oversight and the effects on the rule of law. The applicant submitted that the action by the Sri Lankan government had "dire implications for the protection of human rights in the country, and signals as well as being an initial step in further oppression of Tamils (and other minority groups) and a further breakdown of the rule of law. It is therefore important evidence of the risk the applicant will face in Sri Lanka".

II. **The Decision under Review**

[11] The officer considered the RPD's reasons for denying the applicant's claim for protection under the *IRPA*. The applicant claimed that he was a suspected member of the Liberation Tigers of Tamil Eelam ("LTTE") against whom the Sri Lankan army fought in the civil war that concluded in 2009. The applicant left Sri Lanka in 2010 after the end of the war and after his release from a camp for internally displaced persons, because he feared being associated with the

LTTE. He claimed that he was held in the camp and was questioned later at home because his brother was imprisoned in Colombo, which led authorities to have suspicions about him.

[12] The officer set out the applicant's claims and the RPD's reasoning at some length. The officer noted that the RPD concluded that there was no evidence that the government would pursue the applicant other than for routine questioning. The RPD ultimately concluded that the applicant was not a person in need of protection in Canada, noting that the applicant was never sought, arrested or detained by Sri Lankan authorities. If he were seriously considered as having links to the LTTE, the RPD found he could not have travelled and left Sri Lanka as easily as he apparently did. As a result, there was "no evidence that he would be considered [as] having links to the LTTE" and "no reason to fear return, as he very clearly does not have a profile that is of any interest to authorities".

[13] The officer noted that the PRRA was an opportunity for the applicant to present risks that would prevent him from returning to Sri Lanka; therefore only new evidence, or evidence that would not reasonably have been obtained or presented before the RPD, would be assessed. The officer then stated: "Since the purpose of the PRRA is to assess forward-looking risk, I prefer to place greater weight on more recent sources, when available".

[14] The officer recognized the applicant's submission that changes in Sri Lanka related to the pandemic had concentrated power in a small number of individuals, particularly through the formation of a Presidential Task Force. The officer recognized the broad mandate of the Presidential Task Force, which could enable authorities to pursue its opponents as "social groups" who commit "antisocial activities". The officer noted that the Presidential Task Force consisted of 13 individuals, many of whom were involved in the military during the civil war or

who had attempted to interfere with the election commission or silenced opponents on social media. The officer recognized the applicant's concern that the Task Force had direct access to the President and there was a lack of oversight.

[15] The officer stated:

> While I acknowledge that these changes are not ideal for the Tamil minority population, there is no evidence that the applicant would specifically be targeted. As per the RPD decision, the applicant's profile would not be of interest to authorities. If these ongoing changes do result in increased screening of suspected LTTE members, the applicant would still not be a concern to authorities. The onus is on the applicant to provide the complete documentation that he wishes to have considered in the PRRA, but there is no evidence that there would be any risk to the applicant based on his Tamil ethnicity and residence in Northern Province.

[16] The officer found that based on "the information on file and giving most weight to the objective country documentation that exists for Sri Lanka, I find that there is insufficient evidence the applicant would face more than a mere possibility of persecution based on a protected ground". The officer found it was unlikely that the applicant will be subject to cruel or unusual treatment or torture if he were returned to Sri Lanka.

[17] In the next section of the reasons (entitled "Results of Assessment"), the officer concluded that the applicant's circumstances were linked to a Convention ground in *IRPA* section 96. However, "based on the evidence submitted before me in the form of statements and publicly available country documentation", the officer found that there was less than a mere possibility that the applicant would be persecuted as a suspected LTTE member in Sri Lanka. The officer also concluded that the applicant was not likely to be subjected to cruel or unusual punishment under section 97 if he were returned to Sri Lanka, and found no substantial grounds for believing he would face a risk of torture.

[18] The officer therefore denied the PRRA application.

[19] Under “Sources Consulted”, the officer’s reasons stated: “Pre-Removal Risk Assessment application, received 12 November 2019, including submissions and supporting documentary evidence”. The officer did not list any other country condition evidence relating to Sri Lanka.

[20] In this Court, the applicant’s written submissions challenged the reasonableness of the officer’s decision on several interrelated grounds concerning, broadly speaking, the officer’s alleged failure to assess the evidence of new risk in the objective country condition documents against the applicant’s proper profile and failure to provide an explanation in the written reasons that demonstrated having done so.

[21] At the hearing, the applicant narrowed and focused the argument. He submitted that the officer’s reasons were not intelligible, transparent or properly justified because the applicant’s evidence of new risks in Sri Lanka was rejected because the officer accepted unspecified and undisclosed objective country condition evidence. The officer’s reasons inadequately explained what that evidence was and why it persuaded the officer not to grant the PRRA application.

III. **Analysis**

A. *Standard of Review*

[22] The standard of review is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov,* at paras 12-13 and 15. The Court starts with the reasons provided by the decision maker, which it reads holistically and contextually, and in conjunction with the record

that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86.

[23] A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194.

[24] The Supreme Court has identified two types of fundamental flaws in administrative decisions: a failure of rationality internal to the reasoning process; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov*, at para 101; *Canada Post*, at paras 32, 35 and 39.

[25] A minor misstep or peripheral error will not justify setting aside a decision. In order to intervene, the court must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

B. *Was the Officer's PRRA Decision Reasonable?*

[26] At the hearing in this Court, the applicant focused on the following three statements in the officer's reasons:

(a) "Since the purpose of the PRRA is to assess forward-looking risk, I prefer to place greater weight on more recent sources, when available";

(b) "Based on the information on file and giving most weight to the objective country documentation that exists for Sri Lanka, I find …"; and

(c) "… based on the evidence submitted before me in the form of statements and publicly available country documentation …"

[27] The applicant submitted that these three statements suggested that the officer had relied upon unspecified objective country condition evidence when preparing the PRRA decision. The applicant submitted that the officer used that unidentified evidence as the basis for the conclusion that the applicant would not face a risk on returning to Sri Lanka. Having not expressly disclosed, analysed or listed the additional country condition evidence that was considered and relied upon, the applicant submitted that the officer's reasons were not intelligible or transparent and failed to provide proper justification for the negative PRRA decision.

[28] The respondent disagreed. The respondent submitted that the officer did not refer to any unidentified evidence. Rather, the officer considered the conclusions of the RPD related to the risks in Sri Lanka, and considered the applicant's submissions on new risks arising from the Presidential Task Force as described in the emails from his counsel dated March 5 and June 8, 2020. The officer found that the evidence was "insufficient" to show that he faced a risk of persecution under section 96 or risks of torture or other treatment protected by subsection 97(1).

[29] The respondent maintained that the officer's reasons sufficiently considered the applicant's position and submissions on the risk of his return to Sri Lanka. The respondent noted that the applicant's email dated March 5, 2020 advised the officer that outside sources of country

condition evidence could not be relied upon – the officer should only consider what the applicant provided or should give him an opportunity to make additional submissions on other country condition evidence. With respect to the June 8, 2020 email, the respondent submitted that the applicant's position was essentially that the Presidential Task Force could have implications for the applicant, which was not sufficient to meet the standards for *IRPA* protection.

[30] I generally agree with the respondent and conclude that the applicant has not demonstrated that the officer's decision was unreasonable.

[31] Reading the officer's reasons as a whole and in the context of the record, I do not infer that the officer considered unnamed or unidentified country condition evidence. The officer did not list any such evidence in the "Sources Consulted" section of the reasons and there are no such documents in the Certified Tribunal Record.

[32] None of the three statements identified by the applicant referred expressly to a source outside of the materials in the CTR. The officer's stated preference to "place greater weight on more recent sources, when available", when read with the rest of the paragraph, was a general statement about the kind of evidence that the officer preferred to rely upon when assessing PRRA applications. The officer's second statement about giving "most weight to the objective country documentation that exists for Sri Lanka" was also a comment about the relative weight of evidence. The third reference, to the evidence "before me in the form of statements and publicly available country documentation" appeared to refer to the applicant's country condition evidence in the CTR and not to unnamed and unidentified country condition evidence.

[33] Even assuming that one of the three statements was inadvertently ambiguous as to what evidence was being relied upon, I do not conclude that the officer's decision was unreasonable in this case: *Vavilov*, at para 100; *Mason*, at para 36; *Alexion Pharmaceuticals*, at para 13.

[34] It is possible that the officer was, in each case, using standard language developed in prior PRRA decisions that, when used in this case, led to an argument by the applicant that the officer relied on other unidentified country condition evidence. My conclusion that the applicant has not shown that the decision was unreasonable, on the grounds alleged, does not detract from the requirement that decision makers ensure that their reasons are carefully tailored to each applicant's circumstances and the evidence considered in each application.

[35] I have also assessed the reasonableness of the officer's decision more broadly. As I read the officer's reasons, the officer specifically considered the applicant's submissions concerning the Presidential Task Force. After doing so, the officer found no evidence that the applicant would be specifically targeted and also found that his profile would not be of interest to Sri Lankan authorities (as the RPD had concluded). As the respondent noted, the officer addressed the possibility of increased screening of suspected LTTE members, which had been raised in the applicant's submission. The officer concluded that the applicant would still not be a concern to authorities. The officer noted the onus on the applicant to provide the complete documentation he wished to have considered in the PRRA and concluded that there was no evidence of risk to him based on his Tamil ethnicity and residence in the Northern Province of Sri Lanka.

[36] Following this analysis of the applicant's position and country condition evidence submitted, the officer found that there was "insufficient evidence" that the applicant would face more than a mere possibility of persecution on a protected ground.

[37] Reading the reasoning as a whole with the record, the officer concluded that the country condition evidence described in his counsel's emailed submissions was insufficient to give rise to new risks in Sri Lanka for PRRA purposes. In my view, it was open to the officer to reach that conclusion based on the record and the content of the applicant's submissions: *Vavilov*, at paras 91-96. The officer's decision was not untenable in light of the relevant factual constraints: *Vavilov*, at para 101; *Canada Post*, at paras 32, 35 and 39. The applicant did not contend that the officer's analysis contained a legal error.

IV. **Conclusion**

[38] The application is dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-6744-20:

THIS COURT'S JUDGMENT IS THAT:

1. The application is dismissed.

2. Neither party proposed a question to certify for appeal and none will be stated.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Sarah L. Boyd	FOR THE APPLICANT
Veronica Cham	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sarah L. Boyd Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Veronica Cham Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT